



Structure Replacement Project Bridge 30-114-08.1 – Frontage Road N Glen Ullin

Morton County – Work Order 2232

Apex Project Number 22.517.0045

March 2026

Apex Engineering Group, Inc.
600 South 2nd Street, Suite 145
Bismarck, ND 58504

ENGINEERS CERTIFICATION

I, Troy Ripplinger, P.E., a Registered Professional Engineer in the State of North Dakota, hereby certify that the attached Specifications for the Structure Replacement Project, Bridge 30-114-08.1 Morton County, North Dakota were prepared by me or under my direct supervision and that I am a duly Licensed Professional Engineer under the laws of the State of North Dakota.

Troy Ripplinger /s/
Signature

Troy Ripplinger, PE
Typed or Printed Name

03/06/2026
Date

PE - 5044
License Number



**Structure Replacement Project
Bridge 30-114-08.1 – Frontage Road N Glen Ullin
Morton County Highway Department**

**Apex Project # 22.517.0045
Owner Project # Work Order 2232**

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Section 00030 - ADVERTISEMENT FOR BIDS

Sealed bids for **Structure Replacement Project, Bridge 30-114-08.1**, according to the drawings and specifications, will be received by John Saiki, County Engineer, at the Morton County Highway Department, 2916 37th Street NW, Mandan, North Dakota 58554 until 10:00 AM on the 14th of April, 2026, and then publicly opened and read aloud in the Conference Room. The Contract Documents may be examined at the following locations:

Apex Engineering Group, Inc. – 600 South 2nd Street – Suite 145, Bismarck, ND 58504
Morton County Highway Department – 2916 37th Street NW, Mandan, ND 58554
Bismarck-Mandan Builders Exchange – 4251 Morning Star Dr S – Mandan, ND 58554

The Contract Documents are available for download from the QuestCDN.com website for \$25.00 (QuestCDN Project #10095205). Prospective Bidders are urged to register with the designated website as a plan holder, even if the Bidding Documents are obtained from a plan room or source other than the designated website. Bidders may also obtain hard copies of the Contract Documents from the office of Apex Engineering Group, Inc., 600 South 2nd Street – Suite 145, Bismarck, ND 58504, upon payment of a non-refundable fee of \$100 for 11 x 17 size drawings and specifications.

Bids shall be based upon cash payment for the following general items:

- The project consists of the removal of a timber bridge structure, installation of 2-double cell 11'x8'x84' precast concrete box culverts, grading and incidentals.
- All other improvements as shown and described in the Drawings and Specifications.

Bids will be received as a Unit Price bid for General Construction. The Owner intends to award the Bid on the basis of the low bid submitted by a responsible and responsive bidder for the aggregate sum of all bid items. The Owner reserves the right to reject any and all Bids and to waive any informalities.

No pre-bid conference will be held.

Each Bid shall be accompanied by a separate envelope containing a Bidder's Bond in a sum equal to five percent (5%) of the full amount of the Bid, executed by the Bidder as principal and by a surety company authorized to do business in this state, conditioned that if the principal's Bid is accepted and the contract awarded to the principal, the principal, within ten (10) days after Notice of Award, shall execute and effect a contract in accordance with the terms of his Bid and a Contractor's Bond as required by law and the regulations and determinations of the governing body. The Bid Bond of the three lowest Bidders will be retained until the contract has been awarded and executed, but not longer than sixty (60) days. The Bid security is a guarantee that the Bidder will enter into contract for the work described in the Proposal. The bidder must submit a Bid Bond as outlined above.

All Bidders shall have a valid North Dakota Contractor's license of the appropriate Class for the work, as required by Section 43-07-05 (NDCC). Bidders shall enclose a copy of the license or Certificate of Renewal in the same envelope as the Bidder's Bond, as required under Section 43-07-12 (NDCC). Failure to do so will render the Bid invalid.

Receipt of all Addenda issued during bidding shall be acknowledged by the Bidder on the outside of the Bid Envelope. Failure to acknowledge any Addenda issued during bidding shall render the Bid invalid.

No Bid will be read or considered unless it fully complies with the Bond and license requirements. Any deficient Bid will be resealed and returned to the Bidder immediately.

The successful Bidder shall be required to furnish both a Performance Bond and Payment Bond in the full amount of the Contract.

All Work under this Contract shall be Substantially Completed by October 30, 2026. Final Completion of all Work shall be achieved by November 13, 2026.

ALL QUESTIONS REGARDING THE CONTRACT DOCUMENTS SHALL BE DIRECTED TO THE OFFICE OF:
Apex Engineering Group, Inc., Troy Ripplinger, PE at 701-323-3958 or by email at Troy.Tipplinger@ApexEngGroup.com. All questions must be received in writing or by email on or before five (5) days prior to the bid opening. Responses to technical questions will be issued by addendum within three (3) days prior to the bid opening.

Dated this 5th day of March, 2026.

Dawn Rhone, Auditor
Morton County
Mandan, ND

**Structure Replacement Project
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Morton County Highway Department**

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Section 00100 – INSTRUCTIONS TO BIDDERS

ARTICLE 1—DEFINED TERMS

- 1.01 Terms used in these Instructions to Bidders have the meanings indicated in the General Conditions and Supplementary Conditions. Additional terms used in these Instructions to Bidders have the meanings indicated below:
- A. *Issuing Office*—The office from which the Bidding Documents are to be issued, and which registers plan holders.
 - B. *Successful Bidder* – The lowest, responsible, and responsive Bidder to whom Owner (on the basis of Owner’s evaluation) makes an award.
 - C. *Engineer* – Apex Engineering Group, Inc., Bismarck, North Dakota
 - D. Other terms used in the Bidding Documents and not defined elsewhere have the following means, which are applicable to both the singular and plural thereof:
 - 1. Base Bid – The sum stated in the Bid for which Bidder offers to perform work that is described in the Bidding Documents as Base, to which work may be added or from which work may be deleted for sums stated in the Alternate Bid.
 - 2. Alternate Bid – The amount stated in the Bid to be added to or deducted from the amount of the Base Bid, if accepted.
 - 3. Furnished – Shall mean equipment or material procured by the Owner and turn over to the Contractor at the job site for installation by the Contractor
 - 4. Provide – Shall mean furnished and installed in place by the Contractor

ARTICLE 2—BIDDING DOCUMENTS

- 2.01 Bidder shall obtain a complete set of Bidding Requirements and proposed Contract Documents (together, the Bidding Documents). See the Agreement for a list of the Contract Documents. It is Bidder’s responsibility to determine that it is using a complete set of documents in the preparation of a Bid. Bidder assumes sole responsibility for errors or misinterpretations resulting from the use of incomplete documents, by Bidder itself or by its prospective Subcontractors and Suppliers.
- 2.02 Bidding Documents are made available for the sole purpose of obtaining Bids for completion of the Project and permission to download or distribution of the Bidding Documents does not confer a license or grant permission or authorization for any other use. Authorization to download documents, or other distribution, includes the right for plan holders to print documents solely for their use, and the use of their prospective Subcontractors and Suppliers, provided the plan holder pays all costs associated with printing or reproduction. Printed documents may not be re-sold under any circumstances.

- 2.03 Owner has established a Bidding Documents Website as indicated in the Advertisement or invitation to bid. Owner recommends that Bidder register as a plan holder with the Issuing Office at such website, and obtain a complete set of the Bidding Documents from such website. Bidders may rely that sets of Bidding Documents obtained from the Bidding Documents Website are complete, unless an omission is blatant. Registered plan holders will receive Addenda issued by Owner.
- 2.04 Bidder may register as a plan holder and obtain complete sets of Bidding Documents, in the number and format stated in the Advertisement or invitation to bid, from the Issuing Office. Bidders may rely that sets of Bidding Documents obtained from the Issuing Office are complete, unless an omission is blatant. Registered plan holders will receive Addenda issued by Owner.
- 2.05 Plan rooms (including construction information subscription services, and electronic and virtual plan rooms) may distribute the Bidding Documents, or make them available for examination. Those prospective bidders that obtain an electronic (digital) copy of the Bidding Documents from a plan room are encouraged to register as plan holders from the Bidding Documents Website or Issuing Office. Owner is not responsible for omissions in Bidding Documents or other documents obtained from plan rooms, or for a Bidder's failure to obtain Addenda from a plan room.
- 2.06 *Electronic Documents*
- A. When the Bidding Requirements indicate that electronic (digital) copies of the Bidding Documents are available, such documents will be made available to the Bidders as Electronic Documents in the manner specified.
1. Bidding Documents will be provided in Adobe PDF (Portable Document Format) (.pdf) that is readable by Adobe Acrobat Reader. It is the intent of the Engineer and Owner that such Electronic Documents are to be exactly representative of the paper copies of the documents. However, because the Owner and Engineer cannot totally control the transmission and receipt of Electronic Documents nor the Contractor's means of reproduction of such documents, the Owner and Engineer cannot and do not guarantee that Electronic Documents and reproductions prepared from those versions are identical in every manner to the paper copies.
- B. Unless otherwise stated in the Bidding Documents, the Bidder may use and rely upon complete sets of Electronic Documents of the Bidding Documents, described in Paragraph 2.06.A above. However, Bidder assumes all risks associated with differences arising from transmission/receipt of Electronic Documents versions of Bidding Documents and reproductions prepared from those versions and, further, assumes all risks, costs, and responsibility associated with use of the Electronic Documents versions to derive information that is not explicitly contained in printed paper versions of the documents, and for Bidder's reliance upon such derived information.

ARTICLE 3—QUALIFICATIONS OF BIDDERS

- 3.01 Bidder is to submit the following information with its Bid to demonstrate Bidder's qualifications to perform the Work:
- A. Written evidence establishing its qualifications such as financial data, previous experience, and present commitments.
- B. A written statement that Bidder is authorized to do business in the state where the Project is located, or a written certification that Bidder will obtain such authority prior to the Effective Date of the Contract.

- C. Bidder's state or other contractor license number, if applicable.
 - D. Subcontractor and Supplier qualification information.
 - E. Other required information regarding qualifications.
- 3.02 A Bidder's failure to submit required qualification information with the bid may disqualify Bidder from receiving an award of the Contract.
- 3.03 No requirement in this Article 3 to submit information will prejudice the right of Owner to seek additional pertinent information regarding Bidder's qualifications.

ARTICLE 4—PRE-BID CONFERENCE

- 4.01 A pre-bid conference will not be conducted for this Project.

ARTICLE 5—SITE AND OTHER AREAS; EXISTING SITE CONDITIONS; EXAMINATION OF SITE; OWNER'S SAFETY PROGRAM; OTHER WORK AT THE SITE

5.01 *Site and Other Areas*

- A. The Site is identified in the Bidding Documents. By definition, the Site includes rights-of-way, easements, and other lands furnished by Owner for the use of the Contractor. Any additional lands required for temporary construction facilities, construction equipment, or storage of materials and equipment, and any access needed for such additional lands, are to be obtained and paid for by Contractor.

5.02 *Existing Site Conditions*

A. *Subsurface and Physical Conditions; Hazardous Environmental Conditions*

1. The Supplementary Conditions identify the following regarding existing conditions at or adjacent to the Site:
 - a. Those reports of explorations and tests of subsurface conditions at or adjacent to the Site that contain Technical Data.
 - b. Those drawings known to Owner of existing physical conditions at or adjacent to the Site, including those drawings depicting existing surface or subsurface structures at or adjacent to the Site (except Underground Facilities), that contain Technical Data.
 - c. Reports and drawings known to Owner relating to Hazardous Environmental Conditions that have been identified at or adjacent to the Site.
 - d. Technical Data contained in such reports and drawings.
2. Owner will make copies of reports and drawings referenced above available to any Bidder on request. These reports and drawings are not part of the Contract Documents, but the Technical Data contained therein upon whose accuracy Bidder is entitled to rely, as provided in the General Conditions, has been identified and established in the Supplementary Conditions. Bidder is responsible for any interpretation or conclusion Bidder draws from any Technical Data or any other data, interpretations, opinions, or information contained in such reports or shown or indicated in such drawings.
3. If the Supplementary Conditions do not identify Technical Data, the default definition of Technical Data set forth in Article 1 of the General Conditions will apply.

- B. *Underground Facilities:* Underground Facilities are shown or indicated on the Drawings, pursuant to Paragraph 5.05 of the General Conditions, and not in the drawings referred to in Paragraph 5.02.A of these Instructions to Bidders. Information and data regarding the presence or location of Underground Facilities are not intended to be categorized, identified, or defined as Technical Data.
- C. *Adequacy of Data:* Provisions concerning responsibilities for the adequacy of data furnished to prospective Bidders with respect to subsurface conditions, other physical conditions, and Underground Facilities, and possible changes in the Bidding Documents due to differing or unanticipated subsurface or physical conditions appear in Paragraphs 5.03, 5.04, and 5.05 of the General Conditions. Provisions concerning responsibilities for the adequacy of data furnished to prospective Bidders with respect to a Hazardous Environmental Condition at the Site, if any, and possible changes in the Contract Documents due to any Hazardous Environmental Condition uncovered or revealed at the Site which was not shown or indicated in the Drawings or Specifications or identified in the Contract Documents to be within the scope of the Work, appear in Paragraph 5.06 of the General Conditions.

5.03 *Other Site-related Documents*

- A. In addition to the documents regarding existing Site conditions referred to in Paragraph 5.02.A, the following other documents relating to conditions at or adjacent to the Site are known to Owner and made available to Bidders for reference:
 - 1. **None**

Owner will make copies of these other Site-related documents available to any Bidder on request.
- B. Owner has not verified the contents of these other Site-related documents, and Bidder may not rely on the accuracy of any data or information in such documents. Bidder is responsible for any interpretation or conclusion Bidder draws from the other Site-related documents.
- C. The other Site-related documents are not part of the Contract Documents.
- D. Bidders are encouraged to review the other Site-related documents, but Bidders will not be held accountable for any data or information in such documents. The requirement to review and take responsibility for documentary Site information is limited to information in (1) the Contract Documents and (2) the Technical Data.
- E. No other Site-related documents are available.

5.04 *Site Visit and Testing by Bidders*

- A. Bidder is required to visit the Site during normal working hours and conduct a thorough visual examination of the Site and adjacent areas. During the visit the Bidder must not disturb any ongoing operations at the Site.
- B. Bidders visiting the Site are required to arrange their own transportation to the Site.
- C. Bidder must conduct the required Site visit during normal working hours.
- D. Bidder is not required to conduct any subsurface testing, or exhaustive investigations of Site conditions.
- E. On request, and to the extent Owner has control over the Site, and schedule permitting, the Owner will provide Bidder general access to the Site to conduct such additional examinations, investigations, explorations, tests, and studies as Bidder deems necessary for preparing and submitting a successful Bid. Owner will not have any obligation to grant such

access if doing so is not practical because of existing operations, security or safety concerns, or restraints on Owner's authority regarding the Site. Bidder is responsible for establishing access needed to reach specific selected test sites.

- F. Bidder must comply with all applicable Laws and Regulations regarding excavation and location of utilities, obtain all permits, and comply with all terms and conditions established by Owner or by property owners or other entities controlling the Site with respect to schedule, access, existing operations, security, liability insurance, and applicable safety programs.
- G. Bidder must fill all holes and clean up and restore the Site to its former condition upon completion of such explorations, investigations, tests, and studies.

5.05 *Owner's Safety Program*

- A. Site visits and work at the Site may be governed by an Owner safety program. If an Owner safety program exists, it will be noted in the Supplementary Conditions.

5.06 *Other Work at the Site*

- A. Reference is made to Article 8 of the Supplementary Conditions for the identification of the general nature of other work of which Owner is aware (if any) that is to be performed at the Site by Owner or others (such as utilities and other prime contractors) and relates to the Work contemplated by these Bidding Documents. If Owner is party to a written contract for such other work, then on request, Owner will provide to each Bidder access to examine such contracts (other than portions thereof related to price and other confidential matters), if any.

ARTICLE 6—BIDDER'S REPRESENTATIONS AND CERTIFICATIONS

6.01 *Express Representations and Certifications in Bid Form, Agreement*

- A. The Bid Form that each Bidder will submit contains express representations regarding the Bidder's examination of Project documentation, Site visit, and preparation of the Bid, and certifications regarding lack of collusion or fraud in connection with the Bid. Bidder should review these representations and certifications, and assure that Bidder can make the representations and certifications in good faith, before executing and submitting its Bid.
- B. If Bidder is awarded the Contract, Bidder (as Contractor) will make similar express representations and certifications when it executes the Agreement.

ARTICLE 7—INTERPRETATIONS AND ADDENDA

- 7.01 Owner on its own initiative may issue Addenda to clarify, correct, supplement, or change the Bidding Documents.
- 7.02 Bidder shall submit all questions about the meaning or intent of the Bidding Documents to Engineer in writing.
- 7.03 Interpretations or clarifications considered necessary by Engineer in response to such questions will be issued by Addenda delivered to all registered plan holders. Questions received less than five days prior to the date for opening of Bids may not be answered.
- 7.04 Only responses set forth in an Addendum will be binding. Oral and other interpretations or clarifications will be without legal effect. Responses to questions are not part of the Contract

Documents unless set forth in an Addendum that expressly modifies or supplements the Contract Documents.

ARTICLE 8—BID SECURITY

- 8.01 A Bid must be accompanied by Bid security in a separate envelope made payable to Owner in an amount of five percent (5%) of Bidder's maximum Bid price (determined by adding the base bid and all alternates) and in the form of a Bid bond issued by a surety meeting the requirements of Paragraph 6.01 of the General Conditions. Such Bid bond will be issued in the form included in the Bidding Documents.
- 8.02 The Bid security of the apparent Successful Bidder will be retained until Owner awards the contract to such Bidder, and such Bidder has executed the Contract, furnished the required Contract security, and met the other conditions of the Notice of Award, whereupon the Bid security will be released. If the Successful Bidder fails to execute and deliver the Contract and furnish the required Contract security within 15 days after the Notice of Award, Owner may consider Bidder to be in default, annul the Notice of Award, and the Bid security of that Bidder will be forfeited, in whole in the case of a penal sum bid bond, and to the extent of Owner's damages in the case of a damages-form bond. Such forfeiture will be Owner's exclusive remedy if Bidder defaults.
- 8.03 The Bid security of other Bidders that Owner believes to have a reasonable chance of receiving the award may be retained by Owner until the earlier of 7 days after the Effective Date of the Contract or 61 days after the Bid opening, whereupon Bid security furnished by such Bidders will be released.
- 8.04 Bid security of other Bidders that Owner believes do not have a reasonable chance of receiving the award will be released within seven (7) days after the Bid opening.

ARTICLE 9—CONTRACT TIMES

- 9.01 The number of days within which, or the dates by which, the Work is to be (a) substantially completed and (b) ready for final payment, and (c) Milestones (if any) are to be achieved, are set forth in the Agreement.
- 9.02 Provisions for liquidated damages, if any, for failure to timely attain a Milestone, Substantial Completion, or completion of the Work in readiness for final payment, are set forth in the Agreement.

ARTICLE 10—SUBSTITUTE AND "OR EQUAL" ITEMS

- 10.01 The Contract for the Work, as awarded, will be on the basis of materials and equipment specified or described in the Bidding Documents without consideration during the bidding and Contract award process of possible substitute or "or-equal" items. In cases in which the Contract allows the Contractor to request that Engineer authorize the use of a substitute or "or-equal" item of material or equipment, application for such acceptance may not be made to and will not be considered by Engineer until after the Effective Date of the Contract. The procedure for submission of any such application by the Contractor and consideration by the Engineer is set forth in the General Conditions and may be supplemented in Division 01.
- 10.02 All prices that Bidder sets forth in its Bid will be based on the presumption that the Contractor will furnish the materials and equipment specified or described in the Bidding Documents, as

supplemented by Addenda. Any assumptions regarding the possibility of post-Bid approvals of “or-equal” or substitution requests are made at Bidder’s sole risk.

ARTICLE 11—SUBCONTRACTORS, SUPPLIERS, AND OTHERS

- 11.01 A Bidder must be prepared to retain specific Subcontractors and Suppliers for the performance of the Work if required to do so by the Bidding Documents or in the Specifications. If a prospective Bidder objects to retaining any such Subcontractor or Supplier and the concern is not relieved by an Addendum, then the prospective Bidder should refrain from submitting a Bid.
- 11.02 The Bidder must submit to Owner a list of the Subcontractors/Suppliers proposed for the Work as outlined in Specification Section 00410.
- 11.03 If requested by Owner, such list must be accompanied by an experience statement with pertinent information regarding similar projects and other evidence of qualification for each such Subcontractor or Supplier. If Owner or Engineer, after due investigation, has reasonable objection to any proposed Subcontractor or Supplier, Owner may, before the Notice of Award is given, request apparent Successful Bidder to submit an acceptable substitute, in which case apparent Successful Bidder will submit a substitute, Bidder’s Bid price will be increased (or decreased) by the difference in cost occasioned by such substitution, and Owner may consider such price adjustment in evaluating Bids and making the Contract award.
- 11.04 If apparent Successful Bidder declines to make any such substitution, Owner may award the Contract to the next lowest Bidder that proposes to use acceptable Subcontractors and Suppliers. Declining to make requested substitutions will constitute grounds for forfeiture of the Bid security of any Bidder. Any Subcontractor or Supplier, so listed and against which Owner or Engineer makes no written objection prior to the giving of the Notice of Award will be deemed acceptable to Owner and Engineer subject to subsequent revocation of such acceptance as provided in Paragraph 7.07 of the General Conditions.

ARTICLE 12—PREPARATION OF BID

- 12.01 The Bid Form is included with the Bidding Documents.
 - A. All blanks on the Bid Form must be completed in ink and the Bid Form signed in ink. Erasures or alterations must be initialed in ink by the person signing the Bid Form. A Bid price must be indicated for each section, Bid item, alternate, adjustment unit price item, and unit price item listed therein.
 - B. If the Bid Form expressly indicates that submitting pricing on a specific alternate item is optional, and Bidder elects to not furnish pricing for such optional alternate item, then Bidder may enter the words “No Bid” or “Not Applicable.” If not specifically listed as “optional”, Bidder must enter an amount for each Alternate.
- 12.02 If Bidder has obtained the Bidding Documents as Electronic Documents, then Bidder shall prepare its Bid on a paper copy of the Bid Form printed from the Electronic Documents version of the Bidding Documents. The printed copy of the Bid Form must be clearly legible, printed on 8½ inch by 11-inch paper and as closely identical in appearance to the Electronic Document version of the Bid Form as may be practical. The Owner reserves the right to accept Bid Forms which nominally vary in appearance from the original paper version of the Bid Form, providing that all required information and submittals are included with the Bid.

- 12.03 A Bid by a corporation must be executed in the corporate name by a corporate officer (whose title must appear under the signature), accompanied by evidence of authority to sign. The corporate address and state of incorporation must be shown.
- 12.04 A Bid by a partnership must be executed in the partnership name and signed by a partner (whose title must appear under the signature), accompanied by evidence of authority to sign. The official address of the partnership must be shown.
- 12.05 A Bid by a limited liability company must be executed in the name of the firm by a member or other authorized person and accompanied by evidence of authority to sign. The state of formation of the firm and the official address of the firm must be shown.
- 12.06 A Bid by an individual must show the Bidder's name and official address.
- 12.07 A Bid by a joint venture must be executed by an authorized representative of each joint venturer in the manner indicated on the Bid Form. The joint venture must have been formally established prior to submittal of a Bid, and the official address of the joint venture must be shown.
- 12.08 All names must be printed in ink below the signatures.
- 12.09 The Bid must contain an acknowledgment of receipt of all Addenda, the numbers of which must be filled in on the Bid Form.
- 12.10 Postal and e-mail addresses and telephone number for communications regarding the Bid must be shown.
- 12.11 The Bid must contain evidence of Bidder's authority to do business in the state where the Project is located, or Bidder must certify in writing that it will obtain such authority within the time for acceptance of Bids and attach such certification to the Bid.
- 12.12 If Bidder is required to be licensed to submit a Bid or perform the Work in the state where the Project is located, the Bid must contain evidence of Bidder's licensure. Bidder's state contractor license number, must also be shown on the Bid Form.

ARTICLE 13—BASIS OF BID

- 13.01 *Unit Price*
 - A. Bidders must submit a Bid on a unit price basis for each item of Work listed in the unit price section of the Bid Form.
 - B. The "Bid Price" (sometimes referred to as the extended price) for each unit price Bid item will be the product of the "Estimated Quantity", which Owner or its representative has set forth in the Bid Form, for the item and the corresponding "Bid Unit Price" offered by the Bidder. The total of all unit price Bid items will be the sum of these "Bid Prices"; such total will be used by Owner for Bid comparison purposes. The final quantities and Contract Price will be determined in accordance with Paragraph 13.03 of the General Conditions.
 - C. Discrepancies between the multiplication of units of Work and unit prices will be resolved in favor of the unit prices. Discrepancies between the indicated sum of any column of figures and the correct sum thereof will be resolved in favor of the correct sum.

ARTICLE 14—SUBMITTAL OF BID

- 14.01 The Bidding Documents include one separate unbound copy of the Bid Form, and, if required, the Bid Bond Form. The unbound copy of the Bid Form is to be completed and submitted with the Bid

security and the other documents required to be submitted under the terms of Article 2 of the Bid Form.

Items Listed Below are Required in Separate Bid Security Envelope (Bid Envelope will NOT be opened without these documents).

- A. Required Bid Security (5%)
- B. North Dakota Contractor's License valid 10 Days before bid opening

Items Listed Below are Required in the Bid Envelope:

- E. Section 00300 – Signed Bid Form

Receipt of all Addenda issued during bidding shall be acknowledged by the Bidder on the outside of the Bid Envelope. Failure to acknowledge any Addenda issued during bidding shall render the Bid invalid.

- 14.02 A Bid must be received no later than the date and time prescribed and at the place indicated in the Advertisement or invitation to bid and must be enclosed in a plainly marked package with the Project title, and, if applicable, the designated portion of the Project for which the Bid is submitted, the name and address of Bidder, and must be accompanied by the Bid security and other required documents. If a Bid is sent by mail or other delivery system, the sealed envelope containing the Bid must be enclosed in a separate package plainly marked on the outside with the notation "BID ENCLOSED." A mailed Bid must be addressed to the location designated in the Advertisement.
- 14.03 Bids received after the date and time prescribed for the opening of bids, or not submitted at the correct location or in the designated manner, will not be accepted and will be returned to the Bidder unopened.

ARTICLE 15—MODIFICATION AND WITHDRAWAL OF BID

- 15.01 An unopened Bid may be withdrawn by an appropriate document duly executed in the same manner that a Bid must be executed and delivered to the place where Bids are to be submitted prior to the date and time for the opening of Bids. Upon receipt of such notice, the unopened Bid will be returned to the Bidder.
- 15.02 If a Bidder wishes to modify its Bid prior to Bid opening, Bidder must withdraw its initial Bid in the manner specified in Paragraph 15.01 and submit a new Bid prior to the date and time for the opening of Bids.
- 15.03 If within 24 hours after Bids are opened any Bidder files a duly signed written notice with Owner and promptly thereafter demonstrates to the reasonable satisfaction of Owner that there was a material and substantial mistake in the preparation of its Bid, the Bidder may withdraw its Bid,

and the Bid security will be returned. Thereafter, if the Work is rebid, the Bidder will be disqualified from further bidding on the Work.

ARTICLE 16—OPENING OF BIDS

16.01 Bids will be opened at the time and place indicated in the advertisement or invitation to bid and, unless obviously non-responsive, read aloud publicly. An abstract of the amounts of the base Bids and major alternates, if any, will be made available to Bidders after the opening of Bids.

ARTICLE 17—BIDS TO REMAIN SUBJECT TO ACCEPTANCE

17.01 All Bids will remain subject to acceptance for the period of time stated in the Bid Form, but Owner may, in its sole discretion, release any Bid and return the Bid security prior to the end of this period.

ARTICLE 18—EVALUATION OF BIDS AND AWARD OF CONTRACT

18.01 Owner reserves the right to reject any or all Bids, including without limitation, nonconforming, nonresponsive, unbalanced, or conditional Bids. Owner also reserves the right to waive all minor Bid informalities not involving price, time, or changes in the Work.

18.02 Owner will reject the Bid of any Bidder that Owner finds, after reasonable inquiry and evaluation, to not be responsible.

18.03 If Bidder purports to add terms or conditions to its Bid, takes exception to any provision of the Bidding Documents, or attempts to alter the contents of the Contract Documents for purposes of the Bid, whether in the Bid itself or in a separate communication to Owner or Engineer, then Owner will reject the Bid as nonresponsive; provided that Owner also reserves the right to waive all minor informalities not involving price, time, or changes in the Work.

18.04 *Evaluation of Bids*

A. In evaluating Bids, Owner will consider whether the Bids comply with the prescribed requirements, and such alternates, unit prices, and other data, as may be requested in the Bid Form or prior to the Notice of Award.

B. For the determination of the apparent low Bidder when unit price bids are submitted, Bids will be compared on the basis of the total of the products of the estimated quantity of each item and unit price Bid for that item, together with any lump sum items.

18.05 In evaluating whether a Bidder is responsible, Owner will consider the qualifications of the Bidder and may consider the qualifications and experience of Subcontractors and Suppliers proposed for those portions of the Work for which the identity of Subcontractors and Suppliers must be submitted as provided in the Bidding Documents.

18.06 Owner may conduct such investigations as Owner deems necessary to establish the responsibility, qualifications, and financial ability of Bidders and any proposed Subcontractors or Suppliers.

ARTICLE 19—BONDS AND INSURANCE

19.01 Article 6 of the General Conditions, as may be modified by the Supplementary Conditions, sets forth Owner's requirements as to performance and payment bonds, other required bonds (if any),

and insurance. When the Successful Bidder delivers the executed Agreement to Owner, it must be accompanied by required bonds and insurance documentation.

- 19.02 Article 8, Bid Security, of these Instructions, addresses any requirements for providing bid bonds as part of the bidding process.

ARTICLE 20—SIGNING OF AGREEMENT

- 20.01 When Owner issues a Notice of Award to the Successful Bidder, it will be accompanied by the unexecuted counterparts of the Agreement along with the other Contract Documents as identified in the Agreement. Within 15 days thereafter, Successful Bidder must execute and deliver the required number of counterparts of the Agreement and any bonds and insurance documentation required to be delivered by the Contract Documents to Owner. Within 10 days thereafter, Owner will deliver one fully executed counterpart of the Agreement to Successful Bidder, together with printed and electronic copies of the Contract Documents as stated in Paragraph 2.02 of the General Conditions.

END OF SECTION

**Structure Replacement Project
Bridge 30-114-08.1 – Frontage Road N Glen Ullin
Morton County Highway Department**

**Apex Project # 22.517.0045
Owner Project # Work Order 2232**

Section 00300 - BID FORM

ARTICLE 1 – BID RECIPIENT

1.01 This Bid is submitted to:

**John Saiki
County Engineer
Morton County Highway Department
2916 37th Street NW
Mandan, ND, 58554**

1.02 The undersigned Bidder proposes and agrees, if this Bid is accepted, to enter into an Agreement with Owner in the form included in the Bidding Documents and to perform all Work as specified or indicated in the Bidding Documents for the prices and within the times indicated in this Bid and in accordance with the other terms and conditions of the Bidding Documents.

ARTICLE 2 – BIDDER’S ACKNOWLEDGEMENTS

2.01 Bidder accepts all of the terms and conditions of the Instructions to Bidders, including without limitation those dealing with the disposition of Bid security. This Bid will remain subject to acceptance for 60 days after the Bid opening, or for such longer period of time that Bidder may agree to in writing upon request of Owner.

ARTICLE 3 – BIDDER’S REPRESENTATIONS

3.01 In submitting this Bid, Bidder represents that:

A. Bidder has examined and carefully studied the Bidding Documents, other related data and reference items identified in the Bidding Documents, and Addenda. Receipt of Addenda is hereby acknowledged:

Addendum No.	Addendum Date

B. Bidder has visited the Site, conducted a thorough, alert visual examination of the Site and adjacent areas, and become familiar with and satisfied itself as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.

C. Bidder is familiar with and is satisfied as to all Laws and Regulations that may affect cost, progress, and performance of the Work.

- D. Bidder has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities) that have been identified in SC-4.02 as containing reliable "technical data," and (2) reports and drawings of Hazardous Environmental Conditions, if any, at the Site that have been identified in the Supplementary Conditions, especially with respect to Technical Data in such reports and drawings.
- E. Bidder has considered the information known to Bidder; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Bidding Documents; and the Site-related reports and drawings identified in the Bidding Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Bidder, including applying the specific means, methods, techniques, sequences, and procedures of construction expressly required by the Bidding Documents; and (3) Bidder's safety precautions and programs.
- F. Based on the information and observations referred to in the proceeding paragraphs, Bidder does not consider that further examinations, investigations, explorations, tests, studies, or data are necessary for the determination of this Bid for performance of the Work at the price(s) bid and within the times required, and in accordance with the other terms and conditions of the Bidding Documents.
- G. Bidder is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Bidding Documents.
- H. Bidder has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Bidder has discovered in the Bidding Documents, and the written resolution thereof by Engineer is acceptable to Bidder.
- I. The Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for the performance of the Work for which this Bid is submitted.
- J. The submission of this Bid constitutes an incontrovertible representation by Bidder that Bidder has complied with every requirement of this Article, and that without exception the Bid and all prices in the Bid are premised upon performing and furnishing the Work required by the Bidding Documents.

ARTICLE 4 – BIDDER'S CERTIFICATION

4.01 Bidder certifies that:

- A. This Bid is genuine and not made in the interest of or on behalf of any undisclosed individual or entity and is not submitted in conformity with any collusive agreement or rules of any group, association, organization, or corporation;
- B. Bidder has not directly or indirectly induced or solicited any other Bidder to submit a false or sham Bid;
- C. Bidder has not solicited or induced any individual or entity to refrain from bidding; and
- D. Bidder has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for the Contract. For the purposes of this Paragraph 4.01.D:

1. "corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the bidding process;
2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process to the detriment of Owner, (b) to establish bid prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;
3. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish bid prices at artificial, non-competitive levels; and
4. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

ARTICLE 5 – BASIS OF BID

5.01 Bidder will complete the Work in accordance with the Contract Documents for the following price(s):

SPEC	CODE	ITEM DESCRIPTION	UNIT	QTY	UNIT PRICE	EXTENDED PRICE
103	0100	CONTRACT BOND	L SUM	1		
202	0105	REMOVAL OF STRUCTURE	L SUM	1		
202	0312	REMOVE EXISTING FENCE	LF	600		
203	0102	COMMON EXCAVATION-TYPE B	CY	505		
203	0109	TOPSOIL	CY	1081		
203	0140	BORROW-EXCAVATION	CY	1001		
210	0050	BOX CULVERT EXCAVATION	EA	1		
210	0127	CHANNEL EXCAVATION	L SUM	1		
210	0210	FOUNDATION FILL	CY	381		
210	0250	BOX CULVERT FOUNDATION AGGREGATE	CY	308		
210	0405	FOUNDATION PREPARATION-BOX CULVERT	EA	1		
216	0100	WATER	M GAL	37		
251	0200	SEEDING CLASS II	ACRE	1.23		
251	1000	WETLAND SEED	ACRE	0.12		

251	2000	TEMPORARY COVER CROP	ACRE	1.3		
253	0101	STRAW MULCH	ACRE	2.65		
256	0200	RIPRAP GRADE II	CY	153		
260	0200	SILT FENCE SUPPORTED	LF	105		
260	0201	REMOVE SILT FENCE SUPPORTED	LF	105		
261	0112	FIBER ROLLS 12IN	LF	460		
261	0113	REMOVE FIBER ROLLS 12IN	LF	320		
262	0100	FLOTATION SILT CURTAIN	LF	18		
262	0101	REMOVE FLOTATION SILT CURTAIN	LF	18		
302	0356	AGGREGATE SURFACE COURSE CL 13	TON	623		
606	3108	DBL 11FT X 8FT PRECAST RCB CULVERT	LF	168		
606	7108	DBL 11FT X 8FT PRECAST RCB END SECTION	EA	2		
702	0100	MOBILIZATION	L SUM	1		
704	1000	TRAFFIC CONTROL SIGNS	L SUM	1		
709	0100	GEOSYNTHETIC MATERIAL TYPE G	SY	504		
709	0155	GEOSYNTHETIC MATERIAL TYPE RR	SY	230		
752	0126	FENCE SMOOTH WIRE 3 STRAND-STEEL POST	LF	417		
752	2995	CORNER ASSEMBLY-WOOD POST	EA	4		
754	0803	OBJECT MARKERS - TYPE III	EA	4		
900	1000	TEMPORARY STREAM DIVERSION	EA	1		
TOTAL						

ARTICLE 6 – TIME OF COMPLETION

- 6.01 Bidder agrees that the Work will be substantially complete and will be completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions on or before the dates or within the number of calendar days indicated in the Agreement.
- 6.02 Bidder accepts the provisions of the Agreement as to liquidated damages.

ARTICLE 7 – ATTACHMENTS TO THIS BID

- 7.01 The following documents are submitted with and made a condition of this Bid:

Required in Separate Bid Security Envelope (Bid Envelope will not be opened without these documents):

- A. Required Bid security (5%)
- B. North Dakota Contractor's License valid 10 days before bid opening

Required in Bid Envelope:

- C. Signed Bid Form (Section 00300)

Acknowledgement of Addenda on Bid Envelope

ARTICLE 8 – DEFINED TERMS

- 8.01 The terms used in this Bid with initial capital letters have the meanings stated in the Instructions to Bidders, the General Conditions, and the Supplementary Conditions.

ARTICLE 9 – BID SUBMITTAL

BIDDER: *[Indicate correct name of bidding entity]*

By:

[Signature] _____

[Printed name] _____

(If Bidder is a corporation, a limited liability company, a partnership, or a joint venture, attach evidence of authority to sign.)

Attest:

[Signature] _____

[Printed name] _____

Title: _____

Submittal Date: _____

Address for giving notices:

Telephone Number: _____

Fax Number: _____

Contact Name and e-mail address: _____

Bidder's License No.: _____

(where applicable)

NOTE TO USER: *Use in those states or other jurisdictions where applicable or required.*

Section 00430 – BID BOND (PENAL SUM FORM)

Bidder Name: Address <i>(principal place of business)</i> :	Surety Name: Address <i>(principal place of business)</i> :
Owner Name: Address <i>(principal place of business)</i> :	Bid Project <i>(name and location)</i> : Bid Due Date:
Bond Penal Sum: Date of Bond:	
Surety and Bidder, intending to be legally bound hereby, subject to the terms set forth in this Bid Bond, do each cause this Bid Bond to be duly executed by an authorized officer, agent, or representative.	
Bidder	Surety
_____ <i>(Full formal name of Bidder)</i>	_____ <i>(Full formal name of Surety) (corporate seal)</i>
By: _____ <i>(Signature)</i>	By: _____ <i>(Signature) (Attach Power of Attorney)</i>
Name: _____ <i>(Printed or typed)</i>	Name: _____ <i>(Printed or typed)</i>
Title: _____	Title: _____
Attest: _____ <i>(Signature)</i>	Attest: _____ <i>(Signature)</i>
Name: _____ <i>(Printed or typed)</i>	Name: _____ <i>(Printed or typed)</i>
Title: _____	Title: _____
<i>Notes: (1) Note: Addresses are to be used for giving any required notice. (2) Provide execution by any additional parties, such as joint venturers, if necessary.</i>	

1. Bidder and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to pay to Owner upon default of Bidder the penal sum set forth on the face of this Bond. Payment of the penal sum is the extent of Bidder's and Surety's liability. Recovery of such penal sum under the terms of this Bond will be Owner's sole and exclusive remedy upon default of Bidder.
2. Default of Bidder occurs upon the failure of Bidder to deliver within the time required by the Bidding Documents (or any extension thereof agreed to in writing by Owner) the executed Agreement required by the Bidding Documents and any performance and payment bonds required by the Bidding Documents.
3. This obligation will be null and void if:
 - 3.1. Owner accepts Bidder's Bid and Bidder delivers within the time required by the Bidding Documents (or any extension thereof agreed to in writing by Owner) the executed Agreement required by the Bidding Documents and any performance and payment bonds required by the Bidding Documents, or
 - 3.2. All Bids are rejected by Owner, or
 - 3.3. Owner fails to issue a Notice of Award to Bidder within the time specified in the Bidding Documents (or any extension thereof agreed to in writing by Bidder and, if applicable, consented to by Surety when required by Paragraph 5 hereof).
4. Payment under this Bond will be due and payable upon default of Bidder and within 30 calendar days after receipt by Bidder and Surety of written notice of default from Owner, which notice will be given with reasonable promptness, identifying this Bond and the Project and including a statement of the amount due.
5. Surety waives notice of any and all defenses based on or arising out of any time extension to issue Notice of Award agreed to in writing by Owner and Bidder, provided that the total time for issuing Notice of Award including extensions does not in the aggregate exceed 120 days from the Bid due date without Surety's written consent.
6. No suit or action will be commenced under this Bond prior to 30 calendar days after the notice of default required in Paragraph 4 above is received by Bidder and Surety, and in no case later than one year after the Bid due date.
7. Any suit or action under this Bond will be commenced only in a court of competent jurisdiction located in the state in which the Project is located.
8. Notices required hereunder must be in writing and sent to Bidder and Surety at their respective addresses shown on the face of this Bond. Such notices may be sent by personal delivery, commercial courier, or by United States Postal Service registered or certified mail, return receipt requested, postage pre-paid, and will be deemed to be effective upon receipt by the party concerned.
9. Surety shall cause to be attached to this Bond a current and effective Power of Attorney evidencing the authority of the officer, agent, or representative who executed this Bond on behalf of Surety to execute, seal, and deliver such Bond and bind the Surety thereby.
10. This Bond is intended to conform to all applicable statutory requirements. Any applicable requirement of any applicable statute that has been omitted from this Bond will be deemed to be included herein as if set forth at length. If any provision of this Bond conflicts with any applicable statute, then the provision of said statute governs and the remainder of this Bond that is not in conflict therewith continues in full force and effect.
11. The term "Bid" as used herein includes a Bid, offer, or proposal as applicable.

SECTION 00520 - AGREEMENT BETWEEN OWNER AND CONTRACTOR FOR CONSTRUCTION CONTRACT (STIPULATED PRICE)

This Agreement is by and between **Morton County** ("Owner") and
_____ ("Contractor").

Terms used in this Agreement have the meanings stated in the General Conditions and the Supplementary Conditions.

Owner and Contractor hereby agree as follows:

ARTICLE 1—WORK

1.01 Contractor shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:

- The project consists of the removal of a timber bridge structure, installation of 2-double cell 11'x8'x84' precast concrete box culverts, grading and incidentals.
- All other improvements as shown and described in the Drawings and Specifications.

ARTICLE 2—THE PROJECT

2.01 The Project, of which the Work under the Contract Documents is a part, is generally described as follows: **Structure Replacement Project, Bridge 30-114-08.1**

ARTICLE 3—ENGINEER

3.01 The Owner has retained **Apex Engineering Group** ("Engineer") to act as Owner's representative, assume all duties and responsibilities of Engineer, and have the rights and authority assigned to Engineer in the Contract.

3.02 The part of the Project that pertains to the Work has been designed by Engineer.

ARTICLE 4—CONTRACT TIMES

4.01 *Time is of the Essence*

A. All time limits for Milestones, if any, Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.

4.02 *Contract Times: Dates*

A. The Work will be substantially complete on or before October 30, 2026, and completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions on or before November 13, 2026.

4.05 *Liquidated Damages*

A. Contractor and Owner recognize that time is of the essence as stated in Paragraph 4.01 above and that Owner will suffer financial and other losses if the Work is not completed and Milestones not achieved within the Contract Times, as duly modified. The parties also

recognize the delays, expense, and difficulties involved in proving, in a legal or arbitration proceeding, the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty):

1. *Substantial Completion*: Contractor shall pay Owner \$1,300 for each day that expires after the time (as duly adjusted pursuant to the Contract) specified above for Substantial Completion, until the Work is substantially complete.
 2. *Completion of Remaining Work*: After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Times (as duly adjusted pursuant to the Contract) for completion and readiness for final payment, Contractor shall pay Owner \$1,300 for each day that expires after such time until the Work is completed and ready for final payment.
 3. Liquidated damages for failing to timely attain Substantial Completion and final completion are not additive, and will not be imposed concurrently.
- B. If Owner recovers liquidated damages for a delay in completion by Contractor, then such liquidated damages are Owner's sole and exclusive remedy for such delay, and Owner is precluded from recovering any other damages, whether actual, direct, excess, or consequential, for such delay, except for special damages (if any) specified in this Agreement.

4.06 *Special Damages*

- A. Contractor shall reimburse Owner (1) for any fines or penalties imposed on Owner as a direct result of the Contractor's failure to attain Substantial Completion according to the Contract Times, and (2) for the actual costs reasonably incurred by Owner for engineering, construction observation, inspection, and administrative services needed after the time specified in Paragraph 4.02 for Substantial Completion (as duly adjusted pursuant to the Contract), until the Work is substantially complete.
- B. After Contractor achieves Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Times, Contractor shall reimburse Owner for the actual costs reasonably incurred by Owner for engineering, construction observation, inspection, and administrative services needed after the time specified in Paragraph 4.02 for Work to be completed and ready for final payment (as duly adjusted pursuant to the Contract), until the Work is completed and ready for final payment.
- C. The special damages imposed in this paragraph are supplemental to any liquidated damages for delayed completion established in this Agreement.

ARTICLE 5—CONTRACT PRICE

- 5.01 Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents, the amounts that follow, subject to adjustment under the Contract:
- A. For all Work, at the prices stated in Contractor's Bid, attached hereto as an exhibit.

SPEC	CODE	ITEM DESCRIPTION	UNIT	QTY	UNIT PRICE	EXTENDED PRICE
103	0100	CONTRACT BOND	L SUM	1		
202	0105	REMOVAL OF STRUCTURE	L SUM	1		
202	0312	REMOVE EXISTING FENCE	LF	600		
203	0102	COMMON EXCAVATION- TYPE B	CY	505		
203	0109	TOPSOIL	CY	1081		
203	0140	BORROW-EXCAVATION	CY	1001		
210	0050	BOX CULVERT EXCAVATION	EA	1		
210	0127	CHANNEL EXCAVATION	L SUM	1		
210	0210	FOUNDATION FILL	CY	381		
210	0250	BOX CULVERT FOUNDATION AGGREGATE	CY	308		
210	0405	FOUNDATION PREPARATION- BOX CULVERT	EA	1		
216	0100	WATER	M GAL	37		
251	0200	SEEDING CLASS II	ACRE	1.23		
251	1000	WETLAND SEED	ACRE	0.12		
251	2000	TEMPORARY COVER CROP	ACRE	1.3		
253	0101	STRAW MULCH	ACRE	2.65		
256	0200	RIPRAP GRADE II	CY	153		
260	0200	SILT FENCE SUPPORTED	LF	105		
260	0201	REMOVE SILT FENCE SUPPORTED	LF	105		
261	0112	FIBER ROLLS 12IN	LF	460		

261	0113	REMOVE FIBER ROLLS 12IN	LF	320		
262	0100	FLOTATION SILT CURTAIN	LF	18		
262	0101	REMOVE FLOTATION SILT CURTAIN	LF	18		
302	0356	AGGREGATE SURFACE COURSE CL 13	TON	623		
606	3108	DBL 11FT X 8FT PRECAST RCB CULVERT	LF	168		
606	7108	DBL 11FT X 8FT PRECAST RCB END SECTION	EA	2		
702	0100	MOBILIZATION	L SUM	1		
704	1000	TRAFFIC CONTROL SIGNS	L SUM	1		
709	0100	GEOSYNTHETIC MATERIAL TYPE G	SY	504		
709	0155	GEOSYNTHETIC MATERIAL TYPE RR	SY	230		
752	0126	FENCE SMOOTH WIRE 3 STRAND-STEEL POST	LF	417		
752	2995	CORNER ASSEMBLY-WOOD POST	EA	4		
754	0803	OBJECT MARKERS - TYPE III	EA	4		
900	1000	TEMPORARY STREAM DIVERSION	EA	1		
TOTAL						

ARTICLE 6—PAYMENT PROCEDURES

6.01 *Submittal and Processing of Payments*

- A. Contractor shall submit Applications for Payment in accordance with Article 15 of the General Conditions. Applications for Payment will be processed by Engineer as provided in the General Conditions.

6.02 *Progress Payments; Retainage*

- A. Owner shall make progress payments on the basis of Contractor's Applications for Payment on or about the second Thursday of each month during performance of the Work as provided in Paragraph 6.02.A.1 below, provided that such Applications for Payment have been submitted in a timely manner and otherwise meet the requirements of the Contract. All such payments will be measured by the Schedule of Values established as provided in the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no Schedule of Values, as provided elsewhere in the Contract.
1. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amounts as Owner may withhold, including but not limited to liquidated damages, in accordance with the Contract.
 - a. Ninety (90) percent of the value of the Work completed (with the balance being retainage).
 - 1) If 50 percent or more of the Work has been completed, as determined by Engineer, and if the character and progress of the Work have been satisfactory to Owner and Engineer, then as long as the character and progress of the Work remain satisfactory to Owner and Engineer, there will be no additional retainage; and
 - b. Ninety (90) percent of cost of materials and equipment not incorporated in the Work (with the balance being retainage).
- B. Upon Substantial Completion, Owner shall pay an amount sufficient to increase total payments to Contractor to ninety five (95) percent of the Work completed, less such amounts set off by Owner pursuant to Paragraph 15.01.E of the General Conditions, and less **one hundred (100)** percent of Engineer's estimate of the value of Work to be completed or corrected as shown on the punch list of items to be completed or corrected prior to final payment.

6.03 *Final Payment*

- A. Upon final completion and acceptance of the Work, Owner shall pay the remainder of the Contract Price in accordance with Paragraph 15.06 of the General Conditions.

6.04 *Consent of Surety*

- A. Owner will not make final payment, or return or release retainage at Substantial Completion or any other time, unless Contractor submits written consent of the surety to such payment, return, or release.

6.05 *Interest*

- A. All amounts not paid when due will bear interest at the maximum rate allowed by law in the location of the project .

ARTICLE 7—CONTRACT DOCUMENTS

7.01 *Contents*

- A. The Contract Documents consist of all of the following:

1. This Agreement.
 2. Bonds:
 - a. Performance bond (together with power of attorney).
 - b. Payment bond (together with power of attorney).
 3. General Conditions.
 4. Supplementary Conditions.
 5. Specifications as listed in the table of contents of the project manual (not attached but incorporated by reference).
 7. Drawings listed on the attached sheet index.
 8. Addenda (numbers ___ to ___, inclusive).
 9. Exhibits to this Agreement (enumerated as follows):
 - a. Contractor's Bid (pages █ to █, inclusive).
 - b. Documentation submitted by Contractor prior to Notice of Award (pages █ to █, inclusive).
 10. The following which may be delivered or issued on or after the Effective Date of the Contract and are not attached hereto:
 - a. Notice to Proceed.
 - b. Change Orders.
- B. The Contract Documents listed in Paragraph 7.01.A are attached to this Agreement (except as expressly noted otherwise above).
- C. There are no Contract Documents other than those listed above in this Article 7.
- D. The Contract Documents may only be amended, modified, or supplemented as provided in the Contract.

ARTICLE 8—REPRESENTATIONS, CERTIFICATIONS, AND STIPULATIONS

8.01 Contractor's Representations

- A. In order to induce Owner to enter into this Contract, Contractor makes the following representations:
1. Contractor has examined and carefully studied the Contract Documents, including Addenda.
 2. Contractor has visited the Site, conducted a thorough visual examination of the Site and adjacent areas, and become familiar with the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
 3. Contractor is familiar with all Laws and Regulations that may affect cost, progress, and performance of the Work.
 4. Contractor has carefully studied the reports of explorations and tests of subsurface conditions at or adjacent to the Site and the drawings of physical conditions relating to

existing surface or subsurface structures at the Site that have been identified in the Supplementary Conditions, with respect to the Technical Data in such reports and drawings.

5. Contractor has carefully studied the reports and drawings relating to Hazardous Environmental Conditions, if any, at or adjacent to the Site that have been identified in the Supplementary Conditions, with respect to Technical Data in such reports and drawings.
6. Contractor has considered the information known to Contractor itself; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and the Technical Data identified in the Supplementary Conditions or by definition, with respect to the effect of such information, observations, and Technical Data on (a) the cost, progress, and performance of the Work; (b) the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor; and (c) Contractor's safety precautions and programs.
7. Based on the information and observations referred to in the preceding paragraph, Contractor agrees that no further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract.
8. Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.
9. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and of discrepancies between Site conditions and the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.
10. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
11. Contractor's entry into this Contract constitutes an incontrovertible representation by Contractor that without exception all prices in the Agreement are premised upon performing and furnishing the Work required by the Contract Documents.

8.02 *Contractor's Certifications*

- A. Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. For the purposes of this Paragraph 8.02:
 1. "corrupt practice" means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the bidding process or in the Contract execution;
 2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the Contract to the detriment of Owner, (b) to establish Bid or Contract prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;

3. “collusive practice” means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish Bid prices at artificial, non-competitive levels; and
4. “coercive practice” means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

8.03 *Standard General Conditions*

- A. Owner stipulates that if the General Conditions that are made a part of this Contract are EJCDC® C-700, Standard General Conditions for the Construction Contract (2018), published by the Engineers Joint Contract Documents Committee, and if Owner is the party that has furnished said General Conditions, then Owner has plainly shown all modifications to the standard wording of such published document to the Contractor, through a process such as highlighting or “track changes” (redline/strikeout), or in the Supplementary Conditions.

ARTICLE 9— MISCELLANEOUS

9.01 *Terms*

- A. Terms used in this Agreement will have the meanings stated in the General Conditions and the Supplementary Conditions.

9.02 *Assignment of Contract*

- A. Unless expressly agreed to elsewhere in the Contract, no assignment by a party hereto of any rights under or interests in the Contract will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, money that may become due and money that is due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

9.03 *Successors and Assigns*

- A. Owner and Contractor each binds itself, its successors, assigns, and legal representatives to the other party hereto, its successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

9.04 *Severability*

- A. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Contractor, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement.

This Agreement will be effective on _____ (which is the Effective Date of the Contract).

Owner:

Contractor:

(typed or printed name of organization)

(typed or printed name of organization)

By: _____
(individual's signature)

By: _____
(individual's signature)

Date: _____
(date signed)

Date: _____
(date signed)

Name: _____
(typed or printed)

Name: _____
(typed or printed)

Title: _____
(typed or printed)

Title: _____
(typed or printed)

(If [Type of Entity] is a corporation, a partnership, or a joint venture, attach evidence of authority to sign.)

Attest: _____
(individual's signature)

Attest: _____
(individual's signature)

Title: _____
(typed or printed)

Title: _____
(typed or printed)

Address for giving notices:

Address for giving notices:

Designated Representative:

Designated Representative:

Name: _____
(typed or printed)

Name: _____
(typed or printed)

Title: _____
(typed or printed)

Title: _____
(typed or printed)

Address:

Address:

Phone: _____

Phone: _____

Email: _____

Email: _____

(If [Type of Entity] is a corporation, attach evidence of authority to sign. If [Type of Entity] is a public body, attach evidence of authority to sign and resolution or other documents authorizing execution of this Agreement.)

