INVITATION FOR BID

SOLICITATION NUMBER:	**6982AF26B000006**
SOLICITATION TYPE:	**SMALL BUSINESS SET-ASIDE**
PROJECT NUMBER:	**CO ERFO FS SNJUAN 2026-1(1)**
PROJECT NAME:	**FALL CREEK ROAD**

BID OPENING DATE:
See Page A-1, Item 13A

This solicitation cites Standard Specifications for Construction of Roads and Bridges on Federal Highway Projects, FP-24 US Customary Units

ISSUING OFFICE:

U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION
CENTRAL FEDERAL LANDS HIGHWAY DIVISION
12300 W. DAKOTA AVENUE, SUITE 360
LAKEWOOD, CO 80228
Web site: https://highways.dot.gov/federal-lands
E-mail: CFLContracts@dot.gov

PROJECT	CO ERFO FS SNJUAN 2026-1(1)
LOCATION	SAN JUAN NATIONAL FOREST
COUNTY	ARCHULETA AND MINERAL
STATE	COLORADO
LENGTH	SCHEDULE A: 0.24 MILES
TYPE OF IMPROVEMENT	ROADWAY RECONSTRUCTION, BOX CULVERT, SLOP STABILIZATION, GUARDRAIL, AND BRIDGE REPAIR

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SPECIAL CONTRACT REQUIREMENTS (SCRs)

The following Special Contract Requirements amend and supplement the Standard Specification for Construction of Roads and Bridges on Federal Highway Projects

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PROJECT OVERVIEW

The CO ERFO FS SNJUAN 2026-1(1) project is located in Archuleta and Mineral County, CO within the San Juan National Forest. The project sites are generally located approximately 15 miles north of Pagosa Springs, CO in mountainous terrain. This project includes spot repairs at 5 damaged sites. The proposed improvements include embankment construction and riprap placement, box culvert construction, and bridge abutment scour repairs and protection.

I. PRE-BID INFORMATION

ELECTRONIC BIDS WILL NOT BE ACCEPTED. Submit a printed copy of your bid to the address listed on the SF-1442 (Page A-1, Item 8).

Bids shall be submitted in sealed envelopes or packages:

(1) addressed to the office specified in the solicitation, and
(2) showing the time and date specified for receipt, the solicitation number, and the name and address of the bidder.

Bidders using commercial carrier services shall ensure that the bid is addressed and marked on the outermost envelope or wrapper as prescribed above when delivered to the office specified in the solicitation.

Submit the following documents with your Bid Package–

- SF-1442, Solicitation, Offer & Award, Pages A-1 and A-2
- Bid Schedule Pages A-5 through A-8
- Completed an applicable Authority to Bind certificate, pages A-9 through A-13
- Buy American Act & Hazardous Materials, Pages A-14 through A-15
- Bid Guarantee (RFO Clause 52.228-1), Pages B-1 through B-4. Bid bonds must be originals with original signatures and corporate seals. Photocopies and Faxed copies are NOT acceptable and will make your bid non-responsive.
    - Digital copies may be downloaded at https://www.gsa.gov/forms-library/bid-bond
- Completed the VETS-4212 declaration, Page A-ii; Bidders' Information, Pages B-5 through B-8.

Bidders should retain all other pages for their information. Bids should be submitted in a sealed envelope and include the Contractor's Name, Solicitation Number and the Project Number/Name.

It is the responsibility of the bidder to verify that this solicitation document, including the plans, are complete as listed in the table of contents and the index to sheets. Plan sheets can be found at https://sam.gov and viewed by individual sections, downloaded by individual sections, or the entire plan set downloaded in a zip file. Physical data relevant to this solicitation may also be viewed or downloaded at the above site.

This solicitation and subsequent contract are governed by the 48 CFR, Chapter 1, Federal Acquisition Regulation (FAR), Revolutionary FAR Overhaul (RFO), Department of Transportation Acquisition Regulation (TAR), and the Standard Specifications for Construction of Roads and Bridges on Federal Highway Projects, FP-24.

The FP-24 was utilized for the design of this project. Paper copies of the FP-24 will not be provided to bidders or the awarded Prime Contractor. The FP-24 is available electronically at https://flh.fhwa.dot.gov/resources/specs/ and a copy is uploaded with this solicitation.

Applicable FAR, RFO and TAR provisions and clauses in this IFB are incorporated by reference or full text. FAR, RFO and TAR provisions and clauses incorporated by reference can be accessed on the Internet at https://www.acquisition.gov/content/regulations, https://www.acquisition.gov/far-overhaul/far-part-deviation-guide and https://www.acquisition.gov/tar.

Notice of SAM Registration – Offerors or quoters are required to have an active Federal Government contracts registration in the System for Award Management (SAM) when they submit an offer or quotation, and at the time of award. Failure to be fully registered prior to submission of a bid may require award to the next successful registered offeror. See RFO Subpart 4.203-1(b).

Register online at www.sam.gov.

"System updates may lag policy updates. The System for Award Management (SAM) may continue to require entities to complete representations based on provisions that are not included in DOT solicitations.

Examples include:

- 52.222-25, Affirmative Action Compliance, and

- 52.212-3(d), Offeror Representations and Certifications—Commercial Products and Commercial Services.

- 52.223-22, Public Disclosure of Greenhouse Gas Emissions and Reduction Goals—Representation.

- 52.212-3(t), Offeror Representations and Certifications—Commercial Products and Commercial Services.

Contracting officers will not need to consider these representations when making award decisions or enforce requirements. Entities are not required to, nor are they able to, update their entity registration to remove these representations in SAM."

Representations and Certifications – This solicitation is issued under **NAICS 237310** – Highway, Street & Bridge Construction with a small business size standard of $45 million. If your average annual gross receipts for the past 5 years are above $45 million, you are a large business for this solicitation. If they are below $45 million you are a small business. Before submitting bids, you must ensure you have completed your annual representations and certifications electronically at the SAM website at www.sam.gov. Include NAICS 237310 in your SAM profile.

Vets-4212 Reporting: - The Contractor must complete the report if required. See reporting requirements at: https://www.dol.gov/agencies/vets/programs/vets4212

- My firm had a qualifying Federal Contract in 2025 and has complied with the reporting requirements. ☐
- My firm did not have a qualifying Federal Contract in 2025 and is therefore exempt from the reporting requirements. ☐

Bid Guarantee – Follow the requirements of RFO Clause *52.228-1 Bid Guarantee* and Subpart 102.03 of the FP-24. Bid bonds must be originals and have original signatures and corporate seals. Photocopied and faxed copies of bonds will be rejected and cause your bid to be non-responsive.

Accuracy and Completeness of Bid- The Contractor is fully responsible to verify that all data is correct when an offer is submitted. Failure to properly update your data may cause the offer to be rejected.

Request for Technical Information – Questions relative to the plans and SCRs for this solicitation will only be accepted in writing (see Item 9 on Page A-3).

TECHNICAL QUESTIONS REGARDING THIS SOLICITATION WILL NOT BE ACCEPTED AFTER 4 P.M. ON AUGUST 6, 2026

Consolidate all questions on a single word document and submit NLT the deadline to submit technical questions.

Questions can be submitted to CFLContracts@dot.gov. Questions and answers will be posted at https://sam.gov

Modifications to Bids - Bids may be modified or withdrawn by regular mail, electronic commerce (email), if such notice is received **prior to the time specified for receipt of bids**. The Government will not be responsible for ANY failure attributable to the transmission or receipt of electronic commerce (email).

For all modifications, we **STRONGLY ENCOURAGE you to resubmit the entire bid schedule with a unit price and amount for every bid item, and a Schedule Total.** See RFO Provision 52.214-5, Submission of Bids. Modifications which make the bid ambiguous, indefinite, or uncertain as to any essential requirement of the contract will cause the bid to be rejected as nonresponsive.

Email Address to submit modifications to bids for this project is cflcontracts@dot.gov

Revolutionary FAR Overhaul 36.101-4 requires a description of the Federal Highway Administration's (FHWA) procedures that apply to definitization of equitable adjustments for change orders under construction contracts. It also requires that FWHA furnish data on the agency's past performance, for the prior 3 fiscal years, regarding the time required to definitize equitable adjustments for change orders under construction contracts.

Change orders as defined in RFO 2.101 are changes to the contract work pursuant to RFO 52.243-4, Changes.

There are no agency-specific additional policies and procedures that exist at this time.

The table below contains data regarding the definitization of equitable adjustments for change orders under construction contracts by fiscal year (FY).

Time to definitize after receipt of an adequate change order definitization proposal under construction contracts	**Number of change order proposals definitized under construction contracts**		
	FY 2023	**FY 2024**	**FY 2025**
0 to 30 days	0	0	1
31 to 60 days	0	1	0
61 to 90 days	0	0	0
91 to 180 days	1	4	2
181 to 365 days	1	2	1
366 or more days	0	0	0
After completion of contract performance via a contract modification addressing all undefinitized equitable adjustments received during contract performance	0	0	0

II. POST AWARD INFORMATION

CFLHD will no longer be providing paper copies of the conformed contract to the Awarded Prime Contractor.

Subcontracting – RFO Clause *52.219-8, Utilization of Small Business Concerns* states that Prime Contractors afford small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, and women-owned small business concerns the maximum practicable opportunity to participate in performing contracts let by any Federal agency.

Insurance requirements - See Subsection 107.05 of the FP-24.

Masterworks - Contractors shall use the Government's web-based system Masterworks to prepare all "*Inspector's Daily Record of Construction Operations"* (*Contractors Daily Reports)* and measurement notes (pay notes).

The Contractor shall be required to attend a training session on the use of Masterworks. The virtual training sessions will be either a video presentation or live training as determined by the CO. The Contractor shall be responsible for training additional staff.

The Contractor shall be required to submit a user account form to gain access to the Masterworks. See Subsection 104.04.

SOLICITATION, OFFER AND AWARD *(Construction, Alteration or Repair)*	1. SOLICITATION NO. 6982AF26B000006	2. TYPE OF SOLICITATION [x] SEALED BID *(IFB)* [ ] NEGOTIATED *(RFP)*	3. DATE ISSUED 07/13/2026	PAGE OF PAGES 1 of 2

IMPORTANT - THE "OFFER SECTION ON THE REVERSE MUST BE FULLY COMPLETED BY OFFEROR.

4. CONTRACT NO.	5. REQUISITION/PURCHASE REQUEST NO. HFLCEO260213PR	6. PROJECT NO. CO ERFO FS SNJUAN 2026-1(1)

7. ISSUED BY: CODE: 69050001	8. ADDRESS OFFER TO:
FEDERAL HIGHWAY ADMINISTRATION CENTRAL FEDERAL LANDS DIVISION 12300 WEST DAKOTA AVENUE, SUITE 167 LAKEWOOD, COLORADO 80228	Denise Martinez Federal Highway Administration Central Federal Lands Division Office 12300 W. Dakota Avenue Lakewood, CO 80228

9. FOR INFORMATION CALL	A. NAME:	B. TELEPHONE NO. *(Include area code)*
SEE PAGE A-3	SEE PAGE A-3	SEE PAGE A-3

SOLICITATION

NOTE: In sealed bid solicitations "offer" and "offeror" mean "bid" and "bidder."

10. THE GOVERNMENT REQUIRES PERFORMANCE OF THE WORK DESCRIBED IN THESE DOCUMENTS:

ROADWAY CONSTRUCTION PROJECT IN STRICT ACCORDANCE WITH:

1. **48 CFR, CHAPTER 1, FEDERAL ACQUISTION REGULATION (FAR), REVOLUTIONARY FAR OVERHAUL (RFO) AND THE DEPARTMENT OF TRANSPORATION REGULATION (TAR)**
2. **DEPARTMENT OF LABOR, CONSTRUCTION WAGE RATE REQUIREMENT RATES.**
3. **SPECIAL CONTRACT REQUIREMENTS.**
4. **PLANS.**
5. **BID SCHEDULE.**
6. **STANDARD SPECIFICATIONS FOR CONSTRUCTION OF ROADS AND BRIDGES ON FEDERAL HIGHWAY PROJECTS, FP-24, U.S. CUSTOMARY UNITS.**

See Subsection 104.04 of the FP-24 for governing order of precedence

11. The Contractor shall begin performance within 10 calendar days and complete it within * calendar days after receiving [ ] award [x] notice to proceed. The performance period is [x] mandatory [ ] negotiable. ***See Page A-3**

12A. THE CONTRACTOR MUST FURNISH ANY REQUIRED PERFORMANCE AND PAYMENT BONDS? *(If "YES," indicate within how many calendar days after award in Item 12B.)* [x] YES [ ] NO	12B. CALENDAR DAYS 10

13. ADDITIONAL SOLICITATION REQUIREMENTS:

A. Sealed offers in original and 1 copies to perform the work required are due at the place specified in Item 8. by 2:00 p.m. (hour) local time on 08/13/2026 (date). If this is a sealed bid solicitation, offers will be publicly opened at that time. Sealed envelopes containing offers shall be marked to show the offeror's name and address, the solicitation number, and the date and time offers are due.

B. An offer guarantee [x] is [ ] is not required.

C. All offers are subject to the (1) work requirements and (2) other provisions and clauses incorporated in the solicitation in full text or by reference.

D. Offers providing less than 60 calendar days for Government acceptance after the date offers are due will not be considered and will be rejected.

OFFEROR ***(Must be fully completed by offeror)***

14. NAME AND ADDRESS OF OFFEROR *(Include ZIP Code)*	15. TELEPHONE NO. *(Include area code)*
	16. REMITTANCE ADDRESS *(Include only if different than Item 14)*
UEI. _____	

17. The offeror agrees to perform the work required at the prices specified below in strict accordance with the terms of this solicitation, if this offer is accepted by the Government in writing with 60 calendar days after the date offers are due. *(Insert any number equal to or greater than the minimum requirement stated in Item 13D. Failure to insert any number means the offeror accepts the minimum in Item 13D.)*

AMOUNTS	SEE INDIVIDUAL BID SCHEDULE(S)

18. The offeror agrees to furnish any required performance and payment bonds.

19. ACKNOWLEDGMENT OF AMENDMENTS
(The offeror acknowledges receipt of amendments to the solicitation - give number and date of each)

AMENDMENT NO.										
DATE										

20A. NAME AND TITLE OF PERSON AUTHORIZED TO SIGN OFFER *(Type or print)*	20B. SIGNATURE	20C. OFFER DATE

AWARD ***(To be completed by Government)***

21. ITEMS ACCEPTED:

22. AMOUNT	23. ACCOUNTING AND APPROPRIATION DATA

24. SUBMIT INVOICES TO ADDRESS SHOWN IN BLOCK 27 *(4 copies unless otherwise specified)*	25. OTHER THAN FULL AND OPEN COMPETITION PURSUANT TO ☐ 10 U.S.C. 2304(c)( ) ☐ 41 U.S.C. 3304(a)( )
26. ADMINISTERED BY CODE: _____	27. PAYMENT WILL BE MADE BY FEDERAL HIGHWAY ADMINISTRATION CENTRAL FEDERAL LANDS HIGHWAY DIVISION 12300 W. DAKOTA AVENUE, SUITE 167 LAKEWOOD, COLORADO 80228

CONTRACTING OFFICER WILL COMPLETE ITEM 28 OR 29 AS APPLICABLE

☐ 28. NEGOTIATED AGREEMENT *(Contractor is required to sign this document and return _____ copies to issuing office.)* Contractor agrees to furnish and deliver all items or perform all work requirements identified on this form and any continuation sheets for the consideration stated in this contract. The rights and obligations of the parties to this contract shall be governed by (a) this contract award, (b) the solicitation, and (c) the clauses, representations, certifications, and specifications incorporated by reference in or attached to this contract.	☐ 29. AWARD *(Contractor is not required to sign this document.)* Your offer on this solicitation is hereby accepted as to the items listed. This award consummates the contract, which consists of (a) the Government solicitation and your offer, and (b) this contract award. No further contractual document is necessary.
30A. NAME AND TITLE OF CONTRACTOR OR PERSON AUTHORIZED TO SIGN *(Type or print)*	31A. NAME OF CONTRACTING OFFICER *(Type or print)*

30B. SIGNATURE	30C. DATE	31B. UNITED STATES OF AMERICA BY	31C. AWARD DATE

Item 8: **LOCATION OF PUBLIC BID OPENING:** Offers must be received by designated date and time as stated in Item 13A..

Item 9: **FOR GENERAL INFORMATION:** E-mail us at CFLContracts@dot.gov.

FOR TECHNICAL INFORMATION (plans and specifications): Questions must be submitted in writing by e-mail at CFLContracts@dot.gov .

Item 11: **COMPLETION DATE:** The Contractor shall be required to (a) commence work under this contract within 10 calendar days after the date the Contractor receives the notice to proceed, (b) prosecute the work diligently, and (c) complete the entire work ready for use not later than **See SCR Section 108.01**, subject to such extensions as may be authorized. The time stated for completion shall include final cleanup of the premises.

Item 12A: **PERFORMANCE AND PAYMENT BONDS:** See RFO *Clause 52.228-15 Performance and Payment Bonds-Construction* (Clauses begin on Page C-1) and Subsection 102.06 of the FP-24.

Item 13B: **BID BOND AMOUNT:** See RFO Provision *52.228-1 Bid Guarantee* (Provisions begin on Page B-1) and *Subsection 102.03 Bid Guarantee* of the FP-24. All bid guarantees must have original signatures with original corporate seals.

Item 19: **ACKNOWLEDGMENT OF AMENDMENTS:** FAILURE TO ACKNOWLEDGE AMENDMENTS, **IN ITEM 19 OF THE SF-1442,** BY THE DESIGNATED DATE AND HOUR SPECIFIED IN THE SOLICITATION MAY RESULT IN REJECTION OF YOUR BID. If amendments are issued, they will be posted to https://sam.gov.

Item 24: **SUBMITTING INVOICES:** See *Subsection 109.08 Progress Payments* of the FP-24.

ESTIMATED PRICE: The price range of the project work is between $2,000,000 and $5,000,000.

Bid Schedule Instructions

BIDDERS, PLEASE NOTE: This Bid Proposal is comprised of one (1) schedule. Before preparing the bid, carefully read the Solicitation Provisions and the following:

- Insert a numeric unit bid price for each pay item for which a quantity appears in the bid schedule. Unit bid prices should be quoted no more precisely than the nearest cent (2 decimal places). Unit bid prices quoted more precisely will be rounded up to the nearest cent by the Government

- Multiply the unit price by the quantity for each pay item and show the amount bid. When the words "Lump Sum" appear as a unit bid price, insert an amount for each lump sum pay item.

- Total all amounts bid for each pay item and show the Construction Cost Total on the space provided on the last page of each schedule or option.

- Also show the Construction Cost Total for each schedule/option as well as the combined Total of each Schedule and the Option in the spaces provided on the Bid Summary page.

NOTE: If the amount bid for a pay item is inconsistent with the product of the unit price provided by the bidder and the quantity provided by the Government, the unit price will govern and the Government will determine a corrected amount bid for the pay item by multiplying the unit price by the quantity.

Basis for Award

The Government will evaluate bids in response to this solicitation without discussions and will award a contract to the responsible bidder whose bid, conforming to the solicitation, will be most advantageous to the Government, considering only price and the price-related factors specified elsewhere in the solicitation.

The offeror shall submit prices for each item necessary to complete all contract work in Schedule A

Accordingly, award of contract, if made, will be made to the lowest responsive, responsible bidder, if funds are available.

BID SCHEDULE

Bidder/Offeror please note: Before preparing the bid, carefully read the Solicitation Provisions. Insert a unit bid price, in figures, for each pay item for which a quantity appears in the bid schedule. Unit bid prices should be quoted no more precisely than the nearest cent (2 decimal places). Unit bid prices quoted more precisely will be rounded up to the nearest cent by the Government. Multiply the unit price by the quantity for each pay item and show the amount bid. Should any mathematical check made by the Government show a mistake in the amount bid, the corrected unit price extension shall govern. When the word "LPSM" (Lump Sum) appears as a unit bid price, insert an amount for each lump sum pay item. When a sum based on a fixed rate appears for any pay item in the amount bid column, include the Government inserted amount bid for the item in the total bid amount. Total all of the amounts bid for each pay item and show the total bid amount.

BID SCHEDULE

Project No : CO ERFO FS SNJUAN 2026-1(1) **Schedule :** A
Project Name : FALL CREEK ROAD **Schedule Type :** Base

Contract Quantity Pay Items	
61707-0000	STRUCTURE TRANSITION RAILING

AMD#	Line Item Number	Pay Item Number	Description	Supplemental Description	Quantity	Unit	Unit Price	Amount
	A0100	15101-0000	MOBILIZATION		ALL	LPSM		
	A0120	15201-0000	CONSTRUCTION SURVEY AND STAKING		ALL	LPSM		
	A0140	15301-0000	CONTRACTOR QUALITY CONTROL		ALL	LPSM		
	A0160	15501-0000	CONSTRUCTION SCHEDULE		ALL	LPSM		
	A0180	15701-0000	SOIL EROSION CONTROL		ALL	LPSM		
	A0200	15720-0000	STORMWATER POLLUTION PREVENTION PLAN		ALL	LPSM		
	A0220	20101-0000	CLEARING AND GRUBBING		1.500	ACRE		
	A0240	20304-1000	REMOVAL OF STRUCTURES AND OBSTRUCTIONS		ALL	LPSM		
	A0260	20401-0000	ROADWAY EXCAVATION		330.000	CUYD		
	A0280	20420-0000	EMBANKMENT CONSTRUCTION		1,200.000	CUYD		
	A0300	20420-0000	EMBANKMENT CONSTRUCTION	(REINFORCED SOIL SLOPE)	3,250.000	CUYD		
	A0320	25101-0400	PLACED RIPRAP, CLASS 4		210.000	CUYD		
	A0340	25101-0600	PLACED RIPRAP, CLASS 6		5,300.000	CUYD		
	A0360	27001-0000	GROUT		4.000	CUYD		
	A0380	30202-2000	ROADWAY AGGREGATE, METHOD 2		500.000	TON		
	A0400	57203-0000	REPAIR CONCRETE		ALL	LPSM		
	A0420	60103-0000	CONCRETE, HEADWALL	& WINGWALLS (CONCRETE BOX CULVERT)	2.000	EACH		
	A0440	60220-4760	16 FEET SPAN, 8 FEET RISE PRECAST REINFORCED CONCRETE BOX CULVERT		80.000	LNFT		
	A0460	61702-1500	TERMINAL SYSTEM, TYPE MGS TANGENT		2.000	EACH		
	A0480	61707-0000	STRUCTURE TRANSITION RAILING		27.000	LNFT		
	A0500	62201-0150	DUMP TRUCK, 7 CUBIC YARD MINIMUM CAPACITY		20.000	HOUR		
	A0520	62201-0900	WHEEL LOADER, 2 CUBIC YARD MINIMUM RATED CAPACITY		20.000	HOUR		

	A0540	62201-3150	HYDRAULIC EXCAVATOR, 1.0 CUBIC YARD MINIMUM CAPACITY WITH THUMB ATTACHMENT		20.000	HOUR		
	A0560	62301-0000	GENERAL LABOR		40.000	HOUR		
	A0580	62302-1100	SPECIAL LABOR, HIRED SURVEY SERVICES		10.000	HOUR		
	A0600	62402-0200	PROVIDING AND PLACING TOPSOIL, 3-INCH DEPTH		0.310	ACRE		
	A0620	62510-2000	SEEDING, HYDRAULIC METHOD		0.350	ACRE		
	A0640	62515-2000	MULCHING, HYDRAULIC METHOD		0.350	ACRE		
	A0660	62801-0000	TEMPORARY STREAM DIVERSION		ALL	LPSM		
	A0680	62901-1200	ROLLED EROSION CONTROL PRODUCT, TYPE 5.A		650.000	SQYD		
	A0700	63308-2000	OBJECT MARKER, TYPE 2		4.000	EACH		
	A0720	63308-3000	OBJECT MARKER, TYPE 3		4.000	EACH		
	A0740	63501-0000	TEMPORARY TRAFFIC CONTROL		ALL	LPSM		
	A0760	63701-0000	FIELD OFFICE		1.000	EACH		
	A0780	64704-1000	ENVIRONMENTAL DESIGN, STREAMBED MATERIAL		45.000	CUYD		

Submitted By:

Schedule Total:

BID SCHEDULE SUMMARY

Schedule	Bid Total
Schedule A - Base	

Total-Schedule(s) and Option(s)	Bid Total
Schedule A	

INSTRUCTIONS: When the offeror/principal is a corporation, include this certification with your offer/bid.

Corporate Certificate

I,_____(name), certify that I am the

_____(title), of the corporation named as the

Offeror/Principal herein;

that_____(name), who signed this

offer and/or bid bond on behalf of_____(company name) is

_____(title) of this corporation;

that the offer was duly signed for and on behalf of said corporation by authority and scope of

its governing body, and within the scope of its corporate powers.

_____(signature) Affix Corporate Seal

_____(title)

INSTRUCTIONS: When the offeror/principal is a limited liability corporation, include this certification with your offer/bid.

Limited Liability Certificate

I,_____(name), certify that I am the

_____(title), of the limited liability company

named as the Offeror/Principal herein;

that_____(name), who signed this

offer and/or bid bond on behalf of_____(company name) is

_____(title) of this company;

that the offer was duly signed for and on behalf of said company by authority and scope of its

governing body, and within the scope of its powers.

_____(signature)

_____(title)

Affix Company Seal
(as applicable)

INSTRUCTIONS: When the offeror/principal is a partnership, include this certification with your offer/bid.

Authority to Bind Partnership

This certifies that the names and signatures of all partners are listed below, and that the person signing the proposal has the authority to actually bind the partnership pursuant to its partnership agreement. Each of the partners individually has full authority to enter into and execute contractual instruments on behalf of said partnership, except as follows:

(State "None" or describe limitations, if any)

_____

_____

_____

_____

This authority shall remain in full force and effect until such time as the revocation of authority by any cause whatsoever has been furnished in writing to and acknowledge by the Contracting Officer.

(Include names and signatures of all partners)

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

INSTRUCTIONS: When the offeror/principal is a joint venture, include this certification with your offer/bid.

Authority to Bind Joint Venture

This certifies that the person signing the proposal has the authority to actually bind the joint venture pursuant to its joint venture agreement, and that each of the named persons listed below individually has full authority to enter into and execute contractual instruments on behalf of said joint venture, except as follows:

(State "None" or describe limitations, if any)

_____

_____

_____

_____

This authority shall remain in full force and effect until such time as the revocation of authority by any cause whatsoever has been furnished in writing to and acknowledge by the Contracting Officer.

(Include names and signatures of all applicable individuals)

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

INSTRUCTIONS: When the offeror/principal is a sole proprietorship, include this certification with your offer/bid.

Sole Proprietorship Requirement

An Offeror/Principal that is a sole proprietorship must submit an offer/bid and a bond signed by the sole proprietor, or by one duly authorized to sign for the sole proprietor. If the signature is by someone other than the sole proprietor, a copy of the power of attorney authorizing the individual to sign must be provided with the offer/bid.

BUY AMERICAN ACT- CONSTRUCTION MATERIALS

It is understood and agreed that the materials and components listed in Subparts 25.1 and 25.2 of the RFO are a part of this contract and are deemed to be Domestic Construction Material for the purposes of this contract.

NOTE TO CONTRACTOR:

The following information and any applicable supporting data is required for evaluation of requests under RFO Clause 52.225-9 Paragraph (c) & (d) and RFO Provision 52.225-10 Paragraph (b).

Material and/or Component

Construction Material Description	Unit of Measure	Quantity	*Cost Delivered to Job Site
Foreign Construction Material			
Comparable Domestic Material			

Material and/or Component

Construction Material Description	Unit of Measure	Quantity	*Cost Delivered to Job Site
Foreign Construction Material			
Comparable Domestic Material			

[Include all delivery costs to the construction site and any applicable duty (whether or not a duty-free entry certificate is issued).]*
[Please include name, address, telephone number and contact for suppliers surveyed. Attach copy of response; if oral, attach summary. Include all applicable supporting information.]

HAZARDOUS MATERIALS

As required by FAR Clause 52.223-3, Hazardous Materials Identification and Safety Data - Alternate I, the apparent low bidder must submit prior to award a Material Safety Data Sheet (MSDS) for all hazardous materials that the bidder identifies in paragraph (b) of the FAR clause and defined under the latest version of Federal Standard No. 313.

Hazardous Material	Identification Number

BIOBASED PRODUCTS AND SUSTAINABLE PRODUCTS AND SERVICES

See FAR Provision 52.223-1 Biobased Product Certification and 52.223-2 Reporting of Biobased Products Under Service and Construction Contracts for usage, certification, and reporting requirements.

USE OF RECOVERED MATERIALS ON FEDERAL LANDS HIGHWAY PROJECTS

Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (RCRA) of 1976, as amended (42 U.S.C. 6901 et seq.), requires Federal, State, and local procuring agencies using appropriated Federal funds to purchase items composed of the highest percentage of recovered materials practical. Use of recovered materials is strongly encouraged on Federal Lands Highway Projects. Highway construction items covered by the Environmental Protection Agency's *Comprehensive Guidelines for Procurement of Products Containing Recovered Materials* include fly ash, ground granulated blast furnace slag, traffic barricades, traffic cones, hydraulic mulch and compost for mulch.

Use of fly ash and ground granulated blast furnace slag and construction materials containing fly ash and ground granulated blast furnace slag on Federal Lands Highway Projects:

- It is the policy of the United States Government that fly ash and ground granulated blast furnace slag and materials containing fly ash and ground granulated blast furnace slag shall have maximum practicable opportunity for incorporation into its construction projects.

- The Contractor agrees to investigate the use of fly ash and ground granulated blast furnace slag and materials containing fly ash and ground granulated blast furnace slag to the fullest extent consistent with the efficient performance of this contract. Both the contractor and the subcontractors are urged to seek out suppliers of fly ash and ground granulated blast furnace slag, cement and concrete containing fly ash and ground granulated blast furnace slag and to solicit bids for these materials.

- Names of firms that supply fly ash and ground granulated blast furnace slag and materials containing fly ash and ground granulated blast furnace slag are available from the American Coal Ash Association and the National Slag Association.

Bid Bond (See Instructions on Page 3)	Date Bond Executed (Must Not Be Later Than Bid Opening Date)	**OMB Control Number: 9000-0001** **Expiration Date: 1/31/2027**

Principal (Legal Name And Business Address)	Type Of Organization ("X" One) ☐ Individual ☐ Partnership ☐ Joint Venture ☐ Corporation ☐ Other (Specify)
	State Of Incorporation

Surety(ies) (Name And Business Address)

Penal Sum Of Bond					Bid Identification	
Percent Of Bid Price	Amount Not To Exceed				Bid Date	Invitation Number 6982AF26B000006
	Million(s)	Thousand(s)	Hundred(s)	Cents	For (Construction, Supplies Or Services)	
20	3	000	000	00	Construction	

Obligation:

We, the Principal and Surety(ies) are firmly bound to the United States of America (hereinafter called the Government) in the above penal sum. For payment of the penal sum, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally. However, where the Sureties are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" as well as "severally" only for the purpose of allowing a joint action or actions against any or all of us. For all other purposes, each Surety binds itself, jointly and severally with the Principal, for the payment of the sum shown opposite the name of the Surety. If no limit of liability is indicated, the limit of liability is the full amount of the penal sum.

Conditions:

The Principal has submitted the bid identified above.

Therefore:

The above obligation is void if the Principal - (a) upon acceptance by the Government of the bid identified above, within the period specified therein for acceptance (sixty (60) days if no period is specified), executes the further contractual documents and gives the bond(s) required by the terms of the bid as accepted within the time specified (ten (10) days if no period is specified) after receipt of the forms by the Principal; or (b) in the event of failure to execute such further contractual documents and give such bonds, pays the Government for any cost of procuring the work which exceeds the amount of the bid.

Each Surety executing this instrument agrees that its obligation is not impaired by any extension(s) of the time for acceptance of the bid that the Principal may grant to the Government. Notice to the Surety(ies) of extension(s) is waived. However, waiver of the notice applies only to extensions aggregating not more than sixty (60) calendar days in addition to the period originally allowed for acceptance of the bid.

Witness:

The Principal and Surety(ies) executed this bid bond and affixed their seals on the above date.

