

PLANS & SPECIFICATIONS

**39<sup>TH</sup> STREET SE**  
**STREET AND UTILITY IMPROVEMENTS**  
**CITY OF MINOT, NORTH DAKOTA**  
I.E. #B11-04-280

Prepared For  
City of Minot  
515 2<sup>nd</sup> Avenue SW  
Minot, North Dakota 58702

June 14, 2012

PREPARED BY



**WILLISTON, NORTH DAKOTA**

I, Veronica M. Meyer, hereby certify that these Plans and Specifications were prepared by me or under my direct supervision. I further certify that I am a Registered Professional Engineer under the Laws of the State of North Dakota.

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Veronica M. Meyer

DATE: \_\_\_\_\_ PE-7122

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**ADVERTISEMENT FOR BIDS  
39<sup>TH</sup> STREET SE  
STREET AND UTILITY IMPROVEMENTS  
CITY OF MINOT, NORTH DAKOTA**

Notice is hereby given that sealed bids will be received for the 39<sup>th</sup> Street SE Street and Utility Improvements. Bids will be received by the City of Minot, ND at their office of the City Clerk, 515 2<sup>nd</sup> Avenue SW (Second Floor) Minot, North Dakota until **11 a.m. on December 11, 2012**, and then at said office, the bids will be publicly opened and read aloud.

Digital copies of the Bidding Documents are available at [www.interstateeng.com](http://www.interstateeng.com) or [www.questcdn.com](http://www.questcdn.com) for a fee of \$20.00. These documents may be downloaded by selecting this project from the "Bid Documents" tab and by entering Quest Project Number **2299266** on the "Search Projects" page. For assistance and free membership registration, contact QuestCDN at (952) 233-1632 or [info@questcdn.com](mailto:info@questcdn.com). Paper copies of the Bidding Documents may be obtained from Docunet Corp. located at 2435 Xenium Lane North, Plymouth, MN 55441, phone (763) 475-9600, for a fee of \$40 per set. The bidding and contract documents may also be examined at the City Clerk's office in Minot.

The project will consist of the following approximate quantities:

633 LF 8" PVC Water Main, 28 LF 6" PVC Water Main; 2 Fire Hydrant Assemblies, 2 6" Gate Valves and Boxes, 1 8" Gate Valve and Box, 804 LF RCP Storm Drain Pipe, 2 48" Catch Basin Manholes, 1 48" Manhole, 2 15" RCP Flared End Sections with Trash Guards, 1310 CY Subgrade Excavation and 1860 CY NDDOT CL 5 Aggregate Base, 520 Tons Hot Bituminous Paving, 1392 LF of Concrete Curb and Gutter, 375 SY 4" Concrete Sidewalk, Gravel and Grass Restoration and Miscellaneous items necessary therefore.

Each bid will be submitted on the basis of a cash payment for work. Each bid must be accompanied by a Bidder's Bond in the amount of five percent (5%) of the bid, payable to the City of Minot, ND.

***Bidders on this work will be required to comply with Title 40 CFR 35.3145(d). The requirements for bidders and contractors under this regulation concern utilization of Minority Business Enterprises (MBE), Women's Business Enterprises (WBE), and Small Business Enterprises (SBE) and are explained in the specifications.***

***The goal for MBE is 1% of the total dollar value of the project. The goal for WBE is 2% of the total dollar value of the project***

***Bidders on this work will be required to comply with the President's Executive Order No. 11246, as amended. The requirements for bidders and contractors under this order are explained in the specifications.***

***Attention is called to the fact that not less than the minimum salaries and wages as set forth in the Contract Documents must be paid on this project, and that the Contractor must ensure that employees and applicants for employment are not discriminated against because of their race, color, religion, sex, or national origin.***

The bid bond, a copy of the contractor's license or certificate of renewal, and the MBE/WBE Subcontractor Solicitation Information Form shall be in a separate envelope attached to the

outside of the bidding documents. All bids must be sealed.

No bid will be read or considered which does not fully comply with the above provisions as to Bond and Licenses, and any deficient bid submitted will be resealed and returned to the Bidder immediately.

The OWNER retains the right to reject any or all of the bids submitted and to waive any informality in any bid and to hold all bids for a period not to exceed thirty (30) days from said date of opening bids and to hold the three low bids and bid securities for a period not to exceed sixty (60) days from said date of bid opening.

All work for said improvements is required to be fully completed in 120 calendar days from the Notice to Proceed. Liquidated damages as defined in the General Conditions shall be \$1,000.00 per calendar day beyond the completion date stated above.

City of Minot, ND

By: \_\_\_\_\_

Lisa Jundt, City Clerk  
515 2<sup>nd</sup> Avenue SW  
Minot, ND 58702

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2012

Publication Dates:

Minot Daily News: November 23<sup>rd</sup>, November 30<sup>th</sup>, December 7<sup>th</sup>, 2012

**MBE/WBE SUBCONTRACTOR SOLICITATION INFORMATION**

Name, Address, & Phone Number of Subcontractor Contacted	Date that Quote was Requested	Description of Work Offered	Date of Follow-up & Person Contacted	Amount of Quote or Reason Not Quoting *	Quote Accepted? If not, List Reason for Rejection *	Indicate if MBE/WBE or non MBE/WBE

\* Use additional sheets if necessary. The undersigned hereby certifies that the above information is true and correct.

Contractor \_\_\_\_\_

By:

Signature

Title

Date

&gt;

General Decision Number: ND120002 10/05/2012 ND2

Superseded General Decision Number: ND20100002

State: North Dakota

Construction Type: Highway

Counties: North Dakota Statewide.

## HIGHWAY CONSTRUCTION PROJECTS

Modification Number	Publication Date
0	01/06/2012
1	09/21/2012
2	10/05/2012

ELEC0714-002 07/01/2009

ADAMS, BILLINGS, BOTTINEAU, BOWMAN, BURKE, BURLIEGH, DIVIDE,  
 DUNN, EMMONS, GOLDEN VALLEY, GRANT, HETTINGER, MCHENRY,  
 MCKENZIE, MCLEAN, MERCER, MORTON, MOUNTRIAL, OLIVER, PIERCE,  
 RENVILLE, ROLLETTE, SHERIDAN, SOIUX, SLOPE, STARK, WARD, &  
 WILLIAMS COUNTIES:

	Rates	Fringes
ELECTRICIAN		
CABLE SPLICER.....	\$ 34.46	11.66
ELECTRICIAN.....	\$ 34.06	11.61

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ELEC0714-003 10/01/2009

## LINE CONSTRUCTION:

	Rates	Fringes
Line Construction		
CABLE SPLICER.....	\$ 31.16	29.5%+4.75
GROUNDMAN.....	\$ 18.70	29.5%+4.75
LINE EQUIPMENT OPERATOR.....	\$ 28.04	29.5%+4.75
LINEMAN.....	\$ 31.16	29.5%+4.75

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ELEC1426-002 06/01/2011

BARNES, BENSON, CAVALIER, DICKEY, EDDY, FOSTER, GRAND FORKS,  
 GRIGGS, KIDDER, LAMOURE, LOGAN, MCINTOSH, NELSON, PEMBINA,  
 RAMSEY, RANSOM, RICHLAND, SARGENT, STEELE, STUTSMAN, TOWNER,  
 TRAILL, WALSH, & WELLS COUNTIES:

	Rates	Fringes
ELECTRICIAN		
CABLE SPLICER.....	\$ 26.68	11.07
ELECTRICIAN.....	\$ 25.41	10.92

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 \* ENGI0049-001 10/01/2012

	Rates	Fringes
Power equipment operators:		
GROUP 1.....	\$ 24.55	13.05
GROUP 2.....	\$ 23.65	13.05
GROUP 3.....	\$ 23.40	13.05
GROUP 4.....	\$ 23.25	13.05
GROUP 5.....	\$ 22.40	13.05
GROUP 6.....	\$ 21.10	13.05

#### POWER EQUIPMENT OPERATORS CLASSIFICATIONS

GROUP 1: All Cranes 60 tons and over, Cranes doing piling, sheeting, dragline/clam work, Derrick(Guy & Stiff), Gentry Crane Operator, Helicopter Operator, Mole Operator or Tunnel Mucking Machine, Power Shovel 3-1/2 CY. and over and Traveling Tower Crane.

GROUP 2: All Cranes 21 tons and up to 59 tons, Backhoe Operator 3 CY. and over, Creter Crane, Dredge Operator 12' and Over, Equipment Dispatcher, Finish Motor Grader, Front End Loader Operator 8 CY. and over, Master Mechanic (When supervising 5 or more Mechanics), Mon-o-rail Hoist Operator, Power Shovel up to and including 3-1/2 CY. and Tugboat.

GROUP 3: Cranes 20 tons and under, Asphalt Paving Machine Operator, Asphalt Plant Operator, Automated Grade Trimmer, Backhoe Operator 1 CY. up to and including 2-1/2 CY., Boom Truck Hydraulic (8 Tons & over), Cableway Operator, Concrete Batch Plant Operator(electronic or manual), Concrete Mixer Paving Machine Operator, Concrete Paver-Bridge Decks, Concrete Pump, Concrete Spreader Operator & Belt Placer, Crushing Plant Operator, Dozer Operator, Dredge Operator or Engineer 11'' and under, Drill Rigs, Heavy Duty Rotary or Chum or Cable Drill, Front End Loader (3-1/2 CY. up to and including 7-1/2 CY.), Gravel Washing & Screening Plant Operator, Locomotive, all types, Mechanic or Welder(heavy duty), Motor Grade Operator, Pavement Breaker (Non-Hydro Hammer type, Pipeline Wrapping, Cleaning & Bending Machine Operator, Power Actuated Auger and Horizontal Boring Machine Operator 6'' and over, Refrigeration Plant Engineer, Roto Milling Machine (Surface Planer) 43'' & over, Scraper Operator, Slip Form Concrete Paving Operator, Tandem Pushed Quad 9 or similar, Tractor with Boom Attachment, Trenching Machine- 100 HP. and over.

GROUP 4: Articulated/Off Road Hauler, Asphalt Dump Person, Asphalt Paving Screed Operator, Backhoe - up to and including 1/2 CY., Console Board Operator, Distributor Operator (Bituminous), Forklift Operator, Front End Loader- 1-1/2 CY. up to and including 3 CY., Grade Person, Gravel Screening Plant Operator (not Crushing or Washing), Greaser, Lazer-Screed Operator, Longitudinal Float and Spray Operator, Motor Grade Operator-Hual Roads, Paving Breaker- Hydro Hammer Type, Pugmill Operator, Push Tractor, Roller, Steel & Rubber on Hot Mix Asphalt Paving, Rotomill

Machine (Surface Planer), up to and including 42'', Sand and Chip Spreader, Self-propelled Sheepsfoot Packer with or without Blade attachment, Self-propelled Traveling Soil Stabilizer, Sheepsfoot Packer with Dozer attachment- 100 HP and over, Shouldering Machine, Slip Form, Curb & Gutter Operator, Tamping Machine Operator, Tie Tamper and Ballast Machine, Trenching Machine Operator- 46 HP up to and including 99 HP, Truck Mechanic, Well Points, Tub Grinder.

GROUP 5: Boom Truck- A- Frame or Hydraulic 2 tons up to and including 7 tons, Broom-Self propelled, Concrete Saw (Power Operated), Front End Loader Operator, less than 1-1/2 CY., Mobile Cement Mixer, Power Actuated Auger & Horizontal Boring Machine Operator up to and including 5", Roller, on other than Hot Mix Asphalt Paving, Oilers, Vibrating Packer Operator (Pad Type) Self-propelled, Water Spraying Equipment-Self Propelled.

GROUP 6: Brakeman or Switchman, Curb Machine Operator (Manuel), Dredge or Tugboat Deckhand, Drill Truck Gravel/Testing Operator, Form Trench Digger (Power), Gunite Operator Gunall, Paint Machine Striping Operator, Pick-up Sweeper, 1CY. & over Hopper Capacity, Scissor Jack-Self Propelled Platform Lift, Straw Mulcher and Blower, Stump Chipper Operator, Tractor Pulling Compaction or Aerating Equipment, Trenching Machine Operator- up to and including 45 HP.

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\* SUND2002-001 09/08/2010

	Rates	Fringes
Electrician		
Cass County.....	\$ 14.72	3.40
CARPENTER.....	\$ 25.00	3.65
Cement Mason/Finisher.....	\$ 25.00	3.65
Laborers:		
GROUP 1:.....	\$ 17.40	
GROUP 2:.....	\$ 17.65	
GROUP 3:.....	\$ 17.80	
GROUP 4:.....	\$ 18.55	

#### LABORERS CLASSIFICATIONS

GROUP 1: General Construction Laborers: Sack Shaker (cement and mineral filler): Pipe Handler: Drill Runner Tender: Salamander Heater and Blower Tender, Light truck, Pickup Driver, Flaggers and Pilot Car Drivers.

GROUP 2: Semi Skilled Laborer: Bulk Cement Handler: Conduit Layer, Telephone or Electrical: Form Setter (pavement): Gas Electric or pneumatic tool operator: Chipping Hammer, Grinders and Paving Brakers (tamper-drit) Concrete Vibrator Operator: Chain Saw Operator: Concrete Saw Operator: Concrete Curing Man (not water): Bituminous worker (Shoveler, Dumper, Raker and Floated): Kettleman (bituminous or lead): Concrete Bucket Signlman: Power Buggy



Operator: Brick and Mason Tender: Multiplate Pipelayer:  
Culvert Pipe Layers: Concrete Finishers Tender. Carpenters  
Tenders.

GROUP 3: Caisson Worker: Bottom Man (sanitary sewer, storm  
sewer water and gas liners): Concrete Mixer Operator (one  
bag capacity): Mortar Mixer.

GROUP 4: Pipe Layers (sanitary sewer, storm sewer, water and  
gas lines): Drill runner (includes Wagon Churn or Air  
Track) Powderman, Guniting and Sandblast, Nozzleman,  
Reinforcing Steel Setters/Tiers.

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\* TEAM0638-002 10/01/2012

	Rates	Fringes
TRUCK DRIVER		
Euclid over 20 yds.....	\$ 25.97	10.70
Single Axle Trucks.....	\$ 24.02	10.70
Tandem Tri Axle Semi, Low Boy and Off Road Heavy Duty End Dumps 20 yds & under.....	\$ 24.45	10.70
Tandem Tri/ Axle Truck.....	\$ 24.14	10.70

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

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Unlisted classifications needed for work not included within  
the scope of the classifications listed may be added after  
award only as provided in the labor standards contract clauses  
(29CFR 5.5 (a) (1) (ii)).

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The body of each wage determination lists the classification  
and wage rates that have been found to be prevailing for the  
cited type(s) of construction in the area covered by the wage  
determination. The classifications are listed in alphabetical  
order of "identifiers" that indicate whether the particular  
rate is union or non-union.

#### Union Identifiers

An identifier enclosed in dotted lines beginning with  
characters other than "SU" denotes that the union  
classification and rate have found to be prevailing for that  
classification. Example: PLUM0198-005 07/01/2011. The  
first four letters , PLUM, indicate the international union and  
the four-digit number, 0198, that follows indicates the local  
union number or district council number where applicable ,  
i.e., Plumbers Local 0198. The next number, 005 in the

example, is an internal number used in processing the wage determination. The date, 07/01/2011, following these characters is the effective date of the most current negotiated rate/collective bargaining agreement which would be July 1, 2011 in the above example.

Union prevailing wage rates will be updated to reflect any changes in the collective bargaining agreements governing the rate.

0000/9999: weighted union wage rates will be published annually each January.

#### Non-Union Identifiers

Classifications listed under an "SU" identifier were derived from survey data by computing average rates and are not union rates; however, the data used in computing these rates may include both union and non-union data. Example: SULA2004-007 5/13/2010. SU indicates the rates are not union rates, LA indicates the State of Louisiana; 2004 is the year of the survey; and 007 is an internal number used in producing the wage determination. A 1993 or later date, 5/13/2010, indicates the classifications and rates under that identifier were issued as a General Wage Determination on that date.

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

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#### WAGE DETERMINATION APPEALS PROCESS

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

- \* an existing published wage determination
- \* a survey underlying a wage determination
- \* a Wage and Hour Division letter setting forth a position on a wage determination matter
- \* a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations  
Wage and Hour Division  
U.S. Department of Labor

200 Constitution Avenue, N.W.  
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

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

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

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

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END OF GENERAL DECISION

# EMPLOYEE RIGHTS UNDER THE DAVIS-BACON ACT

## FOR LABORERS AND MECHANICS EMPLOYED ON FEDERAL OR FEDERALLY ASSISTED CONSTRUCTION PROJECTS

THE UNITED STATES DEPARTMENT OF LABOR WAGE AND HOUR DIVISION

### PREVAILING WAGES

You must be paid not less than the wage rate listed in the Davis-Bacon Wage Decision posted with this Notice for the work you perform.

### OVERTIME

You must be paid not less than one and one-half times your basic rate of pay for all hours worked over 40 in a work week. There are few exceptions.

### ENFORCEMENT

Contract payments can be withheld to ensure workers receive wages and overtime pay due, and liquidated damages may apply if overtime pay requirements are not met. Davis-Bacon contract clauses allow contract termination and debarment of contractors from future federal contracts for up to three years. A contractor who falsifies certified payroll records or induces wage kickbacks may be subject to civil or criminal prosecution, fines and/or imprisonment.

### APPRENTICES

Apprentice rates apply only to apprentices properly registered under approved Federal or State apprenticeship programs.

### PROPER PAY

If you do not receive proper pay, or require further information on the applicable wages, contact the Contracting Officer listed below:



or contact the U.S. Department of Labor's Wage and Hour Division.



For additional information:

**1-866-4-USWAGE**

(1-866-487-9243) TTY: 1-877-889-5627



**WWW.WAGEHOUR.DOL.GOV**



# NOTICE TO ALL EMPLOYEES



## Working on Federal or Federally Financed Construction Projects

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### MINIMUM WAGES

You must be paid not less than the wage rate in the schedule posted with this Notice for the kind of work you perform.