License No.: _____
(where applicable)

State: _____

Section 00610 – PERFORMANCE BOND

<p>Contractor</p> <p>Name: _____</p> <p>Address <i>(principal place of business)</i>: _____</p>	<p>Surety</p> <p>Name: _____</p> <p>Address <i>(principal place of business)</i>: _____</p>
<p>Owner</p> <p>Name: _____</p> <p>Mailing address <i>(principal place of business)</i>: _____</p>	<p>Contract</p> <p>Description <i>(name and location)</i>: _____</p> <p>Contract Price: _____</p> <p>Effective Date of Contract: _____</p>
<p>Bond</p> <p>Bond Amount: _____</p> <p>Date of Bond: _____</p> <p><i>(Date of Bond cannot be earlier than Effective Date of Contract)</i></p> <p>Modifications to this Bond form:</p> <p><input type="checkbox"/> None <input type="checkbox"/> See Paragraph 16</p>	
<p>Surety and Contractor, intending to be legally bound hereby, subject to the terms set forth in this Performance Bond, do each cause this Performance Bond to be duly executed by an authorized officer, agent, or representative.</p>	
Contractor as Principal	Surety
_____	_____
<i>(Full formal name of Contractor)</i>	<i>(Full formal name of Surety) (corporate seal)</i>
By: _____	By: _____
<i>(Signature)</i>	<i>(Signature)(Attach Power of Attorney)</i>
Name: _____	Name: _____
<i>(Printed or typed)</i>	<i>(Printed or typed)</i>
Title: _____	Title: _____
Attest: _____	Attest: _____
<i>(Signature)</i>	<i>(Signature)</i>
Name: _____	Name: _____
<i>(Printed or typed)</i>	<i>(Printed or typed)</i>
Title: _____	Title: _____
<p><i>Notes: (1) Provide supplemental execution by any additional parties, such as joint venturers. (2) Any singular reference to Contractor, Surety, Owner, or other party is considered plural where applicable.</i></p>	

1. The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to the Owner for the performance of the Construction Contract, which is incorporated herein by reference.
2. If the Contractor performs the Construction Contract, the Surety and the Contractor shall have no obligation under this Bond, except when applicable to participate in a conference as provided in Paragraph 3.
3. If there is no Owner Default under the Construction Contract, the Surety's obligation under this Bond will arise after:
 - 3.1. The Owner first provides notice to the Contractor and the Surety that the Owner is considering declaring a Contractor Default. Such notice may indicate whether the Owner is requesting a conference among the Owner, Contractor, and Surety to discuss the Contractor's performance. If the Owner does not request a conference, the Surety may, within five (5) business days after receipt of the Owner's notice, request such a conference. If the Surety timely requests a conference, the Owner shall attend. Unless the Owner agrees otherwise, any conference requested under this Paragraph 3.1 will be held within ten (10) business days of the Surety's receipt of the Owner's notice. If the Owner, the Contractor, and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Construction Contract, but such an agreement does not waive the Owner's right, if any, subsequently to declare a Contractor Default;
 - 3.2. The Owner declares a Contractor Default, terminates the Construction Contract and notifies the Surety; and
 - 3.3. The Owner has agreed to pay the Balance of the Contract Price in accordance with the terms of the Construction Contract to the Surety or to a contractor selected to perform the Construction Contract.
4. Failure on the part of the Owner to comply with the notice requirement in Paragraph 3.1 does not constitute a failure to comply with a condition precedent to the Surety's obligations, or release the Surety from its obligations, except to the extent the Surety demonstrates actual prejudice.
5. When the Owner has satisfied the conditions of Paragraph 3, the Surety shall promptly and at the Surety's expense take one of the following actions:
 - 5.1. Arrange for the Contractor, with the consent of the Owner, to perform and complete the Construction Contract;
 - 5.2. Undertake to perform and complete the Construction Contract itself, through its agents or independent contractors;
 - 5.3. Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by the Owner and a contractor selected with the Owners concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Construction Contract, and pay to the Owner the amount of damages as described in Paragraph 7 in excess of the Balance of the Contract Price incurred by the Owner as a result of the Contractor Default; or
 - 5.4. Waive its right to perform and complete, arrange for completion, or obtain a new contractor, and with reasonable promptness under the circumstances:

- 5.4.1 After investigation, determine the amount for which it may be liable to the Owner and, as soon as practicable after the amount is determined, make payment to the Owner; or
 - 5.4.2 Deny liability in whole or in part and notify the Owner, citing the reasons for denial.
- 6. If the Surety does not proceed as provided in Paragraph 5 with reasonable promptness, the Surety shall be deemed to be in default on this Bond seven days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Paragraph 5.4, and the Owner refuses the payment, or the Surety has denied liability, in whole or in part, without further notice, the Owner shall be entitled to enforce any remedy available to the Owner.
- 7. If the Surety elects to act under Paragraph 5.1, 5.2, or 5.3, then the responsibilities of the Surety to the Owner will not be greater than those of the Contractor under the Construction Contract, and the responsibilities of the Owner to the Surety will not be greater than those of the Owner under the Construction Contract. Subject to the commitment by the Owner to pay the Balance of the Contract Price, the Surety is obligated, without duplication for:
 - 7.1. the responsibilities of the Contractor for correction of defective work and completion of the Construction Contract;
 - 7.2. additional legal, design professional, and delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under Paragraph 5; and
 - 7.3. liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of the Contractor.
- 8. If the Surety elects to act under Paragraph 5.1, 5.3, or 5.4, the Surety's liability is limited to the amount of this Bond.
- 9. The Surety shall not be liable to the Owner or others for obligations of the Contractor that are unrelated to the Construction Contract, and the Balance of the Contract Price will not be reduced or set off on account of any such unrelated obligations. No right of action will accrue on this Bond to any person or entity other than the Owner or its heirs, executors, administrators, successors, and assigns.
- 10. The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders, and other obligations.
- 11. Any proceeding, legal or equitable, under this Bond must be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and must be instituted within two years after a declaration of Contractor Default or within two years after the Contractor ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this paragraph are void or prohibited by law, the minimum periods of limitations available to sureties as a defense in the jurisdiction of the suit will be applicable.
- 12. Notice to the Surety, the Owner, or the Contractor must be mailed or delivered to the address shown on the page on which their signature appears.
- 13. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement will be deemed deleted therefrom and provisions conforming to such

statutory or other legal requirement will be deemed incorporated herein. When so furnished, the intent is that this Bond will be construed as a statutory bond and not as a common law bond.

14. Definitions

- 14.1. *Balance of the Contract Price*—The total amount payable by the Owner to the Contractor under the Construction Contract after all proper adjustments have been made including allowance for the Contractor for any amounts received or to be received by the Owner in settlement of insurance or other claims for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Construction Contract.
 - 14.2. *Construction Contract*—The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and changes made to the agreement and the Contract Documents.
 - 14.3. *Contractor Default*—Failure of the Contractor, which has not been remedied or waived, to perform or otherwise to comply with a material term of the Construction Contract.
 - 14.4. *Owner Default*—Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.
 - 14.5. *Contract Documents*—All the documents that comprise the agreement between the Owner and Contractor.
15. If this Bond is issued for an agreement between a contractor and subcontractor, the term Contractor in this Bond will be deemed to be Subcontractor and the term Owner will be deemed to be Contractor.
16. Modifications to this Bond are as follows:

Section 00615 – PAYMENT BOND

<p>Contractor</p> <p>Name: _____</p> <p>Address <i>(principal place of business)</i>: _____</p>	<p>Surety</p> <p>Name: _____</p> <p>Address <i>(principal place of business)</i>: _____</p>
<p>Owner</p> <p>Name: _____</p> <p>Mailing address <i>(principal place of business)</i>: _____</p>	<p>Contract</p> <p>Description <i>(name and location)</i>: _____</p> <p>Contract Price: _____</p> <p>Effective Date of Contract: _____</p>
<p>Bond</p> <p>Bond Amount: _____</p> <p>Date of Bond: _____</p> <p><i>(Date of Bond cannot be earlier than Effective Date of Contract)</i></p> <p>Modifications to this Bond form:</p> <p><input type="checkbox"/> None <input type="checkbox"/> See Paragraph 18</p>	
<p>Surety and Contractor, intending to be legally bound hereby, subject to the terms set forth in this Payment Bond, do each cause this Payment Bond to be duly executed by an authorized officer, agent, or representative.</p>	
Contractor as Principal	Surety
_____ <i>(Full formal name of Contractor)</i>	_____ <i>(Full formal name of Surety) (corporate seal)</i>
By: _____ <i>(Signature)</i>	By: _____ <i>(Signature)(Attach Power of Attorney)</i>
Name: _____ <i>(Printed or typed)</i>	Name: _____ <i>(Printed or typed)</i>
Title: _____	Title: _____
Attest: _____ <i>(Signature)</i>	Attest: _____ <i>(Signature)</i>
Name: _____ <i>(Printed or typed)</i>	Name: _____ <i>(Printed or typed)</i>
Title: _____	Title: _____
<p><i>Notes: (1) Provide supplemental execution by any additional parties, such as joint venturers. (2) Any singular reference to Contractor, Surety, Owner, or other party is considered plural where applicable.</i></p>	

1. The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to the Owner to pay for labor, materials, and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference, subject to the following terms.
2. If the Contractor promptly makes payment of all sums due to Claimants, and defends, indemnifies, and holds harmless the Owner from claims, demands, liens, or suits by any person or entity seeking payment for labor, materials, or equipment furnished for use in the performance of the Construction Contract, then the Surety and the Contractor shall have no obligation under this Bond.
3. If there is no Owner Default under the Construction Contract, the Surety's obligation to the Owner under this Bond will arise after the Owner has promptly notified the Contractor and the Surety (at the address described in Paragraph 13) of claims, demands, liens, or suits against the Owner or the Owner's property by any person or entity seeking payment for labor, materials, or equipment furnished for use in the performance of the Construction Contract, and tendered defense of such claims, demands, liens, or suits to the Contractor and the Surety.
4. When the Owner has satisfied the conditions in Paragraph 3, the Surety shall promptly and at the Surety's expense defend, indemnify, and hold harmless the Owner against a duly tendered claim, demand, lien, or suit.
5. The Surety's obligations to a Claimant under this Bond will arise after the following:
 - 5.1. Claimants who do not have a direct contract with the Contractor
 - 5.1.1. have furnished a written notice of non-payment to the Contractor, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were, or equipment was, furnished or supplied or for whom the labor was done or performed, within ninety (90) days after having last performed labor or last furnished materials or equipment included in the Claim; and
 - 5.1.2. have sent a Claim to the Surety (at the address described in Paragraph 13).
 - 5.2. Claimants who are employed by or have a direct contract with the Contractor have sent a Claim to the Surety (at the address described in Paragraph 13).
6. If a notice of non-payment required by Paragraph 5.1.1 is given by the Owner to the Contractor, that is sufficient to satisfy a Claimant's obligation to furnish a written notice of non-payment under Paragraph 5.1.1.
7. When a Claimant has satisfied the conditions of Paragraph 5.1 or 5.2, whichever is applicable, the Surety shall promptly and at the Surety's expense take the following actions:
 - 7.1. Send an answer to the Claimant, with a copy to the Owner, within sixty (60) days after receipt of the Claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed; and
 - 7.2. Pay or arrange for payment of any undisputed amounts.
 - 7.3. The Surety's failure to discharge its obligations under Paragraph 7.1 or 7.2 will not be deemed to constitute a waiver of defenses the Surety or Contractor may have or acquire as to a Claim, except as to undisputed amounts for which the Surety and Claimant have reached agreement. If, however, the Surety fails to discharge its obligations under Paragraph 7.1 or 7.2, the Surety shall indemnify the Claimant for the reasonable attorney's fees the Claimant incurs thereafter to recover any sums found to be due and owing to the Claimant.

8. The Surety's total obligation will not exceed the amount of this Bond, plus the amount of reasonable attorney's fees provided under Paragraph 7.3, and the amount of this Bond will be credited for any payments made in good faith by the Surety.
9. Amounts owed by the Owner to the Contractor under the Construction Contract will be used for the performance of the Construction Contract and to satisfy claims, if any, under any construction performance bond. By the Contractor furnishing and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfying obligations of the Contractor and Surety under this Bond, subject to the Owner's priority to use the funds for the completion of the work.
10. The Surety shall not be liable to the Owner, Claimants, or others for obligations of the Contractor that are unrelated to the Construction Contract. The Owner shall not be liable for the payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligation to make payments to or give notice on behalf of Claimants, or otherwise have any obligations to Claimants under this Bond.
11. The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders, and other obligations.
12. No suit or action will be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the state in which the project that is the subject of the Construction Contract is located or after the expiration of one year from the date (1) on which the Claimant sent a Claim to the Surety pursuant to Paragraph 5.1.2 or 5.2, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit will be applicable.
13. Notice and Claims to the Surety, the Owner, or the Contractor must be mailed or delivered to the address shown on the page on which their signature appears. Actual receipt of notice or Claims, however accomplished, will be sufficient compliance as of the date received.
14. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement will be deemed deleted here from and provisions conforming to such statutory or other legal requirement will be deemed incorporated herein. When so furnished, the intent is that this Bond will be construed as a statutory bond and not as a common law bond.
15. Upon requests by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor and Owner shall promptly furnish a copy of this Bond or shall permit a copy to be made.
16. Definitions
 - 16.1. *Claim*—A written statement by the Claimant including at a minimum:
 - 16.1.1. The name of the Claimant;
 - 16.1.2. The name of the person for whom the labor was done, or materials or equipment furnished;
 - 16.1.3. A copy of the agreement or purchase order pursuant to which labor, materials, or equipment was furnished for use in the performance of the Construction Contract;
 - 16.1.4. A brief description of the labor, materials, or equipment furnished;

- 16.1.5. The date on which the Claimant last performed labor or last furnished materials or equipment for use in the performance of the Construction Contract;
 - 16.1.6. The total amount earned by the Claimant for labor, materials, or equipment furnished as of the date of the Claim;
 - 16.1.7. The total amount of previous payments received by the Claimant; and
 - 16.1.8. The total amount due and unpaid to the Claimant for labor, materials, or equipment furnished as of the date of the Claim.
- 16.2. *Claimant*—An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials, or equipment for use in the performance of the Construction Contract. The term Claimant also includes any individual or entity that has rightfully asserted a claim under an applicable mechanic’s lien or similar statute against the real property upon which the Project is located. The intent of this Bond is to include without limitation in the terms of “labor, materials, or equipment” that part of the water, gas, power, light, heat, oil, gasoline, telephone service, or rental equipment used in the Construction Contract, architectural and engineering services required for performance of the work of the Contractor and the Contractor’s subcontractors, and all other items for which a mechanic’s lien may be asserted in the jurisdiction where the labor, materials, or equipment were furnished.
 - 16.3. *Construction Contract*—The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and all changes made to the agreement and the Contract Documents.
 - 16.4. *Owner Default*—Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.
 - 16.5. *Contract Documents*—All the documents that comprise the agreement between the Owner and Contractor.
17. If this Bond is issued for an agreement between a contractor and subcontractor, the term Contractor in this Bond will be deemed to be Subcontractor and the term Owner will be deemed to be Contractor.
 18. Modifications to this Bond are as follows:

This document has important legal consequences; consultation with an attorney is encouraged with respect to its use or modification. This document should be adapted to the particular circumstances of the contemplated Project and the controlling Laws and Regulations.

STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

Prepared By



Endorsed By



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National Society of Professional Engineers
1420 King Street, Alexandria, VA 22314-2794
(703) 684-2882
www.nspe.org

American Council of Engineering Companies
1015 15th Street N.W., Washington, DC 20005
(202) 347-7474
www.acec.org

American Society of Civil Engineers
1801 Alexander Bell Drive, Reston, VA 20191-4400
(800) 548-2723
www.asce.org

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STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

ARTICLE 1—DEFINITIONS AND TERMINOLOGY

1.01 *Defined Terms*

- A. Wherever used in the Bidding Requirements or Contract Documents, a term printed with initial capital letters, including the term's singular and plural forms, will have the meaning indicated in the definitions below. In addition to terms specifically defined, terms with initial capital letters in the Contract Documents include references to identified articles and paragraphs, and the titles of other documents or forms.
1. *Addenda*—Written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the Bidding Requirements or the proposed Contract Documents.
 2. *Agreement*—The written instrument, executed by Owner and Contractor, that sets forth the Contract Price and Contract Times, identifies the parties and the Engineer, and designates the specific items that are Contract Documents.
 3. *Application for Payment*—The document prepared by Contractor, in a form acceptable to Engineer, to request progress or final payments, and which is to be accompanied by such supporting documentation as is required by the Contract Documents.
 4. *Bid*—The offer of a Bidder submitted on the prescribed form setting forth the prices for the Work to be performed.
 5. *Bidder*—An individual or entity that submits a Bid to Owner.
 6. *Bidding Documents*—The Bidding Requirements, the proposed Contract Documents, and all Addenda.
 7. *Bidding Requirements*—The Advertisement or invitation to bid, Instructions to Bidders, Bid Bond or other Bid security, if any, the Bid Form, and the Bid with any attachments.
 8. *Change Order*—A document which is signed by Contractor and Owner and authorizes an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the Contract Times, or other revision to the Contract, issued on or after the Effective Date of the Contract.
 9. *Change Proposal*—A written request by Contractor, duly submitted in compliance with the procedural requirements set forth herein, seeking an adjustment in Contract Price or Contract Times; contesting an initial decision by Engineer concerning the requirements of the Contract Documents or the acceptability of Work under the Contract Documents; challenging a set-off against payments due; or seeking other relief with respect to the terms of the Contract.
 10. *Claim*
 - a. A demand or assertion by Owner directly to Contractor, duly submitted in compliance with the procedural requirements set forth herein, seeking an adjustment of Contract Price or Contract Times; contesting an initial decision by Engineer concerning the

- requirements of the Contract Documents or the acceptability of Work under the Contract Documents; contesting Engineer's decision regarding a Change Proposal; seeking resolution of a contractual issue that Engineer has declined to address; or seeking other relief with respect to the terms of the Contract.
- b. A demand or assertion by Contractor directly to Owner, duly submitted in compliance with the procedural requirements set forth herein, contesting Engineer's decision regarding a Change Proposal, or seeking resolution of a contractual issue that Engineer has declined to address.
 - c. A demand or assertion by Owner or Contractor, duly submitted in compliance with the procedural requirements set forth herein, made pursuant to Paragraph 12.01.A.4, concerning disputes arising after Engineer has issued a recommendation of final payment.
 - d. A demand for money or services by a third party is not a Claim.
11. *Constituent of Concern*—Asbestos, petroleum, radioactive materials, polychlorinated biphenyls (PCBs), lead-based paint (as defined by the HUD/EPA standard), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to Laws and Regulations regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.
 12. *Contract*—The entire and integrated written contract between Owner and Contractor concerning the Work.
 13. *Contract Documents*—Those items so designated in the Agreement, and which together comprise the Contract.
 14. *Contract Price*—The money that Owner has agreed to pay Contractor for completion of the Work in accordance with the Contract Documents.
 15. *Contract Times*—The number of days or the dates by which Contractor shall: (a) achieve Milestones, if any; (b) achieve Substantial Completion; and (c) complete the Work.
 16. *Contractor*—The individual or entity with which Owner has contracted for performance of the Work.
 17. *Cost of the Work*—See Paragraph 13.01 for definition.
 18. *Drawings*—The part of the Contract that graphically shows the scope, extent, and character of the Work to be performed by Contractor.
 19. *Effective Date of the Contract*—The date, indicated in the Agreement, on which the Contract becomes effective.
 20. *Electronic Document*—Any Project-related correspondence, attachments to correspondence, data, documents, drawings, information, or graphics, including but not limited to Shop Drawings and other Submittals, that are in an electronic or digital format.
 21. *Electronic Means*—Electronic mail (email), upload/download from a secure Project website, or other communications methods that allow: (a) the transmission or communication of Electronic Documents; (b) the documentation of transmissions, including sending and receipt; (c) printing of the transmitted Electronic Document by the

recipient; (d) the storage and archiving of the Electronic Document by sender and recipient; and (e) the use by recipient of the Electronic Document for purposes permitted by this Contract. Electronic Means does not include the use of text messaging, or of Facebook, Twitter, Instagram, or similar social media services for transmission of Electronic Documents.

22. *Engineer*—The individual or entity named as such in the Agreement.
23. *Field Order*—A written order issued by Engineer which requires minor changes in the Work but does not change the Contract Price or the Contract Times.
24. *Hazardous Environmental Condition*—The presence at the Site of Constituents of Concern in such quantities or circumstances that may present a danger to persons or property exposed thereto.
 - a. The presence at the Site of materials that are necessary for the execution of the Work, or that are to be incorporated into the Work, and that are controlled and contained pursuant to industry practices, Laws and Regulations, and the requirements of the Contract, is not a Hazardous Environmental Condition.
 - b. The presence of Constituents of Concern that are to be removed or remediated as part of the Work is not a Hazardous Environmental Condition.
 - c. The presence of Constituents of Concern as part of the routine, anticipated, and obvious working conditions at the Site, is not a Hazardous Environmental Condition.
25. *Laws and Regulations; Laws or Regulations*—Any and all applicable laws, statutes, rules, regulations, ordinances, codes, and binding decrees, resolutions, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
26. *Liens*—Charges, security interests, or encumbrances upon Contract-related funds, real property, or personal property.
27. *Milestone*—A principal event in the performance of the Work that the Contract requires Contractor to achieve by an intermediate completion date, or by a time prior to Substantial Completion of all the Work.
28. *Notice of Award*—The written notice by Owner to a Bidder of Owner's acceptance of the Bid.
29. *Notice to Proceed*—A written notice by Owner to Contractor fixing the date on which the Contract Times will commence to run and on which Contractor shall start to perform the Work.
30. *Owner*—The individual or entity with which Contractor has contracted regarding the Work, and which has agreed to pay Contractor for the performance of the Work, pursuant to the terms of the Contract.
31. *Progress Schedule*—A schedule, prepared and maintained by Contractor, describing the sequence and duration of the activities comprising Contractor's plan to accomplish the Work within the Contract Times.
32. *Project*—The total undertaking to be accomplished for Owner by engineers, contractors, and others, including planning, study, design, construction, testing, commissioning, and start-up, and of which the Work to be performed under the Contract Documents is a part.

33. *Resident Project Representative*—The authorized representative of Engineer assigned to assist Engineer at the Site. As used herein, the term Resident Project Representative (RPR) includes any assistants or field staff of Resident Project Representative.
34. *Samples*—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and that establish the standards by which such portion of the Work will be judged.
35. *Schedule of Submittals*—A schedule, prepared and maintained by Contractor, of required submittals and the time requirements for Engineer’s review of the submittals.
36. *Schedule of Values*—A schedule, prepared and maintained by Contractor, allocating portions of the Contract Price to various portions of the Work and used as the basis for reviewing Contractor’s Applications for Payment.
37. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information that are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work. Shop Drawings, whether approved or not, are not Drawings and are not Contract Documents.
38. *Site*—Lands or areas indicated in the Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements, and such other lands or areas furnished by Owner which are designated for the use of Contractor.
39. *Specifications*—The part of the Contract that consists of written requirements for materials, equipment, systems, standards, and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable to the Work.
40. *Subcontractor*—An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work.
41. *Submittal*—A written or graphic document, prepared by or for Contractor, which the Contract Documents require Contractor to submit to Engineer, or that is indicated as a Submittal in the Schedule of Submittals accepted by Engineer. Submittals may include Shop Drawings and Samples; schedules; product data; Owner-delegated designs; sustainable design information; information on special procedures; testing plans; results of tests and evaluations, source quality-control testing and inspections, and field or Site quality-control testing and inspections; warranties and certifications; Suppliers’ instructions and reports; records of delivery of spare parts and tools; operations and maintenance data; Project photographic documentation; record documents; and other such documents required by the Contract Documents. Submittals, whether or not approved or accepted by Engineer, are not Contract Documents. Change Proposals, Change Orders, Claims, notices, Applications for Payment, and requests for interpretation or clarification are not Submittals.
42. *Substantial Completion*—The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms “substantially complete” and “substantially completed” as applied to all or part of the Work refer to Substantial Completion of such Work.

43. *Successful Bidder*—The Bidder to which the Owner makes an award of contract.
44. *Supplementary Conditions*—The part of the Contract that amends or supplements these General Conditions.
45. *Supplier*—A manufacturer, fabricator, supplier, distributor, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or a Subcontractor.
46. *Technical Data*
- a. Those items expressly identified as Technical Data in the Supplementary Conditions, with respect to either (1) existing subsurface conditions at or adjacent to the Site, or existing physical conditions at or adjacent to the Site including existing surface or subsurface structures (except Underground Facilities) or (2) Hazardous Environmental Conditions at the Site.
 - b. If no such express identifications of Technical Data have been made with respect to conditions at the Site, then Technical Data is defined, with respect to conditions at the Site under Paragraphs 5.03, 5.04, and 5.06, as the data contained in boring logs, recorded measurements of subsurface water levels, assessments of the condition of subsurface facilities, laboratory test results, and other factual, objective information regarding conditions at the Site that are set forth in any geotechnical, environmental, or other Site or facilities conditions report prepared for the Project and made available to Contractor.
 - c. Information and data regarding the presence or location of Underground Facilities are not intended to be categorized, identified, or defined as Technical Data, and instead Underground Facilities are shown or indicated on the Drawings.
47. *Underground Facilities*—All active or not-in-service underground lines, pipelines, conduits, ducts, encasements, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or systems at the Site, including but not limited to those facilities or systems that produce, transmit, distribute, or convey telephone or other communications, cable television, fiber optic transmissions, power, electricity, light, heat, gases, oil, crude oil products, liquid petroleum products, water, steam, waste, wastewater, storm water, other liquids or chemicals, or traffic or other control systems. An abandoned facility or system is not an Underground Facility.
48. *Unit Price Work*—Work to be paid for on the basis of unit prices.
49. *Work*—The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction; furnishing, installing, and incorporating all materials and equipment into such construction; and may include related services such as testing, start-up, and commissioning, all as required by the Contract Documents.
50. *Work Change Directive*—A written directive to Contractor issued on or after the Effective Date of the Contract, signed by Owner and recommended by Engineer, ordering an addition, deletion, or revision in the Work.

1.02 Terminology

- A. The words and terms discussed in Paragraphs 1.02.B, C, D, and E are not defined terms that require initial capital letters, but, when used in the Bidding Requirements or Contract Documents, have the indicated meaning.
- B. *Intent of Certain Terms or Adjectives:* The Contract Documents include the terms “as allowed,” “as approved,” “as ordered,” “as directed” or terms of like effect or import to authorize an exercise of professional judgment by Engineer. In addition, the adjectives “reasonable,” “suitable,” “acceptable,” “proper,” “satisfactory,” or adjectives of like effect or import are used to describe an action or determination of Engineer as to the Work. It is intended that such exercise of professional judgment, action, or determination will be solely to evaluate, in general, the Work for compliance with the information in the Contract Documents and with the design concept of the Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective is not intended to and shall not be effective to assign to Engineer any duty or authority to supervise or direct the performance of the Work, or any duty or authority to undertake responsibility contrary to the provisions of Article 10 or any other provision of the Contract Documents.
- C. *Day:* The word “day” means a calendar day of 24 hours measured from midnight to the next midnight.
- D. *Defective:* The word “defective,” when modifying the word “Work,” refers to Work that is unsatisfactory, faulty, or deficient in that it:
 - 1. does not conform to the Contract Documents;
 - 2. does not meet the requirements of any applicable inspection, reference standard, test, or approval referred to in the Contract Documents; or
 - 3. has been damaged prior to Engineer’s recommendation of final payment (unless responsibility for the protection thereof has been assumed by Owner at Substantial Completion in accordance with Paragraph 15.03 or Paragraph 15.04).
- E. *Furnish, Install, Perform, Provide*
 - 1. The word “furnish,” when used in connection with services, materials, or equipment, means to supply and deliver said services, materials, or equipment to the Site (or some other specified location) ready for use or installation and in usable or operable condition.
 - 2. The word “install,” when used in connection with services, materials, or equipment, means to put into use or place in final position said services, materials, or equipment complete and ready for intended use.
 - 3. The words “perform” or “provide,” when used in connection with services, materials, or equipment, means to furnish and install said services, materials, or equipment complete and ready for intended use.
 - 4. If the Contract Documents establish an obligation of Contractor with respect to specific services, materials, or equipment, but do not expressly use any of the four words “furnish,” “install,” “perform,” or “provide,” then Contractor shall furnish and install said services, materials, or equipment complete and ready for intended use.

- F. *Contract Price or Contract Times*: References to a change in “Contract Price or Contract Times” or “Contract Times or Contract Price” or similar, indicate that such change applies to (1) Contract Price, (2) Contract Times, or (3) both Contract Price and Contract Times, as warranted, even if the term “or both” is not expressed.
- G. Unless stated otherwise in the Contract Documents, words or phrases that have a well-known technical or construction industry or trade meaning are used in the Contract Documents in accordance with such recognized meaning.

ARTICLE 2—PRELIMINARY MATTERS

2.01 *Delivery of Performance and Payment Bonds; Evidence of Insurance*

- A. *Performance and Payment Bonds*: When Contractor delivers the signed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner the performance bond and payment bond (if the Contract requires Contractor to furnish such bonds).
- B. *Evidence of Contractor’s Insurance*: When Contractor delivers the signed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner, with copies to each additional insured (as identified in the Contract), the certificates, endorsements, and other evidence of insurance required to be provided by Contractor in accordance with Article 6, except to the extent the Supplementary Conditions expressly establish other dates for delivery of specific insurance policies.
- C. *Evidence of Owner’s Insurance*: After receipt of the signed counterparts of the Agreement and all required bonds and insurance documentation, Owner shall promptly deliver to Contractor, with copies to each additional insured (as identified in the Contract), the certificates and other evidence of insurance required to be provided by Owner under Article 6.

2.02 *Copies of Documents*

- A. Owner shall furnish to Contractor four printed copies of the Contract (including one fully signed counterpart of the Agreement), and one copy in electronic portable document format (PDF). Additional printed copies will be furnished upon request at the cost of reproduction.
- B. Owner shall maintain and safeguard at least one original printed record version of the Contract, including Drawings and Specifications signed and sealed by Engineer and other design professionals. Owner shall make such original printed record version of the Contract available to Contractor for review. Owner may delegate the responsibilities under this provision to Engineer.

2.03 *Before Starting Construction*

- A. *Preliminary Schedules*: Within 10 days after the Effective Date of the Contract (or as otherwise required by the Contract Documents), Contractor shall submit to Engineer for timely review:
 - 1. a preliminary Progress Schedule indicating the times (numbers of days or dates) for starting and completing the various stages of the Work, including any Milestones specified in the Contract;
 - 2. a preliminary Schedule of Submittals; and
 - 3. a preliminary Schedule of Values for all of the Work which includes quantities and prices of items which when added together equal the Contract Price and subdivides the Work

into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work.

2.04 *Preconstruction Conference; Designation of Authorized Representatives*

- A. Before any Work at the Site is started, a conference attended by Owner, Contractor, Engineer, and others as appropriate will be held to establish a working understanding among the parties as to the Work, and to discuss the schedules referred to in Paragraph 2.03.A, procedures for handling Shop Drawings, Samples, and other Submittals, processing Applications for Payment, electronic or digital transmittals, and maintaining required records.
- B. At this conference Owner and Contractor each shall designate, in writing, a specific individual to act as its authorized representative with respect to the services and responsibilities under the Contract. Such individuals shall have the authority to transmit and receive information, render decisions relative to the Contract, and otherwise act on behalf of each respective party.

2.05 *Acceptance of Schedules*

- A. At least 10 days before submission of the first Application for Payment a conference, attended by Contractor, Engineer, and others as appropriate, will be held to review the schedules submitted in accordance with Paragraph 2.03.A. No progress payment will be made to Contractor until acceptable schedules are submitted to Engineer.
 - 1. The Progress Schedule will be acceptable to Engineer if it provides an orderly progression of the Work to completion within the Contract Times. Such acceptance will not impose on Engineer responsibility for the Progress Schedule, for sequencing, scheduling, or progress of the Work, nor interfere with or relieve Contractor from Contractor's full responsibility therefor.
 - 2. Contractor's Schedule of Submittals will be acceptable to Engineer if it provides a workable arrangement for reviewing and processing the required submittals.
 - 3. Contractor's Schedule of Values will be acceptable to Engineer as to form and substance if it provides a reasonable allocation of the Contract Price to the component parts of the Work.
 - 4. If a schedule is not acceptable, Contractor will have an additional 10 days to revise and resubmit the schedule.

2.06 *Electronic Transmittals*

- A. Except as otherwise stated elsewhere in the Contract, the Owner, Engineer, and Contractor may send, and shall accept, Electronic Documents transmitted by Electronic Means.
- B. If the Contract does not establish protocols for Electronic Means, then Owner, Engineer, and Contractor shall jointly develop such protocols.
- C. Subject to any governing protocols for Electronic Means, when transmitting Electronic Documents by Electronic Means, the transmitting party makes no representations as to long-term compatibility, usability, or readability of the Electronic Documents resulting from the recipient's use of software application packages, operating systems, or computer hardware differing from those used in the drafting or transmittal of the Electronic Documents.

ARTICLE 3—CONTRACT DOCUMENTS: INTENT, REQUIREMENTS, REUSE

3.01 *Intent*

- A. The Contract Documents are complementary; what is required by one Contract Document is as binding as if required by all.
- B. It is the intent of the Contract Documents to describe a functionally complete Project (or part thereof) to be constructed in accordance with the Contract Documents.
- C. Unless otherwise stated in the Contract Documents, if there is a discrepancy between the electronic versions of the Contract Documents (including any printed copies derived from such electronic versions) and the printed record version, the printed record version will govern.
- D. The Contract supersedes prior negotiations, representations, and agreements, whether written or oral.
- E. Engineer will issue clarifications and interpretations of the Contract Documents as provided herein.
- F. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation will be deemed stricken, and all remaining provisions will continue to be valid and binding upon Owner and Contractor, which agree that the Contract Documents will be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.
- G. Nothing in the Contract Documents creates:
 - 1. any contractual relationship between Owner or Engineer and any Subcontractor, Supplier, or other individual or entity performing or furnishing any of the Work, for the benefit of such Subcontractor, Supplier, or other individual or entity; or
 - 2. any obligation on the part of Owner or Engineer to pay or to see to the payment of any money due any such Subcontractor, Supplier, or other individual or entity, except as may otherwise be required by Laws and Regulations.

3.02 *Reference Standards*

- A. *Standards Specifications, Codes, Laws and Regulations*
 - 1. Reference in the Contract Documents to standard specifications, manuals, reference standards, or codes of any technical society, organization, or association, or to Laws or Regulations, whether such reference be specific or by implication, means the standard specification, manual, reference standard, code, or Laws or Regulations in effect at the time of opening of Bids (or on the Effective Date of the Contract if there were no Bids), except as may be otherwise specifically stated in the Contract Documents.
 - 2. No provision of any such standard specification, manual, reference standard, or code, and no instruction of a Supplier, will be effective to change the duties or responsibilities of Owner, Contractor, or Engineer from those set forth in the part of the Contract Documents prepared by or for Engineer. No such provision or instruction shall be effective to assign to Owner or Engineer any duty or authority to supervise or direct the performance of the Work, or any duty or authority to undertake responsibility

inconsistent with the provisions of the part of the Contract Documents prepared by or for Engineer.

3.03 *Reporting and Resolving Discrepancies*

A. *Reporting Discrepancies*

1. *Contractor's Verification of Figures and Field Measurements:* Before undertaking each part of the Work, Contractor shall carefully study the Contract Documents, and check and verify pertinent figures and dimensions therein, particularly with respect to applicable field measurements. Contractor shall promptly report in writing to Engineer any conflict, error, ambiguity, or discrepancy that Contractor discovers, or has actual knowledge of, and shall not proceed with any Work affected thereby until the conflict, error, ambiguity, or discrepancy is resolved by a clarification or interpretation by Engineer, or by an amendment or supplement to the Contract issued pursuant to Paragraph 11.01.
2. *Contractor's Review of Contract Documents:* If, before or during the performance of the Work, Contractor discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents, or between the Contract Documents and (a) any applicable Law or Regulation, (b) actual field conditions, (c) any standard specification, manual, reference standard, or code, or (d) any instruction of any Supplier, then Contractor shall promptly report it to Engineer in writing. Contractor shall not proceed with the Work affected thereby (except in an emergency as required by Paragraph 7.15) until the conflict, error, ambiguity, or discrepancy is resolved, by a clarification or interpretation by Engineer, or by an amendment or supplement to the Contract issued pursuant to Paragraph 11.01.
3. Contractor shall not be liable to Owner or Engineer for failure to report any conflict, error, ambiguity, or discrepancy in the Contract Documents unless Contractor had actual knowledge thereof.

B. *Resolving Discrepancies*

1. Except as may be otherwise specifically stated in the Contract Documents, the provisions of the part of the Contract Documents prepared by or for Engineer take precedence in resolving any conflict, error, ambiguity, or discrepancy between such provisions of the Contract Documents and:
 - a. the provisions of any standard specification, manual, reference standard, or code, or the instruction of any Supplier (whether or not specifically incorporated by reference as a Contract Document); or
 - b. the provisions of any Laws or Regulations applicable to the performance of the Work (unless such an interpretation of the provisions of the Contract Documents would result in violation of such Law or Regulation).

3.04 *Requirements of the Contract Documents*

- A. During the performance of the Work and until final payment, Contractor and Owner shall submit to the Engineer in writing all matters in question concerning the requirements of the Contract Documents (sometimes referred to as requests for information or interpretation—RFIs), or relating to the acceptability of the Work under the Contract Documents, as soon as possible after such matters arise. Engineer will be the initial interpreter of the requirements of the Contract Documents, and judge of the acceptability of the Work.

- B. Engineer will, with reasonable promptness, render a written clarification, interpretation, or decision on the issue submitted, or initiate an amendment or supplement to the Contract Documents. Engineer's written clarification, interpretation, or decision will be final and binding on Contractor, unless it appeals by submitting a Change Proposal, and on Owner, unless it appeals by filing a Claim.
- C. If a submitted matter in question concerns terms and conditions of the Contract Documents that do not involve (1) the performance or acceptability of the Work under the Contract Documents, (2) the design (as set forth in the Drawings, Specifications, or otherwise), or (3) other engineering or technical matters, then Engineer will promptly notify Owner and Contractor in writing that Engineer is unable to provide a decision or interpretation. If Owner and Contractor are unable to agree on resolution of such a matter in question, either party may pursue resolution as provided in Article 12.

3.05 *Reuse of Documents*

- A. Contractor and its Subcontractors and Suppliers shall not:
 - 1. have or acquire any title to or ownership rights in any of the Drawings, Specifications, or other documents (or copies of any thereof) prepared by or bearing the seal of Engineer or its consultants, including electronic media versions, or reuse any such Drawings, Specifications, other documents, or copies thereof on extensions of the Project or any other project without written consent of Owner and Engineer and specific written verification or adaptation by Engineer; or
 - 2. have or acquire any title or ownership rights in any other Contract Documents, reuse any such Contract Documents for any purpose without Owner's express written consent, or violate any copyrights pertaining to such Contract Documents.
- B. The prohibitions of this Paragraph 3.05 will survive final payment, or termination of the Contract. Nothing herein precludes Contractor from retaining copies of the Contract Documents for record purposes.

ARTICLE 4—COMMENCEMENT AND PROGRESS OF THE WORK

4.01 *Commencement of Contract Times; Notice to Proceed*

- A. The Contract Times will commence to run on the 30th day after the Effective Date of the Contract or, if a Notice to Proceed is given, on the day indicated in the Notice to Proceed. A Notice to Proceed may be given at any time within 30 days after the Effective Date of the Contract. In no event will the Contract Times commence to run later than the 60th day after the day of Bid opening or the 30th day after the Effective Date of the Contract, whichever date is earlier.

4.02 *Starting the Work*

- A. Contractor shall start to perform the Work on the date when the Contract Times commence to run. No Work may be done at the Site prior to such date.

4.03 *Reference Points*

- A. Owner shall provide engineering surveys to establish reference points for construction which in Engineer's judgment are necessary to enable Contractor to proceed with the Work. Contractor shall be responsible for laying out the Work, shall protect and preserve the

established reference points and property monuments, and shall make no changes or relocations without the prior written approval of Owner. Contractor shall report to Engineer whenever any reference point or property monument is lost or destroyed or requires relocation because of necessary changes in grades or locations, and shall be responsible for the accurate replacement or relocation of such reference points or property monuments by professionally qualified personnel.

4.04 *Progress Schedule*

- A. Contractor shall adhere to the Progress Schedule established in accordance with Paragraph 2.05 as it may be adjusted from time to time as provided below.
 - 1. Contractor shall submit to Engineer for acceptance (to the extent indicated in Paragraph 2.05) proposed adjustments in the Progress Schedule that will not result in changing the Contract Times.
 - 2. Proposed adjustments in the Progress Schedule that will change the Contract Times must be submitted in accordance with the requirements of Article 11.
- B. Contractor shall carry on the Work and adhere to the Progress Schedule during all disputes or disagreements with Owner. No Work will be delayed or postponed pending resolution of any disputes or disagreements, or during any appeal process, except as permitted by Paragraph 16.04, or as Owner and Contractor may otherwise agree in writing.

4.05 *Delays in Contractor's Progress*

- A. If Owner, Engineer, or anyone for whom Owner is responsible, delays, disrupts, or interferes with the performance or progress of the Work, then Contractor shall be entitled to an equitable adjustment in Contract Price or Contract Times.
- B. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for delay, disruption, or interference caused by or within the control of Contractor. Delay, disruption, and interference attributable to and within the control of a Subcontractor or Supplier shall be deemed to be within the control of Contractor.
- C. If Contractor's performance or progress is delayed, disrupted, or interfered with by unanticipated causes not the fault of and beyond the control of Owner, Contractor, and those for which they are responsible, then Contractor shall be entitled to an equitable adjustment in Contract Times. Such an adjustment will be Contractor's sole and exclusive remedy for the delays, disruption, and interference described in this paragraph. Causes of delay, disruption, or interference that may give rise to an adjustment in Contract Times under this paragraph include but are not limited to the following:
 - 1. Severe and unavoidable natural catastrophes such as fires, floods, epidemics, and earthquakes;
 - 2. Abnormal weather conditions;
 - 3. Acts or failures to act of third-party utility owners or other third-party entities (other than those third-party utility owners or other third-party entities performing other work at or adjacent to the Site as arranged by or under contract with Owner, as contemplated in Article 8); and
 - 4. Acts of war or terrorism.

- D. Contractor's entitlement to an adjustment of Contract Times or Contract Price is limited as follows:
1. Contractor's entitlement to an adjustment of the Contract Times is conditioned on the delay, disruption, or interference adversely affecting an activity on the critical path to completion of the Work, as of the time of the delay, disruption, or interference.
 2. Contractor shall not be entitled to an adjustment in Contract Price for any delay, disruption, or interference if such delay is concurrent with a delay, disruption, or interference caused by or within the control of Contractor. Such a concurrent delay by Contractor shall not preclude an adjustment of Contract Times to which Contractor is otherwise entitled.
 3. Adjustments of Contract Times or Contract Price are subject to the provisions of Article 11.
- E. Each Contractor request or Change Proposal seeking an increase in Contract Times or Contract Price must be supplemented by supporting data that sets forth in detail the following:
1. The circumstances that form the basis for the requested adjustment;
 2. The date upon which each cause of delay, disruption, or interference began to affect the progress of the Work;
 3. The date upon which each cause of delay, disruption, or interference ceased to affect the progress of the Work;
 4. The number of days' increase in Contract Times claimed as a consequence of each such cause of delay, disruption, or interference; and
 5. The impact on Contract Price, in accordance with the provisions of Paragraph 11.07.
- Contractor shall also furnish such additional supporting documentation as Owner or Engineer may require including, where appropriate, a revised progress schedule indicating all the activities affected by the delay, disruption, or interference, and an explanation of the effect of the delay, disruption, or interference on the critical path to completion of the Work.
- F. Delays, disruption, and interference to the performance or progress of the Work resulting from the existence of a differing subsurface or physical condition, an Underground Facility that was not shown or indicated by the Contract Documents, or not shown or indicated with reasonable accuracy, and those resulting from Hazardous Environmental Conditions, are governed by Article 5, together with the provisions of Paragraphs 4.05.D and 4.05.E.
- G. Paragraph 8.03 addresses delays, disruption, and interference to the performance or progress of the Work resulting from the performance of certain other work at or adjacent to the Site.

ARTICLE 5—SITE; SUBSURFACE AND PHYSICAL CONDITIONS; HAZARDOUS ENVIRONMENTAL CONDITIONS

5.01 *Availability of Lands*

- A. Owner shall furnish the Site. Owner shall notify Contractor in writing of any encumbrances or restrictions not of general application but specifically related to use of the Site with which Contractor must comply in performing the Work.

- B. Upon reasonable written request, Owner shall furnish Contractor with a current statement of record legal title and legal description of the lands upon which permanent improvements are to be made and Owner's interest therein as necessary for giving notice of or filing a mechanic's or construction lien against such lands in accordance with applicable Laws and Regulations.
- C. Contractor shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

5.02 *Use of Site and Other Areas*

A. *Limitation on Use of Site and Other Areas*

1. Contractor shall confine construction equipment, temporary construction facilities, the storage of materials and equipment, and the operations of workers to the Site, adjacent areas that Contractor has arranged to use through construction easements or otherwise, and other adjacent areas permitted by Laws and Regulations, and shall not unreasonably encumber the Site and such other adjacent areas with construction equipment or other materials or equipment. Contractor shall assume full responsibility for (a) damage to the Site; (b) damage to any such other adjacent areas used for Contractor's operations; (c) damage to any other adjacent land or areas, or to improvements, structures, utilities, or similar facilities located at such adjacent lands or areas; and (d) for injuries and losses sustained by the owners or occupants of any such land or areas; provided that such damage or injuries result from the performance of the Work or from other actions or conduct of the Contractor or those for which Contractor is responsible.
 2. If a damage or injury claim is made by the owner or occupant of any such land or area because of the performance of the Work, or because of other actions or conduct of the Contractor or those for which Contractor is responsible, Contractor shall (a) take immediate corrective or remedial action as required by Paragraph 7.13, or otherwise; (b) promptly attempt to settle the claim as to all parties through negotiations with such owner or occupant, or otherwise resolve the claim by arbitration or other dispute resolution proceeding, or in a court of competent jurisdiction; and (c) to the fullest extent permitted by Laws and Regulations, indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, from and against any such claim, and against all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any claim or action, legal or equitable, brought by any such owner or occupant against Owner, Engineer, or any other party indemnified hereunder to the extent caused directly or indirectly, in whole or in part by, or based upon, Contractor's performance of the Work, or because of other actions or conduct of the Contractor or those for which Contractor is responsible.
- B. *Removal of Debris During Performance of the Work:* During the progress of the Work the Contractor shall keep the Site and other adjacent areas free from accumulations of waste materials, rubbish, and other debris. Removal and disposal of such waste materials, rubbish, and other debris will conform to applicable Laws and Regulations.
 - C. *Cleaning:* Prior to Substantial Completion of the Work Contractor shall clean the Site and the Work and make it ready for utilization by Owner. At the completion of the Work Contractor shall remove from the Site and adjacent areas all tools, appliances, construction equipment

and machinery, and surplus materials and shall restore to original condition all property not designated for alteration by the Contract Documents.

- D. *Loading of Structures*: Contractor shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall Contractor subject any part of the Work or adjacent structures or land to stresses or pressures that will endanger them.

5.03 *Subsurface and Physical Conditions*

- A. *Reports and Drawings*: The Supplementary Conditions identify:

1. Those reports of explorations and tests of subsurface conditions at or adjacent to the Site that contain Technical Data;
2. Those drawings of existing physical conditions at or adjacent to the Site, including those drawings depicting existing surface or subsurface structures at or adjacent to the Site (except Underground Facilities), that contain Technical Data; and
3. Technical Data contained in such reports and drawings.

- B. *Underground Facilities*: Underground Facilities are shown or indicated on the Drawings, pursuant to Paragraph 5.05, and not in the drawings referred to in Paragraph 5.03.A. Information and data regarding the presence or location of Underground Facilities are not intended to be categorized, identified, or defined as Technical Data.

- C. *Reliance by Contractor on Technical Data*: Contractor may rely upon the accuracy of the Technical Data expressly identified in the Supplementary Conditions with respect to such reports and drawings, but such reports and drawings are not Contract Documents. If no such express identification has been made, then Contractor may rely upon the accuracy of the Technical Data as defined in Paragraph 1.01.A.46.b.

- D. *Limitations of Other Data and Documents*: Except for such reliance on Technical Data, Contractor may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, with respect to:

1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, and safety precautions and programs incident thereto;
2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings;
3. the contents of other Site-related documents made available to Contractor, such as record drawings from other projects at or adjacent to the Site, or Owner's archival documents concerning the Site; or
4. any Contractor interpretation of or conclusion drawn from any Technical Data or any such other data, interpretations, opinions, or information.

5.04 *Differing Subsurface or Physical Conditions*

- A. *Notice by Contractor:* If Contractor believes that any subsurface or physical condition that is uncovered or revealed at the Site:
1. is of such a nature as to establish that any Technical Data on which Contractor is entitled to rely as provided in Paragraph 5.03 is materially inaccurate;
 2. is of such a nature as to require a change in the Drawings or Specifications;
 3. differs materially from that shown or indicated in the Contract Documents; or
 4. is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents;

then Contractor shall, promptly after becoming aware thereof and before further disturbing the subsurface or physical conditions or performing any Work in connection therewith (except in an emergency as required by Paragraph 7.15), notify Owner and Engineer in writing about such condition. Contractor shall not further disturb such condition or perform any Work in connection therewith (except with respect to an emergency) until receipt of a written statement permitting Contractor to do so.

- B. *Engineer's Review:* After receipt of written notice as required by the preceding paragraph, Engineer will promptly review the subsurface or physical condition in question; determine whether it is necessary for Owner to obtain additional exploration or tests with respect to the condition; conclude whether the condition falls within any one or more of the differing site condition categories in Paragraph 5.04.A; obtain any pertinent cost or schedule information from Contractor; prepare recommendations to Owner regarding the Contractor's resumption of Work in connection with the subsurface or physical condition in question and the need for any change in the Drawings or Specifications; and advise Owner in writing of Engineer's findings, conclusions, and recommendations.
- C. *Owner's Statement to Contractor Regarding Site Condition:* After receipt of Engineer's written findings, conclusions, and recommendations, Owner shall issue a written statement to Contractor (with a copy to Engineer) regarding the subsurface or physical condition in question, addressing the resumption of Work in connection with such condition, indicating whether any change in the Drawings or Specifications will be made, and adopting or rejecting Engineer's written findings, conclusions, and recommendations, in whole or in part.
- D. *Early Resumption of Work:* If at any time Engineer determines that Work in connection with the subsurface or physical condition in question may resume prior to completion of Engineer's review or Owner's issuance of its statement to Contractor, because the condition in question has been adequately documented, and analyzed on a preliminary basis, then the Engineer may at its discretion instruct Contractor to resume such Work.
- E. *Possible Price and Times Adjustments*
1. Contractor shall be entitled to an equitable adjustment in Contract Price or Contract Times, to the extent that the existence of a differing subsurface or physical condition, or any related delay, disruption, or interference, causes an increase or decrease in

Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:

- a. Such condition must fall within any one or more of the categories described in Paragraph 5.04.A;
 - b. With respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraph 13.03; and,
 - c. Contractor's entitlement to an adjustment of the Contract Times is subject to the provisions of Paragraphs 4.05.D and 4.05.E.
2. Contractor shall not be entitled to any adjustment in the Contract Price or Contract Times with respect to a subsurface or physical condition if:
- a. Contractor knew of the existence of such condition at the time Contractor made a commitment to Owner with respect to Contract Price and Contract Times by the submission of a Bid or becoming bound under a negotiated contract, or otherwise;
 - b. The existence of such condition reasonably could have been discovered or revealed as a result of any examination, investigation, exploration, test, or study of the Site and contiguous areas expressly required by the Bidding Requirements or Contract Documents to be conducted by or for Contractor prior to Contractor's making such commitment; or
 - c. Contractor failed to give the written notice required by Paragraph 5.04.A.
3. If Owner and Contractor agree regarding Contractor's entitlement to and the amount or extent of any adjustment in the Contract Price or Contract Times, then any such adjustment will be set forth in a Change Order.
4. Contractor may submit a Change Proposal regarding its entitlement to or the amount or extent of any adjustment in the Contract Price or Contract Times, no later than 30 days after Owner's issuance of the Owner's written statement to Contractor regarding the subsurface or physical condition in question.
- F. *Underground Facilities; Hazardous Environmental Conditions*: Paragraph 5.05 governs rights and responsibilities regarding the presence or location of Underground Facilities. Paragraph 5.06 governs rights and responsibilities regarding Hazardous Environmental Conditions. The provisions of Paragraphs 5.03 and 5.04 are not applicable to the presence or location of Underground Facilities, or to Hazardous Environmental Conditions.

5.05 *Underground Facilities*

- A. *Contractor's Responsibilities*: Unless it is otherwise expressly provided in the Supplementary Conditions, the cost of all of the following are included in the Contract Price, and Contractor shall have full responsibility for:
1. reviewing and checking all information and data regarding existing Underground Facilities at the Site;
 2. complying with applicable state and local utility damage prevention Laws and Regulations;

3. verifying the actual location of those Underground Facilities shown or indicated in the Contract Documents as being within the area affected by the Work, by exposing such Underground Facilities during the course of construction;
 4. coordination of the Work with the owners (including Owner) of such Underground Facilities, during construction; and
 5. the safety and protection of all existing Underground Facilities at the Site, and repairing any damage thereto resulting from the Work.
- B. *Notice by Contractor:* If Contractor believes that an Underground Facility that is uncovered or revealed at the Site was not shown or indicated on the Drawings, or was not shown or indicated on the Drawings with reasonable accuracy, then Contractor shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as required by Paragraph 7.15), notify Owner and Engineer in writing regarding such Underground Facility.
- C. *Engineer's Review:* Engineer will:
1. promptly review the Underground Facility and conclude whether such Underground Facility was not shown or indicated on the Drawings, or was not shown or indicated with reasonable accuracy;
 2. identify and communicate with the owner of the Underground Facility; prepare recommendations to Owner (and if necessary issue any preliminary instructions to Contractor) regarding the Contractor's resumption of Work in connection with the Underground Facility in question;
 3. obtain any pertinent cost or schedule information from Contractor; determine the extent, if any, to which a change is required in the Drawings or Specifications to reflect and document the consequences of the existence or location of the Underground Facility; and
 4. advise Owner in writing of Engineer's findings, conclusions, and recommendations.

During such time, Contractor shall be responsible for the safety and protection of such Underground Facility.

- D. *Owner's Statement to Contractor Regarding Underground Facility:* After receipt of Engineer's written findings, conclusions, and recommendations, Owner shall issue a written statement to Contractor (with a copy to Engineer) regarding the Underground Facility in question addressing the resumption of Work in connection with such Underground Facility, indicating whether any change in the Drawings or Specifications will be made, and adopting or rejecting Engineer's written findings, conclusions, and recommendations in whole or in part.
- E. *Early Resumption of Work:* If at any time Engineer determines that Work in connection with the Underground Facility may resume prior to completion of Engineer's review or Owner's issuance of its statement to Contractor, because the Underground Facility in question and conditions affected by its presence have been adequately documented, and analyzed on a preliminary basis, then the Engineer may at its discretion instruct Contractor to resume such Work.
- F. *Possible Price and Times Adjustments*
1. Contractor shall be entitled to an equitable adjustment in the Contract Price or Contract Times, to the extent that any existing Underground Facility at the Site that was not shown

or indicated on the Drawings, or was not shown or indicated with reasonable accuracy, or any related delay, disruption, or interference, causes an increase or decrease in Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:

- a. With respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraph 13.03;
 - b. Contractor's entitlement to an adjustment of the Contract Times is subject to the provisions of Paragraphs 4.05.D and 4.05.E; and
 - c. Contractor gave the notice required in Paragraph 5.05.B.
2. If Owner and Contractor agree regarding Contractor's entitlement to and the amount or extent of any adjustment in the Contract Price or Contract Times, then any such adjustment will be set forth in a Change Order.
 3. Contractor may submit a Change Proposal regarding its entitlement to or the amount or extent of any adjustment in the Contract Price or Contract Times, no later than 30 days after Owner's issuance of the Owner's written statement to Contractor regarding the Underground Facility in question.
 4. The information and data shown or indicated on the Drawings with respect to existing Underground Facilities at the Site is based on information and data (a) furnished by the owners of such Underground Facilities, or by others, (b) obtained from available records, or (c) gathered in an investigation conducted in accordance with the current edition of ASCE 38, Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data, by the American Society of Civil Engineers. If such information or data is incorrect or incomplete, Contractor's remedies are limited to those set forth in this Paragraph 5.05.F.

5.06 *Hazardous Environmental Conditions at Site*

A. *Reports and Drawings:* The Supplementary Conditions identify:

1. those reports known to Owner relating to Hazardous Environmental Conditions that have been identified at or adjacent to the Site;
2. drawings known to Owner relating to Hazardous Environmental Conditions that have been identified at or adjacent to the Site; and
3. Technical Data contained in such reports and drawings.

B. *Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the accuracy of the Technical Data expressly identified in the Supplementary Conditions with respect to such reports and drawings, but such reports and drawings are not Contract Documents. If no such express identification has been made, then Contractor may rely on the accuracy of the Technical Data as defined in Paragraph 1.01.A.46.b. Except for such reliance on Technical Data, Contractor may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, with respect to:

1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences and procedures

- of construction to be employed by Contractor, and safety precautions and programs incident thereto;
2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings; or
 3. any Contractor interpretation of or conclusion drawn from any Technical Data or any such other data, interpretations, opinions or information.
- C. Contractor shall not be responsible for removing or remediating any Hazardous Environmental Condition encountered, uncovered, or revealed at the Site unless such removal or remediation is expressly identified in the Contract Documents to be within the scope of the Work.
- D. Contractor shall be responsible for controlling, containing, and duly removing all Constituents of Concern brought to the Site by Contractor, Subcontractors, Suppliers, or anyone else for whom Contractor is responsible, and for any associated costs; and for the costs of removing and remediating any Hazardous Environmental Condition created by the presence of any such Constituents of Concern.
- E. If Contractor encounters, uncovers, or reveals a Hazardous Environmental Condition whose removal or remediation is not expressly identified in the Contract Documents as being within the scope of the Work, or if Contractor or anyone for whom Contractor is responsible creates a Hazardous Environmental Condition, then Contractor shall immediately: (1) secure or otherwise isolate such condition; (2) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by Paragraph 7.15); and (3) notify Owner and Engineer (and promptly thereafter confirm such notice in writing). Owner shall promptly consult with Engineer concerning the necessity for Owner to retain a qualified expert to evaluate such condition or take corrective action, if any. Promptly after consulting with Engineer, Owner shall take such actions as are necessary to permit Owner to timely obtain required permits and provide Contractor the written notice required by Paragraph 5.06.F. If Contractor or anyone for whom Contractor is responsible created the Hazardous Environmental Condition in question, then Owner may remove and remediate the Hazardous Environmental Condition, and impose a set-off against payments to account for the associated costs.
- F. Contractor shall not resume Work in connection with such Hazardous Environmental Condition or in any affected area until after Owner has obtained any required permits related thereto, and delivered written notice to Contractor either (1) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work, or (2) specifying any special conditions under which such Work may be resumed safely.
- G. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times, as a result of such Work stoppage, such special conditions under which Work is agreed to be resumed by Contractor, or any costs or expenses incurred in response to the Hazardous Environmental Condition, then within 30 days of Owner's written notice regarding the resumption of Work, Contractor may submit a Change Proposal, or Owner may impose a set-off. Entitlement to any such adjustment is subject to the provisions of Paragraphs 4.05.D, 4.05.E, 11.07, and 11.08.
- H. If, after receipt of such written notice, Contractor does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special

conditions, then Owner may order the portion of the Work that is in the area affected by such condition to be deleted from the Work, following the contractual change procedures in Article 11. Owner may have such deleted portion of the Work performed by Owner's own forces or others in accordance with Article 8.

- I. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, Subcontractors, and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court, arbitration, or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition, provided that such Hazardous Environmental Condition (1) was not shown or indicated in the Drawings, Specifications, or other Contract Documents, identified as Technical Data entitled to limited reliance pursuant to Paragraph 5.06.B, or identified in the Contract Documents to be included within the scope of the Work, and (2) was not created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 5.06.I obligates Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.
- J. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the failure to control, contain, or remove a Constituent of Concern brought to the Site by Contractor or by anyone for whom Contractor is responsible, or to a Hazardous Environmental Condition created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 5.06.J obligates Contractor to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.
- K. The provisions of Paragraphs 5.03, 5.04, and 5.05 do not apply to the presence of Constituents of Concern or to a Hazardous Environmental Condition uncovered or revealed at the Site.