Principal

Signature(s)	1. (Seal)	2. (Seal)	3. (Seal)	Corporate Seal
Name(s) And Title(s) (Typed)	1.	2.	3.	

Individual Surety(ies)

Signature(s)	1. (Seal)	2. (Seal)
Name(s) (Typed)	1.	2.

Corporate Surety(ies)

Surety A	Name And Address		State Of Incorporation	Liability Limit ($)	Corporate Seal
	Signature(s)	1.	2.		
	Name(s) And Title(s) (Typed)	1.	2.		
Surety B	Name And Address		State Of Incorporation	Liability Limit ($)	Corporate Seal
	Signature(s)	1.	2.		
	Name(s) And Title(s) (Typed)	1.	2.		
Surety C	Name And Address		State Of Incorporation	Liability Limit ($)	Corporate Seal
	Signature(s)	1.	2.		
	Name(s) And Title(s) (Typed)	1.	2.		
Surety D	Name And Address		State Of Incorporation	Liability Limit ($)	Corporate Seal
	Signature(s)	1.	2.		
	Name(s) And Title(s) (Typed)	1.	2.		

Surety E	Name And Address	B-3	State Of Incorporation	Liability Limit ($)	Corporate Seal
	Signature(s)	1.	2.		
	Name(s) And Title(s) (Typed)	1.	2.		
Surety F	Name And Address		State Of Incorporation	Liability Limit ($)	Corporate Seal
	Signature(s)	1.	2.		
	Name(s) And Title(s) (Typed)	1.	2.		
Surety G	Name And Address		State Of Incorporation	Liability Limit ($)	Corporate Seal
	Signature(s)	1.	2.		
	Name(s) And Title(s) (Typed)	1.	2.		

1. This form is authorized for use when a bid guaranty is required. Any deviation from this form will require the written approval of the Administrator of General Services.
2. Insert the full legal name and business address of the Principal in the space designated "Principal" on the face of the form. An authorized person shall sign the bond. Any person signing in a representative capacity (e.g., an attorney-in-fact) must furnish evidence of authority if that representative is not a member of the firm, partnership, or joint venture, or an officer of the corporation involved.
3. The bond may express penal sum as a percentage of the bid price. In these cases, the bond may state a maximum dollar limitation (e.g., 20% of the bid price but the amount not to exceed _____ dollars).
4. (a) Corporations executing the bond as sureties must appear on the Department of the Treasury's list of approved sureties and must act within the limitations listed therein. The value put into the Liability Limit block is the penal sum (i.e., the face value) of the bond, unless a co-surety arrangement is proposed.

(b) When multiple corporate sureties are involved, their names and addresses shall appear in the spaces (Surety A, Surety B, etc.) headed "Corporate Surety(ies)." In the space designated "Surety(ies)" on the face of the form, insert only the letter identifier corresponding to each of the sureties. Moreover, when co-surety arrangements exist, the parties may allocate their respective limitations of liability under the bond, provided that the sum total of their liability equals 100% of the bond penal sum.

(c) When individual sureties are involved, a completed Affidavit of Individual Surety (Standard Form 28) for each individual surety, shall accompany the bond. The Government may require the surety to furnish additional substantiating information concerning its financial capability.

5. Corporations executing the bond shall affix their corporate seals. Individuals shall execute the bond opposite the word "Corporate Seal"; and shall affix an adhesive seal if executed in Maine, New Hampshire, or any other jurisdiction requiring adhesive seals.

6. Type the name and title of each person signing this bond in the space provided.

7. In its application to negotiated contracts, the terms "bid" and "bidder" shall include "proposal" and "offeror."

Paperwork Reduction Act Statement - This information collection meets the requirements of 44 USC § 3507, as amended by section 2 of the Paperwork Reduction Act of 1995. You do not need to answer these questions unless we display a valid Office of Management and Budget (OMB) control number. The OMB control number for this collection is 9000-0001. We estimate that it will take 1 hour to read the instructions, gather the facts, and answer the questions. Send only comments relating to our time estimate, including suggestions for reducing this burden, or any other aspects of this collection of information to: General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street, NW, Washington, DC 20405.

FEDERAL HIGHWAY ADMINISTRATION
CENTRAL FEDERAL LANDS HIGHWAY DIVISION

BIDDER'S INFORMATION

INSTRUCTIONS: Answer all questions on this form inserting "none" or "not applicable" where appropriate. If more space is required attach additional sheets. Return the signed, dated and completed form with the bid to the address shown in the invitation for bids on or before the time set for bid opening. The prospective bidder shall provide any additional information requested by the Government during evaluation of the bids.

If the prospective bidder is a joint venture or general partnership, a separate Bidder's Qualifications form shall be provided individually for each joint venture participant or partner.

1. Name and address of business:

Name _____

Unique Entity ID and DUNS _____

Street _____

Employer ID Number (EIN)* _____

City _____ State _____ Zip Code _____

* Necessary for Government reporting purposes only.

County _____

Telephone Number (Include Area Code) _____

Fax Number (Include Area Code) _____

E-mail address _____

2. a. Type of organization (check appropriate box):

☐ Individual ☐ Non-profit organization ☐ Corporation

☐ Partnership ☐ Joint Venture ☐ Incorporated in: _____

If a Foreign entity:

☐ Individual ☐ Non-profit organization ☐ Corporation

☐ Partnership ☐ Joint Venture ☐ Registered in: _____

b. Size and type of Business Concern (check appropriate boxes):

☐ Large Business Concern ☐ Small Disadvantaged Business Concern ☐ Emerging Small Business

☐ Small Business Concern ☐ Women-Owned Small Business ☐ SBA 8(a) Certified

☐ HUB Zone Business Concern ☐ Veteran Owned Business Concern ☐ Service-Disabled Veteran-Owned Business Concern

3. If a joint venture or general partnership:

   a. Provide the name under which the project will be bid, the home office address, and name of the principal who will represent the company with regard to this project if different from "1." above.

   _____
   Principal

   _____
   Business Name

   _____
   Street

   _____
   City State Zip Code

   b. Provide the name and home office addresses of each of the joint venture partners; indicate which partner is the sponsoring partner. Attach a separate sheet for additional partners.

Sponsoring Partner	Other Partner
Street	Street
City State Zip Code	City State Zip Code

4. Date organization established:_____

5. Name of succeeded business, if any: _____

6. How many years have you been in business as:

   a. General contractor ___ years.

   b. Subcontractor ___ years.

7. a. Furnish the following information concerning the owner, partners, officers and directors:

Name	Title	Percent of Business Owned	Years of Business Experience	
			Contracting	Other

   b. Attach resumes of these key personnel as well as the on-site project manager(s) and superintendent(s), and specifically identify the following:

- Present position, responsibility, and length of employment.
- Amount and type of construction experience.
- Amount and type of highway construction experience, including position, responsibility, and a brief project description of each period of employment.
- Formal education and training, professional or technical registrations or licenses.

8. a. Contracts in force. (Attach additional sheets if necessary)

Project Name and Contract Numbers	Owner's Name, Address, and Contact Name, Email and Telephone #	Scope of Work Performed	Contract Amount	Estimated Completion Date	Name of Surety

b. Are there any unresolved claims or lawsuits associated with these projects? If so, state the amount in dispute, parties involved, nature and circumstances of the dispute, and status of the matter on a separate sheet.

9. a. List up to five of the largest jobs you have completed in the last five years which are similar in project work scope to this project. (Attach additional sheets if necessary)

Project Name and Contract Numbers	Owner's Name, Address, Contact Name, Email and Telephone #	Scope of Work Performed	Original and Final Contract Amounts	Original and Final Completion Dates	Names of On-site Project Manager and Superintendent	Name of Surety

b. Are there any unresolved claims or lawsuits associated with these projects? If so, state the amount in dispute, parties involved, nature and circumstances of the dispute, and status of the matter on a separate sheet

Solicitation Provisions

52.203-2 Certificate of Independent Price Determination (APR 1985)

(a) The offeror certifies that-

(1) The prices in this offer have been arrived at independently, without, for the purpose of restricting competition, any consultation, communication, or agreement with any other offeror or competitor relating to-

(i) Those prices;

(ii) The intention to submit an offer; or

(iii) The methods or factors used to calculate the prices offered.

(2) The prices in this offer have not been and will not be knowingly disclosed by the offeror, directly or indirectly, to any other offeror or competitor before bid opening (in the case of a sealed bid solicitation) or contract award (in the case of a negotiated solicitation) unless otherwise required by law; and

(3) No attempt has been made or will be made by the offeror to induce any other concern to submit or not to submit an offer for the purpose of restricting competition.

(b) Each signature on the offer is considered to be a certification by the signatory that the signatory-

(1) Is the person in the offeror's organization responsible for determining the prices being offered in this bid or proposal, and that the signatory has not participated and will not participate in any action contrary to paragraphs (a)(1) through (a)(3) of this provision; or

(2)(i) Has been authorized, in writing, to act as agent for the following principals in certifying that those principals have not participated, and will not participate in any action contrary to paragraphs (a)(1) through (a)(3) of this provision _____ *[insert full name of person(s) in the offeror's organization responsible for determining the prices offered in this bid or proposal, and the title of his or her position in the offeror's organization]*;

(ii) As an authorized agent, does certify that the principals named in subdivision (b)(2)(i) of this provision have not participated, and will not participate, in any action contrary to paragraphs (a)(1) through (a)(3) of this provision; and

(iii) As an agent, has not personally participated, and will not participate, in any action contrary to paragraphs (a)(1) through (a)(3) of this provision.

(c) If the offeror deletes or modifies subparagraph (a)(2) above, the offeror must furnish with its offer a signed statement setting forth in detail the circumstances of the disclosure.

(End of provision)

52.203-11 Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions. (SEP 2024)

52.203-18 Prohibition on Contracting with Entities that Require Certain Internal Confidentiality Agreements-Representation. (JAN 2017)

52.204-7 System for Award Management. (NOV 2024)(DEVIATION NOV 2025)

52.204-90 Offeror Identification (DEVIATION NOV 2025)

52.209-5 Certification Regarding Responsibility Matters. (AUG 2020)(DEVIATION SEP 2025)(DEVIAION JAN 2026)

52.209-7 Information Regarding Responsibility Matters (OCT 2018)(DEVIATION SEP 2025)(DEVIATION JAN 2026)

52.209-11 Representation by Corporations Regarding Delinquent Tax Liability or a Felony Conviction under any Federal Law (FEB 2016)(DEVIATION SEP 2025)(DEVIATION JAN 2026)

52.209-13 Violation of Arms Control Treaties or Agreements – Certification (NOV 2021)(DEVIATION SEP 2025)(DEVIATION JAN 2026)

52.214-3 Amendments to Invitations for Bids. (DEC 2016)(DEVIATION OCT 2025)

52.214-4 False Statements in Bids. (APR 1984)(DEVIATION OCT 2025)

52.214-5 Submission of Bids. (DEC 2016)(DEVIATION OCT 2025)

52.214-6 Explanation to Prospective Bidders. (APR 1984)

52.214-7 Late Submissions, Modifications, and Withdrawals of Bids. (NOV 1999)(DEVIATION OCT 2025)

52.214-18 Preparation of Bids - Construction. (APR 1984)

52.214-19 Contract Award - Sealed Bidding - Construction. (AUG 1996)

52.214-34 Submission of Offers in the English Language. (APR 1991)

52.214-35 Submission of Offers in U.S. Currency. (APR 1991)

52.216-1 Type of Contract. (APR 1984)(DEVIATION OCT 2025)

The Government contemplates award of a ***FIRM FIXED PRICE*** contract resulting from this solicitation.

(End of provision)

52.219-1 Small Business Program Representations (FEB 2024)(DEVIATION NOV 2025)

52.222-5 Construction Wage Rate Requirements Secondary Site of the Work. (MAY 2014)(DEVIATION OCT 2025)

52.223-1 Bio based Product Certification (MAY 2024)(DEVIATION FEB 2025) (DEVIATION DEC 2025)

As required by the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 8101(4)) and the Energy Policy Act of 2005 (7 U.S.C. 8102(a)(2)(F)), the Offeror certifies, by signing this offer, that biobased products (within categories of products listed by the United States Department of Agriculture at https://www.biopreferred.gov/resources/categories.html to be used or delivered in the performance of the contract, other than biobased products that are not purchased by the Offeror as a direct result of this contract, will comply with the applicable specifications or other contractual requirements.

(End of provision)

52.225-10 Notice of Buy American Requirement—Construction Materials (MAY 2014)

52.228-1 Bid Guarantee. (SEP 1996)

(a) Failure to furnish a bid guarantee in the proper form and amount, by the time set for opening of bids, may be cause for rejection of the bid.

(b) The bidder shall furnish a bid guarantee in the form of a firm commitment, *e.g.*, bid bond supported by good and sufficient surety or sureties acceptable to the Government, postal money order, certified check, cashier's check, irrevocable letter of credit, or, under Treasury Department regulations, certain bonds or notes of the United States. The Contracting Officer will return bid guarantees, other than bid bonds -

(1) To unsuccessful bidders as soon as practicable after the opening of bids; and

(2) To the successful bidder upon execution of contractual documents and bonds (including any necessary coinsurance or reinsurance agreements), as required by the bid as accepted.

(c) The amount of the bid guarantee shall be ***twenty (20%) percent*** of the bid price or ***$3,000,000.00***, whichever is less.

(d) If the successful bidder, upon acceptance of its bid by the Government within the

period specified for acceptance, fails to execute all contractual documents or furnish executed bond(s) within 10 days after receipt of the forms by the bidder, the Contracting Officer may terminate the contract for default.

(e) In the event the contract is terminated for default, the bidder is liable for any cost of acquiring the work that exceeds the amount of its bid, and the bid guarantee is available to offset the difference.

52.233-2 Service of Protest. (SEP 2006)(DEVIATION SEP 2025)

(a) Protests, (as defined in section 33.102), that are filed directly with an agency, and copies of any protests that are filed with the Government Accountability Office (GAO), must be served on the Contracting Officer identified in the solicitation by obtaining written and dated acknowledgment of receipt from them.

Mrs. Leslie Karsten
Acting, Acquisitions
Branch Chief
Federal Highway Administration
12300 West Dakota Avenue, Suite 360
Lakewood, Colorado 80228

(b) The copy of any protest shall be received in the office designated above within one day of filing a protest with the GAO.

(End of provision)

52.240-90 Security Prohibitions and Exclusions Representations and Certifications. (DEVIATION SEP 2025)

52.252-1 Solicitation Provisions Incorporated by Reference. (FEB 1998)

This solicitation incorporates one or more solicitation provisions by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. The offeror is cautioned that the listed provisions may include blocks that must be completed by the offeror and submitted with its quotation or offer. In lieu of submitting the full text of those provisions, the offeror may identify the provision by paragraph identifier and provide the appropriate information with its quotation or offer. Also, the full text of a solicitation provision may be accessed electronically at this/these address(es): ***http://www.acquisition.gov/far*** and ***https://www.acquisition.gov/far-overhaul/far-part-deviation-guide/far-overhaul-part-52***

(End of provision)

52.252-3 Alterations in Solicitation. (APR 1984)

Portions of this solicitation are altered as follows: ***NONE***

(End of provision)

52.252-5 Authorized Deviations in Provisions. (NOV 2020)

(a) The use in this solicitation of any Federal Acquisition Regulation (48 CFR Chapter 1) provision with an authorized deviation is indicated by the addition of "(DEVIATION)" after the date of the provision.

(b)The use in this solicitation or contract of any Revolutionary FAR Overhaul (RFO) (48 CFR All Changed Chapters, https://www.acquisition.gov/far-overhaul/far-part-deviation-guide/far-overhaul-part-52) and the Department of Transportation Regulation (TAR) (48 CFR, Chapter 12) clause with an authorized deviation is indicated by the addition of "(DEVIATION)" after the name of the regulation.

(End of provision)

1252.239–92 Information and Communication Technology Accessibility Notice (NOV 2022)

Contract Clauses

52.202-1 Definitions (JUN 2020)

52.203-3 Gratuities. (APR 1984)

52.203-5 Covenant Against Contingent Fees. (MAY 2014)

52.203-6, Restrictions on Subcontractor Sales to the Government (JUN 2020)

52.203-7 Anti-Kickback Procedures. (JUN 2020)

52.203-8 Cancellation, Rescission, and Recovery of Funds for Illegal or Improper Activity. (MAY 2014)

52.203-10 Price or Fee Adjustment for Illegal or Improper Activity. (MAY 2014)

52.203-12 Limitation on Payments to Influence Certain Federal Transactions. (JUN 2020)

52.203-13 Contractor Code of Business Ethics and Conduct (NOV 2021)

52.203-14 Display of Hotline Poster(s) (NOV 2021)

(a) *Definition.*

United States, as used in this clause, means the 50 States, the District of Columbia, and outlying areas.

(b) *Display of fraud hotline poster(s).* Except as provided in paragraph (c)—

(1) During contract performance in the United States, the Contractor shall prominently display in common work areas within business segments performing work under this contract and at contract work sites-

(i) Any agency fraud hotline poster or Department of Homeland Security (DHS) fraud hotline poster identified in paragraph (b)(3) of this clause; and

(ii) Any DHS fraud hotline poster subsequently identified by the Contracting Officer.

(2) Additionally, if the Contractor maintains a company website as a method of providing information to employees, the Contractor shall display an electronic version of the poster(s) at the website.

(3) Any required posters may be obtained as follows:

General Fraud	**https://www.oig.dot.gov/sites/default/files/files/OIG-generic-2.pdf**

(c) If the Contractor has implemented a business ethics and conduct awareness program, including a reporting mechanism, such as a hotline poster, then the Contractor need not display any agency fraud hotline posters as required in paragraph (b) of this clause, other than any required DHS posters.

(d) *Subcontracts.* The Contractor shall include the substance of this clause, including this paragraph (d), in all subcontracts that exceed the threshold specified in Federal Acquisition Regulation 3.1004(b)(1) on the date of subcontract award, except when the subcontract—

(1) Is for the acquisition of a commercial product or commercial service; or

(2) Is performed entirely outside the United States.

(End of clause)

52.203-17 Contractor Employee Whistleblower Rights and Requirements to Inform Employees of Whistleblower Rights (NOV 2023)

52.203-19 Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements (JAN 2017)

52.204-9 Personal Identity Verification of Contractor Personnel (JAN 2011)

52.204-10 Reporting Executive Compensation and First-Tier Subcontract Awards. (JUN 2020)(DEVIATION NOV 2025)

52.204-13 System for Award Management Maintenance. (OCT 2018)(DEVIATION NOV 2025

52.204-14 Service Contract Reporting Requirements (OCT 2016)(DEVIATION NOV 2025)

52.204-19 Incorporation by Reference of Representations and Certifications. (DEC 2014)(DEVIATION NOV 2025)

52.204-91 Contractor Identification (DEVIATION NOV 2025)

52.209-6 Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment. (JAN 2025)(DEVIATION SEP 2025)(DEVIATION JAN 2026)

52.209-10 Prohibition on Contracting With Inverted Domestic Corporations (NOV 2015) (DEVIATION SEP 2025)(DEVIATION JAN 2026)

52.211-12 Liquidated Damages - Construction. (SEP 2000)

(a) If the Contractor fails to complete the work within the time specified in the contract, the Contractor shall pay liquidated damages to the Government in the amount of $ ***2,300.00*** for each calendar day of delay until the work is completed or accepted.

(b) If the Government terminates the Contractor's right to proceed, liquidated damages will continue to accrue until the work is completed. These liquidated damages are in addition to excess costs of repurchase under the Termination clause.

(End of clause)

52.211-13 Time Extensions. (SEP 2000)

52.214-26 Audit and Records – Sealed Bidding. (JUN 2020)(DEVIATION OCT 2025)

52.214-27 Price Reduction for Defective Certified Cost or Pricing Data – Modifications – Sealed Bidding. (JUN 2020)

52.214-28 Subcontractor Certified Cost or Pricing Data – Modifications – Sealed Bidding. (JUN 2020)(DEVIATION OCT 2025)

52.219-6 Notice of Total Small Business Set-Aside (NOV 2020)(DEVIATION NOV 2025)

52.219-8 Utilization of Small Business Concerns (JAN 2025)(DEVIATION NOV 2025)

52.219-14 Limitations on Subcontracting (OCT 2022)(DEVIATION NOV 2025)

52.219-28 Post-Award Small Business Program Rerepresentation (JAN 2025) (DEVAITION NOV 2025)

52.222-1 Notice to the Government of Labor Disputes. (FEB 1997)(DEVIATION OCT 2025)

52.222-3 Convict Labor. (JUN 2003)(DEVIATION OCT 2025)

52.222-4 Contract Work Hours and Safety Standards Act - Overtime Compensation. (MAY 2018)(DEVIATION OCT 2025)

52.222-6 Construction Wage Rate Requirements. (AUG 2018)(DEVIATION FEB 2025)(DEVIATION OCT 2025)

52.222-7 Withholding of Funds. (MAY 2014)(DEVIATION OCT 2025)

52.222-8 Payrolls and Basic Records. (JUL 2021)(DEVIATION OCT 2025)

52.222-10 Compliance with Copeland Act Requirements. (FEB 1988)(DEVIATION OCT 2025)

52.222-11 Subcontracts (Labor Standards). (MAY 2014)(DEVIATION FEB 2025)(DEVIATION OCT 2025)

52.222-12 Contract Termination - Debarment. (MAY 2014)(DEVIATION FEB 2025)

52.222-13 Compliance with Construction Wage Rate Requirements and Related Regulations. (MAY 2014)

52.222-14 Disputes Concerning Labor Standards. (FEB 1988)(DEVIATION OCT 2025)

52.222-15 Certification of Eligibility. (MAY 2014)

52.222-35 Equal Opportunity for Veterans. (JUN 2020)(DEVIATION OCT 2025)

52.222-36 Affirmative Action for Workers with Disabilities. (JUN 2020)(DEVIATION OCT 2025)

52.222-37 Employment Reports on Veterans (JUN 2020)(DEVIATION OCT 2025)

52.222-40 Notification of Employee Rights Under the National Labor Relations Act (DEC 2010)(DEVIATION OCT 2025)

52.222-50 Combating Trafficking in Persons (OCT 2025)(DEVIATION OCT 2025)

52.222-54 Employment Eligibility Verification (JAN 2025)(DEVIATION OCT 2025)

52.222-62 Paid Sick Leave Under Executive Order 13706 (JAN 2022)(DEVIATION OCT 2025)

52.222-90 Addressing DEI Discrimination by Federal Contractors (DEVIATION APR 2026)

(a) *Definitions*. As used in this clause—
Program participation means membership or participation in, or access or admission to: training, mentoring, or leadership development programs; educational opportunities; clubs; associations; or similar opportunities that are sponsored or established by the contractor or subcontractor.

Racially discriminatory diversity, equity, and inclusion (DEI) activities means disparate treatment based on race or ethnicity in the recruitment, employment (e.g., hiring, promotions),

contracting (*e.g.*, vendor agreements), program participation, or allocation or deployment of an entity's resources.

(b) In connection with the performance of work under this contract, the Contractor agrees as follows:

(1) The Contractor will not engage in any racially discriminatory DEI activities;

(2) The Contractor will furnish all information and reports, including providing access to books, records, and accounts, as required by the Contracting Officer, for purposes of ascertaining compliance with this clause;

(3) In the event of the Contractor's or a subcontractor's noncompliance with this clause, this contract may be canceled, terminated, or suspended in whole or in part, and the Contractor or subcontractor may be declared ineligible for further Government contracts;

(4) The Contractor will report any subcontractor's known or reasonably knowable conduct that may violate this clause to the Contracting Officer and take any appropriate remedial actions directed by the Contracting Officer; and

(5) The Contractor will inform the Contracting Officer if a subcontractor sues the Contractor and the suit puts at issue, in any way, the validity of this clause.

(6) The Contractor recognizes that compliance with the requirements of this clause are material to the Government's payment decisions for purposes of 31 U.S.C. 3729(b)(4).

(c) The Contractor must include the substance of this clause, including this paragraph (c), in subcontracts at any tier, including those for commercial products and commercial services, except those where the place of delivery or performance is outside the United States.

(End of clause)

52.223-5 Pollution Prevention and Right-to-Know Information. (MAY 2024)

52.223-23 Sustainable Products and Services (May 2024)(DEVIATION FEB 2025)(DEVIATION DEC 2025)

52.223-2 Reporting of Biobased Products Under Service and Construction Contract. (MAY 2024)(DEVIATION FEB 2025)(DEVIATION DEC 2025)

(a) Definitions. As used in this clause—

Biobased product means a product determined by the U.S. Department of Agriculture (USDA) to be a commercial product or industrial product (other than food or feed) that is composed, in whole or in significant part, of biological products, including renewable domestic agricultural materials and forestry materials, or that is an intermediate ingredient or feedstock. The term includes, with respect to forestry materials, forest products that meet biobased content requirements, notwithstanding the market share the product holds, the age of the product, or

whether the market for the product is new or emerging. (7 U.S.C. 8101) (7 CFR 4270.2).

USDA-designated product category a generic grouping of biobased products that are listed by USDA in a procurement guideline (7 CFR part 4270) and for which USDA has provided minimum biobased content standards
(see https://www.biopreferred.gov/resources/categories.html).

(b) Requirement. The Contractor shall—

(1) Report to https://www.sam.gov, with a copy to the Contracting Officer, on the product types and dollar value of any biobased products in USDA-designated product categories purchased by the Contractor during the previous Government fiscal year, between October 1 and September 30; and

(2) Submit this report no later than—

(i) October 31 of each year during contract performance; and
(ii) At the end of contract performance.

(End of clause)

52.223-3 Hazardous Material Identification and Material Safety Data. (FEB 2021)(DEVIATION DEC 2025)

(a) *Definitions.* As used in this clause—

Sustainable product means—

(1) A product that contains recovered material designated by the EPA under the Comprehensive Procurement Guidelines (42 U.S.C. 6962) (40 CFR part 247)
(https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program#products).

(2) An energy-efficient product or low standby power device (42 U.S.C. 8259b) (10 CFR part 436, subpart C) (https://www.energy.gov/eere/femp/search-energy-efficient-products, https://www.energystar.gov/products?s=mega, and https://www.energy.gov/femp/low-standby-power-product-list).

(3) A biobased product that meets the content requirements of the USDA under the BioPreferred® program (7 U.S.C. 8102) (7 CFR Part 4270) (https://www.biopreferred.gov/).
(4) A substance identified in the EPA's Significant New Alternatives Policy (SNAP) program as a safe alternative to an ozone-depleting substance (42 U.S.C. 7671l) (40 CFR part 82, subpart G) (https://www.epa.gov/snap/unacceptable-and-acceptable-substitutes-tables).

(b) Requirements. The Government has identified in the statement of work or elsewhere in the contract the sustainable products that are required during the performance of this contract. The Contractor shall ensure that it provides sustainable products as required by this contract, when the

products are—

(1) Delivered to the Government;
(2) Furnished for use by the Government;
(3) Incorporated into the construction of a public building or public work; or

(c) Furnished for use in performing services under this contract, where the cost of the products is a direct cost to this contract.

(End of clause)

52.224-1 Privacy Act Notification. (APR 1984)

52.224-2 Privacy Act. (APR 1984)

52.225-9 Buy American-Construction Materials (OCT 2022)(DEVIATION NOV 2025)

(a) Definitions. As used in this clause—

Commercially available off-the-shelf (COTS) item—

(1) Means any item of supply (including construction material) that is–

(i) A commercial product (as defined in paragraph (1) of the definition of "commercial product" at Federal Acquisition Regulation (FAR) 2.101);

(ii) Sold in substantial quantities in the commercial marketplace; and

(iii) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and

(2) Does not include bulk cargo, as defined in 46 U.S.C. 40102(4), such as agricultural products and petroleum products.

"Construction material" means an article, material, or supply brought to the construction site by the Contractor or a subcontractor for incorporation into the building or work. The term also includes an item brought to the site preassembled from articles, materials, or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, that are discrete systems incorporated into a public building or work and that are produced as complete systems, are evaluated as a single and distinct construction material regardless of when or how the individual parts or components of those systems are delivered to the construction site. Materials purchased directly by the Government are supplies, not construction material.

Cost of components means—

(1) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the construction material (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or

(2) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the construction material.

Critical component means a component that is mined, produced, or manufactured in the United States and deemed critical to the U.S. supply chain. The list of critical components is at FAR 25.105.

Critical item means a domestic construction material or domestic end product that is deemed critical to U.S. supply chain resiliency. The list of critical items is at FAR 25.105.

Domestic construction material means—

(1) For construction material that does not consist wholly or predominantly of iron or steel or a combination of both-

(i) An unmanufactured construction material mined or produced in the United States; or

(ii) A construction material manufactured in the United States, if–

(A) The cost of its components mined, produced, or manufactured in the United States exceeds 60 percent of the cost of all its components, except that the percentage will be 65 percent for items delivered in calendar years 2024 through 2028 and 75 percent for items delivered starting in calendar year 2029. Components of foreign origin of the same class or kind for which nonavailability determinations have been made are treated as domestic. Components of unknown origin are treated as foreign; or

(B) The construction material is a COTS item; or

(2) For construction material that consists wholly or predominantly of iron or steel or a combination of both, a construction material manufactured in the United States if the cost of foreign iron and steel constitutes less than 5 percent of the cost of all

components used in such construction material. The cost of foreign iron and steel includes but is not limited to the cost of foreign iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the construction material and a good faith estimate of the cost of all foreign iron or steel components excluding COTS fasteners. Iron or steel components of unknown origin are treated as foreign. If the construction material contains multiple components, the cost of all the materials used in such construction material is calculated in accordance with the definition of "cost of components".

Fastener means a hardware device that mechanically joins or affixes two or more objects together. Examples of fasteners are nuts, bolts, pins, rivets, nails, clips, and screws.

Foreign construction material means a construction material other than a domestic construction material.

Foreign iron and steel means iron or steel products not produced in the United States. Produced in the United States means that all manufacturing processes of the iron or steel must take place in the United States, from the initial melting stage through the application of coatings, except metallurgical processes involving refinement of steel additives. The origin of the elements of the iron or steel is not relevant to the determination of whether it is domestic or foreign.

Predominantly of iron or steel or a combination of both means that the cost of the iron and steel content exceeds 50 percent of the total cost of all its components. The cost of iron and steel is the cost of the iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the product and a good faith estimate of the cost of iron or steel components excluding COTS fasteners.

Steel means an alloy that includes at least 50 percent iron, between 0.02 and 2 percent carbon, and may include other elements.

"United States" means the 50 States, the District of Columbia, and outlying areas.

(b) Domestic preference.

(1) This clause implements 41 U.S.C. chapter 83, Buy American, by providing a preference for domestic construction material. In accordance with 41 U.S.C. 1907, the domestic content test of the Buy American statute is waived for construction material that is a COTS item, except that for construction material that consists wholly or predominantly of iron or steel or a combination of both, the domestic content test is applied only to the iron and steel content of the construction materials, excluding COTS fasteners. The Contractor shall use only domestic construction material in performing this contract, except as provided in paragraphs (b)(2) and (b)(3) of this clause.

(2) This requirement does not apply to information technology that is a commercial product or to the construction materials or components listed by the Government as follows:
None

(3) The Contracting Officer may add other foreign construction material to the list in paragraph (b)(2) of this clause if the Government determines that-

(i) The cost of domestic construction material would be unreasonable.

(A) *For domestic construction material that is not a critical item or does not contain critical components*.

(1) The cost of a particular domestic construction material subject to the requirements of the Buy American statute is unreasonable when the cost of such material exceeds the cost of foreign material by more than 20 percent;

(2) For construction material that is not a COTS item and does not consist wholly or predominantly of iron or steel or a combination of both, if the cost of a particular domestic construction material is determined to be unreasonable or there is no domestic offer received, and the low offer is for foreign construction material that is manufactured in the United States and does not exceed 55 percent domestic content, the Contracting Officer will treat the lowest offer of foreign construction material that exceeds 55 percent domestic content as a domestic offer and determine whether the cost of that offer is unreasonable by applying the evaluation factor listed in paragraph (b)(3)(i)(A)*(1)* of this clause.

(3) The procedures in paragraph (b)(3)(i)(A)*(2)* of this clause will no longer apply as of January 1, 2030.

(B) *For domestic construction material that is a critical item or contains critical components*.

(1) The cost of a particular domestic construction material that is a critical item or contains critical components, subject to the requirements of the Buy American statute, is unreasonable when the cost of such material exceeds the cost of foreign material by more than 20 percent plus the

additional preference factor identified for the critical item or construction material containing critical components listed at FAR 25.105.