### OVERTIME

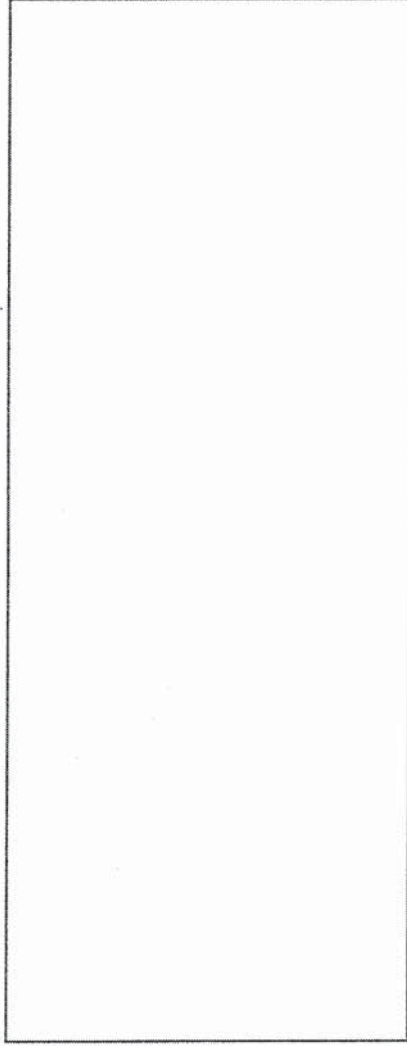
You must be paid not less than one and one-half times your basic rate of pay for all hours worked over 40 a week. There are some exceptions.

# APPRENTICES

Apprentice rates apply only to apprentices properly registered under approved Federal or State apprenticeship programs.

## PROPER PAY

If you do not receive proper pay, contact the Contracting Officer listed below:



or you may contact the nearest office of the Wage and Hour Division, U.S. Department of Labor. The Wage and Hour Division has offices in several hundred communities throughout the country. They are listed in the U.S. Government section of most telephone directories under:

**U.S. Department of Labor**

**Employment Standards Administration**

WH Publication 1321  
Revised January 1986

★ U.S. GOVERNMENT PRINTING OFFICE: 1985-209-866

U.S. Department of Labor  
Employment Standards  
Administration

Wage and Hour Division





## **SECTION 102 INFORMATION FOR BIDDERS**

**102-1:** Sealed bids will be received by OWNER as specified in the Advertisement for Bids for performing work as set forth in the Plans and Specifications. At the time and place indicated, the bids will be publicly opened and read.

**102-2 Form:** Each proposal shall be made on a form prepared therefore by the Engineer and included as one of the Contract Documents, and shall be submitted in a sealed envelope bearing the title of the work, the name of the Bidder, and the license number and class of license of the bidder, and date and hour of the bid opening. Proposals must be filled in, in ink or typewritten. No alterations or interlineations will be permitted, unless made before submission and initialed and dated.

**FAILURE TO INCLUDE THE MBE/WBE SUBCONTRACTOR SOLICITATION INFORMATION FORM IN THE BID SECURITY ENVELOPE WILL RESULT IN THE BID NOT BEING OPENED!**

**102-3 Discrepancies:** In case of a difference between the extended price and the unit price of the proposal, the unit price shall govern.

**102-4 Proposal Guarantee:** All bids are to be submitted on the basis of cash payment for the work and are to be enclosed in a sealed envelope addressed to the undersigned Authorized Representative accompanied by a bidder's bond in a sum equal to five (5) percent 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 be accepted and the contract awarded to him, he, within ten days after Notice of Award, will execute and effect a contract in accordance with the terms of his bid and a contractor's bond. Bid security shall be as required in Section 48-01.1-05, of the North Dakota Century Code as amended.

All bidders must be licensed for the highest amount of their bids, as provided by Section 43-07-05 of the North Dakota Century Code.

No bid will be read or considered which does not fully comply with the above provisions as to bonds and licenses, and any deficient bid submitted will be resealed and returned to the bidder immediately.

As soon as the bid prices have been compared, the OWNER will return the bonds of all except the three (3) lowest responsible bidders. When the Contract is awarded, the bonds of the two remaining unsuccessful bidders will be returned. The bond of the successful bidder will be retained until the Agreement and surety bond have been executed and approved, after which it will be returned.

**102-5 CONTRACT AND BOND:** The party to whom the Contract is awarded will be required to execute the Agreement and a Performance Payment Bond within ten (10)

calendar days from the date when the written "Notice of Award" of the Contract is mailed to the Bidder at the address given by him. If any Bidder to whom a contract is awarded fails or refuses to enter into such Agreement when requested to do so, the bond accompanying his bid shall be retained by the OWNER as liquidated damages for such failure. The bond shall be delivered to the OWNER and shall be credited by him to the fund from which the consideration for such work is payable. The sufficiency of any bond filed by a bidder shall be determined by the governing body at the time it considers the bids.

**102-6 Performance and Payment Bond:** A Performance and Payment Bond in the amount of one hundred percent (100%) of the Contract price with a corporate surety approved by the OWNER and the Engineer will be required for the faithful performance of the Contract, and the bidder shall state in the proposal the name and address of the surety or sureties who will sign this bond in case the Contract is awarded to him. The Contract Bond shall be as required by Section 48-02-06.2 of the North Dakota Century Code as amended.

A maintenance guarantee for the repair of all damages due to improper materials or workmanship for a period of one year after the acceptance of the work by the OWNER will also be required.

**102-7 Award or Rejection:** The Contract will be awarded to the lowest and/or best qualified responsible Bidder complying with these instructions and with the Advertisement. The OWNER reserves the right to reject any or all Proposals or to waive any formality or technicality in any Proposal in the interest of the OWNER. The OWNER reserves the right to hold all bids and bid securities for a period not to exceed thirty (30) days and to hold the three low bids and bid securities for a period not to exceed sixty (60) days from the date of the bid opening.

**102-8 Contractor Qualifications:** Before the award of the Contract, any bidder may be required to furnish evidence satisfactory to the OWNER and to the Engineer of the necessary facilities, ability and pecuniary resources to fulfill the conditions of the said Contract. Before contracts are executed by the OWNER, the Contractor will furnish the OWNER's Engineer a list of Subcontractors for his review, so as to conform with Section 226 of the General Conditions.

**102-9 Modifications:** Alternate proposals will not be considered unless called for. Oral proposals or modifications will not be considered.

**102-10 Examination of Documents and Site Visit:** Before submitting a Proposal, Bidders shall carefully examine the Drawings, read the Specifications and the other Contract Documents, shall visit the site of work, and shall fully inform themselves as to all existing conditions and limitations. The Contractor shall accept such conditions and limitations as the same are eventually found to exist, and to waive all claims for extra compensation arising from unforeseen difficulties, except as may be expressly provided for in the Specifications. Professions of ignorance regarding the work may in no way serve to nullify the provisions of the contract or specifications.



**102-11 Document Number:** Each set of Plans, Specifications and Construction Drawings will have a document number, given by the Engineer, and the number of each set with the name of the purchaser will be recorded by the Engineer. Bids will be accepted only from the original purchasers or from some other qualified Bidder to whom such a set has been transferred by the original purchaser, provided that in the event of such transfer the Engineer shall receive from the original purchasers, at least five (5) days prior to the scheduled bid opening, written notice of such transfer, together with the name of the party to whom the transfer has been made.

**102-12 Owner Information Obligation:** The Construction Agreement and the detailed specifications contain the provisions required for the construction of the project. No information obtained from any officer, agent, or employee of the OWNER on any such matters shall in any way affect the risk or obligation assumed by the Contractor or relieve him from fulfilling any of the conditions of the Contract, except to the extent provided in Paragraph 102-13 immediately following.

**102-13 Interpretations of Documents:** If any person contemplating submitting a Proposal is in doubt as to the true meaning of any part of the Drawings, Specifications, or other Contract Documents, or finds discrepancies in or omissions from the Drawings or Specifications, he may submit to the Engineer a written request for an interpretation or correction thereof. The person submitting the request will be responsible for its prompt delivery. Any interpretation or correction of the documents will be made only by Addendum duly issued and a copy of the Addendum will be mailed or delivered to each person receiving a set of the Contract Documents. Neither the OWNER nor the Engineer will be responsible for any other explanations or interpretations of the Contract Documents.

**102-14 Unacceptable Bids:** Bids which are incomplete, unbalanced, conditioned or obscure, or which contain additions not called for, erasures, alterations or irregularities of any kind, or which do not comply with the Information for Bidders, may be rejected at the option of the OWNER.

If the OWNER so elects, proposals may be issued for projects in combination and/or separately, so that bids may be submitted either on the combinations or on separate units of the combinations. The OWNER reserves the right to make awards on combination bids or separate bids to the best advantage of the OWNER.

Proposals will not be considered if the Bidder adds any provisions reserving the right to accept or reject an award or enter into a Contract pursuant to an award.

**102-15 Bid Submittal Conditions:** All bids must be placed in a sealed envelope upon the outside of which there is disclosed the following information:

- A. The work covered by the bid.
- B. The name of the person, firm or corporation submitting the bid.
- C. A copy of the license or certificate of renewal thereof issued will be enclosed in the required bid bond envelope.

D. Acknowledgement of each Addendum.

No contract will be awarded to any contractor unless he is the holder of a license in the class within which the value of the project shall fall. A contractor must be the holder of a license at least ten (10) days prior to the date set for receiving bids to be a qualified bidder.

Proposals shall be delivered by the time and to the place stipulated in the Advertisement for Bids. It is the sole responsibility of the Bidder to see that his proposal is received in proper time. Any proposal received after the scheduled closing time for receipt of proposals shall be returned to the Bidder unopened.

**102-16 Withdrawal:** A bidder may withdraw any proposal he has submitted at any time prior to the hour set for the opening of the bids, provided the request for withdrawal is signed in a manner identical with the proposal being withdrawn. No withdrawal or modification will be permitted after the hour designated for the opening of the bids.

**102-17 Addenda:** Any addenda issued during the time of bidding, or forming a part of the Contract Documents loaned to the bidder for the preparation of his proposal, shall be covered in the proposal and shall be made a part of the Contract. Receipt of each Addendum shall be acknowledged in the proposal and upon the outside of the Bid Envelope.

**102-18 More than One Proposal:** No person, firm or corporation shall be allowed to make, file or to be interested in more than one proposal for the same work, unless alternate proposals are called for. A person, firm, or corporation who has submitted a sub-proposal to a bidder, or who has quoted prices on materials to a bidder, is hereby not disqualified from submitting a sub-proposal or quoting prices to other bidders.

**102-19 North Dakota State Tax Clearance:** The successful Contractor shall file with the OWNER prior to award of the Contracts a current statement of income tax clearance from the North Dakota Tax Department in accordance with Section 43-07-11.1 North Dakota Century Code as amended.

**102-20 General Conditions:** General Conditions of the Contract as bound hereinwith are hereby made a part of the Contract Documents.

**102-21 Estimate Quantities:** Approval of quantities that will be the basis for payment estimates, both monthly and final, will be made by the Engineer.

**102-22 Conferences:** The Contractor will be notified by the Engineer of any conferences that his attendance is required. A date and time for said conferences will be set by the Engineer.

**102-23 Government Requirements:** The Contractor shall comply with all "Government Requirements" as contained in Section 300 contained herein.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

\_\_\_\_\_  
City of Minot, North Dakota

OWNER

\_\_\_\_\_  
By

\_\_\_\_\_  
Title

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## SECTION 103 BIDDER'S PROPOSAL

**103-1 PROPOSAL:** In compliance with your Advertisement for Bids and subject to all the conditions thereof, the undersigned

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---

hereby proposes to furnish and do everything required by the Contracts to which this refers for the construction of all structures listed at the unit prices shown for each bid item on the following Bid Schedule. (The Bid Schedule attached lists the various divisions of construction contemplated in the Plans and Specifications, together with an estimate of the units of each. With these units as the basis, the bidder will extend such item, using the cost he inserts in the unit column. Any total cost found inconsistent with the unit cost when the bids are examined will be deemed in error and corrected to agree with the unit cost which shall be considered correct.)

**103-2 PROJECT:** This project consists of 39<sup>th</sup> Street SE Street and Utility Improvements – Minot, ND as shown in the Advertisement for Bids.

*Bidders on this work will be required to comply with Title 40 CFR 35.3145(d). The requirements for bidders and contractors under this regulation concern utilization of Minority Business Enterprises (MBE), Women's Business Enterprises (WBE), and Small Business Enterprises (SBE) and are explained in the specifications.*

*The goal for MBE is 1% of the total dollar value of the project. The goal for WBE is 2% of the total dollar value of the project*

*Bidders on this work will be required to comply with the President's Executive Order No. 11246, as amended. The requirements for bidders and contractors under this order are explained in the specifications.*

*Prevailing Wages Required: The Davis Bacon and Related Acts (DBRA) requires all contractors and subcontractors performing work on federal or District of Columbia construction contracts or federally assisted contracts in excess of \$2,000 to pay their laborers and mechanics not less than the prevailing wage rates and fringe benefits for corresponding classes of laborers and mechanics employed on similar projects in the area. The prevailing wage rates and fringe benefits are determined by the Secretary of Labor for inclusion in covered contracts.*

*Recordkeeping: Under the Davis-Bacon and Related Acts (DBRA), covered contractors must maintain payrolls and basic records and submit certified weekly payrolls. Although use of [Form WH-347](#) is optional, the form will satisfy the requirements of Regulations, Parts 3 and 5 (29 CFR, Subtitle A), as to payrolls submitted in connection with contracts subject to the DBRA. Records to be maintained include:*

- *Name, address, and social security number of each employee;*

- *Each employee's work classification(s);*
- *Hourly rate(s) of pay (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof);*
- *Daily and weekly numbers of hours worked;*
- *Deductions made; and*
- *Actual wages paid.*

See [29 CFR 5.5\(a\)\(3\)](#) for further information.

**FAILURE TO INCLUDE THE MBE/WBE SUBCONTRACTOR SOLICITATION INFORMATION FORM IN THE BID SECURITY ENVELOPE WILL RESULT IN THE BID NOT BEING OPENED!**

**103-3 EXAMINATION OF DOCUMENTS AND SITE VISIT:** The undersigned has examined the location of the proposed work, the Drawings, Specifications and other Contract Documents and is familiar with the local conditions and limitations at the place where the work is to be performed.

**103-4 ADDENDA:** The Receipt of Addendas \_\_\_\_\_ through \_\_\_\_\_ is hereby acknowledged.

**103-5 BASIS OF PROPOSAL:** All various phases of work enumerated in the Detailed Specifications with their individual jobs and overhead, whether specifically mentioned, included by implication or appurtenant thereto, are to be performed by the Contractor under one of the items listed in the bid schedule, irrespective of whether it is named in said list, and that the OWNER may specify any number or combination of units that the Engineer may deem necessary for the construction of the Project.

**103-6 TAXES:** Along with 103-5 above, the undersigned agrees that the prices in this Contractor's Proposal include provisions for the payment of all monies which will be payable by the Bidder or the OWNER in connection with the construction of Project on account of taxes imposed by any taxing authority upon the sale, purchase or use of materials, supplies or equipment to be incorporated in the Project. The Bidder agrees to pay all such taxes and to furnish the appropriate taxing authorities all required information and reports pertaining thereto.

**103-7 COLLUSION:** The undersigned bidder does hereby declare and stipulate that this proposal is made in good faith, without collusion or connection with any other person or persons bidding for the same work, and that it is made in pursuance of and subject to all the terms and conditions of the Information for Bidders, the Construction Agreement, the Detailed Specifications, and the Plans pertaining to the work to be done, all of which have been examined by the undersigned.

**103-8 PROPOSAL GUARANTEE:** Accompanying this Proposal is a Bidder's Bond payable

to the OWNER in the amount of five percent (5%) of this bid, in accordance with the Information for Bidders, Section 102-4.

**103-9 PERFORMANCE AND PAYMENT BOND:** As shown in Section 102-6, the undersigned bidder agrees to execute the Agreement and a Performance and Payment Bond for the amount of the total of this bid within ten (10) calendar days from the date when the written Notice of Award of the Contract is delivered to the firm at the address given on this proposal. The name and address of the corporate surety with which the Bidder proposes to furnish the specified Performance and Payment Bond is as follows: \_\_\_\_\_

**103-10 CONTRACTOR'S LICENSE:** The undersigned hereby warrants it possesses Contractor's License Class \_\_\_\_\_ No. \_\_\_\_\_ for the State of \_\_\_\_\_, in which the project is located and said license expires on \_\_\_\_\_, 20\_\_\_\_.

**103-11 CONTRACT TIME:** Bidder hereby agrees to commence work under this contract on or before a date to be specified in the Notice to Proceed and to fully complete the project by **September 13, 2012**. Bidder further agrees to pay as liquidated damages the sum of seven hundred fifty US dollars (**\$ 750.00**) for each calendar day that the Contractor shall be in default of the time specified. This is as provided in Section 215 of the General Conditions.

**103-12 OWNER'S RIGHTS RESERVED:** The undersigned understands that the OWNER reserves the right to reject any or all Proposals or to waive any formality or technicality in any Proposal in the interest of the OWNER.

**103-13 PAYMENT:** This bid is submitted on the basis of cash payment for work. Payment for work performed will be in accordance with the Bid Schedule, subject to changes as provided for in the Construction Contract.

**103-14 BIDDERS PROPOSAL:**

39<sup>th</sup> Street SE Street and Utility Improvements  
City of Minot, ND

Bid Item No.	Description	Unit	Quantity	Unit Price	Total Price
1	General Requirements	LS	1		
2	Mob./Demob.	LS	1		
3	Erosion Control	LS	1		
4	Remove Bituminous Pavement	SY	254		
5	Saw Pavement	LF	216		
6	6" C-900 PVC Water Main	LF	28		
7	8" C-900 PVC Water Main	LF	633		
8	6" Gate Valve and Box	EA	2		
9	8" Gate Valve and Box	EA	1		
10	8" Bends, Tees, Plugs and Fittings	EA	3		
11	Fire Hydrant Assembly	EA	2		
12	Catch Basin Manhole 48IN	EA	2		
13	Manhole Structure 48IN	EA	1		
14	15" RCP Flared End Section with Trash Guard	EA	2		
15	15" RCP Storm Drain Pipe	LF	804		
16	Street Excavation	CY	1310		
17	Subgrade Prep	SY	2992		
18	Reinforcing Fabric, Type R1	SY	2992		
19	Aggregate Base, Class 5	CY	1860		
20	Hot Bituminous Pavement Cl. 29	TON	520		
21	CSS-1H Emulsified Asphalt	GAL	273		
22	Concrete Curb and Gutter	LF	1392		
23	5 Foot Concrete Sidewalk 4IN	SY	375		
24	Concrete Driveway 6IN	SY	19		
25	Truncated Dome Panels	SF	8		
26	Bituminous Patch - Full Depth	SY	204		
27	Lighting	LS	1		
28	Landscape and Seeding	SY	1522		
29	Testing Lab Allowance	LS	1		

Total Bid: \$\_\_\_\_\_



**FAILURE TO INCLUDE THE MBE/WBE SUBCONTRACTOR SOLICITATION INFORMATION FORM IN THE BID SECURITY ENVELOPE WILL RESULT IN THE BID NOT BEING OPENED!**

**103-16 THE ABOVE PROPOSAL IS HEREBY RESPECTFULLY SUBMITTED BY:**

\_\_\_\_\_  
(Contractor)

\_\_\_\_\_  
(By) (Title)

\_\_\_\_\_  
(Business Address) (City & State) (Zip)

\_\_\_\_\_  
(Date) (Telephone Number)

ATTEST: (SEAL)

\_\_\_\_\_  
Corporate Secretary

(The Proposal must be signed with the full name of the Bidder. In the case of a partnership the Proposal must be signed in the firm name of each partner. In the case of a corporation the Proposal must be signed in the corporate name by a duly authorized officer and the corporate seal affixed and attested by the Secretary of the corporation.)