ARTICLE 6—BONDS AND INSURANCE

6.01 *Performance, Payment, and Other Bonds*

- A. Contractor shall furnish a performance bond and a payment bond, each in an amount at least equal to the Contract Price, as security for the faithful performance and payment of Contractor's obligations under the Contract. These bonds must remain in effect until one year after the date when final payment becomes due or until completion of the correction period specified in Paragraph 15.08, whichever is later, except as provided otherwise by Laws or Regulations, the terms of a prescribed bond form, the Supplementary Conditions, or other provisions of the Contract.
- B. Contractor shall also furnish such other bonds (if any) as are required by the Supplementary Conditions or other provisions of the Contract.
- C. All bonds must be in the form included in the Bidding Documents or otherwise specified by Owner prior to execution of the Contract, except as provided otherwise by Laws or

Regulations, and must be issued and signed by a surety named in “Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies” as published in Department Circular 570 (as amended and supplemented) by the Bureau of the Fiscal Service, U.S. Department of the Treasury. A bond signed by an agent or attorney-in-fact must be accompanied by a certified copy of that individual’s authority to bind the surety. The evidence of authority must show that it is effective on the date the agent or attorney-in-fact signed the accompanying bond.

- D. Contractor shall obtain the required bonds from surety companies that are duly licensed or authorized, in the state or jurisdiction in which the Project is located, to issue bonds in the required amounts.
- E. If the surety on a bond furnished by Contractor is declared bankrupt or becomes insolvent, or the surety ceases to meet the requirements above, then Contractor shall promptly notify Owner and Engineer in writing and shall, within 20 days after the event giving rise to such notification, provide another bond and surety, both of which must comply with the bond and surety requirements above.
- F. If Contractor has failed to obtain a required bond, Owner may exclude the Contractor from the Site and exercise Owner’s termination rights under Article 16.
- G. Upon request to Owner from any Subcontractor, Supplier, or other person or entity claiming to have furnished labor, services, materials, or equipment used in the performance of the Work, Owner shall provide a copy of the payment bond to such person or entity.
- H. Upon request to Contractor from any Subcontractor, Supplier, or other person or entity claiming to have furnished labor, services, materials, or equipment used in the performance of the Work, Contractor shall provide a copy of the payment bond to such person or entity.

6.02 *Insurance—General Provisions*

- A. Owner and Contractor shall obtain and maintain insurance as required in this article and in the Supplementary Conditions.
- B. All insurance required by the Contract to be purchased and maintained by Owner or Contractor shall be obtained from insurance companies that are duly licensed or authorized in the state or jurisdiction in which the Project is located to issue insurance policies for the required limits and coverages. Unless a different standard is indicated in the Supplementary Conditions, all companies that provide insurance policies required under this Contract shall have an A.M. Best rating of A-VII or better.
- C. Alternative forms of insurance coverage, including but not limited to self-insurance and “Occupational Accident and Excess Employer’s Indemnity Policies,” are not sufficient to meet the insurance requirements of this Contract, unless expressly allowed in the Supplementary Conditions.
- D. Contractor shall deliver to Owner, with copies to each additional insured identified in the Contract, certificates of insurance and endorsements establishing that Contractor has obtained and is maintaining the policies and coverages required by the Contract. Upon request by Owner or any other insured, Contractor shall also furnish other evidence of such required insurance, including but not limited to copies of policies, documentation of applicable self-insured retentions (if allowed) and deductibles, full disclosure of all relevant exclusions, and evidence of insurance required to be purchased and maintained by

- Subcontractors or Suppliers. In any documentation furnished under this provision, Contractor, Subcontractors, and Suppliers may block out (redact) (1) any confidential premium or pricing information and (2) any wording specific to a project or jurisdiction other than those applicable to this Contract.
- E. Owner shall deliver to Contractor, with copies to each additional insured identified in the Contract, certificates of insurance and endorsements establishing that Owner has obtained and is maintaining the policies and coverages required of Owner by the Contract (if any). Upon request by Contractor or any other insured, Owner shall also provide other evidence of such required insurance (if any), including but not limited to copies of policies, documentation of applicable self-insured retentions (if allowed) and deductibles, and full disclosure of all relevant exclusions. In any documentation furnished under this provision, Owner may block out (redact) (1) any confidential premium or pricing information and (2) any wording specific to a project or jurisdiction other than those relevant to this Contract.
 - F. Failure of Owner or Contractor to demand such certificates or other evidence of the other party's full compliance with these insurance requirements, or failure of Owner or Contractor to identify a deficiency in compliance from the evidence provided, will not be construed as a waiver of the other party's obligation to obtain and maintain such insurance.
 - G. In addition to the liability insurance required to be provided by Contractor, the Owner, at Owner's option, may purchase and maintain Owner's own liability insurance. Owner's liability policies, if any, operate separately and independently from policies required to be provided by Contractor, and Contractor cannot rely upon Owner's liability policies for any of Contractor's obligations to the Owner, Engineer, or third parties.
 - H. Contractor shall require:
 - 1. Subcontractors to purchase and maintain worker's compensation, commercial general liability, and other insurance that is appropriate for their participation in the Project, and to name as additional insureds Owner and Engineer (and any other individuals or entities identified in the Supplementary Conditions as additional insureds on Contractor's liability policies) on each Subcontractor's commercial general liability insurance policy; and
 - 2. Suppliers to purchase and maintain insurance that is appropriate for their participation in the Project.
 - I. If either party does not purchase or maintain the insurance required of such party by the Contract, such party shall notify the other party in writing of such failure to purchase prior to the start of the Work, or of such failure to maintain prior to any change in the required coverage.
 - J. If Contractor has failed to obtain and maintain required insurance, Contractor's entitlement to enter or remain at the Site will end immediately, and Owner may impose an appropriate set-off against payment for any associated costs (including but not limited to the cost of purchasing necessary insurance coverage), and exercise Owner's termination rights under Article 16.
 - K. Without prejudice to any other right or remedy, if a party has failed to obtain required insurance, the other party may elect (but is in no way obligated) to obtain equivalent insurance to protect such other party's interests at the expense of the party who was required to provide such coverage, and the Contract Price will be adjusted accordingly.

- L. Owner does not represent that insurance coverage and limits established in this Contract necessarily will be adequate to protect Contractor or Contractor's interests. Contractor is responsible for determining whether such coverage and limits are adequate to protect its interests, and for obtaining and maintaining any additional insurance that Contractor deems necessary.
- M. The insurance and insurance limits required herein will not be deemed as a limitation on Contractor's liability, or that of its Subcontractors or Suppliers, under the indemnities granted to Owner and other individuals and entities in the Contract or otherwise.
- N. All the policies of insurance required to be purchased and maintained under this Contract will contain a provision or endorsement that the coverage afforded will not be canceled, or renewal refused, until at least 10 days prior written notice has been given to the purchasing policyholder. Within three days of receipt of any such written notice, the purchasing policyholder shall provide a copy of the notice to each other insured and Engineer.

6.03 *Contractor's Insurance*

- A. *Required Insurance:* Contractor shall purchase and maintain Worker's Compensation, Commercial General Liability, and other insurance pursuant to the specific requirements of the Supplementary Conditions.
- B. *General Provisions:* The policies of insurance required by this Paragraph 6.03 as supplemented must:
 - 1. include at least the specific coverages required;
 - 2. be written for not less than the limits provided, or those required by Laws or Regulations, whichever is greater;
 - 3. remain in effect at least until the Work is complete (as set forth in Paragraph 15.06.D), and longer if expressly required elsewhere in this Contract, and at all times thereafter when Contractor may be correcting, removing, or replacing defective Work as a warranty or correction obligation, or otherwise, or returning to the Site to conduct other tasks arising from the Contract;
 - 4. apply with respect to the performance of the Work, whether such performance is by Contractor, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable; and
 - 5. include all necessary endorsements to support the stated requirements.
- C. *Additional Insureds:* The Contractor's commercial general liability, automobile liability, employer's liability, umbrella or excess, pollution liability, and unmanned aerial vehicle liability policies, if required by this Contract, must:
 - 1. include and list as additional insureds Owner and Engineer, and any individuals or entities identified as additional insureds in the Supplementary Conditions;
 - 2. include coverage for the respective officers, directors, members, partners, employees, and consultants of all such additional insureds;
 - 3. afford primary coverage to these additional insureds for all claims covered thereby (including as applicable those arising from both ongoing and completed operations);

4. not seek contribution from insurance maintained by the additional insured; and
5. as to commercial general liability insurance, apply to additional insureds with respect to liability caused in whole or in part by Contractor's acts or omissions, or the acts and omissions of those working on Contractor's behalf, in the performance of Contractor's operations.

6.04 *Builder's Risk and Other Property Insurance*

- A. *Builder's Risk*: Unless otherwise provided in the Supplementary Conditions, Contractor shall purchase and maintain builder's risk insurance upon the Work on a completed value basis, in the amount of the Work's full insurable replacement cost (subject to such deductible amounts as may be provided in the Supplementary Conditions or required by Laws and Regulations). The specific requirements applicable to the builder's risk insurance are set forth in the Supplementary Conditions.
- B. *Property Insurance for Facilities of Owner Where Work Will Occur*: Owner is responsible for obtaining and maintaining property insurance covering each existing structure, building, or facility in which any part of the Work will occur, or to which any part of the Work will attach or be adjoined. Such property insurance will be written on a special perils (all-risk) form, on a replacement cost basis, providing coverage consistent with that required for the builder's risk insurance, and will be maintained until the Work is complete, as set forth in Paragraph 15.06.D.
- C. *Property Insurance for Substantially Complete Facilities*: Promptly after Substantial Completion, and before actual occupancy or use of the substantially completed Work, Owner will obtain property insurance for such substantially completed Work, and maintain such property insurance at least until the Work is complete, as set forth in Paragraph 15.06.D. Such property insurance will be written on a special perils (all-risk) form, on a replacement cost basis, and provide coverage consistent with that required for the builder's risk insurance. The builder's risk insurance may terminate upon written confirmation of Owner's procurement of such property insurance.
- D. *Partial Occupancy or Use by Owner*: If Owner will occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work, as provided in Paragraph 15.04, then Owner (directly, if it is the purchaser of the builder's risk policy, or through Contractor) will provide advance notice of such occupancy or use to the builder's risk insurer, and obtain an endorsement consenting to the continuation of coverage prior to commencing such partial occupancy or use.
- E. *Insurance of Other Property; Additional Insurance*: If the express insurance provisions of the Contract do not require or address the insurance of a property item or interest, then the entity or individual owning such property item will be responsible for insuring it. If Contractor elects to obtain other special insurance to be included in or supplement the builder's risk or property insurance policies provided under this Paragraph 6.04, it may do so at Contractor's expense.

6.05 *Property Losses; Subrogation*

- A. The builder's risk insurance policy purchased and maintained in accordance with Paragraph 6.04 (or an installation floater policy if authorized by the Supplementary Conditions), will contain provisions to the effect that in the event of payment of any loss or damage the insurer will have no rights of recovery against any insureds thereunder, or against

Engineer or its consultants, or their officers, directors, members, partners, employees, agents, consultants, or subcontractors.

1. Owner and Contractor waive all rights against each other and the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, or resulting from any of the perils, risks, or causes of loss covered by such policies and any other property insurance applicable to the Work; and, in addition, waive all such rights against Engineer, its consultants, all individuals or entities identified in the Supplementary Conditions as builder's risk or installation floater insureds, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, under such policies for losses and damages so caused.
 2. None of the above waivers extends to the rights that any party making such waiver may have to the proceeds of insurance held by Owner or Contractor as trustee or fiduciary, or otherwise payable under any policy so issued.
- B. Any property insurance policy maintained by Owner covering any loss, damage, or consequential loss to Owner's existing structures, buildings, or facilities in which any part of the Work will occur, or to which any part of the Work will attach or adjoin; to adjacent structures, buildings, or facilities of Owner; or to part or all of the completed or substantially completed Work, during partial occupancy or use pursuant to Paragraph 15.04, after Substantial Completion pursuant to Paragraph 15.03, or after final payment pursuant to Paragraph 15.06, will contain provisions to the effect that in the event of payment of any loss or damage the insurer will have no rights of recovery against any insureds thereunder, or against Contractor, Subcontractors, or Engineer, or the officers, directors, members, partners, employees, agents, consultants, or subcontractors of each and any of them, and that the insured is allowed to waive the insurer's rights of subrogation in a written contract executed prior to the loss, damage, or consequential loss.
1. Owner waives all rights against Contractor, Subcontractors, and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, for all losses and damages caused by, arising out of, or resulting from fire or any of the perils, risks, or causes of loss covered by such policies.
- C. The waivers in this Paragraph 6.05 include the waiver of rights due to business interruption, loss of use, or other consequential loss extending beyond direct physical loss or damage to Owner's property or the Work caused by, arising out of, or resulting from fire or other insured peril, risk, or cause of loss.
- D. Contractor shall be responsible for assuring that each Subcontract contains provisions whereby the Subcontractor waives all rights against Owner, Contractor, all individuals or entities identified in the Supplementary Conditions as insureds, the Engineer and its consultants, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, relating to, or resulting from fire or other peril, risk, or cause of loss covered by builder's risk insurance, installation floater, and any other property insurance applicable to the Work.

6.06 *Receipt and Application of Property Insurance Proceeds*

- A. Any insured loss under the builder's risk and other policies of property insurance required by Paragraph 6.04 will be adjusted and settled with the named insured that purchased the policy. Such named insured shall act as fiduciary for the other insureds, and give notice to such other insureds that adjustment and settlement of a claim is in progress. Any other insured may state its position regarding a claim for insured loss in writing within 15 days after notice of such claim.
- B. Proceeds for such insured losses may be made payable by the insurer either jointly to multiple insureds, or to the named insured that purchased the policy in its own right and as fiduciary for other insureds, subject to the requirements of any applicable mortgage clause. A named insured receiving insurance proceeds under the builder's risk and other policies of insurance required by Paragraph 6.04 shall maintain such proceeds in a segregated account, and distribute such proceeds in accordance with such agreement as the parties in interest may reach, or as otherwise required under the dispute resolution provisions of this Contract or applicable Laws and Regulations.
- C. If no other special agreement is reached, Contractor shall repair or replace the damaged Work, using allocated insurance proceeds.

ARTICLE 7—CONTRACTOR'S RESPONSIBILITIES

7.01 *Contractor's Means and Methods of Construction*

- A. Contractor shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction.
- B. If the Contract Documents note, or Contractor determines, that professional engineering or other design services are needed to carry out Contractor's responsibilities for construction means, methods, techniques, sequences, and procedures, or for Site safety, then Contractor shall cause such services to be provided by a properly licensed design professional, at Contractor's expense. Such services are not Owner-delegated professional design services under this Contract, and neither Owner nor Engineer has any responsibility with respect to (1) Contractor's determination of the need for such services, (2) the qualifications or licensing of the design professionals retained or employed by Contractor, (3) the performance of such services, or (4) any errors, omissions, or defects in such services.

7.02 *Supervision and Superintendence*

- A. Contractor shall supervise, inspect, and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents.
- B. At all times during the progress of the Work, Contractor shall assign a competent resident superintendent who will not be replaced without written notice to Owner and Engineer except under extraordinary circumstances.

7.03 *Labor; Working Hours*

- A. Contractor shall provide competent, suitably qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. Contractor shall maintain good discipline and order at the Site.

- B. Contractor shall be fully responsible to Owner and Engineer for all acts and omissions of Contractor's employees; of Suppliers and Subcontractors, and their employees; and of any other individuals or entities performing or furnishing any of the Work, just as Contractor is responsible for Contractor's own acts and omissions.
- C. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise stated in the Contract Documents, all Work at the Site will be performed during regular working hours, Monday through Friday. Contractor will not perform Work on a Saturday, Sunday, or any legal holiday. Contractor may perform Work outside regular working hours or on Saturdays, Sundays, or legal holidays only with Owner's written consent, which will not be unreasonably withheld.

7.04 *Services, Materials, and Equipment*

- A. Unless otherwise specified in the Contract Documents, Contractor shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, testing, start up, and completion of the Work, whether or not such items are specifically called for in the Contract Documents.
- B. All materials and equipment incorporated into the Work must be new and of good quality, except as otherwise provided in the Contract Documents. All special warranties and guarantees required by the Specifications will expressly run to the benefit of Owner. If required by Engineer, Contractor shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment.
- C. All materials and equipment must be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable Supplier, except as otherwise may be provided in the Contract Documents.

7.05 *"Or Equals"*

- A. *Contractor's Request; Governing Criteria:* Whenever an item of equipment or material is specified or described in the Contract Documents by using the names of one or more proprietary items or specific Suppliers, the Contract Price has been based upon Contractor furnishing such item as specified. The specification or description of such an item is intended to establish the type, function, appearance, and quality required. Unless the specification or description contains or is followed by words reading that no like, equivalent, or "or equal" item is permitted, Contractor may request that Engineer authorize the use of other items of equipment or material, or items from other proposed Suppliers, under the circumstances described below.
 - 1. If Engineer in its sole discretion determines that an item of equipment or material proposed by Contractor is functionally equal to that named and sufficiently similar so that no change in related Work will be required, Engineer will deem it an "or equal" item. For the purposes of this paragraph, a proposed item of equipment or material will be considered functionally equal to an item so named if:
 - a. in the exercise of reasonable judgment Engineer determines that the proposed item:
 - 1) is at least equal in materials of construction, quality, durability, appearance, strength, and design characteristics;

- 2) will reliably perform at least equally well the function and achieve the results imposed by the design concept of the completed Project as a functioning whole;
 - 3) has a proven record of performance and availability of responsive service; and
 - 4) is not objectionable to Owner.
- b. Contractor certifies that, if the proposed item is approved and incorporated into the Work:
- 1) there will be no increase in cost to the Owner or increase in Contract Times; and
 - 2) the item will conform substantially to the detailed requirements of the item named in the Contract Documents.
- B. *Contractor's Expense*: Contractor shall provide all data in support of any proposed "or equal" item at Contractor's expense.
- C. *Engineer's Evaluation and Determination*: Engineer will be allowed a reasonable time to evaluate each "or-equal" request. Engineer may require Contractor to furnish additional data about the proposed "or-equal" item. Engineer will be the sole judge of acceptability. No "or-equal" item will be ordered, furnished, installed, or utilized until Engineer's review is complete and Engineer determines that the proposed item is an "or-equal," which will be evidenced by an approved Shop Drawing or other written communication. Engineer will advise Contractor in writing of any negative determination.
- D. *Effect of Engineer's Determination*: Neither approval nor denial of an "or-equal" request will result in any change in Contract Price. The Engineer's denial of an "or-equal" request will be final and binding, and may not be reversed through an appeal under any provision of the Contract.
- E. *Treatment as a Substitution Request*: If Engineer determines that an item of equipment or material proposed by Contractor does not qualify as an "or-equal" item, Contractor may request that Engineer consider the item a proposed substitute pursuant to Paragraph 7.06.

7.06 *Substitutes*

- A. *Contractor's Request; Governing Criteria*: Unless the specification or description of an item of equipment or material required to be furnished under the Contract Documents contains or is followed by words reading that no substitution is permitted, Contractor may request that Engineer authorize the use of other items of equipment or material under the circumstances described below. To the extent possible such requests must be made before commencement of related construction at the Site.
1. Contractor shall submit sufficient information as provided below to allow Engineer to determine if the item of material or equipment proposed is functionally equivalent to that named and an acceptable substitute therefor. Engineer will not accept requests for review of proposed substitute items of equipment or material from anyone other than Contractor.
 2. The requirements for review by Engineer will be as set forth in Paragraph 7.06.B, as supplemented by the Specifications, and as Engineer may decide is appropriate under the circumstances.

3. Contractor shall make written application to Engineer for review of a proposed substitute item of equipment or material that Contractor seeks to furnish or use. The application:
 - a. will certify that the proposed substitute item will:
 - 1) perform adequately the functions and achieve the results called for by the general design;
 - 2) be similar in substance to the item specified; and
 - 3) be suited to the same use as the item specified.
 - b. will state:
 - 1) the extent, if any, to which the use of the proposed substitute item will necessitate a change in Contract Times;
 - 2) whether use of the proposed substitute item in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with Owner for other work on the Project) to adapt the design to the proposed substitute item; and
 - 3) whether incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty.
 - c. will identify:
 - 1) all variations of the proposed substitute item from the item specified; and
 - 2) available engineering, sales, maintenance, repair, and replacement services.
 - d. will contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including but not limited to changes in Contract Price, shared savings, costs of redesign, and claims of other contractors affected by any resulting change.
- B. *Engineer's Evaluation and Determination*: Engineer will be allowed a reasonable time to evaluate each substitute request, and to obtain comments and direction from Owner. Engineer may require Contractor to furnish additional data about the proposed substitute item. Engineer will be the sole judge of acceptability. No substitute will be ordered, furnished, installed, or utilized until Engineer's review is complete and Engineer determines that the proposed item is an acceptable substitute. Engineer's determination will be evidenced by a Field Order or a proposed Change Order accounting for the substitution itself and all related impacts, including changes in Contract Price or Contract Times. Engineer will advise Contractor in writing of any negative determination.
- C. *Special Guarantee*: Owner may require Contractor to furnish at Contractor's expense a special performance guarantee or other surety with respect to any substitute.
- D. *Reimbursement of Engineer's Cost*: Engineer will record Engineer's costs in evaluating a substitute proposed or submitted by Contractor. Whether or not Engineer approves a substitute so proposed or submitted by Contractor, Contractor shall reimburse Owner for the reasonable charges of Engineer for evaluating each such proposed substitute. Contractor shall also reimburse Owner for the reasonable charges of Engineer for making changes in the Contract Documents (or in the provisions of any other direct contract with Owner) resulting from the acceptance of each proposed substitute.

- E. *Contractor's Expense*: Contractor shall provide all data in support of any proposed substitute at Contractor's expense.
- F. *Effect of Engineer's Determination*: If Engineer approves the substitution request, Contractor shall execute the proposed Change Order and proceed with the substitution. The Engineer's denial of a substitution request will be final and binding, and may not be reversed through an appeal under any provision of the Contract. Contractor may challenge the scope of reimbursement costs imposed under Paragraph 7.06.D, by timely submittal of a Change Proposal.

7.07 *Concerning Subcontractors and Suppliers*

- A. Contractor may retain Subcontractors and Suppliers for the performance of parts of the Work. Such Subcontractors and Suppliers must be acceptable to Owner. The Contractor's retention of a Subcontractor or Supplier for the performance of parts of the Work will not relieve Contractor's obligation to Owner to perform and complete the Work in accordance with the Contract Documents.
- B. Contractor shall retain specific Subcontractors and Suppliers for the performance of designated parts of the Work if required by the Contract to do so.
- C. Subsequent to the submittal of Contractor's Bid or final negotiation of the terms of the Contract, Owner may not require Contractor to retain any Subcontractor or Supplier to furnish or perform any of the Work against which Contractor has reasonable objection.
- D. Prior to entry into any binding subcontract or purchase order, Contractor shall submit to Owner the identity of the proposed Subcontractor or Supplier (unless Owner has already deemed such proposed Subcontractor or Supplier acceptable during the bidding process or otherwise). Such proposed Subcontractor or Supplier shall be deemed acceptable to Owner unless Owner raises a substantive, reasonable objection within 5 days.
- E. Owner may require the replacement of any Subcontractor or Supplier. Owner also may require Contractor to retain specific replacements; provided, however, that Owner may not require a replacement to which Contractor has a reasonable objection. If Contractor has submitted the identity of certain Subcontractors or Suppliers for acceptance by Owner, and Owner has accepted it (either in writing or by failing to make written objection thereto), then Owner may subsequently revoke the acceptance of any such Subcontractor or Supplier so identified solely on the basis of substantive, reasonable objection after due investigation. Contractor shall submit an acceptable replacement for the rejected Subcontractor or Supplier.
- F. If Owner requires the replacement of any Subcontractor or Supplier retained by Contractor to perform any part of the Work, then Contractor shall be entitled to an adjustment in Contract Price or Contract Times, with respect to the replacement; and Contractor shall initiate a Change Proposal for such adjustment within 30 days of Owner's requirement of replacement.
- G. No acceptance by Owner of any such Subcontractor or Supplier, whether initially or as a replacement, will constitute a waiver of the right of Owner to the completion of the Work in accordance with the Contract Documents.

- H. On a monthly basis, Contractor shall submit to Engineer a complete list of all Subcontractors and Suppliers having a direct contract with Contractor, and of all other Subcontractors and Suppliers known to Contractor at the time of submittal.
- I. Contractor shall be solely responsible for scheduling and coordinating the work of Subcontractors and Suppliers.
- J. The divisions and sections of the Specifications and the identifications of any Drawings do not control Contractor in dividing the Work among Subcontractors or Suppliers, or in delineating the Work to be performed by any specific trade.
- K. All Work performed for Contractor by a Subcontractor or Supplier must be pursuant to an appropriate contractual agreement that specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract for the benefit of Owner and Engineer.
- L. Owner may furnish to any Subcontractor or Supplier, to the extent practicable, information about amounts paid to Contractor for Work performed for Contractor by the Subcontractor or Supplier.
- M. Contractor shall restrict all Subcontractors and Suppliers from communicating with Engineer or Owner, except through Contractor or in case of an emergency, or as otherwise expressly allowed in this Contract.

7.08 *Patent Fees and Royalties*

- A. Contractor shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product, or device which is the subject of patent rights or copyrights held by others. If an invention, design, process, product, or device is specified in the Contract Documents for use in the performance of the Work and if, to the actual knowledge of Owner or Engineer, its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights will be disclosed in the Contract Documents.
- B. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, and its officers, directors, members, partners, employees, agents, consultants, and subcontractors, from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device specified in the Contract Documents, but not identified as being subject to payment of any license fee or royalty to others required by patent rights or copyrights.
- C. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device not specified in the Contract Documents.

7.09 *Permits*

- A. Unless otherwise provided in the Contract Documents, Contractor shall obtain and pay for all construction permits, licenses, and certificates of occupancy. Owner shall assist Contractor, when necessary, in obtaining such permits and licenses. Contractor shall pay all governmental charges and inspection fees necessary for the prosecution of the Work which are applicable at the time of the submission of Contractor's Bid (or when Contractor became bound under a negotiated contract). Owner shall pay all charges of utility owners for connections for providing permanent service to the Work.

7.10 *Taxes*

- A. Contractor shall pay all sales, consumer, use, and other similar taxes required to be paid by Contractor in accordance with the Laws and Regulations of the place of the Project which are applicable during the performance of the Work.

7.11 *Laws and Regulations*

- A. Contractor shall give all notices required by and shall comply with all Laws and Regulations applicable to the performance of the Work. Neither Owner nor Engineer shall be responsible for monitoring Contractor's compliance with any Laws or Regulations.
- B. If Contractor performs any Work or takes any other action knowing or having reason to know that it is contrary to Laws or Regulations, Contractor shall bear all resulting costs and losses, and shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such Work or other action. It is not Contractor's responsibility to make certain that the Work described in the Contract Documents is in accordance with Laws and Regulations, but this does not relieve Contractor of its obligations under Paragraph 3.03.
- C. Owner or Contractor may give written notice to the other party of any changes after the submission of Contractor's Bid (or after the date when Contractor became bound under a negotiated contract) in Laws or Regulations having an effect on the cost or time of performance of the Work, including but not limited to changes in Laws or Regulations having an effect on procuring permits and on sales, use, value-added, consumption, and other similar taxes. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times resulting from such changes, then within 30 days of such written notice Contractor may submit a Change Proposal, or Owner may initiate a Claim.

7.12 *Record Documents*

- A. Contractor shall maintain in a safe place at the Site one printed record copy of all Drawings, Specifications, Addenda, Change Orders, Work Change Directives, Field Orders, written interpretations and clarifications, and approved Shop Drawings. Contractor shall keep such record documents in good order and annotate them to show changes made during construction. These record documents, together with all approved Samples, will be available to Engineer for reference. Upon completion of the Work, Contractor shall deliver these record documents to Engineer.

7.13 *Safety and Protection*

- A. Contractor shall be solely responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. Such responsibility does not relieve Subcontractors of their responsibility for the safety of persons or property in the performance of their work, nor for compliance with applicable safety Laws and Regulations.
- B. Contractor shall designate a qualified and experienced safety representative whose duties and responsibilities are the prevention of Work-related accidents and the maintenance and supervision of safety precautions and programs.
- C. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury, or loss to:
 - 1. all persons on the Site or who may be affected by the Work;
 - 2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and
 - 3. other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, other work in progress, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.
- D. All damage, injury, or loss to any property referred to in Paragraph 7.13.C.2 or 7.13.C.3 caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by Contractor at its expense (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of Owner or Engineer or anyone employed by any of them, or anyone for whose acts any of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of Contractor or any Subcontractor, Supplier, or other individual or entity directly or indirectly employed by any of them).
- E. Contractor shall comply with all applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection.
- F. Contractor shall notify Owner; the owners of adjacent property; the owners of Underground Facilities and other utilities (if the identity of such owners is known to Contractor); and other contractors and utility owners performing work at or adjacent to the Site, in writing, when Contractor knows that prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property or work in progress.
- G. Contractor shall comply with the applicable requirements of Owner's safety programs, if any. Any Owner's safety programs that are applicable to the Work are identified or included in the Supplementary Conditions or Specifications.
- H. Contractor shall inform Owner and Engineer of the specific requirements of Contractor's safety program with which Owner's and Engineer's employees and representatives must comply while at the Site.

- I. Contractor's duties and responsibilities for safety and protection will continue until all the Work is completed, Engineer has issued a written notice to Owner and Contractor in accordance with Paragraph 15.06.C that the Work is acceptable, and Contractor has left the Site (except as otherwise expressly provided in connection with Substantial Completion).
- J. Contractor's duties and responsibilities for safety and protection will resume whenever Contractor or any Subcontractor or Supplier returns to the Site to fulfill warranty or correction obligations, or to conduct other tasks arising from the Contract Documents.

7.14 *Hazard Communication Programs*

- A. Contractor shall be responsible for coordinating any exchange of safety data sheets (formerly known as material safety data sheets) or other hazard communication information required to be made available to or exchanged between or among employers at the Site in accordance with Laws or Regulations.

7.15 *Emergencies*

- A. In emergencies affecting the safety or protection of persons or the Work or property at the Site or adjacent thereto, Contractor is obligated to act to prevent damage, injury, or loss. Contractor shall give Engineer prompt written notice if Contractor believes that any significant changes in the Work or variations from the Contract Documents have been caused by an emergency, or are required as a result of Contractor's response to an emergency. If Engineer determines that a change in the Contract Documents is required because of an emergency or Contractor's response, a Work Change Directive or Change Order will be issued.

7.16 *Submittals*

A. *Shop Drawing and Sample Requirements*

- 1. Before submitting a Shop Drawing or Sample, Contractor shall:
 - a. review and coordinate the Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Work and the Contract Documents;
 - b. determine and verify:
 - 1) all field measurements, quantities, dimensions, specified performance and design criteria, installation requirements, materials, catalog numbers, and similar information with respect to the Submittal;
 - 2) the suitability of all materials and equipment offered with respect to the indicated application, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of the Work; and
 - 3) all information relative to Contractor's responsibilities for means, methods, techniques, sequences, and procedures of construction, and safety precautions and programs incident thereto;
 - c. confirm that the Submittal is complete with respect to all related data included in the Submittal.
- 2. Each Shop Drawing or Sample must bear a stamp or specific written certification that Contractor has satisfied Contractor's obligations under the Contract Documents with respect to Contractor's review of that Submittal, and that Contractor approves the Submittal.

3. With each Shop Drawing or Sample, Contractor shall give Engineer specific written notice of any variations that the Submittal may have from the requirements of the Contract Documents. This notice must be set forth in a written communication separate from the Submittal; and, in addition, in the case of a Shop Drawing by a specific notation made on the Shop Drawing itself.
- B. *Submittal Procedures for Shop Drawings and Samples:* Contractor shall label and submit Shop Drawings and Samples to Engineer for review and approval in accordance with the accepted Schedule of Submittals.
1. *Shop Drawings*
 - a. Contractor shall submit the number of copies required in the Specifications.
 - b. Data shown on the Shop Drawings must be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to show Engineer the services, materials, and equipment Contractor proposes to provide, and to enable Engineer to review the information for the limited purposes required by Paragraph 7.16.C.
 2. *Samples*
 - a. Contractor shall submit the number of Samples required in the Specifications.
 - b. Contractor shall clearly identify each Sample as to material, Supplier, pertinent data such as catalog numbers, the use for which intended and other data as Engineer may require to enable Engineer to review the Submittal for the limited purposes required by Paragraph 7.16.C.
 3. Where a Shop Drawing or Sample is required by the Contract Documents or the Schedule of Submittals, any related Work performed prior to Engineer's review and approval of the pertinent submittal will be at the sole expense and responsibility of Contractor.
- C. *Engineer's Review of Shop Drawings and Samples*
1. Engineer will provide timely review of Shop Drawings and Samples in accordance with the accepted Schedule of Submittals. Engineer's review and approval will be only to determine if the items covered by the Submittals will, after installation or incorporation in the Work, comply with the requirements of the Contract Documents, and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.
 2. Engineer's review and approval will not extend to means, methods, techniques, sequences, or procedures of construction, or to safety precautions or programs incident thereto.
 3. Engineer's review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.
 4. Engineer's review and approval of a Shop Drawing or Sample will not relieve Contractor from responsibility for any variation from the requirements of the Contract Documents unless Contractor has complied with the requirements of Paragraph 7.16.A.3 and Engineer has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample. Engineer will

document any such approved variation from the requirements of the Contract Documents in a Field Order or other appropriate Contract modification.

5. Engineer's review and approval of a Shop Drawing or Sample will not relieve Contractor from responsibility for complying with the requirements of Paragraphs 7.16.A and B.
6. Engineer's review and approval of a Shop Drawing or Sample, or of a variation from the requirements of the Contract Documents, will not, under any circumstances, change the Contract Times or Contract Price, unless such changes are included in a Change Order.
7. Neither Engineer's receipt, review, acceptance, or approval of a Shop Drawing or Sample will result in such item becoming a Contract Document.
8. Contractor shall perform the Work in compliance with the requirements and commitments set forth in approved Shop Drawings and Samples, subject to the provisions of Paragraph 7.16.C.4.

D. Resubmittal Procedures for Shop Drawings and Samples

1. Contractor shall make corrections required by Engineer and shall return the required number of corrected copies of Shop Drawings and submit, as required, new Samples for review and approval. Contractor shall direct specific attention in writing to revisions other than the corrections called for by Engineer on previous Submittals.
2. Contractor shall furnish required Shop Drawing and Sample submittals with sufficient information and accuracy to obtain required approval of an item with no more than two resubmittals. Engineer will record Engineer's time for reviewing a third or subsequent resubmittal of a Shop Drawing or Sample, and Contractor shall be responsible for Engineer's charges to Owner for such time. Owner may impose a set-off against payments due Contractor to secure reimbursement for such charges.
3. If Contractor requests a change of a previously approved Shop Drawing or Sample, Contractor shall be responsible for Engineer's charges to Owner for its review time, and Owner may impose a set-off against payments due Contractor to secure reimbursement for such charges, unless the need for such change is beyond the control of Contractor.

E. Submittals Other than Shop Drawings, Samples, and Owner-Delegated Designs

1. The following provisions apply to all Submittals other than Shop Drawings, Samples, and Owner-delegated designs:
 - a. Contractor shall submit all such Submittals to the Engineer in accordance with the Schedule of Submittals and pursuant to the applicable terms of the Contract Documents.
 - b. Engineer will provide timely review of all such Submittals in accordance with the Schedule of Submittals and return such Submittals with a notation of either Accepted or Not Accepted. Any such Submittal that is not returned within the time established in the Schedule of Submittals will be deemed accepted.
 - c. Engineer's review will be only to determine if the Submittal is acceptable under the requirements of the Contract Documents as to general form and content of the Submittal.

- d. If any such Submittal is not accepted, Contractor shall confer with Engineer regarding the reason for the non-acceptance, and resubmit an acceptable document.
- 2. Procedures for the submittal and acceptance of the Progress Schedule, the Schedule of Submittals, and the Schedule of Values are set forth in Paragraphs 2.03, 2.04, and 2.05.
- F. Owner-delegated Designs: Submittals pursuant to Owner-delegated designs are governed by the provisions of Paragraph 7.19.

7.17 *Contractor's General Warranty and Guarantee*

- A. Contractor warrants and guarantees to Owner that all Work will be in accordance with the Contract Documents and will not be defective. Engineer is entitled to rely on Contractor's warranty and guarantee.
- B. Owner's rights under this warranty and guarantee are in addition to, and are not limited by, Owner's rights under the correction period provisions of Paragraph 15.08. The time in which Owner may enforce its warranty and guarantee rights under this Paragraph 7.17 is limited only by applicable Laws and Regulations restricting actions to enforce such rights; provided, however, that after the end of the correction period under Paragraph 15.08:
 - 1. Owner shall give Contractor written notice of any defective Work within 60 days of the discovery that such Work is defective; and
 - 2. Such notice will be deemed the start of an event giving rise to a Claim under Paragraph 12.01.B, such that any related Claim must be brought within 30 days of the notice.
- C. Contractor's warranty and guarantee hereunder excludes defects or damage caused by:
 - 1. abuse, or improper modification, maintenance, or operation, by persons other than Contractor, Subcontractors, Suppliers, or any other individual or entity for whom Contractor is responsible; or
 - 2. normal wear and tear under normal usage.
- D. Contractor's obligation to perform and complete the Work in accordance with the Contract Documents is absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents, a release of Contractor's obligation to perform the Work in accordance with the Contract Documents, or a release of Owner's warranty and guarantee rights under this Paragraph 7.17:
 - 1. Observations by Engineer;
 - 2. Recommendation by Engineer or payment by Owner of any progress or final payment;
 - 3. The issuance of a certificate of Substantial Completion by Engineer or any payment related thereto by Owner;
 - 4. Use or occupancy of the Work or any part thereof by Owner;
 - 5. Any review and approval of a Shop Drawing or Sample submittal;
 - 6. The issuance of a notice of acceptability by Engineer;
 - 7. The end of the correction period established in Paragraph 15.08;
 - 8. Any inspection, test, or approval by others; or

9. Any correction of defective Work by Owner.
- E. If the Contract requires the Contractor to accept the assignment of a contract entered into by Owner, then the specific warranties, guarantees, and correction obligations contained in the assigned contract will govern with respect to Contractor's performance obligations to Owner for the Work described in the assigned contract.

7.18 *Indemnification*

- A. To the fullest extent permitted by Laws and Regulations, and in addition to any other obligations of Contractor under the Contract or otherwise, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, from losses, damages, costs, and judgments (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) arising from third-party claims or actions relating to or resulting from the performance or furnishing of the Work, provided that any such claim, action, loss, cost, judgment or damage is attributable to bodily injury, sickness, disease, or death, or to damage to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable.
- B. In any and all claims against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, by any employee (or the survivor or personal representative of such employee) of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under Paragraph 7.18.A will not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Contractor or any such Subcontractor, Supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts.

7.19 *Delegation of Professional Design Services*

- A. Owner may require Contractor to provide professional design services for a portion of the Work by express delegation in the Contract Documents. Such delegation will specify the performance and design criteria that such services must satisfy, and the Submittals that Contractor must furnish to Engineer with respect to the Owner-delegated design.
- B. Contractor shall cause such Owner-delegated professional design services to be provided pursuant to the professional standard of care by a properly licensed design professional, whose signature and seal must appear on all drawings, calculations, specifications, certifications, and Submittals prepared by such design professional. Such design professional must issue all certifications of design required by Laws and Regulations.
- C. If a Shop Drawing or other Submittal related to the Owner-delegated design is prepared by Contractor, a Subcontractor, or others for submittal to Engineer, then such Shop Drawing or other Submittal must bear the written approval of Contractor's design professional when submitted by Contractor to Engineer.

- D. Owner and Engineer shall be entitled to rely upon the adequacy, accuracy, and completeness of the services, certifications, and approvals performed or provided by the design professionals retained or employed by Contractor under an Owner-delegated design, subject to the professional standard of care and the performance and design criteria stated in the Contract Documents.
- E. Pursuant to this Paragraph 7.19, Engineer's review, approval, and other determinations regarding design drawings, calculations, specifications, certifications, and other Submittals furnished by Contractor pursuant to an Owner-delegated design will be only for the following limited purposes:
 - 1. Checking for conformance with the requirements of this Paragraph 7.19;
 - 2. Confirming that Contractor (through its design professionals) has used the performance and design criteria specified in the Contract Documents; and
 - 3. Establishing that the design furnished by Contractor is consistent with the design concept expressed in the Contract Documents.
- F. Contractor shall not be responsible for the adequacy of performance or design criteria specified by Owner or Engineer.
- G. Contractor is not required to provide professional services in violation of applicable Laws and Regulations.

ARTICLE 8—OTHER WORK AT THE SITE

8.01 *Other Work*

- A. In addition to and apart from the Work under the Contract Documents, the Owner may perform other work at or adjacent to the Site. Such other work may be performed by Owner's employees, or through contracts between the Owner and third parties. Owner may also arrange to have third-party utility owners perform work on their utilities and facilities at or adjacent to the Site.
- B. If Owner performs other work at or adjacent to the Site with Owner's employees, or through contracts for such other work, then Owner shall give Contractor written notice thereof prior to starting any such other work. If Owner has advance information regarding the start of any third-party utility work that Owner has arranged to take place at or adjacent to the Site, Owner shall provide such information to Contractor.
- C. Contractor shall afford proper and safe access to the Site to each contractor that performs such other work, each utility owner performing other work, and Owner, if Owner is performing other work with Owner's employees, and provide a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work.
- D. Contractor shall do all cutting, fitting, and patching of the Work that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. Contractor shall not endanger any work of others by cutting, excavating, or otherwise altering such work; provided, however, that Contractor may cut or alter others' work with the written consent of Engineer and the others whose work will be affected.

- E. If the proper execution or results of any part of Contractor's Work depends upon work performed by others, Contractor shall inspect such other work and promptly report to Engineer in writing any delays, defects, or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of Contractor's Work. Contractor's failure to so report will constitute an acceptance of such other work as fit and proper for integration with Contractor's Work except for latent defects and deficiencies in such other work.
- F. The provisions of this article are not applicable to work that is performed by third-party utilities or other third-party entities without a contract with Owner, or that is performed without having been arranged by Owner. If such work occurs, then any related delay, disruption, or interference incurred by Contractor is governed by the provisions of Paragraph 4.05.C.3.

8.02 *Coordination*

- A. If Owner intends to contract with others for the performance of other work at or adjacent to the Site, to perform other work at or adjacent to the Site with Owner's employees, or to arrange to have utility owners perform work at or adjacent to the Site, the following will be set forth in the Supplementary Conditions or provided to Contractor prior to the start of any such other work:
 - 1. The identity of the individual or entity that will have authority and responsibility for coordination of the activities among the various contractors;
 - 2. An itemization of the specific matters to be covered by such authority and responsibility; and
 - 3. The extent of such authority and responsibilities.
- B. Unless otherwise provided in the Supplementary Conditions, Owner shall have sole authority and responsibility for such coordination.

8.03 *Legal Relationships*

- A. If, in the course of performing other work for Owner at or adjacent to the Site, the Owner's employees, any other contractor working for Owner, or any utility owner that Owner has arranged to perform work, causes damage to the Work or to the property of Contractor or its Subcontractors, or delays, disrupts, interferes with, or increases the scope or cost of the performance of the Work, through actions or inaction, then Contractor shall be entitled to an equitable adjustment in the Contract Price or the Contract Times. Contractor must submit any Change Proposal seeking an equitable adjustment in the Contract Price or the Contract Times under this paragraph within 30 days of the damaging, delaying, disrupting, or interfering event. The entitlement to, and extent of, any such equitable adjustment will take into account information (if any) regarding such other work that was provided to Contractor in the Contract Documents prior to the submittal of the Bid or the final negotiation of the terms of the Contract, and any remedies available to Contractor under Laws or Regulations concerning utility action or inaction. When applicable, any such equitable adjustment in Contract Price will be conditioned on Contractor assigning to Owner all Contractor's rights against such other contractor or utility owner with respect to the damage, delay, disruption, or interference that is the subject of the adjustment. Contractor's entitlement to an adjustment of the Contract Times or Contract Price is subject to the provisions of Paragraphs 4.05.D and 4.05.E.

- B. Contractor shall take reasonable and customary measures to avoid damaging, delaying, disrupting, or interfering with the work of Owner, any other contractor, or any utility owner performing other work at or adjacent to the Site.
 - 1. If Contractor fails to take such measures and as a result damages, delays, disrupts, or interferes with the work of any such other contractor or utility owner, then Owner may impose a set-off against payments due Contractor, and assign to such other contractor or utility owner the Owner's contractual rights against Contractor with respect to the breach of the obligations set forth in this Paragraph 8.03.B.
 - 2. When Owner is performing other work at or adjacent to the Site with Owner's employees, Contractor shall be liable to Owner for damage to such other work, and for the reasonable direct delay, disruption, and interference costs incurred by Owner as a result of Contractor's failure to take reasonable and customary measures with respect to Owner's other work. In response to such damage, delay, disruption, or interference, Owner may impose a set-off against payments due Contractor.
- C. If Contractor damages, delays, disrupts, or interferes with the work of any other contractor, or any utility owner performing other work at or adjacent to the Site, through Contractor's failure to take reasonable and customary measures to avoid such impacts, or if any claim arising out of Contractor's actions, inactions, or negligence in performance of the Work at or adjacent to the Site is made by any such other contractor or utility owner against Contractor, Owner, or Engineer, then Contractor shall (1) promptly attempt to settle the claim as to all parties through negotiations with such other contractor or utility owner, or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law, and (2) indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against any such claims, and against all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such damage, delay, disruption, or interference.

ARTICLE 9—OWNER'S RESPONSIBILITIES

9.01 *Communications to Contractor*

- A. Except as otherwise provided in these General Conditions, Owner shall issue all communications to Contractor through Engineer.

9.02 *Replacement of Engineer*

- A. Owner may at its discretion appoint an engineer to replace Engineer, provided Contractor makes no reasonable objection to the replacement engineer. The replacement engineer's status under the Contract Documents will be that of the former Engineer.

9.03 *Furnish Data*

- A. Owner shall promptly furnish the data required of Owner under the Contract Documents.

9.04 *Pay When Due*

- A. Owner shall make payments to Contractor when they are due as provided in the Agreement.

- 9.05 *Lands and Easements; Reports, Tests, and Drawings*
- A. Owner's duties with respect to providing lands and easements are set forth in Paragraph 5.01.
 - B. Owner's duties with respect to providing engineering surveys to establish reference points are set forth in Paragraph 4.03.
 - C. Article 5 refers to Owner's identifying and making available to Contractor copies of reports of explorations and tests of conditions at the Site, and drawings of physical conditions relating to existing surface or subsurface structures at the Site.
- 9.06 *Insurance*
- A. Owner's responsibilities, if any, with respect to purchasing and maintaining liability and property insurance are set forth in Article 6.
- 9.07 *Change Orders*
- A. Owner's responsibilities with respect to Change Orders are set forth in Article 11.
- 9.08 *Inspections, Tests, and Approvals*
- A. Owner's responsibility with respect to certain inspections, tests, and approvals is set forth in Paragraph 14.02.B.
- 9.09 *Limitations on Owner's Responsibilities*
- A. The Owner shall not supervise, direct, or have control or authority over, nor be responsible for, Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Owner will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.
- 9.10 *Undisclosed Hazardous Environmental Condition*
- A. Owner's responsibility in respect to an undisclosed Hazardous Environmental Condition is set forth in Paragraph 5.06.
- 9.11 *Evidence of Financial Arrangements*
- A. Upon request of Contractor, Owner shall furnish Contractor reasonable evidence that financial arrangements have been made to satisfy Owner's obligations under the Contract (including obligations under proposed changes in the Work).
- 9.12 *Safety Programs*
- A. While at the Site, Owner's employees and representatives shall comply with the specific applicable requirements of Contractor's safety programs of which Owner has been informed.
 - B. Owner shall furnish copies of any applicable Owner safety programs to Contractor.

ARTICLE 10—ENGINEER'S STATUS DURING CONSTRUCTION

10.01 *Owner's Representative*

- A. Engineer will be Owner's representative during the construction period. The duties and responsibilities and the limitations of authority of Engineer as Owner's representative during construction are set forth in the Contract.

10.02 *Visits to Site*

- A. Engineer will make visits to the Site at intervals appropriate to the various stages of construction as Engineer deems necessary in order to observe, as an experienced and qualified design professional, the progress that has been made and the quality of the various aspects of Contractor's executed Work. Based on information obtained during such visits and observations, Engineer, for the benefit of Owner, will determine, in general, if the Work is proceeding in accordance with the Contract Documents. Engineer will not be required to make exhaustive or continuous inspections on the Site to check the quality or quantity of the Work. Engineer's efforts will be directed toward providing for Owner a greater degree of confidence that the completed Work will conform generally to the Contract Documents. On the basis of such visits and observations, Engineer will keep Owner informed of the progress of the Work and will endeavor to guard Owner against defective Work.
- B. Engineer's visits and observations are subject to all the limitations on Engineer's authority and responsibility set forth in Paragraph 10.07. Particularly, but without limitation, during or as a result of Engineer's visits or observations of Contractor's Work, Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work.

10.03 *Resident Project Representative*

- A. If Owner and Engineer have agreed that Engineer will furnish a Resident Project Representative to represent Engineer at the Site and assist Engineer in observing the progress and quality of the Work, then the authority and responsibilities of any such Resident Project Representative will be as provided in the Supplementary Conditions, and limitations on the responsibilities thereof will be as provided in the Supplementary Conditions and in Paragraph 10.07.
- B. If Owner designates an individual or entity who is not Engineer's consultant, agent, or employee to represent Owner at the Site, then the responsibilities and authority of such individual or entity will be as provided in the Supplementary Conditions.

10.04 *Engineer's Authority*

- A. Engineer has the authority to reject Work in accordance with Article 14.
- B. Engineer's authority as to Submittals is set forth in Paragraph 7.16.
- C. Engineer's authority as to design drawings, calculations, specifications, certifications and other Submittals from Contractor in response to Owner's delegation (if any) to Contractor of professional design services, is set forth in Paragraph 7.19.
- D. Engineer's authority as to changes in the Work is set forth in Article 11.

E. Engineer's authority as to Applications for Payment is set forth in Article 15.

10.05 *Determinations for Unit Price Work*

A. Engineer will determine the actual quantities and classifications of Unit Price Work performed by Contractor as set forth in Paragraph 13.03.

10.06 *Decisions on Requirements of Contract Documents and Acceptability of Work*

A. Engineer will render decisions regarding the requirements of the Contract Documents, and judge the acceptability of the Work, pursuant to the specific procedures set forth herein for initial interpretations, Change Proposals, and acceptance of the Work. In rendering such decisions and judgments, Engineer will not show partiality to Owner or Contractor, and will not be liable to Owner, Contractor, or others in connection with any proceedings, interpretations, decisions, or judgments conducted or rendered in good faith.

10.07 *Limitations on Engineer's Authority and Responsibilities*

A. Neither Engineer's authority or responsibility under this Article 10 or under any other provision of the Contract, nor any decision made by Engineer in good faith either to exercise or not exercise such authority or responsibility or the undertaking, exercise, or performance of any authority or responsibility by Engineer, will create, impose, or give rise to any duty in contract, tort, or otherwise owed by Engineer to Contractor, any Subcontractor, any Supplier, any other individual or entity, or to any surety for or employee or agent of any of them.

B. Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Engineer will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.

C. Engineer will not be responsible for the acts or omissions of Contractor or of any Subcontractor, any Supplier, or of any other individual or entity performing any of the Work.

D. Engineer's review of the final Application for Payment and accompanying documentation, and all maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection, tests and approvals, and other documentation required to be delivered by Contractor under Paragraph 15.06.A, will only be to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, tests, and approvals, that the results certified indicate compliance with the Contract Documents.

E. The limitations upon authority and responsibility set forth in this Paragraph 10.07 also apply to the Resident Project Representative, if any.

10.08 *Compliance with Safety Program*

A. While at the Site, Engineer's employees and representatives will comply with the specific applicable requirements of Owner's and Contractor's safety programs of which Engineer has been informed.

ARTICLE 11—CHANGES TO THE CONTRACT

11.01 *Amending and Supplementing the Contract*

- A. The Contract may be amended or supplemented by a Change Order, a Work Change Directive, or a Field Order.
- B. If an amendment or supplement to the Contract includes a change in the Contract Price or the Contract Times, such amendment or supplement must be set forth in a Change Order.
- C. All changes to the Contract that involve (1) the performance or acceptability of the Work, (2) the design (as set forth in the Drawings, Specifications, or otherwise), or (3) other engineering or technical matters, must be supported by Engineer's recommendation. Owner and Contractor may amend other terms and conditions of the Contract without the recommendation of the Engineer.

11.02 *Change Orders*

- A. Owner and Contractor shall execute appropriate Change Orders covering:
 - 1. Changes in Contract Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in accordance with a Work Change Directive;
 - 2. Changes in Contract Price resulting from an Owner set-off, unless Contractor has duly contested such set-off;
 - 3. Changes in the Work which are: (a) ordered by Owner pursuant to Paragraph 11.05, (b) required because of Owner's acceptance of defective Work under Paragraph 14.04 or Owner's correction of defective Work under Paragraph 14.07, or (c) agreed to by the parties, subject to the need for Engineer's recommendation if the change in the Work involves the design (as set forth in the Drawings, Specifications, or otherwise) or other engineering or technical matters; and
 - 4. Changes that embody the substance of any final and binding results under: Paragraph 11.03.B, resolving the impact of a Work Change Directive; Paragraph 11.09, concerning Change Proposals; Article 12, Claims; Paragraph 13.02.D, final adjustments resulting from allowances; Paragraph 13.03.D, final adjustments relating to determination of quantities for Unit Price Work; and similar provisions.
- B. If Owner or Contractor refuses to execute a Change Order that is required to be executed under the terms of Paragraph 11.02.A, it will be deemed to be of full force and effect, as if fully executed.

11.03 *Work Change Directives*

- A. A Work Change Directive will not change the Contract Price or the Contract Times but is evidence that the parties expect that the modification ordered or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order, following negotiations by the parties as to the Work Change Directive's effect, if any, on the Contract Price and Contract Times; or, if negotiations are unsuccessful, by a determination under the terms of the Contract Documents governing adjustments, expressly including Paragraph 11.07 regarding change of Contract Price.

- B. If Owner has issued a Work Change Directive and:
 - 1. Contractor believes that an adjustment in Contract Times or Contract Price is necessary, then Contractor shall submit any Change Proposal seeking such an adjustment no later than 30 days after the completion of the Work set out in the Work Change Directive.
 - 2. Owner believes that an adjustment in Contract Times or Contract Price is necessary, then Owner shall submit any Claim seeking such an adjustment no later than 60 days after issuance of the Work Change Directive.

11.04 *Field Orders*

- A. Engineer may authorize minor changes in the Work if the changes do not involve an adjustment in the Contract Price or the Contract Times and are compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. Such changes will be accomplished by a Field Order and will be binding on Owner and also on Contractor, which shall perform the Work involved promptly.
- B. If Contractor believes that a Field Order justifies an adjustment in the Contract Price or Contract Times, then before proceeding with the Work at issue, Contractor shall submit a Change Proposal as provided herein.

11.05 *Owner-Authorized Changes in the Work*

- A. Without invalidating the Contract and without notice to any surety, Owner may, at any time or from time to time, order additions, deletions, or revisions in the Work. Changes involving the design (as set forth in the Drawings, Specifications, or otherwise) or other engineering or technical matters will be supported by Engineer's recommendation.
- B. Such changes in the Work may be accomplished by a Change Order, if Owner and Contractor have agreed as to the effect, if any, of the changes on Contract Times or Contract Price; or by a Work Change Directive. Upon receipt of any such document, Contractor shall promptly proceed with the Work involved; or, in the case of a deletion in the Work, promptly cease construction activities with respect to such deleted Work. Added or revised Work must be performed under the applicable conditions of the Contract Documents.
- C. Nothing in this Paragraph 11.05 obligates Contractor to undertake work that Contractor reasonably concludes cannot be performed in a manner consistent with Contractor's safety obligations under the Contract Documents or Laws and Regulations.

11.06 *Unauthorized Changes in the Work*

- A. Contractor shall not be entitled to an increase in the Contract Price or an extension of the Contract Times with respect to any work performed that is not required by the Contract Documents, as amended, modified, or supplemented, except in the case of an emergency as provided in Paragraph 7.15 or in the case of uncovering Work as provided in Paragraph 14.05.C.2.