(2) For construction material that does not consist wholly or predominantly of iron or steel or a combination of both, if the cost of a particular domestic construction material is determined to be unreasonable or there is no domestic offer received, and the low offer is for foreign construction material that does not exceed 55 percent domestic content, the Contracting Officer will treat the lowest foreign offer of construction material that is manufactured in the United States and exceeds 55 percent domestic content as a domestic offer, and determine whether the cost of that offer is unreasonable by applying the evaluation factor listed in paragraph (b)(3)(i)(B)*(1)* of this clause.

(3) The procedures in paragraph (b)(3)(i)(B)*(2)* of this clause will no longer apply as of January 1, 2030.

(ii) The application of the restriction of the Buy American statute to a particular construction material would be impracticable or inconsistent with the public interest; or

(iii) The construction material is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality.

(c) Request for determination of inapplicability of the Buy American statute. (1)

(i) Any Contractor request to use foreign construction material in accordance with paragraph (b)(3) of this clause shall include adequate information for Government evaluation of the request, including-

(A) A description of the foreign and domestic construction materials;
(B) Unit of measure;
(C) Quantity;
(D) Price;
(E) Time of delivery or availability;
(F) Location of the construction project;
(G) Name and address of the proposed supplier; and
(H) A detailed justification of the reason for use of foreign construction materials cited in accordance with paragraph (b)(3) of

this clause.

(ii) A request based on unreasonable cost shall include a reasonable survey of the market and a completed price comparison table in the format in paragraph (d) of this clause.

(iii) The price of construction material shall include all delivery costs to the construction site and any applicable duty (whether or not a duty-free certificate may be issued).

(iv) Any Contractor request for a determination submitted after contract award shall explain why the Contractor could not reasonably foresee the need for such determination and could not have requested the determination before contract award. If the Contractor does not submit a satisfactory explanation, the Contracting Officer need not make a determination.

(2) If the Government determines after contract award that an exception to the Buy American statute applies and the Contracting Officer and the Contractor negotiate adequate consideration, the Contracting Officer will modify the contract to allow use of the foreign construction material. However, when the basis for the exception is the unreasonable price of a domestic construction material, adequate consideration is not less than the differential established in paragraph (b)(3)(i) of this clause.

(3) Unless the Government determines that an exception to the Buy American statute applies, use of foreign construction material is noncompliant with the Buy American statute or Balance of Payments Program.

(d) *Data*. To permit evaluation of requests under paragraph (c) of this clause based on unreasonable cost, the Contractor shall include the following information and any applicable supporting data based on the survey of suppliers:

Foreign and Domestic Construction Materials Price Comparison			
Construction material description	Unit of measure	Quantity	Price (dollars)*
Item 1:			
Foreign construction material.	_____	_____	_____

Domestic construction material.	_____	_____	_____
Item 2:			
Foreign construction material.	_____	_____	_____
Domestic construction material.	_____	_____	_____
[* *Include all delivery costs to the construction site and any applicable duty (whether or not a duty-free entry certificate is issued)*]. [*List name, address, telephone number, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary.*] [*Include other applicable supporting information.*]			

(End of clause)

52.226-7 Drug Free Workplace (May 2024)

52.226-8 Encouraging Contractor Policies to Ban Text Messaging While Driving. (MAY 2024)

52.227-1 Authorization and Consent. (JUN 2020)

52.227-2 Notice and Assistance Regarding Patent and Copyright Infringement. (JUN 2020)

52.227-4 Patent Indemnity--Construction Contracts. (DEC 2007)

52.228-2 Additional Bond Security. (OCT 1997)

52.228-5 Insurance - Work on a Government Installation. (JAN 1997)

52.228-11 Individual Surety - Pledges of Assets. (FEB 2021)

52.228-12 Prospective Subcontractor Requests for Bonds. (DEC 2022)

52.228-14 Irrevocable Letter of Credit (Nov 2014)

52.228-15 Performance and Payment Bonds - Construction. (JUN 2020)

52.229-3 Federal, State, and Local Taxes. (FEB 2013)(DEVIATION AUG 2025)

52.232-5 Payments under Fixed-Price Construction Contracts. (MAY 2014)

52.232-17 Interest. (MAY 2014)

52.232-23 Assignment of Claims. (MAY 2014)

52.232-27 Prompt Payment For Construction Contracts. (JAN 2017)

52.232-33 Payment by Electronic Funds Transfer – System for Award Management (OCT 2018)

52.232-39 Unenforceability of Unauthorized Obligations (JUN 2013)

52.232-40 Providing Accelerated Payments to Small Business Subcontractors (MAR 2023)

52.233-1 Disputes. (MAY 2014)(DEVIATION SEP 2025) - Alternate I (DEC 1991)(DEVIATION SEP 2025)

52.233-3 Protest after Award. (AUG 1996)(DEVIATION SEP 2025)

52.233-4 Applicable Law for Breach of Contract Claim. (OCT 2004)(DEVIATION SEP 2025)

52.236-2 Differing Site Conditions. (APR 1984)(DEVIATION AUG 2025)

52.236-3 Site Investigation and Conditions Affecting the Work. (APR 1984)(DEVIATION AUG 2025)

52.236-5 Material and Workmanship. (APR 1984)(DEVIATION AUG 2025)

52.236-6 Superintendence by the Contractor. (APR 1984)(DEVIATION AUG 2025)

52.236-7 Permits and Responsibilities. (NOV 1991)(DEVIATION AUG 2025)

52.236-8 Other Contracts. (APR 1984)(DEVIATION AUG 2025)

52.236-9 Protection of Existing Vegetation, Structures, Equipment, Utilities, and Improvements. (APR 1984)(DEVIATION AUG 2025)

52.236-10 Operations and Storage Areas. (APR 1984)(DEVIATION AUG 2025)

52.236-11 Use and Possession Prior to Completion. (APR 1984)(DEVIATION AUG 2025)

52.236-12 Cleaning Up. (APR 1984)(DEVIATION AUG 2025)

52.236-13 Accident Prevention. (NOV 1991)(DEVIATION AUG 2025) Alternate I (NOV 1991)

52.236-15 Schedules for Construction Contracts. (APR 1984)(DEVIATION AUG 2025)

52.236-17 Layout of Work. (APR 1984)(DEVIATION AUG 2025)

52.236-21 Specifications and Drawings for Construction. (FEB 1997)(DEVIATION AUG 2025)

52.240-91 Security Prohibitions and Exclusions (DEVIATION SEP 2025)

52.242-13 Bankruptcy. (JUL 1995)

52.242-14 Suspension of Work. (APR 1984)

52.243-4 Changes. (JUN 2007)(DEVIATION JUL 2025)

52.243-6 Change Order Accounting. (APR 1984)(DEVIATION JUL 2025)

52.244-6 Subcontracts for Commercial Products and Commercial Services (OCT 2025)(DEVIATION APR 2026)

52.245-1 Government Property (SEP 2021) - Alternate I (APR 2012)

52.245-9 Use and Charges. (APR 2012)

52.246-12 Inspection of Construction. (AUG 1996)

52.247-64 Preference for Privately Owned U.S.-Flag Commercial Vessels (NOV 2021)(DEVIATION OCT 2025)

52.248-3 Value Engineering - Construction. (OCT 2025)

52.249-2 Termination for Convenience of the Government (Fixed-Price). (APR 2012) - Alternate I (SEP 1996)

52.249-10 Default (Fixed-Price Construction). (APR 1984)

52.252-2 Clauses Incorporated by Reference. (FEB 1998)

This contract incorporates one or more clauses by reference, with the same force and effect as

if they were given in full text. Upon request, the Contracting Officer will make their full text available. Also, the full text of a clause may be accessed electronically at this/these address(es): ***http://www.acquisition.gov/far and https://www.acquisition.gov/far-overhaul***

(End of clause)

52.252-4 Alterations in Contract. (APR 1984)

Portions of this contract are altered as follows: ***NONE***

(End of clause)

52.252-6 Authorized Deviations in Clauses. (NOV 2020)

(a) The use in this solicitation or contract of any Federal Acquisition Regulation Revolutionary FAR Overhaul (RFO) (48 CFR All Changed Chapters) clause with an authorized deviation is indicated by the addition of "(DEVIATION)" after the date of the clause.

(b)The use in this solicitation or contract of any Department of Transportation Regulation (TAR) (48 CFR, Chapter 12) clause with an authorized deviation is indicated by the addition of "(DEVIATION)" after the name of the regulation.

(End of clause)

52.253-1 Computer Generated Forms. (JAN 1991)(DEVIATION OCT 2025)

1252.201-70 Contracting Officer's Representative (NOV 2022)

1252.223-70 Removal or Disposal of Hazardous Substances – Applicable Licenses and Permits (NOV 2022)

1252.223-71 Accident and Fire Reporting (NOV 2022)

1252.223-73 Seat Belt Use Policies and Programs (NOV 2022)

1252.228-74 Notification of Payment Bond Protection (NOV 2022)

(a) The prime contract is subject to the Bonds statute (historically referred to as the Miller Act) (40 U.S.C. chapter 31, subchapter III), under which the prime contractor has obtained a payment bond. This payment bond may provide certain unpaid employees, suppliers, and subcontractors a right to sue the bonding surety under the Bonds statute for amounts owned for work performed and materials delivery under the prime contract.

(b) Persons believing that they have legal remedies under the Bonds statute should consult their legal advisor regarding the proper steps to take to obtain these remedies. This notice clause does

not provide any party any rights against the Federal Government, or create any relationship, contractual or otherwise, between the Federal Government and any private party.

(c) The surety which has provided the payment bond under the prime contract is: On File with the FHWA.

(d) Subcontract flowdown requirements. This clause shall be flowed down to all subcontractors. Prime contractors shall insert this notice clause in all first-tier subcontracts and shall require the clause to be subsequently flowed down by all first-tier subcontractors to all their subcontractors, at any tier. This notice contains information pertaining to the surety that provided the payment bond under the prime contract and is required to be inserted in its entirety to include the information set forth in paragraph (c).

(End of clause)

1252.232–70 Electronic Submission of Payment Requests (NOV 2022)(DEVIATION AUG 2025)

(a) *Definitions.* As used in this clause—

(1) *Contract financing payment* has the meaning given in FAR 32.001.

(2) *Payment request* means a bill, voucher, invoice, or request for contract financing payment or invoice payment with associated supporting documentation. The payment request must comply with the requirements identified in FAR 32.905(b), "Content of Invoices," this clause, and the applicable Payment clause included in this contract.

(3) *Electronic form* means an automated system transmitting information electronically according to the accepted electronic data transmission methods and formats identified in paragraph (c) of this clause. Facsimile, email, and scanned documents are not acceptable electronic forms for submission of payment requests.

(4) *Invoice payment* has the meaning given in FAR 32.001.

(b) *Electronic payment requests.* Except as provided in paragraph (e) of this clause, the contractor shall submit payment requests in electronic form. Purchases paid with a Governmentwide commercial purchase card are considered to be an electronic transaction for purposes of this rule, and therefore no additional electronic invoice submission is required.

(c) *Processing system.* The Department of Transportation utilizes the DELPHI system for processing invoices. The DELPHI module for submitting invoices is called *iSupplier.* Access to DELPHI is granted with electronic authentication of credentials (name & valid email address) utilizing the GSA credentialing platform *login.gov.* Vendors submitting invoices are required to submit invoices via *iSupplier* (DELPHI) and authenticated via *www.login.gov.*

(d) *Invoice requirements.* To receive payment and in accordance with the Prompt Payment Act, all invoices submitted as attachments in *iSupplier* (DELPHI) shall contain the following:

(1) Invoice number and invoice date.

(2) Period of performance covered by invoice.

(3) Contract number and title.

(4) Task/Delivery Order number and title (if applicable).

(5) Amount billed (by CLIN), current and cumulative.

(6) Total ($) of billing.

(7) Cumulative total billed for all contract work to date.

(8) Name, title, phone number, and mailing address of person to be contacted in the event of a defective invoice.

(9) Travel. If the contract includes allowances for travel, all invoices which include charges pertaining to travel expenses will catalog a breakdown of reimbursable expenses with the appropriate receipts to substantiate the travel expenses.

(10) The following statement "The Contractor certifies that, by submitting this invoice to the Government, the supplies and/or services billed have been shipped, rendered, or delivered in accordance with instructions issued by the ordering officer; that they are reflected in the quantities and/or period of performance stated on the invoice; and that such supplies and/or services conform to the quantity and quality requirements specified in the applicable contract, order, or blanket purchase agreement.

Furthermore, pursuant to Executive Order 14173, Ending Illegal Discrimination And Restoring Merit-Based Opportunity, the Contractor certifies that it is in compliance with the Equal Protection principles of the Constitution and all applicable Federal anti-discrimination laws, and acknowledges that such compliance is material to the Government's payment decision under the False Claims Act (31 U.S.C. § 3729(b)(4)). The Contractor also affirms that it does not operate any diversity, equity, and inclusion (DEI) initiatives that are inconsistent with the Equal Protection principles of the Constitution and the non-discrimination requirements of Federal law, as interpreted by the Supreme Court in Students for Fair Admissions v. Harvard, 600 U.S. 181 (2023)."

(e) *Payment system registration.* All persons accessing the *iSupplier* (DELPHI) will be required to have their own unique user ID and password and be credentialed through *login.gov.*

(1) *Electronic authentication. See www.login.gov* for instructions.

(2) To create a *www.login.gov* account, the user will need a valid email address and a working phone number. The user will create a password and then *www.login.gov* will reply with an email confirming the email address.

(3) *iSupplier* (DELPHI) registration instructions: New users should navigate to: *http://einvoice.esc.gov* to establish an account. Users are required to log in to *iSupplier* (DELPHI) every 45 days to keep it active.

(4) *Training on DELPHI.* To facilitate use of DELPHI, comprehensive user information is available at *http://einvoice.esc.gov.*

(5) *Account Management.* Vendors are responsible to contact their assigned COR when their firm's points of contacts will no longer be submitting invoices, so they can be removed from the system.

(f) *Waivers.* For contractors/vendors who are unable to utilize DOT's DELPHI system, waivers may be considered by DOT on a case-by-case basis. Vendors should contact their Contracting Officer's Representative (COR) for procedures.

(g) *Exceptions and alternate payment procedures.* If, based on one of the circumstances set forth in 1232.7002(a) or (b), and the contracting officer directs that payment requests be made by mail, the contractor shall submit payment requests by mail through the United States Postal Service to the designated agency office. If alternate payment procedures are authorized, the Contractor shall include a copy of the Contracting Officer's written authorization with each payment request. If DELPHI is succeeded by later technology, the Contracting Officer will supply the Contractor with the latest applicable electronic invoicing instructions.

(End of clause)

1252.239–93 Information and Communication Technology Accessibility (NOV 2022)

POST-AWARD EVALUATION OF CONTRACTOR PERFORMANCE

Contractor Performance Evaluations

a. Interim and final evaluations of contractor performance will be prepared on this contract in accordance with FAR 42.1502 and TAM 1242.1502. The final performance evaluations will be prepared at the time of completion of work.
b. The Contractor can elect to review the evaluation and submit additional information or provide a rebuttal statement. The contractor will be permitted 60 calendar days to respond from the date of receipt of the evaluation. Contractor response is voluntary. If the contractor does not respond within 60 days, the Government will presume that the Contractor has no comment. Any disagreement between the parties regarding an evaluation will be referred to an individual at a level above the Contracting Officer, whose decision is final.
c. Copies of the evaluations, Contractor responses, and review comments, if any, will be retained as part of the contract file, and may be used to support future award decisions.

The Federal Highway Administration utilizes the Contractor Performance Assessment Reporting System (CPARS) to record and maintain past performance information. CPARS hosts a suite of web-enabled applications that are used to document contractor performance information that is required by Federal Regulations. The CPARS module assesses performance on contracts for Systems, Services, Information Technology, and Operations Support; Architect-Engineer contracts; and Construction contracts. Reference material can be accessed in CPARS.

The registration process requires the Contractor to identify an individual that will serve as a primary contact. This individual will be authorized access to the evaluation for review and comment. In addition, the Contractor is encouraged to identify a secondary contact in the event the primary contact is unavailable to process the evaluation within the required 60 day time period. After the FHWA Focal Point registers the contract in CPARS, the contractor representative will receive a system generated email notifying him/her that the contract is registered. A system generated email will also provide the Contractor with a User ID if the person does not already have a CPARS User ID.

After a performance evaluation has been prepared and is ready for comment, the Contractor representative will receive a system generated email notification that the performance evaluation is electronically available for review and comment. The Contractor representative will receive an automated email whenever an assessment is completed and can subsequently retrieve the completed assessment from CPARS.

Contractors may access evaluations in CPARS for review and comment.

(End of Clause)

"General Decision Number: CO20260012 05/18/2026

State: Colorado

Construction Types: Highway

Counties: Colorado Counties of
Alamosa, Archuleta, Chaffee, Conejos,
Custer, Delta, Dolores, Fremont,
Gunnison, Hinsdale, La Plata, Mineral,
Montezuma, Montrose, Ouray, Rio Grande,
Saguache, San Juan and San Miguel

Modification Number	Publication Date
0	01/02/2026
1	05/18/2026

CARP9901-009 05/01/2024

	Rates	Fringes
CARPENTER (EXCLUDES FORM WORK)	$ 33.11	12.17

ENGI0009-016 05/01/2024

	Rates	Fringes
POWER EQUIPMENT OPERATOR: (5)-DRILL RIG CAISSON (WATSON 2500 SIMILAR OR LARGER)	$ 35.41	15.20
POWER EQUIPMENT OPERATOR: (4)-MECHANIC (LA PLATA COUNTY)	$ 35.58	15.20
POWER EQUIPMENT OPERATOR: (3)- DRILL RIG CAISSON (SMALLER THAN WATSON 2500 AND SIMILAR)	$ 35.41	15.20

SUCO2011-007 09/15/2011

	Rates	Fringes
TRUCK DRIVER: WATER TRUCK (MONTEZUMA)	$ 14.88	2.07
TRUCK DRIVER: WATER TRUCK (LA PLATA)	$ 17.67	3.43
TRUCK DRIVER: WATER TRUCK (FREMONT)	$ 16.15	3.14
TRUCK DRIVER: WATER TRUCK (ARCHULETA, CHAFEE, CONJEOS, CUSTER, DELTA, DOLORES, GUNNISION, HINSDALE, MINERAL, MONTROSE, OURAY, RIO GRANDE, SAN MIGUEL, SAN JUAN, SAGUACHE)	$ 16.75	3.04
TRUCK DRIVER: WATER TRUCK (ALAMOSA)	$ 17.58	3.75
TRUCK DRIVER: SEMI TRUCK (CONEJOS, CUSTER, DELTA, DOLORES, FREMONT, HINSDALE, LA PLATA)	$ 17.25	5.41
TRUCK DRIVER: SEMI TRUCK (ALAMOSA, ARCHULETA, CHAFFEE, GUNNISON, MINERAL, MONTEZUMA, MONTRAOSE, OURAY, RIO GRANDE, SAGUACHE, SAN JUAN, SAN MIGUEL)	$ 19.42	5.41
TRUCK DRIVER: PICKUP AND PILOT CAR (LA PLATA)	$ 15.47	3.49
TRUCK DRIVER: PICKUP AND PILOT CAR (ALAMOSA, ARCHULETA, CHAFFEE, CONEJOS, CUSTER, DELTA, DOLORES, FREMONT, GUNNISON, HINSDALE, MINERAL, MONTEZUMA, MONTROSE, OURAY, RIO GRANDE, SAGUACHE, SAN JUAN, SAN MIGUEL)	$ 14.04	3.49
TRUCK DRIVER: MULTI-PURPOSE SPECIALTY & HOISTING		

TRUCK.....$ 14.60 3.49
TRUCK DRIVER: MECHANIC.....$ 17.79 3.51
TRUCK DRIVER: LOWBOY TRUCK.....$ 17.25 5.84
TRUCK DRIVER: DUMP TRUCK (MINERAL).....$ 16.97 4.61
TRUCK DRIVER: DUMP TRUCK (LA PLATA).....$ 16.90 3.83
TRUCK DRIVER: DUMP TRUCK (FREMONT).....$ 16.55 4.34
TRUCK DRIVER: DUMP TRUCK (ARCHULETA, CHAFFEE,
CONEJOS, CUSTER, DELTA, DOLORES, GUNNISON,
HINSDALE, MONTEZUMA, MONTROSE, OURAY, RIO GRANDE,
SAGUACHE, SAN JUAN, SAN MIGUEL).....$ 16.56 4.03
TRUCK DRIVER: DUMP TRUCK (ALAMOSA).....$ 14.15 3.83
TRUCK DRIVER: DISTRIBUTOR (MONTEZUMA).....$ 15.80 5.27
TRUCK DRIVER: DISTRIBUTOR (ARCHULETA, CHAFFEE,
CONEJOS, CUSTER, DELTA, DOLORES, FREMONT, GUNNISON,
HINSDALE, LA PLATA, MINERAL, MONTROSE, OURAY, RIO
GRANDE, SAGUACHE, SAN JUAN, SAN MIGUEL).....$ 17.62 5.27
TRUCK DRIVER: DISTRIBUTOR (ALAMOSA).....$ 18.40 4.51
TRAFFIC SIGNALIZATION: GROUNDSMAN.....$ 17.04 2.28
POWER EQUIPMENT OPERATOR: TRACTOR.....$ 15.08 2.95
POWER EQUIPMENT OPERATOR: SCREED (LA PLATA).....$ 17.86 2.75
POWER EQUIPMENT OPERATOR: SCREED (ARCHULETA,
CHAFFEE, CONEJOS, CUSTER, DELTA, DOLORES, FREMONT,
GUNNISON, HINSDALE, MINERAL, MONTEZUMA, MONTROSE,
OURAY, RIO GRANDE, SAGUACHE, SAN JUAN, SAN MIGUEL)..$ 19.58 4.96
POWER EQUIPMENT OPERATOR: SCREED (ALAMOSA).....$ 20.33 6.81
POWER EQUIPMENT OPERATOR: SCRAPER.....$ 17.62 2.96
POWER EQUIPMENT OPERATOR: ROTOMILL.....$ 16.28 4.41
POWER EQUIPMENT OPERATOR: ROLLER/COMPACTOR (DIRT
AND GRADE COMPACTION) (LA PLATA).....$ 18.33 2.98
POWER EQUIPMENT OPERATOR: ROLLER/COMPACTOR (DIRT
AND GRADE COMPACTION) (FREMONT).....$ 16.52 5.28
POWER EQUIPMENT OPERATOR: ROLLER/COMPACTOR (DIRT
AND GRADE COMPACTION) (ALAMOSA, ARCHULETA, CHAFFEE,
CONEJOS, CUSTER, DELTA, DOLORES, GUNNISON,
HINSDALE, MINERAL, MONTEZUMA, MONTROSE, OURAY, RIO
GRANDE, SAGUACHE, SAN JUAN, SAN MIGUEL).....$ 19.24 4.96
POWER EQUIPMENT OPERATOR: OILER (SAN MIGUEL).....$ 22.97 9.22
POWER EQUIPMENT OPERATOR: OILER (LA PLATA).....$ 24.08 5.49
POWER EQUIPMENT OPERATOR: OILER (FREMONT).....$ 22.97 8.56
POWER EQUIPMENT OPERATOR: OILER (ALAMOSA,
ARCHULETA, CHAFFEE, CONEJOS, CUSTER, DELTA,
DOLORES, GUNNISON, HINSDALE, MINERAL, MONTEZUMA,
MONTROSE, OURAY, RIO GRANDE, SAGUACHE, SAN JUAN,)...$ 22.97 7.88
POWER EQUIPMENT OPERATOR: MECHANIC (FREMONT).....$ 18.79 3.51
POWER EQUIPMENT OPERATOR: MECHANIC (ALAMOSA,
ARCHULETA, CHAFFEE, CONEJOS, CUSTER, DELTA,
DOLORES, GUNNISON, HINSDALE, MINERAL, MONTEZUMA,
MONTEZUMA, MONTROSE, OURAY, RIO GRANDE, SAGUACHE,
SAN JUAN, SAN MIGUEL).....$ 16.74 4.20
POWER EQUIPMENT OPERATOR: LOADER (FRONT END) (SAN
MIGUEL).....$ 23.82 9.22
POWER EQUIPMENT OPERATOR: LOADER (FRONT END)
(MONTEZUMA).....$ 22.82 8.72
POWER EQUIPMENT OPERATOR: LOADER (FRONT END) (LA
PLATA).....$ 23.36 7.09
POWER EQUIPMENT OPERATOR: LOADER (FRONT END)
(FREMONT).....$ 23.67 9.22
POWER EQUIPMENT OPERATOR: LOADER (FRONT END)
(ALAMOSA, ARCHULETA, CHAFFEE, CONEJOS, CUSTER,
DELTA, DOLORES, GUNNISON, HINSDALE, MINERAL,
MONTROSE, OURAY, RIO GRANDE, SAGUACHE, SAN JUAN)....$ 23.38 8.22
POWER EQUIPMENT OPERATOR: GUARDRAIL/POST DRIVER.....$ 16.07 4.41
POWER EQUIPMENT OPERATOR: GRADER/BLADE (LA PLATA)...$ 19.83 4.20
POWER EQUIPMENT OPERATOR: GRADER/BLADE (FREMONT)....$ 19.68 3.37
POWER EQUIPMENT OPERATOR: GRADER/BLADE (ALAMOSA,

ARCHULETA, CHAFFEE, CONEJOS, CUSTER, DELTA,
DOLORES, GUNNISON, HINSDALE, MINERAL, MONTEZUMA,
MONTROSE, OURAY, RIO GRANDE, SAGUACHE, SAN JUAN,
SAN MIGUEL).....$ 16.39 4.20
POWER EQUIPMENT OPERATOR: GRADE CHECKER.....$ 23.91 7.89
POWER EQUIPMENT OPERATOR: FORKLIFT.....$ 18.30 5.01
POWER EQUIPMENT OPERATOR: DRILL.....$ 20.84 2.66
POWER EQUIPMENT OPERATOR: CRANE (LA PLATA).....$ 25.21 8.22
POWER EQUIPMENT OPERATOR: CRANE (ALAMOSA,
ARCHULETA, CHAFFEE, CONEJOS, CUSTER, DELTA,
DOLORES, FREMONT, GUNNISON, HINSDALE, MINERAL,
MONTEZUMA, MONTROSE, OURAY, RIO GRANDE, SAGUACHE,
SAN JUAN, SAN MIGUEL).....$ 25.01 8.22
POWER EQUIPMENT OPERATOR: CHIPPER.....$ 22.04 8.26
POWER EQUIPMENT OPERATOR: BULLDOZER (LA PLATA).....$ 23.57 8.72
POWER EQUIPMENT OPERATOR: BULLDOZER (FREMONT).....$ 23.67 9.22
POWER EQUIPMENT OPERATOR: BULLDOZER (ALAMOSA,
ARCHULETA, CHAFFEE, CONEJOS, CUSTER, DELTA,
DOLORES, GUNNISON, HINSDALE, MINERAL, MONTEZUMA,
MONTROSE, OURAY, RIO GRANDE, SAGUACHE, SAN JUAN,
SAN MIGUEL).....$ 23.28 9.22
POWER EQUIPMENT OPERATOR: BROOOM/SWEEPER
(ARCHULETA, CHAFFEE, CONEJOS, CUSTER, DELTA,
DOLORES, FREMONT, GUNNISON, HINSDALE, LA PLATA,
MINERAL, MONTEZUMA, MONTROSE, OURAY, RIO GRANDE,
SAGUACHE, SAN JUAN, SAN MIGUEL).....$ 21.70 9.22
POWER EQUIPMENT OPERATOR: BROOM/SWEEPER (ALAMOSA)...$ 20.67 9.22
POWER EQUIPMENT OPERATOR: BOBCAT/SKID LOADER
(MINERAL).....$ 17.94 4.62
POWER EQUIPMENT OPERATOR: BOBCAT/SKID LOADER (LA
PLATA).....$ 19.98 4.88
POWER EQUIPMENT OPERATOR: BOBCAT/SKID LOADER
(ALAMOSA, ARCHULETA, CHAFFEE, CONEJOS, CUSTER,
DELTA, DOLORES, FREMONT, GUNNISON, HINSDALE,
MONTEZUMA, MONTROSE, OURAY, RIO GRANDE, SAGUACHE,
SAN JUAN, SAN MIGUEL).....$ 18.20 4.54
POWER EQUIPMENT OPERATOR: BACKHOE/TRACKHOE
(MONTEZUMA).....$ 16.42 4.42
POWER EQUIPMENT OPERATOR: BACKHOE/TRACKHOE
(MINERAL).....$ 19.17 5.53
POWER EQUIPMENT OPERATOR: BACKHOE/TRACKHOE (LA
PLATA).....$ 19.79 5.13
POWER EQUIPMENT OPERATOR: BACKHOE/TRACKHOE
(ARCHULETA, CHAFFEE, CONEJOS, CUSTER, DELTA,
DOLORES, FREMONT, GUNNISON, HINSDALE, MONTROSE,
OURAY, RIO GRANDE, SAGUACHE, SAN JUAN, SAN MIGUEL)..$ 19.75 3.75
POWER EQUIPMENT OPERATOR: BACKHOE/TRACKHOE
(ALAMOSA).....$ 21.03 3.75
POWER EQUIPMENT OPERATOR: ASPHALT SPREADER.....$ 22.67 8.72
POWER EQUIPMENT OPERATOR: ASPHALT ROLLER
(MONTEZUMA).....$ 22.67 8.72
POWER EQUIPMENT OPERATOR: ASPHALT ROLLER (LA PLATA).$ 22.68 7.30
POWER EQUIPMENT OPERATOR: ASPHALT ROLLER
(ARCHULETA, CHAFFEE, CONEJOS, CUSTER, DELTA,
DOLORES, FREMONT, GUNNISON, HINSDALE, MINERAL,
MONTROSE, OURAY, RIO GRANDE, SAGUACHE, SAN JUAN,
SAN MIGUEL).....$ 22.77 8.36
POWER EQUIPMENT OPERATOR: ASPHALT ROLLER (ALAMOSA)..$ 21.67 8.22
POWER EQUIPMENT OPERATOR: ASPHALT PLANT.....$ 17.23 4.07
POWER EQUIPMENT OPERATOR: ASPHALT PAVER.....$ 22.67 8.72
POWER EQUIPMENT OPERATOR: ASPHALT LAYDOWN
(ARCHULETA, CHAFFEE, CONEJOS, CUSTER, DELTA,
DOLORES, FREMONT, GUNNISON, HINSDALE, MINERAL,
MONTEZUMA, MONTROSE, OURAY, RIO GRANDE, SAGUACHE,
SAN JUAN, SAN MIGUEL).....$ 23.13 8.64

POWER EQUIPMENT OPERATOR: ASPHALT LAYDOWN (ALAMOSA, LA PLATA).....$ 22.67 8.72
PAINTER (SPRAY ONLY).....$ 17.54 3.52
LABORER: TRAFFIC CONTROL (SETS UP/MOVES BARRELS, CONES, INSTALL SIGNS, ARROW BOARDS AND PLACE STATIONARY FLAGS)(EXCLUDES FLAGGERS).....$ 12.39 3.20
LABORER: TRAFFIC CONTROL (FLAGGER).....$ 9.42 3.21
LABORER: MASON TENDER-CEMENT/CONCRETE (LA PLATA)....$ 15.67 3.10
LABORER: MASON TENDER-CEMENT/CONCRETE (CHAFFEE).....$ 12.44 3.10
LABORER: MASON TENDER-CEMENT/CONCRETE (ALAMOSA, ARCHULETA, CONEJOS, CUSTER, DELTA, DOLORES, FREMONT, GUNNISON, HINSDALE, MINERAL, MONTEZUMA, MONTROSE, OURAY, RIO GRANDE, SAGUACHE, SAN JUAN, SAN MIGUEL).....$ 14.59 3.10
LABORER: LANDSCAPE AND IRRIGATION (LA PLATA).....$ 13.54 3.16
LABORER: LANDSCAPE AND IRRIGATION (ALAMOSA, ARCHULETA, CHAFFEE, CONEJOS, CUSTER, DELTA, DOLORES, FREMONT, GUNNISON, HINSDALE, MINERAL, MONTEZUMA, MONTROSE, OURAY, RIO GRANDE, SAGUACHE, SAN JUAN, SAN MIGUEL).....$ 14.02 3.16
LABORER: CONCRETE SAW (HAND HELD).....$ 16.00 6.14
LABORER: COMMON OR GENERAL (SAN JUAN).....$ 13.73 3.53
LABORER: COMMON OR GENERAL (MINERAL).....$ 14.84 3.53
LABORER: COMMON OR GENERAL (LA PLATA).....$ 14.07 3.53
LABORER: COMMON OR GENERAL (FREMONT).....$ 15.19 3.00
LABORER: COMMON OR GENERAL (ARCHULETA, CONEJOS, CUSTER, DELTA, DOLORES, GUNNISON, HINDSDALE, OURAY, RIO GRANDE, SAGUACHE, SAN MIGUEL).....$ 13.70 3.53
LABORER: COMMON OR GENERAL (ALAMOSA, CHAFFEE, MONTEZUMA, MONTROSE).....$ 12.44 3.53
LABORER: ASPHALT RAKER (LA PLATA).....$ 15.38 3.12
LABORER: ASPHALT RAKER (ARCHULETA, CHAFFEE, CONEJOS, CUSTER, DELTA, DOLORES, FREMONT, GUNNISON, HINSDALE, SAN JUAN, SAN MIGUEL).....$ 16.43 3.42
LABORER: ASPHALT RAKER (ALAMOSA).....$ 17.53 3.75
IRONWORKER: STRUCTURAL (EXCLUDES GUARDRAIL INSTALLATION).....$ 16.76 6.01
IRONWORKER: REINFORCING (EXCLUDES GUARDRAIL INSTALLATION).....$ 16.94 6.77
HIGHWAY/PARKING LOT STRIPING: PAINTER.....$ 12.90 3.07
HIGHWAY/PARKING LOT STRIPING: TRUCK DRIVER (LINE STRIPING TRUCK).....$ 14.60 3.49
GUARDRAIL INSTALLER.....$ 12.78 3.31
ELECTRICIAN.....$ 28.06 8.76
CEMENT MASON/CONCRETE FINISHER (MONTROSE).....$ 16.95 2.85
CEMENT MASON/CONCRETE FINISHER (LA PLATA).....$ 18.99 2.85
CEMENT MASON/CONCRETE FINISHER (CHAFFEE).....$ 15.55 2.85
CEMENT MASON/CONCRETE FINISHER (ALAMOSA, ARCHULETA, CONEJOS, CUSTER, DELTA, DOLORES, FREMONT, GUNNISON, HINSDALE, MINERAL, MONTEZUMA, OURAY, RIO GRANDE, SAGUACHE, SAN JUAN, SAN MIGUEL).....$ 17.67 2.85
CARPENTER, FORM WORK ONLY (LA PLATA).....$ 18.60 5.38
CARPENTER, FORM WORK ONLY (ALAMOSA, ARCHULETA, CHAFFEE, CONEJOS, CUSTER, DELTA, DOLORES, FREMONT, GUNNISON, HINSDALE, MINERAL, MONTEZUMA, MONTROSE, OURAY, RIO GRANDE, SAGUACHE, SAN JUAN, SAN MIGUEL)..$ 18.57 5.38

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

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Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any

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

Note: Executive Order 13658 generally applies to contracts subject to the Davis-Bacon Act that were awarded on or between January 1, 2015 and January 29, 2022, and that have not been renewed or extended on or after January 30, 2022. Executive Order 13658 does not apply to contracts subject only to the Davis-Bacon Related Acts regardless of when they were awarded. If a contract is subject to Executive Order 13658, the contractor must pay all covered workers at least $13.65 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract from May 11, 2026, through December 31, 2026. The applicable Executive Order minimum wage rate will be adjusted annually. Additional information on contractor requirements and worker protections under Executive Order 13658 is available at
www.dol.gov/whd/govcontracts.