**FAILURE TO INCLUDE THE MBE/WBE SUBCONTRACTOR SOLICITATION INFORMATION FORM IN THE BID SECURITY ENVELOPE WILL RESULT IN THE BID NOT BEING OPENED!**

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**CERTIFICATION OF BIDDER REGARDING EQUAL EMPLOYMENT OPPORTUNITY**

---

**INSTRUCTIONS**

This certification is required pursuant to Executive Order 11246 (30 F.R. 12319-25). The implementing rules and regulations provide that any bidder or prospective contractor, or any of their proposed subcontractors, shall state as an initial part of the bid or negotiations of the contract whether it has participated in any previous contract or subcontract subject to the equal opportunity clause; and, if so, whether it has filed all compliance reports due under applicable instructions.

Where the certification indicates that the bidder has not filed a compliance report due under applicable instructions, such bidder shall be required to submit a compliance report within seven (7) days after bid opening. No contract shall be awarded unless such report is submitted.

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**CERTIFICATION BY BIDDER**

---

NAME AND ADDRESS OF BIDDER (Include ZIP Code)

---

1. Bidder has participated in a previous contract or subcontract subject to the Equal Opportunity Clause.  
☐ Yes    ☐ No

---

2. Compliance reports were required to be filed in connection with such contract or subcontract.  
☐ Yes    ☐ No

---

3. Bidder has filed all compliance reports due under applicable instructions.  
☐ Yes    ☐ No    ☐ None Required

---

4. Have you ever been or are you being considered for sanction due to violation of Executive Order 11246, as amended?  
☐ Yes    ☐ No

---

NAME AND TITLE OF SIGNER (Please type)

---

SIGNATURE

DATE

---

Replaces Form HUD-1238.CD-1, which is obsolete.

HUD-950.1(11-78)

**CERTIFICATION OF BIDDER REGARDING SECTION 3  
AND SEGREGATED FACILITIES**

---

Name of Prime Contractor

Project Name and Number

The undersigned hereby certifies that

- a. Section 3 provisions are included in the Contract
- b. A written Section 3 plan was prepared and submitted as part of the bid proceedings.
- c. No segregated facilities will be maintained, as required by Title IV of the Civil Rights Act of 1964.

---

Name and Title of Signer (Print or Type)

---

Signature

Date

---

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM

**CONTRACTOR'S CERTIFICATION CONCERNING  
LABOR STANDARDS AND PREVAILING WAGE REQUIREMENTS**

TO (Appropriate Recipient):	Date
c/o	Project Number (if any)
	Project Name

1. The undersigned, having executed a contract with \_\_\_\_\_ for the construction of the above-identified project, acknowledges that:

- a. The Labor Standards provisions are included in the aforesaid contract;
- b. Correction of any infractions of the aforesaid conditions, including infractions by any of his subcontractors and any lower tier subcontractors, is his responsibility;

2. He certifies that:

- a. Neither he nor any firm, partnership or association in which he has substantial interest is designated as an ineligible contractor by the Comptroller General of the United States pursuant to Section 5.6(b) of the Regulations of the Secretary of Labor, Part 5 (29 CFR, Part 5) or pursuant to Section 3(a) of the Davis-Bacon Act, as amended (40 U.S.C. 276a-2[a]).
- b. No part of the aforementioned contract has been or will be subcontracted to any subcontractor if such subcontractor or any firm, corporation, partnership or association in which such subcontractor has a substantial interest is designated as an ineligible contractor pursuant to any of the aforementioned regulatory or statutory provisions.

3. He agrees to obtain and forward to the aforementioned recipient within ten days after the execution of any subcontract, including those executed by his subcontractors and any lower tier subcontractors, a Subcontractor's Certification Concerning Labor Standards and Prevailing Wage Requirements executed by the subcontractors.

4. He certifies that:

- a. The legal name and the business address of the undersigned are:
- b. The undersigned is:  
☐ A SINGLE PROPRIETORSHIP    ☐ A CORPORATION ORGANIZED IN THE STATE OF \_\_\_\_\_  
☐ A PARTNERSHIP                      ☐ OTHER ORGANIZATION

c. The name, title and address of the owner, partners or officers of the undersigned are:

NAME	TITLE	ADDRESS

- d. The names and addresses of all other persons, both natural and corporate, having a substantial interest in the undersigned, and the nature of the interest are (if none, so state):

NAME	ADDRESS	NATURE OF INTEREST

- e. The names, addresses and trade classifications of all other building construction contractors in which the undersigned has a substantial interest are (if none, so state):

NAME	ADDRESS	TRADE CLASSIFICATION

\_\_\_\_\_  
(Contractor)

Date \_\_\_\_\_ By \_\_\_\_\_

#### WARNING

U.S. Criminal Code, Section 1010, Title 18, U.S.C. provides in part: "Whoever. . . makes, passes, utters or publishes any statement, knowing the same to be false . . . shall be fined not more than \$5,000 or imprisoned not more than two years, or both."

# NONCOLLUSION AFFIDAVIT OF PRIME BIDDER

State of \_\_\_\_\_)

County of \_\_\_\_\_) ss.

\_\_\_\_\_, being first duly sworn, deposes and says that:

1. He is \_\_\_\_\_ of \_\_\_\_\_, the Bidder that has submitted the attached Bid;
2. He is fully informed respecting the preparation and contents of the attached Bid and of all pertinent circumstances respecting such Bid;
3. Such Bid is genuine and is not a collusive or sham Bid;
4. Neither the said Bidder nor any of its officers, partners, owners, agents, representatives, employees or parties in interest, including this affiant, has in any way colluded, conspired, connived or agreed, directly or indirectly with any other Bidder, firm or person to submit a collusive or sham Bid in connection with the Contract for which the attached Bid has been submitted or to refrain from bidding in connection with such Contract, or has in any manner, directly or indirectly, sought by agreement or collusion or communication or conference with any other Bidder, firm or person to fix the price or prices in the attached Bid or of any other Bidder, or to fix any overhead, profit or cost element of the Bid price or the Bid price of any other Bidder, or to secure through any collusion, conspiracy, connivance or unlawful agreement any advantage against the (*Grantee/Local Public Agency*) or any person interested in the proposed Contract; and
5. The price or prices quoted in the attached Bid are fair and proper and are not tainted by any collusion, conspiracy, connivance or unlawful agreement on the part of the Bidder or any of its agents, representatives, owners, employees, or parties in interest, including this affiant.

(Signed) \_\_\_\_\_

\_\_\_\_\_  
(Name & Title)

Subscribed and sworn to before me  
this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
(Notary Public)

My commission expires \_\_\_\_\_.

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**CERTIFICATION BY PROPOSED SUBCONTRACTOR REGARDING  
EQUAL EMPLOYMENT OPPORTUNITY**

---

NAME OF PRIME CONTRACTOR

PROJECT NUMBER

---

**INSTRUCTIONS**

This certification is required pursuant to Executive Order 11246 (30 F.R. 12319-25). The implementing rules and regulations provide that any bidder or prospective contractor, or any of their proposed subcontractors, shall state as an initial part of the bid or negotiations of the contract whether it has participated in any previous contract or subcontract subject to the equal opportunity clause; and, if so, whether it has filed all compliance reports due under applicable instructions.

Where the certification indicates that the subcontractor has not filed a compliance report due under applicable instructions, such subcontractor shall be required to submit a compliance report before the owner approves the subcontract or permits work to begin under the subcontract.

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**SUBCONTRACTOR'S CERTIFICATION**

---

NAME AND ADDRESS OF SUBCONTRACTOR (Include ZIP Code)

---

1. Bidder has participated in a previous contract or subcontract subject to the Equal Opportunity Clause.

☐ Yes    ☐ No

2. Compliance reports were required to be filed in connection with such contract or subcontract.

☐ Yes    ☐ No

3. Bidder has filed all compliance reports due under applicable instructions, including SF-100.

☐ Yes    ☐ No

4. Have you ever been or are you being considered for sanction due to violation of Executive Order 11246, as amended?

☐ Yes    ☐ No

---

NAME AND TITLE OF SIGNER (Please type)

---

SIGNATURE

DATE

---

**CERTIFICATION OF PROPOSED SUBCONTRACTOR REGARDING  
SECTION 3 AND SEGREGATED FACILITIES**

---

Name of Subcontractor

Project Name and Number

The undersigned hereby certifies that

- a. Section 3 provisions are included in the Contract
- b. A written Section 3 plan was prepared and submitted as part of the bid proceedings (if bid equals or exceeds \$100,000).
- c. No segregated facilities will be maintained as required by Title VI of the Civil Rights Act of 1964.

---

Name and Title of Signer (Print or Type)

---

Signature

Date



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM

**SUBCONTRACTOR'S CERTIFICATION  
CONCERNING LABOR STANDARDS & PREVAILING WAGE REQUIREMENTS**

TO (APPROPRIATE RECIPIENT) \_\_\_\_\_ DATE \_\_\_\_\_

C/O \_\_\_\_\_  
PROJECT NUMBER (IF ANY) \_\_\_\_\_

\_\_\_\_\_  
PROJECT NAME

1. The undersigned, having executed a contract with \_\_\_\_\_  
(CONTRACTOR or SUBCONTRACTOR)

\_\_\_\_\_ for \_\_\_\_\_  
(NATURE OF WORK)

in the amount of \$ \_\_\_\_\_ in the construction of the above-identified project, certifies that:

- a. The Labor Standards Provisions of The Contract For Construction are included in the aforesaid contract.
- b. Neither he nor any firm, corporation, partnership or association in which he has a substantial interest is designated as an ineligible contractor by the Comptroller General of the United States pursuant to Section 5.6(b) of the regulations of the Secretary of Labor, Part 5 (29 CFR, Part 5), or pursuant to Section 3(a) of the Davis-Bacon Act, as amended (40 U.S.C. 276a-2(a)).
- c. No part of the aforementioned contract has been or will be subcontracted to any subcontractor if such subcontractor or any firm, corporation, partnership or association in which such subcontractor has a substantial interest is designated as an ineligible contractor pursuant to the aforesaid regulatory or statutory provisions.

2. He agrees to obtain and forward to the contractor, for transmittal to the recipient, within ten days after the execution of any Lower tier subcontract, a Subcontractor's Certification Concerning Labor Standards and Prevailing Wage Requirements, executed by the Lower tier subcontractor, in duplicate.

The workmen will report for duty on or about \_\_\_\_\_ (Date)

3. He certifies that:

- a. The Legal name and the business address of the undersigned are:
- b. The undersigned is:  
☐ A SINGLE PROPRIETORSHIP      ☐ A CORPORATION ORGANIZED IN THE STATE OF \_\_\_\_\_  
☐ A PARTNERSHIP      ☐ OTHER ORGANIZATION (DESCRIBED): \_\_\_\_\_

c. THE NAME, TITLE AND ADDRESS OF THE OWNER, PARTNERS OR OFFICERS OF THE UNDERSIGNED ARE:

NAME	TITLE	ADDRESS
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

- d. The names and addresses of all other persons, both natural and corporate, having a substantial interest in the undersigned, and the nature of the interest are (If none, so state):

NAME	ADDRESS	NATURE OF INTEREST

- e. The names, addresses and trade classifications of all other building construction contractors in which the undersigned has a substantial interest are (If none, so state):

NAME	ADDRESS	TRADE CLASSIFICATION

Subcontractor: \_\_\_\_\_

By: \_\_\_\_\_ Date: \_\_\_\_\_  
(Signature)

**WARNING**

U.S. CRIMINAL CODE, SECTION 1010, TITLE 18, U.S.C., PROVIDES IN PART: "WHOEVER, . . . MAKES, PASSES, UTTERS OR PUBLISHES ANY STATEMENT, KNOWING THE SAME TO BE FALSE. . . SHALL BE FINED NOT MORE THAN \$5,000 OR IMPRISONED NOT MORE THAN TWO YEARS, OR BOTH."

## NON-COLLUSION AFFIDAVIT OF SUBCONTRACTOR

State of \_\_\_\_\_)

County of \_\_\_\_\_) ss.

\_\_\_\_\_, being first duly sworn, deposes and says that:

1. He is \_\_\_\_\_ of \_\_\_\_\_, hereinafter referred to as the "subcontractor";
2. He is fully informed respecting the preparation and contents of the subcontractor's Proposal submitted by the subcontractor to \_\_\_\_\_, the Contractor for certain work in connection with the \_\_\_\_\_ Contract pertaining to the Project in \_\_\_\_\_ (City or County and State);
3. Such subcontractor's Proposal is genuine and is not a collusive or sham proposal;
4. Neither the subcontractor nor any of its officers, partners, owners, agents, representatives, employees or parties in interest, including this affiant, has in any way colluded, conspired, connived or agreed, directly or indirectly with any other Bidder, firm or person to submit a collusive or sham Proposal in connection with such Contract or to refrain from submitting a Proposal in connection with such Contract, or has in any manner, with any other Bidder, firm or person to fix the price or prices in said subcontractor's Proposal, or to secure through collusion, conspiracy, connivance or unlawful agreement any advantage against the \_\_\_\_\_ (Grantee/Local Public Agency) or any person interested in the proposed Contract; and
5. The price or prices quoted in the subcontractor's Proposal are fair and proper and are not tainted by any collusion, conspiracy, connivance or unlawful agreement on the part of the Bidder or any of its agents, representatives, owners, employees, or parties in interest, including this affiant.

(Signed) \_\_\_\_\_

\_\_\_\_\_  
(Title)

Subscribed and sworn to before me

this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(Notary Public)

My commission expires: \_\_\_\_\_.

This form to be submitted with Bid:

**MINORITY AND WOMEN’S BUSINESS ENTERPRISE UTILIZATION  
WORKSHEET**

Grant Application \_\_\_\_\_

Project Number \_\_\_\_\_

Contractor/Engineer \_\_\_\_\_

Address, City, State, and Zip \_\_\_\_\_

Contact Person \_\_\_\_\_Telephone No \_\_\_\_\_

Amount of Contract \_\_\_\_\_MBE Percentage \_\_\_\_\_WBE Percentage \_\_\_\_\_

1. MBE \_\_\_\_\_

WBE \_\_\_\_\_

Contact Person \_\_\_\_\_

Amount of Subcontract \_\_\_\_\_

Scope of Work \_\_\_\_\_

Subcontractor \_\_\_\_\_

Address, City, State, Zip \_\_\_\_\_

Tax ID No \_\_\_\_\_

2. MBE \_\_\_\_\_

WBE \_\_\_\_\_

Contact Person \_\_\_\_\_

Amount of Subcontract \_\_\_\_\_

Scope of Work \_\_\_\_\_

Subcontractor \_\_\_\_\_

Address, City, State, Zip \_\_\_\_\_

Tax ID No \_\_\_\_\_

3. MBE \_\_\_\_\_

WBE \_\_\_\_\_

Contact Person \_\_\_\_\_

Amount of Subcontract \_\_\_\_\_

Scope of Work \_\_\_\_\_

Subcontractor \_\_\_\_\_

Address, City, State, Zip \_\_\_\_\_

Tax ID No \_\_\_\_\_

4. MBE \_\_\_\_\_

WBE \_\_\_\_\_

Contact Person \_\_\_\_\_

Amount of Subcontract \_\_\_\_\_

Scope of Work \_\_\_\_\_

Subcontractor \_\_\_\_\_

Address, City, State, Zip \_\_\_\_\_

Tax ID No \_\_\_\_\_

## **BIDDER**

### **SECTION 3 PLAN FORMAT**

If award is received, \_\_\_\_\_ (name of contractor) agrees to implement the following specific affirmative action steps directed at increasing the utilization of lower income residents and businesses within the City of \_\_\_\_\_.

1. To ascertain from the locality's CDBG program official the exact boundaries of the Section 3 covered project area, and where advantageous, seek the assistance of local officials in preparing and implementing the affirmative action plan.
2. To attempt to recruit from within the city the necessary number of lower income residents through local advertising media, signs placed at the proposed site for the project, and community organizations, and public or private institutions operating within or serving the project area, such as Service Employment and Redevelopment (SER), Opportunities Industrialization Center (OIC), Urban League, Concentrated Employment Program, Hometown Plan, or the U.S. Employment Service.
3. To maintain a list of all lower income area residents who have applied either on their own or on referral from any source, and to employ such persons, if otherwise eligible and if a vacancy exists.
4. To insert the Section 3 Contract Provisions clause in all subcontracts over \$100,000, to obtain Tables A and B from said subcontractors, and to obtain all documentation for completion of Tables C and D prior to final payment. (Loans, grants, contracts, and subsidies for less than \$100,000 will be exempt.)
5. To contact unions, subcontractors, and trade associations to secure their cooperation for this program.
6. To ensure that all appropriate project area business concerns are notified of pending sub contractual opportunities.
7. To maintain records, including copies of correspondence, memoranda, etc., which document that all of the above affirmative action steps have been taken.
8. To appoint or recruit an executive official of the company or agency as Equal Opportunity Officer to coordinate the implementation of this Section 3 plan.
9. To list on Table A, information related to proposed subcontracts to be awarded to Section 3 businesses.
10. To list on Table B, all projected workforce needs for all phases of this project by occupation, trade, skill level, and number of positions.
11. If successful bidder, to submit prior to final payment Tables C and D to city/county grantees which includes all applicable hirees and subcontractors utilized on this project.

As officers and representatives of \_\_\_\_\_ (Name of Bidder), we, the undersigned, have read and fully agree to this Affirmative Action Plan, and become a party to the full implementation of this program.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

**TABLE A**  
**BIDDER’S PROPOSED SECTION 3 CONTRACTS/SUBCONTRACTS**

Type of Contract (Business or Profession)	Total No.	Estimated Total Dollar Amount	Estimated No. of Contacts to Section 3 Businesses	Estimated Dollar Amount to Section 3 Businesses

Section 3 Business Concern

A business concern, which is located in or owned in substantial part (at least 50%) by persons residing in the same non-metropolitan county as the project.