11.07 *Change of Contract Price*

- A. The Contract Price may only be changed by a Change Order. Any Change Proposal for an adjustment in the Contract Price must comply with the provisions of Paragraph 11.09. Any Claim for an adjustment of Contract Price must comply with the provisions of Article 12.
- B. An adjustment in the Contract Price will be determined as follows:

1. Where the Work involved is covered by unit prices contained in the Contract Documents, then by application of such unit prices to the quantities of the items involved (subject to the provisions of Paragraph 13.03);
 2. Where the Work involved is not covered by unit prices contained in the Contract Documents, then by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with Paragraph 11.07.C.2); or
 3. Where the Work involved is not covered by unit prices contained in the Contract Documents and the parties do not reach mutual agreement to a lump sum, then on the basis of the Cost of the Work (determined as provided in Paragraph 13.01) plus a Contractor's fee for overhead and profit (determined as provided in Paragraph 11.07.C).
- C. *Contractor's Fee*: When applicable, the Contractor's fee for overhead and profit will be determined as follows:
1. A mutually acceptable fixed fee; or
 2. If a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:
 - a. For costs incurred under Paragraphs 13.01.B.1 and 13.01.B.2, the Contractor's fee will be 15 percent;
 - b. For costs incurred under Paragraph 13.01.B.3, the Contractor's fee will be 5 percent;
 - c. Where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of Paragraphs 11.07.C.2.a and 11.07.C.2.b is that the Contractor's fee will be based on: (1) a fee of 15 percent of the costs incurred under Paragraphs 13.01.B.1 and 13.01.B.2 by the Subcontractor that actually performs the Work, at whatever tier, and (2) with respect to Contractor itself and to any Subcontractors of a tier higher than that of the Subcontractor that actually performs the Work, a fee of 5 percent of the amount (fee plus underlying costs incurred) attributable to the next lower tier Subcontractor; provided, however, that for any such subcontracted Work the maximum total fee to be paid by Owner will be no greater than 27 percent of the costs incurred by the Subcontractor that actually performs the Work;
 - d. No fee will be payable on the basis of costs itemized under Paragraphs 13.01.B.4, 13.01.B.5, and 13.01.C;
 - e. The amount of credit to be allowed by Contractor to Owner for any change which results in a net decrease in Cost of the Work will be the amount of the actual net decrease in Cost of the Work and a deduction of an additional amount equal to 5 percent of such actual net decrease in Cost of the Work; and
 - f. When both additions and credits are involved in any one change or Change Proposal, the adjustment in Contractor's fee will be computed by determining the sum of the costs in each of the cost categories in Paragraph 13.01.B (specifically, payroll costs, Paragraph 13.01.B.1; incorporated materials and equipment costs, Paragraph 13.01.B.2; Subcontract costs, Paragraph 13.01.B.3; special consultants costs, Paragraph 13.01.B.4; and other costs, Paragraph 13.01.B.5) and applying to each such cost category sum the appropriate fee from Paragraphs 11.07.C.2.a through 11.07.C.2.e, inclusive.

11.08 *Change of Contract Times*

- A. The Contract Times may only be changed by a Change Order. Any Change Proposal for an adjustment in the Contract Times must comply with the provisions of Paragraph 11.09. Any Claim for an adjustment in the Contract Times must comply with the provisions of Article 12.
- B. Delay, disruption, and interference in the Work, and any related changes in Contract Times, are addressed in and governed by Paragraph 4.05.

11.09 *Change Proposals*

- A. *Purpose and Content:* Contractor shall submit a Change Proposal to Engineer to request an adjustment in the Contract Times or Contract Price; contest an initial decision by Engineer concerning the requirements of the Contract Documents or relating to the acceptability of the Work under the Contract Documents; challenge a set-off against payment due; or seek other relief under the Contract. The Change Proposal will specify any proposed change in Contract Times or Contract Price, or other proposed relief, and explain the reason for the proposed change, with citations to any governing or applicable provisions of the Contract Documents. Each Change Proposal will address only one issue, or a set of closely related issues.

B. *Change Proposal Procedures*

1. *Submittal:* Contractor shall submit each Change Proposal to Engineer within 30 days after the start of the event giving rise thereto, or after such initial decision.
2. *Supporting Data:* The Contractor shall submit supporting data, including the proposed change in Contract Price or Contract Time (if any), to the Engineer and Owner within 15 days after the submittal of the Change Proposal.
 - a. Change Proposals based on or related to delay, interruption, or interference must comply with the provisions of Paragraphs 4.05.D and 4.05.E.
 - b. Change proposals related to a change of Contract Price must include full and detailed accounts of materials incorporated into the Work and labor and equipment used for the subject Work.

The supporting data must be accompanied by a written statement that the supporting data are accurate and complete, and that any requested time or price adjustment is the entire adjustment to which Contractor believes it is entitled as a result of said event.

3. *Engineer's Initial Review:* Engineer will advise Owner regarding the Change Proposal, and consider any comments or response from Owner regarding the Change Proposal. If in its discretion Engineer concludes that additional supporting data is needed before conducting a full review and making a decision regarding the Change Proposal, then Engineer may request that Contractor submit such additional supporting data by a date specified by Engineer, prior to Engineer beginning its full review of the Change Proposal.
4. *Engineer's Full Review and Action on the Change Proposal:* Upon receipt of Contractor's supporting data (including any additional data requested by Engineer), Engineer will conduct a full review of each Change Proposal and, within 30 days after such receipt of the Contractor's supporting data, either approve the Change Proposal in whole, deny it in whole, or approve it in part and deny it in part. Such actions must be in writing, with a copy provided to Owner and Contractor. If Engineer does not take action on the Change

Proposal within 30 days, then either Owner or Contractor may at any time thereafter submit a letter to the other party indicating that as a result of Engineer's inaction the Change Proposal is deemed denied, thereby commencing the time for appeal of the denial under Article 12.

5. *Binding Decision*: Engineer's decision is final and binding upon Owner and Contractor, unless Owner or Contractor appeals the decision by filing a Claim under Article 12.
- C. *Resolution of Certain Change Proposals*: If the Change Proposal does not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters, then Engineer will notify the parties in writing that the Engineer is unable to resolve the Change Proposal. For purposes of further resolution of such a Change Proposal, such notice will be deemed a denial, and Contractor may choose to seek resolution under the terms of Article 12.
- D. *Post-Completion*: Contractor shall not submit any Change Proposals after Engineer issues a written recommendation of final payment pursuant to Paragraph 15.06.B.

11.10 *Notification to Surety*

- A. If the provisions of any bond require notice to be given to a surety of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Contract Price or Contract Times), the giving of any such notice will be Contractor's responsibility. The amount of each applicable bond will be adjusted to reflect the effect of any such change.

ARTICLE 12—CLAIMS

12.01 *Claims*

- A. *Claims Process*: The following disputes between Owner and Contractor are subject to the Claims process set forth in this article:
 1. Appeals by Owner or Contractor of Engineer's decisions regarding Change Proposals;
 2. Owner demands for adjustments in the Contract Price or Contract Times, or other relief under the Contract Documents;
 3. Disputes that Engineer has been unable to address because they do not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters; and
 4. Subject to the waiver provisions of Paragraph 15.07, any dispute arising after Engineer has issued a written recommendation of final payment pursuant to Paragraph 15.06.B.
- B. *Submittal of Claim*: The party submitting a Claim shall deliver it directly to the other party to the Contract promptly (but in no event later than 30 days) after the start of the event giving rise thereto; in the case of appeals regarding Change Proposals within 30 days of the decision under appeal. The party submitting the Claim shall also furnish a copy to the Engineer, for its information only. The responsibility to substantiate a Claim rests with the party making the Claim. In the case of a Claim by Contractor seeking an increase in the Contract Times or Contract Price, Contractor shall certify that the Claim is made in good faith, that the supporting data are accurate and complete, and that to the best of Contractor's knowledge

and belief the amount of time or money requested accurately reflects the full amount to which Contractor is entitled.

- C. *Review and Resolution*: The party receiving a Claim shall review it thoroughly, giving full consideration to its merits. The two parties shall seek to resolve the Claim through the exchange of information and direct negotiations. The parties may extend the time for resolving the Claim by mutual agreement. All actions taken on a Claim will be stated in writing and submitted to the other party, with a copy to Engineer.
- D. *Mediation*
 - 1. At any time after initiation of a Claim, Owner and Contractor may mutually agree to mediation of the underlying dispute. The agreement to mediate will stay the Claim submittal and response process.
 - 2. If Owner and Contractor agree to mediation, then after 60 days from such agreement, either Owner or Contractor may unilaterally terminate the mediation process, and the Claim submittal and decision process will resume as of the date of the termination. If the mediation proceeds but is unsuccessful in resolving the dispute, the Claim submittal and decision process will resume as of the date of the conclusion of the mediation, as determined by the mediator.
 - 3. Owner and Contractor shall each pay one-half of the mediator's fees and costs.
- E. *Partial Approval*: If the party receiving a Claim approves the Claim in part and denies it in part, such action will be final and binding unless within 30 days of such action the other party invokes the procedure set forth in Article 17 for final resolution of disputes.
- F. *Denial of Claim*: If efforts to resolve a Claim are not successful, the party receiving the Claim may deny it by giving written notice of denial to the other party. If the receiving party does not take action on the Claim within 90 days, then either Owner or Contractor may at any time thereafter submit a letter to the other party indicating that as a result of the inaction, the Claim is deemed denied, thereby commencing the time for appeal of the denial. A denial of the Claim will be final and binding unless within 30 days of the denial the other party invokes the procedure set forth in Article 17 for the final resolution of disputes.
- G. *Final and Binding Results*: If the parties reach a mutual agreement regarding a Claim, whether through approval of the Claim, direct negotiations, mediation, or otherwise; or if a Claim is approved in part and denied in part, or denied in full, and such actions become final and binding; then the results of the agreement or action on the Claim will be incorporated in a Change Order or other written document to the extent they affect the Contract, including the Work, the Contract Times, or the Contract Price.

ARTICLE 13—COST OF THE WORK; ALLOWANCES; UNIT PRICE WORK

13.01 *Cost of the Work*

- A. *Purposes for Determination of Cost of the Work*: The term Cost of the Work means the sum of all costs necessary for the proper performance of the Work at issue, as further defined below. The provisions of this Paragraph 13.01 are used for two distinct purposes:
 - 1. To determine Cost of the Work when Cost of the Work is a component of the Contract Price, under cost-plus-fee, time-and-materials, or other cost-based terms; or

2. When needed to determine the value of a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price. When the value of any such adjustment is determined on the basis of Cost of the Work, Contractor is entitled only to those additional or incremental costs required because of the change in the Work or because of the event giving rise to the adjustment.
- B. *Costs Included:* Except as otherwise may be agreed to in writing by Owner, costs included in the Cost of the Work will be in amounts no higher than those commonly incurred in the locality of the Project, will not include any of the costs itemized in Paragraph 13.01.C, and will include only the following items:
1. Payroll costs for employees in the direct employ of Contractor in the performance of the Work under schedules of job classifications agreed upon by Owner and Contractor in advance of the subject Work. Such employees include, without limitation, superintendents, foremen, safety managers, safety representatives, and other personnel employed full time on the Work. Payroll costs for employees not employed full time on the Work will be apportioned on the basis of their time spent on the Work. Payroll costs include, but are not limited to, salaries and wages plus the cost of fringe benefits, which include social security contributions, unemployment, excise, and payroll taxes, workers' compensation, health and retirement benefits, sick leave, and vacation and holiday pay applicable thereto. The expenses of performing Work outside of regular working hours, on Saturday, Sunday, or legal holidays, will be included in the above to the extent authorized by Owner.
 2. Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts accrue to Contractor unless Owner deposits funds with Contractor with which to make payments, in which case the cash discounts will accrue to Owner. All trade discounts, rebates, and refunds and returns from sale of surplus materials and equipment will accrue to Owner, and Contractor shall make provisions so that they may be obtained.
 3. Payments made by Contractor to Subcontractors for Work performed by Subcontractors. If required by Owner, Contractor shall obtain competitive bids from subcontractors acceptable to Owner and Contractor and shall deliver such bids to Owner, which will then determine, with the advice of Engineer, which bids, if any, will be acceptable. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Subcontractor's Cost of the Work and fee will be determined in the same manner as Contractor's Cost of the Work and fee as provided in this Paragraph 13.01.
 4. Costs of special consultants (including but not limited to engineers, architects, testing laboratories, surveyors, attorneys, and accountants) employed or retained for services specifically related to the Work.
 5. Other costs consisting of the following:
 - a. The proportion of necessary transportation, travel, and subsistence expenses of Contractor's employees incurred in discharge of duties connected with the Work.
 - b. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office, and temporary facilities at the Site, which are

consumed in the performance of the Work, and cost, less market value, of such items used but not consumed which remain the property of Contractor.

- 1) In establishing included costs for materials such as scaffolding, plating, or sheeting, consideration will be given to the actual or the estimated life of the material for use on other projects; or rental rates may be established on the basis of purchase or salvage value of such items, whichever is less. Contractor will not be eligible for compensation for such items in an amount that exceeds the purchase cost of such item.

c. *Construction Equipment Rental*

- 1) Rentals of all construction equipment and machinery, and the parts thereof, in accordance with rental agreements approved by Owner as to price (including any surcharge or special rates applicable to overtime use of the construction equipment or machinery), and the costs of transportation, loading, unloading, assembly, dismantling, and removal thereof. All such costs will be in accordance with the terms of said rental agreements. The rental of any such equipment, machinery, or parts must cease when the use thereof is no longer necessary for the Work.
- 2) Costs for equipment and machinery owned by Contractor or a Contractor-related entity will be paid at a rate shown for such equipment in the equipment rental rate book specified in the Supplementary Conditions. An hourly rate will be computed by dividing the monthly rates by 176. These computed rates will include all operating costs.
- 3) With respect to Work that is the result of a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price ("changed Work"), included costs will be based on the time the equipment or machinery is in use on the changed Work and the costs of transportation, loading, unloading, assembly, dismantling, and removal when directly attributable to the changed Work. The cost of any such equipment or machinery, or parts thereof, must cease to accrue when the use thereof is no longer necessary for the changed Work.

- d. Sales, consumer, use, and other similar taxes related to the Work, and for which Contractor is liable, as imposed by Laws and Regulations.
- e. Deposits lost for causes other than negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.
- f. Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by Contractor in connection with the performance of the Work (except losses and damages within the deductible amounts of builder's risk or other property insurance established in accordance with Paragraph 6.04), provided such losses and damages have resulted from causes other than the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses include settlements made with the written consent and approval of Owner. No such losses, damages, and expenses will be included in the Cost of the Work for the purpose of determining Contractor's fee.

- g. The cost of utilities, fuel, and sanitary facilities at the Site.
- h. Minor expenses such as communication service at the Site, express and courier services, and similar petty cash items in connection with the Work.
- i. The costs of premiums for all bonds and insurance that Contractor is required by the Contract Documents to purchase and maintain.

C. *Costs Excluded*: The term Cost of the Work does not include any of the following items:

- 1. Payroll costs and other compensation of Contractor's officers, executives, principals, general managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks, and other personnel employed by Contractor, whether at the Site or in Contractor's principal or branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in Paragraph 13.01.B.1 or specifically covered by Paragraph 13.01.B.4. The payroll costs and other compensation excluded here are to be considered administrative costs covered by the Contractor's fee.
- 2. The cost of purchasing, renting, or furnishing small tools and hand tools.
- 3. Expenses of Contractor's principal and branch offices other than Contractor's office at the Site.
- 4. Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the Work and charges against Contractor for delinquent payments.
- 5. Costs due to the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property.
- 6. Expenses incurred in preparing and advancing Claims.
- 7. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in Paragraph 13.01.B.

D. *Contractor's Fee*

- 1. When the Work as a whole is performed on the basis of cost-plus-a-fee, then:
 - a. Contractor's fee for the Work set forth in the Contract Documents as of the Effective Date of the Contract will be determined as set forth in the Agreement.
 - b. for any Work covered by a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price on the basis of Cost of the Work, Contractor's fee will be determined as follows:
 - 1) When the fee for the Work as a whole is a percentage of the Cost of the Work, the fee will automatically adjust as the Cost of the Work changes.
 - 2) When the fee for the Work as a whole is a fixed fee, the fee for any additions or deletions will be determined in accordance with Paragraph 11.07.C.2.
- 2. When the Work as a whole is performed on the basis of a stipulated sum, or any other basis other than cost-plus-a-fee, then Contractor's fee for any Work covered by a Change

Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price on the basis of Cost of the Work will be determined in accordance with Paragraph 11.07.C.2.

- E. *Documentation and Audit:* Whenever the Cost of the Work for any purpose is to be determined pursuant to this Article 13, Contractor and pertinent Subcontractors will establish and maintain records of the costs in accordance with generally accepted accounting practices. Subject to prior written notice, Owner will be afforded reasonable access, during normal business hours, to all Contractor's accounts, records, books, correspondence, instructions, drawings, receipts, vouchers, memoranda, and similar data relating to the Cost of the Work and Contractor's fee. Contractor shall preserve all such documents for a period of three years after the final payment by Owner. Pertinent Subcontractors will afford such access to Owner, and preserve such documents, to the same extent required of Contractor.

13.02 Allowances

- A. It is understood that Contractor has included in the Contract Price all allowances so named in the Contract Documents and shall cause the Work so covered to be performed for such sums and by such persons or entities as may be acceptable to Owner and Engineer.
- B. *Cash Allowances:* Contractor agrees that:
 - 1. the cash allowances include the cost to Contractor (less any applicable trade discounts) of materials and equipment required by the allowances to be delivered at the Site, and all applicable taxes; and
 - 2. Contractor's costs for unloading and handling on the Site, labor, installation, overhead, profit, and other expenses contemplated for the cash allowances have been included in the Contract Price and not in the allowances, and no demand for additional payment for any of the foregoing will be valid.
- C. *Owner's Contingency Allowance:* Contractor agrees that an Owner's contingency allowance, if any, is for the sole use of Owner to cover unanticipated costs.
- D. Prior to final payment, an appropriate Change Order will be issued as recommended by Engineer to reflect actual amounts due Contractor for Work covered by allowances, and the Contract Price will be correspondingly adjusted.

13.03 Unit Price Work

- A. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the unit price for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement.
- B. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Payments to Contractor for Unit Price Work will be based on actual quantities.
- C. Each unit price will be deemed to include an amount considered by Contractor to be adequate to cover Contractor's overhead and profit for each separately identified item.
- D. Engineer will determine the actual quantities and classifications of Unit Price Work performed by Contractor. Engineer will review with Contractor the Engineer's preliminary determinations on such matters before rendering a written decision thereon (by recommendation of an Application for Payment or otherwise). Engineer's written decision

thereon will be final and binding (except as modified by Engineer to reflect changed factual conditions or more accurate data) upon Owner and Contractor, and the final adjustment of Contract Price will be set forth in a Change Order, subject to the provisions of the following paragraph.

E. *Adjustments in Unit Price*

1. Contractor or Owner shall be entitled to an adjustment in the unit price with respect to an item of Unit Price Work if:
 - a. the quantity of the item of Unit Price Work performed by Contractor differs materially and significantly from the estimated quantity of such item indicated in the Agreement; and
 - b. Contractor's unit costs to perform the item of Unit Price Work have changed materially and significantly as a result of the quantity change.
2. The adjustment in unit price will account for and be coordinated with any related changes in quantities of other items of Work, and in Contractor's costs to perform such other Work, such that the resulting overall change in Contract Price is equitable to Owner and Contractor.
3. Adjusted unit prices will apply to all units of that item.

ARTICLE 14—TESTS AND INSPECTIONS; CORRECTION, REMOVAL, OR ACCEPTANCE OF DEFECTIVE WORK

14.01 *Access to Work*

- A. Owner, Engineer, their consultants and other representatives and personnel of Owner, independent testing laboratories, and authorities having jurisdiction have access to the Site and the Work at reasonable times for their observation, inspection, and testing. Contractor shall provide them proper and safe conditions for such access and advise them of Contractor's safety procedures and programs so that they may comply with such procedures and programs as applicable.

14.02 *Tests, Inspections, and Approvals*

- A. Contractor shall give Engineer timely notice of readiness of the Work (or specific parts thereof) for all required inspections and tests, and shall cooperate with inspection and testing personnel to facilitate required inspections and tests.
- B. Owner shall retain and pay for the services of an independent inspector, testing laboratory, or other qualified individual or entity to perform all inspections and tests expressly required by the Contract Documents to be furnished and paid for by Owner, except that costs incurred in connection with tests or inspections of covered Work will be governed by the provisions of Paragraph 14.05.
- C. If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested, or approved by an employee or other representative of such public body, Contractor shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish Engineer the required certificates of inspection or approval.

- D. Contractor shall be responsible for arranging, obtaining, and paying for all inspections and tests required:
1. by the Contract Documents, unless the Contract Documents expressly allocate responsibility for a specific inspection or test to Owner;
 2. to attain Owner's and Engineer's acceptance of materials or equipment to be incorporated in the Work;
 3. by manufacturers of equipment furnished under the Contract Documents;
 4. for testing, adjusting, and balancing of mechanical, electrical, and other equipment to be incorporated into the Work; and
 5. for acceptance of materials, mix designs, or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work.

Such inspections and tests will be performed by independent inspectors, testing laboratories, or other qualified individuals or entities acceptable to Owner and Engineer.

- E. If the Contract Documents require the Work (or part thereof) to be approved by Owner, Engineer, or another designated individual or entity, then Contractor shall assume full responsibility for arranging and obtaining such approvals.
- F. If any Work (or the work of others) that is to be inspected, tested, or approved is covered by Contractor without written concurrence of Engineer, Contractor shall, if requested by Engineer, uncover such Work for observation. Such uncovering will be at Contractor's expense unless Contractor had given Engineer timely notice of Contractor's intention to cover the same and Engineer had not acted with reasonable promptness in response to such notice.

14.03 *Defective Work*

- A. *Contractor's Obligation:* It is Contractor's obligation to assure that the Work is not defective.
- B. *Engineer's Authority:* Engineer has the authority to determine whether Work is defective, and to reject defective Work.
- C. *Notice of Defects:* Prompt written notice of all defective Work of which Owner or Engineer has actual knowledge will be given to Contractor.
- D. *Correction, or Removal and Replacement:* Promptly after receipt of written notice of defective Work, Contractor shall correct all such defective Work, whether or not fabricated, installed, or completed, or, if Engineer has rejected the defective Work, remove it from the Project and replace it with Work that is not defective.
- E. *Preservation of Warranties:* When correcting defective Work, Contractor shall take no action that would void or otherwise impair Owner's special warranty and guarantee, if any, on said Work.
- F. *Costs and Damages:* In addition to its correction, removal, and replacement obligations with respect to defective Work, Contractor shall pay all claims, costs, losses, and damages arising out of or relating to defective Work, including but not limited to the cost of the inspection, testing, correction, removal, replacement, or reconstruction of such defective Work, fines levied against Owner by governmental authorities because the Work is defective, and the costs of repair or replacement of work of others resulting from defective Work. Prior to final payment, if Owner and Contractor are unable to agree as to the measure of such claims, costs,

losses, and damages resulting from defective Work, then Owner may impose a reasonable set-off against payments due under Article 15.

14.04 *Acceptance of Defective Work*

- A. If, instead of requiring correction or removal and replacement of defective Work, Owner prefers to accept it, Owner may do so (subject, if such acceptance occurs prior to final payment, to Engineer's confirmation that such acceptance is in general accord with the design intent and applicable engineering principles, and will not endanger public safety). Contractor shall pay all claims, costs, losses, and damages attributable to Owner's evaluation of and determination to accept such defective Work (such costs to be approved by Engineer as to reasonableness), and for the diminished value of the Work to the extent not otherwise paid by Contractor. If any such acceptance occurs prior to final payment, the necessary revisions in the Contract Documents with respect to the Work will be incorporated in a Change Order. If the parties are unable to agree as to the decrease in the Contract Price, reflecting the diminished value of Work so accepted, then Owner may impose a reasonable set-off against payments due under Article 15. If the acceptance of defective Work occurs after final payment, Contractor shall pay an appropriate amount to Owner.

14.05 *Uncovering Work*

- A. Engineer has the authority to require additional inspection or testing of the Work, whether or not the Work is fabricated, installed, or completed.
- B. If any Work is covered contrary to the written request of Engineer, then Contractor shall, if requested by Engineer, uncover such Work for Engineer's observation, and then replace the covering, all at Contractor's expense.
- C. If Engineer considers it necessary or advisable that covered Work be observed by Engineer or inspected or tested by others, then Contractor, at Engineer's request, shall uncover, expose, or otherwise make available for observation, inspection, or testing as Engineer may require, that portion of the Work in question, and provide all necessary labor, material, and equipment.
 1. If it is found that the uncovered Work is defective, Contractor shall be responsible for all claims, costs, losses, and damages arising out of or relating to such uncovering, exposure, observation, inspection, and testing, and of satisfactory replacement or reconstruction (including but not limited to all costs of repair or replacement of work of others); and pending Contractor's full discharge of this responsibility the Owner shall be entitled to impose a reasonable set-off against payments due under Article 15.
 2. If the uncovered Work is not found to be defective, Contractor shall be allowed an increase in the Contract Price or an extension of the Contract Times, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, and reconstruction. If the parties are unable to agree as to the amount or extent thereof, then Contractor may submit a Change Proposal within 30 days of the determination that the Work is not defective.

14.06 *Owner May Stop the Work*

- A. If the Work is defective, or Contractor fails to supply sufficient skilled workers or suitable materials or equipment, or fails to perform the Work in such a way that the completed Work will conform to the Contract Documents, then Owner may order Contractor to stop the Work,

or any portion thereof, until the cause for such order has been eliminated; however, this right of Owner to stop the Work will not give rise to any duty on the part of Owner to exercise this right for the benefit of Contractor, any Subcontractor, any Supplier, any other individual or entity, or any surety for, or employee or agent of any of them.

14.07 Owner May Correct Defective Work

- A. If Contractor fails within a reasonable time after written notice from Engineer to correct defective Work, or to remove and replace defective Work as required by Engineer, then Owner may, after 7 days' written notice to Contractor, correct or remedy any such deficiency.
- B. In exercising the rights and remedies under this Paragraph 14.07, Owner shall proceed expeditiously. In connection with such corrective or remedial action, Owner may exclude Contractor from all or part of the Site, take possession of all or part of the Work and suspend Contractor's services related thereto, and incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere. Contractor shall allow Owner, Owner's representatives, agents and employees, Owner's other contractors, and Engineer and Engineer's consultants access to the Site to enable Owner to exercise the rights and remedies under this paragraph.
- C. All claims, costs, losses, and damages incurred or sustained by Owner in exercising the rights and remedies under this Paragraph 14.07 will be charged against Contractor as set-offs against payments due under Article 15. Such claims, costs, losses and damages will include but not be limited to all costs of repair, or replacement of work of others destroyed or damaged by correction, removal, or replacement of Contractor's defective Work.
- D. Contractor shall not be allowed an extension of the Contract Times because of any delay in the performance of the Work attributable to the exercise by Owner of Owner's rights and remedies under this Paragraph 14.07.

ARTICLE 15—PAYMENTS TO CONTRACTOR; SET-OFFS; COMPLETION; CORRECTION PERIOD

15.01 Progress Payments

- A. *Basis for Progress Payments:* The Schedule of Values established as provided in Article 2 will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to Engineer. Progress payments for Unit Price Work will be based on the number of units completed during the pay period, as determined under the provisions of Paragraph 13.03. Progress payments for cost-based Work will be based on Cost of the Work completed by Contractor during the pay period.
- B. *Applications for Payments*
 - 1. At least 20 days before the date established in the Agreement for each progress payment (but not more often than once a month), Contractor shall submit to Engineer for review an Application for Payment filled out and signed by Contractor covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents.
 - 2. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment must also be accompanied by: (a) a bill of sale, invoice, copies of subcontract or purchase order payments, or other documentation

establishing full payment by Contractor for the materials and equipment; (b) at Owner's request, documentation warranting that Owner has received the materials and equipment free and clear of all Liens; and (c) evidence that the materials and equipment are covered by appropriate property insurance, a warehouse bond, or other arrangements to protect Owner's interest therein, all of which must be satisfactory to Owner.

3. Beginning with the second Application for Payment, each Application must include an affidavit of Contractor stating that all previous progress payments received by Contractor have been applied to discharge Contractor's legitimate obligations associated with prior Applications for Payment.
4. The amount of retainage with respect to progress payments will be as stipulated in the Agreement.

C. *Review of Applications*

1. Engineer will, within 10 days after receipt of each Application for Payment, including each resubmittal, either indicate in writing a recommendation of payment and present the Application to Owner, or return the Application to Contractor indicating in writing Engineer's reasons for refusing to recommend payment. In the latter case, Contractor may make the necessary corrections and resubmit the Application.
2. Engineer's recommendation of any payment requested in an Application for Payment will constitute a representation by Engineer to Owner, based on Engineer's observations of the executed Work as an experienced and qualified design professional, and on Engineer's review of the Application for Payment and the accompanying data and schedules, that to the best of Engineer's knowledge, information and belief:
 - a. the Work has progressed to the point indicated;
 - b. the quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, the results of any subsequent tests called for in the Contract Documents, a final determination of quantities and classifications for Unit Price Work under Paragraph 13.03, and any other qualifications stated in the recommendation); and
 - c. the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe the Work.
3. By recommending any such payment Engineer will not thereby be deemed to have represented that:
 - a. inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in the Contract; or
 - b. there may not be other matters or issues between the parties that might entitle Contractor to be paid additionally by Owner or entitle Owner to withhold payment to Contractor.

4. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment, including final payment, will impose responsibility on Engineer:
 - a. to supervise, direct, or control the Work;
 - b. for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto;
 - c. for Contractor's failure to comply with Laws and Regulations applicable to Contractor's performance of the Work;
 - d. to make any examination to ascertain how or for what purposes Contractor has used the money paid by Owner; or
 - e. to determine that title to any of the Work, materials, or equipment has passed to Owner free and clear of any Liens.
5. Engineer may refuse to recommend the whole or any part of any payment if, in Engineer's opinion, it would be incorrect to make the representations to Owner stated in Paragraph 15.01.C.2.
6. Engineer will recommend reductions in payment (set-offs) necessary in Engineer's opinion to protect Owner from loss because:
 - a. the Work is defective, requiring correction or replacement;
 - b. the Contract Price has been reduced by Change Orders;
 - c. Owner has been required to correct defective Work in accordance with Paragraph 14.07, or has accepted defective Work pursuant to Paragraph 14.04;
 - d. Owner has been required to remove or remediate a Hazardous Environmental Condition for which Contractor is responsible; or
 - e. Engineer has actual knowledge of the occurrence of any of the events that would constitute a default by Contractor and therefore justify termination for cause under the Contract Documents.

D. *Payment Becomes Due*

1. Ten days after presentation of the Application for Payment to Owner with Engineer's recommendation, the amount recommended (subject to any Owner set-offs) will become due, and when due will be paid by Owner to Contractor.

E. *Reductions in Payment by Owner*

1. In addition to any reductions in payment (set-offs) recommended by Engineer, Owner is entitled to impose a set-off against payment based on any of the following:
 - a. Claims have been made against Owner based on Contractor's conduct in the performance or furnishing of the Work, or Owner has incurred costs, losses, or damages resulting from Contractor's conduct in the performance or furnishing of the Work, including but not limited to claims, costs, losses, or damages from workplace injuries, adjacent property damage, non-compliance with Laws and Regulations, and patent infringement;

- b. Contractor has failed to take reasonable and customary measures to avoid damage, delay, disruption, and interference with other work at or adjacent to the Site;
 - c. Contractor has failed to provide and maintain required bonds or insurance;
 - d. Owner has been required to remove or remediate a Hazardous Environmental Condition for which Contractor is responsible;
 - e. Owner has incurred extra charges or engineering costs related to submittal reviews, evaluations of proposed substitutes, tests and inspections, or return visits to manufacturing or assembly facilities;
 - f. The Work is defective, requiring correction or replacement;
 - g. Owner has been required to correct defective Work in accordance with Paragraph 14.07, or has accepted defective Work pursuant to Paragraph 14.04;
 - h. The Contract Price has been reduced by Change Orders;
 - i. An event has occurred that would constitute a default by Contractor and therefore justify a termination for cause;
 - j. Liquidated or other damages have accrued as a result of Contractor's failure to achieve Milestones, Substantial Completion, or final completion of the Work;
 - k. Liens have been filed in connection with the Work, except where Contractor has delivered a specific bond satisfactory to Owner to secure the satisfaction and discharge of such Liens; or
 - l. Other items entitle Owner to a set-off against the amount recommended.
2. If Owner imposes any set-off against payment, whether based on its own knowledge or on the written recommendations of Engineer, Owner will give Contractor immediate written notice (with a copy to Engineer) stating the reasons for such action and the specific amount of the reduction, and promptly pay Contractor any amount remaining after deduction of the amount so withheld. Owner shall promptly pay Contractor the amount so withheld, or any adjustment thereto agreed to by Owner and Contractor, if Contractor remedies the reasons for such action. The reduction imposed will be binding on Contractor unless it duly submits a Change Proposal contesting the reduction.
 3. Upon a subsequent determination that Owner's refusal of payment was not justified, the amount wrongfully withheld will be treated as an amount due as determined by Paragraph 15.01.D.1 and subject to interest as provided in the Agreement.

15.02 *Contractor's Warranty of Title*

- A. Contractor warrants and guarantees that title to all Work, materials, and equipment furnished under the Contract will pass to Owner free and clear of (1) all Liens and other title defects, and (2) all patent, licensing, copyright, or royalty obligations, no later than 7 days after the time of payment by Owner.

15.03 *Substantial Completion*

- A. When Contractor considers the entire Work ready for its intended use Contractor shall notify Owner and Engineer in writing that the entire Work is substantially complete and request that Engineer issue a certificate of Substantial Completion. Contractor shall at the same time

submit to Owner and Engineer an initial draft of punch list items to be completed or corrected before final payment.

- B. Promptly after Contractor's notification, Owner, Contractor, and Engineer shall make an inspection of the Work to determine the status of completion. If Engineer does not consider the Work substantially complete, Engineer will notify Contractor in writing giving the reasons therefor.
- C. If Engineer considers the Work substantially complete, Engineer will deliver to Owner a preliminary certificate of Substantial Completion which will fix the date of Substantial Completion. Engineer shall attach to the certificate a punch list of items to be completed or corrected before final payment. Owner shall have 7 days after receipt of the preliminary certificate during which to make written objection to Engineer as to any provisions of the certificate or attached punch list. If, after considering the objections to the provisions of the preliminary certificate, Engineer concludes that the Work is not substantially complete, Engineer will, within 14 days after submission of the preliminary certificate to Owner, notify Contractor in writing that the Work is not substantially complete, stating the reasons therefor. If Owner does not object to the provisions of the certificate, or if despite consideration of Owner's objections Engineer concludes that the Work is substantially complete, then Engineer will, within said 14 days, execute and deliver to Owner and Contractor a final certificate of Substantial Completion (with a revised punch list of items to be completed or corrected) reflecting such changes from the preliminary certificate as Engineer believes justified after consideration of any objections from Owner.
- D. At the time of receipt of the preliminary certificate of Substantial Completion, Owner and Contractor will confer regarding Owner's use or occupancy of the Work following Substantial Completion, review the builder's risk insurance policy with respect to the end of the builder's risk coverage, and confirm the transition to coverage of the Work under a permanent property insurance policy held by Owner. Unless Owner and Contractor agree otherwise in writing, Owner shall bear responsibility for security, operation, protection of the Work, property insurance, maintenance, heat, and utilities upon Owner's use or occupancy of the Work.
- E. After Substantial Completion the Contractor shall promptly begin work on the punch list of items to be completed or corrected prior to final payment. In appropriate cases Contractor may submit monthly Applications for Payment for completed punch list items, following the progress payment procedures set forth above.
- F. Owner shall have the right to exclude Contractor from the Site after the date of Substantial Completion subject to allowing Contractor reasonable access to remove its property and complete or correct items on the punch list.

15.04 *Partial Use or Occupancy*

- A. Prior to Substantial Completion of all the Work, Owner may use or occupy any substantially completed part of the Work which has specifically been identified in the Contract Documents, or which Owner, Engineer, and Contractor agree constitutes a separately functioning and usable part of the Work that can be used by Owner for its intended purpose without

significant interference with Contractor's performance of the remainder of the Work, subject to the following conditions:

1. At any time, Owner may request in writing that Contractor permit Owner to use or occupy any such part of the Work that Owner believes to be substantially complete. If and when Contractor agrees that such part of the Work is substantially complete, Contractor, Owner, and Engineer will follow the procedures of Paragraph 15.03.A through 15.03.E for that part of the Work.
2. At any time, Contractor may notify Owner and Engineer in writing that Contractor considers any such part of the Work substantially complete and request Engineer to issue a certificate of Substantial Completion for that part of the Work.
3. Within a reasonable time after either such request, Owner, Contractor, and Engineer shall make an inspection of that part of the Work to determine its status of completion. If Engineer does not consider that part of the Work to be substantially complete, Engineer will notify Owner and Contractor in writing giving the reasons therefor. If Engineer considers that part of the Work to be substantially complete, the provisions of Paragraph 15.03 will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.
4. No use or occupancy or separate operation of part of the Work may occur prior to compliance with the requirements of Paragraph 6.04 regarding builder's risk or other property insurance.

15.05 *Final Inspection*

- A. Upon written notice from Contractor that the entire Work or an agreed portion thereof is complete, Engineer will promptly make a final inspection with Owner and Contractor and will notify Contractor in writing of all particulars in which this inspection reveals that the Work, or agreed portion thereof, is incomplete or defective. Contractor shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.

15.06 *Final Payment*

A. *Application for Payment*

1. After Contractor has, in the opinion of Engineer, satisfactorily completed all corrections identified during the final inspection and has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance, certificates of inspection, annotated record documents (as provided in Paragraph 7.12), and other documents, Contractor may make application for final payment.
2. The final Application for Payment must be accompanied (except as previously delivered) by:
 - a. all documentation called for in the Contract Documents;
 - b. consent of the surety, if any, to final payment;
 - c. satisfactory evidence that all title issues have been resolved such that title to all Work, materials, and equipment has passed to Owner free and clear of any Liens or other title defects, or will so pass upon final payment.

- d. a list of all duly pending Change Proposals and Claims; and
 - e. complete and legally effective releases or waivers (satisfactory to Owner) of all Lien rights arising out of the Work, and of Liens filed in connection with the Work.
3. In lieu of the releases or waivers of Liens specified in Paragraph 15.06.A.2 and as approved by Owner, Contractor may furnish receipts or releases in full and an affidavit of Contractor that: (a) the releases and receipts include all labor, services, material, and equipment for which a Lien could be filed; and (b) all payrolls, material and equipment bills, and other indebtedness connected with the Work for which Owner might in any way be responsible, or which might in any way result in liens or other burdens on Owner's property, have been paid or otherwise satisfied. If any Subcontractor or Supplier fails to furnish such a release or receipt in full, Contractor may furnish a bond or other collateral satisfactory to Owner to indemnify Owner against any Lien, or Owner at its option may issue joint checks payable to Contractor and specified Subcontractors and Suppliers.
- B. *Engineer's Review of Final Application and Recommendation of Payment:* If, on the basis of Engineer's observation of the Work during construction and final inspection, and Engineer's review of the final Application for Payment and accompanying documentation as required by the Contract Documents, Engineer is satisfied that the Work has been completed and Contractor's other obligations under the Contract have been fulfilled, Engineer will, within 10 days after receipt of the final Application for Payment, indicate in writing Engineer's recommendation of final payment and present the final Application for Payment to Owner for payment. Such recommendation will account for any set-offs against payment that are necessary in Engineer's opinion to protect Owner from loss for the reasons stated above with respect to progress payments. Otherwise, Engineer will return the Application for Payment to Contractor, indicating in writing the reasons for refusing to recommend final payment, in which case Contractor shall make the necessary corrections and resubmit the Application for Payment.
- C. *Notice of Acceptability:* In support of its recommendation of payment of the final Application for Payment, Engineer will also give written notice to Owner and Contractor that the Work is acceptable, subject to stated limitations in the notice and to the provisions of Paragraph 15.07.
- D. *Completion of Work:* The Work is complete (subject to surviving obligations) when it is ready for final payment as established by the Engineer's written recommendation of final payment and issuance of notice of the acceptability of the Work.
- E. *Final Payment Becomes Due:* Upon receipt from Engineer of the final Application for Payment and accompanying documentation, Owner shall set off against the amount recommended by Engineer for final payment any further sum to which Owner is entitled, including but not limited to set-offs for liquidated damages and set-offs allowed under the provisions of this Contract with respect to progress payments. Owner shall pay the resulting balance due to Contractor within 30 days of Owner's receipt of the final Application for Payment from Engineer.

15.07 *Waiver of Claims*

- A. By making final payment, Owner waives its claim or right to liquidated damages or other damages for late completion by Contractor, except as set forth in an outstanding Claim,

appeal under the provisions of Article 17, set-off, or express reservation of rights by Owner. Owner reserves all other claims or rights after final payment.

- B. The acceptance of final payment by Contractor will constitute a waiver by Contractor of all claims and rights against Owner other than those pending matters that have been duly submitted as a Claim, or appealed under the provisions of Article 17.

15.08 *Correction Period*

- A. If within one year after the date of Substantial Completion (or such longer period of time as may be prescribed by the Supplementary Conditions or the terms of any applicable special guarantee required by the Contract Documents), Owner gives Contractor written notice that any Work has been found to be defective, or that Contractor's repair of any damages to the Site or adjacent areas has been found to be defective, then after receipt of such notice of defect Contractor shall promptly, without cost to Owner and in accordance with Owner's written instructions:
 - 1. correct the defective repairs to the Site or such adjacent areas;
 - 2. correct such defective Work;
 - 3. remove the defective Work from the Project and replace it with Work that is not defective, if the defective Work has been rejected by Owner, and
 - 4. satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others, or to other land or areas resulting from the corrective measures.
- B. Owner shall give any such notice of defect within 60 days of the discovery that such Work or repairs is defective. If such notice is given within such 60 days but after the end of the correction period, the notice will be deemed a notice of defective Work under Paragraph 7.17.B.
- C. If, after receipt of a notice of defect within 60 days and within the correction period, Contractor does not promptly comply with the terms of Owner's written instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the defective Work corrected or repaired or may have the rejected Work removed and replaced. Contractor shall pay all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others). Contractor's failure to pay such costs, losses, and damages within 10 days of invoice from Owner will be deemed the start of an event giving rise to a Claim under Paragraph 12.01.B, such that any related Claim must be brought within 30 days of the failure to pay.
- D. In special circumstances where a particular item of equipment is placed in continuous service before Substantial Completion of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Specifications.
- E. Where defective Work (and damage to other Work resulting therefrom) has been corrected or removed and replaced under this paragraph, the correction period hereunder with respect to such Work will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.

- F. Contractor's obligations under this paragraph are in addition to all other obligations and warranties. The provisions of this paragraph are not to be construed as a substitute for, or a waiver of, the provisions of any applicable statute of limitation or repose.

ARTICLE 16—SUSPENSION OF WORK AND TERMINATION

16.01 *Owner May Suspend Work*

- A. At any time and without cause, Owner may suspend the Work or any portion thereof for a period of not more than 90 consecutive days by written notice to Contractor and Engineer. Such notice will fix the date on which Work will be resumed. Contractor shall resume the Work on the date so fixed. Contractor shall be entitled to an adjustment in the Contract Price or an extension of the Contract Times directly attributable to any such suspension. Any Change Proposal seeking such adjustments must be submitted no later than 30 days after the date fixed for resumption of Work.

16.02 *Owner May Terminate for Cause*

- A. The occurrence of any one or more of the following events will constitute a default by Contractor and justify termination for cause:
 - 1. Contractor's persistent failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment, or failure to adhere to the Progress Schedule);
 - 2. Failure of Contractor to perform or otherwise to comply with a material term of the Contract Documents;
 - 3. Contractor's disregard of Laws or Regulations of any public body having jurisdiction; or
 - 4. Contractor's repeated disregard of the authority of Owner or Engineer.
- B. If one or more of the events identified in Paragraph 16.02.A occurs, then after giving Contractor (and any surety) 10 days' written notice that Owner is considering a declaration that Contractor is in default and termination of the Contract, Owner may proceed to:
 - 1. declare Contractor to be in default, and give Contractor (and any surety) written notice that the Contract is terminated; and
 - 2. enforce the rights available to Owner under any applicable performance bond.
- C. Subject to the terms and operation of any applicable performance bond, if Owner has terminated the Contract for cause, Owner may exclude Contractor from the Site, take possession of the Work, incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere, and complete the Work as Owner may deem expedient.
- D. Owner may not proceed with termination of the Contract under Paragraph 16.02.B if Contractor within 7 days of receipt of notice of intent to terminate begins to correct its failure to perform and proceeds diligently to cure such failure.
- E. If Owner proceeds as provided in Paragraph 16.02.B, Contractor shall not be entitled to receive any further payment until the Work is completed. If the unpaid balance of the Contract Price exceeds the cost to complete the Work, including all related claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects,

attorneys, and other professionals) sustained by Owner, such excess will be paid to Contractor. If the cost to complete the Work including such related claims, costs, losses, and damages exceeds such unpaid balance, Contractor shall pay the difference to Owner. Such claims, costs, losses, and damages incurred by Owner will be reviewed by Engineer as to their reasonableness and, when so approved by Engineer, incorporated in a Change Order. When exercising any rights or remedies under this paragraph, Owner shall not be required to obtain the lowest price for the Work performed.

- F. Where Contractor's services have been so terminated by Owner, the termination will not affect any rights or remedies of Owner against Contractor then existing or which may thereafter accrue, or any rights or remedies of Owner against Contractor or any surety under any payment bond or performance bond. Any retention or payment of money due Contractor by Owner will not release Contractor from liability.
- G. If and to the extent that Contractor has provided a performance bond under the provisions of Paragraph 6.01.A, the provisions of that bond will govern over any inconsistent provisions of Paragraphs 16.02.B and 16.02.D.

16.03 *Owner May Terminate for Convenience*

- A. Upon 7 days' written notice to Contractor and Engineer, Owner may, without cause and without prejudice to any other right or remedy of Owner, terminate the Contract. In such case, Contractor shall be paid for (without duplication of any items):
 - 1. completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;
 - 2. expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses; and
 - 3. other reasonable expenses directly attributable to termination, including costs incurred to prepare a termination for convenience cost proposal.
- B. Contractor shall not be paid for any loss of anticipated profits or revenue, post-termination overhead costs, or other economic loss arising out of or resulting from such termination.

16.04 *Contractor May Stop Work or Terminate*

- A. If, through no act or fault of Contractor, (1) the Work is suspended for more than 90 consecutive days by Owner or under an order of court or other public authority, or (2) Engineer fails to act on any Application for Payment within 30 days after it is submitted, or (3) Owner fails for 30 days to pay Contractor any sum finally determined to be due, then Contractor may, upon 7 days' written notice to Owner and Engineer, and provided Owner or Engineer do not remedy such suspension or failure within that time, terminate the contract and recover from Owner payment on the same terms as provided in Paragraph 16.03.
- B. In lieu of terminating the Contract and without prejudice to any other right or remedy, if Engineer has failed to act on an Application for Payment within 30 days after it is submitted, or Owner has failed for 30 days to pay Contractor any sum finally determined to be due, Contractor may, 7 days after written notice to Owner and Engineer, stop the Work until payment is made of all such amounts due Contractor, including interest thereon. The

provisions of this paragraph are not intended to preclude Contractor from submitting a Change Proposal for an adjustment in Contract Price or Contract Times or otherwise for expenses or damage directly attributable to Contractor's stopping the Work as permitted by this paragraph.

ARTICLE 17—FINAL RESOLUTION OF DISPUTES

17.01 *Methods and Procedures*

- A. *Disputes Subject to Final Resolution:* The following disputed matters are subject to final resolution under the provisions of this article:
1. A timely appeal of an approval in part and denial in part of a Claim, or of a denial in full, pursuant to Article 12; and
 2. Disputes between Owner and Contractor concerning the Work, or obligations under the Contract Documents, that arise after final payment has been made.
- B. *Final Resolution of Disputes:* For any dispute subject to resolution under this article, Owner or Contractor may:
1. elect in writing to invoke the dispute resolution process provided for in the Supplementary Conditions;
 2. agree with the other party to submit the dispute to another dispute resolution process; or
 3. if no dispute resolution process is provided for in the Supplementary Conditions or mutually agreed to, give written notice to the other party of the intent to submit the dispute to a court of competent jurisdiction.

ARTICLE 18—MISCELLANEOUS

18.01 *Giving Notice*

- A. Whenever any provision of the Contract requires the giving of written notice to Owner, Engineer, or Contractor, it will be deemed to have been validly given only if delivered:
1. in person, by a commercial courier service or otherwise, to the recipient's place of business;
 2. by registered or certified mail, postage prepaid, to the recipient's place of business; or
 3. by e-mail to the recipient, with the words "Formal Notice" or similar in the e-mail's subject line.

18.02 *Computation of Times*

- A. When any period of time is referred to in the Contract by days, it will be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day made a legal holiday by the law of the applicable jurisdiction, such day will be omitted from the computation.

18.03 *Cumulative Remedies*

- A. The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by Laws or Regulations, by special warranty or guarantee, or by other provisions of the Contract. The provisions of this paragraph will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right, and remedy to which they apply.

18.04 *Limitation of Damages*

- A. With respect to any and all Change Proposals, Claims, disputes subject to final resolution, and other matters at issue, neither Owner nor Engineer, nor any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, shall be liable to Contractor for any claims, costs, losses, or damages sustained by Contractor on or in connection with any other project or anticipated project.

18.05 *No Waiver*

- A. A party's non-enforcement of any provision will not constitute a waiver of that provision, nor will it affect the enforceability of that provision or of the remainder of this Contract.

18.06 *Survival of Obligations*

- A. All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with the Contract, as well as all continuing obligations indicated in the Contract, will survive final payment, completion, and acceptance of the Work or termination of the Contract or of the services of Contractor.

18.07 *Controlling Law*

- A. This Contract is to be governed by the law of the state in which the Project is located.

18.08 *Assignment of Contract*

- A. Unless expressly agreed to elsewhere in the Contract, no assignment by a party to this Contract of any rights under or interests in the Contract will be binding on the other party without the written consent of the party sought to be bound; and, specifically but without limitation, money that may become due and money that is due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract.

18.09 *Successors and Assigns*

- A. Owner and Contractor each binds itself, its successors, assigns, and legal representatives to the other party hereto, its successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

18.10 *Headings*

- A. Article and paragraph headings are inserted for convenience only and do not constitute parts of these General Conditions.

**Structure Replacement Project
Bridge 30-114-08.1 – Frontage Road N Glen Ullin
Morton County Highway Department**

Apex Project # 22.517.0045
Owner Project # Work Order 2232

**Section 00800 – SUPPLEMENTARY CONDITIONS OF THE CONSTRUCTION
CONTRACT**

These Supplementary Conditions amend or supplement EJCDC® C-700 (Specification Section 00700), Standard General Conditions of the Construction Contract (2018). The General Conditions remain in full force and effect except as amended.

The terms used in these Supplementary Conditions have the meanings stated in the General Conditions. Additional terms used in these Supplementary Conditions have the meanings stated below, which are applicable to both the singular and plural thereof.

The address system used in these Supplementary Conditions is the same as the address system used in the General Conditions, with the prefix "SC" added—for example, "Paragraph SC-4.05."

SC-1.01 *Defined Terms*

Add to the list of definitions in Paragraph 1.01.A by inserting the following as numbered items in their proper alphabetical positions:

51. Final Completion – The Work is complete when it is ready for final payment as established by the Engineer’s written recommendation of final payment as set forth in Paragraph 15.06.

SC-2.02 Delete Paragraph 2.02.A in its entirety and insert the following new paragraph in its place:

A. Owner shall furnish to Contractor up to two (2) printed or hard copies of the Drawings and the Project Manual, and one (1) set in electronic portable document format (PDF). Additional copies will be furnished upon request at the cost of reproduction.

SC-3.02 Reference Standards

Add the following Paragraph under 3.02.A:

3. The construction work items shall be performed in accordance with the North Dakota Department of Transportation Standard Specifications for Road and Bridge Construction 2024 and corresponding supplemental specifications and other contract provisions submitted herein that are in effect at the time of this project being bid. Wherever the word *Department or Director* is used it shall be replaced or synonymous with *Owner*. Section 100-General Provisions of the NDDOT Standard Specifications will not apply with the exception of the following sections or sub-sections:

- 101 Abbreviations & Definitions
- 105.03 Cooperation with Utility Owners
- 105.04 Cooperation Between Contractors
- 105.06 Character of Workers, Methods and Equipment
- 105.07 Conformance with the Contract Requirements
- 105.10 Construction Staking
- 106.01 General Methods of Materials Acceptance
- 106.03 Storage of Materials
- 106.04 Handling Materials
- 106.05 Stockpiling Aggregate and Salvaged Materials
- 107.07 Responsibility to the Public
- 107.08 Haul Roads
- 107.10 Protection and Restoration of Property
- 107.15 Hazardous Material
- 107.17 Removed Material
- 107.18 High Visibility Clothing
- 109.01 Measurement of Quantities

NOTE: Parties agree that any reference to references to sections or sub-sections of Section 100, General Provisions, not listed here will be redirected to the applicable sub-sections or sections of the contract documents or the reference will be considered deleted if it is not relevant to this contract.

SC-2.06 Delete Paragraphs 2.06.B and 2.06.C in their entirety and insert the following in their place:

B. *Electronic Documents Protocol*: The parties shall conform to the following provisions in Paragraphs 2.06.B and 2.06.C, together referred to as the Electronic Documents Protocol (“EDP” or “Protocol”) for exchange of electronic transmittals.

1. *Basic Requirements*

- a. To the fullest extent practical, the parties agree to and will transmit and accept Electronic Documents in an electronic or digital format using the procedures described in this Protocol. Use of the Electronic Documents and any information contained therein is subject to the requirements of this Protocol and other provisions of the Contract.
- b. The contents of the information in any Electronic Document will be the responsibility of the transmitting party.
- c. Electronic Documents as exchanged by this Protocol may be used in the same manner as the printed versions of the same documents that are exchanged using non-electronic format and methods, subject to the same governing requirements, limitations, and restrictions, set forth in the Contract Documents.
- d. Except as otherwise explicitly stated herein, the terms of this Protocol will be incorporated into any other agreement or subcontract between a party and any third party for any portion of the Work on the Project, or any Project-related services, where that third party is, either directly or indirectly, required to exchange Electronic Documents with a party or with Engineer. Nothing herein will

modify the requirements of the Contract regarding communications between and among the parties and their subcontractors and consultants.

- e. When transmitting Electronic Documents, the transmitting party makes no representations as to long term compatibility, usability, or readability of the items resulting from the receiving party's use of software application packages, operating systems, or computer hardware differing from those established in this Protocol.
- f. Nothing herein negates any obligation 1) in the Contract to create, provide, or maintain an original printed record version of Drawings and Specifications, signed and sealed according to applicable Laws and Regulations; 2) to comply with any applicable Law or Regulation governing the signing and sealing of design documents or the signing and electronic transmission of any other documents; or 3) to comply with the notice requirements of Paragraph 18.01 of the General Conditions.

2. *System Infrastructure for Electronic Document Exchange*

- a. Each party will provide hardware, operating system(s) software, internet, e-mail, and large file transfer functions ("System Infrastructure") at its own cost and sufficient for complying with the EDP requirements. With the exception of minimum standards set forth in this EDP, and any explicit system requirements specified by attachment to this EDP, it is the obligation of each party to determine, for itself, its own System Infrastructure.
 - 1) The maximum size of an email attachment for exchange of Electronic Documents under this EDP is **10 MB**. Attachments larger than that may be exchanged using large file transfer functions or physical media.
 - 2) Each Party assumes full and complete responsibility for any and all of its own costs, delays, deficiencies, and errors associated with converting, translating, updating, verifying, licensing, or otherwise enabling its System Infrastructure, including operating systems and software, for use with respect to this EDP.
- b. Each party is responsible for its own system operations, security, back-up, archiving, audits, printing resources, and other Information Technology ("IT") for maintaining operations of its System Infrastructure during the Project, including coordination with the party's individual(s) or entity responsible for managing its System Infrastructure and capable of addressing routine communications and other IT issues affecting the exchange of Electronic Documents.
- c. Each party will operate and maintain industry-standard, industry-accepted, ISO-standard, commercial-grade security software and systems that are intended to protect the other party from: software viruses and other malicious software like worms, trojans, adware; data breaches; loss of confidentiality; and other threats in the transmission to or storage of information from the other parties, including transmission of Electronic Documents by physical media such as CD/DVD/flash drive/hard drive. To the extent that a party maintains and operates such security software and systems, it shall not be liable to the other party for any breach of system security.

- d. In the case of disputes, conflicts, or modifications to the EDP required to address issues affecting System Infrastructure, the parties shall cooperatively resolve the issues; but, failing resolution, the Owner is authorized to make and require reasonable and necessary changes to the EDP to effectuate its original intent. If the changes cause additional cost or time to Contractor, not reasonably anticipated under the original EDP, Contractor may seek an adjustment in price or time under the appropriate process in the Contract.
- e. Each party is responsible for its own back-up and archive of documents sent and received during the term of the contract under this EDP, unless this EDP establishes a Project document archive, either as part of a mandatory Project website or other communications protocol, upon which the parties may rely for document archiving during the specified term of operation of such Project document archive. Further, each party remains solely responsible for its own post-Project back-up and archive of Project documents after the term of the Contract, or after termination of the Project document archive, if one is established, for as long as required by the Contract and as each party deems necessary for its own purposes.
- f. If a receiving party receives an obviously corrupted, damaged, or unreadable Electronic Document, the receiving party will advise the sending party of the incomplete transmission.
- g. The parties will bring any non-conforming Electronic Documents into compliance with the EDP. The parties will attempt to complete a successful transmission of the Electronic Document or use an alternative delivery method to complete the communication.

C. Software Requirements for Electronic Document Exchange; Limitations

1. Each party will acquire the software and software licenses necessary to create and transmit Electronic Documents and to read and to use any Electronic Documents received from the other party (and if relevant from third parties), using the software formats required in this section of the EDP.
 - a. Prior to using any updated version of the software required in this section for sending Electronic Documents to the other party, the originating party will first notify and receive concurrence from the other party for use of the updated version or adjust its transmission to comply with this EDP.
2. The parties agree not to intentionally edit, reverse engineer, decrypt, remove security or encryption features, or convert to another format for modification purposes any Electronic Document or information contained therein that was transmitted in a software data format, including Portable Document Format (PDF), intended by sender not to be modified, unless the receiving party obtains the permission of the sending party or is citing or quoting excerpts of the Electronic Document for Project purposes.
3. Software and data formats for exchange of Electronic Documents will conform to the requirements set forth herein to this EDP, including software versions, if listed.