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

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

Union Rate Identifiers

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

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

Union Average Rate Identifiers

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

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

Survey Rate Identifiers

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

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

State Adopted Rate Identifiers

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

WAGE DETERMINATION APPEALS PROCESS

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

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

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

davisbaconinfo@dol.gov or by mail to:
Branch of Wage Surveys
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

Regarding any other wage determination matter such as conformance decisions, requests for initial decisions should be directed to the WHD Branch of Construction Wage Determinations. Requests can be submitted via email to BCWD-Office@dol.gov or by mail to:
Branch of Construction Wage Determinations
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

2) If an initial decision has been issued, then any interested party (those affected by the action) that disagrees with the decision can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Requests for review and reconsideration can be submitted via email to dba.reconsideration@dol.gov or by mail to:
Wage and Hour Administrator
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

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

3) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:
Administrative Review Board
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210.

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END OF GENERAL DECISION

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SPECIAL CONTRACT REQUIREMENTS

The following Special Contract Requirements amend and supplement the *Standard Specifications for Construction of Roads and Bridges on Federal Highway Projects (FP-24),* U.S. Department of Transportation, Federal Highway Administration.

Section 101. — TERMS, FORMAT, AND DEFINITIONS

101.02 Specifications Format. Delete the second paragraph and substitute the following:

Division 150 consists of project contract requirements that apply to all contracts. The contractor must perform all work included in Division 150. Work under Division 150 is paid for directly or indirectly according to Subsection 109.05. If there is no pay item in the bid schedule, no direct payment is made.

101.03(a) Acronyms. Add the following:

CDR – Contractor's Daily Record

101.04 Definitions. Delete the definition of (c) Supplemental agreement under Contract Modification.

101.04 Definitions. Add the following:

Masterworks — A web-based system used by the Government, Contractors, and Subcontractors on this Government contract to prepare CDRs, measurement notes (pay notes and field measurement documentation), and transmit submittals, and documents and drawings.

Section 102. — BID, AWARD, AND EXECUTION OF CONTRACT

102.02A Physical Data. (Added Subsection).

Data and information furnished or referred to below is for the Contractor's information. The Government is not responsible for any interpretation of, or conclusion drawn from the data or information by the Contractor.

(a) The indications of physical conditions on the drawings and in the specifications are the result of site investigations by:

(1) Final Hydraulic Report dated May 28, 2026.

(2) Geotechnical Recommendations Technical Memorandum dated May 28, 2026.

(b) Weather conditions: Contact the National Weather Service.

(c) The following design data is applicable to the Fall Creek, Hatcher, and Lower Piedra sites and posted on https://sam.gov/:

(1) Horizontal and vertical alignment listings in Portable Document Format (.pdf) and LandXML (.xml) formats;

(2) 3D surfaces of existing ground, subgrade, and top of base course in LandXML (.xml) format;

(3) Proposed 3D breaklines in Drawing Exchange Format (.dxf);

(4) 3D coordinates and offset distance from centerline for subgrade and slope staking information and top of base course information at 50-foot intervals and miscellaneous intermediate stations in Portable Document Format (.pdf);

(d) The following design data is applicable to the East Fork site and posted on https://sam.gov/:

(1) Horizontal and vertical alignment listings in Portable Document Format (.pdf) and LandXML (.xml) formats;

(2) 3D surfaces of existing ground in LandXML (.xml) format.

Section 104. — CONTROL OF WORK

104.04 Electronic Documentation. Delete this Subsection and substitute the following:

Provide documents and drawings electronically using Masterworks.

Request the *Masterworks User Account Form* (Form Masterworks-001) and submission instructions. Complete and electronically submit Form Masterworks-001 for each individual requiring Masterworks access. Allow 7 days for system access.

Contact the CO to schedule a training session on the use of Masterworks. The virtual training session will be either a video presentation or live training as determined by the CO. The Contractor is responsible for training additional staff that were not present during the original training session.

Maintain active Masterworks accounts for all Contractor staff who use Masterworks. Notify the CO within 24 hours after an account holder is reassigned or no longer associated with the project. If account holder is no longer employed by the contractor, submit a Form Masterworks-001 requesting their account be marked inactive.

Provide documents and drawings in their native file format (the format produced by the software that the document and drawing was created in) upon request.

Documents and drawings include but are not limited to correspondence, submittals, measurement notes, reports, plans, diagrams, qualifications, certifications, payrolls, schedules, invoices, mix designs, job-mix formulas, test results, notifications, requests, permits, and agreements.

Provide a resolution quality with color, text, and lines clearly discernible. Submit each document and drawing in an individual file. Name files with a unique document name.

Documents and drawings delivered after 5:00 pm local time will be considered received on the next business day.

The CO will reject documents that are unreadable, corrupted, illegible, or include malicious content.

104.08 Load Restrictions. Delete the second sentence of the third paragraph.

Section 105. — CONTROL OF MATERIAL

105.01 Source of Supply and Quality Requirements. Add the following:

Materials containing petroleum-based solvents such as cutback asphalts and traffic paints may be restricted from use by local laws or ordinances in certain geographic areas. Upon presenting proof of such restrictions, alternate materials considered acceptable to the CO may be substituted for the materials specified in the contract.

Certify, according to Subsection 107.10(d), that sources of rock, sand, gravel, earth, subsoil, or other natural material imported into the project construction limits are noxious weed free.

105.02(a) Government-furnished sources. Add the following:

> The Contractor may use rivers and creeks adjacent to the project sites for construction water. Fit pumps with mesh screens over the intake with a maximum mesh size of $^{3}/_{32}$ inch.

105.04 Handling and Storing Material. Add the following after the second paragraph:

For Contractor-located, non-commercial staging, storing, and material handling areas, secure environmental clearances according to Subsection 107.10.

Add the following:

The Contractor may use previously disturbed areas within the road closures for stockpiling and staging.

Use products according to the manufacturer's recommendations for handling, storage, and disposal. Follow the requirements of FAR Clause 52.236-10 Operations and Storage Areas and FAR Clause 52.236-12 Cleaning Up. Maintain the staging and storage areas in a clean, neat, and orderly condition.

Store construction, building and waste materials, and containers in designated areas indoors or protect with a suitable covering.

Keep the manufacturer's SDS, an inventory of the material, and emergency numbers near the storage area. Take appropriate measures to ensure that incompatible chemicals are not stored next to each other.

Store construction materials within the limits shown in the plans. Properly store materials according to the applicable permit. Check the storage areas weekly and according to the applicable permit.

Submit a site map showing the material storage and stockpile locations at least 14 days before the start of construction activities.

Section 106. — ACCEPTANCE OF WORK

106.01 Conformity with Contract Requirements. Add the following:

If the accuracy of Government test results is disputed, inform the CO. If the dispute is unresolved after reasonable steps are taken to resolve the dispute, further evaluation may be obtained by written request.

Where sample and testing procedures refer to AASHTO, ASTM, or other standards (designated as FLH T), use the procedure as modified in the FLH *Field Materials Manual*.

Where the specifications refer to AASHTO T 11, follow "Procedure B - Washing Using a Wetting Agent".

Where the specifications refer to AASHTO T 310, follow the "Direct Transmission Method of In-Place Nuclear Density and Moisture Content".

106.03 Certification. Delete the third paragraph and substitute the following:

See Table 106-3 for schedule for full or partial acceptance by material certification. Submit certification and sample of material for testing as required.

Check certifications before incorporating the material into the work to ensure that the requirements of the contract have been met. Mark the certifications with the following information: project number and name; pay item number and description; date; and Contractor-signed certification stating "to the best of our knowledge the materials certified by the attached certification represent the materials incorporated into the work of this contract".

Table 106-3
Schedule For Full or Partial Acceptance by Materials Certification

Section	Description	Material	Material Property Or Specification	Certification Frequency	Sample Frequency
302	Crushed Aggregate	Crushed aggregate	Source, quality and gradation	1 per source	1 per source
312	Dust Palliative	Calcium chloride magnesium chloride, lignosulfonate	As specified	1 per shipment	First shipment
403	Asphalt Concrete	Aggregate asphalt mix	Source quality, gradation, stability, and grade	1 per mix	1 per source
634 and 635	Permanent Pavement Markings, Temporary Traffic Control	634.02 as applicable, 635 as applicable	As specified	1 per source	–
701	Cementitious Material	Portland cement, blended hydraulic cement, mortar cement	AASHTO M 85, M 240, ASTM C91 and ASTM C1392 as applicable	1 per shipment	1 per 100 tons
702.01	Asphalt Binder	Asphalt cement	AASHTO M 226 or M 320, as applicable	1 per shipment	1 per shipment
702.02	Emulsified Asphalt	Emulsified asphalt	AASHTO M 140 or M 208 as applicable	1 per shipment	1 per shipment
702.05	Antistrip Additive	As specified	As applicable	1 per shipment	–
706	Concrete Pipe	As specified	As applicable	1 per shipment	–
707	Metal Pipe	As specified	As applicable	1 per shipment	–
708	Plastic Pipe	As specified	As applicable	1 per shipment	–
709	Reinforcing Steel and Wire Rope	As specified	As applicable	1 per shipment	For 709.01 submit 3, 1-yard bars of each size and grade of bar furnished. For 709.02 submit 1 6-foot length for each size furnished
710	Fencing and Mesh Fabrics	As specified	As applicable	1 per shipment	–
711	Concrete Curing Material and Additives	As specified	As applicable	1 per material source per material type	–
712	Joint Material	As specified	As applicable	1 per shipment	–

Section	Description	Material	Material Property Or Specification	Certification Frequency	Sample Frequency
713	Roadside Improvement Material	As specified	As applicable	1 per shipment	–
714	Geosynthetic Material	As specified	As applicable	1 per shipment	1 per project per type
715	Piling	As specified	As applicable	1 per shipment	–
716	Material for Timber Structures	Timber and hardware	As applicable	1 per shipment	–
717	Structural Metal	As specified	As applicable	1 per shipment	For 717.01(e) minimum 6 per shipment for each size used. For 717.09 1 per project
718	Traffic Signing and Marking Material	As specified	As applicable	1 per shipment	–
719	Coating Material	As specified	As applicable	1 per batch\lot	1 sample for quantities > 25 gallons
720	Structural Wall and Stabilized Embankment Material	As specified	As applicable	1 per shipment per material type	–
721	Electrical and Illumination Material	As specified	As applicable	1 per shipment per material type	–
722	Anchor Material	As specified	As applicable	1 per shipment per material type	–
723	Dampproofing and Waterproofing Material	Asphalt materials used for damproofing and waterproofing concrete and masonry surfaces	As specified for each type of asphalt material	1 per shipment	–
724	Guardrail	As specified	As applicable	1 per shipment	–
725	Miscellaneous Material	As specified	As applicable	1 per shipment per material type	–

106.03(b) Production certification. Delete subsection **(3)** and substitute the following:

(3) Substantiating evidence that the material conforms to the contract quality requirements, including the following:

(a) Test results on material from the same lot and documentation of the inspection and testing system;

(b) A statement from the manufacturer that the material complies with the contract; and

(c) Manufacturer's signature or other means of demonstrating accountability for the certification.

Section 107. — LEGAL RELATIONS AND RESPONSIBILITY TO THE PUBLIC

107.01 Laws to be Observed. Add the following:

(a) Section 401 and Section 404 of the Clean Water Act. Comply with the terms and conditions of any permits that authorize the discharge of dredged or fill material in waters of the U.S., including Section 404 permits and Section 401 water quality certifications. See the Appendix for permits. The following permits apply to the respective, individual sites:

- Nationwide 3 Permit – Hatcher Road, West Fork of San Juan River Bridge, East Fork Road
- Nationwide 13 Permit – Lower Piedra Campground
- Nationwide 14 Permit – Fall Creek Road

(b) National Pollutant Discharge Elimination System (NPDES). Comply with the requirements of the Construction General Permit (CGP) as shown in Table 107-1.

Prepare a Stormwater Pollution Prevention Plan (SWPPP) according to Section 157. If the current CGP expires during the contract, amend the SWPPP when a new permit goes into effect to meet new permit conditions.

Obtain a separate NPDES permit associated with industrial activity for mobile asphalt and concrete plants that provide material for the project. Provide a copy of the permit and acknowledgement letter to the CO.

(1) Notice of Intent (NOI). After the SWPPP is approved, file the NOI according to the CGP as shown in Table 107-1. Allow the regulatory review period, shown in Table 107-1, from submittal of NOI to receipt of authorization of coverage under the CGP. Provide a copy of the NOI and confirmation letter to the CO.

Post all project authorization numbers near the entrance to the site and on the bulletin board.

(2) Payment of permit fees. Submit the appropriate permit fees and renewal fees required for both the Contractor and Government to the regulatory agency.

(3) Notice of Termination (NOT). If applicable, file a NOT when the conditions listed in the CGP have been met or transfer the NOI to the maintaining agency after final acceptance.

Table 107-1
NPDES Permits

State / Agency	Permit Number and Link	Effective Date	Expiration Date	Regulatory Review Period
Colorado (Federal)	COR10F000	2/17/2022	2/16/2027	14 days

107.02(d) Utilities. Add the following:

The locations of the utilities shown in the plans have been certified to a Quality Level D according to the CFLHD *Utility Data Quality Certification* requirements available at https://highways.dot.gov/federal-lands/rw-util/cfl.

Table 107-2
Status of Utilities

	Utility Type	Company	Contact Name	Phone Number / Email	Status(1)
1	Telephone (West Fork site)	Century Link	N/A	800-244-1111	4
2	Electric (West Fork site)	La Plata Electric	N/A	970-247-5786	4
3	Gas (East Fork site)	Xcel Energy	Tim Butler	303-507-9600	4

(1) Status is defined as follows:
Status 1: The utilities are in conflict with the project and require relocation by others during construction.
Status 2: The utilities are in conflict with the project and require relocation by the Contractor during construction.
Status 3: The utilities are in conflict with the project and require relocation by others before construction.
Status 4: The utilities are located within the project right-of-way but require no relocation.

107.03 Bulletin Board. Delete Subsections (a) and (f).

107.05 Responsibility for Damage Claims. Delete the first sentence of the third paragraph and substitute the following:

Before work starts, submit "*certificates of insurance*" certifying that the policies will not be changed or canceled until 30 days' written notice has been given to the Government.

107.08 Sanitation, Health, and Safety. Delete the first paragraph and substitute the following:

Follow the requirements of FAR Clause 52.236-13 Accident Prevention, Alternate 1. Submit an accident prevention plan.

107.10(a) Federal Water Pollution Control Act (Clean Water Act) 33 USC § 1251 et seq. Add the following:

(4) Do not ford running streams with construction equipment. Obtain approval from the CO to use temporary bridges or other structures whenever crossings are necessary.

(5) Locate machinery servicing and refueling areas away from streambanks, wetlands, shorelines, lakes, and reservoirs to reduce the possibility and minimize the impacts of accidental spills or discharges.

107.10(b) Oil and hazardous substances. Delete the third and fourth paragraphs and substitute the following:

Do not use equipment with leaking fluids. Repair equipment leaks immediately. Keep absorbent material manufactured for containment and cleanup of hazardous material on the job site. Sand and soils are not approved absorbent materials.

Notify the CO of hazardous spills. Report the spill to the appropriate federal, state, and local authorities as required by the SPCC plan or hazardous spill plan.

107.10(c) Dirt, plant, and foreign material. Add the following:

All vehicles and equipment entering the project area must be clean of noxious weeds and free from oil leaks and are subject to inspection. Thoroughly wash construction equipment, including the undercarriage and any surface where soil containing exotic seeds may exist. Allow the CO to inspect each piece of equipment before entering the project. Provide the cleaning and inspection records to the CO.

107.10(d) Clearances for Contractor-selected, noncommercial areas. Add the following to the end of the first paragraph:

Use rock, sand, gravel, earth, subsoil, or other natural materials from a Contractor-selected non-commercial materials source that has been certified free of noxious weeds. Materials imported into the project limits which do not include a noxious weed free certification may be rejected and ordered to be removed from the project limits. The CO has the discretion of requesting inspection of certified materials by a third party and rejecting the use of the source if noxious weeds or seeds thereof are found to be present.

Add the following after Subsection (4):

(5) Any required certifications.

107.11 Protection of Forests, Parks, and Public Lands. Add the following:

Comply with the fire prevention plan included in the Appendix. The CO will order the emergency suspension of operations when conditions are unsafe as determined by the CO and the land management agency.

Section 108. — PROSECUTION AND PROGRESS

108.01 Commencement, Prosecution, and Completion of Work. Delete this subsection and substitute the following:

A preconstruction conference will be held after the contract is awarded and before starting work. Seven days before the preconstruction conference, submit copies of the preliminary work plan according to Section 155.

Limit operations according to Sections 107 and 156.

Limit operations as follows:

(a) The West Fork Campground, located east of the West Fork of San Juan River Bridge, is available for the placement of an office trailer and contractor personnel camping. The campground remains open to the public and is operated by a concessionaire; campsite availability is not guaranteed. Submit a written request to the CO at least 14 days before the intended use. Do not occupy the campground or mobilize personnel or equipment to the site until written authorization is received from the CO. The Government is not responsible for expenses, delays, or contract adjustments if the campground or trailer space is unavailable.

(b) The winter shutdown period is anticipated for the months of December thru May, due to the high altitude climate and snow fall. Coordinate with the CO on the exact dates of the winter shutdown period, based on current and anticipated weather conditions.

Perform no work except to maintain traffic control devices, erosion control devices, the roadway driving surface, and to control dust during the listed holidays and surrounding days as shown in Table 108-2.

Table 108-2
Holidays and Surrounding Days

Holiday	Time	Remarks
Birthday of Martin Luther King, Jr.	Noon Friday to 6:00 a.m. Tuesday	–
Washington's Birthday	Noon Friday to 6:00 a.m. Tuesday	–
Memorial Day	Noon Friday to 6:00 a.m. Tuesday	–
Juneteenth National Independence Day	Noon June 18 to 6:00 a.m. June 20	If June 19 falls on a Saturday, do not work the preceding Friday. If June 19 falls on a Sunday, do not work the following Monday.
Independence Day	Noon July 3 to 6:00 a.m. July 5	If July 4 falls on a weekend, Friday, or Monday, do not work the weekend. If July 4 falls on a Saturday, do not work the preceding Friday. If July 4 falls on a Sunday, do not work the following Monday.
Labor Day	Noon Friday to 6:00 a.m. Tuesday	–
Columbus Day	Noon Friday to 6:00 a.m. Tuesday	–
Veterans Day	Noon November 10 to 6:00 a.m. November 12	If November 11 falls on a Saturday, do not work the preceding Friday. If November 11 falls on a Sunday, do not work the following Monday.
Thanksgiving Day	Noon Wednesday to 6:00 a.m. Monday	–
Christmas Day / New Year's Day	Noon December 23 to 6:00 a.m. January 2	If December 23 or January 1 falls on a Monday, do not work the adjacent weekend and do not work on December 23. If January 1 falls on a Friday, do not work the weekend.

Schedule at least 2 non-workdays out of every 14 days. The selected non-workdays do not need to be consecutive, but they must be scheduled. Notify the CO at least 2 weeks before changing the scheduled days off.

The CO may grant written approval for exemptions to scheduled days off for specific project operations and for periods of limited duration.

<u>Add the following:</u>

The CO will issue the NTP before commencement of any work. The completion date is 7/30/2027. The interim completion date for the West Fork of San Juan River Bridge site is 11/16/2026.

108.03 Subcontracting. Delete the second paragraph and substitute the following:

Within 14 days of subcontract award, submit a completed SF 1413 and 1413S. Complete Part I for each Subcontractor, and include Part II when the Subcontractor performs on-site work. Complete other forms that may be required by the Government to show the work subcontracted and the total dollar amount of the subcontract. Submit the above required information for each Subcontractor at lower tiers.

108.04 Determination and Extension of Contract Time. Delete the first sentence.

108.04(c) Time extensions. Add the following:

If a quantity variation described in Subsection 109.06(e) results in an increase in the time necessary for completion, the Contractor may request, in writing, an extension of time as provided within this Subsection.

108.05 Failure to Complete Work on Time. Delete the second and third paragraphs and substitute the following:

Liquidated damages in the amount specified in FAR Clause 52.211-12 Liquidated Damages — Construction will be assessed for each day beyond the time allowed to complete the contract until substantial completion of the work.

If a winter shutdown occurs during this period, liquidated damages in an amount equal to 10 percent of the amount shown in FAR Clause 52.211-12 Liquidated Damages — Construction will be assessed for each day until work resumes at which time full liquidated damages will be assessed.

Delete Table 108-1.

Section 109. — MEASUREMENT AND PAYMENT

109.01 Measurement of Work. Delete the sixth paragraph.

109.01 Measurement of Work. Delete the seventh paragraph and substitute the following:

Prepare, sign, and submit electronic measurement notes (item postings and supporting field documentation) using Masterworks. Unacceptable measurement notes will be electronically rejected and returned. Correct rejected measurement notes and resubmit electronically.

109.02(d)(1)*(a) Average end area method.* Delete this Subsection and substitute the following:

> *(a) Average end area method.* Take cross-sections of the original ground. Use design or staked templates to determine end areas. Compute the quantity using the average

end areas multiplied by the horizontal distance along a centerline or reference line between the end areas.

109.06(c)(3) Profit. Delete this Subsection and substitute the following:

(3) Profit. Include a reasonable profit, except when precluded by the FAR. Limit profit to 10 percent of the total cost. Due to the limited risk in post-work pricing, a lower profit percentage may be determined by a profit analysis according to FAR 15.404-9 Profit.

109.06(d) Cost or pricing data. Delete this Subsection and substitute the following:

(d) Cost or pricing data. When the contract modification exceeds the amount indicated in FAR Clause 52.214-27 Price Reduction for Defective Cost or Pricing Data - Modifications - Sealed Bidding, FAR Clause 52.215-10 Price Reduction for Defective Certified Cost or Pricing Data, or FAR Clause 52.215-11 Price Reduction for Defective Cost or Pricing Data - Modifications, and the CO has determined that an exception does not apply, submit cost or pricing data according to Subsection 109.06(b) or (c) as applicable and as defined in FAR Subpart 2.1 Definitions, for the Contractor and each major subcontractor. See FAR Subpart 15.4 Contract Pricing and FAR Table 15-1 Instructions for Submitting Cost/Price Proposals When Certified Cost or Pricing Data Are Required for guidance.

109.06 Pricing of Adjustments. Add the following:

(e) Variation in estimated quantity. If the quantity of a unit-priced item is an estimated quantity and the actual quantity of the unit-priced item varies more than 15 percent above or below the estimated quantity, an equitable adjustment in the contract price may be made upon request of either party. The equitable adjustment will be based upon any increase or decrease in costs due solely to the variation above 115 percent or below 85 percent of the estimated quantity.

109.08(a) General. Delete the last sentence and substitute the following:

The CO may withhold partial progress payment according to Subsection 109.08(h) for failure to make satisfactory progress until a construction schedule or schedule update is approved.

109.08(b) Invoice requirements. Add the following:

Submit a separate statement documenting the total cumulative value for on-site work subcontracted to date as a percentage of the original contract amount.

109.08(c) Government's receiving report. Delete this Subsection and substitute the following:

The Government's receiving report will be developed using the measurements and quantities from Pay Notes received by the CO in Masterworks and determined acceptable.

109.08(d) Closing date and invoice submittal date. Add the following:

No closing dates will be permitted from September 1 to October 5. Do not submit invoices between September 1 and October 5.

109.08(e)(1) Proper invoices. Delete this Subsection and substitute the following:

(1) Invoices received by the 7th day following the closing date.

(a) Proper invoices. If the invoice meets the requirements of Subsection 109.08(b), and the quantities and unit prices shown on the Contractor's invoice agree with the corresponding quantities and unit prices shown on the Government's receiving report, the invoice will be paid.

(b) Defective invoices. If the invoice does not meet the requirements of Subsection 109.08(b), or if any of the quantities or unit prices shown on the Contractor's invoice exceed the corresponding quantities and unit prices shown on the Government's receiving report, the invoice will be deemed defective, and the Contractor so notified according to FAR Clause 52.232-27(a)(2). Defective invoices will not be corrected by the Government and will be returned to the Contractor within 7 days after the Government's designated billing office receives the invoice.

Revise and resubmit returned invoices by the 18th day following the closing date. The CO will evaluate the revised invoice. If the invoice is deemed proper, it will be forwarded for processing within 7 days of receipt. If the invoice still does not meet the requirements of Subsection 109.08(b), the Contractor will be so notified according to FAR Clause 52.232-27(a)(2), and no progress payment will be made that month. Correct the deficiencies and resubmit the invoice the following month.

If the revised invoice meets the requirements of Subsection 109.08(b), but still has quantities or unit prices exceeding the corresponding quantities and unit prices shown on the Government's receiving report, the Government's data for that item or work will be used. The Contractor's invoice, as revised by the Government's receiving report, will be forwarded for processing by the 23rd day following the closing date. The Contractor will be notified by the 23rd day following the closing date of the reasons for any changes to the invoice.

109.08(e)(2) Defective invoices. Delete this Subsection and substitute the following:

(2) Invoices received between the 8th and 16th day following the closing date.

(a) Proper invoices. If the invoice meets the requirements of Subsection 109.08(b), and the quantities and unit prices shown on the Contractor's invoice agree with the corresponding quantities and unit prices shown on the CO's receiving report, the invoice will be deemed proper and forwarded for processing within 7 days of receipt.

(b) Defective invoices. If the invoice does not meet the requirements of Subsection 109.08(b), the invoice will be deemed defective, the Contractor so notified according

to FAR Clause 52.232-27(a)(2), and no progress payment will be made that month. Correct the deficiencies and resubmit the invoice the following month.

If the invoice meets the requirements of Subsection 109.08(b) but has quantities or unit prices exceeding the corresponding quantities and unit prices shown on the Government's receiving report, the Government's data for that item of work will be used. The Contractor's invoice, as revised by the Government's receiving report, will be forwarded for processing within 7 days of the Government's receipt of the invoice. The Contractor will be notified of the reasons for any changes to the invoice.

109.08(f) Partial payments. Delete this Subsection and substitute the following:

(f) Partial payments. Progress payments may include partial payment for material to be incorporated in the work according to FAR Clause 52.232-5(b)(2), provided the material meets the requirements of the contract and is delivered on, or in the vicinity of, the project site or stored in acceptable storage places.

Partial payments for stockpiled manufactured material (aggregates) will be based on Contractor process control test results. If test results show the material to be out-of-specification, or in "reject" where statistical evaluation procedures are used, no payment for stockpiled materials will be made.

Partial payment for material does not constitute acceptance of such material for use in completing items of work. Partial payments will not be made for living or perishable material until incorporated into the project.

Individual and cumulative partial payments for preparatory work and material will not exceed the lesser of:

(1) 80 percent of the contract bid price for the item; or

(2) 100 percent of amount supported by copies of invoices submitted.

The quantity paid will not exceed the corresponding quantity estimated in the contract. The CO may adjust partial payments as necessary to protect the Government.

Section 152. — CONSTRUCTION SURVEY AND STAKING

Construction Requirements

152.04 General. Add the following to the fifth paragraph:

The Government has established vertical and horizontal survey control points.

The Government will furnish design data listed in 102.02A(c).

152.05(b) Centerline establishment. Add the following:

Reestablishment of centerline may be ordered and paid for under Section 623 for purposes other than to control the work.

152.05(d)(2) Conventional survey methods. Add the following:

When the centerline curve radius is less than or equal to 250 feet, use a maximum longitudinal spacing between stakes of 25 feet. When the centerline is on a tangent or the curve radius is greater than 250 feet, use a maximum longitudinal spacing between stakes of 50 feet.

152.05(f)(1) AMG method. Delete this Subsection and substitute the following:

Use conventional survey methods for grade finishing.

152.05(g) Culverts. Delete this Subsection and substitute the following:

(1) Verify and set culvert locations at the inlet, outlet, and channel tie-in points as shown in the plans. Plot to scale the profile along the culvert centerline including the channel 50 feet upstream and downstream of the culvert. Show the existing ground, flow line, roadway section, and culvert including end treatments and other appurtenances. Show the elevations, culvert grade, average channel grade, culvert length, degree of elbow, catch points, and hinge points on the plot.

(2) Perform the following if the culvert design shown in the plans does not fit field conditions, when the CO requires adjustment to a culvert location, or when a culvert design isn't furnished for a new culvert, culvert replacement, or culvert extension:

(a) Recommend a revised culvert location and alignment if needed.

(b) Survey and record the ground profile along the culvert centerline and additional channel profile for an appropriate offset to capture required information in Subsection 152.05(g)(2)(e).