\_\_\_\_\_  
Company

\_\_\_\_\_  
Project Name

\_\_\_\_\_  
Project Number

\_\_\_\_\_  
Person Completing Form

\_\_\_\_\_  
Date

**TABLE B**  
**BIDDER’S SECTION 3 ESTIMATED NEW HIRES**

Job Category	Estimated Total Positions Needed for Project	No. of Positions Occupied by Permanent Employees	No. of Positions Not Occupied	No. Of Positions to be Filled with Section 3 Residents
Officer/Supervisors				
Professionals				
Technical				
Hsq Sales/Rental Mgmt.				
Office/Clerical				
Service Workers				
Others				
TRADE:				
Journeyman				
Helpers				
Apprentices				
Trainees				
Others				
TRADE:				
Journeyman				
Helpers				
Apprentices				
Trainees				
Others				

Section 3 Resident

Individual residing within the non-metropolitan county in which the Section 3 covered project is located and whose income does not exceed 80% of the higher of the median income, adjusted by family size, for the county of residence of the non-metropolitan area of the state.

\_\_\_\_\_  
Company

\_\_\_\_\_  
Project Name

\_\_\_\_\_  
Project Number

\_\_\_\_\_  
Person Completing Form

\_\_\_\_\_  
Date



TABLE C  
CONTRACTOR’S SECTION 3 NEW HIRES REPORT

Job Category	Estimated Total Positions Needed for Project	No. of Positions Occupied by Permanent Employees	No. of Positions Not Occupied	No. Of Positions to be Filled with Section 3 Residents
Officer/Supervisors				
Professionals				
Technical				
Hsq Sales/Rental Mgmt.				
Office/Clerical				
Service Workers				
Others				
TRADE:				
Journeyman				
Helpers				
Apprentices				
Trainees				
Others				
TRADE:				
Journeyman				
Helpers				
Apprentices				
Trainees				
Others				

Section 3 Resident

Individual residing within the non-metropolitan county in which the Section 3 covered project is located and whose income does not exceed 80% of the higher of the median income, adjusted by family size, for the county of residence of the non-metropolitan area of the state.

\_\_\_\_\_  
Company

\_\_\_\_\_  
Project Name

\_\_\_\_\_  
Project Number

\_\_\_\_\_  
Person Completing Form

\_\_\_\_\_  
Date

**TABLE D**  
**CONTRACTOR’S SECTION 3 BUSINESS UTILIZATION REPORT**

Project Number	Prime Contractor	Address	Contract Amount	Federal ID No.			
Name of Subcontractor	Section 3 Business*	Address and Phone Number	Trade, Service, or Supply	Contract Amount	Award Date	Competitive or Negotiated Bid	Federal Identification No.
	<input type="checkbox"/>						
	<input type="checkbox"/>						
	<input type="checkbox"/>						
	<input type="checkbox"/>						
	<input type="checkbox"/>						
	<input type="checkbox"/>						
	<input type="checkbox"/>						
	<input type="checkbox"/>						
	<input type="checkbox"/>						

\*Check if a Section 3 Business Concern

Section 3 Business Concern

A business concern which is located in or owned in substantial part (at least 51%) by persons residing in the same non-metropolitan county as the project

Total Dollar Amount Awarded to Section 3 Businesses \_\_\_\_\_

**CERTIFICATION BY PROPOSED SUBCONTRACTOR REGARDING  
EQUAL EMPLOYMENT OPPORTUNITY**

NAME OF PRIME CONTRACTOR

PROJECT NUMBER

**INSTRUCTIONS:**

The certification is required pursuant to Executive Order 11246 (30 F.R. 12319-25). The implementing rules and regulations provide that any bidder or prospective contractor, or any of their proposed subcontractors, shall state as an initial part of the bid or negotiations of the contract whether it has participated in any previous contract or subcontract subject to the equal opportunity clause; and, if so, whether it has filed all compliance reports due under applicable instructions.

Where the certification indicates that the subcontractor has not filed a compliance report due under applicable instructions, such subcontractor shall be required to submit a compliance report before the owner approves the subcontract or permits work to begin under the subcontract.

**SUBCONTRACTOR’S CERTIFICATION**

NAME AND ADDRESS OF SUBCONTRACTOR (Include ZIP Code):

1. Bidder has participated in a previous contract or subcontract subject to the Equal Opportunity Clause.

☐ YES      ☐ NO

2. Compliance reports were required to be filed in connection with such contract or subcontract.

☐ YES      ☐ NO

3. Bidder has filed all compliance reports due under applicable instructions.

☐ YES      ☐ NO

4. Have you ever been or are you being considered for sanction due to violation of Executive Order 11246, as amended?

☐ YES      ☐ NO

NAME AND TITLE OF SIGNER (Please type):

SIGNATURE:

DATE:

**SECTION 104  
NOTICE OF AWARD**

TO: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Description of Work: Construction of 39<sup>th</sup> Street SE Street and Utility Improvements for the City of Minot, ND, hereinafter OWNER. The OWNER represented by the undersigned has considered the Proposal submitted by you for the above described work in response to its "Advertisement for Bids" dated \_\_\_\_\_ and Information for Bidders.

It appears that it is to the best interest of said OWNER to accept your proposal in the amount of \_\_\_\_\_ DOLLARS (\$\_\_\_\_\_). You are hereby notified that \_\_\_\_\_ Proposal has been accepted for items \_\_\_\_\_. You are required by the "Information for Bidders" to execute the agreement with the undersigned OWNER and to furnish the required Contractor's Performance and Payment Bond within ten (10) days from the date of the mailing of this Notice to you.

If you fail to execute said agreement and to furnish said bond within ten (10) days from the date of mailing of this Notice, said OWNER will be entitled to consider all your rights arising out of the OWNER's acceptance of your proposal as abandoned and to award the work covered by your Proposal to another, or to re-advertise the work or otherwise dispose thereof as the OWNER may see fit.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.

OWNER: \_\_\_\_\_

BY: \_\_\_\_\_

(SEAL)

TITLE: \_\_\_\_\_

ATTEST:

\_\_\_\_\_

#### ACCEPTANCE OF NOTICE

Receipt of the above Notice of Award is  
hereby acknowledged this \_\_\_\_\_ day  
of \_\_\_\_\_, 20 \_\_\_\_.

\_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

**SECTION 105  
CONSTRUCTION AGREEMENT**

THIS AGREEMENT, Made this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, at \_\_\_\_\_,  
State of \_\_\_\_\_ by and between the City of Minot, North Dakota, hereinafter  
called the "OWNER", and \_\_\_\_\_, hereinafter called the  
"Contractor" to complete the following work: **39<sup>TH</sup> STREET SE STREET AND UTILITY  
IMPROVEMENTS, CITY OF MINOT, NORTH DAKOTA.**

WITNESSETH THAT:

In consideration of the mutual covenants and conditions hereinafter set forth, the  
OWNER and Contractor hereby agree as follows:

**105-1 SCOPE OF WORK:** The Contractor shall furnish and pay the cost, including sales tax  
and all other applicable taxes and fees, of all the necessary materials not furnished by the  
OWNER and shall furnish and pay for all the superintendence, labor, tools, equipment and  
transportation, and perform all the work required for the construction of all structures listed  
and itemized under the bid schedule of the Bidder's Proposal attached hereto in strict  
accordance with the General Conditions; Special Conditions, Governmental Requirements,  
the Plans, which include all maps, plats, blueprints, and other drawings and printed or written  
explanatory matter therein; the Specifications and Contract Documents as prepared by  
Interstate Engineering, Inc., herein called "Engineer", and any amendments thereto and  
such supplemental Plans and Specifications as may hereafter be approved.

All addendums \_\_\_\_\_ through \_\_\_\_ are hereby made part of this Contract.

**105-2 COMPLETION OF WORK:** The Contractor shall commence the work covered by this Agreement within \_\_\_\_ calendar days after the date of the Notice to Proceed and shall complete the same by \_\_\_\_\_ unless the period for completion is extended as hereinafter provided.

**105-3 CONTRACT SUM:** The OWNER shall pay the Contractor for the performance of said work as set forth by Section 105-1 above, \_\_\_\_\_ DOLLARS (\$\_\_\_\_\_).

Breakdown of above mentioned contract amount is as follows:

**105-4 MAINTENANCE:** The Contractor shall guarantee the repair of all damages or defects due to faulty materials or workmanship done by the Contractor or subcontractors. This guarantee shall remain in effect for a period of one year after acceptance of the project by the OWNER according to the General Conditions.

**105-5 PAYMENT:** Payment shall be made to the Contractor for work performed under this Agreement for the quantities of work as determined in accordance with the General Conditions.

**105-6 SUB-CONTRACTORS:** The Contractor agrees to bind every sub-contractor by the terms of the Contract Documents. The Contract Documents shall not be construed as creating any contractual relation between any sub-contractor and the OWNER.

**105-7 SUCCESSORS AND ASSIGNS:** This Agreement and all of the covenants hereof shall insure to the benefit of and be binding upon the OWNER and the Contractor respectively, and his partners, successors, assigns and legal representatives. Neither the OWNER nor the Contractor shall have the right to assign, transfer or sublet his interests or obligations hereunder without written consent of the other party.

**105-8 SOURCE AND MANNER OF PAYMENT:** All payments shall be made in warrants drawn on the construction account of the funds of the \_\_\_\_\_ and said warrants shall bear no interest and shall be payable immediately on issuance.

**105-9 OWNER'S RIGHT TO SUSPEND WORK:** The OWNER, by resolution duly adopted by the governing body, shall have the right to suspend the work at any time for improper construction, and to relet the contract therefore, or to order the reconstruction of the work as to any part thereof improperly done. This right shall be additional to the rights, powers, and privileges reserved to the OWNER in the several provisions of the plans and specifications.

**105-10 OWNER ASSUMES NO GENERAL LIABILITY:** It is expressly agreed and understood that the OWNER assumes and incurs no general liability under the contract for the payment of any compensation to the Contractor, or any other person; the OWNER's obligation hereunder being limited solely to the administration and application of the funds of said \_\_\_\_\_, in accordance with the law, and the provisions of this Agreement.



**105-11 ENGINEER'S FAILURE TO REJECT WORK:** Failure of the Engineer to reject work and materials which are not up to specifications and acceptance of the job by the Engineer shall not release the Contractor from liability for any failure on his part to perform work or furnish materials in accordance with the plans and specifications.

**105-12 INDEMNIFICATION:** To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, Engineer, Engineer's consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including, but not limited to attorney's fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss, or expenses attributable to bodily injury, sickness, disease or death, or injury to or destruction of tangible property (other than the Work itself) including loss of use resulting therefrom, but only to the extent caused in whole or in part by negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder.

**105-13 SERVICE OF NOTICE:** All notices required to be given hereunder shall be mailed or delivered in the case of the OWNER to \_\_\_\_\_  
\_\_\_\_\_ and in the case of the Contractor to  
\_\_\_\_\_.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed the day and year first above written.

(SEAL)

OWNER: \_\_\_\_\_

\_\_\_\_\_

ATTEST: \_\_\_\_\_

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

TITLE: \_\_\_\_\_

(SEAL)

CONTRACTOR: \_\_\_\_\_

ATTEST: \_\_\_\_\_

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

TITLE: \_\_\_\_\_

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**SECTION 106**  
**PERFORMANCE - PAYMENT BOND**

THE STATE OF NORTH DAKOTA

COUNTY OF \_\_\_\_\_

KNOW ALL MEN BY THESE PRESENTS: That we (1) \_\_\_\_\_  
(2) \_\_\_\_\_ of \_\_\_\_\_  
hereinafter called Principal and (3) \_\_\_\_\_ of  
\_\_\_\_\_ State of \_\_\_\_\_,  
hereinafter called the Surety, are held and firmly bound unto  
(4) \_\_\_\_\_, Hereinafter called OWNER, and unto all persons,  
firms, and corporations who may furnish materials for, or perform labor upon, the building or  
improvements hereinafter referred to in the penal sum  
\_\_\_\_\_ DOLLARS (\$ \_\_\_\_\_)  
in lawful money of the United States to be paid in (5) \_\_\_\_\_ County,  
North Dakota, for the payment of which sum well and truly to be made, we bind ourselves,  
our heirs, executors, administrators and successors, jointly and severally, firmly by these  
presents.

THE CONDITION OF THIS OBLIGATION is such that Whereas, the Principal  
entered into a certain contract with (6) \_\_\_\_\_ which is  
dated \_\_\_\_ day of \_\_\_\_\_ A.D. 20 \_\_, a copy of which is hereto attached  
and made a part hereof for the construction of \_\_\_\_\_  
\_\_\_\_\_.

NOW THEREFORE, if the Principal shall (1) well and truly perform and fulfill all  
the undertakings, covenants, terms, conditions, and agreements of said Contract during the  
original term of said contract and any extension thereof that may be granted by the OWNER  
with or without notice to the surety, and during the life of the one year guaranty required  
under the contract, and; (2) promptly make payment to all persons supplying labor and  
materials, including supplies used for machinery and equipment, performed, furnished and  
used in and about the performance of the Contract to the Principal or to any subcontractor of  
the Principal in the prosecution of the work provided for in said contract (failing which such  
persons shall have a direct right of action against the Principal and surety under this  
obligation), also such payment shall include interest in the amount authorized under Section  
13-01-14 of the North Dakota Century Code on all bills and claims not paid within ninety (90)  
days and; (3) well and truly perform and fulfill all the undertakings, covenants, terms,  
conditions, and agreements of any and all duly authorized modifications of said contract that  
may hereafter be made and promptly make payment to all persons supplying labor and  
materials including supplies used for machinery and equipment, performed, furnished and  
used in and about the performance of the contract to the Principal or to any subcontractor to  
the Principal in the prosecution of the work provided for in such modifications (failing which  
such persons shall have a direct right of action against the Principal and surety under this  
obligation), notice to the surety of all duly authorized modifications being hereby waived,  
and; (4) make, prior to the commencement of any work by himself or any subcontractor  
under the contract, full and true report to the Workmen's Compensation Bureau of the payroll

expenditures for the employees to be engaged in such work and pay the premium thereon prior to the commencement of such work, and; (5) the Contractor will pay or cause to be paid all sales and use taxes payable as a result of the performance of the contract for which the bond is given, as well as the payment of gasoline and special motor fuels taxes used in the performance of the contract, and all motor vehicle fees required for commercial motor vehicles used in connection with the performance of such contract then this obligation to be void; otherwise to remain in full force and effect.

In case of a default on the part of the Principal herein in the performance of the work as provided in the above contract, the sum of this bond as set out above shall be taken and held to be fixed and liquidated damages in favor of the OWNER, and said full amount may be recovered from the principal and surety in an action against them on this bond.

IN WITNESS WHEREOF, this instrument is executed in \_\_\_\_\_  
counterparts, each one of which shall be deemed an original, this the \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_.

ATTEST:

\_\_\_\_\_  
Secretary or Principal

(7) \_\_\_\_\_  
Principal

By \_\_\_\_\_

\_\_\_\_\_  
Title

(CORPORATE SEAL)

\_\_\_\_\_  
Address

\_\_\_\_\_  
Surety

By \_\_\_\_\_  
Attorney-in-Fact

ATTEST:

\_\_\_\_\_  
Secretary of Surety

(CORPORATE SEAL)

Full Name of Surety Company \_\_\_\_\_

Home Office Address \_\_\_\_\_

Name of Attorney-in-Fact \_\_\_\_\_

Name of Local Agency \_\_\_\_\_

Address of Local Agency \_\_\_\_\_

A copy of the Power of Attorney of the Attorney-in-fact showing that it remains in force as of the date of the Bond must be attached to the Bond.

.....

NOTE: Date of Bond must not be prior to date of Contract.

- (1) Correct name of Contractor
- (2) A Corporation, a Partnership or an Individual as case may be.
- (3) Correct Name of Surety
- (4) Correct Name of OWNER
- (5) County
- (6) OWNER
- (7) If Contractor is Partnership, all partners should execute Bond.

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**SECTION 107**  
**ADDITIONAL DOCUMENTS OF CONTRACT**

**107-1** Acknowledgement of Principal

**107-2** Power of Attorney

**107-3** Liability Insurance (See Section 221 of General Conditions)

**107-4** Current Workmen's Compensation Certificate of Premium Paid

**107-5** Contractor's Certificate of North Dakota Income and Sales Tax Clearance



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**SECTION 108  
NOTICE TO PROCEED**

TO: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

DATE: \_\_\_\_\_  
PROJECT: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

You are hereby notified to commence WORK in accordance with the Agreement dated \_\_\_\_\_, 20\_\_\_\_, on or before \_\_\_\_\_, 20\_\_\_\_, and you are to complete the WORK within \_\_\_\_\_ consecutive calendar days thereafter. The date of completion of all WORK is therefore \_\_\_\_\_.

\_\_\_\_\_  
OWNER

By: \_\_\_\_\_

Title: \_\_\_\_\_

**ACCEPTANCE OF NOTICE**

Receipt of the above NOTICE TO  
PROCEED is hereby acknowledged

\_\_\_\_\_  
this the \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_

\_\_\_\_\_  
By \_\_\_\_\_

Title \_\_\_\_\_

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**SECTION 200  
GENERAL CONDITIONS  
OF THE CONTRACT**

- |  |  |
|--|--|
| 1. Definitions                                 | 16. Insurance  |
| 2. Additional Instructions and Detail Drawings | 17. Contract Security  |
| 3. Schedules, Reports, and Records             | 18. Assignments  |
| 4. Drawings and Specifications                 | 19. Indemnification  |
| 5. Shop Drawings                               | 20. Separate Contracts   |
| 6. Materials, Services and Facilities          | 21. Subcontracting   |
| 7. Inspection and Testing                      | 22. Engineer's Authority   |
| 8. Substitutions                               | 23. Land and Rights-of-Way   |
| 9. Patents                                     | 24. Guarantee  |
| 10. Surveys, Permits, Regulations              | 25. Taxes  |
| 11. Protection of Work, Property, Persons      | 26. Compliance With Air and Water Acts   |
| 12. Supervision by Contractor                  | 27. Equal Employment Opportunity   |
| 13. Changes in the Work                        | 28. Section 503 of the Rehabilitation Act of 1973  |
| 14. Changes in Contract Price                  | 29. Section 402 Veterans of the Vietnam Era  |
| 15. Time for Completion and Liquidated Damages | 30. Section 3 Compliance in the Provision of Training, Employment and Business Opportunities |
| 16. Correction of Work                         | 31. Nonsegregated Facilities   |
| 17. Subsurface Conditions                      | 32. Interest of Certain Federal and Other Officials  |
| 18. Suspension of Work, Termination and Delay  | 33. Americans with Disabilities Act  |
| 19. Payments to Contractors                    | 34. General Conditions Part II (Federal Labor Standards Provisions)                          |
| 20. Acceptance of Final Payment as Release     |  |

**201 DEFINITIONS**

**201-1:** Wherever used in the CONTRACT DOCUMENTS, the following terms shall have the meanings indicated which shall be applicable to both the singular and plural thereof:

**201-2 ADDENDA:** Written or graphic instruments issued prior to the execution of the Agreement which modify or interpret the CONTRACT DOCUMENTS, DRAWINGS and SPECIFICATIONS, by additions, deletions, clarifications or corrections.