Item	Electronic Documents	Transmittal Means	Data Format	Note (1)
a.1	General communications, transmittal covers, meeting notices and responses to general information requests for which there is no specific prescribed form.	Email	Email	
a.2	Meeting agendas, meeting minutes, and Contract forms.	Email w/ Attachment	PDF	(2)
a.3	Requests for Information (RFIs) and responses to RFIs	Email w/ Attachment or Project Website	PDF	(2)
a.4	Contactors Submittals (Shop Drawings, "or equal" requests, substitution requests, documentation accompanying Sample submittals and other submittals) to Owner and Engineer, and Owner's and Engineer's responses to Contractor's Submittals, Shop Drawings, correspondence, and Applications for Payment.	Email w/ Attachment or Project Website	PDF	
a.5	Correspondence; milestone and final version Submittals of reports, layouts, Drawings, maps, calculations and spreadsheets, Specifications, Drawings and other Submittals from Contractor to Owner or Engineer and for responses from Engineer and Owner to Contractor regarding Submittals.	Email w/ Attachment or Project Website or LFE	PDF	
a.6	Layouts and drawings to be submitted to Owner for future use and modification.	Email w/ Attachment or Project Website or LFE	DWG	
a.7	Correspondence, reports, and Specifications to be submitted to Owner for future word processing use and modification.	Email w/ Attachment or Project Website or LFE	DOC	
a.8	Spreadsheets and data to be submitted to Owner for future data processing use and modification.	Email w/ Attachment or Project Website or LFE	EXC	
a.9	Database files and data to be submitted to Owner for future data processing use and modification.	Email w/ Attachment or Project Website or LFE	DB	

Notes

(1) All exchanges and uses of transmitted data are subject to the appropriate provisions of Contract Documents.

(2) Transmittal of written notices is governed by Paragraph 18.01 of the General Conditions.

Key

Email	Standard Email formats (.htm, .rtf, or .txt). Do not use stationery formatting or other features that impair legibility of content on screen or in printed copies
LFE	Agreed upon Large File Exchange method (FTP, CD, DVD, hard drive)
PDF	Portable Document Format readable by Adobe® Acrobat Reader, latest Version
DWG	Autodesk® AutoCAD .dwg format Version Current Version on advertisement date or newer.
DOC	Microsoft® Word .docx format Version Current Version on advertisement date or newer.
EXC	Microsoft® Excel .xls or .xml format Version Current Version on advertisement date or newer.
DB	Microsoft® Access .mdb format Version Current Version on advertisement date or newer.

SC-5.03 Add the following new paragraphs immediately after Paragraph 5.03.D:

- E. The following table lists the reports of explorations and tests of subsurface conditions at or adjacent to the Site that contain Technical Data, and specifically identifies the Technical Data in the report upon which Contractor may rely:

Report Title	Date of Report	Technical Data
None		

- F. The following table lists the drawings of existing physical conditions at or adjacent to the Site, including those drawings depicting existing surface or subsurface structures at or adjacent to the Site (except Underground Facilities), that contain Technical Data, and specifically identifies the Technical Data upon which Contractor may rely:

Drawings Title	Date of Drawings	Technical Data
None		

- G. Contractor may examine copies of reports and drawings identified in SC-5.03.E and SC-5.03.F that were not included with the Bidding Documents **at the office of the Engineer** during regular business hours.

Copies of reports and drawings referenced above are also available electronically upon written request to the Engineer. These reports and drawings identified in SC-5.03.E and SC-5.03.F are not part of the Contract Documents, but the “technical data” contained therein upon which Bidder is entitled to rely as provided in Paragraph 5.03.C of the General Conditions has been identified and established in Paragraph 5.03 of the Supplementary Conditions. Bidder is responsible for any interpretation or conclusion Bidder draws from any “technical data” or any other data, interpretations, opinions, or information contained in such reports or shown or indicated in such drawings.

The reports and drawings identified above are not part of the Contract Documents, but the “technical data” contained therein upon which Contractor may rely, as expressly identified and established above, are incorporated in the Contract Documents by reference. Contractor is not entitled to rely upon any other information and data known to or identified by Owner or Engineer.

SC-5.05 Delete 5.05.A and replace with the following:

Underground Facilities

Owner and Engineer do not warrant or guarantee the accuracy or completeness of any such information or data provided by others. The subsurface utility information in these contract documents is Utility Quality Level D in accordance to the guideline of CI/ASCE 38-02 entitled, “Standard Guidelines for the Collection and Depiction of Existing Subsurface Utility Data”; and the costs of all the following are included in the Contract Price, and Contractor shall have full responsibility for:

SC-5.06 Add the following new paragraphs immediately after Paragraph 5.06.A.3:

4. The following table lists the reports known to Owner relating to Hazardous Environmental Conditions at or adjacent to the Site, and the Technical Data (if any) upon which Contractor may rely:

Report Title	Date of Report	Technical Data
None		

5. The following table lists the drawings known to Owner relating to Hazardous Environmental Conditions at or adjacent to the Site, and Technical Data (if any) contained in such Drawings upon which Contractor may rely:

Drawings Title	Date of Drawings	Technical Data
None		

Copies of reports and drawings referenced above are also available electronically upon written request to the Engineer. These reports and drawings identified in SC-5.06.A.4. and SC-5.06.A.5. are not part of the Contract Documents, but the “technical data” contained therein upon which Bidder is entitled to rely as provided in Paragraph 5.06.B of the General Conditions has been identified and established in Paragraph 5.06 of the Supplementary Conditions. Bidder is responsible for any interpretation or conclusion Bidder draws from any “technical data” or any other data, interpretations, opinions, or information contained in such reports or shown or indicated in such drawings.

The reports and drawings identified above are not part of the Contract Documents, but the “technical data” contained therein upon which Contractor may rely, as expressly identified and established above, are incorporated in the Contract Documents by reference. Contractor is not entitled to rely upon any other information and data known to or identified by Owner or Engineer.

SC-6.01 Add the following paragraphs immediately after Paragraph 6.01.A:

1. *Required Performance Bond Form:* The performance bond that Contractor furnishes will be in the form of EJCDC® 00610, Performance Bond (2018 edition).
2. *Required Payment Bond Form:* The payment bond that Contractor furnishes will be in the form of EJCDC® 00615, Payment Bond (2018 edition).

SC-6.02 Add the following paragraph immediately after Paragraph 6.02.H.2.

3. Contractor is solely responsible for ensuring Subcontractors and Suppliers comply with the above provisions at all times. Contractor shall document and maintain all worker's compensation and insurance information provided by their Subcontractors and Suppliers and will submit documentation to the Owner and/or Engineer upon request.

SC-6.03 Supplement Paragraph 6.03 with the following provisions after Paragraph 6.03.C:

- D. *Other Additional Insureds:* As a supplement to the provisions of Paragraph 6.03.C of the General Conditions, the commercial general liability, automobile liability, umbrella or excess, pollution liability, and unmanned aerial vehicle liability policies must include as additional insureds (in addition to Owner and Engineer) the following: **None**
- E. *Workers' Compensation and Employer's Liability:* Contractor shall purchase and maintain workers' compensation and employer's liability insurance, including, as applicable, United States Longshoreman and Harbor Workers' Compensation Act, Jones Act, stop-gap employer's liability coverage for monopolistic states, and foreign voluntary workers' compensation (from available sources, notwithstanding the jurisdictional requirement of Paragraph 6.02.B of the General Conditions).

Workers' Compensation and Related Policies	Policy limits of not less than:
Workers' Compensation	
State	Statutory
Applicable Federal (e.g., Longshoreman's)	Statutory
Foreign voluntary workers' compensation (employer's responsibility coverage), if applicable	Statutory
Jones Act (if applicable)	
Bodily injury by accident—each accident	\$NA
Bodily injury by disease—aggregate	\$NA
Employer's Liability	
Each accident	\$1,000,000
Each employee	\$1,000,000
Policy limit	\$1,000,000
Stop-gap Liability Coverage	
For work performed in monopolistic states, stop-gap liability coverage must be endorsed to either the worker's compensation or commercial general liability policy with a minimum limit of:	\$NA

- F. *Commercial General Liability—Claims Covered:* Contractor shall purchase and maintain commercial general liability insurance, covering all operations by or on behalf of Contractor, on an occurrence basis, against claims for:
 1. damages because of bodily injury, sickness or disease, or death of any person other than Contractor's employees,
 2. damages insured by reasonably available personal injury liability coverage, and
 3. damages because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom.

- G. *Commercial General Liability—Form and Content:* Contractor’s commercial liability policy must be written on a 1996 (or later) Insurance Services Organization, Inc. (ISO) commercial general liability form (occurrence form) and include the following coverages and endorsements:
1. Products and completed operations coverage.
 - a. Such insurance must be maintained for three years after final payment.
 - b. Contractor shall furnish Owner and each other additional insured (as identified in the Supplementary Conditions or elsewhere in the Contract) evidence of continuation of such insurance at final payment and three years thereafter.
 2. Blanket contractual liability coverage, including but not limited to coverage of Contractor’s contractual indemnity obligations in Paragraph 7.18.
 3. Severability of interests and no insured-versus-insured or cross-liability exclusions.
 4. Underground, explosion, and collapse coverage.
 5. Personal injury coverage.
 6. Additional insured endorsements that include both ongoing operations and products and completed operations coverage through ISO Endorsements CG 20 10 10 01 and CG 20 37 10 01 (together). If Contractor demonstrates to Owner that the specified ISO endorsements are not commercially available, then Contractor may satisfy this requirement by providing equivalent endorsements.
 7. For design professional additional insureds, ISO Endorsement CG 20 32 07 04 “Additional Insured—Engineers, Architects or Surveyors Not Engaged by the Named Insured” or its equivalent.
- H. *Commercial General Liability—Excluded Content:* The commercial general liability insurance policy, including its coverages, endorsements, and incorporated provisions, must not include any of the following:
1. Any modification of the standard definition of “insured contract” (except to delete the railroad protective liability exclusion if Contractor is required to indemnify a railroad or others with respect to Work within 50 feet of railroad property).
 2. Any exclusion for water intrusion or water damage.
 3. Any provisions resulting in the erosion of insurance limits by defense costs other than those already incorporated in ISO form CG 00 01.
 4. Any exclusion of coverage relating to earth subsidence or movement.
 5. Any exclusion for the insured’s vicarious liability, strict liability, or statutory liability (other than worker’s compensation).
 6. Any limitation or exclusion based on the nature of Contractor’s work.
 7. Any professional liability exclusion broader in effect than the most recent edition of ISO form CG 22 79.

I. *Commercial General Liability—Minimum Policy Limits*

Commercial General Liability	Policy limits of not less than:
General Aggregate	\$2,000,000
Products—Completed Operations Aggregate	\$2,000,000
Personal and Advertising Injury	\$1,000,000
Bodily Injury and Property Damage—Each Occurrence	\$1,000,000

- J. *Automobile Liability:* Contractor shall purchase and maintain automobile liability insurance for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance, or use of any motor vehicle. The automobile liability policy must be written on an occurrence basis.

Automobile Liability	Policy limits of not less than:
Bodily Injury	
Each Person	\$1,000,000
Each Accident	\$1,000,000
Property Damage	
Each Accident	\$2,000,000
or	
Combined Single Limit	
Combined Single Limit (Bodily Injury and Property Damage)	\$2,000,000

- K. *Umbrella or Excess Liability:* Contractor shall purchase and maintain umbrella or excess liability insurance written over the underlying employer’s liability, commercial general liability, and automobile liability insurance described in the Paragraphs above. The coverage afforded must be at least as broad as that of each and every one of the underlying policies.

Excess or Umbrella Liability	Policy limits of not less than:
Each Occurrence	\$1,000,000
General Aggregate	\$2,000,000

- L. *Using Umbrella or Excess Liability Insurance to Meet CGL and Other Policy Limit Requirements:* Contractor may meet the policy limits specified for employer’s liability, commercial general liability, and automobile liability through the primary policies alone, or through combinations of the primary insurance policy’s policy limits and partial attribution of the policy limits of an umbrella or excess liability policy that is at least as broad in coverage as that of the underlying policy, as specified herein..

- SC-7.03 Add the following new subparagraphs immediately after Paragraph 7.03.C:
1. Regular working hours will be **7 AM to 7 PM, Monday through Saturday.**
 2. Owner's legal holidays are **State of North Dakota Holidays.**
 3. Community Celebrations or other events, which the contractor may not perform certain work which may be disruptive (as determined by the Engineer) include: **None**
- SC-7.03 Add the following new paragraph immediately after Paragraph 7.03.C:
- D. Owner shall be responsible for the cost of any overtime pay or other expense incurred by the Owner for Engineer's services (including those of the Resident Project Representative, if any), Owner's representative, and construction observation services, occasioned by the performance of Work on Sunday, any legal holiday, or as overtime on any regular work day. If Contractor is responsible but does not pay, or if the parties are unable to agree as to the amount owed, then Owner may impose a reasonable set-off against payments due under Article 15.
- SC-7.09 Revise 7.09A to read as follows:
- A. Owner has applied and paid for permits listed below. Unless otherwise provided in the Contract Documents, Contractor shall obtain and pay for all other construction permits and licenses. Owner shall assist Contractor, when necessary, in obtaining such permits and licenses. Contractor shall pay all governmental charges and inspection fees necessary for the prosecution of the Work which are applicable at the time of the submission of Contractor's Bid (or when Contractor became bound under a negotiated contract). Owner shall pay all charges of utility owners for connections for providing permanent service to the Work
- B. The Owner has applied/obtained the following permits:
1. US Army Corps of Engineers (USACE) – Nationwide Permit Number (NWP) NWP 14 Linear Transportation Projects
 2. North Dakota Department of Transportation (NDDOT) – Agreement to Enter and Do Work on Highway Right of Way
- C. The Contractor is responsible for complying with all requirements of Owner or Contractor obtained permits. Permits not included in the contract documents are available for review at the Engineer's office upon request.
- D. The Contractor is responsible for obtaining, paying for any fees related to, and complying with requirements of all other permits that may be required for the work.
- SC-10.03 Add the following new paragraphs immediately after Paragraph 10.03.B:
- C. The Resident Project Representative (RPR) will be Engineer's representative at the Site, will act as directed by and under the supervision of the Engineer, and will confer with the Engineer regarding RPR's actions. RPR's dealings in matters pertaining to the Work in general will be with Engineer and Contractor. RPR's dealings with Subcontractors will only be through or with the full knowledge or approval of Contractor. RPR shall generally communicate with the Owner only with the knowledge of and under the direction of the Engineer. The RPR will:

1. *Conferences and Meetings:* Attend meetings with Contractor, such as preconstruction conferences, progress meetings, job conferences, and other Project-related meetings (but not including Contractor's safety meetings), and as appropriate prepare and circulate copies of minutes thereof.
2. *Schedules:* Review the progress schedule, schedule of Shop Drawing and Sample submittals, and Schedule of Values prepared by the Contractor and consult with the Engineer concerning acceptability.
3. *Safety Compliance:* Comply with Site safety programs, as they apply to RPR, and if required to do so by such safety programs, receive safety training specifically related to RPR's own personal safety while at the Site.
4. *Liaison*
 - a. Serve as Engineer's liaison with Contractor. Working principally through Contractor's authorized representative or designee, assist in providing information regarding the provisions and intent of the Contract Documents.
 - b. Assist Engineer in serving as Owner's liaison with Contractor when Contractor's operations affect Owner's on-Site operations.
 - c. Assist in obtaining from Owner additional details or information, when required for Contractor's proper execution of the Work.
 - d. *Interpretation of Contract Documents:* Report to the Engineer when clarifications and interpretations of the Contract Documents are needed and transmit to the Contractor clarifications and interpretations as issued by the Engineer.
 - e. *Modifications:* Consider and evaluate the Contractor's suggestions for modifications in Drawings or Specifications and report such suggestions, together with the RPR's recommendations, if any, to the Engineer. Transmit to the Contractor in writing decisions as issued by the Engineer.
4. *Review of Work; Defective Work*
 - a. Conduct on-Site observations of the Work to assist Engineer in determining, to the extent set forth in Paragraph 10.02, if the Work is in general proceeding in accordance with the Contract Documents.
 - b. Observe whether any Work in place appears to be defective.
 - c. Observe whether any Work in place should be uncovered for observation, or requires special testing, inspection or approval.
 - d. Report to Engineer whenever RPR believes that any part of Contractor's work in progress is defective, will not produce a completed Project that conforms generally to the Contract Documents, or will imperil the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents, or has been damaged, or does not meet the requirements of any inspection, test or approval required to be made; and advise Engineer of that part of work in progress that RPR believes should be corrected or rejected or should be uncovered for observation, or requires special testing, inspection or approval.
5. *Inspections, Tests, and System Start-ups*

- a. Observe Contractor-arranged inspections required by Laws and Regulations, including but not limited to those performed by public or other agencies having jurisdiction over the Work.
 - b. Accompany visiting inspectors representing public or other agencies having jurisdiction over the Work.
 - c. Verify that tests, equipment, and system start-ups and operating and maintenance training are conducted in the presence of appropriate Owner's personnel and that the Contractor maintains adequate records thereof.
 - d. Observe, record, and report to the Engineer appropriate details relative to the test procedures and system start-ups.
6. Records
- a. Prepare a daily report or keep a diary or log book, recording Contractor's hours on the Site, Subcontractors present at the Site, weather conditions, data relative to questions of Change Orders, Field Orders, Work Change Directives, or changed conditions, Site visitors, deliveries of equipment or materials, daily activities, decisions, observations in general, and specific observations in more detail as in the case of observing test procedures, and send copies to the Engineer.
 - b. Record names, addresses, fax numbers, email addresses, web site locations, and telephone numbers of all Contractors, Subcontractors, and major Suppliers of materials and equipment.
 - c. Maintain records for use in preparing Project documentation.
7. Reports
- a. Furnish to the Engineer periodic reports as required of progress of Work and of Contractor's compliance with the Progress Schedule and schedule of Shop Drawing and Sample submittals.
 - b. Draft and recommend to the Engineer proposed Change Orders, Work Change Directives, and Field Orders. Obtain backup material from the Contractor.
 - c. Immediately notify the Engineer of the occurrence of any Site accidents, emergencies, acts of God endangering the Work, force majeure or delay events, damage to property by fire or other causes, or the discovery of any Constituent of Concern or Hazardous Environmental Condition.
8. *Payment Requests*: Review Applications for Payment with Contractor for compliance with the established procedure for their submission and forward with recommendations to the Engineer, noting particularly the relationship of the payment requested with the Schedule of Values, Work completed, and materials and equipment delivered at the Site by not incorporated in the Work.
9. Certificates, Operation and Maintenance Manuals: During the course of the Work, verify that materials and equipment certificates, operations and maintenance manuals and other data required by the Contract Documents to be assembled and furnished by the Contractor are applicable to the items actually installed and in accordance with the Contract Documents, and have these documents delivered to the Engineer for review and forwarding to the Owner prior to payment for that part of the Work.

7. *Completion*

- a. Participate in Engineer's visits regarding Substantial Completion.
- b. Assist in the preparation of a punch list of items to be completed or corrected.
- c. Participate in Engineer's visit to the Site in the company of Owner and Contractor regarding completion of the Work, and prepare a final punch list of items to be completed or corrected by Contractor.
- d. Observe whether items on the final punch list have been completed or corrected and make recommendations to Engineer concerning acceptance and issuance of the notice of acceptability of the work.

D. The RPR will not:

1. Authorize any deviation from the Contract Documents or substitution of materials or equipment (including "or-equal" items).
2. Exceed limitations of Engineer's authority as set forth in the Contract Documents.
3. Undertake any of the responsibilities of Contractor, Subcontractors, or Suppliers.
4. Advise on, issue directions relative to, or assume control over any aspect of the means, methods, techniques, sequences, or procedures of construction.
5. Advise on, issue directions regarding, or assume control over security or safety practices, precautions, and programs in connection with the activities or operations of Owner or Contractor.
6. Participate in specialized field or laboratory tests or inspections conducted off-site by others except as specifically authorized by Engineer.
7. Accept Shop Drawing or Sample submittals from anyone other than the Contractor.
8. Authorize Owner to occupy the Project in whole or in part.

SC-13.01 Supplement Paragraph 13.01.B.5.c.(2) by adding the following sentence:

The equipment rental rate book that governs the included costs for the rental of machinery and equipment owned by Contractor (or a related entity) under the Cost of the Work provisions of this Contract is the most current edition of the Rental Rate Blue Book as published by Primedia Information, Inc.

SC-13.01 Supplement Paragraph 13.01.C.2 by adding the following definition of small tools and hand tools:

- a. For purposes of this paragraph, "small tools and hand tools" means any tool or equipment whose current price if it were purchased new at retail would be less than \$1,000.

SC-13.01 Add the following to Paragraph 13.01

- E. Additional compensation or changes to unit prices will not be made for escalation of fuel prices.

SC-13.03 Delete Paragraph 13.03.E in its entirety and insert the following in its place:

E. *Adjustments in Unit Price*

1. Contractor or Owner shall be entitled to an adjustment in the unit price with respect to an item of Unit Price Work if:
 - a. the extended price of a particular item of Unit Price Work amounts to **5** percent or more of the Contract Price (based on estimated quantities at the time of Contract formation) and the variation in the quantity of that particular item of Unit Price Work actually furnished or performed by Contractor differs by more than **25** percent from the estimated quantity of such item indicated in the Agreement; and
 - b. Contractor's unit costs to perform the item of Unit Price Work have changed materially and significantly as a result of the quantity change.
2. The adjustment in unit price will account for and be coordinated with any related changes in quantities of other items of Work, and in Contractor's costs to perform such other Work, such that the resulting overall change in Contract Price is equitable to Owner and Contractor.
3. Adjusted unit prices will apply to all units of that item.
4. Additional compensation or changes to unit prices will not be made for escalation of fuel prices.

SC-14.02 Add the following to 14.02 following Paragraph F:

- G. The Contractor shall pay for tests and associated costs to the Owner that fail to meet the specified standards. All costs associated with failing tests shall be deducted from the contract and withheld from following payments which may be due to the contractor.

SC-15.01 Delete 15.01.D and replace with the following:

D. *Payment Becomes Due*

1. Thirty (30) days after the presentation of the Application for Payment to the Owner with the Engineer's recommendations and funding agency concurrence, the amount recommended will (subject to the provision of Paragraph 14.02.D) become due and will be paid by the Owner to the Contractor.

SC-15.03 Add the following new subparagraph to Paragraph 15.03.B:

1. If some or all of the Work has been determined not to be at a point of Substantial Completion and will require re-inspection or re-testing by Engineer, the cost of such re-inspection or re-testing, including the cost of time, travel and living expenses, will be paid by Contractor to Owner. If Contractor does not pay, or the parties are unable to agree as to the amount owed, then Owner may impose a reasonable set-off against payments due under this Article 15.

END OF SECTION

**Structure Replacement Project
Bridge 30-114-08.1 – Frontage Road N Glen Ullin
Morton County Highway Department**

**Apex Project # 22.517.0045
Owner Project # Work Order 2232**

Section 00810 - NDPDES Storm Water Permit & Temporary Water Diversion

Any project that involves land disturbance (clearing, grading or excavating) greater than or equal to one acre requires a North Dakota Pollution Discharge Elimination System (NDPDES) permit. The Contractor is required by the permit to adhere to the conditions of the storm water permit and storm water pollution prevention plan (SWPPP) as it relates to controlling erosion and sedimentation during construction activities, maintaining erosion control devices, conducting inspections and maintaining appropriate records.

The NDPDES Permit Application and additional information can be found at:

https://deq.nd.gov/WQ/2_NDPDES_Permits/7_Stormwater/StW.aspx

Develop a SWPPP specific to the project. The project plan sheets by themselves do not meet the requirements of a complete SWPPP and should not be considered as such. The Contractor has the flexibility to modify the design and implementation of the temporary erosion and sediment controls to match the Contractor's means and methods and/or field conditions. These changes must be documented in the SWPPP and meet all regulatory requirements.

Update the SWPPP as work progresses, or as directed by the Engineer. Update the SWPPP to show changes due to revisions in work schedules or sequence of construction. Update the site map to reflect erosion and sediment ESCMs that have been installed, changed, or removed.

Install stabilization ESCMs (mulch, seeding and mulch, etc.) in areas that have been disturbed where work has temporarily or permanently ceased following the timelines established in the applicable permits. If implementation of stabilization is precluded by snow cover, undertake such measures as soon as conditions allow.

TEMPORARY WATER DIVERSION

Description

Diversions are used to temporarily reroute surface water or restrict flows to allow for the construction activities to take place. This work consists of constructing and maintaining a temporary diversion to allow for the installation of a reinforced concrete box culvert. This work is in conjunction with the requirements of the NDPDES Permit.

Construction Requirements

A. General

Obtain and modify all appropriate permits before work commences on the diversions. Design, construct, operate, and remove temporary diversions to prevent soil/water interaction. Isolate work

area using dikes or other methods even when no water is present. Construct the diversion before beginning work on the structure.

1. Plan Submittal

Submit a plan for the diversion that includes work drawings and include the submittals with the Storm Water Pollution Prevention Plan (SWPPP).

2. Design

Design the temporary diversion to withstand the 2-year event ($Q_2 = 242$ cfs) and meet the following:

- If flow occurs while the diversion is in place, a portion of the flow must be passed as water accumulates in order to maintain flows downstream;
- Maintain downstream water quality equal to the preconstruction upstream water quality; and
- Include provisions that will prevent the accumulation of job site sediment in the diversion.

B. Diversion Components

Construction of the diversion may entail using the components listed below or other methods approved by the Engineer. Install diversion measures before beginning work on the structure.

1. Dike

Construct upstream and downstream dikes to isolate the work area. Construct dikes using one or more of the following materials:

- Sandbags;
- Sheet piles;
- Soil or rock wrapped with Geosynthetic Type R1;
- Water filled bladder;
- Impermeable containers; or
- Prefabricated dams.

2. Work Area Dewatering

Operate the dewatering system within the work area to prevent any change in water quality of the water body. Before beginning dewatering of the work area, provide an inlet control system that limits sediment from entering the system and provide a stabilized discharge from the dewatering system.

Inlet control systems may include:

- Surface skimmers;
- Aggregate filled perforated containers; or
- Inlet filter sock.

Stabilized discharges may include:

- Dewatering basin;
- Sediment bag; or

- Filtering through vegetation.

Design and operate the discharge so that there is no visible sediment plume present in the water body and the discharge causes no additional erosion or sediment.

Do not discharge water directly to the water body or the diversion.

3. Culvert Installation

Provide positive drainage from the upstream to downstream ends of the culvert and install energy dissipation measures at culvert outlets.

a. Culvert Through Existing Structure

Install pipes through the existing structure.

Construction may include using the following steps:

- (1) Install a temporary culvert through the structure.
- (2) Anchor and seal the installed pipes at the upstream impervious dike.
- (3) Extend the installed pipes through the downstream impervious dike.

b. Culvert Diversion

Install a temporary pipe crossing under the roadway near the existing culvert.

4. Channels

Construct channels with side slopes that are 2:1 or flatter with a channel bottom of sufficient width. Cover disturbed slopes and channel bottom with Geosynthetic Material, Type R1. Overlap splices and joints placed at least 36 inches. Secure the liner using methods that will ensure that the liner will not be disturbed by the design flows shown in Appendix A. Potential methods of securing the liner may include:

- Staples;
- Pins;
- Sandbags; or
- Riprap.

Patch damaged areas by overlapping the tear a minimum of 36 inches with geosynthetic and secure the perimeter of the patch area. Install fiber rolls or silt fence along the top of the channel to prevent any sediment or debris from entering the channel. Connect the downstream end of the channel before connecting the upstream end of the channel to the existing water body.

5. Diversion Pumping

Place an inlet control system at pump inlets. An inlet control systems may include:

- Surface skimmers;
- Aggregate filled perforated containers; or
- Inlet filter sock.

Route the discharge hose through the structure or work area.

Design and operate the discharge so that no visible sediment plume is present in the water body and so the discharge causes no additional erosion of the water body.

C. Diversion Removal

Do not begin removal of the temporary diversion until the construction activities relating to the structure are complete and all permanent erosion and sediment control devices are in place. Remove the diversion in a manner that prevents soil/water interaction.

Remove all materials used to construct the diversion. Restore the area affected by the temporary diversion to the same condition that existed before construction.

1. Downstream Dike

Remove the downstream dike first. Stabilize the areas above the waterline where the downstream dike was located.

2. Upstream Dike

Remove the upstream dike to restore normal flow through the structure before removal of any devices used to create the diversion. Stabilize the areas above the waterline where the upstream dike was located.

a. Suspended Pipe

Remove the suspended pipe at the same time as removing the upstream dike.

b. Channel and Pipe Diversion

Remove the upstream dike and construct a dike to prevent water from entering the channel or pipe diversion.

3. Pipe

Remove pipe after the stream has been restored to normal flow.

4. Channel

Backfill temporary channels outside of the roadway embankment as specified in Section 203.04 E.3, "Compaction Control, Type B". When backfilling roadway embankment areas, benching of slopes will be required as specified in Section 203.04 E.1, "General".

Method of Measurement and Basis of Payment

Include the cost for installation, maintenance, and removal of erosion control devices used in conjunction with the stream diversion in the contract unit price for "Temporary Stream Diversion" per EA. 75% of payment will be made when the diversion is installed and 25% will be made after it is removed and restored. Such payment is full compensation for designing, furnishing all equipment, material, labor, and other incidentals to complete the work as specified.

Structure Replacement Project
Bridge 30-114-08.1 – Frontage Road N Glen Ullin
Morton County Highway Department

Apex Project # 22.517.0045
Owner Project # Work Order 2232

Section 00820 - Permits & Environmental Considerations

This Special Provision incorporates the US Army Corps of Engineers (USACE) Nationwide Permit Number 14 and the North Dakota Department of Transportation (NDDOT) Agreement to Enter and Do Work on Highway Right of Way into the bidder's proposal.

The Contractor is responsible for complying with all the terms and conditions as contained in the permit(s) attached hereto. Bidders will become familiar with all standard conditions and special conditions of the permit(s) and submit their bid for the construction of this project based on the following:

- **US Army Corps of Engineers (USACE) – Nationwide Permit Number (NWP) NWP 14 Linear Transportation Projects**

The NWP 14 Permit, NWO-2023-554-BIS, authorizes the replacement of Structure 30-114-08.1 with two double 11'x8'x84' precast reinforced concrete box culverts located on 38th Street. As part of the project a temporary bypass would be constructed across Haymarsh Creek to allow local traffic during construction. Following construction, the temporary bypass would be removed and returned to pre-existing contours and conditions. As a result of the proposed project, it will permanently impact approximately 0.33-acres of other waters and permanently impact approximately 0.062-acres of wetlands.

- **North Dakota Department of Transportation (NDDOT) – Agreement to Enter and Do Work on Highway Right of Way**

Authorizes Morton County to enter and do work on NDDOT Highway Right of Way. The Contractor will not be allowed to stage materials or equipment on NDDOT right of way.

The Contractor is responsible for preparing and submitting Permit(s) for any additional impacts not authorized by the attached Permit(s) obtained by Morton County. The Contractor is responsible for any delays associated with obtaining any additional Permit(s).



DEPARTMENT OF THE ARMY
CORPS OF ENGINEERS, OMAHA DISTRICT
NORTH DAKOTA REGULATORY OFFICE
3319 UNIVERSITY DRIVE
BISMARCK, NORTH DAKOTA 58504-7565

July 28, 2023

NWO-2023-554-BIS

Morton County Highway Department
Attn: Mr. John Saiki
2916 37th Street NW
Mandan, North Dakota 58554

Dear Mr. Saiki:

We are responding to your July 25, 2023, request for a Department of the Army permit for the Haymarsh Creek Structure 30-114-08.1 Replacement project. The project site is located at Latitude 46.862075° North, Longitude -101.818195° West, Section 8, Township 139 North, Range 88 West, Morton County, North Dakota.

Based on the information you provided to this office, Morton County is replacing Structure 30-114-08.1 with two double 11'x8'x84' precast reinforced concrete box culverts located on 38th Street. As part of the project a temporary bypass would be constructed across Haymarsh Creek to allow continued traffic during construction. Following construction the temporary bypass would be removed and returned to pre-existing contours and conditions. As a result of the proposed project, it will permanently impact approximately 0.33-acres of other waters and permanently impact approximately 0.062-acres of wetlands.

We have determined activities in waters of the U.S. associated with the project are authorized by Nationwide Permit Number (NWP) **NWP 14 Linear Transportation Projects**, found in the December 27, 2021, Federal Register (86 FR 73522) and January 13, 2021, Federal Register (86 FR 2744), Reissuance and Modification of Nationwide Permits. Enclosed is a fact sheet that fully describes this Nationwide Permit and lists the General and Regional Conditions that must be adhered to for this authorization to remain valid. **Please note that deviations from the original plans and specifications of your project could require additional authorization from this office**

This determination is applicable only to the permit program administered by the Corps of Engineers. It does not eliminate the need to obtain other Federal, state, tribal and local approvals before beginning work.

You are responsible for all work accomplished in accordance with the terms and conditions of the Nationwide Permit, **including the Regional Conditions specific to projects undertaken in North Dakota**. Information about the NWP and regional

conditions are available at <http://www.nwo.usace.army.mil/Missions/Regulatory-Program/North-Dakota/>. If a contractor or other authorized representative will be accomplishing the work authorized by the Nationwide Permit on your behalf, it is strongly recommended that they be provided a copy of this letter and the attached conditions so that they are aware of the limitations of the applicable Nationwide Permit. Any activity that fails to comply with all of the terms and conditions of the Nationwide Permit will be considered unauthorized and subject to appropriate enforcement action.

In addition, your work must comply with the following Special Conditions:

1. To compensate for the loss of 0.033 acres of other waters and 0.062-acres of wetlands resources, you shall establish 0.062-acres of wetlands and 0.033-acres of other waters within the site described in the Compensatory Wetland Mitigation Plan; Structure 30-114-08.1 Bridge Replacement in Morton County document, dated July 2023, prepared by Ms. Kayla Block-Torgerson. You shall fully comply with all requirements of the Compensatory Wetland Mitigation Plan; Structure 30-114-08.1 Bridge Replacement in Morton County.

2. The Permittee's responsibility to complete the required compensatory mitigation, as set forth in the Compensatory Mitigation Special Condition of this permit, will not be considered fulfilled until mitigation success has been demonstrated and written verification has been provided by the Corps. A mitigation area which has been released will no longer require monitoring or reporting by the Permittee; however the Permittee, Successors and subsequent Transferees remain responsible to ensure that the mitigation area(s) remain in a condition appropriate to offset the authorized impacts in accordance with the approved mitigation and monitoring plan and the general and special conditions of this permit.

Within 30 days after completion of the authorized work, you must sign the enclosed Compliance Certification and return it to this office.

This verification will be valid until **March 14, 2026**. If the nationwide permit is modified, suspended, or revoked prior to this date, but is reissued without modification or the activity complies with any subsequent modification, this authorization remains valid until the expiration date. If the nationwide permit is modified, suspended, or revoked, and construction has commenced or is under contract to commence before the date that the relevant nationwide permit is modified or revoked, you will have twelve (12) months from the date of the modification or revocation to complete the activity under the present terms and conditions.

The Omaha District, North Dakota Regulatory Office is committed to providing quality and timely service to our customers. In an effort to improve customer service, please take a moment to complete our Customer Service Survey found on our website at <https://regulatory.ops.usace.army.mil/customer-service-survey/>. If you do not have Internet access, you may call and request a paper copy of the survey that you can complete and return to us by mail or fax.

Please refer to identification number NWO-2023-554-BIS in any correspondence concerning this project. If you have any questions, please contact Benjamin Reile at the North Dakota Regulatory Office, 3319 University Drive, Bismarck, North Dakota 58504, by email at Benjamin.D.Reile@usace.army.mil, or telephone at (701) 255-0015, Ext. 2013.

Sincerely,

Benjamin D. Reile

Benjamin D. Reile
Senior Project Manager
North Dakota

Cf: Kayla Block-Torgerson, Apex Engineering Group

COMPLIANCE CERTIFICATION

Permit File Name: Morton County Haymarsh Creek Structure 30-114-08.1
Replacement Project

Action ID: NWO-2023-554-BIS

Nationwide Permit Number: NWP 14 Linear Transportation Projects

Permittee: Morton County Highway Department
Attn: Mr. John Saiki
2916 37th Street NW
Mandan, North Dakota 58554

County: Morton County

Date of Verification: July 28, 2023

Within 30 days after completion of the activity authorized by this permit, sign this certification and return it to the following address:

U.S. Army Corps of Engineers, Omaha District
North Dakota Regulatory Office
3319 University Drive
Bismarck, North Dakota 58504
CENWO-OD-RND@usace.army.mil

Please note that your permitted activity is subject to a compliance inspection by a U.S. Army Corps of Engineers representative. If you fail to comply with the terms and conditions of the permit your authorization may be suspended, modified, or revoked. If you have any questions about this certification, please contact the U.S. Army Corps of Engineers.

* * * * *

I hereby certify that the work authorized by the above-referenced permit, including all the required mitigation, was completed in accordance with the terms and conditions of the permit verification.

Permittee Signature

Date

Nationwide Permit 14: Linear Transportation Projects

Activities required for crossings of waters of the United States associated with the construction, expansion, modification, or improvement of linear transportation projects (e.g., roads, highways, railways, trails, driveways, airport runways, and taxiways) in waters of the United States. For linear transportation projects in non-tidal waters, the discharge of dredged or fill material cannot cause the loss of greater than 1/2 -acre of waters of the United States. For linear transportation projects in tidal waters, the discharge of dredged or fill material cannot cause the loss of greater than 1/3 -acre of waters of the United States. Any stream channel modification, including bank stabilization, is limited to the minimum necessary to construct or protect the linear transportation project; such modifications must be in the immediate vicinity of the project.

This NWP also authorizes temporary structures, fills, and work, including the use of temporary mats, necessary to construct the linear transportation project. Appropriate measures must be taken to maintain normal downstream flows and minimize flooding to the maximum extent practicable, when temporary structures, work, and discharges of dredged or fill material, including cofferdams, are necessary for construction activities, access fills, or dewatering of construction sites. Temporary fills must consist of materials, and be placed in a manner, that will not be eroded by expected high flows. Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The areas affected by temporary fills must be revegetated, as appropriate.

This NWP cannot be used to authorize non-linear features commonly associated with transportation projects, such as vehicle maintenance or storage buildings, parking lots, train stations, or aircraft hangars.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if: (1) The loss of waters of the United States exceeds 1/10 acre; or (2) there is a discharge of dredged or fill material in a special aquatic site, including wetlands. (See general condition 32.) (Authorities: Sections 10 and 404).



Note 1: For linear transportation projects crossing a single waterbody more than one time at separate and distant locations, or multiple waterbodies at separate and distant locations, each crossing is considered a single and complete project for purposes of NWP authorization. Linear transportation projects must comply with [33 CFR 330.6\(d\)](#).

Note 2: Some discharges of dredged or fill material for the construction of farm roads or forest roads, or temporary roads for moving mining equipment, may qualify for an exemption under Section 404(f) of the Clean Water Act (see [33 CFR 323.4](#)).

Note 3: For NWP 14 activities that require pre-construction notification, the PCN must include any other NWP(s), regional general permit(s), or individual permit(s) used or intended to be used to authorize any part of the proposed project or any related activity, including other separate and distant crossings that require Department of the Army authorization but do not require pre-construction notification (see paragraph (b)(4) of general condition 32). The district engineer will evaluate the PCN in accordance with Section D, "District Engineer's Decision." The district engineer may require mitigation to ensure that the authorized activity results in no more than minimal individual and cumulative adverse environmental effects (see general condition 23).

General Conditions

Note: To qualify for NWP authorization, the prospective permittee must comply with the following general conditions, as applicable, in addition to any regional or case-specific conditions imposed by the division engineer or district engineer. Prospective permittees should contact the appropriate Corps district office to determine if regional conditions have been imposed on an NWP. Prospective permittees should also contact the appropriate Corps district office to determine the status of Clean Water Act Section 401 water quality certification and/or Coastal Zone Management Act consistency for an NWP. Every person who may wish to obtain permit authorization under one or more NWPs, or who is currently relying on an existing or prior permit authorization under one or more NWPs, has been and is on notice that all of the provisions of [33 CFR 330.1](#) through 330.6 apply to every NWP authorization. Note especially [33 CFR 330.5](#) relating to the modification, suspension, or revocation of any NWP authorization.

1. Navigation.

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



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

(c) The permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his or her authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

2. Aquatic Life Movements.

No activity may substantially disrupt the necessary life cycle movements of those species of aquatic life indigenous to the waterbody, including those species that normally migrate through the area, unless the activity's primary purpose is to impound water. All permanent and temporary crossings of waterbodies shall be suitably culverted, bridged, or otherwise designed and constructed to maintain low flows to sustain the movement of those aquatic species. If a bottomless culvert cannot be used, then the crossing should be designed and constructed to minimize adverse effects to aquatic life movements.

3. Spawning Areas.

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

4. Migratory Bird Breeding Areas.

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

5. Shellfish Beds.



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

6. Suitable Material.

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

7. Water Supply Intakes.

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

8. Adverse Effects From Impoundments.

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

9. Management of Water Flows.

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

10. Fills Within 100-Year Floodplains.

The activity must comply with applicable FEMA-approved state or local floodplain management requirements.

11. Equipment.



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

12. Soil Erosion and Sediment Controls.

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

13. Removal of Temporary Structures and Fills.

Temporary structures must be removed, to the maximum extent practicable, after their use has been discontinued. Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The affected areas must be revegetated, as appropriate.

14. Proper Maintenance.

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

15. Single and Complete Project.

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

16. Wild and Scenic Rivers.

(a) No NWP activity may occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a “study river” for possible inclusion in the system while the river is in an official study status, unless the appropriate Federal agency with direct management responsibility for such river, has determined in writing that the proposed activity will not adversely affect the Wild and Scenic River designation or study status.

(b) If a proposed NWP activity will occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a “study river” for



possible inclusion in the system while the river is in an official study status, the permittee must submit a pre-construction notification (see general condition 32). The district engineer will coordinate the PCN with the Federal agency with direct management responsibility for that river. Permittees shall not begin the NWP activity until notified by the district engineer that the Federal agency with direct management responsibility for that river has determined in writing that the proposed NWP activity will not adversely affect the Wild and Scenic River designation or study status.

(c) Information on Wild and Scenic Rivers may be obtained from the appropriate Federal land management agency responsible for the designated Wild and Scenic River or study river (e.g., National Park Service, U.S. Forest Service, Bureau of Land Management, U.S. Fish and Wildlife Service). Information on these rivers is also available at: <http://www.rivers.gov/>.

17. Tribal Rights.

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

18. Endangered Species.

(a) No activity is authorized under any NWP which is likely to directly or indirectly jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act (ESA), or which will directly or indirectly destroy or adversely modify designated critical habitat or critical habitat proposed for such designation. No activity is authorized under any NWP which “may affect” a listed species or critical habitat, unless ESA section 7 consultation addressing the consequences of the proposed activity on listed species or critical habitat has been completed. See [50 CFR 402.02](#) for the definition of “effects of the action” for the purposes of ESA section 7 consultation, as well as [50 CFR 402.17](#), which provides further explanation under ESA section 7 regarding “activities that are reasonably certain to occur” and “consequences caused by the proposed action.”

(b) Federal agencies should follow their own procedures for complying with the requirements of the ESA (see [33 CFR 330.4\(f\)\(1\)](#)). If pre-construction notification is required for the proposed activity, the Federal permittee must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements. The district engineer will verify that the appropriate documentation has



been submitted. If the appropriate documentation has not been submitted, additional ESA section 7 consultation may be necessary for the activity and the respective federal agency would be responsible for fulfilling its obligation under section 7 of the ESA.

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

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

(e) Authorization of an activity by an NWP does not authorize the “take” of a threatened or endangered species as defined under the ESA. In the absence of separate authorization (e.g., an ESA Section 10 Permit, a Biological Opinion with



“incidental take” provisions, etc.) from the FWS or the NMFS, the Endangered Species Act prohibits any person subject to the jurisdiction of the United States to take a listed species, where “take” means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. The word “harm” in the definition of “take” means an act which actually kills or injures wildlife. Such an act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering.

(f) If the non-federal permittee has a valid ESA section 10(a)(1)(B) incidental take permit with an approved Habitat Conservation Plan for a project or a group of projects that includes the proposed NWP activity, the non-federal applicant should provide a copy of that ESA section 10(a)(1)(B) permit with the PCN required by paragraph (c) of this general condition. The district engineer will coordinate with the agency that issued the ESA section 10(a)(1)(B) permit to determine whether the proposed NWP activity and the associated incidental take were considered in the internal ESA section 7 consultation conducted for the ESA section 10(a)(1)(B) permit. If that coordination results in concurrence from the agency that the proposed NWP activity and the associated incidental take were considered in the internal ESA section 7 consultation for the ESA section 10(a)(1)(B) permit, the district engineer does not need to conduct a separate ESA section 7 consultation for the proposed NWP activity. The district engineer will notify the non-federal applicant within 45 days of receipt of a complete pre-construction notification whether the ESA section 10(a)(1)(B) permit covers the proposed NWP activity or whether additional ESA section 7 consultation is required.

(g) Information on the location of threatened and endangered species and their critical habitat can be obtained directly from the offices of the FWS and NMFS or their world wide web pages at <http://www.fws.gov/> or <http://www.fws.gov/ipac> and <http://www.nmfs.noaa.gov/pr/species/esa/> respectively.

19. Migratory Birds and Bald and Golden Eagles.

The permittee is responsible for ensuring that an action authorized by an NWP complies with the Migratory Bird Treaty Act and the Bald and Golden Eagle Protection Act. The permittee is responsible for contacting the appropriate local office of the U.S. Fish and Wildlife Service to determine what measures, if any, are necessary or



appropriate to reduce adverse effects to migratory birds or eagles, including whether “incidental take” permits are necessary and available under the Migratory Bird Treaty Act or Bald and Golden Eagle Protection Act for a particular activity.

20. Historic Properties.

(a) No activity is authorized under any NWP which may have the potential to cause effects to properties listed, or eligible for listing, in the National Register of Historic Places until the requirements of Section 106 of the National Historic Preservation Act (NHPA) have been satisfied.

(b) Federal permittees should follow their own procedures for complying with the requirements of section 106 of the National Historic Preservation Act (see [33 CFR 330.4\(g\)\(1\)](#)). If pre-construction notification is required for the proposed NWP activity, the Federal permittee must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements. The district engineer will verify that the appropriate documentation has been submitted. If the appropriate documentation is not submitted, then additional consultation under section 106 may be necessary. The respective federal agency is responsible for fulfilling its obligation to comply with section 106.

(c) Non-federal permittees must submit a pre-construction notification to the district engineer if the NWP activity might have the potential to cause effects to any historic properties listed on, determined to be eligible for listing on, or potentially eligible for listing on the National Register of Historic Places, including previously unidentified properties. For such activities, the pre-construction notification must state which historic properties might have the potential to be affected by the proposed NWP activity or include a vicinity map indicating the location of the historic properties or the potential for the presence of historic properties. Assistance regarding information on the location of, or potential for, the presence of historic properties can be sought from the State Historic Preservation Officer, Tribal Historic Preservation Officer, or designated tribal representative, as appropriate, and the National Register of Historic Places (see [33 CFR 330.4\(g\)](#)). When reviewing pre-construction notifications, district engineers will comply with the current procedures for addressing the requirements of section 106 of the National Historic Preservation Act. The district engineer shall make a reasonable and good faith effort to carry out appropriate identification efforts commensurate with



potential impacts, which may include background research, consultation, oral history interviews, sample field investigation, and/or field survey. Based on the information submitted in the PCN and these identification efforts, the district engineer shall determine whether the proposed NWP activity has the potential to cause effects on the historic properties. Section 106 consultation is not required when the district engineer determines that the activity does not have the potential to cause effects on historic properties (see [36 CFR 800.3\(a\)](#)). Section 106 consultation is required when the district engineer determines that the activity has the potential to cause effects on historic properties. The district engineer will conduct consultation with consulting parties identified under [36 CFR 800.2\(c\)](#) when he or she makes any of the following effect determinations for the purposes of section 106 of the NHPA: No historic properties affected, no adverse effect, or adverse effect.

(d) Where the non-Federal applicant has identified historic properties on which the proposed NWP activity might have the potential to cause effects and has so notified the Corps, the non-Federal applicant shall not begin the activity until notified by the district engineer either that the activity has no potential to cause effects to historic properties or that NHPA section 106 consultation has been completed. For non-federal permittees, the district engineer will notify the prospective permittee within 45 days of receipt of a complete pre-construction notification whether NHPA section 106 consultation is required. If NHPA section 106 consultation is required, the district engineer will notify the non-Federal applicant that he or she cannot begin the activity until section 106 consultation is completed. If the non-Federal applicant has not heard back from the Corps within 45 days, the applicant must still wait for notification from the Corps.

(e) Prospective permittees should be aware that section 110k of the NHPA ([54 U.S.C. 306113](#)) prevents the Corps from granting a permit or other assistance to an applicant who, with intent to avoid the requirements of section 106 of the NHPA, has intentionally significantly adversely affected a historic property to which the permit would relate, or having legal power to prevent it, allowed such significant adverse effect to occur, unless the Corps, after consultation with the Advisory Council on Historic Preservation (ACHP), determines that circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant. If circumstances justify granting the assistance, the Corps is required to notify the ACHP and provide documentation specifying the circumstances, the degree of damage to the integrity of



any historic properties affected, and proposed mitigation. This documentation must include any views obtained from the applicant, SHPO/THPO, appropriate Indian tribes if the undertaking occurs on or affects historic properties on tribal lands or affects properties of interest to those tribes, and other parties known to have a legitimate interest in the impacts to the permitted activity on historic properties.

21. Discovery of Previously Unknown Remains and Artifacts.

Permittees that discover any previously unknown historic, cultural or archeological remains and artifacts while accomplishing the activity authorized by an NWP, they must immediately notify the district engineer of what they have found, and to the maximum extent practicable, avoid construction activities that may affect the remains and artifacts until the required coordination has been completed. The district engineer will initiate the Federal, Tribal, and state coordination required to determine if the items or remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

22. Designated Critical Resource Waters.

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

(a) Discharges of dredged or fill material into waters of the United States are not authorized by NWPs 7, 12, 14, 16, 17, 21, 29, 31, 35, 39, 40, 42, 43, 44, 49, 50, 51, 52, 57 and 58 for any activity within, or directly affecting, critical resource waters, including wetlands adjacent to such waters.

(b) For NWPs 3, 8, 10, 13, 15, 18, 19, 22, 23, 25, 27, 28, 30, 33, 34, 36, 37, 38, and 54, notification is required in accordance with general condition 32, for any activity proposed by permittees in the designated critical resource waters including wetlands adjacent to those waters. The district engineer may authorize activities under these NWPs only after she or he determines that the impacts to the critical resource waters will be no more than minimal.



23. Mitigation.

The district engineer will consider the following factors when determining appropriate and practicable mitigation necessary to ensure that the individual and cumulative adverse environmental effects are no more than minimal:

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

(b) Mitigation in all its forms (avoiding, minimizing, rectifying, reducing, or compensating for resource losses) will be required to the extent necessary to ensure that the individual and cumulative adverse environmental effects are no more than minimal.

(c) Compensatory mitigation at a minimum one-for-one ratio will be required for all wetland losses that exceed 1/10-acre and require pre-construction notification, unless the district engineer determines in writing that either some other form of mitigation would be more environmentally appropriate or the adverse environmental effects of the proposed activity are no more than minimal, and provides an activity-specific waiver of this requirement. For wetland losses of 1/10-acre or less that require pre-construction notification, the district engineer may determine on a case-by-case basis that compensatory mitigation is required to ensure that the activity results in only minimal adverse environmental effects.

(d) Compensatory mitigation at a minimum one-for-one ratio will be required for all losses of stream bed that exceed 3/100-acre and require pre-construction notification, unless the district engineer determines in writing that either some other form of mitigation would be more environmentally appropriate or the adverse environmental effects of the proposed activity are no more than minimal, and provides an activity-specific waiver of this requirement. This compensatory mitigation requirement may be satisfied through the restoration or enhancement of riparian areas next to streams in accordance with paragraph (e) of this general condition. For losses of stream bed of 3/100-acre or less that require pre-construction notification, the district engineer may determine on a case-by-case basis that compensatory mitigation is required to ensure that the activity results in only minimal adverse environmental effects. Compensatory mitigation for losses of streams should be provided, if practicable, through stream



rehabilitation, enhancement, or preservation, since streams are difficult-to-replace resources (see [33 CFR 332.3\(e\)\(3\)](#)).

(e) Compensatory mitigation plans for NWP activities in or near streams or other open waters will normally include a requirement for the restoration or enhancement, maintenance, and legal protection (e.g., conservation easements) of riparian areas next to open waters. In some cases, the restoration or maintenance/protection of riparian areas may be the only compensatory mitigation required. If restoring riparian areas involves planting vegetation, only native species should be planted. The width of the required riparian area will address documented water quality or aquatic habitat loss concerns. Normally, the riparian area will be 25 to 50 feet wide on each side of the stream, but the district engineer may require slightly wider riparian areas to address documented water quality or habitat loss concerns. If it is not possible to restore or maintain/protect a riparian area on both sides of a stream, or if the waterbody is a lake or coastal waters, then restoring or maintaining/protecting a riparian area along a single bank or shoreline may be sufficient. Where both wetlands and open waters exist on the project site, the district engineer will determine the appropriate compensatory mitigation (e.g., riparian areas and/or wetlands compensation) based on what is best for the aquatic environment on a watershed basis. In cases where riparian areas are determined to be the most appropriate form of minimization or compensatory mitigation, the district engineer may waive or reduce the requirement to provide wetland compensatory mitigation for wetland losses.

(f) Compensatory mitigation projects provided to offset losses of aquatic resources must comply with the applicable provisions of [33 CFR part 332](#).

(1) The prospective permittee is responsible for proposing an appropriate compensatory mitigation option if compensatory mitigation is necessary to ensure that the activity results in no more than minimal adverse environmental effects. For the NWPs, the preferred mechanism for providing compensatory mitigation is mitigation bank credits or in-lieu fee program credits (see [33 CFR 332.3\(b\)\(2\)](#) and (3)). However, if an appropriate number and type of mitigation bank or in-lieu credits are not available at the time the PCN is submitted to the district engineer, the district engineer may approve the use of permittee-responsible mitigation.

(2) The amount of compensatory mitigation required by the district engineer must be sufficient to ensure that the authorized activity results in no more than minimal individual and cumulative adverse environmental effects (see [33 CFR 330.1\(e\)\(3\)](#)). (See also [33 CFR 332.3\(f\)](#).)

(3) Since the likelihood of success is greater and the impacts to potentially valuable uplands are reduced, aquatic resource restoration should be the first compensatory mitigation option considered for permittee-responsible mitigation.

(4) If permittee-responsible mitigation is the proposed option, the prospective permittee is responsible for submitting a mitigation plan. A conceptual or detailed mitigation plan may be used by the district engineer to make the decision on the NWP verification request, but a final mitigation plan that addresses the applicable requirements of [33 CFR 332.4\(c\)\(2\)](#) through (14) must be approved by the district engineer before the permittee begins work in waters of the United States, unless the district engineer determines that prior approval of the final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation (see [33 CFR 332.3\(k\)\(3\)](#)). If permittee-responsible mitigation is the proposed option, and the proposed compensatory mitigation site is located on land in which another federal agency holds an easement, the district engineer will coordinate with that federal agency to determine if proposed compensatory mitigation project is compatible with the terms of the easement.

(5) If mitigation bank or in-lieu fee program credits are the proposed option, the mitigation plan needs to address only the baseline conditions at the impact site and the number of credits to be provided (see [33 CFR 332.4\(c\)\(1\)\(ii\)](#)).

(6) Compensatory mitigation requirements (e.g., resource type and amount to be provided as compensatory mitigation, site protection, ecological performance standards, monitoring requirements) may be addressed through conditions added to the NWP authorization, instead of components of a compensatory mitigation plan (see [33 CFR 332.4\(c\)\(1\)\(ii\)](#)).

(g) Compensatory mitigation will not be used to increase the acreage losses allowed by the acreage limits of the NWPs. For example, if an NWP has an acreage limit of 1/2-acre, it cannot be used to authorize any NWP activity resulting in the loss of greater than 1/2-acre of waters of the United States, even if compensatory mitigation is



provided that replaces or restores some of the lost waters. However, compensatory mitigation can and should be used, as necessary, to ensure that an NWP activity already meeting the established acreage limits also satisfies the no more than minimal impact requirement for the NWPs.

(h) Permittees may propose the use of mitigation banks, in-lieu fee programs, or permittee-responsible mitigation. When developing a compensatory mitigation proposal, the permittee must consider appropriate and practicable options consistent with the framework at [33 CFR 332.3\(b\)](#). For activities resulting in the loss of marine or estuarine resources, permittee-responsible mitigation may be environmentally preferable if there are no mitigation banks or in-lieu fee programs in the area that have marine or estuarine credits available for sale or transfer to the permittee. For permittee-responsible mitigation, the special conditions of the NWP verification must clearly indicate the party or parties responsible for the implementation and performance of the compensatory mitigation project, and, if required, its long-term management.

(i) Where certain functions and services of waters of the United States are permanently adversely affected by a regulated activity, such as discharges of dredged or fill material into waters of the United States that will convert a forested or scrub-shrub wetland to a herbaceous wetland in a permanently maintained utility line right-of-way, mitigation may be required to reduce the adverse environmental effects of the activity to the no more than minimal level.

24. Safety of Impoundment Structures.

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

25. Water Quality.

(a) Where the certifying authority (state, authorized tribe, or EPA, as appropriate) has not previously certified compliance of an NWP with CWA section 401, a CWA section 401 water quality certification for the proposed discharge must be obtained or waived (see [33 CFR 330.4\(c\)](#)). If the permittee cannot comply with all of the conditions of a



water quality certification previously issued by certifying authority for the issuance of the NWP, then the permittee must obtain a water quality certification or waiver for the proposed discharge in order for the activity to be authorized by an NWP.

(b) If the NWP activity requires pre-construction notification and the certifying authority has not previously certified compliance of an NWP with CWA section 401, the proposed discharge is not authorized by an NWP until water quality certification is obtained or waived. If the certifying authority issues a water quality certification for the proposed discharge, the permittee must submit a copy of the certification to the district engineer. The discharge is not authorized by an NWP until the district engineer has notified the permittee that the water quality certification requirement has been satisfied by the issuance of a water quality certification or a waiver.

(c) The district engineer or certifying authority may require additional water quality management measures to ensure that the authorized activity does not result in more than minimal degradation of water quality.