(c) Determine the slope catch points at the inlet and outlet.

(d) Set reference points and record information necessary to determine culvert length and end treatments.

(e) Plot to scale the profile along the culvert centerline. Show the existing ground, flow line, roadway section, culvert, end treatments, and other appurtenances. Show elevations, grade, culvert length, and degree of elbow.

(1) For single skewed culverts, submit a plotted field-design cross-section normal to roadway centerline and at each end section. Plot the offset and elevation of existing ground at the end section and at proposed template break points between

centerline and the end section. Ensure the template design embankment slope is not exceeded.

(2) For multiple skewed culverts, submit a plotted field design cross-section normal to roadway centerline and at the end sections (left and right) nearest to the shoulder. Plot the offset and elevation of existing ground at the end section and at proposed template break points between centerline and the end section. Ensure the template design embankment slope is not exceeded.

(3) Submit the plotted field-design cross-section for approval of final culvert length and alignment. Plot at a clear and readable scale.

(4) Set inlet, outlet, and reference stakes when the field design has been approved. Stake inlet and outlet ditches to ensure the culvert and end treatments (such as drop inlets) are functional.

(5) Adjust slope, reference, and clearing stakes as necessary to provide for culvert inlet treatments in cut slopes. Readjust slope, reference, and clearing stakes as necessary when culvert inlets are moved from their plan locations. Review slope adjustments with the CO and obtain approval.

152.05(i) Retaining walls, rockeries, special rock embankments, rock buttresses, gabion walls, and reinforced soil slopes. Delete the first sentence and substitute the following:

Survey and record profile measurements along the face of the proposed wall, rockery, embankment, buttress, or reinforced soil slope along the face of the proposed wall or slope, and at 5 feet and 10 feet in front of the wall or slope face.

Section 153. — CONTRACTOR QUALITY CONTROL

Description

153.01 Add the following:

This work also consists of using Masterworks to prepare electronic CDRs and measurement notes (pay notes and supporting field documentation), including entering labor, equipment, subcontractors, and inspection records into the system.

Construction Requirements

153.03(b) QC procedures. Add the following to Subsection (3):

List the material to be tested by pay item, tests to be conducted, the location of sampling, and the frequency of testing.

153.03 Quality Control Plan. Add the following after Subsection (c):

(d) Subcontractors and suppliers. Include the work of all subcontractors. If a subcontractor is to perform work under this Section, explain how the subcontractor's inspection plan will interface with the Prime Contractor first tier subcontractors and lower tier subcontractors and organizations, and the CO. Include the work of major suppliers and suppliers of structural and geotechnical services and materials.

153.03 Quality Control Plan. Add the following:

Modifications or additions may be required to any part of the plan that is not adequately covered. Acceptance of the quality control plan will be based on the inclusion of the required information. Acceptance does not imply any warranty by the Government that the plan will result in consistent contract compliance. It remains the responsibility of the Contractor to demonstrate such compliance.

153.04 Quality Control Manager. Delete the second sentence and substitute the following:

The QCM may manage or superintend the project. Do not assign the QCM manual labor or equipment operation duties.

153.05 Certifications and Submittals. Delete this Subsection and substitute the following:

For materials or work accepted by certification according to Subsection 106.03, review all certifications to ensure compliance with the requirements of the contract before incorporating materials into the work and provide a signed copy of the reviewed certification to the CO. According to FAR Subpart 46.407, materials or work without proper certification will be rejected in writing, and payment for such material or work will be withheld until proper certification has been provided to the CO.

153.06 Prosecution of Work. Delete this Subsection and substitute the following:

Address each of the subjects shown for each phase of construction:

(a) Preparatory phase.

(1) In a preparatory phase meeting, review the contract requirements for the work; the process for constructing the work; and the plan for inspecting, testing, measuring, and reporting the work. Include the project superintendent, QCM, work foreperson, and the CO in the meeting. Schedule and conduct a preparatory meeting for each type of work to be performed at least one week prior to beginning the work.

(2) Review and coordinate certifications, submittals, plans, drawings, and permits.

(3) Verify the capabilities of equipment, material, and personnel. Provide training as necessary.

(4) Establish a detailed testing schedule based on the production schedule.

(5) Ensure preparatory testing and inspection is accomplished.

(6) Review accuracy of the surveying and staking.

(b) Start-up phase.

(1) In a start-up phase meeting, review the contract requirements and the processes for constructing the work with the personnel who will be performing the work. Invite the CO, project superintendent, QCM, testers, and inspectors of the work being performed, and the personnel directly supervising and performing the work. Review the planned testing, inspection, and reporting requirements with the quality control personnel responsible for the testing and inspection. Explain the reporting procedures to be used if defective work is identified. Conduct a start-up meeting for each type of work to be performed upon beginning the work.

(2) Inspect, test, and report start-up work according to the QCP and ensure the work conforms to the contract.

(c) Production phase.

(1) Inspect, test, and report according to the QCP and evaluate the acceptability of the work produced.

(2) Identify and correct deficiencies.

(3) Request Government inspection.

(4) Provide feedback on processes and deficiencies. Identify root causes of deficiencies and make timely and effective changes to work processes to prevent repeated deficiencies.

153.07 Sampling and Testing. Delete this Subsection and substitute the following:

Perform sampling and testing according to the approved QCP. As a minimum perform process control testing according to the Sampling, Testing, and Acceptance Requirements tables at the end of each Section where applicable. Where no minimums are specified, submit proposed tests to be performed and the proposed sampling and testing frequencies.

(a) Sample splitting. Schedules and times or locations for obtaining on-site split samples for Government use will be provided by the CO using a procedure for random sampling. Sample any material that appears defective or inconsistent with similar material being produced, unless such material is voluntarily removed and replaced or otherwise corrected according to Subsection 106.01

(b) Testing. Provide a laboratory equipped with all test equipment necessary to satisfy the requirements of the contract. Ensure test equipment has been checked, calibrated, standardized, and otherwise verified according to AASHTO and ASTM standards by an individual qualified to perform the work. Perform an equipment inspection after the laboratory has been moved to its permanent location on the project site, and anytime it is moved thereafter. Inspect equipment within 45 days of actual use for project testing, and at least once a year thereafter. Do not use equipment that has not been inspected or is found to be deficient.

Mark deficient equipment and take it out-of-service until repaired or replaced and shown by subsequent inspection to perform as required. Maintain records documenting laboratory equipment inspections. Provide certification stating the equipment conforms to testing requirements and provide evidence of current inspection. Keep laboratory facilities clean and maintain equipment in proper working condition. Allow the CO unrestricted access to the laboratory for inspection and review.

The CO may require a demonstration of proficiency in sampling and testing capabilities. One or more proficiency samples may be provided by the Government to verify basic qualifications. Provide the results of the proficiency samples to the CO within 48 hours of receipt of the material.

153.08 Records and Control Charts. Delete the first sentence and substitute the following:

Maintain complete testing and inspection records by pay item number and make them accessible to the CO.

(a) QC and construction operations reports. Delete this Subsection and substitute the following:

(a) QC and construction operations reports. For each day of the contract, prepare a CDR using Masterworks. Enter initial data for Labor/Equipment and Subcontractors before beginning any work. Maintain and update the Labor/Equipment and Subcontractors data to reflect ongoing changes as they occur. Report operations or items of work separately, with manpower and equipment assigned to each operation separately. Detail inspection results, including deficiencies observed and corrective actions taken. Complete a CDR for each contractor and subcontractor working that day.

When submitting test results on material being incorporated into the work, report test results within the reporting times indicated in the sampling and testing requirements at the end of each Section.

Enter the following data into Masterworks:

(1) Subcontractor data.

(2) Labor/Equipment.

(a) All manpower and equipment, including contractor and subcontractors. Complete all data fields.

(b) Labor: Type/classification, move-in date, move-out date, hourly rate, the contractor or subcontractor, and name.

(c) Equipment: Type/classification, move-in date, move-out date, make, model, and year of equipment manufacture.

Certify all CDRs using the following statement:

"I certify that the information contained in this record is accurate and that work documented herein complies with the contract. Exceptions to this certification are documented as a part of this record."

Submit certified CDRs that have been signed by a person who has both responsibility for the inspection system and signature authority.

Submit the record and certification within 24 hours of the work being performed. If the CDR is incomplete, in error, or otherwise misleading, the CDR will be rejected and returned within Masterworks with corrections noted. Correct rejected CDRs and resubmit the revised CDR within 24 hours. If chronic errors or omissions occur, correct the procedures by which the records are produced.

153.09 Acceptance. Add the following:

The Government may charge to the Contractor the cost of any additional inspections required when the work being inspected is found not to comply with contract requirements during the initial inspection. Work stop orders, due to recurring deficiencies of work required by this Section, will be rescinded after the Contractor demonstrates to the CO that changes were made to the quality control plan and system which resulted in the correction of those deficiencies. There will be no adjustment in the contract time, or payments to the Contractor for any impacts, delays, or other costs due to any periods of work stoppage resulting from failure to comply with the requirements of this Section.

CDRs will be evaluated under Subsection 106.02.

Payment

153.11 Add the following:

Progress payments for Contractor quality control by the lump sum will be paid as follows:

(a) 25 percent of the pay item amount, no more than 0.5 percent of the original contract amount, will be paid after the Contractor quality control plan is accepted; all testing facilities are in place; qualified quality control supervisor, inspection, and sampling and testing personnel are in position to provide quality control activities; and the work being inspected or tested has started.

(b) 65 percent of the pay item amount will be prorated for payment based on the completed portion of the total work not including the original 25 percent completed under (a) above.

(c) The remaining portion of the pay item amount will be paid when all inspections, test results, submittals, and reports are complete and accepted.

Section 154. — CONTRACTOR SAMPLING AND TESTING

Construction Requirements

154.03 Sampling. Add the following:

Perform the initial curing of all concrete test cylinders. Provide for transporting the Government verification cylinders to the FHWA-Central Federal Lands Highway Division (CFLHD) Laboratory unless other testing facilities are approved.

Label each concrete mold with the name and number of the project, the cylinder number, date molded, location of the sample, and the test age (7, 14, or 28 days). Label the mold after casting and the cylinder after stripping to ensure the sample can be identified throughout the entire curing process.

Provide the required cylinder molds.

154.04B Laboratory (Contractor-Provided). (Added Subsection).

Provide a field laboratory or commercial laboratory equipped with all test equipment necessary to satisfy the requirements of the contract.

The sampling and testing services of a commercial laboratory meeting or exceeding the requirements described herein may be used if all contract sampling and testing requirements are satisfied by the use of the commercial facility.

Ensure test equipment has been checked, calibrated, standardized or otherwise verified according to AASHTO and ASTM standards by an individual qualified to do this work. Ensure mobile laboratories receive an equipment inspection after the laboratory has been moved to its permanent location on the project site and anytime it is moved thereafter. Inspect equipment within 45 days of actual use in project testing and at least once a year thereafter. Do not use equipment that has not been inspected or is found to be deficient. Mark deficient equipment and take it out-of-service until it is repaired or replaced and shown by subsequent inspection to perform as required. Maintain records documenting these inspections in the laboratory. Provide certifications stating the equipment conforms to testing requirements and provide evidence of current inspection.

The CO may require the Contractor to perform testing to demonstrate acceptable equipment and an acceptable level of technician competence. The CO may also check equipment and inspection records to verify condition. Repair or replace equipment not meeting applicable requirements. Keep laboratory facilities clean and maintain equipment in proper working condition. Provide the CO unrestricted access to the laboratory for inspection and review.

Section 155. — SCHEDULES FOR CONSTRUCTION CONTRACTS

Construction Requirements

155.05 Baseline Construction Schedule. Add the following:

Include activities for permit review and approval. Refer to the permitting agencies to determine an appropriate duration for permit application review, permit approval, and distribution of permits.

155.06(d)(1) Delete Subsection (*f*) and substitute the following:

> (*f*) Revised construction activities affected by impacts addressed with an approved time impact analysis. Include a revised completion date for the total work.

Section 156. — PUBLIC TRAFFIC

Construction Requirements

156.04 Maintaining Roadways During Work. Add the following to Subsection (a):

> Do not construct temporary traffic diversions outside of the clearing limits or use alternate route detours without approval.

156.06 Limitations on Construction Operations. Delete the first sentence of Subsection (d) and substitute the following:

> For alternate one-way traffic control, provide a minimum lane width of 9 feet.

156.06 Limitations on Construction Operations. Add the following:

> **(j)** The Fall Creek Road, West Fork of the San Juan River Bridge, Hatcher Road, and Lower Piedra Campground sites are currently closed to public traffic.
>
> **(k)** Maintain one lane of traffic during the work at the East Fork Road site.
>
> **(l)** Weekend work may be allowed with prior approval.

156.08 Traffic Control Supervisor. Delete the second paragraph and substitute the following:

The superintendent may serve as the TCS provided the requirements of Subsection 156.02 are met.

Section 157. — SOIL EROSION AND SEDIMENT CONTROL

Delete this Section and substitute the following:

Section 157. — SOIL EROSION CONTROL, SEDIMENT CONTROL, AND STORMWATER POLLUTION PREVENTION PLAN

Description

157.01 This work consists of preparing and maintaining a SWPPP including non-stormwater pollution prevention. This work also consists of implementing the SWPPP including, but not limited to, furnishing, constructing, and maintaining soil erosion and sediment control devices to eliminate or minimize pollutants in stormwater discharges from the project.

Material

157.02 Conform to the following Subsections:

Fiber rolls	713.12
Filter rock	705.08
Floating turbidity curtains	713.21
General purpose tackifier	713.11(a)
Geotextile	714.01
Gravel bags	713.13
Mulch	713.05
Nonloadbearing concrete masonry units	725.07(c)
Plastic lining	713.22
Prefabricated filter insert	713.20
Rock for riprap	705.02
Rock mulch	705.07
Rolled erosion control products	713.17
Sandbags	713.14
Sediment filter bags	713.19
Seed	713.04
Silt fence	713.16
Soil and soil-aggregate materials	704.01
Temporary culvert pipe	713.15
Temporary plastic fence	710.08
Turf reinforcement mats	713.18
Water for vegetation	725.01(b)

Construction Requirements

157.03 Qualifications. Provide a SWPPP Developer, Erosion Control Supervisor, and On-Site Stormwater Lead with experience in implementing erosion and sediment control. Provide documentation that personnel meet the qualifications in the applicable Construction General Permit (CGP) or the qualifications below, whichever is more stringent. Include certifications in those states where applicable. One person may serve in more than one role if qualified.

Submit the following for approval as part of the SWPPP submittal:

(a) SWPPP Developer. A résumé describing the following:

(1) Have completed 40 hours of stormwater management training;

(2) Have 5 years of highway or equivalent experience developing SWPPPs and designing site-specific BMPs; and

(3) Be registered or certified in the state in which the project is located for one or more of the following:

(a) Professional engineer, geologist, or hydrologist;

(b) Licensed landscape architect; or

(c) Other state or nationally recognized certification program for erosion and sediment control professionals.

(b) Erosion Control Supervisor. A résumé describing the following:

(1) Both of the following:

(a) Have completed 24 hours of stormwater management training; and

(b) Have 3 years of highway or equivalent construction experience that included oversight of erosion, sediment, and pollution control BMPs; or

(2) One of the following:

(a) Meet requirements of SWPPP Developer above; or

(b) Be registered or certified as a stormwater inspector from a state or nationally recognized certification program for stormwater inspectors.

(c) On-Site Stormwater Lead. A résumé describing the following:

(1) Both of the following:

(a) Have completed 8 hours of stormwater management training;

(b) Have 1 year of highway construction experience including stormwater management duties; or

(2) One of the following:

(a) Meet requirements of Erosion Control Supervisor above; or

(b) Be registered or certified as a stormwater inspector from a state or nationally recognized certification program for stormwater inspectors.

157.04 Roles and Responsibilities.

(a) SWPPP Developer. Develop the SWPPP for the project based on requirements in the CGP, plans, and specifications. Show construction phasing of erosion, sediment, and pollution

prevention BMPs for all construction activities on a site plan to meet water quality regulations. Review field changes and update the SWPPP when substantial changes occur.

(b) Erosion Control Supervisor. Implement the SWPPP, which includes but is not limited to, scheduling installation and maintenance of all BMPs, job site inspections, and other activities for pollution prevention. Review all inspection reports and ensure that the SWPPP and site plan are implemented and updated.

(c) Stormwater Lead. Install and maintain BMPs, conduct site inspections, monitor water quality, and perform all on-site and reporting activities required to comply with the CGP. Inform the Erosion Control Supervisor when changes are made. The Stormwater Lead is required to be on the project site during working hours, and available during non-work hours to do inspections before, during, and after qualifying rain events.

157.05 General. Develop, submit, and manage a SWPPP according to the CGP requirements. Contract permits amend the requirements of this Section. Submit the SWPPP to the CO at or before the preconstruction conference. Allow 14 days for CO review and approval.

If soil erosion and sediment pollution control measures are not functioning as intended, take corrective action to eliminate or minimize pollutants in stormwater discharges from the project.

Provide certified weed free devices.

Do not use monofilament plastic for erosion or sediment control products.

157.06 Controls and Limitations on Work. Mark clearing limits and construct sediment perimeter control measures before ground disturbing activities. Before the start of a construction activity, implement appropriate pollution prevention measures for the activity. No soil disturbing construction activity, including clearing and grubbing, may begin on the project until the SWPPP has been reviewed and approved, the NOI has been accepted by the permitting agency and is active, and the CO has authorized on-site work to proceed.

Limit the combined grubbing and grading operations areas to 5 acres of exposed soil at one time.

157.07 Stormwater Pollution Prevention Plan. Prepare, submit, and implement a Construction SWPPP following the SWPPP template of the state in which the project is located. Include the Federal Highway Administration as an operator on the project in charge of plans and specifications. If the state does not provide a template, follow the SWPPP template provided by the Environmental Protection Agency (EPA) (https://www.epa.gov/npdes/construction-general-permit-resources-tools-and-templates#swppp).

Provide a SWPPP according to the CGP.

Provisions in the SWPPP are incorporated by reference into the contract. Provide an electronic copy of the SWPPP.

Based on the approved SWPPP, provide the CO a list of the planned pollution prevention devices for each of the following: erosion controls, sediment controls, and non-stormwater controls.

Implement the SWPPP as required throughout the construction period. Modify the erosion, sediment, and non-stormwater pollution control details and SWPPP plans as necessary to accommodate project site conditions and proposed construction operations. Update the SWPPP when modifying erosion, sediment, and non-stormwater pollution controls. Provide a copy of the updated SWPPP monthly to the CO for review.

157.08 Soil Erosion Control. Apply erosion control measures to stabilize soils and to control temporary concentrated flows throughout the duration of the project. Construct and maintain measures according to the manufacturer's recommendations.

157.09 Sediment Control. Apply sediment control measures to intercept, slow, and detain the flow of stormwater throughout the duration of the project. Construct and maintain measures according to the manufacturer's recommendations.

157.10 Non-Stormwater Controls. Apply non-stormwater measures as needed and as required in the SWPPP to control non-stormwater discharges, and to prevent or limit potential pollutants at their source from contact with stormwater throughout the duration of the project. Construct and maintain measures according to the manufacturer's recommendations.

157.11 Acceptance. Material for erosion, sediment, and non-stormwater pollution control measures will be evaluated under Subsections 106.02 and 106.03.

Construction, maintenance, and removal of erosion control, sediment control, and non-stormwater controls will be evaluated under Subsections 106.02 and 106.04.

Measurement

157.12 Measure the Section 157 pay items listed in the bid schedule according to Subsection 109.02 and the following as applicable:

Do not measure replacement erosion, sediment, or non-stormwater pollution control measures.

Do not measure additional or changed erosion, sediment, or non-stormwater pollution control measures required when planned controls are not functioning as intended and corrective actions are taken.

Payment

157.13 The accepted quantities will be paid at the contract price per unit of measurement for the Section 157 pay items listed in the bid schedule. Payment will be full compensation for the work prescribed in this Section. See Subsection 109.05.

(a) Progress payments for SWPPP will be paid as follows:

(1) 25 percent of the pay item amount will be paid on the approval of the SWPPP and upon receipt of authorization from the permitting agency that the project permit is active.

(2) An additional 50 percent of the pay item amount will be prorated based on total work completed in the contract.

(3) The remaining portion of the pay item amount will be paid when a copy of the final SWPPP and all accompanying documentation, including inspection reports, water quality sampling results, and annual report submittals, is submitted and accepted after resolution of the final inspection punch list items.

(b) Progress payments for erosion and sediment control measures or devices will be paid as follows:

(1) 80 percent of the pay item amount will be prorated based on total work completed in the contract.

(2) 20 percent of the pay item amount will be paid at final acceptance.

Section 203. — REMOVAL OF STRUCTURES AND OBSTRUCTIONS

Description

203.01 Add the following:

This work also includes removal of existing culvert, temporary riprap, damaged guardrail, and stream debris.

Construction Requirements

203.05 Removing Material. Add the following:

Remove concrete according to Subsection 572.06.

Section 204. — EXCAVATION AND EMBANKMENT

Description

204.01 Add the following:

This work also consists of furnishing and placing reinforcement geosynthetic, Type 1 as shown in the plans. Install geotextile according to Section 207.

Construction Requirements

204.16(a)(1) Delete Subsection *(a)* and substitute the following:

(a) Roadway prism excavation. Use the design volume. The design volume is defined as the bid schedule quantity less any allowance, as shown in the plans. This volume is subject to adjustments resulting from changes to slope stakes according to Subsection 152.05(d);

204.16(a)(1) Delete Subsection *(h)* and substitute the following:

(h) Conserved material taken from pre-existing stockpiles and used in Section 204 work, except topsoil measured under Section 624. Only approved materials required to be conserved are eligible for measurement under this item.

Measurement

204.16 (c)(1)*(a).* Delete this Subsection and substitute the following:

(a) Roadway prism embankments. Use the design volume. The design volume is defined as the bid schedule quantity less any allowance, as shown in the plans. This volume is subject to adjustments resulting from changes to slope stakes according to Subsection 152.05(d);

Section 207. — EARTHWORK GEOSYNTHETICS

Measurement

207.09 Delete this Subsection and substitute the following:

Do not measure Section 207 items for payment.

Section 251. — RIPRAP

Construction Requirements

251.04 Placed Riprap. Add the following:

Place riprap in a stable orientation with minimal voids to produce a random pattern.

Section 270. — GROUTING SCOUR VOIDS (ADDED SECTION)

Description

270.01 This work consists of filling scour voids beneath bridge abutment footing with non-shrink grout.

Material

270.02 Conform to the following Subsections:

Non-shrink grout for scour voids	701.04(d)
PVC pipe	708.06

Construction Requirements

270.03 General. Install 4" diameter PVC pipes through formwork at 4 foot maximum spacing for placing grout and capturing displaced water. Grout to be mixed and pumped according to manufacturer's recommendations. Displaced water to be captured and disposed off-site. Following grout placement, remove pipes or cut pipes flush with formwork face.

Submit a grouting plan for approval 21 days before production which includes the following:

(a) Past experience. Demonstrate experience grouting scour voids of similar nature within the last 2 years.

(b) Scour grouting plan. Provide a drawing showing locations and extents of existing scour voids and proposed formwork.

(c) Grout material. Provide non-shrink grout certification and product information.

(d) Formwork. Describe materials, equipment, methods, and sequencing for installing formwork around scour voids.

(e) Grout mixing and placement. Describe equipment, methods, and sequencing for mixing and placement of grout.

Section 302. — CRUSHED AGGREGATE

302.06 Acceptance. Add the following to the second paragraph:

Sample material at the frequency shown in Table 302-1. Materials that do not meet the approved certification will be considered unacceptable.

Delete Table 302-1 and substitute the following:

Table 302-1
Sampling, Testing, and Acceptance Requirements

Material or Product	Type of Acceptance (Subsection)	Characteristic	Test Methods Specifications	Sampling Frequency	Point of Sampling	Split Sample	Reporting Time
Production							
Crushed aggregate(1)	Measured & tested for conformance (106.04)	Moisture-density	AASHTO T 180, Method D(3)	1 per aggregate supplied	Production output or stockpile	Yes	Before using in work
		Gradation(2)	AASHTO T 11 & T 27	1 per 500 tons	From the windrow or roadbed after processing	Yes	Before placing next layer
		Density	AASHTO T 310 or other approved procedures	1 per 500 tons	In-place after compaction	No	Before placing next lift
Crushed aggregate	Process control (153.03)	Moisture content (in-place)	AASHTO T 310 or other approved procedures	1 per 500 tons	In-place after compaction	No	Before placement of next lift or as requested
Finished Product							
Crushed aggregate	Measured & tested for conformance (106.04)	Surface tolerance & grade	Subsection 301.06	Determined by the CO	Surface of final course	No	Before placement of next layer or as requested

(1) Sampling and testing required for roadway aggregate.
(2) Use only sieves indicated for the specified gradation.
(3) At least 5 points per proctor.

Section 578. — PRECAST CONCRETE ELEMENTS

578.02 Add the following:

Precast Reinforced Concrete Box Sections 706.07

578.09 Acceptance. Add the following:

Concrete for precast box culvert elements will be evaluated under Section 552.

Section 601. — MINOR CONCRETE

Delete Table 601-2 and substitute the following:

Table 601-2

Sampling, Testing, and Acceptance Requirements

Material or Product (Subsection)	Type of Acceptance (Subsection)	Characteristic	Test Methods Specifications	Sampling Frequency	Point of Sampling	Split Sample	Reporting Time	Remarks
Source								
Aggregate (fine & coarse)	Measured & tested for conformance (106.04 & 105)	Quality	Subsections 703.01 & 703.02	1 per material type	Source of material	Yes	Before producing	–
Mix Design								
Concrete composition (601.03)	"	All	Subsection 601.03	1 per mix design	Source of material	If requested	Before producing	–
Production								
Concrete(1)	Measured & tested for conformance (106.04)	Density	AASHTO T 121	1 set per truck load, but not less than 1 per day	Point of discharge	No	Upon completing tests	–
		Air content	AASHTO T 152 or AASHTO T 196	"	"	"	"	–
		Slump	AASHTO T 119	"	"	"	"	–
		Temperature	ASTM C1064	"	"	"	"	–
		Compressive strength(2)(3) (28-day)	AASHTO R 100 & T 22	1 set per 30 yd^3, but not less than 1 per day	Point of discharge(4)	Yes	28 days	(5)

(1) Sample according to AASHTO R 60, except composite samples are not required.
(2) Cast at least four compressive strength test cylinders for 6- by 12-inch specimens or six compressive strength cylinders for 4- by 8-inch and carefully transport the cylinders to the job site curing facility.
(3) A single compressive strength test result is the average result from two 6- by 12-inch or three 4- by 8-inch cylinders cast from the same load.
(4) If the point of placement is different from the point of discharge, correlate the discharge tests with the placement tests to document the changes.
(5) Deliver cylinders to the CO or designated laboratory for scheduled testing.

Section 602. — CULVERTS AND DRAINS

Description

602.01 Add the following:

This work also consists of the design and construction of cast-in-place wingwalls, headwalls, and cut-off walls.

Material

602.02 Add the following:

Concrete	601
Temporary Works	562
Reinforcing Steel	709.01

Construction Requirements

602.03 General. Add the following:

For the cast-in-place concrete wingwalls, headwalls, and cut-off walls submit to CO for approval shop drawings according to Subsection 104.06.

Prior to drawing submittal, provide to CO for review and approval, layout including the following:

- Elevation drawing showing wingwall elevations, fill slopes, and headwall/cutoff wall configuration and dimensions
- Plan drawing showing wingwall flares and lengths.

602.08 Acceptance. Add the following:

Concrete for cast-in-place wingwalls, headwalls and cut-off walls will be evaluated under Section 601.

Reinforcing steel will be evaluated under Section 554.

Section 617. — GUARDRAIL

Construction Requirements

617.04 General. Add the following:

Provide tangent terminals meeting MASH Test Level 2.

Section 625. — TURF ESTABLISHMENT

Measurement

625.11 Delete the second sentence and substitute the following:

When measuring turf establishment and supplemental applications by the acre or square yard, measure on the ground surface.

Section 628. — TEMPORARY STREAM DIVERSIONS

Construction Requirements

628.05(d) Bypass pumping diversion. Delete the third sentence and substitute the following:

Place a mesh screen over the intake with a maximum mesh size of $^{3}/_{32}$ inch.

Section 629. — ROLLED EROSION CONTROL PRODUCTS AND CELLULAR CONFINEMENT SYSTEMS

629.06(a)(3) Check slot. Delete this Subsection and substitute the following:

> **(3) Check slot.** Install two rows of fasteners 4 inches apart on 4-inch centers across the top edge of the RECP. Drive fasteners flush with soil surface.

629.06(b) Channel installations. Delete the second paragraph and substitute the following:

Securely fasten RECP to the soil by installing fasteners at a minimum rate of 2 per square yard. Significantly higher anchor rates may be necessary in sandy, loose, or wet soils and in severe applications.

629.07 Cellular Confinement Systems. Delete the first paragraph and substitute the following:

Excavate to the depth of the cellular confinement system and smooth and compact the slope. Install the top of the system flush or lower than the adjacent slope. Expand the geocell down the slope. Connect adjacent geocell sections with fasteners in every other cell.

Section 635. — TEMPORARY TRAFFIC CONTROL

Construction Requirements

635.07 Construction Signs. Add the following:

Provide the same type of sheeting on all post-mounted construction signs.

Section 637. — FACILITIES AND SERVICES

Description

637.01 This work consists of providing, installing, maintaining, and removing facilities and services for the exclusive use of Government personnel.

Construction Requirements

637.02 General. Provide the facilities and services starting no later than 7 days before starting on-site construction activities and ending no sooner than 7 days after on-site construction activities have concluded for all contract work. Provide notice for removal or termination date for facilities and services.

Submit a list of facilities, proposed facility locations, services, furnishings, and equipment for approval before committing to or signing any agreements or leases for these items. Locate facilities within 20 miles of the project site.

Comply with applicable ordinances, safety codes, rules, and regulations.

If facilities or services become defective, are damaged, stolen, or for other reasons do not function as intended; repair or provide a replacement within 8 hours after being notified. Repairs and replacements are subject to approval.

Pay bills, including taxes and fees, for facilities and services by the payment due date.

Remove facilities and services when directed.

637.03 Facilities. Perform site work to accommodate the placement or construction of facilities. Conform to Subsection 107.10(d).

Provide and maintain facilities according to Tables 637-1 and 637-2. If not otherwise specified, provide furnishings of standard size, character, and condition for their function. Provide batteries and light bulbs necessary for the provided furnishings.

Provide safe, secure, sanitary, weatherproof buildings or trailers in good condition. Provide services according to Subsection 637.04.

Restore the ground to its original condition upon removal of facilities.

(a) Field office. Provide one of the following:

(1) Office trailer. Provide a portable office trailer. Locate the office trailer on or adjacent to the project site, or as directed. Locate the trailer so that it can be accessed 24 hours a day, 7 days a week. Provide exterior lighting to illuminate the area surrounding the Government field office at night. Equip the lights with photocell sensor devices and motion detectors to activate the lights.

(2) Commercial office space. Provide office space at a commercial development adjacent to or near the project site.

Table 637-1
Minimum Requirements for Field Facilities and Associated Services

Property	Field Office, Each
Floor space, square feet	192
Locking outside door, deadbolt with 2 sets of keys	1
Steps with slip-proof tread and handrails	✓(1)
Windows with locks	2
Ceiling height, 7 feet	✓
Electrical lighting	✓
Heat and air conditioning, maintain temperature of 72±7 °F(2)	✓
Adequate electrical outlets	✓
Surge protectors	3
Adequate electricity (120 and 240 V, 60 cycle as applicable)	✓

(1) As required by local code.
(2) If window air conditioning is provided, provide a separate unit for each room

Table 637-2
Minimum Facility Furnishings

Property	Field Office, Each
Table, wood or like, 96 inches L x 30 inches W x 30 inches H	1
Desk, wood or like, 60 inches L x 30 inches W x 30 inches H(1)	1
Desk lamp(1)	2
Office chair(1)	3
Storage cabinet, 72 inches L x 36 inches W x 18 inches H	1
Fire extinguisher	1
Refrigerator, 3-cubic feet	1
Microwave Oven, 1.1 cubic feet, 1100 watt	1

(1) Meet accepted industry standards for ergonomics.