**201-3 BID:** The offer or proposal of the BIDDER submitted on the prescribed form setting forth the prices for the WORK to be performed.

**201-4 BIDDER:** Any person, firm or corporation submitting a BID for the WORK.

**201-5 BONDS:** Bid, Performance, and other instruments of security, furnished by the CONTRACTOR and his surety in accordance with the CONTRACT DOCUMENTS.

**201-6 CHANGE ORDER:** A written order to the CONTRACTOR authorizing an addition, deletion or revision in the WORK within the general scope of the CONTRACT DOCUMENTS, or authorizing an adjustment in the CONTRACT PRICE OF CONTRACT TIME.

**201-7 CONTRACT DOCUMENTS:** The contract, including Advertisement for Bids, Information for Bidders, BID, Bid Bond, Agreement, Performance Bond, NOTICE OF AWARD, NOTICE TO PROCEED, CHANGE ORDER, DRAWINGS, SPECIFICATIONS, and ADDENDA.

**201-8 CONTRACT PRICE:** The total monies payable to the CONTRACTOR under the terms and conditions of the CONTRACT DOCUMENTS.

**201-9 CONTRACT TIME:** The number of calendar days, or weather working days, stated in the CONTRACT DOCUMENTS for the completion of the WORK.

**201-10 CONTRACTOR:** The person, firm or corporation with whom the OWNER has executed the Agreement.

**201-11 DRAWINGS:** The part of the CONTRACT DOCUMENTS which show the characteristics and scope of the WORK to be performed and which have been prepared or approved by the ENGINEER.

**201-12 ENGINEER:** INTERSTATE ENGINEERING, INC., Williston, North Dakota, or its representative, duly authorized in writing to act for the ENGINEER.

**201-13 FIELD ORDER:** A written order effecting a change in the WORK not involving an adjustment in the CONTRACT PRICE or an extension of the CONTRACT TIME, issued by the ENGINEER to the CONTRACTOR during construction.

**201-14 NOTICE OF AWARD:** The written notice of the acceptance of the BID from the OWNER to the successful BIDDER.

**201-15 NOTICE TO PROCEED:** Written communication issued by the OWNER to the CONTRACTOR authorizing him to proceed with the WORK and establishing the date of commencement of the WORK.

**201-16 OWNER:** A public or quasi-public body or authority, corporation, association, partnership, or individual for whom the WORK is to be performed.

**201-17 PROJECT:** The undertaking to be performed as provided in the CONTRACT DOCUMENTS.

**201-18 RESIDENT PROJECT REPRESENTATIVE:** The authorized representative of the OWNER who is assigned to the PROJECT site or any part thereof.

**201-19 SHOP DRAWINGS:** All drawings, diagrams, illustrations, brochures, schedules and other data which are prepared by the CONTRACTOR, a SUBCONTRACTOR,

manufacturer, SUPPLIER, or distributor, which illustrate how specific portions of the WORK shall be fabricated or installed.

**201-20 SPECIFICATIONS:** A part of the CONTRACT DOCUMENTS consisting of written descriptions of a technical nature of materials, equipment, construction systems, standards and workmanship.

**201-21 SUBCONTRACTOR:** An individual, firm or corporation having a direct contract with the CONTRACTOR or with any other SUBCONTRACTOR for the performance of a part of the WORK at the site.

**201-22 SUBSTANTIAL COMPLETION:** That date as certified by the ENGINEER when the construction of the PROJECT or a specified part thereof is sufficiently completed, in accordance with the CONTRACT DOCUMENTS, so that the PROJECT or specified part can be utilized for the purposes for which it is intended.

**201-23 SUPPLEMENTAL GENERAL CONDITIONS:** Modifications to General Conditions required by a Federal Agency for participation in the PROJECT and approved by the agency in writing prior to inclusion in the CONTRACT DOCUMENTS, or such requirements that may be imposed by applicable state laws.

**201-24 SUPPLIER:** Any person or organization who supplies materials or equipment for the WORK, including that fabricated to a special design.

**201-25 WORK:** All labor necessary to produce the construction required by the CONTRACT DOCUMENTS, and all materials and equipment incorporated or to be incorporated in the PROJECT.

**201-26 WRITTEN NOTICE:** Any notice to any party of the Agreement relative to any part of this Agreement in writing and considered delivered and the service thereof completed, when posted by certified or registered mail to the said party at his last given address, or delivered in person to said party or his authorized representative on the WORK.

## **202 ADDITIONAL INSTRUCTIONS AND DETAIL DRAWINGS**

**202-1:** The CONTRACTOR may be furnished additional instructions and detail drawings by the ENGINEER, as necessary to carry out the WORK required by the CONTRACT DOCUMENTS.

**202-2:** The additional drawings and instruction thus supplied will become a part of the CONTRACT DOCUMENTS. The CONTRACTOR shall carry out the WORK in accordance with the additional detail drawings and instructions.

## **203 SCHEDULES, REPORTS AND RECORDS**

**203-1:** The CONTRACTOR shall submit to the OWNER such schedule of quantities and costs, progress schedules, payrolls, reports, estimates, records and other data where applicable, as is required by the CONTRACT DOCUMENTS for the WORK to be

performed.

**203-2:** Prior to the first partial payment estimate the CONTRACTOR shall submit construction progress schedules showing the order in which he proposes to carry on the WORK, including dates at which he will start the various parts of the WORK, estimated date of completion of each part, and, as applicable:

**203-2.1:** The dates at which special detail drawings will be required; and

**203-2.2:** Respective dates for submission of SHOP DRAWINGS, the beginning of manufacture, the testing and installation of materials, supplies and equipment.

**203-3:** The CONTRACTOR shall also submit a schedule of payments that he anticipates he will earn during the course of the WORK.

## **204 DRAWINGS AND SPECIFICATIONS**

**204-1:** The intent of the DRAWINGS and SPECIFICATIONS is that the CONTRACTOR shall furnish all labor, materials, tools, equipment, and transportation necessary for the proper execution of the WORK in accordance with the CONTRACT DOCUMENTS and all incidental work necessary to complete the PROJECT in an acceptable manner, ready for use, occupancy or operation by the OWNER.

**204-2:** In case of conflict between the DRAWINGS and SPECIFICATIONS, the SPECIFICATIONS shall govern. Figure dimensions on DRAWINGS shall govern over scale dimensions, and detailed DRAWINGS shall govern over general DRAWINGS.

**204-3:** Any discrepancies found between the DRAWINGS and SPECIFICATIONS and site conditions or any inconsistencies or ambiguities in the DRAWINGS or SPECIFICATIONS shall be immediately reported to the ENGINEER, in writing, who shall promptly correct such inconsistencies or ambiguities in writing. WORK done by the CONTRACTOR after his discovery of such discrepancies, inconsistencies or ambiguities shall be done at the CONTRACTOR'S risk.

**204-4:** Ownership of DRAWINGS and SPECIFICATIONS: All original or duplicated DRAWINGS and SPECIFICATIONS and other data prepared by the ENGINEER shall remain the property of the ENGINEER, and they shall not be reused on other work, but shall be returned to him upon completion of the WORK.

## **205 SHOP DRAWINGS**

**205-1:** The CONTRACTOR shall provide SHOP DRAWINGS as may be necessary for the prosecution of the WORK as required by the CONTRACT DOCUMENTS. The ENGINEER shall promptly review all SHOP DRAWINGS. The ENGINEER'S approval of any SHOP DRAWING shall not release the CONTRACTOR from responsibility for deviations from the CONTRACT DOCUMENTS. The approval of any SHOP DRAWING which substantially deviates from the requirement of the CONTRACT DOCUMENTS shall be evidenced by a CHANGE ORDER.

**205-2:** When submitted for the ENGINEER'S review, SHOP DRAWINGS shall bear the CONTRACTOR'S certification that he has reviewed, checked and approved the SHOP DRAWINGS and that they are in conformance with the requirements of the CONTRACT DOCUMENTS.

**205-3:** Portions of the WORK requiring a SHOP DRAWING or sample submission shall not begin until the SHOP DRAWING or submission has been approved by the ENGINEER. A copy of each approved SHOP DRAWING and each approved sample shall be kept in good order by the CONTRACTOR at the site and shall be available to the ENGINEER.

**205-4 EQUIPMENT DATA:** The CONTRACTOR shall submit for the ENGINEER'S review complete catalog data for every manufactured item of equipment and all components to be used in the work, including specific performance data, material description, rating, capacity, working pressure, material gauge or thickness, brand name, catalog number and general type. This submission shall be compiled by the CONTRACTOR and reviewed by the ENGINEER before any equipment is ordered.

## **206 MATERIALS, SERVICES AND FACILITIES**

**206-1:** It is understood that, except as otherwise specifically stated in the CONTRACT DOCUMENTS, the CONTRACTOR shall provide and pay for all materials, labor, tools, equipment, water, light, power, transportation, supervision, temporary construction of any nature, and all other services and facilities of any nature whatsoever necessary to execute, complete, and deliver the WORK within the specified time.

**206-2:** Materials and equipment shall be so stored as to insure the preservation of their quality and fitness for the WORK. Stored materials and equipment to be incorporated in the WORK shall be located so as to facilitate prompt inspection.

**206-3:** Manufactured articles, materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned as directed by the manufacturer.

**206-4:** Materials, supplies and equipment shall be in accordance with samples submitted by the CONTRACTOR and approved by the ENGINEER.

**206-5:** Materials, supplies or equipment to be incorporated into the WORK shall not be purchased by the CONTRACTOR or the SUB-CONTRACTOR subject to a chattel mortgage or under a conditional sale contract or other agreement by which an interest is retained by the seller.

**206-6 MATERIALS FURNISHED BY THE OWNER:** Materials specifically indicated shall be furnished by the OWNER. The fact that the OWNER is to furnish material is conclusive evidence of its acceptability for the purpose intended and the CONTRACTOR may continue to use it until otherwise directed. If the CONTRACTOR discovers any defect in material furnished by the OWNER, he shall notify the ENGINEER. Unless otherwise noted or specifically stated, materials furnished by the OWNER, which are not of local occurrence, are considered to be f.o.b., the nearest railroad station. The CONTRACTOR shall be prepared to unload and properly protect



all such material from damage or loss. The CONTRACTOR shall be responsible for material loss or damage after receipt of material at the point of delivery.

**206-6.1 INDEX:** Each data sheet or catalog in the submission shall be indexed according to SPECIFICATION section and paragraph for easy reference.

**206-6.2 RELATION TO CONTRACT DOCUMENTS:** Catalog data for equipment reviewed by the ENGINEER shall not supersede the ENGINEER'S CONTRACT DOCUMENTS. The review of the ENGINEER shall not relieve the CONTRACTOR from responsibility for deviations from DRAWINGS of SPECIFICATIONS, unless he has in writing called the ENGINEER'S attention to such deviations at the time of submission, nor shall it relieve him from responsibility for errors of any sort in the items submitted. The CONTRACTOR shall check the WORK described in the catalog data with the ENGINEER'S CONTRACT DOCUMENTS for deviations and errors.

**206-6.3 CONTRACTOR'S CERTIFICATION:** Equipment data shall be submitted by the CONTRACTOR with a covering letter indicating that he has reviewed, checked and approved the data submitted, that they are in harmony with the requirements of the PROJECT and with the provisions of the CONTRACT DOCUMENTS and that he has verified all field measurements and construction criteria, materials, catalog numbers and similar data. CONTRACTOR shall also certify that the WORK represented by the SHOP DRAWINGS is recommended by the CONTRACTOR and that his GUARANTEE will fully apply.

## **207 INSPECTION AND TESTING**

**207-1:** All materials and equipment used in the construction of the PROJECT shall be subject to adequate inspection and testing in accordance with generally accepted standards, as required and defined in the CONTRACT DOCUMENTS.

**207-2:** The OWNER shall provide all inspection and testing services not required by the CONTRACT DOCUMENTS.

**207-3:** The CONTRACTOR shall provide at his expense the testing and inspection services required by the CONTRACT DOCUMENTS.

**207-4:** If the CONTRACT DOCUMENTS, laws, ordinances, rules, regulations or orders of any public authority having jurisdiction require any WORK to specifically be inspected, tested, or approved by someone other than the CONTRACTOR, the CONTRACTOR will give the ENGINEER timely notice of readiness. The CONTRACTOR will then furnish the ENGINEER the required certificates of inspection, testing or approval.

**207-5:** Inspections, tests or approvals by the ENGINEER or others shall not relieve the CONTRACTOR from his obligations to perform the WORK in accordance with the requirements of the CONTRACT DOCUMENTS.

**207-6:** The ENGINEER and his representatives will at all times have access to the

WORK. In addition, authorized representatives and agents of any participating Federal or State agency shall be permitted to inspect all work, materials, payrolls, records of personnel, invoices of materials, and other relevant data and records. The CONTRACTOR will provide proper facilities for such access and observation of the WORK and also for any inspection or testing thereof.

**207-7:** If any WORK is covered contrary to the written instructions of the ENGINEER it must, if requested by the ENGINEER, be uncovered for his observation and replaced at the CONTRACTOR'S expense.

**207-8:** If the ENGINEER considers it necessary or advisable that covered WORK be inspected or tested by others, the CONTRACTOR, at the ENGINEER'S request, will uncover, expose or otherwise make available for observation, inspection or testing as the ENGINEER may require, that portion of the WORK in question, furnishing all necessary labor, materials, tools, and equipment. If it is found that such WORK is defective, the CONTRACTOR will bear all the expenses of such uncovering, exposure, observation, inspection and testing and of satisfactory reconstruction. If, however, such WORK is not found to be defective, the CONTRACTOR will be allowed an increase in the CONTRACT PRICE or an extension of the CONTRACT TIME, or both, directly attributable to such uncovering, exposure, observation, inspection, testing and reconstruction and an appropriate CHANGE ORDER shall be issued.

## **208 SUBSTITUTIONS**

**208-1:** Whenever a material, article or piece of equipment is identified on the DRAWINGS or SPECIFICATIONS by reference to brand name or catalog number, it shall be understood that this is referenced for the purpose of defining the performance or other salient requirements and that other products of equal capacities, quality and function shall be considered. The CONTRACTOR may recommend the substitution of a material, article, or piece of equipment of equal substance and function for those referred to in the CONTRACT DOCUMENTS by reference to brand name or catalog number, and if in the opinion of the ENGINEER, such material, article, or piece of equipment is of equal substance and function to that specified, the ENGINEER may approve its substitution and use by the CONTRACTOR. Any cost differential shall be deductible from the CONTRACT PRICE and the CONTRACT DOCUMENTS shall be appropriately modified by CHANGE ORDER. The CONTRACTOR warrants that if substitutes are approved, no major changes in the function or general design of the PROJECT will result. Incidental changes or extra component parts required to accommodate the substitute will be made by the CONTRACTOR without a change in the CONTRACT PRICE or CONTRACT TIME.

## **209 PATENTS**

**209-1:** The CONTRACTOR shall pay all applicable royalties and license fees. He shall defend all suits or claims for infringements of any patent rights and save the OWNER harmless from loss on account thereof, except that the OWNER shall be responsible for any such loss when a particular process, design, or the product of a particular manufacturer or manufacturers is specified, however, if the CONTRACTOR has reason

to believe that the design, process or product specified is an infringement of a patent, he shall be responsible for such loss unless he promptly gives such information to the ENGINEER.

## **210 SURVEYS, PERMITS, REGULATIONS**

**210-1:** The OWNER shall furnish all boundary surveys and establish all base lines for locating the principal component parts of the WORK together with a suitable number of bench marks adjacent to the WORK as shown in the CONTRACT DOCUMENTS. Unless otherwise specified in the CONTRACT DOCUMENTS, the OWNER shall develop and make all detail surveys needed for construction such as slope stakes, batter boards, stakes for pile locations and other working points, lines, elevations and cut sheets.

**210-2:** The CONTRACTOR shall carefully preserve bench marks, reference points and stakes and, in case of willful or careless destruction, he shall be charged with the resulting expense and shall be responsible for any mistakes that may be caused by their unnecessary loss or disturbance.

**210-3:** Permits and licenses of a temporary nature necessary for the prosecution of the WORK shall be secured and paid for by the CONTRACTOR unless otherwise stated in the SUPPLEMENTAL GENERAL CONDITIONS. Permits, licenses and easements for permanent structures or permanent changes in existing facilities shall be secured and paid for by the OWNER, unless otherwise specified. The CONTRACTOR shall give all notices and comply with all laws, ordinances, rules and regulations bearing on the conduct of the WORK as drawn and specified. If the CONTRACTOR observes that the CONTRACT DOCUMENTS are at variance therewith, he shall promptly notify the ENGINEER in writing, and any necessary changes shall be adjusted as provided in Section 213, CHANGES IN THE WORK.

## **211 PROTECTION OF WORK, PROPERTY AND PERSONS**

**211-1:** The CONTRACTOR will be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the WORK. He will take all necessary precautions for the safety of, and will provide the necessary protection to prevent damage, injury or loss to all employees on the WORK and other persons who may be affected thereby, all the WORK and all materials or equipment to be incorporated therein, whether in storage on or off the site, and other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

**211-2:** The CONTRACTOR will comply with all applicable laws, ordinances, rules, regulations and orders of any public body having jurisdiction. He will erect and maintain as required by the conditions and progress of the WORK all necessary safeguards for safety and protection. He will notify owners of adjacent utilities when prosecution of the WORK may affect them. The CONTRACTOR will remedy all damage, injury or loss to any property caused, directly or indirectly, in whole or in part, by the CONTRACTOR,

any SUBCONTRACTOR or anyone directly or indirectly employed by any of them or anyone for whose acts any of them be liable, except damage or loss attributable to the fault of the CONTRACT DOCUMENTS or to the acts or omissions of the OWNER or the ENGINEER or anyone employed by either of them or anyone for those acts either of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of the CONTRACTOR.

**211-3:** In emergencies affecting the safety of persons or the WORK or property at the site or adjacent thereto, the CONTRACTOR, without special instruction or authorization from the ENGINEER or OWNER, shall act to prevent threatened damage, injury, or loss. He will give the ENGINEER prompt WRITTEN NOTICE of any significant changes in the WORK or deviations from the CONTRACT DOCUMENTS caused thereby, and a CHANGE ORDER shall thereupon be issued covering the changes and deviations involved.