26. Coastal Zone Management.

In coastal states where an NWP has not previously received a state coastal zone management consistency concurrence, an individual state coastal zone management consistency concurrence must be obtained, or a presumption of concurrence must occur (see [33 CFR 330.4\(d\)](#)). If the permittee cannot comply with all of the conditions of a coastal zone management consistency concurrence previously issued by the state, then the permittee must obtain an individual coastal zone management consistency concurrence or presumption of concurrence in order for the activity to be authorized by an NWP. The district engineer or a state may require additional measures to ensure that the authorized activity is consistent with state coastal zone management requirements.

27. Regional and Case-By-Case Conditions.

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

28. Use of Multiple Nationwide Permits.

Contents adapted from the Federal Register ([86 FR 73522](#)) published on Dec. 27, 21 and Federal Register ([86 FR 2744](#)) published on Jan. 13, 2021.



The use of more than one NWP for a single and complete project is authorized, subject to the following restrictions:

(a) If only one of the NWPs used to authorize the single and complete project has a specified acreage limit, the acreage loss of waters of the United States cannot exceed the acreage limit of the NWP with the highest specified acreage limit. For example, if a road crossing over tidal waters is constructed under NWP 14, with associated bank stabilization authorized by NWP 13, the maximum acreage loss of waters of the United States for the total project cannot exceed 1/3-acre.

(b) If one or more of the NWPs used to authorize the single and complete project has specified acreage limits, the acreage loss of waters of the United States authorized by those NWPs cannot exceed their respective specified acreage limits. For example, if a commercial development is constructed under NWP 39, and the single and complete project includes the filling of an upland ditch authorized by NWP 46, the maximum acreage loss of waters of the United States for the commercial development under NWP 39 cannot exceed 1/2-acre, and the total acreage loss of waters of United States due to the NWP 39 and 46 activities cannot exceed 1 acre.

29. Transfer of Nationwide Permit Verifications.

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

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

(Transferee)

(Date)



30. Compliance Certification.

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

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

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

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

The completed certification document must be submitted to the district engineer within 30 days of completion of the authorized activity or the implementation of any required compensatory mitigation, whichever occurs later.

31. Activities Affecting Structures or Works Built by the United States.

If an NWP activity also requires review by, or permission from, the Corps pursuant to [33 U.S.C. 408](#) because it will alter or temporarily or permanently occupy or use a U.S. Army Corps of Engineers (USACE) federally authorized Civil Works project (a "USACE project"), the prospective permittee must submit a pre-construction notification. See paragraph (b)(10) of general condition 32. An activity that requires section 408 permission and/or review is not authorized by an NWP until the appropriate Corps office issues the section 408 permission or completes its review to alter, occupy, or use the USACE project, and the district engineer issues a written NWP verification.

32. Pre-Construction Notification.

Contents adapted from the Federal Register ([86 FR 73522](#)) published on Dec. 27, 21 and Federal Register ([86 FR 2744](#)) published on Jan. 13, 2021.



(a) *Timing.* Where required by the terms of the NWP, the prospective permittee must notify the district engineer by submitting a pre-construction notification (PCN) as early as possible. The district engineer must determine if the PCN is complete within 30 calendar days of the date of receipt and, if the PCN is determined to be incomplete, notify the prospective permittee within that 30 day period to request the additional information necessary to make the PCN complete. The request must specify the information needed to make the PCN complete. As a general rule, district engineers will request additional information necessary to make the PCN complete only once. However, if the prospective permittee does not provide all of the requested information, then the district engineer will notify the prospective permittee that the PCN is still incomplete and the PCN review process will not commence until all of the requested information has been received by the district engineer. The prospective permittee shall not begin the activity until either:

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

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



NWP may be modified, suspended, or revoked only in accordance with the procedure set forth in [33 CFR 330.5\(d\)\(2\)](#).

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

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

(2) Location of the proposed activity;

(3) Identify the specific NWP or NWP(s) the prospective permittee wants to use to authorize the proposed activity;

(4) (i) A description of the proposed activity; the activity's purpose; direct and indirect adverse environmental effects the activity would cause, including the anticipated amount of loss of wetlands, other special aquatic sites, and other waters expected to result from the NWP activity, in acres, linear feet, or other appropriate unit of measure; a description of any proposed mitigation measures intended to reduce the adverse environmental effects caused by the proposed activity; and any other NWP(s), regional general permit(s), or individual permit(s) used or intended to be used to authorize any part of the proposed project or any related activity, including other separate and distant crossings for linear projects that require Department of the Army authorization but do not require pre-construction notification. The description of the proposed activity and any proposed mitigation measures should be sufficiently detailed to allow the district engineer to determine that the adverse environmental effects of the activity will be no more than minimal and to determine the need for compensatory mitigation or other mitigation measures.

(ii) For linear projects where one or more single and complete crossings require pre-construction notification, the PCN must include the quantity of anticipated losses of wetlands, other special aquatic sites, and other waters for each single and complete crossing of those wetlands, other special aquatic sites, and other waters (including those single and complete crossings authorized by an NWP but do not require PCNs). This information will be used by the district engineer to evaluate the cumulative adverse environmental effects of the proposed linear project, and does not change those non-PCN NWP activities into NWP PCNs.



(iii) Sketches should be provided when necessary to show that the activity complies with the terms of the NWP. (Sketches usually clarify the activity and when provided results in a quicker decision. Sketches should contain sufficient detail to provide an illustrative description of the proposed activity (e.g., a conceptual plan), but do not need to be detailed engineering plans);

(5) The PCN must include a delineation of wetlands, other special aquatic sites, and other waters, such as lakes and ponds, and perennial and intermittent streams, on the project site. Wetland delineations must be prepared in accordance with the current method required by the Corps. The permittee may ask the Corps to delineate the special aquatic sites and other waters on the project site, but there may be a delay if the Corps does the delineation, especially if the project site is large or contains many wetlands, other special aquatic sites, and other waters. Furthermore, the 45-day period will not start until the delineation has been submitted to or completed by the Corps, as appropriate;

(6) If the proposed activity will result in the loss of greater than 1/10-acre of wetlands or 3/100-acre of stream bed and a PCN is required, the prospective permittee must submit a statement describing how the mitigation requirement will be satisfied, or explaining why the adverse environmental effects are no more than minimal and why compensatory mitigation should not be required. As an alternative, the prospective permittee may submit a conceptual or detailed mitigation plan.

(7) For non-federal permittees, if any listed species (or species proposed for listing) or designated critical habitat (or critical habitat proposed for such designation) might be affected or is in the vicinity of the activity, or if the activity is located in designated critical habitat (or critical habitat proposed for such designation), the PCN must include the name(s) of those endangered or threatened species (or species proposed for listing) that might be affected by the proposed activity or utilize the designated critical habitat (or critical habitat proposed for such designation) that might be affected by the proposed activity. For NWP activities that require pre-construction notification, Federal permittees must provide documentation demonstrating compliance with the Endangered Species Act;

(8) For non-federal permittees, if the NWP activity might have the potential to cause effects to a historic property listed on, determined to be eligible for listing on, or



potentially eligible for listing on, the National Register of Historic Places, the PCN must state which historic property might have the potential to be affected by the proposed activity or include a vicinity map indicating the location of the historic property. For NWP activities that require pre-construction notification, Federal permittees must provide documentation demonstrating compliance with section 106 of the National Historic Preservation Act;

(9) For an activity that will occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a “study river” for possible inclusion in the system while the river is in an official study status, the PCN must identify the Wild and Scenic River or the “study river” (see general condition 16); and

(10) For an NWP activity that requires permission from, or review by, the Corps pursuant to [33 U.S.C. 408](#) because it will alter or temporarily or permanently occupy or use a U.S. Army Corps of Engineers federally authorized civil works project, the pre-construction notification must include a statement confirming that the project proponent has submitted a written request for section 408 permission from, or review by, the Corps office having jurisdiction over that USACE project.

(c) *Form of Pre-Construction Notification:* The nationwide permit pre-construction notification form (Form ENG 6082) should be used for NWP PCNs. A letter containing the required information may also be used. Applicants may provide electronic files of PCNs and supporting materials if the district engineer has established tools and procedures for electronic submittals.

(d) *Agency Coordination:* (1) The district engineer will consider any comments from Federal and state agencies concerning the proposed activity's compliance with the terms and conditions of the NWPs and the need for mitigation to reduce the activity's adverse environmental effects so that they are no more than minimal.

(2) Agency coordination is required for: (i) All NWP activities that require pre-construction notification and result in the loss of greater than 1/2-acre of waters of the United States; (ii) NWP 13 activities in excess of 500 linear feet, fills greater than one cubic yard per running foot, or involve discharges of dredged or fill material into special aquatic sites; and (iii) NWP 54 activities in excess of 500 linear feet, or that extend into



the waterbody more than 30 feet from the mean low water line in tidal waters or the ordinary high water mark in the Great Lakes.

(3) When agency coordination is required, the district engineer will immediately provide (e.g., via email, facsimile transmission, overnight mail, or other expeditious manner) a copy of the complete PCN to the appropriate Federal or state offices (FWS, state natural resource or water quality agency, EPA, and, if appropriate, the NMFS). With the exception of NWP 37, these agencies will have 10 calendar days from the date the material is transmitted to notify the district engineer via telephone, facsimile transmission, or email that they intend to provide substantive, site-specific comments. The comments must explain why the agency believes the adverse environmental effects will be more than minimal. If so contacted by an agency, the district engineer will wait an additional 15 calendar days before making a decision on the pre-construction notification. The district engineer will fully consider agency comments received within the specified time frame concerning the proposed activity's compliance with the terms and conditions of the NWPs, including the need for mitigation to ensure that the net adverse environmental effects of the proposed activity are no more than minimal. The district engineer will provide no response to the resource agency, except as provided below. The district engineer will indicate in the administrative record associated with each pre-construction notification that the resource agencies' concerns were considered. For NWP 37, the emergency watershed protection and rehabilitation activity may proceed immediately in cases where there is an unacceptable hazard to life or a significant loss of property or economic hardship will occur. The district engineer will consider any comments received to decide whether the NWP 37 authorization should be modified, suspended, or revoked in accordance with the procedures at [33 CFR 330.5](#).

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

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



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Further Information

1. District engineers have authority to determine if an activity complies with the terms and conditions of an NWP.
2. NWPs do not obviate the need to obtain other federal, state, or local permits, approvals, or authorizations required by law.
3. NWPs do not grant any property rights or exclusive privileges.
4. NWPs do not authorize any injury to the property or rights of others.
5. NWPs do not authorize interference with any existing or proposed Federal project (see general condition 31).



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**2021 Nationwide Permits
Regional Conditions for North Dakota
and
Omaha District - Required Best Management Practices**

The following Nationwide Permit (NWP) regional conditions will be used in the State of North Dakota. The issuance of the NWPs was announced in the January 13, 2021, issue of the Federal Register (86 FR 2744) and December 27, 2021, issue of the Federal Register (86 FR 73522). Regional conditions are placed on NWPs to ensure projects result in no more than minimal adverse impacts to the aquatic environment and to address local resources concerns.

A. PRECONSTRUCTION NOTIFICATION REQUIREMENTS APPLICABLE TO ALL NWPs OR LIMITED REVOCATION OF NWPs

For all NWPs, permittees must notify the Corps in accordance with General Condition 32 Preconstruction Notification (PCN) requirements for regulated activities located within or comprised of the following:

1. Wetlands Classified as Peatlands:

For purposes of this condition, peatlands are permanently or seasonally waterlogged areas with a surface accumulation of peat (organic matter) 30 centimeters (12 inches) or more thick. Under cool, anaerobic, and acidic conditions, the rate of organic matter accumulation exceeds organic decay. Any peat-covered areas, including fens, bogs, and muskegs, are all peatlands.

- a. PCN required for NWP 3, 5, 20, 32, 38 and 45.
- b. All NWPs not listed above are revoked for use in peatlands.

2. Waters Adjacent to Natural Springs:

PCN required for any regulated activity located within 100 feet of the water source in natural spring areas. For purposes of this condition, a spring source is defined as any location where there is flow emanating from a distinct point at any time during the growing season. Springs do not include seeps and other groundwater discharge areas where there is no distinct point source.

Springs do not include drain tile outlets.

3. Bank Stabilization Activities:

PCN required for any regulated activity that involves bank stabilization impacting an area greater than 1/10 of an acre below the Ordinary High Water Mark or includes features that extend out from the existing bank line greater than 25% of the bankfull channel width.

4. Specific Waterways:

PCN required for any regulated activity occurring in or under the Missouri River, including Lake Sakakawea and Lake Oahe. In addition, a PCN is required for any activity occurring in an off channel area (e.g. marinas and bays) of any of these waterways.



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B. PRECONSTRUCTION NOTIFICATION REQUIREMENTS APPLICABLE TO SPECIFIC NWP

1. NWP 23 – Approved Categorical Exclusions:

In addition to PCN requirements identified in Regulatory Guidance Letter (RGL) 05-07 or the applicable Corps RGL, PCN is required prior to initiating any regulated activity under NWP 23 that would permanently impact an area greater than 1/2 an acre of waters of the United States. In addition to information required for PCN, the applicant must identify the approved categorical exclusion that applies in RGL 05-07 or the applicable Corps RGL and provide documentation that the project fits the categorical exclusion.

C. BEST MANAGEMENT PRACTICES

Required Best Management Practices:

In addition to the Regional Conditions above, additional required best management practices apply to NWPs within the Omaha District follow. These are also available at:

<https://www.nwo.usace.army.mil/Missions/Regulatory-Program/Nation-Wide-Permit-Information/>

The following Nationwide Permit regional condition best management practices are required for Montana, Nebraska, North Dakota, South Dakota, and Wyoming in the Omaha District. The issuance of the NWPs was announced in the January 13, 2021, issue of the Federal Register (86 FR 2744) and December 27, 2021, issue of the Federal Register (86 FR 73522). Regional conditions are placed on NWPs to ensure projects result in no more than minimal adverse impacts to the aquatic environment and to address local resources concerns.

A. REQUIRED BEST MANAGEMENT PRACTICES APPLICABLE TO MONTANA, NEBRASKA, NORTH DAKOTA, SOUTH DAKOTA, AND WYOMING

1. Suitable Material:

Permittees are reminded of General Condition No. 6 which prohibits use of unsuitable material. A list of materials prohibited or restricted as fill material in waters of the United States can be found at:

<http://www.nwo.usace.army.mil/Media/FactSheets/FactSheetArticleView/tabid/2034/Article/12320/prohibited-restricted-materials.aspx>

PARAGRAPHS PERTAINING TO ALL STATES EXCEPT NORTH DAKOTA HAVE BEEN REMOVED FROM THIS VERSION FOR CLARITY.

B. NORTH DAKOTA REQUIRED BEST MANAGEMENT PRACTICES

2. Minimum Culvert Width:

For all NWPs in jurisdictional streams, the culvert opening width of a stream crossing shall not be less than the mean bank to bank width as measured from the Ordinary High Water Mark in the affected stream reach. In stable stream channels, the Ordinary High Water Mark is often found at the point where over-bank flow begins during a flood event. In incised stream channels that do not frequently access a floodplain or upper terrace, the Ordinary High Water Mark is generally located within the entrenched channel. The Ordinary High Water Mark may be identified by observing indicators such as a distinct change in slope, a change in vegetation characteristics, or a change in sediment characteristics, see 33 CFR 328.3(e).



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3. Culvert Countersink Depth:

For all NWP in jurisdictional streams and a stable stream bed, culvert stream crossings shall be installed with the culvert invert set below the natural stream channel flow line according to the table below. This regional condition does not apply in instances where the lowering of the culvert invert would allow a headcut to migrate upstream of the project into an unaffected stream reach or result in lowering the elevation of the stream reach.

Culvert Type	Drainage Area	Minimum Distance Culvert Invert Shall Be Lowered Below Stream Flow Line
All culvert types	< 100 acres	Not required
Pipe diameter <8.0 ft	100 to 640 acres	1/2 ft
Pipe diameter <8.0 ft	>640 acres	1.0 ft
Pipe diameter > 8.0 ft	All drainage sizes	20% of pipe diameter
Box culvert	All drainage sizes	1.0 ft

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

4. Spawning Areas:

Spawning areas and seasons can be accessed on the North Dakota Game & Fish Department’s website at: <http://gf.nd.gov/gnf/conservation/docs/spawning-restriction-exclusions.pdf>

5. Intake Structures:

- a. Intake screens with a maximum mesh opening of 1/4-inch must be provided, inspected annually, and maintained. Wire, Johnson-like, screens must have a maximum distance between wires of 1/8-inch. Water velocity at the intake screen shall not exceed 1/2-foot per second.
- b. Pumping plant sound levels will not exceed 75 dB at 50 feet.
- c. Intakes located in Lake Sakakawea, above river mile 1519, and on the Yellowstone River, are subject to the following conditions:
 - i. The intakes shall be floating.
 - ii. At the beginning of the pumping season, the intake shall be placed over water with a minimum depth of 20 feet.
 - iii. If the 20-foot depth is not attainable, then the intake shall be located over the deepest water available.
 - iv. If the water depth falls below six feet, the intake shall be moved to deeper water or the maximum intake velocity shall be limited to 1/4-foot per second.
- d. Intakes located in Lake Sakakawea, below river mile 1519, and the Missouri River below



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Garrison Dam are subject to the following conditions:

- i. The intakes shall be submerged.
 - ii. At the beginning of the pumping season, the intake will be placed at least 20 vertical feet below the existing water level.
 - iii. The intake shall be elevated 2 to 4 feet off the bottom of the river or reservoir bed.
 - iv. If the 20-foot depth is not attainable, then the intake velocity shall be limited to ¼-foot per second with intake placed at the maximum practicable attainable depth.
- e. Intakes and associated utility lines that are proposed to cross sandbars in areas designated as piping plover critical habitat are prohibited.
- f. Any temporary open trench associated with utility lines are to be closed within 30 days of excavation. This time limit may be extended by notifying the North Dakota Regulatory Office and receiving a written response that the extension is acceptable

6. Boat Docks:

To ensure that the work or structure shall not cause unreasonable obstruction to the free navigation of the navigable waters, the following conditions are required:

- a. No boat dock shall be located on a sandbar or barren sand feature. The farthest point riverward of a dock shall not exceed a total length of 30 feet from the Ordinary High Water Mark. Information Note: Issuance of this permit does not supersede authorization required by the North Dakota State Engineer's Office.
- b. Any boat dock shall be anchored to the top of the high bank.
- c. Any boat dock located within an excavated bay or marina that is off the main river channel may be anchored to the bay or marina bottom with spuds.
- d. Section 10 Waters located in the State of North Dakota are:
 - i. Bois de Sioux River
 - ii. James River Missouri River
 - iii. Red River of the North
 - iv. Upper Des Lacs Lake
 - v. Yellowstone River



**2022 Nationwide Permits
Regional Conditions
State of North Dakota
Section 401 Water Quality Certification**

The following Nationwide permit (NWP) regional conditions pertaining to Section 401 Water Quality Certification (WQC) will be used in the State of North Dakota for NWP 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 13, 14, 15, 16, 17, 18, 19, 20, 22, 23, 24, 25, 27, 28, 30, 31, 32, 33, 34, 35, 36, 37, 38, 41, 45, 46, 49, 53, 54 and 59.

The Environmental Protection Agency is responsible for providing WQC for activities that occur on Indian Lands in the State of North Dakota.

The North Dakota Department of Environmental Quality is responsible for providing WQC for Section 404 activities that occur in the State of North Dakota, excluding Indian Lands.

WQC by NWP follows:

- **NWP 1 – Aids to Navigation**
-Certification not required (Section 10 Only)
- **NWP 2 – Structures in Artificial Canals**
-Certification not required (Section 10 Only)
- **NWP 3 – Maintenance**
-EPA certified with conditions (see EPA certification following this listing).
-NDDEQ certified for all activities.
- **NWP 4 – Fish and Wildlife Harvesting, Enhancement, and Attraction Devices and Activities**
-EPA waived certification for all activities.
-NDDEQ certified for all activities.
- **NWP 5 – Scientific Measurement Devices**
-EPA certified with conditions (see EPA certification following this listing).
-NDDEQ certified for all activities.
- **NWP 6 – Survey Activities**
-EPA certified with conditions (see EPA certification following this listing).
-NDDEQ certified for all activities.
- **NWP 7 – Outfall Structures and Associated Intake Structures**
-EPA certified with conditions (see EPA certification following this listing).
-NDDEQ certified with a condition requiring a copy of the preconstruction notification (PCN) be provided for any projects affecting classified rivers, streams or lakes.
Classified waters are listed in Appendixes I and II of the State Water Quality Standards.
- **NWP 8 – Oil and Gas Structures on the Outer Continental Shelf**
-Not applicable in North Dakota

- **NWP 9 – Structures in Fleeting and Anchorage Areas**
-Certification not required (Section 10 Only)
- **NWP 10 – Mooring Buoys**
-Certification not required (Section 10 Only)
- **NWP 11 – Temporary Recreational Structures**
-Certification not required (Section 10 Only)
- **NWP 13 – Bank Stabilization**
-EPA certified with conditions (see EPA certification following this listing).
-NDDEQ certified with a condition requiring that a copy of the PCN be provided for any projects affecting classified waters.
- **NWP 14 – Linear Transportation Projects**
-EPA certified with conditions (see EPA certification following this listing).
-NDDEQ certified for all activities.
- **NWP 15 – U.S. Coast Guard Approved Bridges**
-EPA certified with conditions (see EPA certification following this listing).
-NDDEQ certified for all activities, except those affecting classified waters. Individual certification is required for projects affecting classified waters.
- **NWP 16 – Return Water From Upland Contained Disposal Areas**
-EPA denied certification and individual certification is required for all activities.
-NDDEQ certified with a condition requiring that a copy of the PCN be provided for any projects affecting classified waters.
- **NWP 17 – Hydropower Projects**
-EPA denied certification and individual certification is required for all activities.
-NDDEQ certified for all activities, except those affecting classified waters. Individual certification is required for projects affecting classified waters.
- **NWP 18 – Minor Discharges**
-EPA certified with conditions (see EPA certification following this listing).
-NDDEQ certified for all activities.
- **NWP 19 – Minor Dredging**
-EPA certified with conditions (see EPA certification following this listing).
-NDDEQ certified for all activities, provided spoils are disposed of at an upland site and are not allowed to drain back to waters of the state.
- **NWP 20 – Response Operations for Oil or Hazardous Substances**
-EPA certified with conditions (see EPA certification following this listing).
-NDDEQ certified for all activities.
- **NWP 22 – Removal of Vessels**
-EPA waived certification for all activities.
-NDDEQ certified for all activities.

- **NWP 23 – Approved Categorical Exclusions**
 - EPA certified with conditions (see EPA certification following this listing).
 - NDDEQ certified for all activities, except those impacting classified waters and bank loss exceeds 300 linear feet. Individual certification is required for the excepted projects.
- **NWP 24 – Indian Tribe or State Administered Section 404 Programs**
 - Not applicable in North Dakota.
- **NWP 25 – Structural Discharges**
 - EPA certified with conditions (see EPA certification following this listing).
 - NDDEQ certified for all activities.
- **NWP 27 – Aquatic Habitat Restoration, Establishment, and Enhancement Activities**
 - EPA certified with conditions (see EPA certification following this listing).
 - NDDEQ certified with conditions: 1) PCN must be provided for projects affecting classified waters; 2) Projects must not result in a net loss of wetland or wetland type; and 3) no in-stream berms, dams, or similar structures in classified waters, unless constructed in such a way that the stream assimilative capacity and aquatic life passage are maintained or the structures are part of a restoration project.
- **NWP 28 – Modifications of Existing Marinas**
 - Certification not required (Section 10 Only)
- **NWP 30 – Moist Soil Management for Wildlife**
 - EPA certified with conditions (see EPA certification following this listing).
 - NDDEQ certified for all activities.
- **NWP 31 – Maintenance of Existing Flood Control Facilities**
 - EPA certified with conditions (see EPA certification following this listing).
 - NDDEQ certified for all activities.
- **NWP 32– Completed Enforcement Actions**
 - EPA certified with conditions (see EPA certification following this listing).
 - NDDEQ certified with a condition requiring that a copy of the PCN be provided for any projects affecting classified waters.
- **NWP 33 – Temporary Construction, Access, and Dewatering**
 - EPA certified with conditions (see EPA certification following this listing).
 - NDDEQ certified for all activities.
- **NWP 34 – Cranberry Production Activities**
 - EPA denied certification and individual certification is required for all activities.
 - NDDEQ N/A
- **NWP 35 – Maintenance Dredging of Existing Basins**
 - Certification not required (Section 10 Only)

- **NWP 36 – Boat Ramps**
 - EPA certified with conditions (see EPA certification following this listing).
 - NDDEQ certified for all activities.
- **NWP 37 – Emergency Watershed Protection and Rehabilitation**
 - EPA certified with conditions (see EPA certification following this listing).
 - NDDEQ certified for all activities.
- **NWP 38 – Cleanup of Hazardous and Toxic Waste**
 - EPA certified with conditions (see EPA certification following this listing).
 - NDDEQ certified for all activities.
- **NWP 41 – Reshaping Existing Drainage Ditches**
 - EPA certified with conditions (see EPA certification following this listing).
 - NDDEQ certified for all activities.
- **NWP 45 – Repair of Uplands Damaged by Discrete Events**
 - EPA certified with conditions (see EPA certification following this listing).
 - NDDEQ certified for all activities.
- **NWP 46 – Discharges in Ditches**
 - EPA certified with conditions (see EPA certification following this listing).
 - NDDEQ certified for all activities.
- **NWP 49 – Coal Remining Areas**
 - EPA denied certification and individual certification is required for all activities.
 - NDDEQ certified for all activities.
- **NWP 53 – Removal of Low-Head Dams**
 - EPA denied certification and individual certification is required for all activities.
 - NDDEQ certified for all activities.
- **NWP 54 – Living Shorelines**
 - EPA waived certification for all activities.
 - NDDEQ N/A
- **NWP 59 – Water Reclamation and Reuse Facilities**
 - EPA certified with conditions (see EPA certification following this listing).
 - NDDEQ N/A

EPA certification follows.

**U.S. Environmental Protection Agency Region 8 Clean Water Act Section 401
Water Quality Certification for the U.S. Corps of Engineers CWA Section 404
2021 Nationwide Permits Reissuance**

This Certification applies to any potential point source discharges from potential projects authorized under the proposed re-issuance of the following U.S. Army Corps of Engineers CWA 404 Nationwide Permit (NWP) into waters of the United States that occur within Indian country¹ lands within the state of North Dakota: NWP 3, 4, 5, 6, 7, 13, 14, 15, 16, 17, 18, 19, 20, 22, 23, 25, 27, 30, 31, 32, 33, 34, 36, 37, 38, 41, 45, 46, 49, 53, 54, and 59/E.²

Section 401(a)(1) of the Clean Water Act requires applicants for Federal permits and licenses that may result in discharges into waters of the United States to obtain certification that potential discharges will comply with applicable provisions of the CWA, including Sections 301, 302, 303, 306 and 307. Where no state agency or tribe has authority to give such certification, the U.S. Environmental Protection Agency (EPA) is the certifying authority. In this case, the Sisseton-Wahpeton Oyate, Spirit Lake Tribe, Standing Rock Sioux Tribe, Three Affiliated Tribes (the Mandan, Hidatsa and Arikara Nation), and Turtle Mountain Band of Chippewa Indians currently are not authorized to provide CWA Section 401 certifications for discharges occurring on reservations, or any other Indian country lands, within the State of North Dakota, therefore, the EPA is making the certification decisions for discharges that may result from potential projects authorized under the proposed Corps CWA 404 NWPs listed above. Although the above Tribes currently are not authorized to provide CWA Section 401 certifications, EPA will condition certifications using Tribal water quality requirements where applicable and appropriate.

General Information

The general information provided in this section is intended to provide context for EPA's certification decision and does not itself constitute a certification condition(s). The information in this section is being provided to help project proponents comply with the terms and conditions of the CWA Section 401 certification on the NWPs on applicable Indian country lands.

- Prior to work commencing, project proponents should notify the appropriate Tribal Environmental Office.
- The project proponents for projects authorized under the NWPs should obtain all other permits, licenses, and certifications that may be required by federal, state, or tribal authority.

¹ Indian country is defined in 18 U.S.C. Section 1151. Indian country in North Dakota generally includes (1) lands within the exterior boundaries of the following Indian reservations located within North Dakota: the Fort Berthold Indian Reservation, the Spirit Lake Reservation, the Lake Traverse Reservation, the Standing Rock Sioux Reservation, and the Turtle Mountain Reservation; (2) any land held in trust by the United States for an Indian tribe; and (3) any other areas that are "Indian country" within the meaning of 18 U.S.C. Section 1151.

² This Certification does not apply to the following NWPs: 1, 2, 8, 9, 10, 11, 24, 28, and 35. The Corps has not requested certification for these NWPs. If any activity authorized by these listed NWPs may result in a discharge into a water of the United States, the project proponent should contact the Corps or EPA to determine if a CWA Section 401 certification is required. Furthermore, NWPs 12, 21, 29, 39, 40, 42, 43, 44, 48, 50, 51, 52, A/55, B/56, C/57, and D/58 were reissued in January 2021. 86 FR 2744. EPA denied certification for all these NWPs, except NWP 48. Project proponents must apply for an individual CWA Section 401 certification from EPA for all NWPs reissued in January 2021, except NWP 48, for which EPA expressly waived certification authority.

- If a project is unable to meet the enclosed conditions, or if certification is denied for an applicable NWP, the project proponent should request an individual CWA Section 401 certification from EPA. An individual certification request is subject to the requirements outlined in 40 CFR 121.
- Copies of this certification should be kept on the job site and readily available for reference.
- Pursuant to CWA section 308(a), EPA representatives may inspect the authorized activity and any mitigation areas to determine compliance with the terms and conditions of the NWP.
- If you have questions regarding this certification, or need assistance contacting the appropriate tribe, please contact EPA Region 8 at: R8CWA401@epa.gov and Aaron Blair at (303) 312-6883 or via email at blair.aaron@epa.gov or Toney Ott at (303) 312-6906 or via email at ott.toney@epa.gov. Additional information on tribes in EPA Region 8 also can be found at: <https://www.epa.gov/tribal/region-8-tribal-program>.

NWPs Granted with Conditions (121.7(d)(2))

On behalf of the tribes listed above, CWA Section 401 certification is granted with the following conditions for NWPs 3, 5, 6, 7, 13, 14, 15, 18, 19, 20, 23, 25, 27, 30, 31, 32, 33, 36, 37, 38, 41, 45, 46, and 59/E. EPA Region 8 has determined that any discharge authorized under these proposed NWPs will comply with water quality requirements, as defined in 40 C.F.R. 121.1(n), subject to the following conditions pursuant to Section 401(d). Note that all correlating justification statements and citations as required by 40 CFR 121.7(d)(2) are included in Appendix A.

General Condition 1: Point source discharges shall not occur in jurisdictional waters of these special aquatic resources: (1) fens, bogs, or other peatlands; (2) within 100 feet of the point of discharge of a known natural spring source; (3) riffle-pool complexes of streams; or (4) water sources above hanging gardens. Projects or activities expected to have potential discharges into these areas are not covered by this certification and require a project-specific CWA Section 401 certification from EPA Region 8.

A peatland is defined by the U.S. Forest Service as any type of peat covered terrain with an accumulation of at least 20 to 40 centimeters of peat within the upper 80 centimeters of the soil profile. More resources on peatlands and hanging gardens can be found here:

<https://www.fws.gov/mountain-prairie/es/fen/FWSRegion6FenPolicy1999.pdf>

https://www.fs.fed.us/wildflowers/beauty/California_Fens/what.shtml

<https://cnhp.colostate.edu/cnhpblog/2009/08/11/hanging-gardens/>

<https://springstewardshipinstitute.org/hanging-garden>

General Condition 2: Except as specified in the project plan, no debris, silt, sand, cement, concrete, oil or petroleum, organic material, or other construction related materials or wastes shall be allowed to enter or be stored within 100 feet of waters of the U.S. If materials are stored within 100 feet of waters of the U.S., the project plan shall identify the measures and controls that will be used to ensure the materials will not enter waters of the U.S. No activities shall result in an unconfined discharge of liquid cement into waters of the U.S.

Any materials not specified in the project plan that do enter waters of the U.S. shall be reported to EPA (R8CWA401@epa.gov) with a remediation plan within 15 days.

For emergency spills, including any spills of petroleum products, contact EPA's National Response Center at 1-800-424-8802, the appropriate Tribal Environmental Office, and local spill response hotlines within 24 hours.

General Condition 3: Activities that may result in a point source discharge shall occur during seasonal low flow or no flow periods. Activities that cannot meet this condition require a project-specific CWA Section 401 certification from EPA Region 8.

General Condition 4: When operating equipment or otherwise undertaking construction activities (including grouting riprap) in aquatic resources:

- Work shall be completed in the dry, unless justification for working in the wet can be documented by the project proponent prior to construction.³
- Concrete grouting shall be allowed to dry thoroughly before exposure to waters of the U.S.
- All equipment shall be cleaned prior to arriving on the project site. All equipment shall be inspected daily and prior to entering any streams or wetlands for oil, gas, diesel, anti-freeze, hydraulic fluid, and other petroleum leaks.
- All contaminated areas shall be cleaned immediately, and contaminated soil removed from the site or contained in enclosed containers. Containers shall not be stored within 100 feet of waters of the U.S. If site conditions do not allow for storage at least 100 feet away from waters of the U.S., or if the topography is such that storage can occur within 100 feet without risk to waters of the U.S., the project proponent shall document this along with the measures and controls that will be used to ensure contaminants will not enter waters of the U.S. All equipment detected with leaks shall be repaired promptly or moved offsite within 24 hours.
- Containment booms and/or absorbent material shall be available onsite. In the case of spills, containment booms and/or absorbent materials shall be employed immediately to prevent discharges from reaching waters of the U.S.

General Condition 5: For projects that require coverage under EPA's Construction General Permit, the project proponent shall submit the Stormwater Pollution Prevention Plan (SWPPP) to EPA Region 8 (R8CWA401@epa.gov).

For projects that do not require the development of a SWPPP, the project proponent shall document how the project will utilize construction techniques, including soil erosion and sediment controls, to prevent or minimize water quality degradation because of the project. Projects shall not permanently impact the overall health of the aquatic resource; beneficial uses shall not be lost or impaired.

General Condition 6: Vegetation in jurisdictional wetlands and waterbodies shall be protected except where its removal is necessary for completion of the work. Locations disturbed by construction activities shall be revegetated with appropriate native vegetation in a manner that optimizes plant establishment for the specific site (e.g., stockpiling of existing topsoil that is weed-seed free). Revegetation may include topsoil replacement, planting, seeding, fertilization, liming, and weed-free mulching. All revegetation materials, including plants and plant seed shall be on site or scheduled for delivery prior to or upon completion of the earth moving activities. Exceptions to native revegetation include agricultural lands that are being returned to crop or pasture vegetation, with Corps permission.

Where removal of vegetation occurs, the project proponent shall develop a restoration plan prior to initiating construction on the project. The restoration plan shall include measures, including but not limited to:

- The project proponent shall describe and photo document where the disturbance or removal of riparian/wetland vegetation will occur during the completion of the work.

³ See "Working in the dry: Cofferdams, in-river construction, and the United States Army Corps of Engineers" <https://usace.contentdm.oclc.org/digital/collection/p16021coll4/id/156/>

- The project proponent shall revegetate disturbed jurisdictional areas within three months of completion of construction, based on pre-disturbance or reference site conditions, including percent cover and native species diversity.
- The project proponent shall revegetate any disturbed wetland soil with native plant species. Non-native and invasive species shall not be used for restoration activities.

General Condition 7: The placement of material (discharge) for the construction of new dams is not certified, except for stream restoration projects. Activities that cannot meet this condition require a project-specific CWA Section 401 certification from EPA Region 8.

General Condition 8 – Applicable only to the following NWPs: 3, 7, 13, 14, 15, 19, 23, 27, 37, and 59/E. Project proponents shall provide notice to EPA Region 8 at least 30 days prior to commencing work in water of the U.S. to provide EPA Region 8 with the opportunity to review and inspect the activity for the purposes of determining whether any discharge from the proposed project will violate this water quality certification. In cases where the Corps requires a PCN for the applicable NWP, in accordance with Corps' National General Condition 32(b), Pre-Construction Notification (86 FR 2873), the applicant shall also provide the PCN to Region 8.

Additionally, the applicant shall include a summary of communications with the affected Tribe's water quality staff regarding the project, including any concerns or issues, in its submission to EPA.

NWP-Specific Conditions:

NWP 3, Specific Condition 1: No more than 25 cubic yards of new or additional riprap shall be placed to protect the structure or fill. If a project proponent seeking NWP authorization plans to use more than 25 cubic yards of new or additional riprap to protect the structure or fill, the project proponent shall request a project-specific CWA Section 401 certification from EPA Region 8.

NWP 3, Specific Condition 2: Bridge replacements shall span the bankfull width and/or the ordinary highwater mark of the affected waters of the U.S. Projects or activities that cannot meet this condition require a project-specific CWA Section 401 certification from EPA Region 8.

NWP 3, Specific Condition 3: Fill or dredged material shall not result in an increase in land contour height beyond the original dimensions for the repair of low water crossings, or loss of stream cross section dimensions. Original land contour dimensions shall be documented prior to construction to confirm contours are returned to these dimensions post-maintenance activities.

NWP 3, Specific Condition 4: Silt and sediment removal shall not exceed:

- 1) 50 linear feet for low water crossings; and
- 2) 100 linear feet for bridge crossings.

Projects or activities that cannot meet this condition require a project-specific CWA Section 401 certification from EPA Region 8.

NWP 7, Specific Condition 1: Construction of the outfall structure shall be placed at the streambed elevation and, at a minimum, the pipe should be sized to prevent high pressure discharge of stormwater. Pipe sizing selection methods and justification that high pressure discharge will be minimized shall be documented by the

project proponent.

NWP 7, Specific Condition 2: Outfall structures shall not be constructed in jurisdictional wetlands. If a project proponent plans to construct an outfall structure in a jurisdictional wetland, the project proponent shall request a project-specific CWA Section 401 certification from EPA Region 8.

NWP 7, Specific Condition 3: For activities that do not require a SWPPP, the project proponent shall submit to EPA, an erosion and sediment control plan prior to construction that includes outfall stabilization controls. (Projects or activities requiring a SWPPP must submit the SWPPP to EPA per General Condition 5.)

The plan shall describe type, location, and maintenance schedules for all controls to be put in place prior to, during, and after construction to stabilize all areas of the bed and bank around and adjacent to the outfall structure and associated intake structures that may be affected by outfall or stream flows, respectively. The plan shall provide for maintenance of measures, and adaptive management processes if any measures are determined to be ineffective. During monitoring and maintenance, if water quality requirements are exceeded or if measures are identified as ineffective, then descriptions of additional measures taken to ensure compliance shall be sent to EPA within 48 hours of the exceedance or measure failure.

Rip rap aprons and/or energy dissipation structures shall be constructed to provide protection from the erosive potential of high-velocity flows, as documented in the erosion and sediment control plan, with adaptive management in place for potential structure failures.

NWP 7, Specific Condition 4: The project proponent shall submit a monitoring plan to EPA Region 8 prior to initiating construction on the project.

- The project proponent shall monitor the project site through the next growing season or until the site is restored to pre-disturbance or reference site conditions. The monitoring plan shall contain the restoration plan (as outlined in General Condition 6) and any additional adaptive management methods if the site is not achieving pre-disturbance or reference site conditions.
- The project proponent shall use referenced photographs to document the status of all relevant locations at the project site prior to construction, during project construction, after project completion, and upon completion of all restoration activities, consistent with the monitoring plan.
- The project proponent shall submit electronic photos (prior to, during and post-construction, and post-restoration) in an annual monitoring report to EPA Region 8 (R8CWA401@epa.gov). The report shall be labeled with the project name and Corps District number.

NWP 13, Specific Condition 1: The project proponent shall submit a project plan with design techniques and stabilization methods to EPA Region 8 prior to construction. Activities shall use native vegetation or other bioengineered design techniques (e.g., willow plantings, root wads, large woody debris, etc.) or a combination of hard-armoring (e.g., rock) and predominately native vegetation or bioengineered design techniques. Artificial soil stabilizing material (e.g., mulch, matting, netting, etc.) shall be used to reduce soil erosion. These materials, to include all plants and plant seed, shall be on site or scheduled for delivery prior to or upon completion of the earth moving activities. Sediment control measures shall be maintained in good working order at all times.

Any project proposing bank stabilization solely using hard armoring methods, or where the scope of the entire project is greater than 500 linear feet, is not authorized under this certification and the project proponent shall seek a project-specific CWA Section 401 certification from EPA Region 8.

NWP 13, Specific Condition 2: The slopes of disturbed banks shall be configured to mimic a stable reference reach and not reduce the bottom width of the stream. Pre-construction cross sections shall be included in the project plan submitted to EPA Region 8.

NWP 13, Specific Condition 3: The project proponent shall submit a monitoring plan to EPA Region 8 prior to initiating construction on the project.

- The project proponent shall monitor the project site through the next growing season or until the site is restored to pre-disturbance or reference site conditions. The monitoring plan shall contain the restoration plan (as outlined in General Condition 6) and any additional adaptive management methods if the site is not achieving pre-disturbance or reference site conditions.
- The project proponent shall use referenced photographs to document the status of all relevant locations at the project site prior to construction, during project construction, after project completion, and upon completion of all restoration activities, consistent with the monitoring plan.
- The project proponent shall submit electronic photos (prior to, during and post-construction, and post-restoration) in an annual monitoring report to EPA Region 8 (R8CWA401@epa.gov). The report shall be labeled with the project name and Corps District number (if available).

NWP 14, Specific Condition 1: NWP 14 is conditionally certified, except that a project-specific CWA section 401 certification is required for projects authorized under one or more NWP by the Corps that result(s) in:

1. Greater than 1/10 acre of impacts to waters of the U.S.; or
2. Greater than 300 linear feet of impacts to waters of the U.S.

NWP 14, Specific Condition 2: The project proponent shall submit a project design plan to EPA Region prior to construction. Affected streambanks shall be sloped such that the stream bottom width is not reduced, and bottom elevations are restored to original elevations. Stream bank slopes should not be steeper than 3:1. Justification for banks steeper than 3:1 shall be included in the project design plan. The project design plan also shall document how all temporary fills and structures will be removed, and the area restored to pre-project conditions.

NWP 14, Specific Condition 3: Permanent culverts shall be installed using an established culvert analysis and design tool (ex. HY-8, HEC-RAS, USGS CAP, etc.). Culverts shall span the bankfull width and/or ordinary high-water mark of the affected waterbody. The culvert bottom shall be installed below the existing streambed elevation to allow aquatic organism passage and the natural substrate to reestablish.

NWP 14, Specific Condition 4: The project proponent shall submit a monitoring plan to EPA Region 8 prior to initiating construction on the project.

- The project proponent shall monitor the project site through the next growing season or until the site is restored to pre-disturbance or reference site conditions. The monitoring plan shall contain the restoration plan (as outlined in General Condition 6) and any additional adaptive management methods if the site is not achieving pre-disturbance or reference site conditions.
- Impacts to aquatic resource buffers shall be avoided. If avoidance is not possible, methods for buffer restoration and monitoring shall be in the monitoring plan.
- The project proponent shall use referenced photographs to document the status of all relevant locations at the project site prior to construction, during project construction, after project completion, and upon completion of all restoration activities, consistent with the monitoring plan.

- The project proponent shall submit electronic photos (prior to, during and post-construction, and post-restoration) in an annual monitoring report to EPA Region 8 (R8CWA401@epa.gov). The report shall be labeled with the project name and Corps District number (if available).

NWP 15, Specific Condition 1: Fill or dredged material shall not result in an increase in land contour height beyond the original dimensions of the waterbody. Original land contour dimensions shall be documented prior to construction to confirm contours are restored to pre-disturbance conditions. Affected streambanks shall be sloped such that the stream bottom width is not reduced, and bottom elevations are restored to original elevations. Stream bank slopes should not be steeper than 3:1. Justification for banks steeper than 3:1 shall be included in the project design plan. The project design plan also shall document how all temporary fills and structures will be removed, and the area restored to pre-project conditions.

NWP 15, Specific Condition 2: Crossings shall be placed perpendicular to the water course, unless the project proponent can document that this would result in increased impacts to aquatic resources or compromise the safety of the structure.

NWP 15, Specific Condition 3: Bridge decks shall be designed such that they do not drain directly into the waterbody.

NWP 15, Specific Condition 4: Bridges shall span the bankfull width, adjacent wetlands, and/or ordinary high-water mark of the affected waterbody. Projects that cannot meet this condition require a project-specific CWA Section 401 certification from EPA Region 8.

NWP 19, Specific Condition 1: Dredged or fill materials shall be placed in non-jurisdictional areas and controlled such that it cannot return to waters of the U.S. Dredged or fill material shall not be placed on islet, islands, sandbars, landmass or other area of sediment accumulation within the banks of a stream, shore of lake, edge of wetland or other type of waterbody, unless the project proponent can document that the vegetation and geomorphology signify a long-term stable configuration (e.g., areas of sediment accumulation are not formed from temporary situations such as drought conditions or upstream reservoir release conditions).

NWP 27, Specific Condition 1: NWP 27 is conditionally certified, subject to the general conditions listed above, except for the following activities, where an individual project-specific CWA Section 401 certification is required: (1) the project involves dam removal; and/or (2) the project or activities involve greater than 1-acre of impacts to waters of the U.S.; and/or (3) the project impacts greater than 500 linear feet of waters of the U.S.

NWP 37, Specific Condition 1: Original and planned stream contours shall be documented by the project proponent. Construction activities shall not result in the channelization of streams or sloughs. Channelization is defined, for this purpose, as the placement of excess material in a manner that modifies the bank alignment, and subsequently the channel alignment, from its present condition.

NWP 37, Specific Condition 2: Construction activities shall not remove silt beyond what was deposited by the emergency event. Based on the original site conditions and planned project design, the project proponent shall justify the amount of silt identified for removal, such that the construction activities do not result in the removal of silt beyond what was deposited by the emergency event (e.g., excavating a wetland area to the point it's a stormwater retention pond, or deepening/widening a stream channel to accommodate higher flow capacity).

NWP 37, Specific Condition 3: Construction of temporary structures or drains for the purpose of reducing or preventing flood damage shall be removed within 60 days following the emergency event, unless justification for retaining the structures for a longer period is documented by the project proponent.

NWPs Denied (121.7(e)(2))

On behalf of the Sisseton-Wahpeton Oyate, Spirit Lake Tribe, Standing Rock Sioux Tribe, Three Affiliated Tribes (the Mandan, Hidatsa and Arikara Nation), and Turtle Mountain Band of Chippewa Indians, EPA Region 8 cannot certify that the range of discharges from potential projects authorized under the following proposed NWPs will comply with water quality requirements, as defined in 40 CFR 121.1(n). Therefore, CWA Section 401 water quality certification is denied for NWPs 16, 17, 34, 49, and 53 and applicants must request an individual water quality certification, consistent with 40 CFR 121.5.

Certification denial is due to insufficient information. 40 CFR 121.7(e)(2)(iii). In EPA's unique role certifying on behalf of a tribe, EPA lacks important information about tribal water resources. In the case of the Sisseton-Wahpeton Oyate, Spirit Lake Tribe, Standing Rock Sioux Tribe, Three Affiliated Tribes (the Mandan, Hidatsa and Arikara Nation), and Turtle Mountain Band of Chippewa Indians, EPA Region 8 lacks sufficient information on sensitive resources that may exist on these tribal lands, potential impaired waters on these tribal lands, and potential cultural importance of the water resources on these tribal lands. Additional information on these specific subjects would be needed for EPA Region 8 to assure that the range of discharges from potential projects authorized under NWPs 16, 17, 34, 49, and 53 will comply with water quality requirements, as defined in 40 CFR 121.1(n).

This information would also be necessary for EPA Region 8 to identify specific water quality requirements and evaluate whether the range of discharges from potential projects will comply with such requirements, in accordance with CWA section 401(a)(1) and 40 CFR 121.7(b). Lacking this information, EPA Region 8 is therefore denying certification.

NWPs Waived (121.9(a)(1))

On behalf of the Sisseton-Wahpeton Oyate, Spirit Lake Tribe, Standing Rock Sioux Tribe, Three Affiliated Tribes (the Mandan, Hidatsa and Arikara Nation), and Turtle Mountain Band of Chippewa Indians, EPA Region 8 is expressly waiving its authority to act on the CWA § 401 certification request for the following proposed NWPs: 4, 22, and 54.

December 8, 2020

Patricia L. McQueary
Regulatory Program Manager, North Dakota
US Army Corps of Engineers
1513 South 12th Street
Bismarck, ND 58504-6640

Dear Ms. McQueary:

The department has completed reviewing the proposed 2020 Nationwide Permits (NWP) for compliance with Standards of Quality for Water of the State (WQ-standards) and for Certification under Section 401 of the Clean Water Act.

The department has Clean Water Act Section 401 authority for North Dakota. Under that authority the department certifies, certifies with conditions, or denies select 2020 NWP. Certification, certification with condition, and denials are issued to ensure that the water quality requirements as defined in the Standards of Quality of Water Quality of the State, North Dakota Administrative Code Chapter 33.1-16-02.1 (WQ-Standards) are supported as intended by the Clean Water Act (CWA) Sections 301, 301, 303, 306, and 307, the 40 Code of Federal Registry Part 121 and the ND Century Code 28-61-04.

If a project is unable to meet the enclosed conditions, or if certification is denied for an applicable NWP, the applicant may request an individual certification from the department. An individual certification request must follow the requirements outlined in §121.5 of EPA's CWA § 401 Certification Rule, effective September 11, 2020.

The department may inspect any authorized activity to determine compliance with the terms and conditions (Section 121.11).

Under Section 401 of the Clean Water Act this department grants certification to the following Nationwide Permits as the discharge(s) will comply with water quality requirements:

- 1) **Nationwide Permits Not Applicable:** No. 8, 24, 34, 54, A, B, and E.
- 2) **Nationwide Permits Clean Water Certified:** No. 1, 2, 3, 4, 5, 6, 9, 10, 11, 14, 18, 20, 21, 22, 25, 28, 30, 31, 33, 36, 37, 38, 41, 43, 44, 45, 46, 48, 49, 50, 51, 53, and C.

Under Section 401 of the Clean Water Act the department grants certification with conditions (Section 121.7(d)(2)) to the following Nationwide Permits, as with the conditions discharge(s) will comply with water quality requirements:

- 3) **Nationwide Permits 7, 13, 16, 32, 35, and 52:** Nationwide Permits 7, 13, 16, 35 and 52 are granted Section 401 Clean Water Certification with the condition that all projects, (Including Federal and Non-Federal Permittees), provide preconstruction notification (PCN) for projects in, over or under Class I, IA, II and class III rivers and streams, and classified lakes listed in Appendixes I and II of the WQ-Standards

Section 121.7(d)(2)

(i) A preconstruction notification (PCN) requirements for Federal and Federal Permittees provides the department the means to ascertain if the Water Quality Standards are being supported and to confirm if the action was implemented as permitted. Both of these are required under 40 CFR § 121.2 [Clean Water Certification is required for any license or permit that authorizes an activity that may result in a discharge] and 40 CFR 121.11(b) [The certifying authority, prior to the initial operation of a certified project, shall be afforded the opportunity to inspect the facility or activity of the purpose of determining whether the discharge from the certified project will violate the certification].

(ii) Without a PCN the department and USACE regulator will be blind to any violations, preventing the requirements of 40 CFR 121.11(c) [The Federal agency shall be responsible for enforcing certification condition that are incorporated into a license or permit]. Without a PCN Sections 301,302,303,306 and 307 of the Clean water act (CWA) cannot be supported.

- 4) **Nationwide Permits 15, and 17:** Nationwide Permits 15 and 17 are granted Section 401 Clean Water Certification except those in, on or over Class I, IA, II Rivers and Streams.

Section 121.7(d)(2)

(i) Bridges and hydropower dams sequester sediments and other pollutants from runoff, as well as reduce or increase flow velocities in waters of the state. Maintaining natural stream morphology reduces the destabilization of the stream/river.

Drainage directly from hydropower surfaces and bridge decks may cause erosion, and introduce additional pollutants, such as oil, gas, sediment, and toxics. Directing bridge deck drainage into constructed runoff water quality control systems will help prevent erosion and keep pollutants from directly entering the waterway.

The placement of a structure within the ordinary highwater alters the hydrologic characteristics of the waterbody leading to increased erosional forces, scour around the structures, increased sediment loads to the waterbody, abandonment of the primary channel, and undermining of the structure itself.

(ii) All streams are waters of the state under North Dakota Century Code 28-61-04 and protected by North Dakota Administrative Code Chapter 33.1-16-02.1 for the

beneficial uses, municipal, domestic, aquatic life, recreation, agriculture, and industry. In order to ensure that state law is supported bridges and hydropower projects need project and specific conditions and allow inspections during and after construction (Section 121.11).

Authority for NWP 15 and 17 are 40 CFR § 121.2 [Clean Water Certification is required for any license or permit that authorizes an activity that may result in a discharge] and 40 CFR 121.11(b) [The certifying authority, prior to the initial operation of a certified project, shall be afforded the opportunity to inspect the facility or activity of the purpose of determining whether the discharge from the certified project will violate the certification]. Conditioning of NWP 17 and 19 insure support of Sections 301,302,303,306 and 307 of the CWA.

- 5) **Nationwide Permit 19:** Nationwide Permit 19 is granted Section 401 Clean Water Certification with the condition spoils are disposed at an upland site where they will not drain back to waters of the state.

Section 121.7(d)(2)

(i) Discharge of dredge material has the capacity to bury the biological community, impact stream function, and release trace elements in concentration exceeding the numeric criteria in the WQ-standards.

(ii) All streams, rivers, lakes, ponds and wetlands are waters of the state under North Dakota Century Code 28-61-04 are protected by North Dakota Administrative Code Chapter 33.1-16-02.1 for the beneficial uses, municipal, domestic, aquatic life, recreation, agriculture, and industry. Conditioning of NWP 19 insure support of Sections 301,302,303,306 and 307 of the CWA.

- 6) **Nationwide Permits 23, and 29:** Nationwide Permits 23 and 29 are granted Section 401 Clean Water Certification with the condition that the project will not result in a stream bank loss exceeding 300 Linear feet in Class I, IA, II and III streams. Projects that cannot meet the condition under nationwide Permits 23 and 29 will require an individual certification.

Section 121.7(d)(2)

(i) Projects exceeding 300 linear feet of stream bank have the capacity to remove the biological, hydraulic and geomorphic stream function, disconnect and fragment the watershed and potentially result in the total loss of a stream.

(iii) All streams are waters of the state under North Dakota Century Code 28-61-04 and protected by North Dakota Administrative Code Chapter 33.1-16-02.1 for the beneficial uses of municipal, domestic, aquatic life, recreation, agriculture, and industry. Conditioning of NWP 19 insure support of Sections 301,302,303,306 and 307 of the CWA.

- 7) **Nationwide Permit 27:** Nationwide Permit 27 is granted Section 401 Clean Water Certification with the following conditions: (1) Projects in Class I, IA, II, III rivers and streams, and classified lakes listed in Appendixes I and II of the WQ-Standards must provide a preconstruction notification, (2) projects will not result in a net loss of wetland or wetland type, and (3) no in-stream berms, dams, or similar structures on Class I, IA, and II, III river or stream listed in the Appendix I of the standards unless constructed in such a way that the stream assimilative capacity and aquatic life passage are maintained or the structures are part of a stream, river, wetland, or lake restoration project.

Section 121.7(d)(2)

(i) NWP 27 is sometimes used for damming, ephemeral and intermittent drainages. A PCN is required to ensure appropriate conditions are applied during and after construction to protect aquatic life passage, existing beneficial uses and prevent construction in ecological settings likely to become contaminant sinks (WQ-Standards). Projects need to demonstrate that at maturity there will be no net loss of wetland and wetland types. Wetland/wetland type and associated vegetation ensure no loss of assimilative capacity of contaminants, nutrients, and sediment to protect aquatic life (WQ-Standards).

(iv) Under 40 CFR § 121.2 [Clean Water Certification is required for any license or permit that authorizes an activity that may result in a discharge], 40 CFR 121.11(b) [The certifying authority, prior to the initial operation of a certified project, shall be afforded the opportunity to inspect the facility or activity of the purpose of determining whether the discharge from the certified project will violate the certification], and 40 CFR 121.11(c) [The Federal agency shall be responsible for enforcing certification condition that are incorporated into a license or permit]. Without a PCN, 40 CFR § 121.2, 40 CFR 121.11(b), or 40 CFR 121.11(c) cannot be satisfied. Conditioning of NWP 27 insure support of Sections 301,302,303,306 and 307 of the CWA.

- 8) **Nationwide Permits 39, 40, and 42:** Nationwide Permits 39, 40 and 42 are granted Section 401 Clean Water Certification with the condition that the resulting will not cause a loss or relocation of 150 feet or more of any river or stream. Projects that cannot meet the condition under nationwide Permits 39, 40 and 42 will require an individual certification.

Section 121.7(d)(2)

(i) North Dakota has many intermittent and perennial streams with bed widths of less than four (4) feet. Projects with large footprints (i. g., Commercial, Industrial, Agricultural, and Recreational) that remove ≥ 150 linear feet of stream bank have the capacity to remove the capability, singularly or cumulatively, of the biological, assimilative, hydraulic and geomorphic stream function, disconnect and fragment the watershed and potentially result in the total loss of a stream.

(v) All streams are waters of the state under North Dakota Century Code 28-61-04 and protected by North Dakota Administrative Code Chapter 33.1-16-02.1 for the beneficial uses, municipal, domestic, aquatic life, recreation, agriculture, and industry.

Conditioning of NWP 39, 40, and 42 insure support of Sections 301,302,303,306 and 307 of the CWA.