637.04 Services. Provide utilities and services necessary to operate field offices and residential housing facilities according to Table 637-3 and the following.

(a) Electricity. Provide electrical service from the local utility. Obtain approval to use generators if electricity cannot be provided to the facility by the utility.

(b) Water. Provide continuous potable water supply, if available.

(c) Sewer. Provide service from the local utility if required and available.

(d) Portable toilet. Provide portable toilets if sewer or septic hookups are unavailable for field office trailers. Provide one portable toilet with weekly service and cleanings. Locate portable toilet adjacent to the field office, as directed. Provide hand sanitizer and toilet paper. Provide a padlock if requested.

(e) Trash and waste disposal. Provide trash and waste disposal service weekly.

(f) High-speed internet. Provide dedicated commercial high-speed internet service with no bandwidth limitations, data caps, or throttling that meets one of the following:

(1) Fiber Optic Service (FIOS), Cable Internet Service, or Digital Subscriber Line (DSL), with the following properties:

(a) Download speed of at least 25 megabits per second; and

(b) Upload speed of at least 10 megabits per second; or

(2) Satellite connection with the following capabilities:

(a) Download speed of at least 5 megabits per second;

(b) Upload speed of at least 2 megabits per second; and

(c) Capable of mobile operation.

(h) All-in-One (AIO) device. A self-feeding plain paper printer, copier, and scanner with the following minimum capabilities:

(1) Printing, copying, and scanning 8½- by 11-inch, black and white hardcopies;

(2) Automatic document feeder capable of making at least 20 copies per minute;

(3) Reducing or enlarging originals, including duplex (double-sided) copying;

(4) Capable of scanning at 600 dpi;

(5) Copying to Universal Serial Bus (USB) flash drive in Adobe Acrobat (*.pdf) file format; and

(6) Built-in wireless technology (Wi-Fi capable).

Furnish all necessary supplies for the AIO device, including paper.

Table 637-3
Services Provided for Facilities

Service	Field Office, Each
Electricity (120 and 240 V, 60 cycle as applicable)	✓
Water(1)	✓
Sewer(1)	✓
Portable toilet(2)	✓
Trash and waste disposal	✓
High-speed internet	✓

(1) If available
(2) If indoor flush toilets are not available.

637.05 Acceptance. Facilities and services will be evaluated under Subsections 106.02 and 106.04.

Measurement

637.06 Measure the Section 637 pay items listed in the bid schedule according to Subsection 109.02.

Payment

637.07 The accepted quantities will be paid at the contract price per unit of measurement for the Section 637 pay items listed in the bid schedule. Payment will be full compensation for the work prescribed in this Section. See Subsection 109.05.

Progress payments for facilities and services by the lump sum or by the each will be paid as follows:

(a) 75 percent of the pay item amount will be paid after installation and acceptance for occupancy.

(b) The remaining portion of the pay item amount will be paid after the facilities and services are removed.

Add the following section:

Section 647. – STREAMBED MATERIAL PLACEMENT

Description

647.01 This work consists of excavating and placing conserved streambed material and furnishing and placing streambed material.

Material

647.02 Conform to the following Subsections:

Riprap	705.02

Construction Requirements

647.03 General. Divert stream according to Section 628. Construct erosion control measures according to Section 157. Minimize construction disturbance around streams. Excavate material according to Section 209.

647.05 Streambed Material. At least 14 days prior to construction, submit plan for testing the particle-size distribution, obtaining, and stockpiling streambed material for approval to the CO. Excavate, conserve, and stockpile streambed material in locations approved by the CO. Conserve and stockpile material to prevent segregation. If sufficient conserved streambed material is not available, furnish streambed material conforming to approved plan.

Place the streambed material to form a well-graded, compacted, low-permeability mass. Wash in, compact, and fill voids in riprap with streambed material. Fill all voids between streambed rocks. Construct a low flow channel in the culvert as shown in the plans. Line the sides of the low flow channel with Class 4 Riprap. Shape the top layer so it is similar in appearance and texture to the natural streambed.

647.06 Stream Channel Restoration. After culvert installation, shape disturbed channels to blend with natural streambed channels.

647.07 Acceptance.
Material and construction of items will be evaluated under Subsection 106.02.

Measurement

647.08 Measure the Section 647 pay item listed in the bid schedule according to Subsection 109.02. Only measure the placed material.

Payment

647.09 The accepted quantities will be paid at the contract price per unit of measurement for the Section 647 pay itmes listed in the bid schedule. Payment will be full compensation for the work prescribed in this Section. See Subsection 109.05.

Section 701. — CEMENTITIOUS MATERIAL

701.03 Pozzolans. Delete Subsection (a) and substitute the following:

(a) Fly ash. Conform to AASHTO M 295 Class C or Class F. When used to mitigate alkali-silica reactivity, also available alkalis as equivalent Na_2O	4.5 percent maximum

701.04 Grout. Add the following:

(d) Non-shrink grout for scour voids. Commercially produced, pumpable, dry, pre-blended mixture of cement, sand, and admixtures; specially formulated for use in underwater applications. Conform to ASTM C1107 and provide a minimum compressive strength of 5000 pounds per square inch in 3 days.

701.05(b) Packaged repair mortar. Delete Subsection (2) and substitute the following:

(2) Length change, ASTM C157, except cure according to ASTM C928 when using rapid-hardening mortar.	0.07 percent maximum

Section 703. — AGGREGATE

703.01 Fine Aggregate for Concrete. Add the following:

(c) Sand equivalent value, AASHTO T 176, Alternate Method No. 2	75 minimum

703.06 Crushed Aggregate. Add the following:

When aggregate is used as a surface course, provide an aggregate with a gradation and plasticity index (AASHTO T 90) conforming to Table 703-2a.

Table 703-2a
Surface Course Gradation and Plasticity Index

Sieve Size	Percent by Mass Passing Designated Sieve (AASHTO T 27 & T 11)
¾ inch	100
No. 4	41 to 71
No. 40	12 to 28
No. 200	9 to 16
Plasticity Index (PI)	4 to 12

Section 704. — SOIL

704.01 Soil and Soil-aggregate Materials. Add the following to Table 704-1 in the Other Requirements row in the Structural Backfill column:

Liquid limit, AASHTO R 58 and T 89, 30 maximum

Section 712. — JOINT MATERIAL

712.01 Sealants, Fillers, and Seals. Delete Subsections (h) and (i) and substitute the following:

(h) Pre-compressed foam-supported silicone joint seal. Provide a joint system comprised of the following:

(1) Cellular polyurethane foam impregnated with hydrophobic 100 percent acrylic, water-based emulsion, factory coated with highway-grade, fuel resistant silicone conforming to Table 712-3.

(2) Field-applied epoxy adhesive primer conforming to Table 712-4.

(3) Field-injected silicone sealant bands conforming to Table 712-5.

Table 712-3
Impregnated Foam Requirements

Property	Test Method	Minimum Requirement
Base material	–	Cellular, high density, polyurethane foam
Tensile strength	ASTM D3574	18 psi
UV and moisture resistance	ASTM G155	No changes - 2000 hours, Pass
Density	ASTM D545	4 lb./cu. ft.

Elongation	ASTM D3574	125%
Temperature service range	ASTM C711	-40 to 185 °F

Table 712-4
Epoxy Adhesive Requirements

Property	Test Method	Minimum Requirement
Tensile strength	ASTM D638	3500 psi
Shear strength	ASTM D732	3000 psi
Bond strength	ASTM D882	2500 psi
Compressive strength	ASTM D695	8000 psi

Table 712-5
Silicone Sealant Bands Requirements

Property	Test Method	Requirement
Color	Visual	Black
Movement capability	ASTM C719	±50%
Elongation	ASTM D412	> 600%
Tensile strength	ASTM D412	≥ 100 psi

(i) Reserved.

Section 713. — ROADSIDE IMPROVEMENT MATERIAL

713.04 Seed. Add the following:

Use the following seed mix:

Common Name	Scientific Name	Growth Habit and Native Status	Recommended Broadcast Rate (PLS lbs/acre)
Fringed brome	*Bromus ciliata*	Graminoid & Native	15-18lbs/acre
Water sedge	*Carex aquatilis*	Graminoid & Native	15-18lbs/acre
Nebraska sedge	*Carex nebrascensis*	Graminoid & Native	15-18lbs/acre
Beaked sedge	*Carex utriculata*	Graminoid & Native	15-18lbs/acre
Tufted hairgrass	*Deschampsia caespitosa*	Graminoid & Native	1-2lbs/acre

Idaho fescue	*Festuca idahoensis*	Graminoid & Native	3-6lbs/acre
Wild iris	*Irmi missouriensis*	Forb & Native	3-6lbs/acre
Common cow parsnip	*Heracleum maximum*	Forb & Native	3-6lbs/acre
Western yarrow	*Achillea millefolium var occidentalis*	Forb & Native	3-6lbs/acre

Section 714. — GEOSYNTHETIC MATERIAL

714.01(c) Geotextile filter. Delete the Subsection and substitute the following:

(1) Conform to AASHTO M 288 Table 1, Class 1 (either <50 percent elongation or ≥50 percent elongation) and the following for riprap, special rock embankment, rock buttress, and other high survivability applications:

(a) Minimum permittivity, ASTM D4491	0.2 sec^{-1}
(b) Maximum apparent opening size, ASTM D4751	0.25 mm maximum average roll value
(c) Minimum ultraviolet stability, ASTM D4355	50 percent strength retained after 500 hours of exposure

(2) Conform to AASHTO M 288 Table 1, Class 2 (either <50 percent elongation or ≥50 percent elongation) and the following for underdrains and other subsurface drainage applications:

(a) Minimum permittivity, ASTM D4491	0.2 sec^{-1}
(b) Maximum apparent opening size, ASTM D4751	0.25 mm maximum average roll value
(c) Minimum ultraviolet stability, ASTM D4355	50 percent strength retained after 500 hours of exposure

714.04 Reinforcement Geotextile and Geogrid. Delete the first paragraph and substitute the following:

Provide reinforcement geotextile and geogrids conforming to AASHTO M 288, Table 8 and 9, and Table 714-2.

APPENDIX

Appendix A: FIRE PLAN

Appendix B: PERMITS

Nationwide Permit 3

Nationwide Permit 13

Nationwide Permit 14

APPENDIX A – FIRE PLAN

Fire Plan for Industrial Operations
San Juan National Forest

This plan outlines the Operator's responsibilities for fire prevention and suppression activities within the Operator's project area. For the purposes of this provision, the project area is defined as the area within one half mile (0.5 miles) of the project boundary.

Fire Precautions

I. SMOKING AND LUNCH FIRE RESTRICTIONS

Smoking is prohibited except inside a building, developed recreation site, vehicle, or while seated in an area of at least three feet in diameter that is barren or cleared of all flammable materials. 36 CFR 261.52(d), 42 CFR 9212(a).

The building of camp, lunch, warming and other fires within the project area and vicinity is prohibited, except at established camps or at other safe places where all flammable material has been cleared away sufficiently to prevent the start and spread of wildfires. The FS representative may, upon written request, designate specific places where campfires may be built for purposes of heating lunches.

II. SPARK ARRESTERS AND MUFFLERS

Operating or using any internal combustion engine, on any timber, brush, or grass covered land, including trails and roads traversing such land, without a spark arrester, is prohibited. The spark arrester must be maintained in effective working order, meeting either (1) Department of Agriculture, Forest Service standard 5100, Spark Arresters for Internal Combustion Engines (current edition); or (2) the Society of Automotive Engineers (SAE) recommended Practices J335, Multiposition Small Engine Exhaust System Fire Ignition Suppression (current revision), and J350, 36 CFR 261.52(j), 43 CFR 9212.1(h).

Passenger vehicles, pickups, medium and large highway trucks (80,000 GVW) will be equipped with a factory designed muffler system which is specified for the make and model of the respective vehicle/truck or with a muffler system that is equivalent or that exceeds factory specifications.

Exhaust systems shall be properly installed and continually maintained in serviceable condition.

III. FIRE EXTINGUISHERS AND TOOLS ON EQUIPMENT

While in use, each piece of equipment with an internal combustion engine shall be provided with at least the following:

1. One fire extinguisher, at least 5# ABC with an Underwriters Laboratory (UL) rating of 3A – 40BC, or greater.

2. One shovel, sharp, size 0 or larger, round-pointed with an overall length of at least 48 inches.

3. One axe, sharp, double bit 3½#, or one sharp Pulaski.

Extinguishers, shovels, axes, and Pulaski's shall be mounted so they are readily available to the operator. All tools shall be maintained in a serviceable condition.

IV. POWER SAWS

Each gasoline engine power saw shall be provided with one chemical-pressurized fire extinguisher of not less than 8-ounce capacity by weight, and one size 0 or larger, round-pointed shovel with an overall length of at least 48 inches. The extinguisher and shovel shall be maintained in good working order. The extinguisher shall be with the power saw operator and immediately available for use at all times. The extinguisher shall not be affixed to the saw. The shovel shall be readily available to the operator of the saw at all times. Having the shovel with the gas can used to refuel the saw may be considered "readily available" if not more than 200 feet from the saw. During periods of critical fire danger, the FS may prescribe other precautionary measures.

Any fueling or refueling of a power saw shall be done in an area which has first been cleared of material which will carry fire. The power saw shall be moved at least 10 feet from the place of fueling or refueling before starting.

V. BLASTING AND WELDING

Unless otherwise directed in writing by the FS, all flammable material shall be cleared for 10 feet around any piece of equipment being welded. In addition, the Operator shall provide a fire extinguisher of a size and type designed to extinguish a fire in the flammable materials surrounding the spot being welded. If unforeseen circumstances arise where blasting may be required, the operator shall contact the District Ranger to describe the circumstances and why blasting is required, and to develop safety procedures under which the blasting would be conducted which would require District Ranger approval.

VI. STORAGE OF FLAMMABLES

Gasoline, oil, grease and other highly flammable material shall be stored either in approved containers on board mobile vehicles, or in approved portable containers of 5 gallons or less at a site where all debris is cleared within a radius of 25 feet.

VII. CAMP FIRE PROTECTION

Campfires are not proposed for the project and are not allowed. Propane or gas powered heaters/camp stoves shall be used to satisfy cooking and personal heating needs of those involved in the project.

Fire Precautions and Control

I. PLANS

Prior to initiating the Operator's operations during the Fire Precautionary Period, which is from May 15 thru October 1, the Operator shall file with the FS a Fire Prevention and Control Plan providing for the prevention and control of fires on the project area. The Plan shall include a detailed list of personnel and equipment at the Operator's disposal for implementing the Plan. This requirement may be met by preparing a single Plan for more than one project.

II. FIRE PRECAUTIONS

Specific Fire Precautionary measures listed shall be applicable during the Operator's operations during the High Fire Danger period or during FS Fire Restrictions (Stage I, II, or III). The Contracting Officer may change the dates of the High Fire Danger periodby advance written notice, if justified by unusual weather or other conditions. Required tools and equipment shall be kept in serviceable condition and immediately available to extinguish a fire at all times during the Operator's operations during the High Fire Danger period.

A. Substitute Precautions

The FS may authorize substitute measures or equipment, or waive specific requirements by written notice, if substitute measures or equipment will afford equal protection, or some of the required measures and equipment are unnecessary.

B. Emergency Precautions

The FS may require the necessary shutting down of equipment on portions of the Operator's operations when emergency fire precautions are necessary.

III. FIRE CONTROL

The Operator shall, both independently and in cooperation with the FS, take all reasonable and practicable action to prevent and suppress fires resulting from the Operator's operations. The Operator's independent initial fire suppression action on such fires shall be immediate and shall include the use of all necessary personnel and equipment at the Operator's disposal on the project area. Any fires caused by the Operator's operations should be immediately reported to the COR and Durango Dispatch regardless of successful or unsuccessful attempts to extinguish a fire.

A. Operator's Reinforcement Obligations

Whenever an Operations Fire or Negligent Fire, whether on or off the project area, has not been suppressed by initial action and appreciable reinforcement strength is required, the FS may require further actions by the Operator until such fire is controlled and mopped up to a point of safety. Operations may be suspended in this situation.

IV. FIRE SUPPRESSION COSTS

The Operator's obligations for cost of fire suppression vary according to three classifications of fires as follows:

A. Operations Fire

An Operations Fire is a fire caused by the Operator's operations other than a Negligent Fire.

The FS, except as provided in Section III, shall, under 16 USC 572, perform fire suppression activities on Operations Fires. The Operator agrees to reimburse the FS for such cost for each Operations Fire. The cost of the Operator's actions, supplies, and equipment on any such fire provided pursuant to Section III, or otherwise at the request of the FS, shall be credited toward such maximum. If the Operator's actual cost exceeds the Operator's obligation stated above, the FS shall reimburse the Operator for the excess.

B. Negligent Fire

A Negligent Fire is a fire caused by negligence or fault of the Operator's operations, including, but not limited to, one caused by smoking by persons engaged in the Operator's operations during the course of their employment, or during rest or lunch periods; or if the Operator's failure to comply with the requirements of Sections II and III results in a fire starting or permits a fire to spread. Damages and the cost of suppressing Negligent Fires shall be borne by the Operator.

C. Other Fires on Project Area

V. The Operator should immediately report any fires in the project area to the COR and Durango Dispatch.

STATE LAW

The Operator shall not be relieved by the terms of this contract of any liability to the United States for fire suppression costs recoverable in an action based on State law, except for such costs resulting from Operations Fires. Amounts due the Operator for fire fighting expenditures shall not be withheld pending settlement of any such claim or action based on State law.

VI. PERFORMANCE BY OPERATOR

Where the Operator's employees, agents, Operators, subcontractors, or their employees or agents perform the Operator's operations in connection with fire responsibilities, the Operator's obligations shall be the same as if performance was by the Operator.

Should Fire Restrictions become necessary, the following describes the stage levels.

I. STAGE I AND STAGE II FIRE RESTRICTIONS

There will be two fire restriction stages: Stage I and Stage II. Stage III denotes area closure. Each agency within a fire restriction area must write its own agency document that authorizes the restrictions within its jurisdiction. Each agency is responsible for using its own format, citing the specific codes of Federal Regulation (CFR) and United Stated Code (U.S.C.) and having the appropriate legal counsel review the document to assure it is correct and enforceable. To establish consistency, reduce confusion and standardize restrictions, the following criteria will be

used in all restriction documents, unless an exception is approved by the District Ranger on a case-by-case basis:

A. STAGE I The following acts are prohibited until further notice:

1) Building, maintaining, attending, or using a fire, campfire, coal or wood burning stove, any type of charcoal fueled broiler or open fire of any type in undeveloped areas.

2) Smoking, except within an enclosed vehicle or building, in a developed recreation site or while stopped in an area at least 3 feet in diameter that is barren or cleared of all flammable vegetation.

3) Using explosive material: (i.e.: fireworks, blasting caps or any incendiary device which may result in the ignition of flammable material.}

4) Welding, or operating acetylene or other similar torch with open flame.

5) Operating or using any internal combustion engine without a spark arresting device properly installed, maintained and in effective working order meeting either:

(a) Department of Agriculture, FS Standard 5100-1a; or

(b) Appropriate Society of Automotive Engineers (SAE) recommended practice J335 (b) and J350 (a).

6) Possible Exemptions

(a) Persons with a written permit specifically authorizing the otherwise prohibited act or omission.

(b) Fires in constructed, permanent fire pits or fire grates within developed recreation sites.

(c) Any Federal, State, or local officer or member of an organized rescue or firefighting force in the performance of an official duty.

(d) Mechanical stoves and appliances fueled by bottled or liquid gas which allow the operator to control or extinguish the flame with a valve are permitted provided that such devices are approved by Underwriters laboratory Inc.

(e) Owners or lessees of land in the restricted area.

(f) Residents in the restricted area.

B. STAGE II The following acts are prohibited until further notice:

1) Building, maintaining, attending, or using a fire, campfire, coal or wood burning stove, any type of charcoal fueled broiler or open fire of any type.

2) Smoking, except within an enclosed vehicle or building.

3) Using explosive material: (i.e.: fireworks, blasting caps or any incendiary device which may result in the ignition of flammable material.)

4) Welding, or operating acetylene or other similar torch with open flame.

5) Operating or using any internal combustion engine without a spark arresting device properly installed, maintained and in effective working order meeting either:

(a) Department of Agriculture, FS Standard 5100-1a: or

(b) Society of Automotive Engineers (SAE) recommended practice J335 (b) and J350 (a).

6) Operating a chainsaw without a chemical pressurized fire extinguisher of not less than 8 ounces capacity by weight, and one size 0 or larger round pointed shovel with an overall length of at least 36 it was 48" above inches. The extinguisher shall be with the chainsaw operator. The shovel may be kept with the fueling supplies but readily available.

7) Other possible restricted acts under Stage II

(a) Operating a motorized vehicle off designated roads and trails.

(b) Operating a chainsaw outside the hours of 5 a.m. and 11 p.m.

(c) Overnight camping limited to listed campgrounds and recreation sites.

8) Possible Exemptions

(a) Persons with a written permit specifically authorizing the otherwise prohibited act or omission.

(b) Any Federal, State or local officer or member of an organized rescue or firefighting force in the performance of an official duty.

(c) Mechanical stoves and appliances fueled by bottled or liquid gas which allow the operator to control and extinguish the flame with a valve are permitted provided that such devices are approved by Underwriters Laboratory Inc.

(d) Owners or lessees of land in the restricted area.

(e) Residents in the restricted area.

C. Stage III Fire Restrictions

1) Before the fire season, the "Council" will review the evaluation guidelines and determine threshold levels that substantiate the need for closures.

2) Examples include:

(a) Potential loss of life due to explosive fire conditions.

(b) Potential for extreme or blowup fire behavior.

(c) Stage I or Stage II restrictions are not effective in reducing the number of human-caused fires.

(d) Resources across the geographic area are at a critical shortage level.

(e) Proximity to substantial population centers.

(f) The extent of wildland-urban interface.

APPENDIX B – PERMITS

Nationwide Permit 3

Nationwide Permit 13

Nationwide Permit 14

US Army Corps of Engineers®
Omaha District

Nationwide Permit 3: Maintenance

(a) The repair, rehabilitation, or replacement of any previously authorized, currently serviceable structure or fill, or of any currently serviceable structure or fill authorized by 33 CFR 330.3, provided that the structure or fill is not to be put to uses differing from those uses specified or contemplated for it in the original permit or the most recently authorized modification. Minor deviations in the structure's configuration or filled area, including those due to changes in materials, construction techniques, requirements of other regulatory agencies, or current construction codes or safety standards that are necessary to make the repair, rehabilitation, or replacement are authorized. This NWP also authorizes the removal of previously authorized structures or fills. Any stream channel modification is limited to the minimum necessary for the repair, rehabilitation, or replacement of the structure or fill; such modifications, including the removal of material from the stream channel, must be immediately adjacent to the project. This NWP also authorizes the removal of accumulated sediment and debris within, and in the immediate vicinity of, the structure or fill. This NWP also authorizes the repair, rehabilitation, or replacement of those structures or fills destroyed or damaged by storms, floods, fire or other discrete events, provided the repair, rehabilitation, or replacement is commenced, or is under contract to commence, within two years of the date of their destruction or damage. In cases of catastrophic events, such as hurricanes or tornadoes, this two-year limit may be waived by the district engineer, provided the permittee can demonstrate funding, contract, or other similar delays.

(b) This NWP also authorizes the removal of accumulated sediments and debris outside the immediate vicinity of existing structures (e.g., bridges, culverted road crossings, water intake structures, etc.). The removal of sediment is limited to the minimum necessary to restore the waterway in the vicinity of the structure to the approximate dimensions that existed when the structure was built, but cannot extend farther than 200 feet in any direction from the structure. This 200 foot limit does not apply to maintenance dredging to remove accumulated sediments blocking or restricting outfall and intake structures or to maintenance dredging to remove accumulated sediments from canals associated with outfall and intake structures. All dredged or excavated materials must be deposited and retained in an area that has no waters of the United States unless otherwise specifically approved by the district engineer under separate authorization.

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

(d) This NWP does not authorize maintenance dredging for the primary purpose of navigation. This NWP does not authorize beach restoration. This NWP does not authorize new stream channelization or stream relocation projects.

Notification: For activities authorized by paragraph (b) of this NWP, the permittee must submit a pre-construction notification to the district engineer prior to commencing the activity (see general condition 32). The pre-construction notification must include information regarding the original design capacities and configurations of the outfalls, intakes, small impoundments, and canals. (Authorities: Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act (Sections 10 and 404))

Note: This NWP authorizes the repair, rehabilitation, or replacement of any previously authorized structure or fill that does not qualify for the Clean Water Act Section 404(f) exemption for maintenance.

C. Nationwide Permit General Conditions

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

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

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

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

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

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

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

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

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

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

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

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

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

11. Equipment. Heavy equipment working in wetlands or mudflats must be placed on mats, or other measures must be taken to minimize soil disturbance. If mats are used to minimize soil disturbance, the affected areas must be returned to pre-construction elevations, and revegetated as appropriate. In circumstances where the use of mats has caused significant soil compaction, efforts using techniques (e.g., soil reaeration techniques) to break up the compaction should be employed to return the soil to a pre-construction state prior to returning to pre-construction elevations.

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

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

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

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

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

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

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

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

18. Endangered Species. (a) No activity is authorized under any NWP which is likely to directly or indirectly jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the federal Endangered Species Act (ESA), or which will directly or indirectly destroy or adversely modify designated critical habitat or critical habitat proposed for such designation. No activity is authorized under any NWP which “may affect” a listed species or critical habitat, unless ESA section 7 consultation addressing the consequences of the proposed activity on listed species or critical habitat has been completed. See 50 CFR 402.02 for the definition of “effects of the action” for the purposes of ESA section 7 consultation.

(b) Federal agencies should follow their own procedures for complying with the requirements of the ESA (see 33 CFR 330.4(f)(1)). If pre-construction notification is required for the proposed activity, the federal permittee must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements. The district engineer will verify that the appropriate documentation has been submitted. If the appropriate documentation has not been submitted, additional ESA section 7 consultation may be necessary for the activity and the respective federal agency would be responsible for fulfilling its obligation under section 7 of the ESA.

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

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

(e) Authorization of an activity by an NWP does not authorize the “take” of a threatened or endangered species as defined under the ESA. In the absence of separate authorization (e.g., an ESA Section 10 Permit, a Biological Opinion with “incidental take” provisions, etc.) from the FWS or the NMFS, the Endangered Species Act prohibits any person subject to the jurisdiction of the United States to take a listed species, where "take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. The word “harm” in the definition of “take" means an act which actually kills or injures wildlife.

Such an act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering.

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

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

19. Migratory Birds and Bald and Golden Eagles. The permittee is responsible for ensuring that an action authorized by an NWP complies with the Migratory Bird Treaty Act and the Bald and Golden Eagle Protection Act. The permittee is responsible for contacting the appropriate local office of the U.S. Fish and Wildlife Service to determine what measures, if any, are necessary or appropriate to reduce adverse effects to migratory birds or eagles, including whether "incidental take" permits are necessary and available under the Migratory Bird Treaty Act or Bald and Golden Eagle Protection Act for a particular activity.

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

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

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

properties. Section 106 consultation is not required when the district engineer determines that the activity does not have the potential to cause effects on historic properties (see 36 CFR 800.3(a)). Section 106 consultation is required when the district engineer determines that the activity has the potential to cause effects on historic properties. The district engineer will conduct consultation with consulting parties identified under 36 CFR 800.2(c) when he or she makes any of the following effect determinations for the purposes of section 106 of the NHPA: no historic properties affected, no adverse effect, or adverse effect.

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

(e) Prospective permittees should be aware that section 110k of the NHPA (54 U.S.C. 306113) prevents the Corps from granting a permit or other assistance to an applicant who, with intent to avoid the requirements of section 106 of the NHPA, has intentionally significantly adversely affected a historic property to which the permit would relate, or having legal power to prevent it, allowed such significant adverse effect to occur, unless the Corps, after consultation with the Advisory Council on Historic Preservation (ACHP), determines that circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant. If circumstances justify granting the assistance, the Corps is required to notify the ACHP and provide documentation specifying the circumstances, the degree of damage to the integrity of any historic properties affected, and proposed mitigation. This documentation must include any views obtained from the applicant, SHPO/THPO, appropriate Indian tribes if the undertaking occurs on or affects historic properties on tribal lands or affects properties of interest to those tribes, and other parties known to have a legitimate interest in the impacts to the permitted activity on historic properties.

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

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

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

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

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

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

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

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

(d) Compensatory mitigation at a minimum one-for-one ratio will be required for all losses of stream bed that exceed 3/100-acre and require pre-construction notification, unless the district engineer determines in writing that either some other form of mitigation would be more environmentally appropriate or the adverse environmental effects of the proposed activity are no more than minimal, and provides an activity-specific waiver of this requirement. This compensatory mitigation requirement may be satisfied through the restoration or enhancement of riparian areas next to streams in accordance with paragraph (e) of this general condition. For losses of stream bed of 3/100-acre or less that require pre-construction notification, the district engineer may determine on a case-by-case basis that compensatory mitigation is required to ensure that the activity results in only minimal adverse environmental effects. Compensatory mitigation for losses of streams should be provided, if practicable, through stream rehabilitation, enhancement, or preservation, because streams are difficult-to-replace resources (see 33 CFR 332.3(e)(3)).

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

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

(1) The prospective permittee is responsible for proposing an appropriate compensatory mitigation option if compensatory mitigation is necessary to ensure that the activity results in no more than minimal adverse environmental effects. For the NWPs, the preferred mechanism for providing compensatory mitigation is mitigation bank credits or in-lieu fee program credits (see 33 CFR 332.3(b)(2) and (3)). However, if an appropriate

number and type of mitigation bank or in-lieu credits are not available at the time the PCN is submitted to the district engineer, the district engineer may approve the use of permittee-responsible mitigation.

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

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

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

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

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

(g) Compensatory mitigation will not be used to increase the acreage losses allowed by the acreage limits of the NWPs. For example, if an NWP has an acreage limit of 1/2-acre, it cannot be used to authorize any NWP activity resulting in the loss of greater than 1/2-acre of waters of the United States, even if compensatory mitigation is provided that replaces or restores some of the lost waters. However, compensatory mitigation can and should be used, as necessary, to ensure that an NWP activity already meeting the established acreage limits also satisfies the no more than minimal impact requirement for the NWPs.

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

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

24. <u>Safety of Impoundment Structures</u>. To ensure that all impoundment structures are safely designed, the district engineer may require non-federal applicants to demonstrate that the structures comply with

established state or federal, dam safety criteria or have been designed by qualified persons. The district engineer may also require documentation that the design has been independently reviewed by similarly qualified persons, and appropriate modifications made to ensure safety.

25. Water Quality. (a) Where the certifying authority (state, authorized tribe, or EPA, as appropriate) has not previously certified compliance of an NWP with CWA section 401, a CWA section 401 water quality certification for the proposed activity which may result in any discharge from a point source into waters of the United States must be obtained or waived (see 33 CFR 330.4(c)). If the permittee cannot comply with all of the conditions of a water quality certification previously issued by the certifying authority for the issuance of the NWP, then the permittee must obtain a water quality certification or waiver for the proposed activity which may result in any discharge from a point source into waters of the United States in order for the activity to be authorized by an NWP.

(b) If the NWP activity requires pre-construction notification and the certifying authority has not previously certified compliance of an NWP with CWA section 401, the proposed activity which may result in any discharge from a point source into waters of the United States is not authorized by an NWP until water quality certification is obtained or waived. If the certifying authority issues a water quality certification for the proposed discharge into waters of the United States, the permittee must submit a copy of the certification to the district engineer. The discharge into waters of the United States is not authorized by an NWP until the district engineer has notified the permittee that the water quality certification requirement has been satisfied (i.e., by the issuance of a water quality certification or a waiver and completion of the Section 401(a)(2) process).

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

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

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

28. Use of Multiple Nationwide Permits. The use of more than one NWP for a single and complete project is authorized, subject to the following restrictions:

(a) The total acreage loss of waters of the United States for a single and complete project cannot exceed the acreage limit of the NWP with the highest specified acreage limit when multiple NWPs are used to authorize an activity.