## **212 SUPERVISION BY CONTRACTOR**

**212-1:** The CONTRACTOR will supervise and direct the WORK. He will be solely responsible for the means, methods, techniques, sequences and procedures of construction. The CONTRACTOR will employ and maintain on the WORK a qualified supervisor or superintendent who shall have been designated in writing by the CONTRACTOR as the CONTRACTOR'S representative at the site. The supervisor shall have full authority to act on behalf of the CONTRACTOR and all communications given to the supervisor shall be as binding as if given to the CONTRACTOR. The supervisor shall be present on the site at all times as required to perform adequate supervision and coordination of the WORK.

## **213 CHANGES IN THE WORK**

**213-1:** The OWNER may at any time, as the need arises, order changes within the scope of the WORK without invalidating the Agreement. If such changes increase or decrease the amount due under the CONTRACT DOCUMENTS, or in the time required for performance of the WORK, an equitable adjustment shall be authorized by CHANGE ORDER.

**213-2:** The ENGINEER also may at any time by issuing a FIELD ORDER make changes in the details of the WORK. The Contractor shall proceed with the performance of any changes in the WORK so ordered by the ENGINEER unless the CONTRACTOR believes that such FIELD ORDER entitles him to a change in CONTRACT PRICE or TIME or both, in which event he shall give the ENGINEER WRITTEN NOTICE thereof within seven (7) days after the receipt of the ordered change. Thereafter the CONTRACTOR shall document the basis for the change in CONTRACT PRICE or TIME within thirty (30) days. The CONTRACTOR shall not execute such changes pending the receipt of an executed CHANGE ORDER or further instruction from the OWNER.

## **214 CHANGES IN CONTRACT PRICE**

**214-1:** The CONTRACT PRICE may be changed only by a CHANGE ORDER. The value of any WORK covered by a CHANGE ORDER or of any claim for increase or decrease in the CONTRACT PRICE shall be determined by one or more of the following methods in the order of precedence listed below, and not to exceed 25% of the CONTRACT AMOUNTS. If requested by Contractor in writing:

- A) Unit prices previously approved.
- B) An agreed lump sum.
- C) The actual cost for labor, direct overhead, materials, supplies, equipment, and other services necessary to complete the work. In addition, there shall be added a percentage, to be agreed upon, of the actual cost of the WORK to cover the cost of general overhead and profit.

## **215 TIME FOR COMPLETION AND LIQUIDATED DAMAGES**

**215-1:** The date of beginning and the time for completion of the WORK are essential conditions of the CONTRACT DOCUMENTS and the WORK embraced shall be commenced on a date specified in the NOTICE TO PROCEED.

**215-2:** The Contractor will proceed with the WORK at such rate of progress to insure full completion within the CONTRACT TIME. It is expressly understood and agreed, by and between the CONTRACTOR and the OWNER, that the CONTRACT TIME for the completion of the WORK described herein is a reasonable time, taking into consideration the average climatic and economic conditions and other factors prevailing in the locality of the WORK.

**215-3:** If the CONTRACTOR shall fail to complete the WORK within the CONTRACT TIME, or extension of time granted by the OWNER, then the CONTRACTOR will pay to the OWNER the amount for liquidated damages as specified in the BID for each calendar day that the CONTRACTOR shall be in default after the time stipulated in the CONTRACT DOCUMENTS.

**215-4:** The CONTRACTOR shall not be charged with liquidated damages or any excess cost when the delay in completion of the WORK is due to the following, and the CONTRACTOR has promptly given WRITTEN NOTICE of such delay to the OWNER or ENGINEER.

**215-4.1:** To any preference, priority or allocation order duly issued by the Owner.

**215-4.2:** To unforeseeable causes beyond the control and without the fault or negligence of the CONTRACTOR, including but not restricted to, acts of God, or of the public enemy, acts of the OWNER, acts of another CONTRACTOR in the performance of a contract with the OWNER, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and abnormal and unforeseeable weather; and

**215-4.3:** To any delays of SUBCONTRACTORS occasioned by any of the causes specified in Paragraphs 215-4.1 and 215-4.2 of this article.

## **216 CORRECTION OF WORK**

**216-1:** The CONTRACTOR shall promptly remove from the premises all WORK rejected by the ENGINEER for failure to comply with the CONTRACT DOCUMENTS, whether incorporated in the construction or not, and the CONTRACTOR shall promptly replace and re-execute the WORK in accordance with the CONTRACT DOCUMENTS and without expense to the OWNER and shall bear the expense of making good all WORK of other CONTRACTORS destroyed or damaged by such removal or replacement.

**216-2:** All removal and replacement WORK shall be done at the CONTRACTOR'S expense. If the CONTRACTOR does not take action to remove such rejected WORK within ten (10) days after receipt of WRITTEN NOTICE, the OWNER may remove such WORK and store the materials at the expense of the CONTRACTOR.

## **217 SUBSURFACE CONDITIONS**

**217-1:** The CONTRACTOR shall promptly, and before such conditions are disturbed, except in the event of an emergency, notify the OWNER by WRITTEN NOTICE of:

**217-1.1:** Subsurface or latent physical conditions of the site differing materially from those indicated in the CONTRACT DOCUMENTS; or

**217-1.2:** Unknown physical conditions at the site, of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in WORK of the character provided for in the CONTRACT DOCUMENTS.

**217-2:** The OWNER shall promptly investigate the conditions, and if he finds that such conditions do so materially differ and cause an increase or decrease in the cost of, or in the time required for, performance of the WORK, an equitable adjustment shall be made and the CONTRACT DOCUMENTS shall be modified by a CHANGE ORDER. Any claim of the CONTRACTOR for adjustment hereunder shall not be allowed unless he has given the required WRITTEN NOTICE; provided that the OWNER may, if he determines the facts so justify, consider and adjust any such claims asserted before the date of final payment.

## **218 SUSPENSION OF WORK, TERMINATION AND DELAY**

**218-1:** The OWNER may suspend the WORK or any portion thereof for a period of not more than ninety days or such further time as agreed upon by the CONTRACTOR, by WRITTEN NOTICE to the CONTRACTOR and the ENGINEER which notice shall fix the date on which WORK shall be resumed. The CONTRACTOR will resume that WORK on the date so fixed. The CONTRACTOR will be allowed an increase in the CONTRACT PRICE or an extension of the CONTRACT TIME, or both, directly attributable to any suspension.

**218-2:** If the CONTRACTOR is adjudged a bankrupt or insolvent, or if he makes a general assignment for the benefit of his creditors, or if a trustee or receiver is appointed

for the CONTRACTOR or for any of his property, or if he files a petition to take advantage of any debtor's act, or to reorganize under the bankruptcy or applicable laws, or if he repeatedly fails to supply sufficient skilled workmen or suitable materials or equipment, or if he repeatedly fails to make prompt payments to SUBCONTRACTORS for labor, materials or equipment, or if he disregards laws, ordinances, rules, regulations or orders of any public body having jurisdiction of the WORK or if he disregards the authority of the ENGINEER, or if he otherwise violates any provision of the CONTRACT DOCUMENTS, then the OWNER may, without prejudice to any other right or remedy and after giving the CONTRACTOR and his surety a minimum of ten (10) days from delivery of a WRITTEN NOTICE, terminate the services of the CONTRACTOR and take possession of the PROJECT and of all materials, equipment, tools, construction equipment and machinery thereon owned by the CONTRACTOR, and finish the WORK by whatever method he may deem expedient. In such case the CONTRACTOR shall not be entitled to receive any further payment until the WORK is finished. If the unpaid balance of the CONTRACT PRICE exceeds the direct and indirect costs of completing the PROJECT, including compensation for additional professional services, such excess SHALL BE PAID TO THE CONTRACTOR. If such costs exceed such unpaid balance, the CONTRACTOR will pay the difference to the OWNER.

Such costs incurred by the OWNER will be determined by the ENGINEER and incorporated in a CHANGE ORDER.

**218-3:** Where the CONTRACTOR'S services have been so terminated by the OWNER, said termination shall not affect any right of the OWNER against the CONTRACTOR then existing or which may thereafter accrue. Any retention or payment of monies by the OWNER due the CONTRACTOR will not release the CONTRACTOR from compliance with the CONTRACT DOCUMENTS.

**218-4:** After ten (10) days from delivery of a WRITTEN NOTICE to the CONTRACTOR and the ENGINEER, the OWNER may, without cause and without prejudice to any other right or remedy, elect to abandon the PROJECT and terminate the CONTRACT. In such case, the CONTRACTOR shall be paid for all WORK executed and any expense sustained plus reasonable profit.

**218-5:** If, through no act or fault of the CONTRACTOR, the WORK is suspended for a period of more than ninety (90) days by the OWNER or under an order of court or other public authority, or the ENGINEER fails to act on any request for payment within thirty (30) days after it is submitted, or the OWNER fails to pay the CONTRACTOR substantially the sum approved by the ENGINEER or awarded by arbitrators within thirty (30) days of its approval and presentation, then the CONTRACTOR may, after ten (10) days from delivery of a WRITTEN NOTICE to the OWNER and the ENGINEER, terminate the CONTRACT and recover from the OWNER payment for all WORK executed and all expenses sustained. In addition and in lieu of terminating the CONTRACT, if the ENGINEER has failed to act on a request for payment or if the OWNER has failed to make any payment as aforesaid, the CONTRACTOR may upon ten (10) days WRITTEN NOTICE to the OWNER and the ENGINEER stop the WORK until he has been paid all amounts then due, in which event and upon resumption of the WORK, CHANGE ORDERS shall be issued for adjusting the CONTRACT PRICE or

extending the CONTRACT TIME or both to compensate for the costs and delays attributable to the stoppage of the WORK.

**218-6:** If the performance of all or any portion of the WORK is suspended, delayed or interrupted as a result of a failure of the OWNER or ENGINEER to act within the time specified in the CONTRACT DOCUMENTS, or if no time is specified, within a reasonable time, an adjustment in the CONTRACT PRICE or an extension of the CONTRACT TIME, or both, shall be made by CHANGE ORDER to compensate the CONTRACTOR for the costs and delays necessarily caused by the failure of the OWNER or ENGINEER.

## **219 PAYMENTS TO CONTRACTOR**

**219-1:** At least ten (10) days before each progress payment falls due (but not more often than once a month), the CONTRACTOR will submit to the ENGINEER a partial payment estimate filled out and signed by the CONTRACTOR covering the WORK performed during the period covered by the partial payment estimate and supported by such data as the ENGINEER may reasonably require. If payment is requested on the basis of materials and equipment not incorporated in the WORK but delivered and suitably stored at or near the site, the partial payment estimate shall also be accompanied by such supporting data, satisfactory to the OWNER, as will establish the OWNER'S title to the material and equipment and protect his interests therein, including applicable insurance. The ENGINEER will, within ten (10) days after receipt of each partial payment estimate, either indicate in writing his approval of payment and present the partial payment estimate to the OWNER, or return the partial payment estimate to the CONTRACTOR indicating in writing his reasons for refusing to approve payment. In the latter case, the CONTRACTOR may take the necessary corrections and resubmit the partial payment estimate. The OWNER will, within thirty (30) days of presentation to him of an approved partial payment estimate, pay the CONTRACTOR a progress payment on the basis of the approved partial payment estimate. The retainage shall be an amount equal to ten percent (10%) of said estimate until fifty percent (50%) of the work has been completed. At fifty percent (50%) completion, further partial payments shall be made in full to the CONTRACTOR and no additional amounts may be retained unless the ENGINEER certifies that the job is not proceeding satisfactorily, but amounts previously retained shall not be paid to the CONTRACTOR. At fifty percent (50%) completion or any time thereafter when the progress of the WORK is not satisfactory, additional amounts may be retained but in no event shall the total retainage be more than ten percent (10%) of the value of the work completed. Upon substantial completion of the work, any amount retained may be paid to the CONTRACTOR. When the WORK has been substantially completed except for WORK which cannot be completed because of weather conditions, lack of materials or other reasons which, in the judgement of the OWNER, are valid reasons for non-completion, the OWNER may make additional payments, retaining at all times an amount sufficient to cover the estimated cost of the WORK still to be completed. On completion and acceptance of a part of the WORK on which the price is stated separately in the CONTRACT DOCUMENTS, payment may be made in full, including retained percentages, less authorized deductions.



**219-2:** The request for payment may also include an allowance for the cost of such major materials and equipment which are suitably stored either at or near the site.

**219-3:** Prior to SUBSTANTIAL COMPLETION, the OWNER, with the approval of the ENGINEER and with the concurrence of the CONTRACTOR, may use any completed or substantially completed portions of the WORK. Such use shall not constitute an acceptance of such portions of the WORK.

**219-4:** The OWNER shall have the right to enter the premises for the purpose of doing work not covered by the CONTRACT DOCUMENTS. This provision shall not be construed as relieving the CONTRACTOR of the sole responsibility for the care and protection of the WORK, or the restoration of any damaged WORK except such as may be caused by agents or employees of the OWNER.

**219-5:** Upon completion and acceptance of the WORK, the ENGINEER shall issue a certificate attached to the final payment request that the WORK has been accepted by him under the conditions of the CONTRACT DOCUMENTS. The entire balance found to be due the CONTRACTOR, including the retained percentages, but except such sums as may be lawfully retained by the OWNER, shall be paid to the CONTRACTOR within thirty (30) days of completion and acceptance of the WORK.

**219-6:** The CONTRACTOR will indemnify and save the OWNER or the OWNER'S agents harmless from all claims growing out of the lawful demands of SUBCONTRACTORS, laborers, workmen, mechanics, materialmen, and furnishers of machinery and parts thereof, equipment, tools, and all supplies, incurred in the furtherance of the performance of the WORK. The CONTRACTOR shall, at the OWNER'S request, furnish satisfactory evidence that all obligations of the nature designated above have been paid, discharged, or waived. If the CONTRACTOR fails to do so the OWNER may, after having notified the CONTRACTOR, either pay unpaid bills or withhold from the CONTRACTOR'S unpaid compensation a sum of money deemed reasonably sufficient to pay any and all such lawful claims until satisfactory evidence is furnished that all liabilities have been fully discharged, whereupon payment to the CONTRACTOR shall be resumed in accordance with the terms of the CONTRACT DOCUMENTS, but in no event shall the provisions of this sentence be construed to impose any obligations upon the OWNER to either the CONTRACTOR, his Surety, or any third party. In paying any unpaid bills of the CONTRACTOR, any payment so made by the OWNER shall be considered as a payment made under the CONTRACT DOCUMENTS by the OWNER to the CONTRACTOR and the OWNER shall not be liable to the CONTRACTOR for any such payments made in good faith.

**219-7:** If the OWNER fails to make payment thirty (30) days after approval by the ENGINEER, in addition to other remedies available to the CONTRACTOR, there shall be added to each such payment interest at the rate of 6% By Annum commencing on the first day after said payment is due and continuing until payment is received by the CONTRACTOR.

## **220 ACCEPTANCE OF FINAL PAYMENT AS RELEASE**

**220-1:** The acceptance by the CONTRACTOR of final payment shall be and shall

operate as a release to the OWNER of all claims and all liability to the CONTRACTOR other than claims in stated amounts as may be specifically excepted by the CONTRACTOR for all things done or furnished in connection with this WORK and for every act and neglect of the OWNER and others relating to or arising out of this WORK. Any payment, however, final or otherwise, shall not release the CONTRACTOR or his sureties from any obligations under the CONTRACT DOCUMENTS or the PERFORMANCE BOND.

**220-2 CLEANING UP:** The CONTRACTOR shall remove from the OWNER'S property, and from all public and private property, all temporary structures, rubbish, and waste materials resulting from his operation or caused by his employees, and shall remove all surplus materials leaving the site smooth, clean and true to line and grade.

**220-3 ACCEPTANCE AND FINAL PAYMENT:** When the CONTRACTOR shall have completed the WORK in accordance with the terms of the CONTRACT DOCUMENTS, he shall certify completion of the WORK to the OWNER and submit a final REQUEST FOR PAYMENT, which shall be the CONTRACT AMOUNT plus all approved additions less all approved deductions and less previous payments made. The CONTRACTOR shall furnish evidence (See Attached Affidavit) that he has fully paid all debts for labor, materials, and equipment incurred in connection with the WORK, and upon acceptance by the OWNER, the OWNER will release the CONTRACTOR except as to the conditions of the CONTRACT BOND, any legal rights of the OWNER, required guaranties, and Correction of Faulty Work After Final Payment, and will pay the CONTRACTOR'S final Request for Payment. The CONTRACTOR shall allow sufficient time between the time of completion of the WORK and approval of the final Request for Payment for the Engineer to assemble and check the necessary data.

## **221 INSURANCE**

**221-1: The CONTRACTOR** shall purchase and maintain such insurance as will protect him from claims set forth below which may arise out of or result from the CONTRACTOR'S execution of the WORK, whether such execution be by himself or by any SUBCONTRACTOR or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

**221-1.1:** Claims under workmen's compensation, disability benefit and other similar employee benefit acts:

**221-1.2:** Claims for damages because of bodily injury, occupational sickness or disease, or death of his employees;

**221-1.3:** Claims for damages because of bodily injury, sickness or disease, or death of any person other than his employees;

**221-1.4:** Claims for damages insured by usual personal injury liability coverage which are sustained (1) by any person as a result of an offense directly or indirectly related to the employment of such person by the CONTRACTOR, or (2) by any other person; and

**221-1.5:** Claims for damages because of injury to or destruction of tangible property, including loss of use resulting therefrom.

**221-2:** Certificates of Insurance acceptable to the OWNER shall be filed with the OWNER prior to commencement of the WORK. These Certificates shall contain a provision that coverage afforded under the policies will not be cancelled unless at least fifteen (15) days prior WRITTEN NOTICE has been given to the OWNER.

**221-3:** The CONTRACTOR shall procure and maintain, at his own expense, during the CONTRACT TIME, liability insurance as hereinafter specified:

**221-3.1:** CONTRACTOR'S General Public Liability and Property Damage Insurance including vehicle coverage issued to the CONTRACTOR and protecting him from all claims for personal injury, including death, and all claims for destruction of or damage to property, arising out of or in connection with any operations under the CONTRACT DOCUMENTS, whether such operations be by himself or by any SUBCONTRACTOR under him, or anyone directly or indirectly employed by the CONTRACTOR or by a SUBCONTRACTOR under him. Insurance shall be written with a limit of liability of not less than \$500,000 for all damages arising out of bodily injury, including death, at any time resulting therefrom, sustained by any one person in any one accident; and a limit of liability of not less than \$1,000,000 aggregate for any such damages sustained by two or more persons in any one accident. Insurance shall be written with a limit of liability of not less than \$100,000 for all property damage sustained by any one person in any one accident; and a limit of liability of not less than \$200,000 aggregate for any such damage sustained by two or more persons in any one accident.

**221-3.2:** The CONTRACTOR shall acquire and maintain, if applicable, Fire and Extended Coverage insurance upon the PROJECT to the full insurable value thereof for the benefit of the OWNER, the CONTRACTOR, and SUBCONTRACTORS as their interest may appear. This provision shall in no way release the CONTRACTOR or CONTRACTOR'S surety from obligations under the CONTRACT DOCUMENTS to fully complete the PROJECT.