9) **Nationwide Permit D (Utility Line Activities for Water and Other Substances):**

Utility line activities under Nationwide Permit D for water and other substances are granted Section 401 Clean Water Certification with the condition they do not carry oil and gas production water, produce water, or brine water. Pipelines that carry oil or gas production water, produced water, or brine water, collectively called saltwater pipelines, in, over or under Class I, IA, II and class III rivers and streams, and classified lakes listed in Appendixes I and II of the WQ-standards will require an individual certification with conditions based on the specific waterbody, location on the water, type of construction, and safety controls applied prior, during, and after construction.

Section 121.7(d)(2)

(i) Documentation of the “may discharge” by saltwater pipelines in violation of North Dakota’s Administrative Code Chapter 33.1-16-02.1, the Clean Water Act 301, 302 (40 CFR part 121) are the 284 reported pipeline releases/failures reported in North Dakota between January 1, 2016 and October 1, 2020.

Saltwater pipelines in, over or under Class I, IA, II and class III rivers and streams, and classified lakes listed in Appendixes I and II of the WQ-standards need to be conditioned based on the waterbody, location on the water, type of construction, and safety controls applied prior during and after construction.

Pipelines carrying oil or gas production water, produced water, or brine water can be constructed to minimize discharge and failure potential through appropriate permit conditions. Under the proposed 2020 NWP D information is required to develop project specific conditions. General information needed to certify or certify with conditions is, but not limited to is: 1) construction type, 2) design, 3) crossing type, 4) monitoring, 5) safety systems installed, and 6) what toxin or pollutant is being transported by the pipeline.

Specific information required: (1) The geologic and geomorphic conditions at the constructions site to determine the likelihood of point source releases from construction activities such as the common frac-out of directional drilling fluids and the toxicity of the fluids, and (2) the location of the project in order to inspect during and after construction to ensure compliance with conditions (§121.11). Finally, there is a physical requirement to know that that all saltwater pipelines are installed at depths below any potential scour to protect them from the hydraulic energies of water.

(ii) Class I, IA, II and III streams under 40 CFR 131.10 and state law ND Century Code 28-61-04 have federally and state defined beneficial uses. These include the Clean Water Act (CWA) 101(a)(2) beneficial uses of “*wherever attainable, an interim goal of water quality which provides for the protection and propagation of fish, shellfish, and wildlife and provides for recreation in and on the water be achieved by July 1, 1983*”. Class I, IA, II and III streams under 40 CFR 131.10 and state law ND Century Code 28-

61-04 also have state defined beneficial uses. These include municipal, domestic, agriculture, and industrial uses. Pollutant releases into state waters may occur during and after construction of production, produced and brine water (saltwater) pipelines. Releases will violate sections 301, 302, 303, and 306 of the Clean Water Act, and WQ-Standards.

The department has the legal obligation to ensure the protection of the beneficial uses: municipal and industrial, fish and aquatic biota, recreation, agriculture, and industrial by insuring the ND Century Code 28-61-04 is supported by the WQ-Standards as determined by the Clean Water Act 301, 302, 303, and 306 and information to do so (§121.11).

Under Section 401 of the Clean Water Act the department denies (CFR 40 Section 121.7(e)(2)) certification of the following Nationwide Permits as the discharge(s) will not comply with water quality requirements:

- 10) **Nationwide Permit 12:** Oil and gas natural related projects in Class I, IA, II and class III rivers and streams, and classified lakes listed in Appendixes I and II of the standards are denied Section 401 Water Quality Certification.

Denied Section 121.7(e)(2)

(i) Documented “May discharge” by oil and natural gas pipelines in violation of North Dakota’s Administrative Code Chapter 33.1-16-02.1, the Clean Water Act 301, 302 and 40 CFR Part 121 is documented by the 183 crude oil pipeline releases/failures reported in North Dakota between January 1, 2016 and October 1, 2020.

Pipeline permitted under NWP 12 can be built/constructed to minimize discharge and failure potential through appropriate conditioning. Under the proposed 2020 NWP there is not enough information to do so. General information needed to certify or certify with conditions is, but not limited to is: 1) construction type, 2) design, 3) crossing type, 4) monitoring, 5) safety systems installed, and 6) what toxin or pollutant is being transported by the pipeline.

Specific information required: (1) The geologic and geomorphic conditions at the constructions site to determine the likelihood of point source releases from construction activities such as the common frac-out of directional drilling fluids and the toxicity of the fluids, and (2) the location of the project in order to inspect during and after construction to ensure compliance with conditions (§121.11). Finally, there is a requirement to know that all oil and natural gas pipelines are installed at depths below any potential scour to protect them from the hydraulic energies of water.

(ii) Class I, IA, II and III streams under 40 CFR 131.10 and state law ND Century Code 28-61-04 have federally and state defined beneficial uses. These include the Clean Water Act (CWA) 101(a)(2) beneficial uses of “*wherever attainable, an interim goal of water quality which provides for the protection and propagation of fish, shellfish, and wildlife and provides for recreation in and on the water be achieved by July 1, 1983*”.

Class I, IA, II and III streams under 40 CFR 131.10 and state law ND Century Code 28-61-04 also have state defined beneficial uses. These include municipal, domestic, agriculture, and industrial uses. Pollutant releases into state waters may occur during and after construction of crude oil, natural gas and oil related pipelines. Releases will violate sections 301, 302, 303, 306 and 307 of the Clean Water Act, and WQ-Standards.

The department has the legal obligation to ensure the protection of the beneficial uses: municipal and industrial, fish and aquatic biota, recreation, agriculture, and industrial by ensuring the ND Century Code 28-61-04 is supported by the WQ-Standards as determined by the Clean Water Act 301, 302, 303, 306, and 307 and information to do so (§121.11).

The WQ-Standards may be found at <https://www.legis.nd.gov/information/acdata/pdf/33.1-16-02.1.pdf>. Within the WQ-Standards are the Authority 33.1-16-02.1-01, Beneficial uses 33.1-16-02.1-04, Narrative standards 33.1-16-02.1-08, Numeric standards 33.1-16-02.1-09, Stream and stream class (Appendix I), Lake and lake classifications (Appendix II), Antidegradation policy (Appendix IV).

Sincerely,

A handwritten signature in black ink, appearing to read 'Karl H. Rockeman', with a long horizontal flourish extending to the right.

Karl H. Rockeman, P.E.
Director, Division of Water Quality

PNW:saj

**North Dakota Department of Transportation
AGREEMENT TO ENTER AND DO WORK ON HIGHWAY RIGHT-OF-WAY**

This agreement is between the state of North Dakota, acting by and through its Director of Transportation, hereinafter referred to as NDDOT, whose address is 608 East Boulevard Avenue, Bismarck, North Dakota 58505-0700, and Morton County, hereafter referred to as the Permittee, whose address is 2916 37th Street NW Mandan, ND 58554.

Permission is hereby given to enter and do work on highway right-of-way, under the following conditions:

1. The location of the proposed work is north side of I-94 @ RP 108.64.
2. The work to be performed is the construction of a box culvert on the County road adjacent to the Interstate I-94 right-of-way at the location described above. Due to the culvert's proximity to the Interstate, a portion of the wing wall and associated rock riprap will extend beyond the County right of way onto the Interstate right-of-way. The County shall be solely responsible for all maintenance associated with the box culvert, including any components located on the Interstate right-of-way. This includes, but is not limited to, maintenance of the wing wall, rock riprap, and any erosion or damage resulting from the presence or function of the box culvert.

The State also retains the right to have any or all components of the box culvert removed from the Interstate right of way for future Interstate projects or if issues related to the installation of the box culvert become apparent that were not recognized prior to installation.

3. All work done on highway right-of-way must conform to the reasonable requirements of NDDOT's district engineer, whether communicated before or after the work is conducted.
4. Effective November 24, 2008, the Permittee shall be required to wear an ANSI/ISEA 107-2004 Class II high visibility garment while within the highway right-of-way as per the requirements of 23 CFR 634.
5. Permittee must, as soon as possible, return all disturbed areas to their original condition and reseed all disturbed areas with seed mixture approved by NDDOT.
6. All work done will be at no cost to NDDOT.
7. All work will be completed by 11/1/2027.
8. The Permittee, for him or herself, his or her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the Permittee will use the premises in compliance with all other requirements imposed by or pursuant to the Acts and Regulations, as amended, such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities set forth in this Assurance.



That in the event of breach of any of the above Non discrimination covenants, NDDOT will have the right to terminate this Permit and to enter or re-enter and repossess said land and the facilities thereon, and hold the same as if said Permit had never been made or issued.

9. The Risk Management Appendix, attached, is hereby incorporated into and made a part of this agreement.

Executed the last date below signed.

PERMITTEE:

Nathan James Boehm
NAME (TYPE OR PRINT)
Nathan James Boehm
SIGNATURE
Chairman Martin County Commission
TITLE
8-28-2005
DATE

NORTH DAKOTA
DEPARTMENT OF TRANSPORTATION

Larry Gungl
DISTRICT ENGINEER (TYPE OR PRINT)
Larry Gungl
SIGNATURE
8/12/25
DATE

To be signed by Owner; Partner; Corp. Pres., Vice Pres., or other authorized Corp. Officer. (If signed by other authorized Corp. Officer, please attach copy of Power of Attorney or other documentation showing authority to sign.)

CLA 17088 (Div. 70)
L.D. Approved 7-17-89; 8-18



CLA 17088 (Div. 70)

Risk Management Appendix

Small, Low-Risk Leases, Easements, Licenses, and Permits with Private Individuals, Companies, Corporations, Etc. (referred to as Recipient):

Recipient agrees to defend, indemnify, and hold harmless the state of North Dakota, its agencies, officers and employees (State), from and against claims based on the vicarious liability of the State or its agents, but not against claims based on the State's contributory negligence, comparative and/or contributory negligence or fault, sole negligence, or intentional misconduct. The legal defense provided by the Recipient to the State under this provision must be free of any conflicts of interest, even if retention of separate legal counsel for the State is necessary. Recipient also agrees to defend, indemnify, and hold the State harmless for all costs, expenses and attorneys' fees incurred if the State prevails in an action against the Recipient in establishing and litigating the indemnification coverage provided herein. This obligation shall continue after the termination of this agreement.

Recipient shall secure and keep in force during the term of this agreement, from insurance companies, government self-insurance pools, or government self-retention funds authorized to do business in North Dakota, the following insurance coverages:

Commercial general liability insurance – minimum limits of liability required are **\$500,000 per person** and **\$2,000,000 per occurrence**. If it is not practical for Recipient to carry commercial general liability insurance, Recipient may substitute **farm liability insurance, renters insurance, or home owners** insurance in the amount of **at least \$500,000**.

- 1) If Recipient may use an automobile in relation to the attached agreement, Recipient must secure **automobile liability** insurance with a minimum limit of liability of **at least \$500,000**. The above limits may be satisfied through a policy or policies of insurance, primary and excess, including the so called umbrella or catastrophe form. The State of North Dakota shall have all the benefits, rights and coverages of an additional insured under these policies that shall not be limited to the minimum limits of insurance required by this agreement or by the contractual indemnity obligations of the Contractor.
- 3) The State of North Dakota, its agencies, officers, and employees (State) shall be endorsed as an **additional insured** on the above policies.

The Recipient shall furnish a certificate of insurance coverage evidencing the requirements in 1 through 3 above to the undersigned State representative prior to commencement of this agreement.

Recipients' insurance coverage shall be primary (i.e., pay first) as respects any insurance, self-insurance, or self-retention maintained by the State.

The insolvency or bankruptcy of the insured Recipient shall not release the insurer from payment under the policy, even when such insolvency or bankruptcy prevents the insured Recipient from meeting the retention limit under the policy.

The Recipient must secure any necessary Workers Compensation coverage that may be required by State law.

When a portion of a Contract is sublet, the Recipient shall obtain insurance protection (as outlined above) to provide liability coverage to protect the Recipient and the State as a result of work undertaken by the Subcontractor or Sublessor. In addition, the Recipient shall ensure that any and all parties performing work under the Contract are covered by public liability insurance as outlined above. All Subcontractors or Sublessors performing work under the Contract are required to maintain the same scope of insurance required of the Recipient. The Recipient shall be held responsible for ensuring compliance with those requirements by all Subcontractors or Sublessors.

RM Consulted 2007
Revised 07-23



**Structure Replacement Project
Bridge 30-114-08.1 – Frontage Road N Glen Ullin
Morton County Highway Department**

**Apex Project # 22.517.0045
Owner Project # Work Order 2232**

**Section 00830 - Structural and Channel Excavation, Foundation Fill and
Preparation**

DESCRIPTION

Replace Section 210 Structural and Channel Excavation, Foundation Fill and Preparation of the North Dakota Department of Transportation 2024 Standard Specifications with the attached information.

ATTACHMENTS

Section 210 “Structural and Channel Excavation, Foundation Fill and Preparation”.

**SECTION 210
STRUCTURAL AND CHANNEL EXCAVATION,
FOUNDATION FILL AND PREPARATION**

210.01 DESCRIPTION

A. Structural Excavation.

1. **Class 1:** Class 1 excavation will be defined in the plans.
2. **Class 2:** Class 2 excavation will be defined in the plans.
3. **Box Culvert Excavation:** Excavation and ordinary backfill required for installation of box culverts.

B. Channel Excavation.

Channel excavation will be designated on the plans and includes excavation necessary to place riprap or aggregate cushions and to flatten and shape slopes around abutment locations.

210.02 EQUIPMENT

Reserved.

210.03 MATERIALS

A. Ordinary Backfill.

Use approved material from the excavation. Use borrow material as specified in Section 203.04 D, "Borrow Excavation" if additional material is required.

B. Foundation Fill.

Use CL 3 or CL 5 aggregate as specified in Section 816, "Aggregates".

C. Box Culvert Foundation Aggregate.

Provide material that meets the following requirements:

Sieve Size or Testing Method	Box Culvert Foundation Aggregate
2 inch	100
1.5 inch	80-100
3/8 inch	20-60
No. 10	0-10
ND T 113, Shale (max %)	12%
AASHTO T 96, L.A. Abrasion (max %)	40%
NDDOT 4, Fractured Faces (min %)¹	75%

¹Minimum weight percentage allowable for the portion of the aggregate retained on a No. 4 sieve having at least 1 fractured face

210.04 CONSTRUCTION REQUIREMENTS

A. Excavation.

1. General.

Perform excavation so that concrete is placed in a dry area free of water.

If excavation has been performed to the specified elevation and unsuitable material is encountered, remove the unsuitable material and place foundation fill to the specified elevation.

Dispose of unsuitable excavated material as specified in Section 107.17, "Removed Material".

2. Class 1 and 2 Excavation.

If footings are to be placed on an excavated surface and the excavated surface is disturbed, scarify the area, and compact the material using a mechanical tamper. Perform final preparations of the foundation bed just before placing concrete.

When foundation piles are specified, the bottom of the excavation may be extended below the footing to allow for heaving. Perform the extended excavation and place additional required backfill at no additional expense to the Department.

Use all suitable excavated material for backfilling in areas where ordinary backfill is specified. Dispose of remaining suitable excavation as specified in Section 107.17, "Removed Material".

3. Box Culvert Excavation.

If excavation has been performed to the specified elevation and the engineer determines that the material is unsuitable to build on, remove the unsuitable material and replace with Box Culvert Foundation Aggregate. The Engineer will determine the depth of the excavation. Do not excavate below the depth of the cutoff wall.

Dispose of unsuitable excavated material as specified in Section 107.17, "Removed Material".

Include the cost of additional excavation in the price bid for "Box Culvert Excavation".

B. Backfill.

1. General.

Place backfill material in an area free of water using tamping equipment that will not cause a wedging action of the material against the structure.

Place backfill material after the concrete has reached 70 percent of its design strength. Place backfill material around box culverts after the roof has reached 70 percent of its design strength.

If a wall depends on a superstructure for support, release the falsework before placing backfill material.

When placing of backfill material is required on only one side of a structure, compact backfill material without placing excessive pressure on the structure.

Place fill adjacent to a bridge abutment no higher than the berm elevation in front of the abutment until the superstructure is in place.

If foundation fill is not specified, backfill using ordinary backfill.

2. Ordinary Backfill.

Place ordinary backfill in layers not exceeding 6 inches of compacted material. Compact material according to 203.04.G.2, "Compaction Control Type A".

3. Foundation Fill.

Place foundation fill in layers not exceeding 6 inches. Compact material to at least 90 percent of the maximum dry density with a moisture content not less than 2.0 percentage points below optimum moisture and no more than 3.0 percentage points above the optimum moisture. The Engineer will determine the maximum dry density and optimum moisture content as specified in ND T 180.

4. Box Culvert Foundation Aggregate.

Place the box culvert foundation drainage aggregate in lifts not exceeding 6" of compacted material. Compact the material until the surface is tightly bound, shows no rutting, and no displacement during the compaction operation. Compact material over geosynthetic geogrid as specified in Section 709.04 C, "Geosynthetic Geogrid (Type G)".

Place the geosynthetic material directly on the bottom of the excavation below the Box Culvert Foundation Aggregate.

5. Bedding.

For cast-in-place (CIP) box culverts, provide a 2 inch thickness of uncompacted and screedable sand material under the CIP box culvert for a leveling course. Include the cost for bedding in the contract bid items for Section 602, "Concrete Structures".

C. Foundation Preparation.

Perform all work necessary to properly stage and maintain a site for construction of a structure. Construct and remove temporary features necessary to facilitate construction of the structure. Backfill the site as specified in the plans and Section 210.04 B, "Backfill". Dispose of excess and waste materials as specified in Section 107.17, "Removed Material".

210.05 METHOD OF MEASUREMENT

The Engineer will measure as specified in Section 109.01, "Measurement of Quantities" and as follows:

A. Foundation Fill.

The Engineer will measure foundation fill completed and in place. The Engineer will not measure beyond the excavation limits for payment.

B. Box Culvert Foundation Aggregate.

The Engineer will measure box culvert foundation aggregate completed and in place.

C. Channel Excavation.

The Engineer will not measure beyond the excavation limits for payment.

210.06 BASIS OF PAYMENT

Pay Item	Pay Unit
Channel Excavation	Lump Sum, Cubic Yard
Class __ Excavation	Lump Sum, Cubic Yard
Foundation Preparation	Lump Sum, Each
Foundation Fill	Ton, Cubic Yard
Box Culvert Foundation Aggregate	Cubic Yard

Include dewatering of the construction site in the contract unit price for "Foundation Preparation".

Such payment is full compensation for furnishing all materials, equipment, labor, and incidentals to complete the work as specified.

DESIGN DATA: Bridge No. 30-114-08.0			
Traffic	Average Daily		
Current 2022	Pass: <100	Trucks: <100	Total: <100
Forecast 2042	Pass: <100	Trucks: <100	Total: <100
Clear Zone Distance: 18'	Design Speed: 55 MPH		
Minimum Sight Dist. for Stopping: 495'	Bridges: Sta. 2+63		
Sight Dist. for No Passing Zone: N/A	Design Load: HL-93		
Pavement Design Life: N/A			

STATE	PROJECT NO.	PCN	SECTION NO.	SHEET NO.
ND	30-114-08.1	N/A	1	1

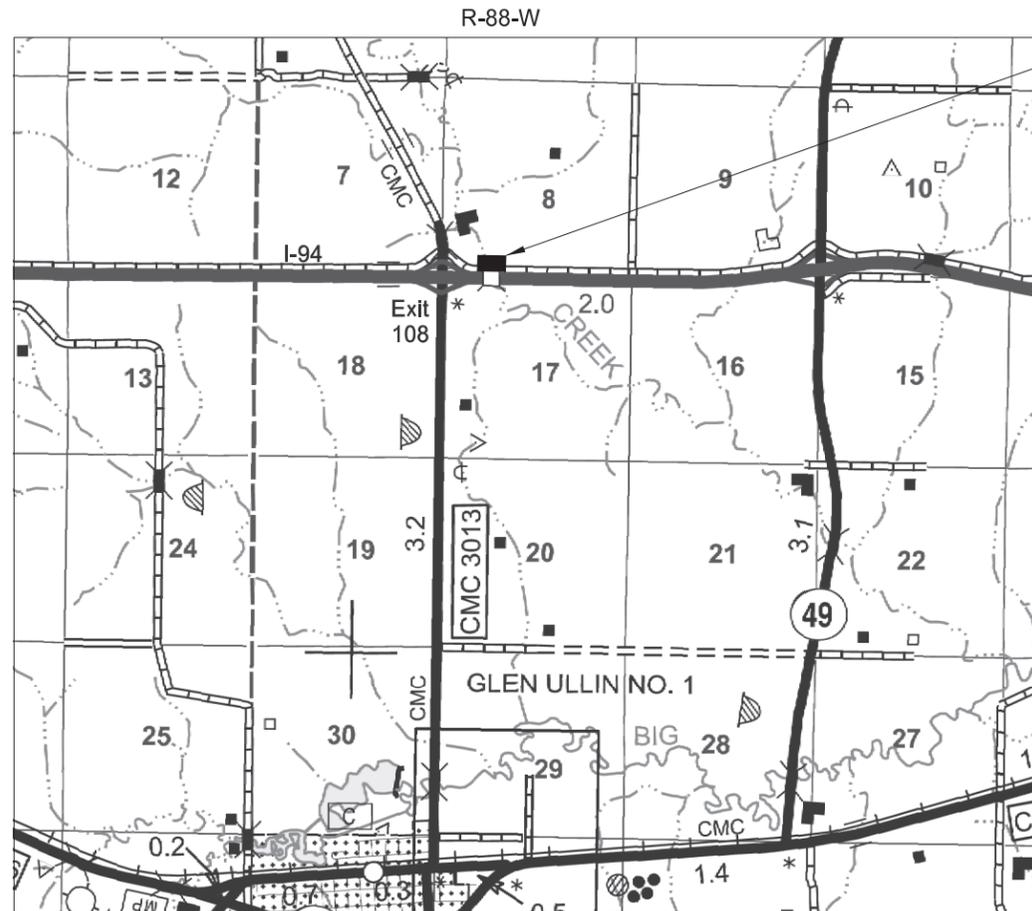
MORTON COUNTY, NORTH DAKOTA

PLANS FOR STRUCTURE REPLACEMENT BRIDGE NO. 30-114-08.0 (30-114-08.1)

PROJECT IS LOCATED 3 MILES NORTH OF
GLEN ULLIN, NORTH DAKOTA
Project Consists of Structure Removal,
Installation of Precast RCBC, Minor Grading, and Incidentals

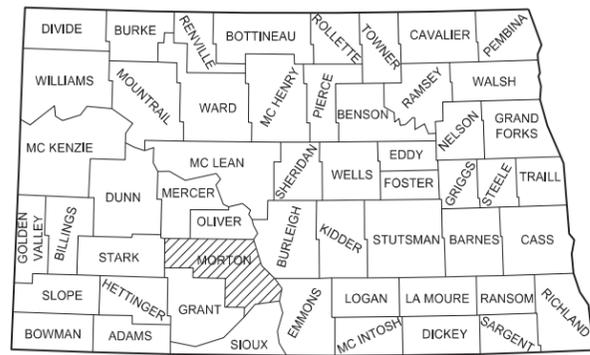
GOVERNING SPECIFICATIONS	Date Published and Adopted by the North Dakota Department of Transportation
Standard Specifications	7/1/2024
Supplemental Specifications	NONE

PROJECT NUMBER \ DESCRIPTION	NET MILES	GROSS MILES
Morton County W.O. 2232	0.108	0.108



Begin Project
Sta. 0+00
A point 1270' east and 18' north of the
SW 1/4 corner of Section 8, T-139-N, R- 88-W

End Project
Sta. 5+70
A point 1840' east and 18' north of the
SW 1/4 corner of Section 8, T-139-N, R- 88-W



STATE COUNTY MAP

DESIGNER Caleb Weisgarber
DESIGNER Jennifer Malloy
DESIGNER

APEX ENGINEERING GROUP

TABLE OF CONTENTS

	STATE	PROJECT NO.	SECTION NO.	SHEET NO.
	ND	30-114-08.1	2	1

PLAN SECTIONS

LIST OF STANDARD DRAWINGS

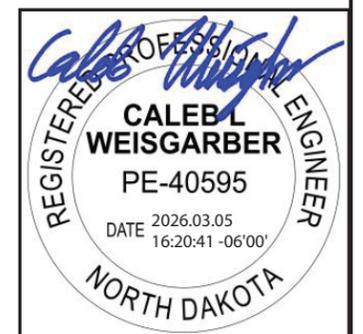
Section	Page(s)	Description	Number	Description
1	1	Title Sheet	D-101-1, 2,3,4	NDDOT Abbreviations
2	1	Table of Contents	D-101-10	NDDOT Utility Company and Organization Abbreviations
6	1	Notes	D-101-20, 21	Line Styles
8	1	Quantities	D-101-30, 31,32,33	Symbols
20	1 - 3	General Details	D-260-1	Erosion And Siltation Controls - Silt Fence
30	1	Typical Sections	D-261-1	Erosion Control - Fiber Roll Placement Details
60	1	Plan & Profile	D-704-7	Breakaway Systems For Construction Zone Signs - Perforated Tube
75	1	Wetland Impacts	D-704-8	Breakaway Systems For Construction Zone Signs - U-Channel Post
76	1	Temporary Erosion Control	D-704-9	Construction Sign Details - Terminal And Guide Signs
77	1	Permanent Erosion Control	D-704-10	Construction Sign Details - Regulatory Signs
100	1	Work Zone Traffic Control	D-704-11	Construction Sign Details - Warning Signs
170	1 - 3	Bridges and Box Culverts	D-704-13	Barricade And Channelizing Device Details
200	1 - 3	Cross Sections	D-704-14	Construction Sign Punching And Mounting Details
			D-704-15	Road Closure Layouts
			D-704-19	Road Closure And Lane Closure On A Two Way Road Layouts
			D-704-50	Portable Sign Support Assembly
			D-714-22	Concrete Pipe, Cattle Pass, or Precast Concrete Box Culvert Ties
			D-752-1	Standard Barbed Wire Fence
			D-754-82	Object Markers

NOTES

STATE	PROJECT NO.	SECTION NO.	SHEET NO.
ND	30-114-08.1	6	1

GENERAL NOTES

- 105-P01 UTILITIES: The horizontal utility locations shown in the plans are approximate. Plan locations should not be interpreted as exact for bidding purposes.
- 203-010 SHRINKAGE: 25 Percent additional volume is included for shrinkage in earth embankment.
- 203-P01 TOPSOIL: Topsoil will be paid at plan quantity.
- 203-P02 COMMON EXCAVATION - TYPE B: Measurement of "Common Excavation – Type B" will be paid at plan quantity. Excess excavation must be disposed of by the Contractor. Furnish the Engineer copies of all agreements with property owners. Include all costs associated with disposing the excess excavation in the price bid for "Common Excavation-Type B".
- 203-P03 BORROW-EXCAVATION: All borrow needed for the project shall be furnished by the contractor. Borrow will be paid at plan quantity.
- 203-P04 CHANNEL EXCAVATION: Excavation required to shape the channel shall be included in the Lump Sum Bid item "Channel Excavation." There is an estimated quantity of 837 CY of Channel Excavation.
- 203-P05 TEMPORARY BYPASS: Construct a temporary bypass, as shown in the plans, to accommodate local agricultural traffic. The bypass will remain closed to the general traveling public. Maintain a minimum surface width of 20' and be able to accommodate wider loads that need to pass through the work zone. Coordination will be required with the local landowners for use of the bypass. The cost to construct, maintain, and remove the bypass will not be paid separately and will be incidental to other items.
- 251-P01 SEEDING & COVER CROP: Measurements for seeding and cover crop will be paid at plan quantity.
- 253-P01 MULCH: Mulch will be paid at plan quantity.
- 752-P01 FENCE: Install smooth wire fence in accordance with D-752-1. All wire shall be smooth galvanized steel, 12.5 gauge minimum, in lieu of the barbed wire shown in the standard drawing.



Estimated Quantities

STATE	PROJECT NO.	SECTION NO.	SHEET NO.
ND	30-114-08.1	8	1

SPEC	CODE	ITEM DESCRIPTION	UNIT	Morton County	TOTAL
103	0100	CONTRACT BOND	L SUM	1	1
202	0105	REMOVAL OF STRUCTURE	L SUM	1	1
202	0312	REMOVE EXISTING FENCE	LF	600	600
203	0102	COMMON EXCAVATION-TYPE B	CY	505	505
203	0109	TOPSOIL	CY	1081	1081
203	0140	BORROW-EXCAVATION	CY	1001	1001
210	0050	BOX CULVERT EXCAVATION	EA	1	1
210	0127	CHANNEL EXCAVATION	L SUM	1	1
210	0210	FOUNDATION FILL	CY	381	381
210	0250	BOX CULVERT FOUNDATION AGGREGATE	CY	308	308
210	0405	FOUNDATION PREPARATION-BOX CULVERT	EA	1	1
216	0100	WATER	M GAL	37	37
251	0200	SEEDING CLASS II	ACRE	1.23	1.23
251	1000	WETLAND SEED	ACRE	0.12	0.12
251	2000	TEMPORARY COVER CROP	ACRE	1.3	1.3
253	0101	STRAW MULCH	ACRE	2.65	2.65
256	0200	RIPRAP GRADE II	CY	153	153
260	0200	SILT FENCE SUPPORTED	LF	105	105
260	0201	REMOVE SILT FENCE SUPPORTED	LF	105	105
261	0112	FIBER ROLLS 12IN	LF	460	460
261	0113	REMOVE FIBER ROLLS 12IN	LF	320	320
262	0100	FLOTATION SILT CURTAIN	LF	18	18
262	0101	REMOVE FLOTATION SILT CURTAIN	LF	18	18
302	0356	AGGREGATE SURFACE COURSE CL 13	TON	623	623
606	3108	DBL 11FT X 8FT PRECAST RCB CULVERT	LF	168	168
606	7108	DBL 11FT X 8FT PRECAST RCB END SECTION	EA	2	2
702	0100	MOBILIZATION	L SUM	1	1
704	1000	TRAFFIC CONTROL SIGNS	L SUM	1	1
709	0100	GEOSYNTHETIC MATERIAL TYPE G	SY	504	504
709	0155	GEOSYNTHETIC MATERIAL TYPE RR	SY	230	230
752	0126	FENCE SMOOTH WIRE 3 STRAND-STEEL POST	LF	417	417
752	2995	CORNER ASSEMBLY-WOOD POST	EA	4	4
754	0803	OBJECT MARKERS - TYPE III	EA	4	4
900	1000	TEMPORARY STREAM DIVERSION	EA	1	1

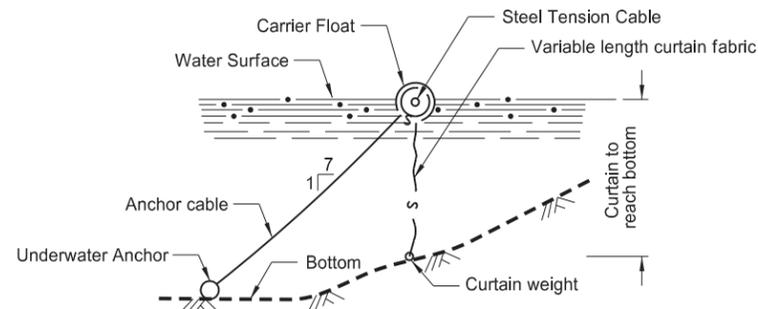
Basis of Estimate

Materials

302 0356 AGGREGATE SURFACE COURSE CL 13 @ 1.875 TON/CY

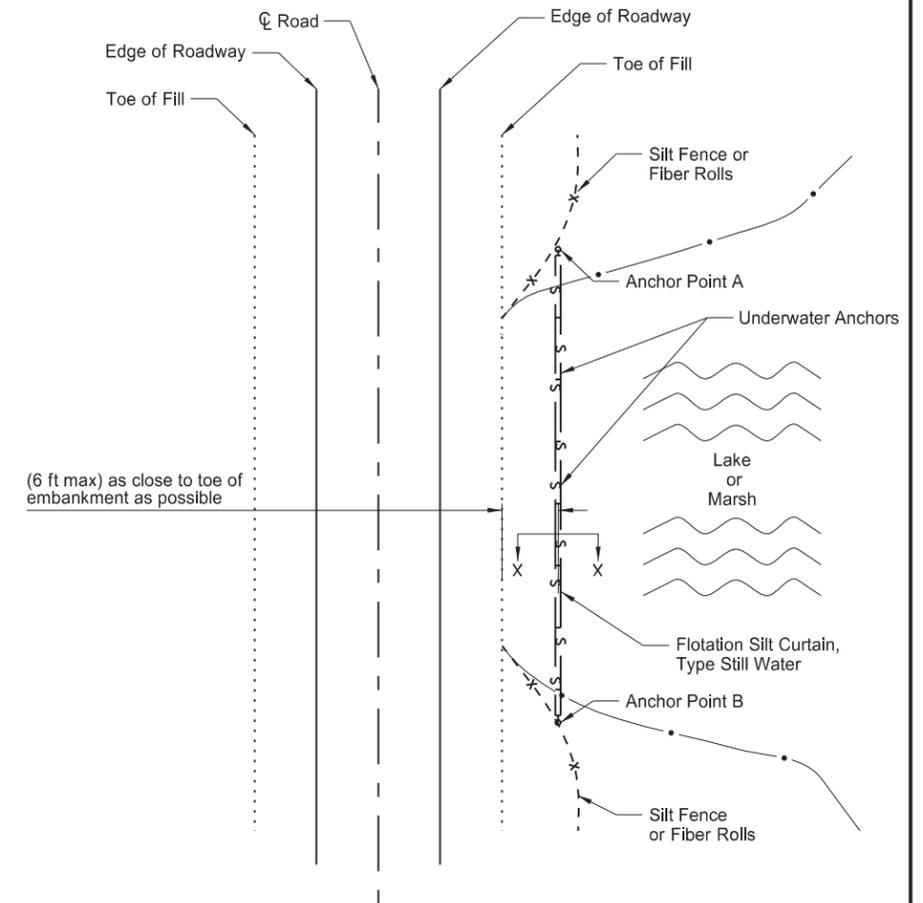
216 0100		WATER	
Material	Basis	Basis Quantity	Quantity (MGAL)
Dust Palliative	25 MGal/Mile	1 Mile	25
Aggregates	20 Gal/Ton	623 Ton	12
Total:			37

STATE	PROJECT NO.	SECTION NO.	SHEET NO.
ND	30-114-08.1	20	1



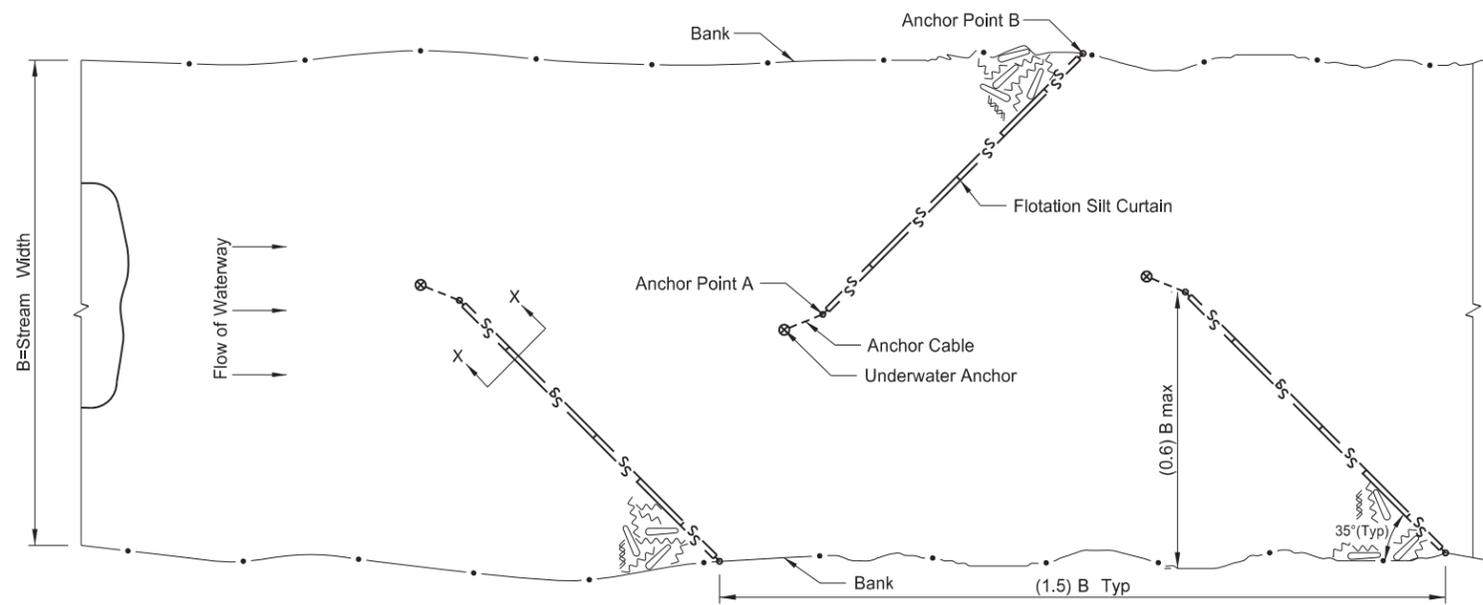
SECTION X-X
FLOTATION SILT CURTAINS

Note:
Maximum water velocity for moving water = 5 ft/sec



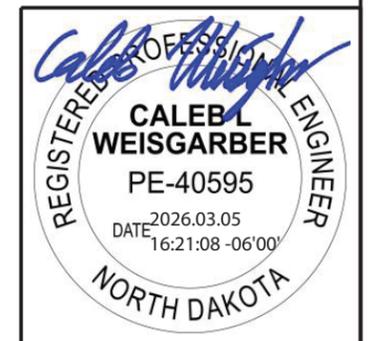
PLAN VIEW
FLOTATION SILT CURTAIN - TYPE STILL WATER

Extend silt curtain onto shore and anchor there also.



PLAN VIEW
FLOTATION SILT CURTAIN - TYPE HERRING BONE PATTERN

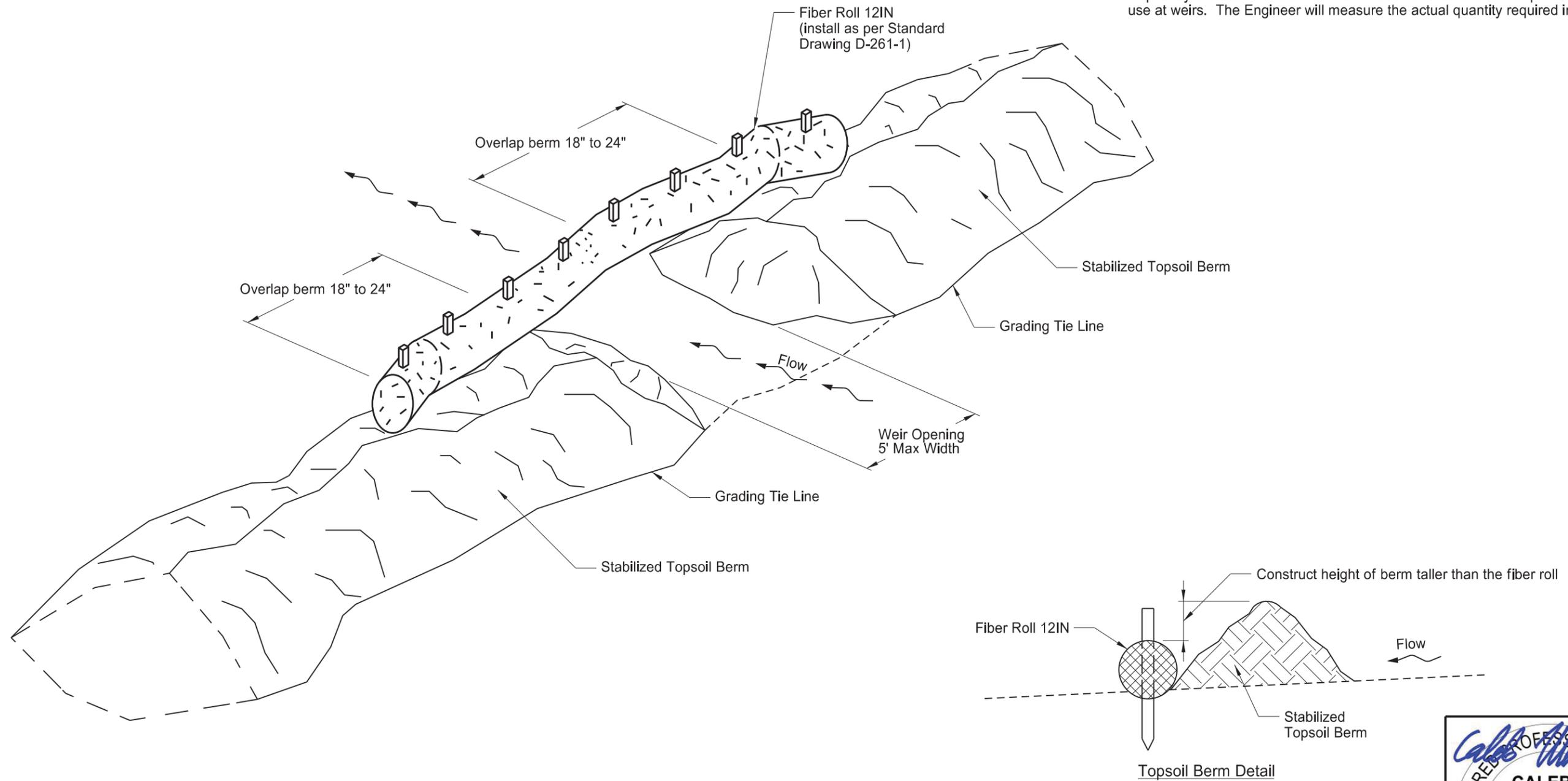
DESIGN GUIDELINES:
When temporary work encroaches more than 1/3 width of the stream
Or where stream width doesn't allow use of Type Moving Water



Morton County Bridge Replacement
Temporary Erosion Control - Flotation Silt Curtain

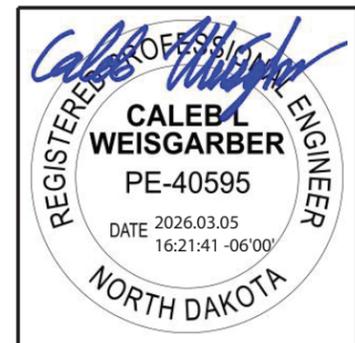
STATE	PROJECT NO.	SECTION NO.	SHEET NO.
ND	30-114-08.1	20	2

A quantity of 40 LF of Fiber Roll 12IN has been included in the quantities for use at weirs. The Engineer will measure the actual quantity required in the field.



Notes:

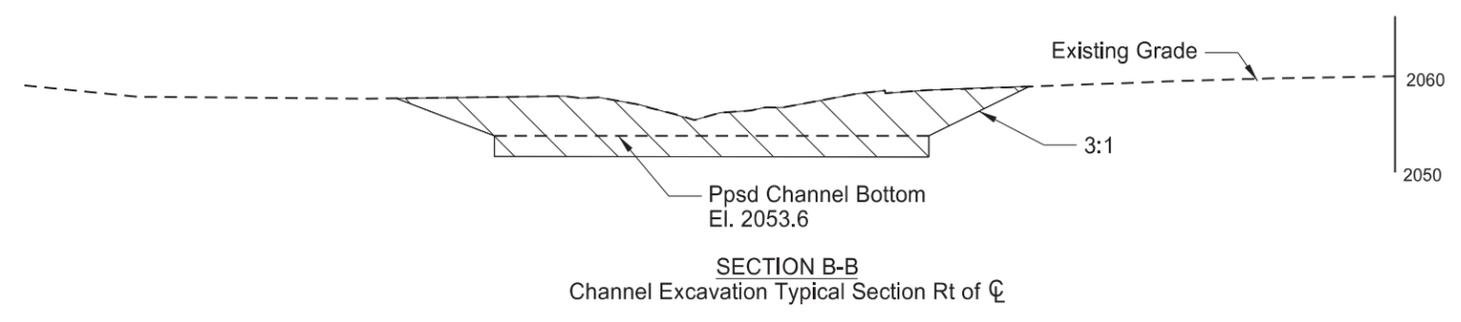
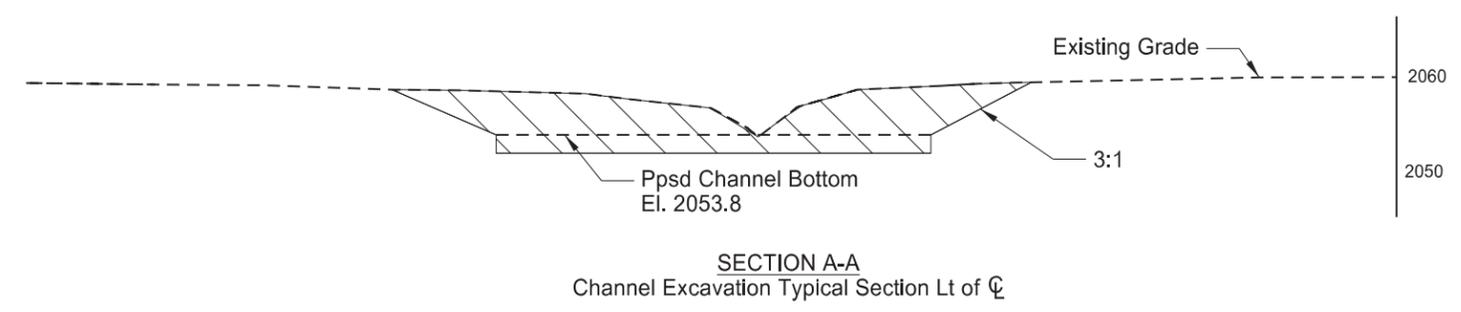
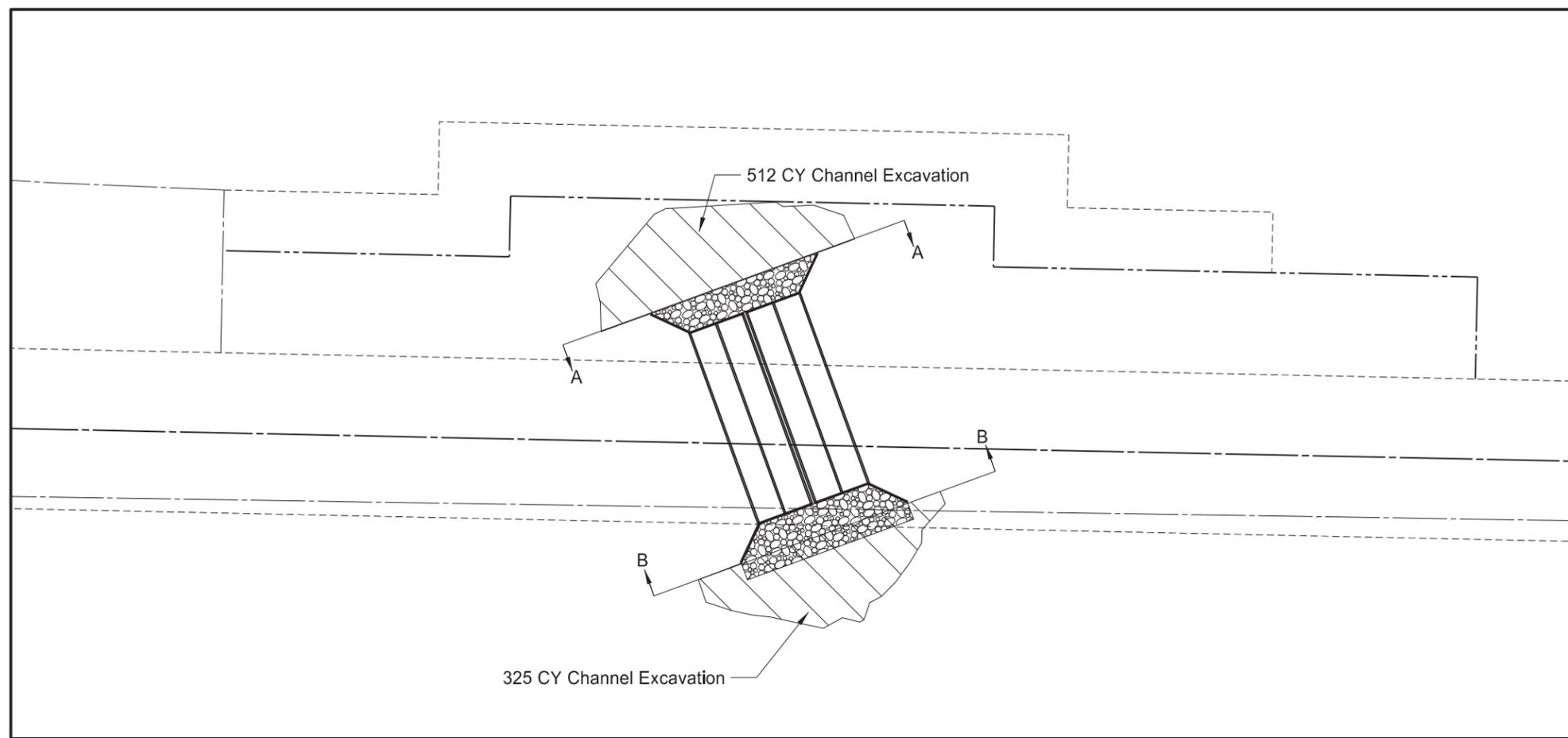
1. Windrow the existing topsoil from the foreslope to create a berm at the grading tie line.
2. Stabilize berms in accordance with the Construction General Permit.
3. Place weirs intermittently throughout the length of the berm to allow stormwater to drain through the berm.
4. Avoid placing weirs adjacent to waterbodies.
5. Install fiber rolls as the weirs are created in the topsoil berm.
6. Include costs to create, stabilize, maintain, and dismantle the berm in the unit price bid for "Topsoil".
7. Include costs for fiber rolls in the unit price bid for "Fiber Rolls 12IN".