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

(c) If two or more of the NWPs used to authorize the single and complete project have specified acreage limits, the acreage loss of waters of the United States authorized by each of those NWPs cannot exceed the

specified acreage limits of each of those NWPs. For example, if a commercial development is constructed under NWP 39 (which as a 1/2-acre limit), and the single and complete project includes the filling of a ditch authorized by NWP 46 (which has a 1-acre limit), the maximum acreage loss of waters of the United States for the construction of the commercial development under NWP 39 cannot exceed 1/2-acre, and the total acreage loss of waters of United States caused by the combination of the NWP 39 and NWP 46 activities cannot exceed 1 acre.

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

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

_____

(Transferee)

_____

(Date)

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

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

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

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

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

31. Activities Affecting Structures or Works Built by the United States. If an NWP activity also requires review by, or permission from, the Corps pursuant to 33 U.S.C. 408 because it will alter or temporarily or permanently occupy or use a U.S. Army Corps of Engineers (USACE) federally authorized Civil Works project (a "USACE project"), the prospective permittee must submit a pre-construction notification. See paragraph (b)(10) of general condition 32. An activity that requires section 408 permission and/or review is not authorized

by an NWP until the appropriate Corps office issues the section 408 permission or completes its review to alter, occupy, or use the USACE project, and the district engineer issues a written NWP verification.

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

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

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

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

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

(2) Location of the proposed activity;

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

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

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

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

(5) The PCN must include a delineation of waters, wetlands, and other special aquatic sites on the project site. Wetland delineations must be prepared in accordance with the current method required by the Corps. The permittee may ask the Corps to delineate the special aquatic sites and other waters on the project site, but there may be a delay if the Corps does the delineation, especially if the project site is large or contains many wetlands, other special aquatic sites, and other waters. Furthermore, the 45-day period will not start until the delineation has been submitted to or completed by the Corps, as appropriate. For NWP 27 activities that require PCNs because of other general conditions or regional conditions imposed by division engineers, see Note 2 of that NWP;

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

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

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

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

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

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

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

(2) Agency coordination is required for: (i) all NWP activities that require pre-construction notification and result in the loss of greater than 1/2-acre of waters of the United States; (ii) NWP 13 activities in excess of 500 linear feet, fills greater than one cubic yard per running foot, or involve discharges of dredged or fill material into special aquatic sites; and (iii) NWP 54 activities in excess of 500 linear feet, or that extend into the waterbody more than 30 feet from the mean low water line in tidal waters or the ordinary high water mark in the Great Lakes.

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

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

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

E. Further Information

1. District engineers have authority to determine if an activity complies with the terms and conditions of an NWP.

2. NWPs do not obviate the need to obtain other federal, state, or local permits, approvals, or authorizations required by law.

3. NWPs do not grant any property rights or exclusive privileges.

4. NWPs do not authorize any injury to the property or rights of others.

5. NWPs do not authorize interference with any existing or proposed Federal project (see general condition 31).

F. Nationwide Permit Definitions

Best management practices (BMPs): Policies, practices, procedures, or structures implemented to mitigate the adverse environmental effects on surface water quality resulting from development. BMPs are categorized as structural or non-structural.

Compensatory mitigation: The restoration (re-establishment or rehabilitation), establishment (creation), enhancement, and/or in certain circumstances preservation of aquatic resources for the purposes of offsetting unavoidable adverse impacts which remain after all appropriate and practicable avoidance and minimization has been achieved.

Currently serviceable: Useable as is or with some maintenance, but not so degraded as to essentially require reconstruction.

Direct effects: Effects that are caused by the activity and occur at the same time and place.

Discharge: The term "discharge" means any discharge of dredged or fill material into waters of the United States.

Ecological reference: A model used to plan and design an aquatic ecosystem restoration, enhancement, or establishment activity under NWP 27. An ecological reference may be based on: (1) the structure, functions, and dynamics of an aquatic ecosystem type or a riparian area type that currently exists in the region; (2) the structure, functions, and dynamics of an aquatic ecosystem type or riparian area type that existed in the region in the past; and/or (3) indigenous and local ecological knowledge that apply to the aquatic ecosystem type or riparian area type (i.e., a cultural ecosystem). Cultural ecosystems are ecosystems that have developed under the joint influence of natural processes and human management activities (e.g., fire stewardship). An ecological reference takes into account the range of variation of the aquatic habitat type or riparian area type in the region.

Enhancement: The manipulation of the physical, chemical, or biological characteristics of an aquatic resource to heighten, intensify, or improve a specific aquatic resource function(s). Enhancement results in the gain of selected aquatic resource function(s), but may also lead to a decline in other aquatic resource function(s). Enhancement does not result in a gain in aquatic resource area.

Establishment (creation): The manipulation of the physical, chemical, or biological characteristics present to develop an aquatic resource that did not previously exist at an upland site. Establishment results in a gain in aquatic resource area.

High Tide Line: The line of intersection of the land with the water's surface at the maximum height reached by a rising tide. The high tide line may be determined, in the absence of actual data, by a line of oil or scum along shore objects, a more or less continuous deposit of fine shell or debris on the foreshore or berm, other physical markings or characteristics, vegetation lines, tidal gages, or other suitable means that delineate the general height reached by a rising tide. The line encompasses spring high tides and other high tides that occur with periodic frequency but does not include storm surges in which there is a departure from the normal or predicted reach of the tide due to the piling up of water against a coast by strong winds such as those accompanying a hurricane or other intense storm.

Historic Property: Any prehistoric or historic district, site (including archaeological site), building, structure, or other object included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior. This term includes artifacts, records, and remains that are related to and located within such properties. The term includes properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization and that meet the National Register criteria (36 CFR part 60).

Independent utility: A test to determine what constitutes a single and complete non-linear project in the Corps Regulatory Program. A project is considered to have independent utility if it would be constructed absent the construction of other projects in the project area. Portions of a multi-phase project that depend upon other phases of the project do not have independent utility. Phases of a project that would be constructed even if the other phases were not built can be considered as separate single and complete projects with independent utility.

Indirect effects: Effects that are caused by the activity and are later in time or farther removed in distance, but are still reasonably foreseeable.

Loss of waters of the United States: Waters of the United States that are permanently adversely affected by filling, flooding, excavation, or drainage because of the regulated activity. The loss of stream bed includes the acres of stream bed that are permanently adversely affected by filling or excavation because of the regulated activity. Permanent adverse effects include permanent discharges of dredged or fill material that change an aquatic area to dry land, increase the bottom elevation of a waterbody, or change the use of a waterbody. The acreage of loss of waters of the United States is a threshold measurement of the impact to jurisdictional waters or wetlands for determining whether a project may qualify for an NWP; it is not a net threshold that is calculated after considering compensatory mitigation that may be used to offset losses of aquatic functions and services. Waters of the United States temporarily filled, flooded, excavated, or drained, but restored to pre-construction contours and elevations after construction, are not included in the measurement of loss of waters of the United States. Impacts resulting from activities that do not require Department of the Army authorization, such as activities eligible for exemptions under section 404(f) of the Clean Water Act, are not considered when calculating the loss of waters of the United States.

Nature-based solutions: Actions to protect, sustainably manage, and restore natural or modified ecosystems, that address societal challenges effectively and adaptively, simultaneously providing human well-being and biodiversity benefits.

Navigable waters: Waters subject to section 10 of the Rivers and Harbors Act of 1899. These waters are defined at 33 CFR part 329.

Non-tidal wetland: A non-tidal wetland is a wetland that is not subject to the ebb and flow of tidal waters. Non-tidal wetlands contiguous to tidal waters are located landward of the high tide line (i.e., spring high tide line).

Open water: For purposes of the NWPs, an open water is any area that in a year with normal patterns of precipitation has water flowing or standing above ground to the extent that an ordinary high water mark can be determined. Aquatic vegetation within the area of flowing or standing water is either non-emergent, sparse, or absent. Vegetated shallows are considered to be open waters. Examples of “open waters” include rivers, streams, lakes, and ponds.

Ordinary High Water Mark: The term ordinary high water mark means that line on the shore established by the fluctuations of water and indicated by physical characteristics such as a clear, natural line impressed on the bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding areas.

Perennial stream: A perennial stream has surface water flowing continuously year-round during a typical year.

Practicable: Available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes.

Pre-construction notification: A request submitted by the project proponent to the Corps for confirmation that a particular activity is authorized by nationwide permit. The request may be a permit application, letter, or similar document that includes information about the proposed work and its anticipated environmental effects. Pre-construction notification may be required by the terms and conditions of a nationwide permit, or by regional conditions. A pre-construction notification may be voluntarily submitted in cases where pre-construction

notification is not required and the project proponent wants confirmation that the activity is authorized by nationwide permit.

Preservation: The removal of a threat to, or preventing the decline of, aquatic resources by an action in or near those aquatic resources. This term includes activities commonly associated with the protection and maintenance of aquatic resources through the implementation of appropriate legal and physical mechanisms. Preservation does not result in a gain of aquatic resource area or functions.

Re-establishment: The manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions to a former aquatic resource. Re-establishment results in rebuilding a former aquatic resource and results in a gain in aquatic resource area and functions.

Rehabilitation: The manipulation of the physical, chemical, or biological characteristics of a site with the goal of repairing natural/historic functions to a degraded aquatic resource. Rehabilitation results in a gain in aquatic resource function, but does not result in a gain in aquatic resource area.

Restoration: The manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions to a former or degraded aquatic resource. For the purpose of tracking net gains in aquatic resource area, restoration is divided into two categories: re-establishment and rehabilitation.

Riffle and pool complex: Riffle and pool complexes are special aquatic sites under the 404(b)(1) Guidelines. Riffle and pool complexes sometimes characterize steep gradient sections of streams. Such stream sections are recognizable by their hydraulic characteristics. The rapid movement of water over a course substrate in riffles results in a rough flow, a turbulent surface, and high dissolved oxygen levels in the water. Pools are deeper areas associated with riffles. A slower stream velocity, a streaming flow, a smooth surface, and a finer substrate characterize pools.

Riparian areas: Riparian areas are lands next to streams, lakes, and estuarine-marine shorelines. Riparian areas are transitional between terrestrial and aquatic ecosystems, through which surface and subsurface hydrology connects riverine, lacustrine, estuarine, and marine waters with their adjacent wetlands, non-wetland waters, or uplands. Riparian areas provide a variety of ecological functions and services and help improve or maintain local water quality. (See general condition 23.)

Shellfish seeding: The placement of shellfish seed and/or suitable substrate to increase shellfish production. Shellfish seed consists of immature individual shellfish or individual shellfish attached to shells or shell fragments (i.e., spat on shell). Suitable substrate may consist of shellfish shells, shell fragments, or other appropriate materials placed into waters for shellfish habitat.

Single and complete linear project: A linear project is a project constructed for the purpose of getting people, goods, or services from a point of origin to a terminal point, which often involves multiple crossings of one or more waterbodies at separate and distant locations. The term “single and complete project” is defined as that portion of the total linear project proposed or accomplished by one owner/developer or partnership or other association of owners/developers that includes all crossings of a single water of the United States (i.e., a single waterbody) at a specific location. For linear projects crossing a single or multiple waterbodies several times at separate and distant locations, each crossing is considered a single and complete project for purposes of NWP authorization. However, individual channels in a braided stream or river, or individual arms of a large, irregularly shaped wetland or lake, etc., are not separate waterbodies, and crossings of such features cannot be considered separately.

Single and complete non-linear project: For non-linear projects, the term “single and complete project” is defined at 33 CFR 330.2(i) as the total project proposed or accomplished by one owner/developer or partnership or other association of owners/developers. A single and complete non-linear project must have independent utility (see definition of “independent utility”). Single and complete non-linear projects may not be “piecemealed” to avoid the limits in an NWP authorization.

Stormwater management: Stormwater management is the mechanism for controlling stormwater runoff for the purposes of reducing downstream erosion, water quality degradation, and flooding and mitigating the adverse effects of changes in land use on the aquatic environment.

Stormwater management facilities: Stormwater management facilities are those facilities, including but not limited to, stormwater retention and detention ponds and best management practices, which retain water for a period of time to control runoff and/or improve the quality (i.e., by reducing the concentration of nutrients, sediments, hazardous substances and other pollutants) of stormwater runoff.

Stream bed: The substrate of the stream channel between the ordinary high water marks. The substrate may be bedrock or inorganic particles that range in size from clay to boulders. The substrate may also be comprised, in part, of organic matter, such as large or small wood fragments, leaves, algae, and other organic materials. Wetlands contiguous to the stream bed, but outside of the ordinary high water marks, are not considered part of the stream bed.

Stream channelization: The manipulation of a stream's course, condition, capacity, or location that causes more than minimal interruption of normal stream processes. A channelized jurisdictional stream remains a water of the United States.

Structure: An object that is arranged in a definite pattern of organization. Examples of structures include, without limitation, any pier, boat dock, boat ramp, wharf, dolphin, weir, boom, breakwater, bulkhead, revetment, riprap, jetty, artificial island, artificial reef, permanent mooring structure, power transmission line, permanently moored floating vessel, piling, aid to navigation, or any other manmade obstacle or obstruction.

Tidal wetland: A tidal wetland is a jurisdictional wetland that is inundated by tidal waters. Tidal waters rise and fall in a predictable and measurable rhythm or cycle due to the gravitational pulls of the moon and sun. Tidal waters end where the rise and fall of the water surface can no longer be practically measured in a predictable rhythm due to masking by other waters, wind, or other effects. Tidal wetlands are located channelward of the high tide line.

Tribal lands: Any lands title to which is either: 1) held in trust by the United States for the benefit of any Indian tribe or individual; or 2) held by any Indian tribe or individual subject to restrictions by the United States against alienation.

Tribal rights: Those rights legally accruing to a tribe or tribes by virtue of inherent sovereign authority, unextinguished aboriginal title, treaty, statute, judicial decisions, executive order or agreement, and that give rise to legally enforceable remedies.

Vegetated shallows: Vegetated shallows are special aquatic sites under the 404(b)(1) Guidelines. They are areas that are permanently inundated and under normal circumstances have rooted aquatic vegetation, such as seagrasses in marine and estuarine systems and a variety of vascular rooted plants in freshwater systems.

Waterbody: For purposes of the NWPs, a waterbody is a "water of the United States." If a wetland is adjacent to a waterbody determined to be a water of the United States, that waterbody and any adjacent wetlands are considered together as a single aquatic unit (see 33 CFR 328.4(c)(2)).

US Army Corps of Engineers®
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Omaha District

Regional Conditions to the 2026 Nationwide Permits in the State of Colorado

Regional Conditions Applicable to All Nationwide Permits within the State of Colorado

1. Construction of Diversions and Intakes. The permittee must submit a pre-construction notification (PCN) to the District Engineer in accordance with general condition 32 prior to commencing any activity that involves the construction of new water diversions and intakes. This regional condition does not apply to maintenance activities covered by Nationwide Permit (NWP) 3.

2. Open Trenching in Perennial Streams. The permittee must submit a PCN to the District Engineer in accordance with general condition 32 prior to commencing any activity that involves open trenching in perennial streams.

3. Peatlands. All NWPs, with the exception of 3, 5, 6, 20, 27, 32, 37, and 38, are revoked for the discharge of dredged or fill material in peatlands. For NWPs 3, 5, 6, 20, 27, 32, 37, and 38, the permittee must submit a PCN to the District Engineer in accordance with general condition 32 prior to commencing work in peatlands. The term peatland includes fens and bogs. For the purposes of this regional condition, a peatland is defined as a wetland with organic soil that is classified as a histosol in the Natural Resources Conservation Service (NRCS) guidance document titled Field Indicators of Hydric Soils in the United States (Version 9.0, 2024). A copy of the document can be obtained from the NRCS at https://www.nrcs.usda.gov/resources/guides-and-instructions/field-indicators-of-hydric-soils.

4. Stream Stabilization. The permittee must submit a PCN to the District Engineer in accordance with general condition 32 prior to commencing any stream stabilization activity that utilizes non-native material. The permittee must also submit a PCN to the District Engineer in accordance with general condition 32 prior to commencing any stream stabilization activity that exceeds the placement of ¼ cubic yard of material per linear foot on average below the plane of the ordinary high water mark for streams with an average width of less than 20 feet (measured at the plane of ordinary high water).

Non-native materials include clean brick, broken concrete, cinder block, slab material, wire mesh, such as gabion baskets, grout, and sheet piling. The use of broken concrete with exposed rebar, tires (loose or formed into bales), or other materials listed under general condition 6 is prohibited in all waters of the United States. Rock rip rap, and woody debris are considered native material.

For all stream stabilization activities involving non-native material, permittees must demonstrate that alternative engineering methods utilizing native materials are not practicable (with respect to cost, existing technology, and logistics), before the use of non-native material is allowed as suitable fill.

5. Gold Medal Waters. The permittee must submit a PCN to the District Engineer in accordance with general condition 32 prior to commencing all activities located in waters identified as "Gold Medal" by the Colorado Wildlife Commission. Upon receipt of a complete PCN, the U.S. Army Corps of Engineers (Corps) will initiate Agency Coordination with Colorado Parks and Wildlife (CPW) as outlined in the procedures under general condition 32(d) of the NWPs. Pre-application consultation with CPW is not required but highly recommended. If a pre-application consultation is conducted with CPW, providing written documentation of CPW's response to the project may satisfy the coordination requirements resulting in quicker processing times. Please visit CPW's website at cpw.state.co.us to determine the location of Gold Medal waters and the appropriate office for coordination.

6. Water Quality Certification. In accordance with 33 CFR 330.4(c), the conditions of Clean Water Act Section 401 water quality certifications are incorporated as conditions of the Section 404 NWPs. The requirements for water quality certifications in the State of Colorado can be found at spa.usace.army.mil/reg/wqc.

Regional Conditions Applicable to Specific Nationwide Permits within the State of Colorado

7. Nationwide Permit No. 27: Aquatic Ecosystem Restoration, Enhancement, and Establishment Activities.

   a. PCN is required for activities that qualify for Nationwide Permit 27 and involve streambed form modifications, or the creation/modification of riffle pool complexes. To evaluate whether the activity is ecologically appropriate for the specific stream reach, the Corps will coordinate with Colorado Parks and Wildlife (CPW), or the appropriate Tribal entity, in accordance with the procedures set forth in General Condition 32(d).

   To assist in agency coordination with CPW or appropriate Tribal entity, drawings must include the following:

   (1) Plan view of all work clearly identifying types and locations of

structures/impacts, along with dimensions, and approximate extents of aquatic resources within the project area, including wetlands and riffle and pool complexes. To aid in visual understanding, this plan can be overlaid on a recent aerial image of the project site. The plan should also include information such as the existing and proposed bank slopes, width-to-depth ratio of the channel, and sinuosity.

(2) Cross-sectional and longitudinal profile views to scale of the existing stream channel and the proposed channel modifications, including dimensions (length, width and height of the structures or work).

PCNs will be determined incomplete if the information required for coordination with CPW or appropriate Tribal entity is not provided.

b. Use of concrete and grout. The use of concrete/grouting is not allowed in perennial streams unless the Corps determines on a case-by-case basis that the impacts will result in minimal adverse effects to the aquatic resource. Projects proposing the use of concrete/grouting will require a PCN.

Nationwide Permit 13: Bank Stabilization

Bank stabilization activities necessary for erosion control or prevention, such as vegetative stabilization, bioengineering, sills, rip rap, revetment, gabion baskets, stream barbs, and bulkheads, or combinations of bank stabilization techniques, provided the activity meets all of the following criteria:

(a) No material is placed in excess of the minimum needed for erosion protection;

(b) The activity is no more than 500 feet in length along the bank, unless the district engineer waives this criterion by making a written determination concluding that the discharge of dredged or fill material will result in no more than minimal adverse environmental effects (an exception is for bulkheads – the district engineer cannot issue a waiver for a bulkhead that is greater than 1,000 feet in length along the bank);

(c) The activity will not exceed an average of one cubic yard per running foot, as measured along the length of the treated bank, below the plane of the ordinary high water mark or the high tide line, unless the district engineer waives this criterion by making a written determination concluding that the discharge of dredged or fill material will result in no more than minimal adverse environmental effects;

(d) The activity does not involve discharges of dredged or fill material into special aquatic sites, unless the district engineer waives this criterion by making a written determination concluding that the discharge of dredged or fill material will result in no more than minimal adverse environmental effects;

(e) No material is of a type, or is placed in any location, or in any manner, that will impair surface water flow into or out of any waters of the United States;

(f) No material is placed in a manner that will be eroded by normal or expected high flows (properly anchored native trees and treetops may be used in low energy areas);

(g) Native plants appropriate for current site conditions, including salinity, must be used for bioengineering or vegetative bank stabilization;

(h) The activity is not a stream channelization activity; and

(i) The activity must be properly maintained, which may require repairing it after severe storms or erosion events. This NWP authorizes those maintenance and repair activities if they require authorization.

In addition, this NWP authorizes discharges of dredged or fill material into waters of the United States and structures and work in navigable waters of the United States to incorporate nature-based solutions into new and existing bank stabilization activities to provide habitat and other ecosystem functions and services and to reduce adverse effects of bank stabilization activities on the aquatic environment. Examples of nature-based solutions for bank stabilization activities include the use of construction materials for seawalls and bulkheads that have textured surfaces, crevices, shelves, benches, and pits that support attachment and growth of benthic organisms; vegetative stabilization; bioengineering; the construction of rock pools next to the bank stabilization activity; the construction of small pocket beaches next to the bank stabilization activity; the use of various sizes of rock for revetments to provide different sizes of spaces between rocks for habitat for various species of organisms; the placement of rock clusters next to a seawall or bulkhead; the placement of large wood next to seawalls, bulkheads, and revetments; and the placement of bags of molluscs or the placement of small reef structures to provide habitat for molluscs and other sessile aquatic organisms next to a seawall, bulkhead, or revetment. Nature-based solutions should be appropriate for the physical and biological characteristics of the site.

This NWP also authorizes temporary structures, fills, and work, including the use of temporary mats, necessary to construct the bank stabilization activity. Appropriate measures must be taken to maintain normal downstream flows and minimize flooding to the maximum extent practicable, when temporary structures, work, and discharges of dredged or fill material, including cofferdams, are necessary for construction activities, access fills, or dewatering of construction sites. Temporary fills must consist of materials, and be placed in a manner, that will not be eroded by expected high flows. After construction, temporary fills must be removed in their entirety

and the affected areas returned to pre-construction elevations. The areas affected by temporary fills must be revegetated, as appropriate.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if the bank stabilization activity: (1) involves discharges of dredged or fill material into special aquatic sites; or (2) is in excess of 500 feet in length; or (3) will involve the discharge of dredged or fill material of greater than an average of one cubic yard per running foot as measured along the length of the treated bank, below the plane of the ordinary high water mark or the high tide line. (See general condition 32.) (Authorities: Sections 10 and 404)

Note 1: In coastal waters and the Great Lakes, living shorelines may be an appropriate option for bank stabilization, and may be authorized by NWP 54.

Note 2: Under 33 CFR 320.4(g)(2), a landowner has the general right to protect his or her property from erosion, and the district engineer can provide general guidance to the landowner regarding possible alternative methods of protecting his or her property. Permittees are encouraged to use soft bank stabilization approaches (e.g., bioengineering, vegetative stabilization) at sites where those methods are likely to be effective in managing erosion, such as sites where shorelines and banks are subject to moderate to low erosive forces. However, hard bank stabilization activities (e.g., seawalls, bulkheads, revetments, riprap) may be necessary at sites where shorelines and banks are subject to strong erosive forces. An appropriate and effective approach to managing shoreline or bank erosion at a specific site requires consideration of a variety of factors, including but not limited to: bank height; bank condition; the energy of tides, waves, currents, or other water flows that the bank is exposed to; fetch; nearshore water depths; the potential for storm surges; sediment or substrate type; tidal range in waters subject to the ebb and flow of tides; shoreline configuration and orientation; the width of the waterway; and whether there is infrastructure in the vicinity of the proposed bank stabilization activity that needs to be protected and the degree of protection needed.

C. Nationwide Permit General Conditions

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

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

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

(c) The permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his or her authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without

expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

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

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

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

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

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

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

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

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

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

11. Equipment. Heavy equipment working in wetlands or mudflats must be placed on mats, or other measures must be taken to minimize soil disturbance. If mats are used to minimize soil disturbance, the affected areas must be returned to pre-construction elevations, and revegetated as appropriate. In circumstances where the use of mats has caused significant soil compaction, efforts using techniques (e.g., soil reaeration techniques) to break up the compaction should be employed to return the soil to a pre-construction state prior to returning to pre-construction elevations.

12. Soil Erosion and Sediment Controls. Appropriate soil erosion and sediment controls must be used and maintained in effective operating condition during construction, and all exposed soil and other fills, as well as any work below the ordinary high water mark or high tide line, must be permanently stabilized at the earliest

practicable date. Permittees are encouraged to perform work within waters of the United States during periods of low-flow or no-flow, or during low tides.

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

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

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

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

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

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

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

18. Endangered Species. (a) No activity is authorized under any NWP which is likely to directly or indirectly jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the federal Endangered Species Act (ESA), or which will directly or indirectly destroy or adversely modify designated critical habitat or critical habitat proposed for such designation. No activity is authorized under any NWP which "may affect" a listed species or critical habitat, unless ESA section 7 consultation addressing the consequences of the proposed activity on listed species or critical habitat has been completed. See 50 CFR 402.02 for the definition of "effects of the action" for the purposes of ESA section 7 consultation.

(b) Federal agencies should follow their own procedures for complying with the requirements of the ESA (see 33 CFR 330.4(f)(1)). If pre-construction notification is required for the proposed activity, the federal permittee must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements. The district engineer will verify that the appropriate documentation has been submitted. If the appropriate documentation has not been submitted, additional ESA section 7 consultation may be necessary for the activity and the respective federal agency would be responsible for fulfilling its obligation under section 7 of the ESA.

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

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

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

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

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

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

birds or eagles, including whether "incidental take" permits are necessary and available under the Migratory Bird Treaty Act or Bald and Golden Eagle Protection Act for a particular activity.

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

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

(c) Non-federal permittees must submit a pre-construction notification to the district engineer if the NWP activity might have the potential to cause effects on any historic properties listed on, determined to be eligible for listing on, or potentially eligible for listing on the National Register of Historic Places, including previously unidentified properties. For such activities, the pre-construction notification must state which historic properties might have the potential to be affected by the proposed NWP activity or include a vicinity map indicating the location of the historic properties or the potential for the presence of historic properties. Assistance regarding information on the location of, or potential for, the presence of historic properties can be sought from the State Historic Preservation Officer, Tribal Historic Preservation Officer, or designated tribal representative, as appropriate, and the National Register of Historic Places (see 33 CFR 330.4(g)). When reviewing pre-construction notifications, district engineers will comply with the current procedures for addressing the requirements of section 106 of the National Historic Preservation Act. The district engineer shall make a reasonable and good faith effort to carry out appropriate identification efforts commensurate with potential impacts, which may include background research, consultation, oral history interviews, sample field investigation, and/or field survey. Based on the information submitted in the PCN and these identification efforts, the district engineer shall determine whether the proposed NWP activity has the potential to cause effects on historic properties. Section 106 consultation is not required when the district engineer determines that the activity does not have the potential to cause effects on historic properties (see 36 CFR 800.3(a)). Section 106 consultation is required when the district engineer determines that the activity has the potential to cause effects on historic properties. The district engineer will conduct consultation with consulting parties identified under 36 CFR 800.2(c) when he or she makes any of the following effect determinations for the purposes of section 106 of the NHPA: no historic properties affected, no adverse effect, or adverse effect.

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

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

If circumstances justify granting the assistance, the Corps is required to notify the ACHP and provide documentation specifying the circumstances, the degree of damage to the integrity of any historic properties affected, and proposed mitigation. This documentation must include any views obtained from the applicant, SHPO/THPO, appropriate Indian tribes if the undertaking occurs on or affects historic properties on tribal lands or affects properties of interest to those tribes, and other parties known to have a legitimate interest in the impacts to the permitted activity on historic properties.

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

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

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

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

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

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

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

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

(d) Compensatory mitigation at a minimum one-for-one ratio will be required for all losses of stream bed that exceed 3/100-acre and require pre-construction notification, unless the district engineer determines in writing that either some other form of mitigation would be more environmentally appropriate or the adverse environmental effects of the proposed activity are no more than minimal, and provides an activity-specific waiver

of this requirement. This compensatory mitigation requirement may be satisfied through the restoration or enhancement of riparian areas next to streams in accordance with paragraph (e) of this general condition. For losses of stream bed of 3/100-acre or less that require pre-construction notification, the district engineer may determine on a case-by-case basis that compensatory mitigation is required to ensure that the activity results in only minimal adverse environmental effects. Compensatory mitigation for losses of streams should be provided, if practicable, through stream rehabilitation, enhancement, or preservation, because streams are difficult-to-replace resources (see 33 CFR 332.3(e)(3)).

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

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

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

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

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

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

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

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

(g) Compensatory mitigation will not be used to increase the acreage losses allowed by the acreage limits of the NWPs. For example, if an NWP has an acreage limit of 1/2-acre, it cannot be used to authorize any NWP activity resulting in the loss of greater than 1/2-acre of waters of the United States, even if compensatory mitigation is provided that replaces or restores some of the lost waters. However, compensatory mitigation can and should be used, as necessary, to ensure that an NWP activity already meeting the established acreage limits also satisfies the no more than minimal impact requirement for the NWPs.

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

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

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

25. Water Quality. (a) Where the certifying authority (state, authorized tribe, or EPA, as appropriate) has not previously certified compliance of an NWP with CWA section 401, a CWA section 401 water quality certification for the proposed activity which may result in any discharge from a point source into waters of the United States must be obtained or waived (see 33 CFR 330.4(c)). If the permittee cannot comply with all of the conditions of a water quality certification previously issued by the certifying authority for the issuance of the NWP, then the permittee must obtain a water quality certification or waiver for the proposed activity which may result in any discharge from a point source into waters of the United States in order for the activity to be authorized by an NWP.

(b) If the NWP activity requires pre-construction notification and the certifying authority has not previously certified compliance of an NWP with CWA section 401, the proposed activity which may result in any discharge from a point source into waters of the United States is not authorized by an NWP until water quality certification is obtained or waived. If the certifying authority issues a water quality certification for the proposed discharge into waters of the United States, the permittee must submit a copy of the certification to the district engineer. The discharge into waters of the United States is not authorized by an NWP until the district engineer has notified the permittee that the water quality certification requirement has been satisfied (i.e., by the issuance of a water quality certification or a waiver and completion of the Section 401(a)(2) process).

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

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

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

28. Use of Multiple Nationwide Permits. The use of more than one NWP for a single and complete project is authorized, subject to the following restrictions:

(a) The total acreage loss of waters of the United States for a single and complete project cannot exceed the acreage limit of the NWP with the highest specified acreage limit when multiple NWPs are used to authorize an activity.

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

(c) If two or more of the NWPs used to authorize the single and complete project have specified acreage limits, the acreage loss of waters of the United States authorized by each of those NWPs cannot exceed the specified acreage limits of each of those NWPs. For example, if a commercial development is constructed under NWP 39 (which as a 1/2-acre limit), and the single and complete project includes the filling of a ditch authorized by NWP 46 (which has a 1-acre limit), the maximum acreage loss of waters of the United States for the construction of the commercial development under NWP 39 cannot exceed 1/2-acre, and the total acreage loss of waters of United States caused by the combination of the NWP 39 and NWP 46 activities cannot exceed 1 acre.

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

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

(Transferee)

_____

(Date)

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

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

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

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

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

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

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

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

(2) 45 calendar days have passed from the district engineer's receipt of the complete PCN and the prospective permittee has not received written notice from the district or division engineer. However, if the permittee was required to notify the Corps pursuant to general condition 18 that listed species (or species proposed for listing) or designated critical habitat (or critical habitat proposed for such designation) might be affected or are in the vicinity of the activity, or to notify the Corps pursuant to general condition 20 that the activity

might have the potential to cause effects to historic properties, the permittee cannot begin the activity until receiving written notification from the Corps that there is “no effect” on listed species or “no potential to cause effects” on historic properties, or that any consultation required under Section 7 of the Endangered Species Act (see 33 CFR 330.4(f)) and/or section 106 of the National Historic Preservation Act (see 33 CFR 330.4(g)) has been completed. If the proposed activity requires a written waiver to exceed specified limits of an NWP, the permittee may not begin the activity until the district engineer issues the waiver. If the district or division engineer notifies the permittee in writing that an individual permit is required within 45 calendar days of receipt of a complete PCN, the permittee cannot begin the activity until an individual permit has been obtained. Subsequently, the permittee’s right to proceed under the NWP may be modified, suspended, or revoked only in accordance with the procedure set forth in 33 CFR 330.5(d)(2).