**221-4:** The CONTRACTOR shall procure and maintain at his own expense, during the CONTRACT TIME in accordance with the provisions of the laws of the state in which the work is performed, Workmen's Compensation Insurance, including occupational disease provisions, for all of his employees at the site of the PROJECT; and, in case any work is sublet, the CONTRACTOR shall require such SUBCONTRACTOR similarly to provide Workmen's Compensation Insurance, including occupational disease provisions for all of the latter's employees unless such employees are covered by the protection afforded by the CONTRACTOR. In case any class of employees engaged in hazardous work under this contract at the site of the PROJECT is not protected under Workmen's Compensation statute, the CONTRACTOR shall provide, and shall cause each SUBCONTRACTOR to provide, adequate and suitable insurance for the protection of his employees not otherwise protected.

**221-5:** The CONTRACTOR shall secure, if applicable, "All Risk" type Builder's Risk Insurance for WORK to be performed. Unless specifically authorized by the OWNER,

the amount of such insurance shall not be less than the CONTRACT PRICE totaled in the BID. The policy shall cover not less than the losses due to fire, explosion, hail, lightning, vandalism, malicious mischief, wind, collapse, riot, aircraft, and smoke during the CONTRACT TIME, and until the WORK is accepted by the OWNER. The policy shall name as the insured the CONTRACTOR, the ENGINEER, and the OWNER.

**221-6 RAILROAD INSURANCE COVERAGE:** The CONTRACTOR and his SUBCONTRACTORS shall provide adequate insurance to cover limits set forth by the railroad company for working adjacent to or crossing their tracks.

## **222 CONTRACT SECURITY**

**222-1:** The CONTRACTOR shall within ten (10) days after the receipt of the NOTICE OF AWARD furnish the OWNER with a Performance Bond and a Payment Bond in penal sums equal to the amount of the CONTRACT PRICE, conditioned upon the performance by the CONTRACTOR of all undertakings, covenants, terms, conditions and agreements of the CONTRACT DOCUMENTS, and upon the prompt payment by the CONTRACTOR to all persons supplying labor and materials in the prosecution of the WORK provided by the CONTRACT DOCUMENTS. Such BONDS shall be executed by the CONTRACTOR and a corporate bonding company licensed to transact such business in the state in which the WORK is to be performed and named on the current list of "Surety Companies Acceptable on Federal Bonds" as published in the Treasury Department Circular Number 570. The expense of these BONDS shall be borne by the CONTRACTOR. If at any time a surety on any such BOND is declared a bankrupt or loses its right to do business in the state in which the WORK is to be performed or is removed from the list of Surety Companies accepted on Federal BONDS, CONTRACTOR shall, within ten (10) days after notice from the OWNER to do so, substitute an acceptable BOND (or BONDS) in such form and sum and signed by such other Surety or sureties as may be satisfactory to the OWNER. The premiums on such BOND shall be paid by the CONTRACTOR. No further payments shall be deemed due nor shall be made until the new surety or sureties shall have furnished an acceptable BOND to the OWNER.

## **223 ASSIGNMENTS**

**223-1:** Neither the CONTRACTOR nor the OWNER shall sell, transfer, assign or otherwise dispose of the CONTRACT or any portion thereof, or of his right, title or interest therein, or his obligations thereunder, without written consent of the other party.

## **224 INDEMNIFICATION**

**224-1:** The CONTRACTOR will indemnify and hold harmless the OWNER and the ENGINEER and their agents and employees from and against all claims, damages, losses and expenses including attorney's fees arising out of or resulting from the performance of the WORK, provided that any such claims, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property including the loss of use resulting therefrom; and is caused in whole or in part by any negligent or willful act or omission of the CONTRACTOR, and SUBCON-

TRACTOR, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable.

**224-2:** In any and all claims against the OWNER or the ENGINEER, or any of their agents or employees, by any employee of the CONTRACTOR, any SUBCONTRACTOR, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the CONTRACTOR or any SUBCONTRACTOR under workmen's compensation acts, disability benefit acts or other employee benefits acts.

**224-3:** The obligation of the CONTRACTOR under this paragraph shall not extend to the liability of the ENGINEER, his agents or employees arising out of the preparation or approval of maps, DRAWINGS, opinions, reports, surveys, CHANGE ORDERS, designs or SPECIFICATIONS.

## **225 SEPARATE CONTRACTS**

**225-1:** The OWNER reserves the right to let other contracts in connection with this PROJECT. The CONTRACTOR shall afford other CONTRACTORS reasonable opportunity for the introduction and storage of their materials and the execution of their WORK, and shall properly connect and coordinate his WORK with theirs. If the proper execution of results of any part of the CONTRACTOR'S WORK depends upon the WORK of any other CONTRACTOR, the CONTRACTOR shall inspect and promptly report to the ENGINEER any defects in such WORK that render it unsuitable for such proper execution and results.

**225-2:** The OWNER may perform additional WORK related to the PROJECT by himself, or he may let other contracts containing provisions similar to these. The CONTRACTOR will afford the other CONTRACTORS who are parties to such Contracts (or the OWNER, if he is performing the additional WORK himself), reasonable opportunity for the introduction and storage of materials and equipment and the execution of WORK, and shall properly connect and coordinate his WORK with theirs.

**225-3:** If the performance of additional WORK by other CONTRACTORS or the OWNER is not noted in the CONTRACT DOCUMENTS prior to the execution of the CONTRACT, written notice thereof shall be given to the CONTRACTOR prior to starting any such additional WORK. If the CONTRACTOR believes that the performance of such additional WORK by the OWNER or others involves him in additional expense or entitles him to an extension of the CONTRACT TIME, he may make a claim therefore as provided in Sections 214 and 215.

## **226 SUBCONTRACTING**

**226-1:** The CONTRACTOR may utilize the services of specialty SUBCONTRACTORS on those parts of the WORK which, under normal contracting practices, are performed by specialty SUBCONTRACTORS.

**226-2:** The CONTRACTOR shall not award WORK to SUBCONTRACTOR(s), in excess of fifty (50%) percent of the CONTRACT PRICE, without prior written approval of the OWNER.

**226-3:** The CONTRACTOR shall be fully responsible to the OWNER for the acts and omissions of his SUBCONTRACTORS, and of persons either directly or indirectly employed by them, as he is for the acts and omissions of persons directly employed by him.

**226-4:** The CONTRACTOR shall cause appropriate provisions to be inserted in all subcontracts relative to the WORK to bind SUBCONTRACTORS to the CONTRACTOR by the terms of the CONTRACT DOCUMENTS insofar as applicable to the WORK of SUBCONTRACTORS and to give the CONTRACTOR the same power as regard terminating any subcontract that the OWNER may exercise over the CONTRACTOR under any provision of the CONTRACT DOCUMENTS.

**226-5:** Nothing contained in this CONTRACT shall create any contractual relation between any SUBCONTRACTOR and the OWNER.

## **227 ENGINEER'S AUTHORITY**

**227-1:** The ENGINEER shall act as the OWNER'S representative during the construction period. He shall decide questions which may rise as to quality and acceptability of materials furnished and WORK performed. He shall interpret the intent of the CONTRACT DOCUMENTS in a fair and unbiased manner. The ENGINEER will make visits to the site and determine if the WORK is proceeding in accordance with the CONTRACT DOCUMENTS.

**227-2:** The CONTRACTOR will be held strictly to the intent of the CONTRACT DOCUMENTS in regard to the quality of materials, workmanship and execution of the WORK. Inspections may be made at the factory or fabrication plant of the source of material supply.

**227-3:** The ENGINEER will not be responsible for the construction means, controls, techniques, sequences, procedures, or construction safety.

**227-4:** The ENGINEER shall promptly make decisions relative to interpretation of the CONTRACT DOCUMENTS.

## **228 LAND AND RIGHTS-OF-WAY**

**228-1:** Prior to issuance of NOTICE TO PROCEED, the OWNER shall obtain all land and rights-of-way necessary for carrying out and for the completion of the WORK to be performed pursuant to the CONTRACT DOCUMENTS, unless otherwise mutually agreed.

**228-2:** The OWNER shall provide to the CONTRACTOR information which delineates and describes the lands owned and rights-of-way acquired.

**228-3:** The CONTRACTOR shall provide at his own expense and without liability to the OWNER, any additional land and access thereto that the CONTRACTOR may desire for temporary construction facilities, or for storage of materials.

## **229 GUARANTEE**

**229-1:** The CONTRACTOR shall guarantee all materials and equipment furnished and WORK performed for a period of one (1) year from the date of acceptance by the OWNER. The CONTRACTOR warrants and guarantees for a period of one (1) year from the date of acceptance by the OWNER of the system that the completed system is free from all defects due to faulty materials or workmanship and the CONTRACTOR shall promptly make such corrections as may be necessary by reason of such defects including the repairs of any damage to other parts of the system resulting from such defects. The OWNER will give notice of observed defects with reasonable promptness.

In the event that the CONTRACTOR should fail to make such repairs, adjustments, or other WORK that may be made necessary by such defects, the OWNER may do so and charge the CONTRACTOR the cost thereby incurred. The Performance Bond shall remain in full force and effect through the guarantee period.

## **230 TAXES**

**230-1:** The CONTRACTOR will pay all sales, consumer, use and other similar taxes required by the law of the place where the WORK is performed.

## **240 COMPLIANCE WITH AIR AND WATER ACTS**

**240-1:** In compliance with the Clean Air Act, as amended, 42 U.S.C. 1857 et. seq., the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et. seq., and the regulations of the Environmental Protection Agency with respect thereto, the Contractor agrees that:

1. Any facility to be utilized in the performance of this Contract or any subcontract shall not be a facility listed on the EPA List of Violating Facilities pursuant to 40 CFR 15.20.
2. He will comply with all requirements of Section 114 of the Clean Air Act as amended, (42 U.S.C. 1857c-8) and Section 308 of the Federal Water Pollution Control Act, as amended, (33 U.S.C. 1251) relating to inspection, monitoring, entry, reports, and information, as well as all other requirements specified in said Section 114 and Section 308, and all regulations & guidelines issued thereunder.
3. He will promptly notify the owner of any notification received from the Director, Office of Federal Activities, EPA, indicating that a facility utilized or to be utilized for the Contract is under consideration to be listed on the EPA List of Violating Facilities.
4. He will include or cause to be included the provisions of paragraphs (1) through (4) of this section in every nonexempt subcontract and that he will take such action as the Government may direct as a means of enforcing such provisions.

## 250 EQUAL EMPLOYMENT OPPORTUNITY

### 250-1:

1. If the contract amount is \$10,000 or less, the following conditions shall apply:

During the performance of this contract the Contractor agrees as follows:

- a. The Contractor will not discriminate against any employee or the applicant for employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: employment upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the owner setting forth the provisions of this nondiscrimination clause.
  - b. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
  - c. The Contractor will cause the foregoing provisions to be inserted in all subcontracts for any work covered by this contract so that such provisions will be binding upon each subcontractor, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.
2. Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity (Executive Order 11246). (*Applicable to contracts/subcontracts exceeding \$10,000.*)
    - a. The Offeror's or Bidder's attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Opportunity Construction Contract Specifications" set forth herein.
    - b. The goals for minority and female participation, expressed in percentage terms for the Contractor's aggregate work force in each trade on all construction work in the covered area.



participation for  
each trade: 4.4%

participation in  
each trade: 6.9%

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These goals are applicable to all the Contractor's construction work (*whether or not it is federal or federally assisted*) performed in the covered area.

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

- c. The Contractor shall provide written notification to the Director of the Office of Federal Contract Compliance Programs within 10 working days of award of any construction subcontract in excess of \$10,000 at any tier for construction work under the contract resulting from this solicitation. The notification shall list the name, address, and telephone number of the subcontractor; employer identification number; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the contract is to be performed.
- d. As used in this Notice, and in the contract resulting from this solicitation, the "covered area" is (*insert description of the geographical areas where the contract is to be performed giving the state, county, and city, if any*).

3. Standard Federal Equal Employment Opportunity Construction Contract Specifications

- a. As used in these specifications:
  - i. "Covered area" means the geographical area described in the solicitation from which this contract resulted;

- ii. “*Director*” means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;
- iii. “*Federal Employer Identification Number*” (FEIN) means the Federal Social Security number used on the Employer’s Quarterly Federal Tax Return, U.S. Treasury Department Form 941.
- iv. “*Minority*” includes:

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

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

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

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

- b. Whenever the Contractor, or any Subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of \$10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this contract resulted.
- c. If the Contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each Contractor or Subcontractor participating in an approved Plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other Contractors or Subcontractors toward a goal in an approved Plan does not excuse any covered Contractor’s or Subcontractor’s failure to take good faith efforts to achieve the Plan goals and timetables.

- d. The Contractor shall implement the specific affirmative action standards provided in paragraphs 3a through 3p of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization that the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. The Contractor is expected to make substantially uniform progress toward its goals in each craft during the period specified.
- e. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Contractor has a collective bargaining agreement to refer either minorities or women shall excuse the Contractor's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.
- f. In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.
- g. The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its efforts to achieve maximum results from its actions. The Contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:
  - i. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more women to each construction project. The Contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.
  - ii. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community

organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.

- iii. Maintain a current file of the names, addresses, and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefore, along with whatever additional actions the Contractor may have taken.
- iv. Provide immediate written notification to the Director when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.
- v. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under 3b above.
- vi. Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.
- vii. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination, or other employment

decisions including specific review of these items with on-site supervisory personnel such as Superintendents, General Foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

- viii. Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, and providing written notification to and discussing the Contractor's EEO policy with other Contractors and Subcontractors with whom the Contractor does or anticipates doing business.
- ix. Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.
- x. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer, and vacation employment to minority and female youth both on the site and in other areas of a Contractor's work force.
- xi. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.
- xii. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.
- xiii. Ensure that seniority practices, job classifications, work assignments, and other personnel practices do not have a discriminatory effect by continually monitoring all personnel and employment-related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.

- xiv. Ensure that all facilities and company activities are nonsegregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.
  - xv. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.
  - xvi. Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's EEO policies and affirmative action obligations.
- h. Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (*3a through p*). The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under 3a through p of these Specifications provided that the Contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female work force participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation shall not be a defense for the contractor's non-compliance.
- i. A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (*for example, even though the Contractor has achieved its goals for women generally, the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized*).
- j. The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.

- k. The Contractor shall not enter into any Subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.
- l. The Contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any Contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.
- m. The Contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 3 of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 60-4.8.
- n. The Contractor shall designate a responsible official to monitor all employment-related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (*e.g., mechanic, apprentice, trainee or laborer*), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.
- o. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (*e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program*).

## **260 SECTION 503 OF THE REHABILITATION ACT OF 1973 (If \$10,000 or Over)**

### **260-1:**

#### Affirmative Action for Workers With Disabilities

1. The Contractor will not discriminate against any employee or applicant for employment because of physical or mental disability in regard to any position for which the employee or applicant for employment is qualified. The Contractor agrees to take affirmative action to employ, advance in employment and otherwise treat qualified individuals with disabilities without discrimination based upon their physical or mental disability in all employment practices such as the following: Employment, upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.
2. In the event of the Contractor's noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.
3. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the Director, provided by or through the contracting officer. Such notices shall state the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified employees with disabilities and applicants for employment, and the rights of applicants and employees.
4. The Contractor will notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Contractor is bound by the terms of Section 504 of the Rehabilitation Act of 1973, and is committed to take affirmative action to employ and advance in employment individuals with disabilities.
5. The Contractor will include the provisions of this clause in every subcontract or purchase order of \$10,000 or more unless exempted by rules, regulations, or orders of the Secretary issued pursuant to Section 503 of the Act, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the Director of the Office of Federal Contract Compliance Programs may direct to enforce such provisions, including action for non-compliance.

## **270 SECTION 402 VETERANS OF THE VIETNAM ERA (If \$10,000 or Over)**

### **270-1:**

#### Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era



1. The Contractor will not discriminate against any employee or applicant for employment because he or she is a disabled veteran or veteran of the Vietnam era in regard to any position for which the employee or applicant for employment is qualified. The Contractor agrees to take affirmative action to employ, advance in employment and otherwise treat qualified disabled veterans and veterans of the Vietnam era without discrimination based upon their disability or veteran status in all employment practices such as the following: employment upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.
2. The Contractor agrees that all suitable employment openings of the Contractor which exist at the time of the execution of this Contract and those which occur during the performance of this Contract, including those not generated by this Contract and including those occurring at an establishment of the Contractor other than the one wherein the Contract is being performed but excluding those of independently operated corporate affiliates, shall be listed at an appropriate local office of the State employment service system wherein the opening occurs. The Contractor further agrees to provide such reports to such local office regarding employment openings and hires as may be required.

State and local government agencies holding Federal contracts of \$10,000 or more shall also list all their suitable openings with the appropriate office of the State employment service, but are not required to provide those reports set forth in paragraphs (4) and (5).

3. Listing of employment openings with the employment service system pursuant to this clause shall be made at least concurrently with the use of any other recruitment source or effort and shall involve the normal obligations which attach to the placing of a bona fide job order, including the acceptance or referrals of veterans and non-veterans. The listing of employment openings does not require the hiring of any particular job applicant or from any particular group of job applicants, and nothing herein is intended to relieve the Contractor from any requirements in Executive Orders or regulations regarding nondiscrimination in employment.
4. The reports required by paragraph (2) of this clause shall include, but not be limited to, periodic reports which shall be filed at least quarterly with the appropriate local office or, where the Contractor has more than one hiring location in a State, with the central office of that State employment service. Such reports shall indicate for each hiring location (1) the number of individuals hired during the reporting period, (2) the number of non-disabled veterans of the Vietnam era hired, (3) the number of disabled veterans of the Vietnam era hired, and (4) the total number of disabled veterans hired. The reports should include covered veterans hired for on-the-job training under 38 U.S.C. 1787. The Contractor shall submit a

report within 30 days after the end of each reporting period wherein any performance is made on this contract identifying data for each hiring location. The Contractor shall maintain at each hiring location copies of the reports submitted until the expiration of one year after final payment under the Contract, during which time these reports and related documentation shall be made available, upon request, for examination by any authorized representatives of the contracting officer or of the Secretary of Labor. Documentation would include personnel records respecting job openings, recruitment, and placement.