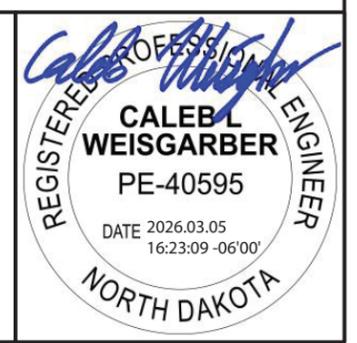
Morton County Bridge Replacement
 Temporary Topsoil Berm and Weir Detail

STATE	PROJECT NO.	SECTION NO.	SHEET NO.
ND	30-114-08.1	20	3

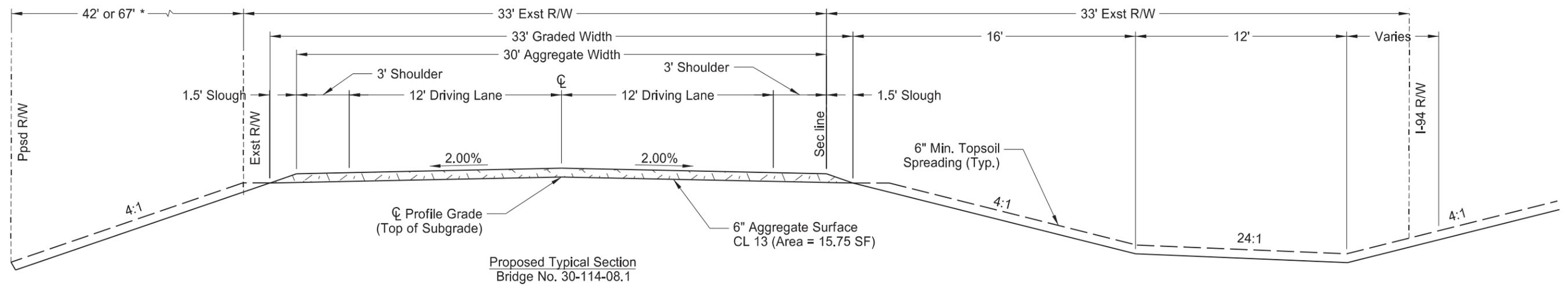
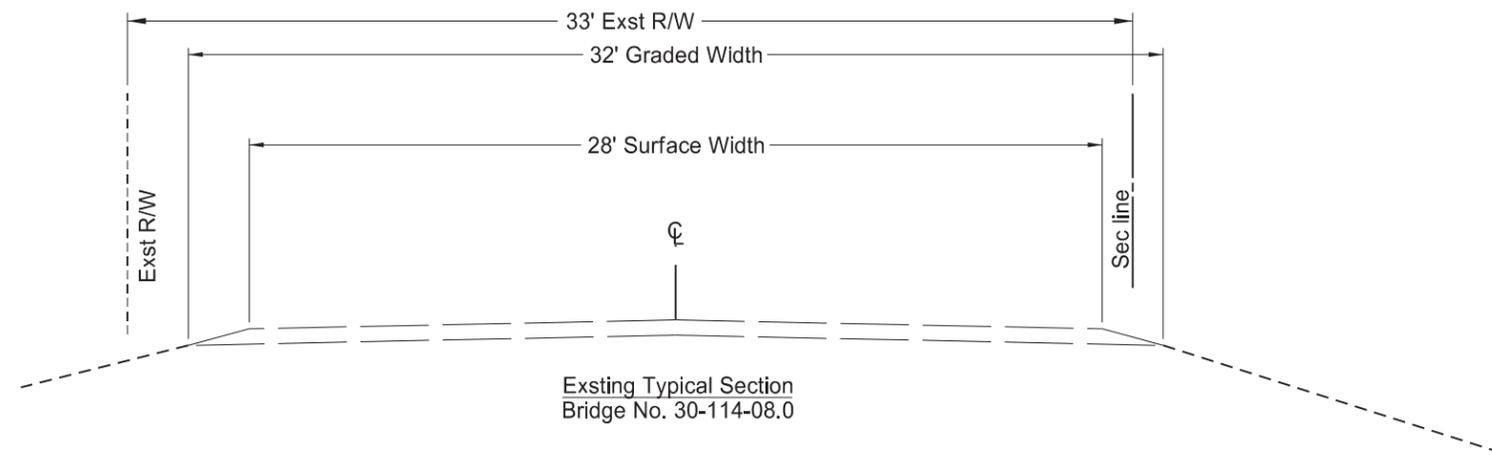
SPEC	CODE	BID ITEM	QTY	UNIT
210	0127	CHANNEL EXCAVATION See Plan View	1	L SUM



Morton County Bridge Replacement
Channel Excavation Detail

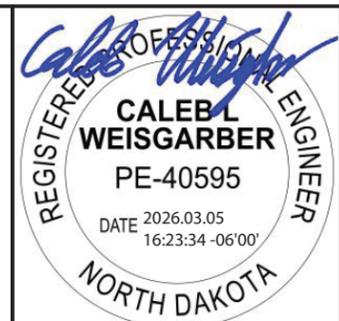


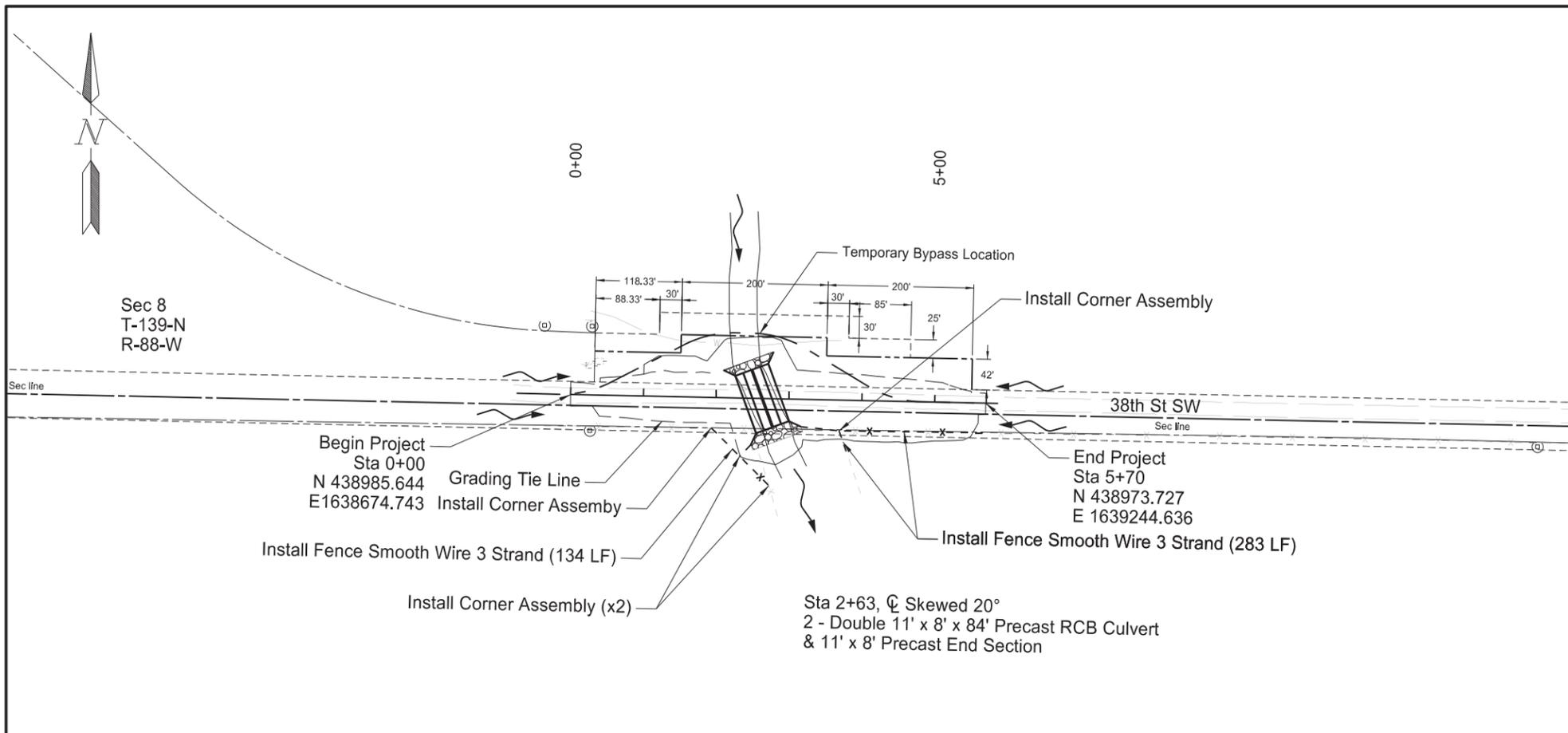
STATE	PROJECT NO.	SECTION NO.	SHEET NO.
ND	30-114-08.1	30	1



* Sta 0+32 to 1+50 & 3+50 to 5+50 - 42'
Sta 1+50 to 3+50 - 67'

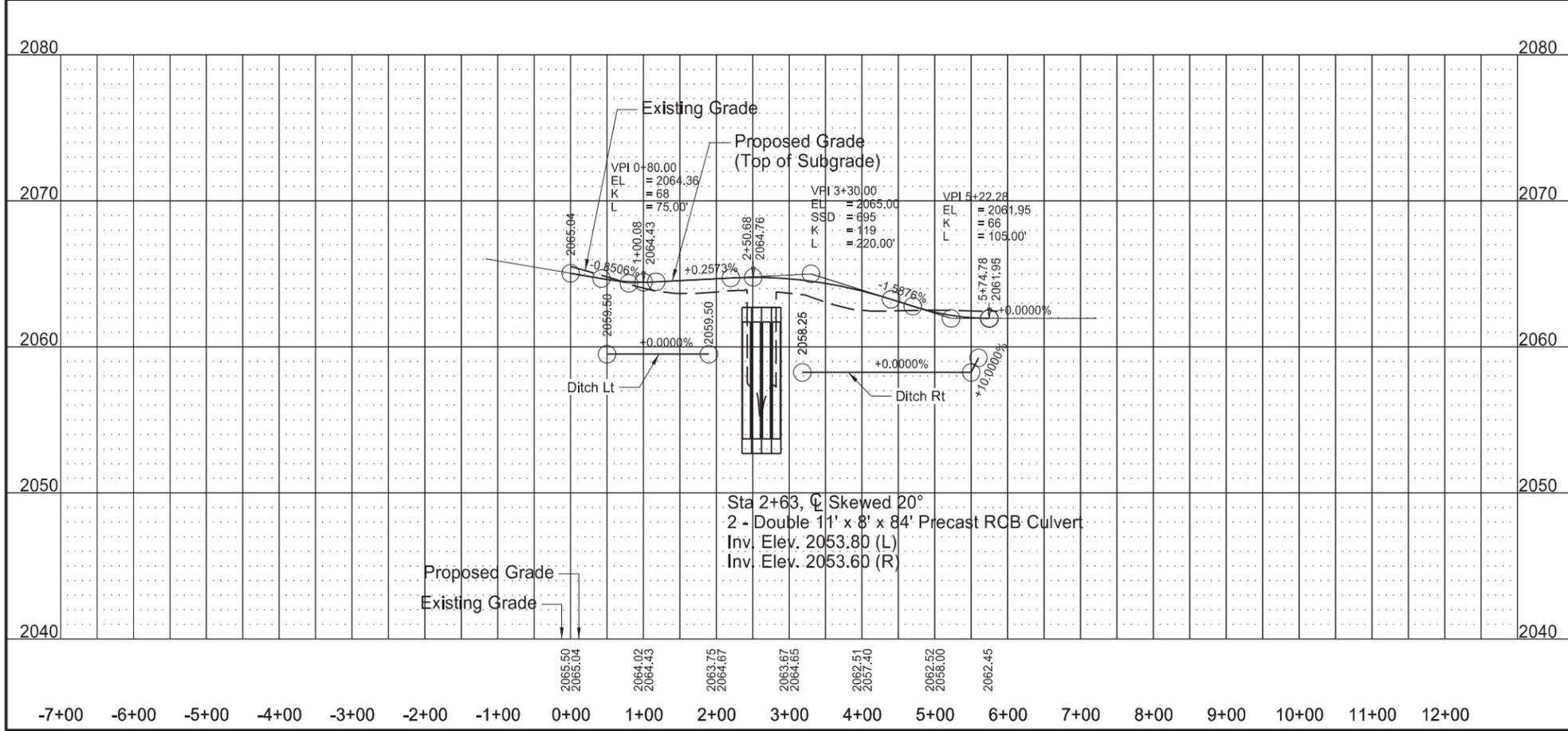
Morton County Bridge Replacement
Typical Sections





STATE	PROJECT NO.	SECTION NO.	SHEET NO.
ND	30-114-08.1	60	1

SPEC	CODE	BID ITEM	QTY	UNIT
202	0312	REMOVE EXISTING FENCE Sta 1+94 to Sta 5+70	600	LF
302	0356	AGGREGATE SURFACE COURSE CL 13 Sta 0+00 to 5+70	623	TON
752	0126	FENCE SMOOTH WIRE 3 STRAND-STEEL POST Sta 1+94 @ 42' Rt to Sta 2+75 @ 119' Rt Sta 3+17 @ 38' Rt to Sta 5+70 @ 42' Rt	134 283	LF LF
752	2995	CORNER ASSEMBLY-WOOD POST Sta 1+94 @ 42' Rt Sta 2+34 @ 80' Rt Sta 2+75 @ 119' Rt Sta 3+69 @ 42' Rt	1 1 1 1	EA EA EA EA
754	0803	OBJECT MARKERS - TYPE III Parapet Locations	4	EA

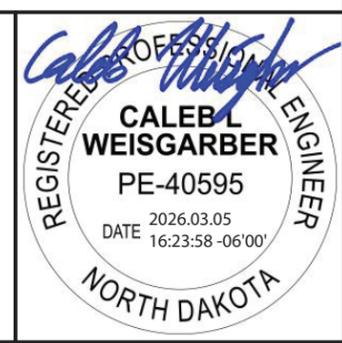


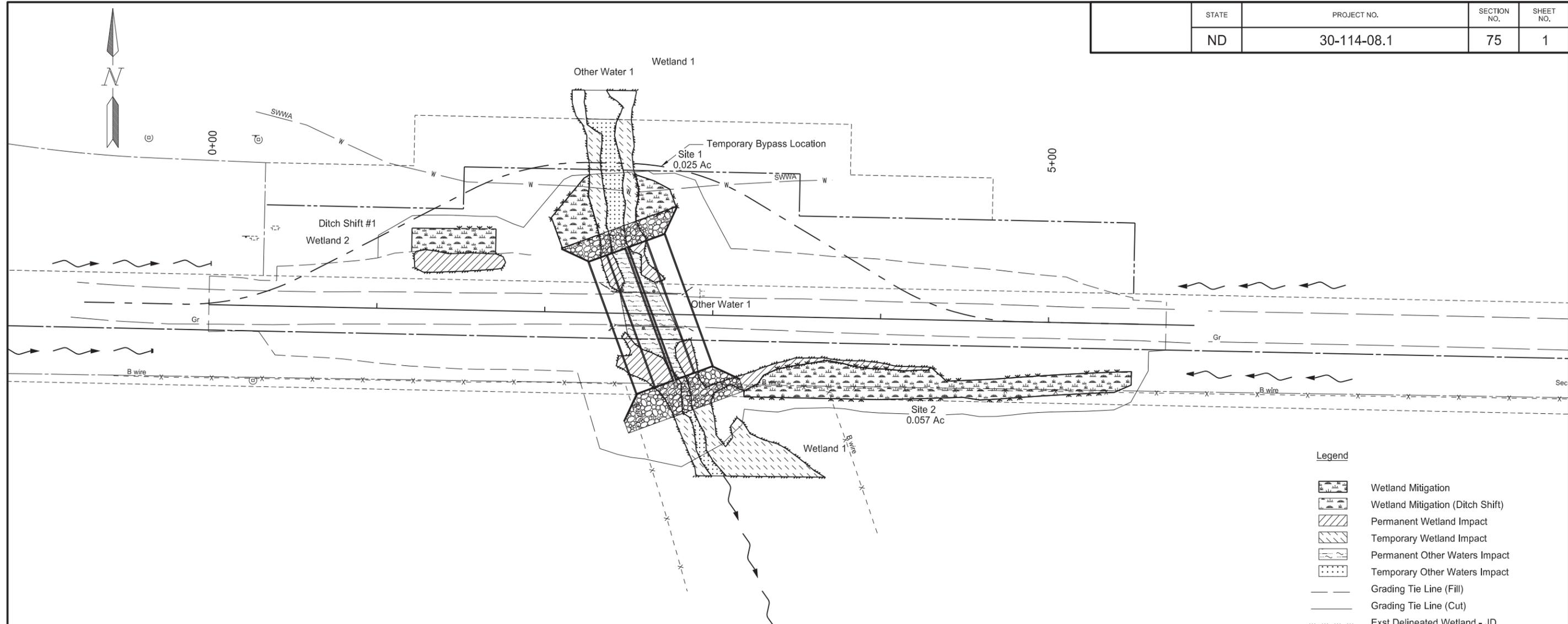
Earthwork Summary			
Location	203 0102 COMMON EXCAVATION-TYPE B (CY)	Embankment (CY)	203 0140 BORROW- EXCAVATION
38th St SW Sta 0+00 to 5+70	505	1,506	1,001

Morton County Bridge Replacement

Plan & Profile

Sta 0+00 to 5+70





- Legend**
- Wetland Mitigation
 - Wetland Mitigation (Ditch Shift)
 - Permanent Wetland Impact
 - Temporary Wetland Impact
 - Permanent Other Waters Impact
 - Temporary Other Waters Impact
 - Grading Tie Line (Fill)
 - Grading Tie Line (Cut)
 - Exst Delineated Wetland - JD
 - Other Water
 - Flow Direction

Wetland Impact Table										
Wetland Number	Location	Wetland Type	Wetland Feature	USACE Jurisdictional Wetlands	Wetland Impacts Acre(s)			Wetland Mitigation		
					Temp.	Perm. (Fill/Drain)	Perm. (Cut)	Mitigation Proposed	Mitigation Location; ratio	Onsite Acre(s)
#1	Sec. 8 & 17, T139N, R88W	Slope	Basin	Yes	0.061	0.049		Y	Site 1 & Site 2; 1:1	0.049
#2	Sec. 8, T139N, R88W	Slope	Basin	Yes		0.013		Y	Ditch Shift #1	0.013
Totals					0.061	0.062	0			0.062

Mitigation Summary Table				
	Wetland #1	Wetland #2	Other Waters #1	Total
Onsite	0.049		0.033	0.082
Onsite Ditch Shift		0.013		0.013

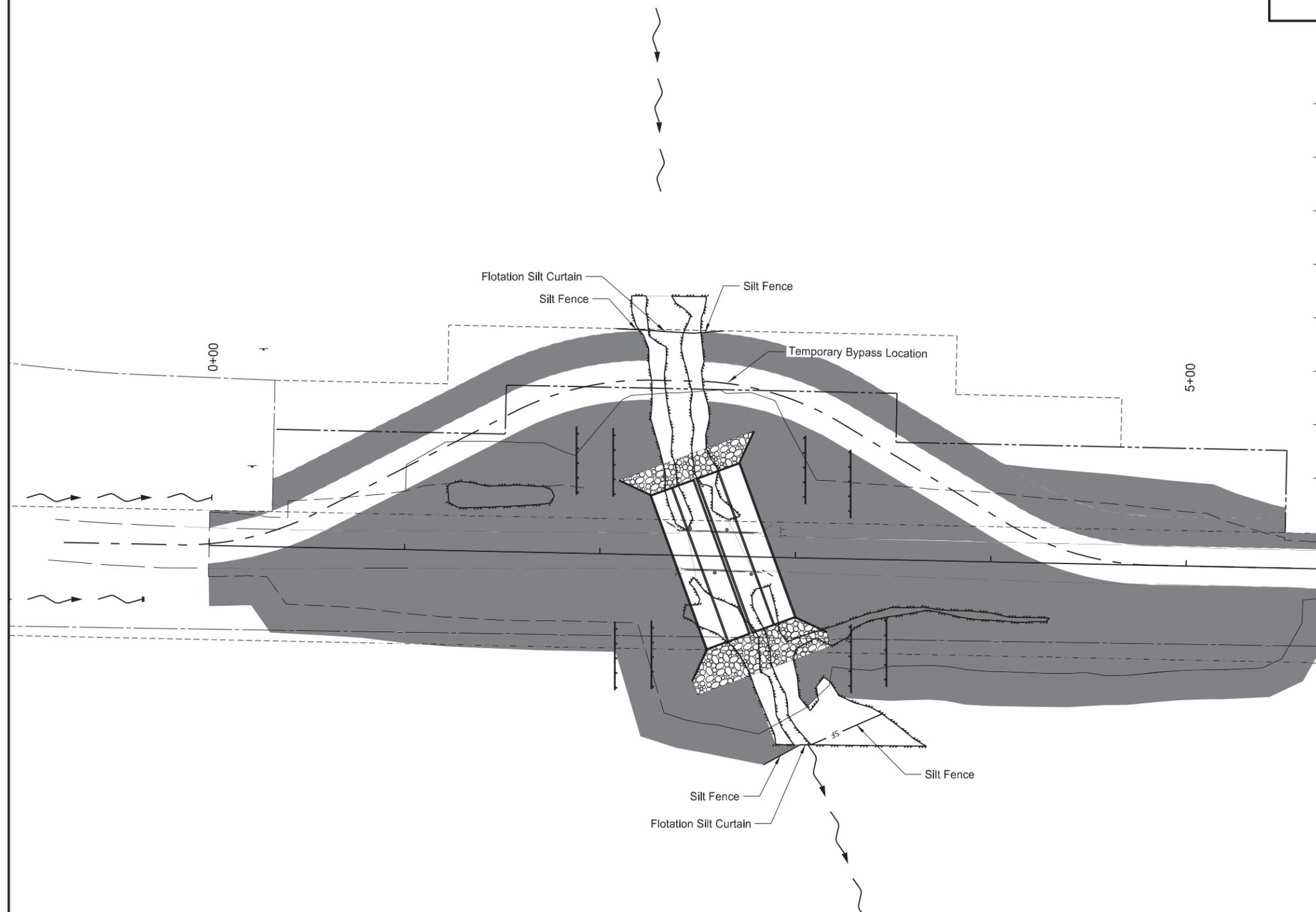
Other Waters Impact Table													
Number	Location	Type	Feature	USACE Jurisdictional	Impacts to Other Waters						Other Waters Mitigation		
					Acres			Linear Feet			USACE / EO 11990	Mitigation Location; ratio	Onsite Acre(s)
					Temp.	Perm. (Fill/Drain)	Perm.	Temp.	Perm. (Fill/Drain)	Perm.			
#OW 1	Sec. 8 & 17, T139N, R88W	Stream	Tributary to Heart River	Y	0.023	0.033		107	118		Y	Site 1 & Site 2; 1:1	0.033
Totals					0.023	0.033	0.000	107	118	0			0.033

Morton County Bridge Replacement

Wetland Impacts

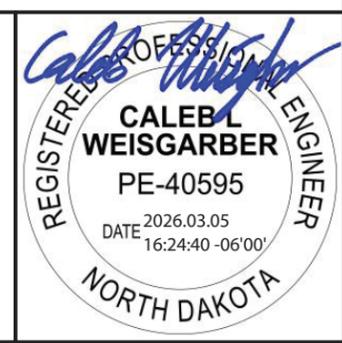
STATE	PROJECT NO.	SECTION NO.	SHEET NO.
ND	30-114-08.1	76	1

SPEC	CODE	BID ITEM	QTY	UNIT
251	2000	TEMPORARY COVER CROP Various Locations	1.30	ACRE
253	0101	STRAW MULCH Various Locations	1.30	ACRE
260	0200	SILT FENCE SUPPORTED Various Locations	105	LF
260	0201	REMOVE SILT FENCE SUPPORTED Various Locations	105	LF
261	0112	FIBER ROLLS 12IN Various Locations	280	LF
261	0113	REMOVE FIBER ROLLS 12IN Various Locations	280	LF
262	0100	FLOTATION SILT CURTAIN Various Locations	18	LF
262	0101	REMOVE FLOTATION SILT CURTAIN Various Locations	18	LF



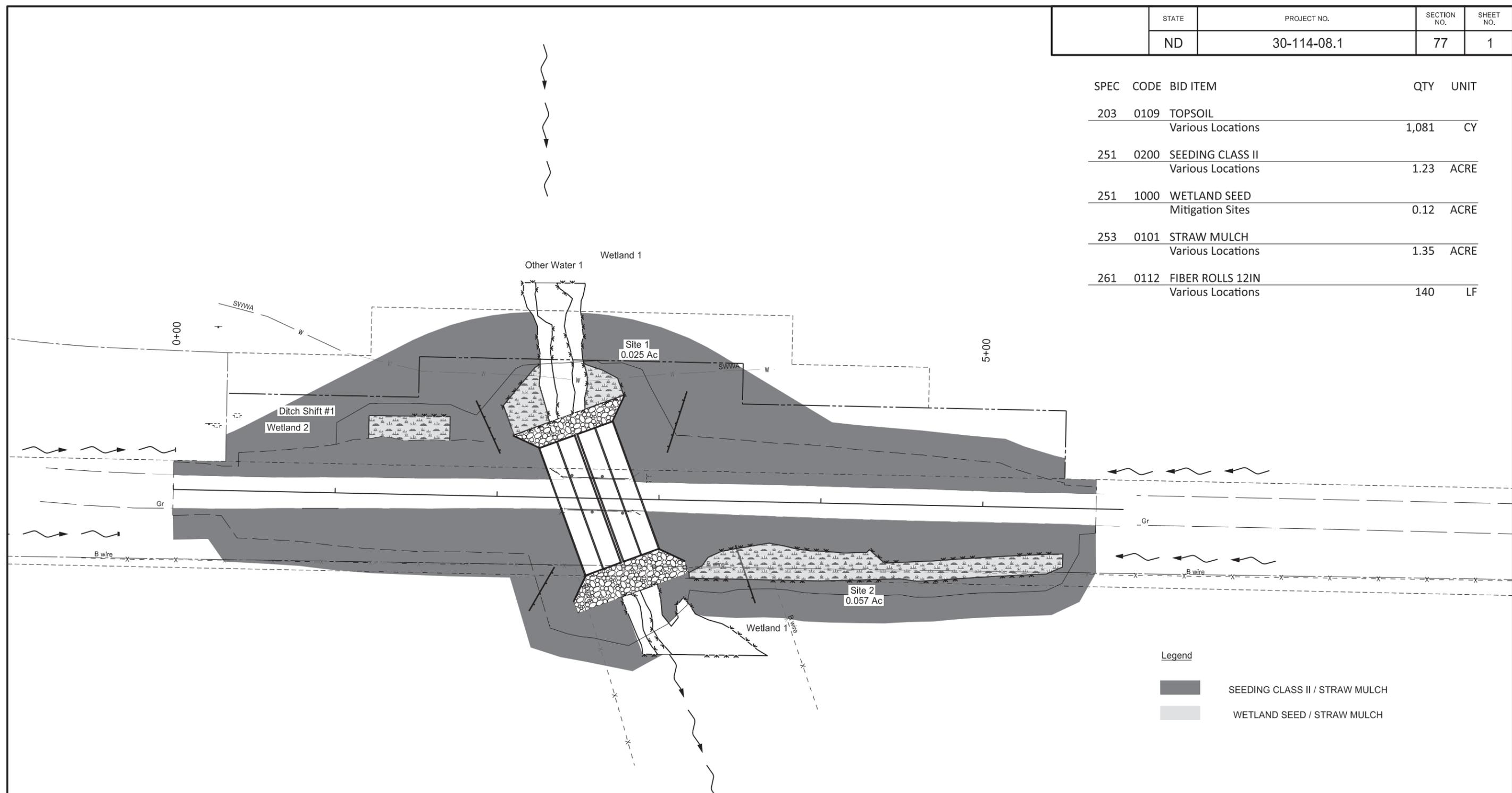
Legend
 TEMPORARY COVER CROP / STRAW MULCH

Morton County Bridge Replacement
 Temporary Erosion Control
 Sta 0+00 to 5+70



STATE	PROJECT NO.	SECTION NO.	SHEET NO.
ND	30-114-08.1	77	1

SPEC	CODE	BID ITEM	QTY	UNIT
203	0109	TOPSOIL Various Locations	1,081	CY
251	0200	SEEDING CLASS II Various Locations	1.23	ACRE
251	1000	WETLAND SEED Mitigation Sites	0.12	ACRE
253	0101	STRAW MULCH Various Locations	1.35	ACRE
261	0112	FIBER ROLLS 12IN Various Locations	140	LF



Legend

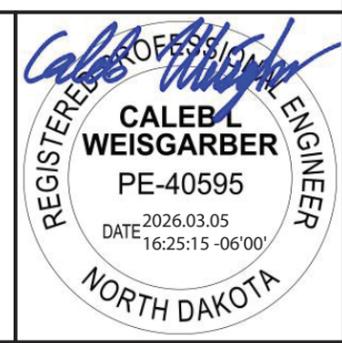
■ SEEDING CLASS II / STRAW MULCH

■ WETLAND SEED / STRAW MULCH

Morton County Bridge Replacement

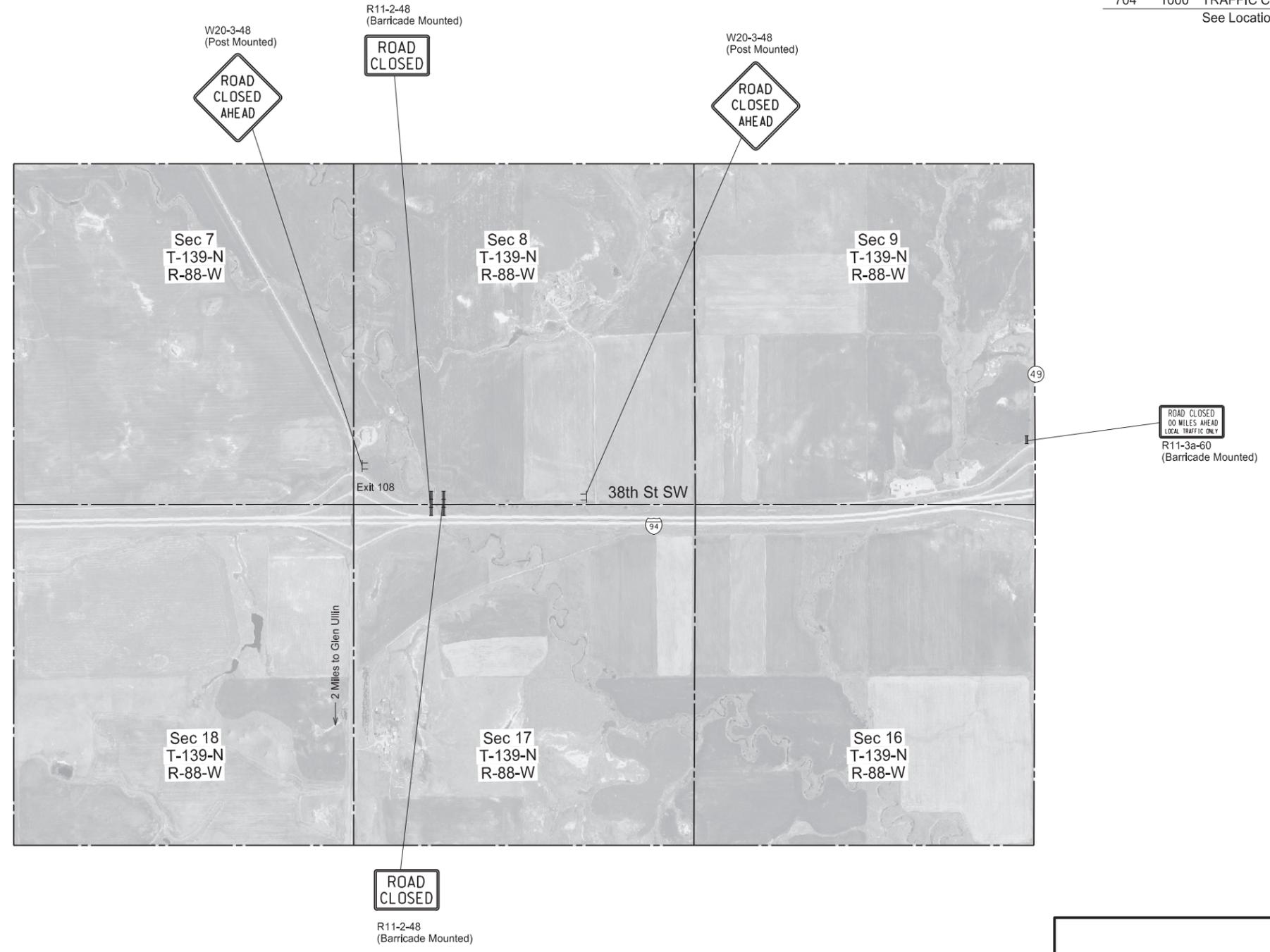
Permanent Erosion Control

Sta 0+00 to 5+70



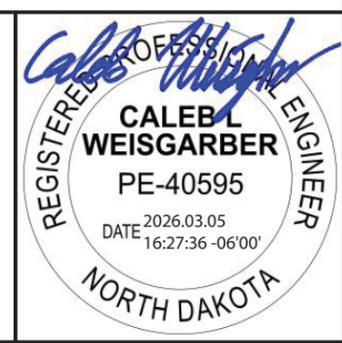
STATE	PROJECT NO.	SECTION NO.	SHEET NO.
ND	30-114-08.1	100	1

SPEC	CODE	BID ITEM	QTY	UNIT
704	1000	TRAFFIC CONTROL SIGNS		
See Locations on Left			1	L SUM

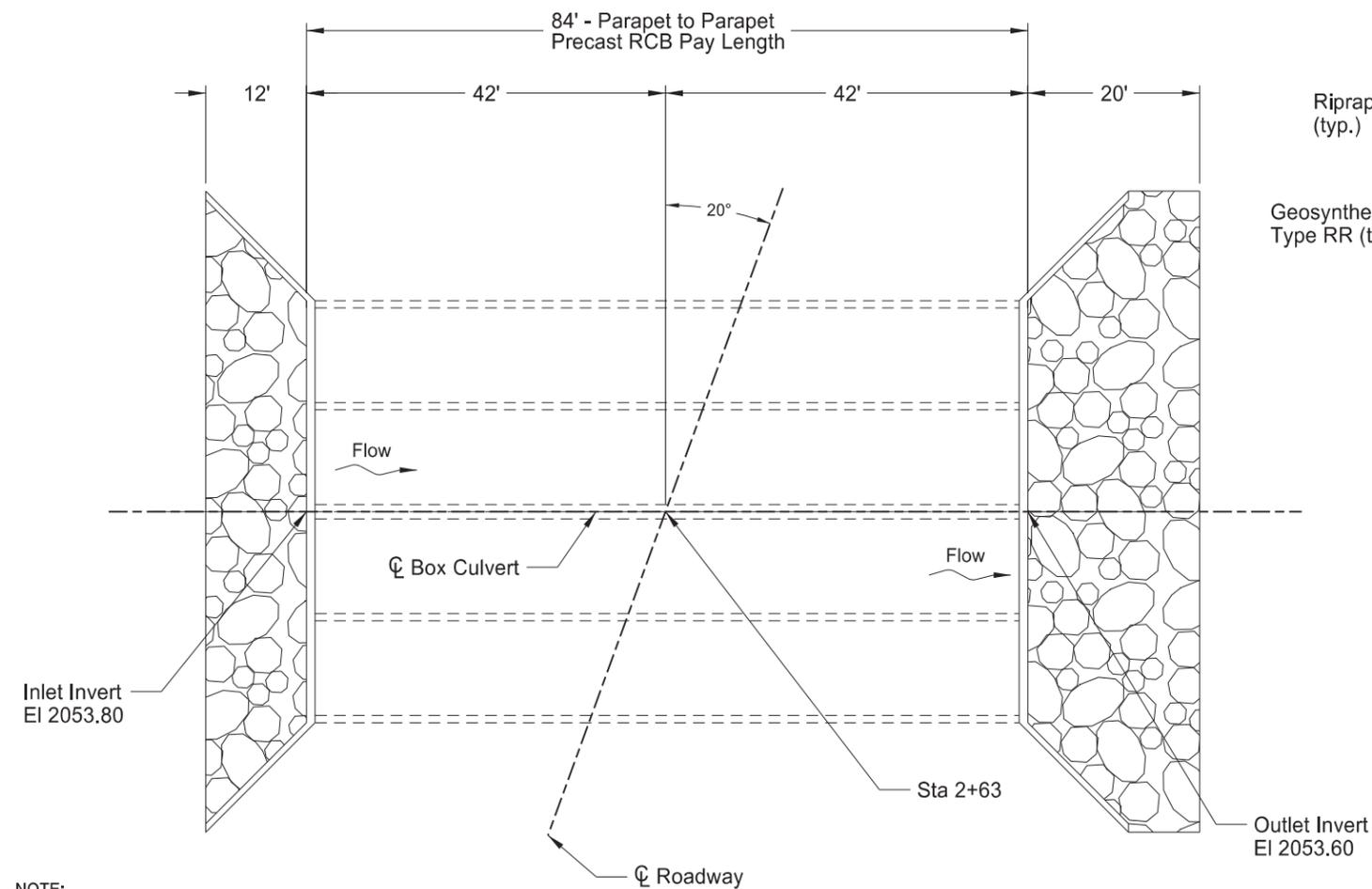


Morton County Bridge Replacement

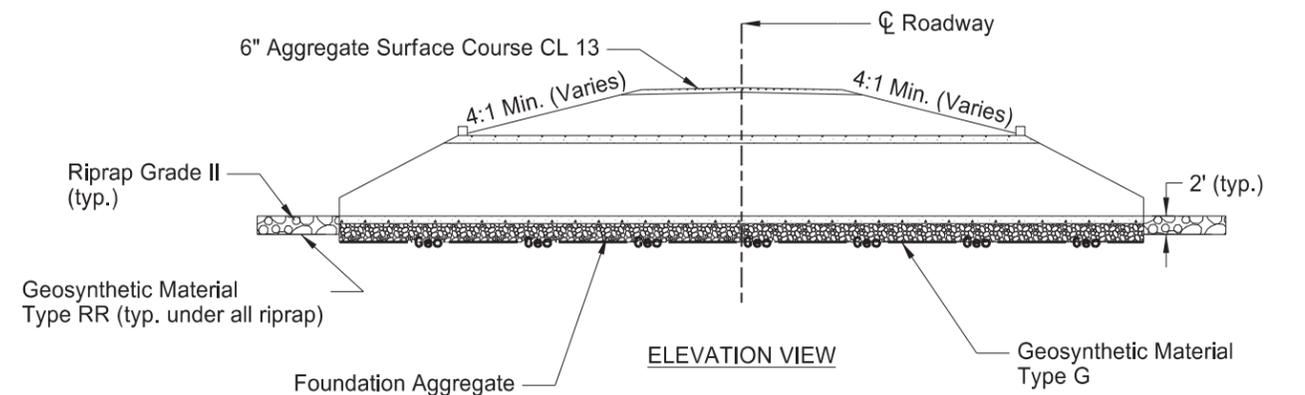
Work Zone Traffic Control



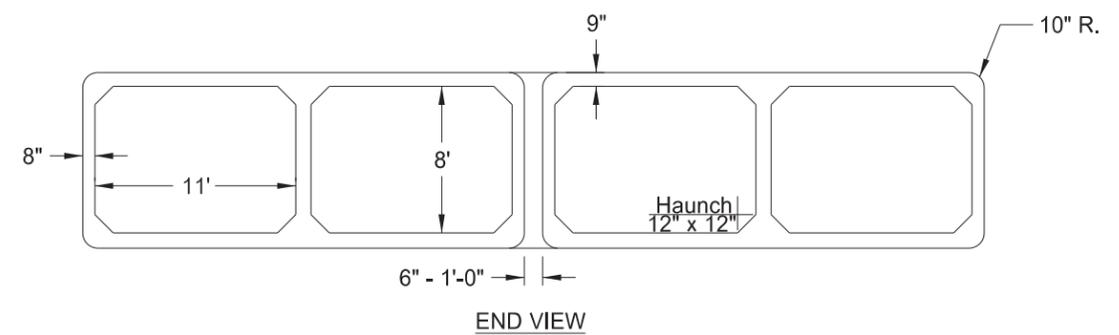
STATE	PROJECT NO.	SECTION NO.	SHEET NO.
ND	30-114-08.1	170	1



PLAN VIEW



ELEVATION VIEW



END VIEW

BOX CULVERT BID ITEMS

NOTE:
The invert elevations shown represent an elevation 1 foot below the existing streambed.

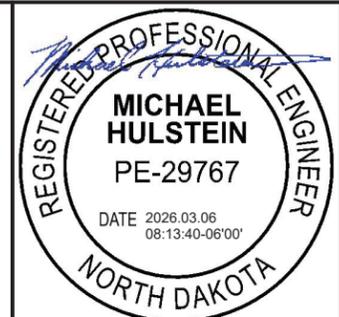
HYDRAULIC DATA:

Drainage Area	41.4	sq mi
Stream Gradient	0.001	ft/ft
Design Frequency	25	yr
Design Discharge	1620	cfs
Design Headwater Stage	2062.22	ft
Design Trailwater Stage	2061.46	ft
Velocity Through Culvert	5.36	fps
100-Year Frequency Discharge	2570	cfs
100-Year Frequency Headwater	2063.17	ft
Overtopping Stage	2062.10	ft
Overtopping Discharge	1474	cfs

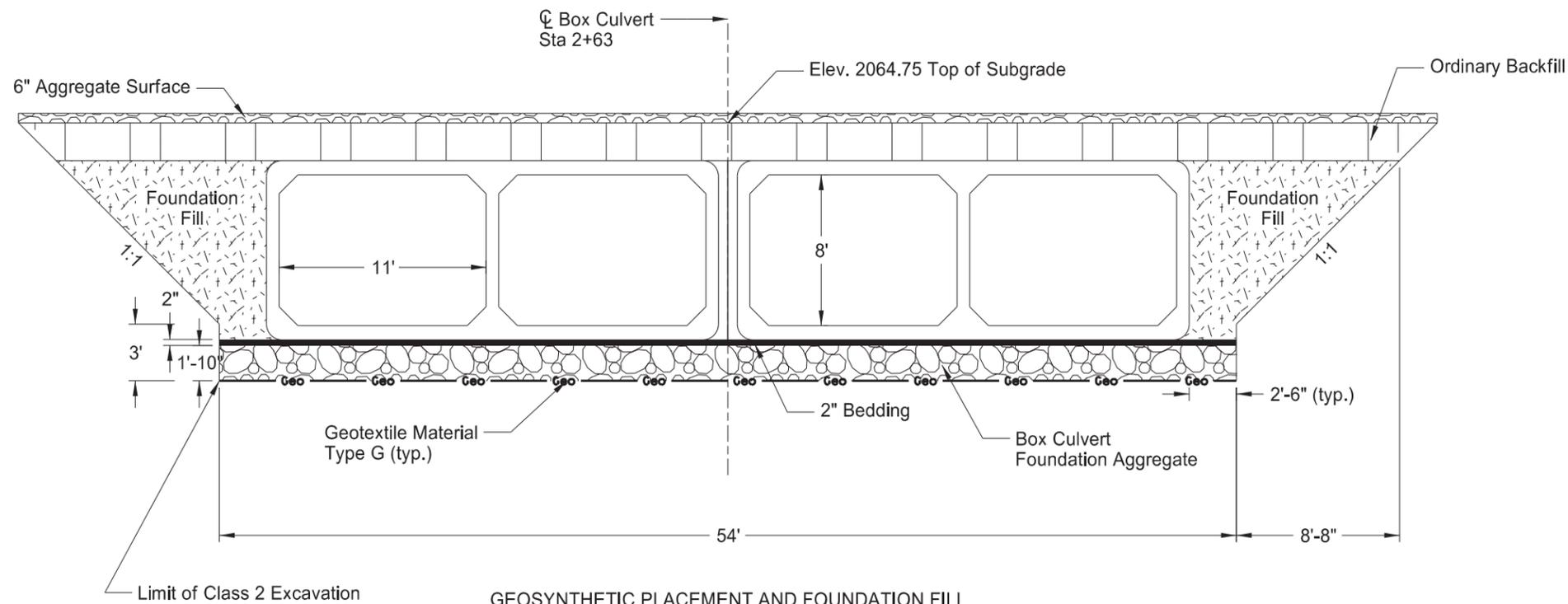
SPEC	CODE	ITEM DESCRIPTION	UNIT	QUANTITY
			L SUM	1
202	0105	REMOVAL OF STRUCTURE	EA	1
210	0050	BOX CULVERT EXCAVATION	CY	381
210	0210	FOUNDATION FILL	CY	308
210	0250	BOX CULVERT FOUNDATION AGGREGATE	EA	1
210	0405	FOUNDATION PREPARATION-BOX CULVERT	CY	153
256	0200	RIPRAP GRADE II	LF	168
606	3108	DBL 11FT X 8FT PRECAST RCB CULVERT	EA	2
606	7108	DBL 11FT X 8FT PRECAST RCB END SECTION	SY	504
709	0100	GEOSYNTHETIC MATERIAL TYPE G	SY	230
709	0155	GEOSYNTHETIC MATERIAL TYPE RR		

Morton County Bridge Replacement

2-Double 8' X 11' X 84'



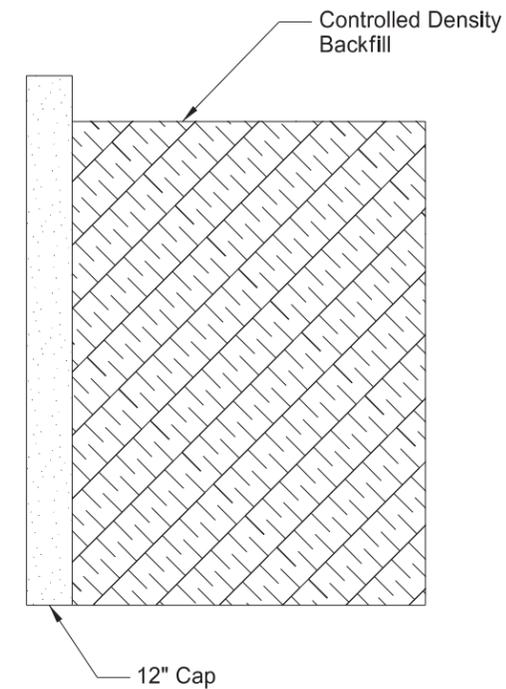
STATE	PROJECT NO.	SECTION NO.	SHEET NO.
ND	30-114-08.1	170	2



GEOSYNTHETIC PLACEMENT AND FOUNDATION FILL THROUGH EMBANKMENT

NOTES

Place all bedding for entire barrel length prior to placing box culvert sections.



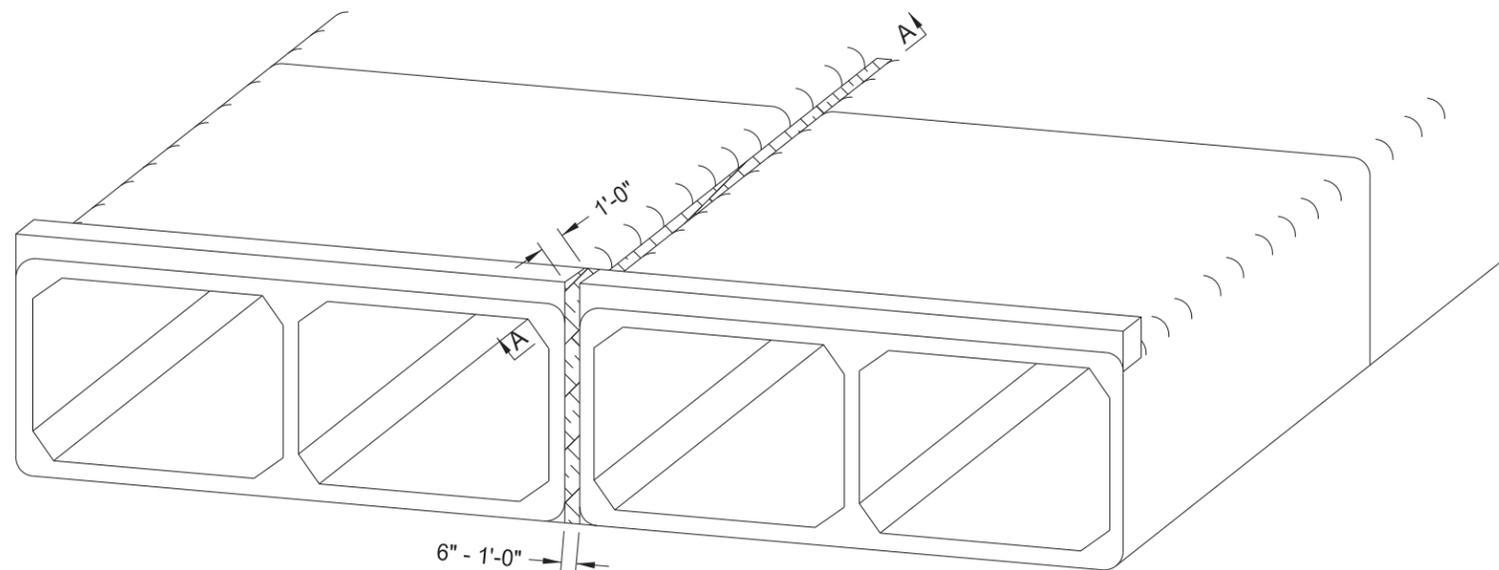
SECTION A-A

NOTES

The intent of this detail is to show only the placement of the controlled density backfill between adjacent barrels. The representation of the size of the barrels is arbitrary.

Embed the #4 bar 6" into the side of one of the box culvert end sections maintaining a 3" minimum clearance from the other box culvert. Spacing measured 1'-0" from bottom of box spaced at 1'-0" up the front face.

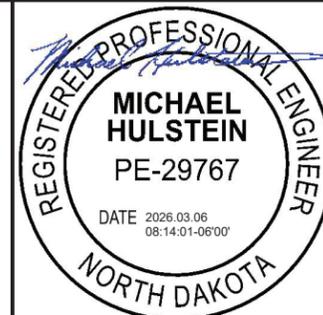
Install the #4 bars according to the manufacturer's recommendations, with a high strength adhesive specifically intended for concrete anchorage and that meets the requirements of Section 806.02.



MULTIPLE CELL INSTALLATION

Morton County Bridge Replacement

Precast Concrete Box Culvert



STATE	PROJECT NO.	SECTION NO.	SHEET NO.
ND	30-114-08.1	170	3

NOTES

202-P01 REMOVAL OF STRUCTURE: The existing structure is a 40' long by 20' wide, single span bridge with timber beams, decking and abutments.

210-P03 ORDINARY BACKFILL: Compact material as specified in Section 203.04 G.2.a, "ND T 180."

606-P01 DESIGN AND LOAD RATING: Design the box culvert and box culvert end sections in accordance with the AASHTO LRFD Bridge Design Specifications, 10th Edition. Design for HL-93 live load and a fill height range from 1 ft to 5 ft over the box culvert.

Load rate the box culvert in accordance with both the NDDOT Load Rating Manual and the AASHTO Manual for Bridge Evaluation, 2018 Edition, incorporating the latest Interim Revisions. Provide a box culvert design to achieve a rating factor greater than or equal to 1.0 for the design, legal, and permit trucks over the specified fill range. Include BrR Load Rating Summaries for 1 ft incremental fill depths throughout the fill range in the load rating report. Populate the NDDOT Load Rating Summary for the actual fill depth at the time of construction.

Include with the work drawing submittals a Load Rating Report sealed by a ND registered PE, and an AASHTOWare BrR Model of the structure in XML format.

606-P02 PRECAST SECTION: Do not install lifting holes in walls or floor of box culvert sections. Plug lifting holes in roof with tapered concrete plugs or another method approved by the Engineer.

Tie the barrel sections together with 1" tie bolts as shown on Standard Drawing D-714-22. Place two ties per exterior wall joint, located at third points of the wall clear height.

A 1 EA payment for "Dbl 11Ft X 8Ft Precast RCB End Section" will be made at each end of the box for the apron, cutoff wall, parapet and wingwalls. Attach the apron to the last barrel section, the wingwalls and the cutoff wall. Attach the wingwalls to the last barrel section. Provide a welded tie type system for the connections of the apron to the box and wingwalls. Connect the wingwalls to the last barrel section by the use of tie bolts, steel-bolted plates or other approved method so the inside corner surface is smooth.

Use ASTM A36 steel for bolts, plates, angles, and studs. Use heavy hex nuts meeting the requirements of ASTM A563 and washers meeting ASTM F436, Type 1. Provide welded pipe sleeves meeting the requirements of ASTM A53, Grade B. Galvanize hardware and structural steel according to Section 854.

Welders are to meet the requirements of Section 105.06 D. Galvanize field welds according to Section 854.02.

Cast holes at 3'-0" centers through the apron and into the cutoff wall to receive 3/4" diameter reinforcing bars. Cast holes in the last barrel section at 1'-0" centers for 1/2" diameter reinforcing bars to attach the parapet. Cast parapet against the section.

Install the bars according to the manufacturer's recommendations, with a high strength adhesive specifically intended for concrete anchorage, in accordance with Section 806.02.

Provide a distance of 1'-0" between separate precast units. Fill this gap with a controlled density backfill. Use a controlled density backfill consisting of cement, water, pozzolanic materials, and fillers. Use a material that is fluid on placement to flow around and fill voids in the backfill area. Use a material that is able to support normal loads after 6 hours and have a compressive strength in the range of 75 psi to 125 psi at 28 days. If the mix design shown is used, no further testing will be required. The mix design yields approximately one cubic yard of flowable mortar.

MIX DESIGNS

Mix Design 1

Cement 100 lbs
 Fly Ash 300 lbs
 Fine Aggregate 2600 lbs
 Water 70 gals

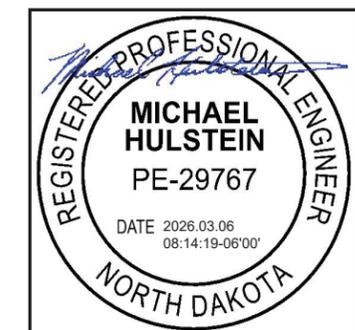
Mix Design 2 (No Fly Ash)

Cement 165 lbs
 Fly Ash NA
 Fine Aggregate 2600 lbs
 Water 50 gals

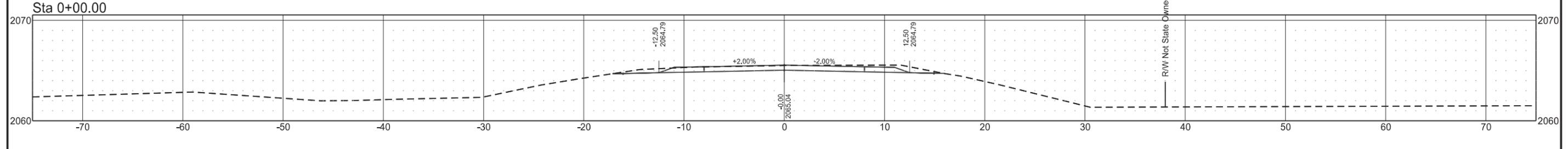
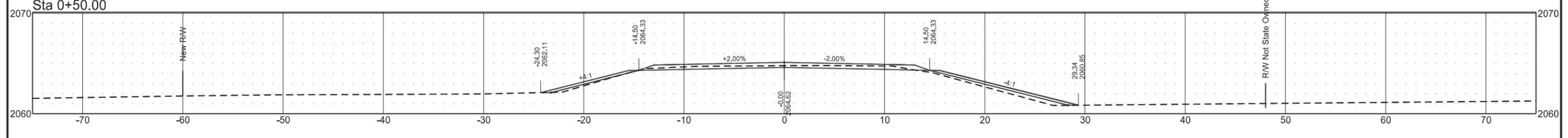
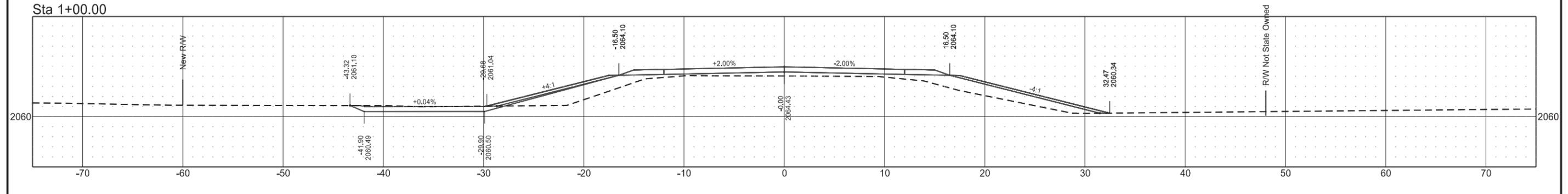
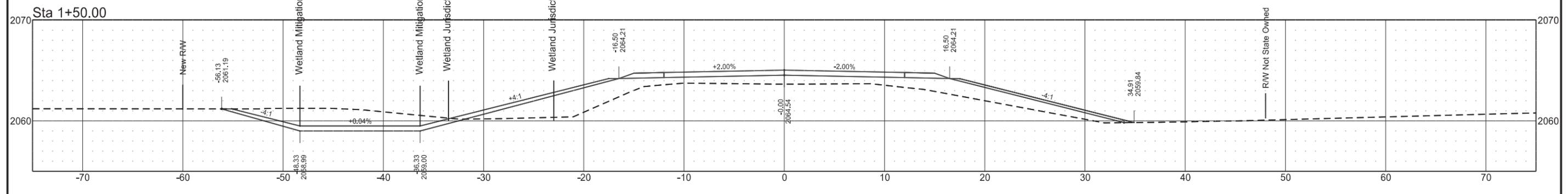
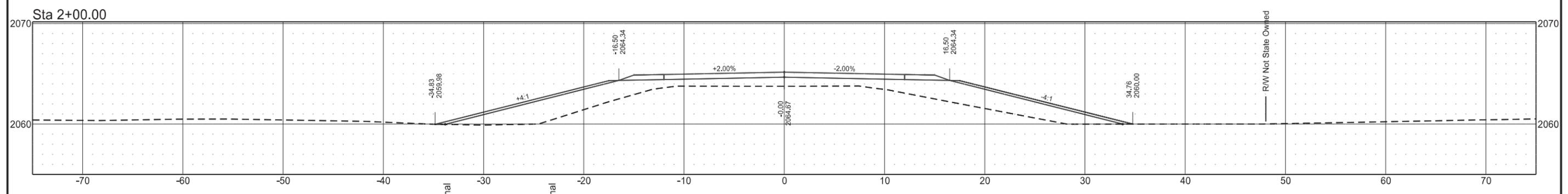
For the 12" cap, use a weatherproof and freeze/thaw resistant, non-shrink cement grout material such as SikaGrout @ 212, BASF Masterflow @ 928, Euclid NS Grout, or an approved equal which complies with ASTM C1107.

Include the controlled density backfill and material used for the 12" cap in the price bid for "Dbl 11Ft X 8Ft Precast RCB Culvert."

606-P03 JOINTS: Provide joints in accordance with Section 606.04 E.3, with the exception that a 12" minimum width waterproof membrane is allowable around the exterior surfaces of the box culvert walls and roof.

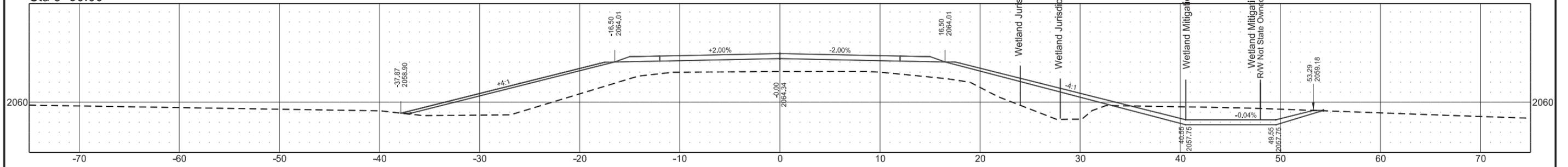


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ND	30-114-08.1	200	1

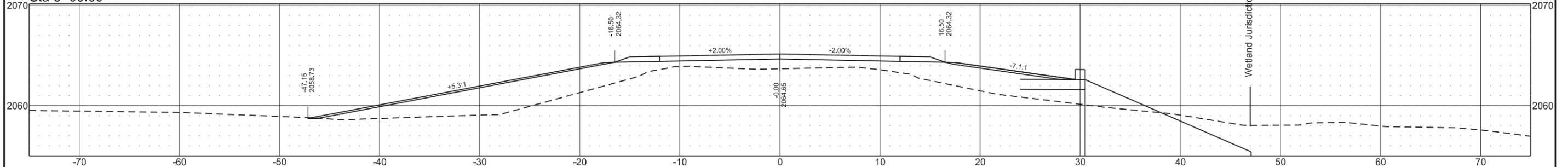


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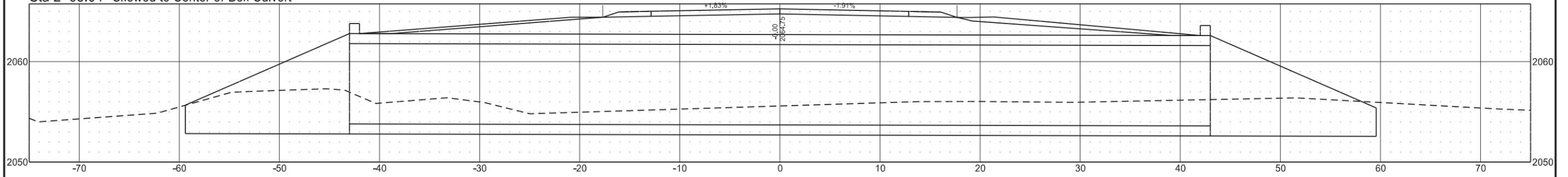
Sta 3+50.00



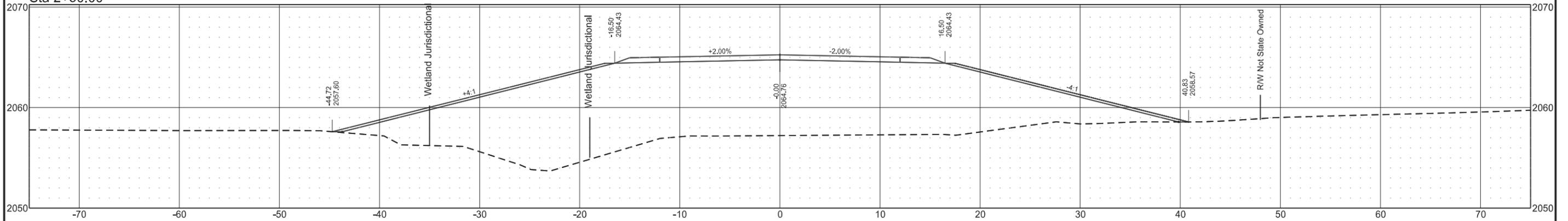
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Sta 2+63.04 Skewed to Center of Box Culvert*

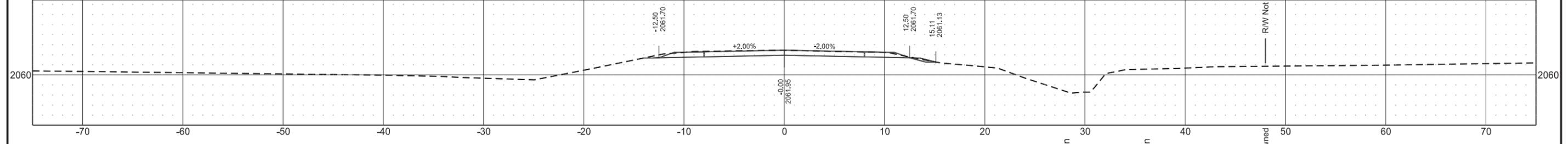


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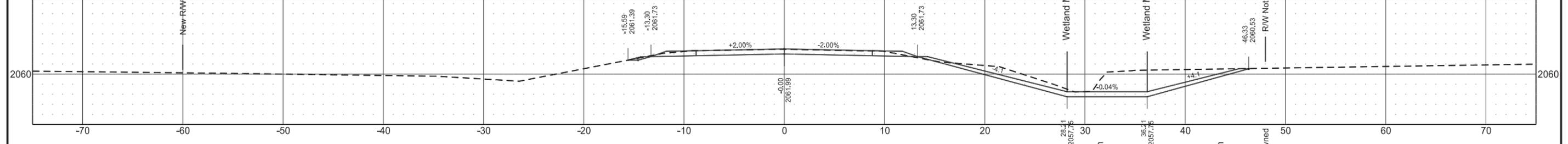


STATE	PROJECT NO.	SECTION NO.	SHEET NO.
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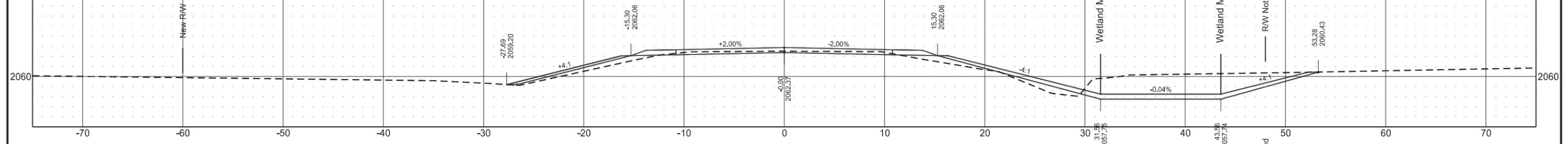
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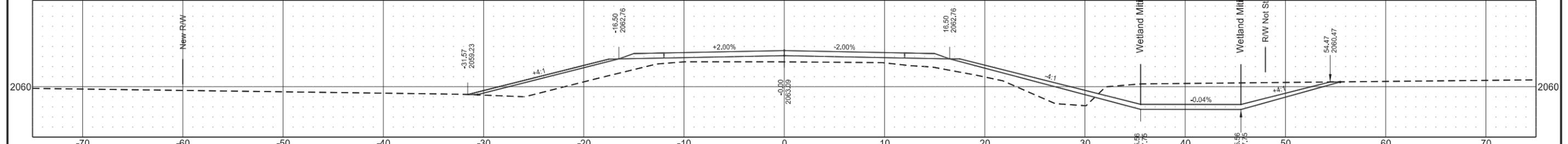
Sta 5+50.00



Sta 5+00.00



Sta 4+50.00



Sta 4+00.00