5. Whenever the Contractor becomes contractually bound to the listing provisions of this clause, it shall advise the employment service system in each State where it has establishments of the name and location of each hiring location in the State. As long as the Contractor is contractually bound to these provisions and has so advised the State system, there is no need to advise the State system of subsequent contracts. The Contractor may advise the State system when it is no longer bound by this Contract clause.
6. This clause does not apply to the listing of employment openings which occur and are filled outside of the 50 States, the District of Columbia, Puerto Rico, Guam, and the Virgin Islands.
7. The Contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.
8. In the event of the Contractor's noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.
9. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the Director, provided by or through the contracting officer. Such notice shall state the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified disabled veterans and veterans of the Vietnam era for employment, and the rights of applicants and employees.
10. The Contractor will notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding that the Contractor is bound by the terms of the Vietnam Era Veterans Readjustment Assistance Act, and is committed to take affirmative action to employ and advance in employment qualified disabled veterans and veterans of the Vietnam Era.
11. The Contractor will include the provisions of this clause in every subcontract or purchase order of \$10,000 or more unless exempted by rules, regulation, or orders of the Secretary issued pursuant to the Act, so that such provisions will be binding upon each subcontractor or vendor.

The Contractor will take such action with respect to any subcontract or purchase order as the Director of the Office of Federal Contract Compliance Programs may direct to enforce such provisions, including action for noncompliance.

## **SECTION 280 “SECTION 3” COMPLIANCE IN THE PROVISION OF TRAINING, EMPLOYMENT AND BUSINESS OPPORTUNITIES**

**280-1:** Any contract or subcontract awarded by a recipient or contractor shall include the following clause (referred to as a Section 3 clause):

- a. The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (Section 3). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low-and-moderate income persons, particularly persons who are recipients of HUD assistance for housing.
- b. The parties to this contract agree to comply with HUD’s regulations in 24 CFR part 135, which implement Section 3. The parties to this contract will certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.
- c. The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers’ representative of the contractor’s commitments under this Section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment can see the notice.

The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

- d. The contractor agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.

- e. The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those of whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 135.
- f. Noncompliance with HUD's regulations in 24 CFR part 135 may result in termination of this contract for default or suspension from future HUD assisted contracts.
- g. With respect to work performed in connection with Section 3 covered Indian housing assistance, Section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of Section 3 and Section 7(b) agree to comply with Section 3 to the maximum extent feasible, but not in derogation of compliance with Section 7(b).

## **SECTION 290 NONSEGREGATED FACILITIES**

**290-1:** The Contractor certifies that he does not maintain or provide for his employees any segregated facilities at any of his establishments, and that he does not permit his employees any segregated facilities at any of his establishments, and that he does not permit his employees to perform their services at any location, under his control, where segregated facilities are maintained. The Contractor covenants that he will not maintain or provide for his employees any segregated facilities at any of his establishments, and that he will not permit his employees to perform their services at any location, under his control, where segregated facilities are maintained. As used in this paragraph the term "segregated facilities" means any waiting rooms, work areas, rest rooms and washrooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, creed, color, or national origin, because of habit, local custom, or otherwise. The Contractor agrees that prior to award of subcontracts exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity Clause, that he will retain such certifications in his files.

## **SECTION 300 INTEREST OF CERTAIN FEDERAL AND OTHER OFFICIALS**

### **300-1:**

1. No member of or delegate to the Congress of the United States and no Resident Commissioner shall be admitted to any share or part of this Contractor to any benefit to arise from same: Provided, that the foregoing provision of this section shall not be construed to extend to this Contract if made with a corporation for its general benefit.
2. No member, officer, or employee of the Grantee, or its designees or agents, no member of the governing body of the locality in which the Project is located, and no other public official of such locality or localities who exercises any functions or responsibilities in connection with the Project during his tenure or for one year thereafter, shall have any interest, direct or indirect, in any Contract or Subcontract, or the proceeds thereof, for work to be performed under this Contract.

The Contractor will include the provisions of paragraphs (1) and (2) in every Subcontract so that such provisions will be binding upon each Subcontractor

## **SECTION 301 AMERICANS WITH DISABILITIES ACT**

**301-1:** Title I of the Americans with Disabilities Act specifically requires that an employer with 15 or more employees cannot discriminate against qualified applicants and employees on the basis of disability.

Title II of the Americans with Disabilities Act specifically requires that all newly constructed or altered streets, roads, highways, and pedestrian walkways must contain curb ramps or other sloped areas at any intersection having curbs or other barriers to entry from a street level or pedestrian walkway and that all newly constructed or altered street level pedestrian walkways must have curb ramps at intersections. Newly constructed or altered street level pedestrian walkways must contain curb ramps or other sloped areas at intersections to streets, roads, or highways [28 CFR 35.151(e)].

## **SECTION 302 GENERAL SPECIFICATIONS**

### **GENERAL CONDITIONS**

#### **PART II**

*(Federal Labor Standards Provisions)*

#### **APPLICABILITY**

The Project or Program to which the work covered by this Contract pertains is being assisted by the United States of America and the following Federal Labor Standards Provisions are included in this Contract pursuant to the provisions applicable to such Federal assistance.

#### **MINIMUM WAGE RATES FOR LABORERS AND MECHANICS**

All laborers and mechanics employed upon the work covered by this Contract shall be paid unconditionally and not less often than once each week, and without subsequent deduction or rebate on any account (except such payroll deductions as are made mandatory by law and such other payroll deductions as are permitted by the applicable regulations issued by the Secretary of Labor, United States Department of Labor, pursuant to the Anti-Kickback Act hereinafter identified), the full amount due at time of payment computed at wage rates not less than those contained in the wage determination decision of said Secretary of Labor **(a copy of which is attached as Attachment B and herein incorporated by reference)**, regardless of any contractual relationship which may be alleged to exist between the Contractor or any subcontractor and such laborers and mechanics. All laborers and mechanics employed upon such work shall be paid in cash, except that payment may be by check if the employer provides or secures satisfactory facilities approved by the City of Minot or Public Body for the cashing of the same without cost or expense to the employee. For the purpose of this clause, contributions made or costs reasonably anticipated under Section 1 (b) (2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of Section 5.5 (a) (1) (iv) of Title 29, Code of Federal Regulations. Also for the purpose of this clause, regular contributions made or costs incurred for more than a weekly period under plans, funds, or programs, but covering the particular weekly period, are deemed to be constructively made or incurred during such weekly period.

#### **UNDERPAYMENTS OF WAGES OR SALARIES**

In case of underpayment of wages by the Contractor or by any subcontractor to laborers or mechanics employed by the Contractor or subcontractor upon the work covered by this Contract, the City of Minot or Public Body in addition to such other rights as may be afforded it under this Contract shall withhold from the Contractor, out of any payments due the Contractor, so much thereof as the City of Minot or Public Body may consider necessary to pay such laborers or mechanics the full amount of wages required by this Contract. The amount so withheld may be disbursed by the City of Minot or Public Body, for and on

account of the Contractor or the subcontractor (as may be appropriate), to the respective laborers or mechanics to whom the same is due or on their behalf to funds/or programs for any type of fringe benefit prescribed in the applicable wage determination.

### **ANTICIPATED COSTS OF FRINGE BENEFITS**

If the Contractor does not make payments to a trustee or other third person, he may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing fringe benefits under a plan or program of a type expressly listed in the wage determination decision of the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program. A copy of any findings made by the Secretary of Labor in respect to fringe benefits being provided by the Contractor must be submitted to the City of Minot or Public Body with the first payroll filed by the Contractor subsequent to receipt of the findings.

### **OVERTIME COMPENSATION REQUIRED BY CONTRACT WORK HOURS AND SAFETY STANDARDS ACT (76 State. 357-360: Title 40 U.S.C., Sections 327-332)**

- a. *Overtime Requirements.* No Contractor or subcontractor contracting for any part of the Contract work which may require or involve the employment of laborers or mechanics, including watchmen and guards, shall require or permit any laborer or mechanic in any workweek in which he is employed on such work to work in excess of 40 hours in such work week unless such laborer or mechanic receives compensation at a rate not less than one and one-half times his basic rate of pay for all hours worked in excess of 40 hours in such work week, as the case may be.
- b. *Violation: Liability for Unpaid Wages Liquidated Damages.* In the event of any violation of the clause set forth in paragraph (a), the Contractor and any subcontractor responsible therefore shall be liable to any affected employee for his unpaid wages. In addition such Contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic employed in violation of the clause set forth in paragraph (a), in the sum of \$10 for each calendar day on which such employee was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by the clause set forth in paragraph (a).
- c. *Withholding for Liquidated Damages.* The City of Minot or Public Body shall withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor, such sums as may administratively be determined to be necessary to satisfy any

liabilities of such Contractor or subcontractor for liquidated damages as provided in the clause set forth in paragraph (b).

- d. *Subcontracts.* The Contractor shall insert in any subcontracts the clauses set forth in paragraphs (a), (b), and (c) of this Section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts which they may enter into, together with a clause requiring this insertion in any further subcontracts that may in turn be made..

## **APPRENTICES AND TRAINEES**

- a. *Apprentices.* Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Manpower Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen in any craft classification shall not be greater than the ratio permitted to the contractor as to his entire force under the registered program. Any employee listed on a payroll at an apprentice wage rate, who is not a trainee as defined in paragraph 2, below, or is not registered or otherwise employed as stated above, shall be paid the wage rate determined by the Secretary of Labor for the classification of work he actually performed. The contractor or subcontractor will be required to furnish to the contracting officer or a representative of the Wage-Hour Division of the U.S. Department of Labor written evidence of the registration of his program and apprentices as well as the appropriate ratios and wage rates (expressed in percentages of the journeymen hourly rates), for the area of construction prior to using any apprentices on the contract work. The wage rate paid apprentices shall be not less than the appropriate percentage of the journeyman's rate contained in the applicable wage determination.
- b. *Trainees.* Except as provided in 29 CFR 5.15 trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification, by the U.S. Department of Labor, Manpower Administration, Bureau of Apprenticeship and Training. The ratio of trainees to journeymen shall not be greater than permitted under the plan approved by the Bureau of Apprenticeship and Training. Every trainee must be paid at not less than the rate specified in the approved program for his level of progress. Any employee listed on the payroll at a trainee rate who is not registered and



participating in a training plan approved by the Bureau of Apprenticeship and Training shall be paid not less than the wage rate determined by the Secretary of Labor for the classification of work he actually performed. The Contractor or subcontractor will be required to furnish the contracting officer or a representative of the Wage-Hour Division of the U.S. Department of Labor written evidence of the certification of his program, the registration of the trainees, and the ratios and wage rates prescribed in that program. In the event the Bureau of Apprenticeship and Training withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

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

#### **EMPLOYMENT OF CERTAIN PERSONS PROHIBITED**

No person under the age of sixteen years and no person who, at the time, is serving sentence in a penal or correctional institution shall be employed on the work covered by this Contract.

#### **REGULATIONS PURSUANT TO SO-CALLED COPELAND ANTI-KICKBACK ACT**

The Contractor shall comply with the applicable regulations of the Secretary of Labor, United States Department of Labor, made pursuant to the Copeland Anti-Kickback Act (Title 40 U.S.C., Section 276c), and any amendment or modifications thereof, shall cause appropriate provisions to be inserted in subcontracts to insure compliance therewith by all subcontractors subject thereto, and shall be responsible for the submission of affidavits required by subcontractor thereunder, except as said Secretary of Labor may specifically provide for reasonable limitations, variations, tolerance, and exemptions from the requirements thereof.

#### **EMPLOYMENT OF LABORERS OR MECHANICS NOT LISTED IN AFORESAID WAGE DETERMINATION DECISION**

Any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the Contract will be classified or reclassified conformably to the wage determination by the City of Minot or Public Body, and a report of the action taken shall be submitted by the City of Minot or Public Body, through the Secretary of Housing and Urban Development, to the Secretary of Labor, United States Department of Labor. In the event the interested parties cannot agree on the proper classification or reclassification of a particular class of laborers and mechanics to be used, the question accompanied by the recommendation of the City of Minot or Public Body shall be referred, through the

Secretary of Housing and Urban Development, to the Secretary of Labor for final determination.

### **FRINGE BENEFITS NOT EXPRESSED AS HOURLY WAGE RATES**

The City of Minot or Public Body shall require, whenever the minimum wage rate prescribed in the Contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly wage rate and the Contractor is obligated to pay cash equivalent of such a fringe benefit, an hourly cash equivalent thereof to be established. In the event the fringe benefit expressed as an hourly cash equivalent cannot be determined, the City of Minot shall refer its recommendation through HUD to DOL for determination.

### **POSTING WAGE DETERMINATION DECISIONS AND AUTHORIZED WAGE DEDUCTIONS**

The applicable wage poster of the Secretary of Labor, United States Department of Labor, and the applicable wage determination decisions of said Secretary of Labor with respect to the various classification of laborers and mechanics employed and to be employed upon the work covered by this Contract, and a statement showing all deductions, if any, in accordance with the provisions of this Contract, to be made from wages actually earned by persons so employed or to be employed in such classifications, shall be posted at appropriate conspicuous points at the site of the work.

### **COMPLAINTS, PROCEEDINGS, OR TESTIMONY BY EMPLOYEES**

No laborer or mechanic to whom the wage, salary, or other labor standards provisions of this Contract are applicable shall be discharged or in any other manner discriminated against by the Contractor or any subcontractor because such employee has filed any complaint or instituted or caused to be instituted any proceeding or has testified or is about to testify in any proceeding under or relating to the labor standards applicable under this Contract to his employer.

### **CLAIMS AND DISPUTES PERTAINING TO WAGE RATES**

Claims and disputes pertaining to wage rates or to classifications of laborers and mechanics employed upon the work covered by this Contract shall be promptly reported by the Contractor in writing to the City of Minot or Public Body for referral by the latter through the Secretary of Housing and Urban Development to the Secretary of Labor, United States Department of Labor, whose decision shall be final with respect thereto.

### **QUESTIONS CONCERNING FEDERAL STATUTES AND REGULATIONS**

All questions arising under this Contract which relate to the application or interpretation of (a) the aforesaid Anti-Kickback Act, (b) the Contract Work Hours and Safety Standards Act, (c) the aforesaid Davis-Bacon Act, (d) the regulations issued by the Secretary of Labor, United States Department of Labor, pursuant to

said Acts, or (e) the labor standards provisions of any other pertinent Federal statute, shall be referred, through the City of Minot or Public Body and the Secretary of Housing and Urban Development, to the Secretary of Labor, United States Department of Labor, for said Secretary's appropriate ruling or interpretation which shall be authoritative and may be relied upon for the purposes of this Contract.

## **PAYROLLS AND BASIC PAYROLL RECORDS OF CONTRACTOR AND SUBCONTRACTORS**

The Contractor and each subcontractor shall prepare his payrolls on forms satisfactory to and in accordance with the instructions to be furnished by the City of Minot or Public Body. The Contractor shall submit weekly to the City of Minot or Public Body two certified copies of all payrolls of the Contractor and of the subcontractors, it being understood that the Contractor shall be responsible for the submission of copies of payrolls of all subcontractors. Each such payroll shall contain the "Weekly Statement of Compliance" set forth in Section 3.3 of Title 29, Code of Federal Regulations. The payrolls and basic payroll records of the Contractor and each subcontractor covering all laborers and mechanics employed upon the work covered by this Contract shall be maintained during the course of the work and preserved for a period of 3 years thereafter. Such payrolls and basic payroll records shall contain the name and address of each such employee, his correct classification, rate of pay (including rates of contributions or costs anticipated of the types described in Section 1(b) (2) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made, and actual wages paid. In addition, whenever the Secretary of Labor has found under Section 5.5(a) (iv) of Title 29, Code of Federal Regulations, that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section 1(b) (2) (B) of the Davis-Bacon Act, the Contractor or subcontractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual costs incurred in providing such benefits. The Contractor and each subcontractor shall make his employment records with respect to persons employed by him upon the work covered by this Contract available for inspection by authorized representatives of the Secretary of Housing and Urban Development, the City of Minot or Public Body, and the United States Department of Labor. Such representatives shall be permitted to interview employees of the Contractor or of any subcontractor during working hours on the job.

## **SPECIFIC COVERAGE OF CERTAIN TYPES OF WORK BY EMPLOYEES**

The transporting of materials and supplies to or from the site of the Project or Program to which this Contract pertains by the employees of the Contractor or of any subcontractor, and the manufacturing or furnishing of materials, articles, supplies, or equipment on the site of the Project or Program to which this

Contract pertains by persons employed by the Contractor or by any subcontractor shall, for the purposes of this Contract, and without limiting the generality of the foregoing provisions of this Contract, be deemed to be work to which these Federal Labor Standards Provisions are applicable.

### **INELIGIBLE SUBCONTRACTORS**

The Contractor shall not subcontract any part of the work covered by this Contract or permit subcontracted work to be further subcontracted without the City of Minot's or Public Body's prior written approval of the subcontractor. The City of Minot or Public Body will not approve any subcontractor for work covered by this Contract who is at the time ineligible under the provisions of any applicable regulations issued by the Secretary of Labor, United States Department of Labor or the Secretary of Housing and Urban Development, to receive an award of such subcontract.

### **PROVISIONS TO BE INCLUDED IN CERTAIN SUBCONTRACTS**

The Contractor shall include or cause to be included in each subcontract covering any of the work covered by this Contract, provisions which are consistent with these Federal Labor Standards Provisions and also a clause requiring the subcontractors to include such provisions in any lower tier subcontracts which they may enter into, together with a clause requiring such insertion in any further subcontracts that may in turn be made.

### **BREACH OF FOREGOING FEDERAL LABOR STANDARDS PROVISIONS**

In addition to the causes for termination of this Contract as herein elsewhere set forth, the City of Minot or Public Body reserves the right to terminate this Contract if the Contractor or any subcontractor whose subcontract covers any of the work covered by this Contract shall breach any of these Federal Labor Standards Provisions. A breach of these Federal Labor Standards Provisions may also be grounds for debarment as provided by the applicable regulations issued by the Secretary of Labor, United States Department of Labor.

## **SECTION 300 GOVERNMENT REQUIREMENTS**

### **300-1 EMPLOYMENT PREFERENCE IN CONTRACT**

The Contractor must give preference to the employment of bona fide North Dakota residents, with preference given first to honorably discharged disabled veterans and veterans of the armed forces of the United States, who are deemed to be qualified in the performance of said work. Such preference shall not apply to engineering, superintendence, management, or office or clerical work. No contract shall be let to any person, firm, association, cooperative, corporation, or limited liability company refusing to execute an agreement containing the aforementioned provisions. This preference in employment is mandated by Section 43-07-20 of the NDCC.

### **300-2 EMPLOYMENT PREFERENCE WITHHOLDING**

Section 43-07-21 of NDCC requires that one thousand dollars (\$1000) of the contract price be withheld in addition to any other withholding until it has been determined by the Commissioner of Labor that no action or fines are pending as a result of a violation of preference in employment of a bona fide North Dakota resident.

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