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

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

(2) Location of the proposed activity;

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

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

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

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

(5) The PCN must include a delineation of waters, wetlands, and other special aquatic sites on the project site. Wetland delineations must be prepared in accordance with the current method required by the Corps. The permittee may ask the Corps to delineate the special aquatic sites and other waters on the project site, but there may be a delay if the Corps does the delineation, especially if the project site is large or contains many wetlands, other special aquatic sites, and other waters. Furthermore, the 45-day period will not start until the delineation has been submitted to or completed by the Corps, as appropriate. For NWP 27 activities that require PCNs because of other general conditions or regional conditions imposed by division engineers, see Note 2 of that NWP;

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

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

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

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

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

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

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

(2) Agency coordination is required for: (i) all NWP activities that require pre-construction notification and result in the loss of greater than 1/2-acre of waters of the United States; (ii) NWP 13 activities in excess of 500 linear feet, fills greater than one cubic yard per running foot, or involve discharges of dredged or fill material into special aquatic sites; and (iii) NWP 54 activities in excess of 500 linear feet, or that extend into the waterbody more than 30 feet from the mean low water line in tidal waters or the ordinary high water mark in the Great Lakes.

(3) When agency coordination is required, the district engineer will immediately provide (e.g., via e-mail, facsimile transmission, overnight mail, or other expeditious manner) a copy of the complete PCN to the appropriate federal or state offices (FWS, state natural resource or water quality agency, EPA, and, if appropriate, the NMFS). With the exception of NWP 37, these agencies will have 10 calendar days from the date the material is transmitted to notify the district engineer via telephone, facsimile transmission, or e-mail that they intend to provide substantive, site-specific comments. The comments must explain why the agency believes the adverse

environmental effects will be more than minimal. If so contacted by an agency, the district engineer will wait an additional 15 calendar days before making a decision on the pre-construction notification. The district engineer will fully consider agency comments received within the specified time frame concerning the proposed activity's compliance with the terms and conditions of the NWPs, including the need for mitigation to ensure that the net adverse environmental effects of the proposed activity are no more than minimal. The district engineer will provide no response to the resource agency, except as provided below. The district engineer will indicate in the administrative record associated with each pre-construction notification that the resource agencies' concerns were considered. For NWP 37, the emergency watershed protection and rehabilitation activity may proceed immediately in cases where there is an unacceptable hazard to life or a significant loss of property or economic hardship will occur. The district engineer will consider any comments received to decide whether the NWP 37 authorization should be modified, suspended, or revoked in accordance with the procedures at 33 CFR 330.5.

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

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

E. Further Information

1. District engineers have authority to determine if an activity complies with the terms and conditions of an NWP.

2. NWPs do not obviate the need to obtain other federal, state, or local permits, approvals, or authorizations required by law.

3. NWPs do not grant any property rights or exclusive privileges.

4. NWPs do not authorize any injury to the property or rights of others.

5. NWPs do not authorize interference with any existing or proposed Federal project (see general condition 31).

F. Nationwide Permit Definitions

Best management practices (BMPs): Policies, practices, procedures, or structures implemented to mitigate the adverse environmental effects on surface water quality resulting from development. BMPs are categorized as structural or non-structural.

Compensatory mitigation: The restoration (re-establishment or rehabilitation), establishment (creation), enhancement, and/or in certain circumstances preservation of aquatic resources for the purposes of offsetting unavoidable adverse impacts which remain after all appropriate and practicable avoidance and minimization has been achieved.

Currently serviceable: Useable as is or with some maintenance, but not so degraded as to essentially require reconstruction.

Direct effects: Effects that are caused by the activity and occur at the same time and place.

Discharge: The term "discharge" means any discharge of dredged or fill material into waters of the United States.

Ecological reference: A model used to plan and design an aquatic ecosystem restoration, enhancement, or establishment activity under NWP 27. An ecological reference may be based on: (1) the structure, functions, and dynamics of an aquatic ecosystem type or a riparian area type that currently exists in the region; (2) the structure, functions, and dynamics of an aquatic ecosystem type or riparian area type that existed in the region in the past; and/or (3) indigenous and local ecological knowledge that apply to the aquatic ecosystem type or riparian area type (i.e., a cultural ecosystem). Cultural ecosystems are ecosystems that have developed under the joint influence of natural processes and human management activities (e.g., fire stewardship). An ecological reference takes into account the range of variation of the aquatic habitat type or riparian area type in the region.

Enhancement: The manipulation of the physical, chemical, or biological characteristics of an aquatic resource to heighten, intensify, or improve a specific aquatic resource function(s). Enhancement results in the gain of selected aquatic resource function(s), but may also lead to a decline in other aquatic resource function(s). Enhancement does not result in a gain in aquatic resource area.

Establishment (creation): The manipulation of the physical, chemical, or biological characteristics present to develop an aquatic resource that did not previously exist at an upland site. Establishment results in a gain in aquatic resource area.

High Tide Line: The line of intersection of the land with the water's surface at the maximum height reached by a rising tide. The high tide line may be determined, in the absence of actual data, by a line of oil or scum along shore objects, a more or less continuous deposit of fine shell or debris on the foreshore or berm, other physical markings or characteristics, vegetation lines, tidal gages, or other suitable means that delineate the general height reached by a rising tide. The line encompasses spring high tides and other high tides that occur with periodic frequency but does not include storm surges in which there is a departure from the normal or predicted reach of the tide due to the piling up of water against a coast by strong winds such as those accompanying a hurricane or other intense storm.

Historic Property: Any prehistoric or historic district, site (including archaeological site), building, structure, or other object included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior. This term includes artifacts, records, and remains that are related to and located within such properties. The term includes properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization and that meet the National Register criteria (36 CFR part 60).

Independent utility: A test to determine what constitutes a single and complete non-linear project in the Corps Regulatory Program. A project is considered to have independent utility if it would be constructed absent the construction of other projects in the project area. Portions of a multi-phase project that depend upon other phases of the project do not have independent utility. Phases of a project that would be constructed even if the other phases were not built can be considered as separate single and complete projects with independent utility.

Indirect effects: Effects that are caused by the activity and are later in time or farther removed in distance, but are still reasonably foreseeable.

Loss of waters of the United States: Waters of the United States that are permanently adversely affected by filling, flooding, excavation, or drainage because of the regulated activity. The loss of stream bed includes the acres of stream bed that are permanently adversely affected by filling or excavation because of the regulated activity. Permanent adverse effects include permanent discharges of dredged or fill material that change an aquatic area to dry land, increase the bottom elevation of a waterbody, or change the use of a waterbody. The acreage of loss of waters of the United States is a threshold measurement of the impact to jurisdictional waters or wetlands for determining whether a project may qualify for an NWP; it is not a net threshold that is calculated after considering compensatory mitigation that may be used to offset losses of aquatic functions and services. Waters of the United States temporarily filled, flooded, excavated, or drained, but restored to pre-construction contours and elevations after construction, are not included in the measurement of loss of waters of the United States. Impacts resulting from activities that do not require Department of the Army

authorization, such as activities eligible for exemptions under section 404(f) of the Clean Water Act, are not considered when calculating the loss of waters of the United States.

Nature-based solutions: Actions to protect, sustainably manage, and restore natural or modified ecosystems, that address societal challenges effectively and adaptively, simultaneously providing human well-being and biodiversity benefits.

Navigable waters: Waters subject to section 10 of the Rivers and Harbors Act of 1899. These waters are defined at 33 CFR part 329.

Non-tidal wetland: A non-tidal wetland is a wetland that is not subject to the ebb and flow of tidal waters. Non-tidal wetlands contiguous to tidal waters are located landward of the high tide line (i.e., spring high tide line).

Open water: For purposes of the NWPs, an open water is any area that in a year with normal patterns of precipitation has water flowing or standing above ground to the extent that an ordinary high water mark can be determined. Aquatic vegetation within the area of flowing or standing water is either non-emergent, sparse, or absent. Vegetated shallows are considered to be open waters. Examples of “open waters” include rivers, streams, lakes, and ponds.

Ordinary High Water Mark: The term ordinary high water mark means that line on the shore established by the fluctuations of water and indicated by physical characteristics such as a clear, natural line impressed on the bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding areas.

Perennial stream: A perennial stream has surface water flowing continuously year-round during a typical year.

Practicable: Available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes.

Pre-construction notification: A request submitted by the project proponent to the Corps for confirmation that a particular activity is authorized by nationwide permit. The request may be a permit application, letter, or similar document that includes information about the proposed work and its anticipated environmental effects. Pre-construction notification may be required by the terms and conditions of a nationwide permit, or by regional conditions. A pre-construction notification may be voluntarily submitted in cases where pre-construction notification is not required and the project proponent wants confirmation that the activity is authorized by nationwide permit.

Preservation: The removal of a threat to, or preventing the decline of, aquatic resources by an action in or near those aquatic resources. This term includes activities commonly associated with the protection and maintenance of aquatic resources through the implementation of appropriate legal and physical mechanisms. Preservation does not result in a gain of aquatic resource area or functions.

Re-establishment: The manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions to a former aquatic resource. Re-establishment results in rebuilding a former aquatic resource and results in a gain in aquatic resource area and functions.

Rehabilitation: The manipulation of the physical, chemical, or biological characteristics of a site with the goal of repairing natural/historic functions to a degraded aquatic resource. Rehabilitation results in a gain in aquatic resource function, but does not result in a gain in aquatic resource area.

Restoration: The manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions to a former or degraded aquatic resource. For the purpose of tracking net gains in aquatic resource area, restoration is divided into two categories: re-establishment and rehabilitation.

Riffle and pool complex: Riffle and pool complexes are special aquatic sites under the 404(b)(1) Guidelines. Riffle and pool complexes sometimes characterize steep gradient sections of streams. Such stream sections are recognizable by their hydraulic characteristics. The rapid movement of water over a course substrate in riffles results in a rough flow, a turbulent surface, and high dissolved oxygen levels in the water. Pools are deeper areas associated with riffles. A slower stream velocity, a streaming flow, a smooth surface, and a finer substrate characterize pools.

Riparian areas: Riparian areas are lands next to streams, lakes, and estuarine-marine shorelines. Riparian areas are transitional between terrestrial and aquatic ecosystems, through which surface and subsurface hydrology connects riverine, lacustrine, estuarine, and marine waters with their adjacent wetlands, non-wetland waters, or uplands. Riparian areas provide a variety of ecological functions and services and help improve or maintain local water quality. (See general condition 23.)

Shellfish seeding: The placement of shellfish seed and/or suitable substrate to increase shellfish production. Shellfish seed consists of immature individual shellfish or individual shellfish attached to shells or shell fragments (i.e., spat on shell). Suitable substrate may consist of shellfish shells, shell fragments, or other appropriate materials placed into waters for shellfish habitat.

Single and complete linear project: A linear project is a project constructed for the purpose of getting people, goods, or services from a point of origin to a terminal point, which often involves multiple crossings of one or more waterbodies at separate and distant locations. The term “single and complete project” is defined as that portion of the total linear project proposed or accomplished by one owner/developer or partnership or other association of owners/developers that includes all crossings of a single water of the United States (i.e., a single waterbody) at a specific location. For linear projects crossing a single or multiple waterbodies several times at separate and distant locations, each crossing is considered a single and complete project for purposes of NWP authorization. However, individual channels in a braided stream or river, or individual arms of a large, irregularly shaped wetland or lake, etc., are not separate waterbodies, and crossings of such features cannot be considered separately.

Single and complete non-linear project: For non-linear projects, the term “single and complete project” is defined at 33 CFR 330.2(i) as the total project proposed or accomplished by one owner/developer or partnership or other association of owners/developers. A single and complete non-linear project must have independent utility (see definition of “independent utility”). Single and complete non-linear projects may not be “piecemealed” to avoid the limits in an NWP authorization.

Stormwater management: Stormwater management is the mechanism for controlling stormwater runoff for the purposes of reducing downstream erosion, water quality degradation, and flooding and mitigating the adverse effects of changes in land use on the aquatic environment.

Stormwater management facilities: Stormwater management facilities are those facilities, including but not limited to, stormwater retention and detention ponds and best management practices, which retain water for a period of time to control runoff and/or improve the quality (i.e., by reducing the concentration of nutrients, sediments, hazardous substances and other pollutants) of stormwater runoff.

Stream bed: The substrate of the stream channel between the ordinary high water marks. The substrate may be bedrock or inorganic particles that range in size from clay to boulders. The substrate may also be comprised, in part, of organic matter, such as large or small wood fragments, leaves, algae, and other organic materials. Wetlands contiguous to the stream bed, but outside of the ordinary high water marks, are not considered part of the stream bed.

Stream channelization: The manipulation of a stream’s course, condition, capacity, or location that causes more than minimal interruption of normal stream processes. A channelized jurisdictional stream remains a water of the United States.

Structure: An object that is arranged in a definite pattern of organization. Examples of structures include, without limitation, any pier, boat dock, boat ramp, wharf, dolphin, weir, boom, breakwater, bulkhead, revetment, riprap, jetty, artificial island, artificial reef, permanent mooring structure, power transmission line, permanently moored floating vessel, piling, aid to navigation, or any other manmade obstacle or obstruction.

Tidal wetland: A tidal wetland is a jurisdictional wetland that is inundated by tidal waters. Tidal waters rise and fall in a predictable and measurable rhythm or cycle due to the gravitational pulls of the moon and sun. Tidal waters end where the rise and fall of the water surface can no longer be practically measured in a predictable rhythm due to masking by other waters, wind, or other effects. Tidal wetlands are located channelward of the high tide line.

Tribal lands: Any lands title to which is either: 1) held in trust by the United States for the benefit of any Indian tribe or individual; or 2) held by any Indian tribe or individual subject to restrictions by the United States against alienation.

Tribal rights: Those rights legally accruing to a tribe or tribes by virtue of inherent sovereign authority, unextinguished aboriginal title, treaty, statute, judicial decisions, executive order or agreement, and that give rise to legally enforceable remedies.

Vegetated shallows: Vegetated shallows are special aquatic sites under the 404(b)(1) Guidelines. They are areas that are permanently inundated and under normal circumstances have rooted aquatic vegetation, such as seagrasses in marine and estuarine systems and a variety of vascular rooted plants in freshwater systems.

Waterbody: For purposes of the NWPs, a waterbody is a “water of the United States.” If a wetland is adjacent to a waterbody determined to be a water of the United States, that waterbody and any adjacent wetlands are considered together as a single aquatic unit (see 33 CFR 328.4(c)(2)).

US Army Corps of Engineers®
Albuquerque District
Omaha District

Regional Conditions to the 2026 Nationwide Permits in the State of Colorado

Regional Conditions Applicable to All Nationwide Permits within the State of Colorado

1. Construction of Diversions and Intakes. The permittee must submit a pre-construction notification (PCN) to the District Engineer in accordance with general condition 32 prior to commencing any activity that involves the construction of new water diversions and intakes. This regional condition does not apply to maintenance activities covered by Nationwide Permit (NWP) 3.

2. Open Trenching in Perennial Streams. The permittee must submit a PCN to the District Engineer in accordance with general condition 32 prior to commencing any activity that involves open trenching in perennial streams.

3. Peatlands. All NWPs, with the exception of 3, 5, 6, 20, 27, 32, 37, and 38, are revoked for the discharge of dredged or fill material in peatlands. For NWPs 3, 5, 6, 20, 27, 32, 37, and 38, the permittee must submit a PCN to the District Engineer in accordance with general condition 32 prior to commencing work in peatlands. The term peatland includes fens and bogs. For the purposes of this regional condition, a peatland is defined as a wetland with organic soil that is classified as a histosol in the Natural Resources Conservation Service (NRCS) guidance document titled Field Indicators of Hydric Soils in the United States (Version 9.0, 2024). A copy of the document can be obtained from the NRCS at https://www.nrcs.usda.gov/resources/guides-and-instructions/field-indicators-of-hydric-soils.

4. Stream Stabilization. The permittee must submit a PCN to the District Engineer in accordance with general condition 32 prior to commencing any stream stabilization activity that utilizes non-native material. The permittee must also submit a PCN to the District Engineer in accordance with general condition 32 prior to commencing any stream stabilization activity that exceeds the placement of ¼ cubic yard of material per linear foot on average below the plane of the ordinary high water mark for streams with an average width of less than 20 feet (measured at the plane of ordinary high water).

Non-native materials include clean brick, broken concrete, cinder block, slab material, wire mesh, such as gabion baskets, grout, and sheet piling. The use of broken concrete with exposed rebar, tires (loose or formed into bales), or other materials listed under general condition 6 is prohibited in all waters of the United States. Rock rip rap, and woody debris are considered native material.

For all stream stabilization activities involving non-native material, permittees must demonstrate that alternative engineering methods utilizing native materials are not practicable (with respect to cost, existing technology, and logistics), before the use of non-native material is allowed as suitable fill.

5. Gold Medal Waters. The permittee must submit a PCN to the District Engineer in accordance with general condition 32 prior to commencing all activities located in waters identified as "Gold Medal" by the Colorado Wildlife Commission. Upon receipt of a complete PCN, the U.S. Army Corps of Engineers (Corps) will initiate Agency Coordination with Colorado Parks and Wildlife (CPW) as outlined in the procedures under general condition 32(d) of the NWPs. Pre-application consultation with CPW is not required but highly recommended. If a pre-application consultation is conducted with CPW, providing written documentation of CPW's response to the project may satisfy the coordination requirements resulting in quicker processing times. Please visit CPW's website at cpw.state.co.us to determine the location of Gold Medal waters and the appropriate office for coordination.

6. Water Quality Certification. In accordance with 33 CFR 330.4(c), the conditions of Clean Water Act Section 401 water quality certifications are incorporated as conditions of the Section 404 NWPs. The requirements for water quality certifications in the State of Colorado can be found at spa.usace.army.mil/reg/wqc.

Regional Conditions Applicable to Specific Nationwide Permits within the State of Colorado

7. Nationwide Permit No. 27: Aquatic Ecosystem Restoration, Enhancement, and Establishment Activities.

   a. PCN is required for activities that qualify for Nationwide Permit 27 and involve streambed form modifications, or the creation/modification of riffle pool complexes. To evaluate whether the activity is ecologically appropriate for the specific stream reach, the Corps will coordinate with Colorado Parks and Wildlife (CPW), or the appropriate Tribal entity, in accordance with the procedures set forth in General Condition 32(d).

   To assist in agency coordination with CPW or appropriate Tribal entity, drawings must include the following:

   (1) Plan view of all work clearly identifying types and locations of

structures/impacts, along with dimensions, and approximate extents of aquatic resources within the project area, including wetlands and riffle and pool complexes. To aid in visual understanding, this plan can be overlaid on a recent aerial image of the project site. The plan should also include information such as the existing and proposed bank slopes, width-to-depth ratio of the channel, and sinuosity.

(2) Cross-sectional and longitudinal profile views to scale of the existing stream channel and the proposed channel modifications, including dimensions (length, width and height of the structures or work).

PCNs will be determined incomplete if the information required for coordination with CPW or appropriate Tribal entity is not provided.

b. Use of concrete and grout. The use of concrete/grouting is not allowed in perennial streams unless the Corps determines on a case-by-case basis that the impacts will result in minimal adverse effects to the aquatic resource. Projects proposing the use of concrete/grouting will require a PCN.

Nationwide Permit 14: Linear Transportation Projects

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

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

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

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

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

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

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

C. Nationwide Permit General Conditions

Note: To qualify for NWP authorization, the prospective permittee must comply with the following general conditions, as applicable, in addition to any regional or case-specific conditions imposed by the division engineer or district engineer. Prospective permittees should contact the appropriate Corps district office to determine if regional conditions have been imposed on an NWP. Prospective permittees should also contact the appropriate

Corps district office to determine the status of Clean Water Act Section 401 water quality certification and/or Coastal Zone Management Act consistency for an NWP. Every person who may wish to obtain permit authorization under one or more NWPs, or who is currently relying on an existing or prior permit authorization under one or more NWPs, has been and is on notice that all of the provisions of 33 CFR 330.1 through 330.6 apply to every NWP authorization. Note especially 33 CFR 330.5 relating to the modification, suspension, or revocation of any NWP authorization.

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

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

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

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

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

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

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

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

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

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

9. Management of Water Flows. To the maximum extent practicable, the pre-construction course, condition, capacity, and location of open waters must be maintained for each activity, including stream channelization, storm water management activities, and temporary and permanent road crossings, except as provided below. The activity must be constructed to withstand expected high flows, including tidal flows. The

activity must not restrict or impede the passage of normal or high flows, including tidal flows, unless the primary purpose of the activity is to impound water or manage high flows. The activity may alter the pre-construction course, condition, capacity, and location of open waters if it benefits the aquatic environment (e.g., stream restoration or relocation activities).

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

11. Equipment. Heavy equipment working in wetlands or mudflats must be placed on mats, or other measures must be taken to minimize soil disturbance. If mats are used to minimize soil disturbance, the affected areas must be returned to pre-construction elevations, and revegetated as appropriate. In circumstances where the use of mats has caused significant soil compaction, efforts using techniques (e.g., soil reaeration techniques) to break up the compaction should be employed to return the soil to a pre-construction state prior to returning to pre-construction elevations.

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

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

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

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

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

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

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

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

18. <u>Endangered Species</u>. (a) No activity is authorized under any NWP which is likely to directly or indirectly jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the federal Endangered Species Act (ESA), or which will directly or indirectly destroy or adversely modify designated critical habitat or critical habitat proposed for such designation. No activity is authorized under any NWP which "may affect" a listed species or critical habitat, unless ESA section 7 consultation addressing the consequences of the proposed activity on listed species or critical habitat has been completed. See 50 CFR 402.02 for the definition of "effects of the action" for the purposes of ESA section 7 consultation.

(b) Federal agencies should follow their own procedures for complying with the requirements of the ESA (see 33 CFR 330.4(f)(1)). If pre-construction notification is required for the proposed activity, the federal permittee must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements. The district engineer will verify that the appropriate documentation has been submitted. If the appropriate documentation has not been submitted, additional ESA section 7 consultation may be necessary for the activity and the respective federal agency would be responsible for fulfilling its obligation under section 7 of the ESA.

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

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

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

(f) If the non-federal permittee has a valid ESA section 10(a)(1)(B) incidental take permit with an approved Habitat Conservation Plan for a project or a group of projects that includes the proposed NWP activity, the non-federal permittee should provide a copy of that ESA section 10(a)(1)(B) permit with the PCN required by paragraph (c) of this general condition. The district engineer will coordinate with the agency that issued the ESA

section 10(a)(1)(B) permit to determine whether the proposed NWP activity and the associated incidental take were considered in the internal ESA section 7 consultation conducted for the ESA section 10(a)(1)(B) permit. If that coordination results in concurrence from the agency that the proposed NWP activity and the associated incidental take were considered in the internal ESA section 7 consultation for the ESA section 10(a)(1)(B) permit, the district engineer does not need to conduct a separate ESA section 7 consultation for the proposed NWP activity. The district engineer will notify the non-federal applicant within 45 days of receipt of a complete pre-construction notification whether the ESA section 10(a)(1)(B) permit covers the proposed NWP activity or whether additional ESA section 7 consultation is required.

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

19. Migratory Birds and Bald and Golden Eagles. The permittee is responsible for ensuring that an action authorized by an NWP complies with the Migratory Bird Treaty Act and the Bald and Golden Eagle Protection Act. The permittee is responsible for contacting the appropriate local office of the U.S. Fish and Wildlife Service to determine what measures, if any, are necessary or appropriate to reduce adverse effects to migratory birds or eagles, including whether "incidental take" permits are necessary and available under the Migratory Bird Treaty Act or Bald and Golden Eagle Protection Act for a particular activity.

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

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

(c) Non-federal permittees must submit a pre-construction notification to the district engineer if the NWP activity might have the potential to cause effects on any historic properties listed on, determined to be eligible for listing on, or potentially eligible for listing on the National Register of Historic Places, including previously unidentified properties. For such activities, the pre-construction notification must state which historic properties might have the potential to be affected by the proposed NWP activity or include a vicinity map indicating the location of the historic properties or the potential for the presence of historic properties. Assistance regarding information on the location of, or potential for, the presence of historic properties can be sought from the State Historic Preservation Officer, Tribal Historic Preservation Officer, or designated tribal representative, as appropriate, and the National Register of Historic Places (see 33 CFR 330.4(g)). When reviewing pre-construction notifications, district engineers will comply with the current procedures for addressing the requirements of section 106 of the National Historic Preservation Act. The district engineer shall make a reasonable and good faith effort to carry out appropriate identification efforts commensurate with potential impacts, which may include background research, consultation, oral history interviews, sample field investigation, and/or field survey. Based on the information submitted in the PCN and these identification efforts, the district engineer shall determine whether the proposed NWP activity has the potential to cause effects on historic properties. Section 106 consultation is not required when the district engineer determines that the activity does not have the potential to cause effects on historic properties (see 36 CFR 800.3(a)). Section 106 consultation is required when the district engineer determines that the activity has the potential to cause effects on historic properties. The district engineer will conduct consultation with consulting parties identified under 36 CFR 800.2(c) when he or she makes any of the following effect determinations for the purposes of section 106 of the NHPA: no historic properties affected, no adverse effect, or adverse effect.

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

(e) Prospective permittees should be aware that section 110k of the NHPA (54 U.S.C. 306113) prevents the Corps from granting a permit or other assistance to an applicant who, with intent to avoid the requirements of section 106 of the NHPA, has intentionally significantly adversely affected a historic property to which the permit would relate, or having legal power to prevent it, allowed such significant adverse effect to occur, unless the Corps, after consultation with the Advisory Council on Historic Preservation (ACHP), determines that circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant. If circumstances justify granting the assistance, the Corps is required to notify the ACHP and provide documentation specifying the circumstances, the degree of damage to the integrity of any historic properties affected, and proposed mitigation. This documentation must include any views obtained from the applicant, SHPO/THPO, appropriate Indian tribes if the undertaking occurs on or affects historic properties on tribal lands or affects properties of interest to those tribes, and other parties known to have a legitimate interest in the impacts to the permitted activity on historic properties.

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

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

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

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

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

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

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

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

(d) Compensatory mitigation at a minimum one-for-one ratio will be required for all losses of stream bed that exceed 3/100-acre and require pre-construction notification, unless the district engineer determines in writing that either some other form of mitigation would be more environmentally appropriate or the adverse environmental effects of the proposed activity are no more than minimal, and provides an activity-specific waiver of this requirement. This compensatory mitigation requirement may be satisfied through the restoration or enhancement of riparian areas next to streams in accordance with paragraph (e) of this general condition. For losses of stream bed of 3/100-acre or less that require pre-construction notification, the district engineer may determine on a case-by-case basis that compensatory mitigation is required to ensure that the activity results in only minimal adverse environmental effects. Compensatory mitigation for losses of streams should be provided, if practicable, through stream rehabilitation, enhancement, or preservation, because streams are difficult-to-replace resources (see 33 CFR 332.3(e)(3)).

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

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

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

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

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

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

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

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

(g) Compensatory mitigation will not be used to increase the acreage losses allowed by the acreage limits of the NWPs. For example, if an NWP has an acreage limit of 1/2-acre, it cannot be used to authorize any NWP activity resulting in the loss of greater than 1/2-acre of waters of the United States, even if compensatory mitigation is provided that replaces or restores some of the lost waters. However, compensatory mitigation can and should be used, as necessary, to ensure that an NWP activity already meeting the established acreage limits also satisfies the no more than minimal impact requirement for the NWPs.

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

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

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

25. Water Quality. (a) Where the certifying authority (state, authorized tribe, or EPA, as appropriate) has not previously certified compliance of an NWP with CWA section 401, a CWA section 401 water quality

certification for the proposed activity which may result in any discharge from a point source into waters of the United States must be obtained or waived (see 33 CFR 330.4(c)). If the permittee cannot comply with all of the conditions of a water quality certification previously issued by the certifying authority for the issuance of the NWP, then the permittee must obtain a water quality certification or waiver for the proposed activity which may result in any discharge from a point source into waters of the United States in order for the activity to be authorized by an NWP.

(b) If the NWP activity requires pre-construction notification and the certifying authority has not previously certified compliance of an NWP with CWA section 401, the proposed activity which may result in any discharge from a point source into waters of the United States is not authorized by an NWP until water quality certification is obtained or waived. If the certifying authority issues a water quality certification for the proposed discharge into waters of the United States, the permittee must submit a copy of the certification to the district engineer. The discharge into waters of the United States is not authorized by an NWP until the district engineer has notified the permittee that the water quality certification requirement has been satisfied (i.e., by the issuance of a water quality certification or a waiver and completion of the Section 401(a)(2) process).

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

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

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

28. Use of Multiple Nationwide Permits. The use of more than one NWP for a single and complete project is authorized, subject to the following restrictions:

(a) The total acreage loss of waters of the United States for a single and complete project cannot exceed the acreage limit of the NWP with the highest specified acreage limit when multiple NWPs are used to authorize an activity.

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

(c) If two or more of the NWPs used to authorize the single and complete project have specified acreage limits, the acreage loss of waters of the United States authorized by each of those NWPs cannot exceed the specified acreage limits of each of those NWPs. For example, if a commercial development is constructed under NWP 39 (which as a 1/2-acre limit), and the single and complete project includes the filling of a ditch authorized by NWP 46 (which has a 1-acre limit), the maximum acreage loss of waters of the United States for the construction of the commercial development under NWP 39 cannot exceed 1/2-acre, and the total acreage loss

of waters of United States caused by the combination of the NWP 39 and NWP 46 activities cannot exceed 1 acre.

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

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

_____

(Transferee)

_____

(Date)

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

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

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

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

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

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

32. Pre-Construction Notification. (a) *Timing*. Where required by the terms of the NWP, the prospective permittee must notify the district engineer by submitting a pre-construction notification (PCN) as early as

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

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

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

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

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

(2) Location of the proposed activity;

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

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

(ii) For linear projects where one or more single and complete crossings require pre-construction notification, the PCN must include the quantity of anticipated losses of wetlands, other special aquatic sites, and other waters for each single and complete crossing of those wetlands, other special aquatic sites, and other waters (including those single and complete crossings authorized by an NWP but do not require PCNs). This

information will be used by the district engineer to evaluate the cumulative adverse environmental effects of the proposed linear project, and does not change those non-PCN NWP activities into NWP PCNs.

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

(5) The PCN must include a delineation of waters, wetlands, and other special aquatic sites on the project site. Wetland delineations must be prepared in accordance with the current method required by the Corps. The permittee may ask the Corps to delineate the special aquatic sites and other waters on the project site, but there may be a delay if the Corps does the delineation, especially if the project site is large or contains many wetlands, other special aquatic sites, and other waters. Furthermore, the 45-day period will not start until the delineation has been submitted to or completed by the Corps, as appropriate. For NWP 27 activities that require PCNs because of other general conditions or regional conditions imposed by division engineers, see Note 2 of that NWP;

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

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

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

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

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

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

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

(2) Agency coordination is required for: (i) all NWP activities that require pre-construction notification and result in the loss of greater than 1/2-acre of waters of the United States; (ii) NWP 13 activities in excess of 500 linear feet, fills greater than one cubic yard per running foot, or involve discharges of dredged or fill material into special aquatic sites; and (iii) NWP 54 activities in excess of 500 linear feet, or that extend into the waterbody more than 30 feet from the mean low water line in tidal waters or the ordinary high water mark in the Great Lakes.

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

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

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

E. Further Information

1. District engineers have authority to determine if an activity complies with the terms and conditions of an NWP.

2. NWPs do not obviate the need to obtain other federal, state, or local permits, approvals, or authorizations required by law.

3. NWPs do not grant any property rights or exclusive privileges.

4. NWPs do not authorize any injury to the property or rights of others.

5. NWPs do not authorize interference with any existing or proposed Federal project (see general condition 31).

F. Nationwide Permit Definitions

Best management practices (BMPs): Policies, practices, procedures, or structures implemented to mitigate the adverse environmental effects on surface water quality resulting from development. BMPs are categorized as structural or non-structural.

Compensatory mitigation: The restoration (re-establishment or rehabilitation), establishment (creation), enhancement, and/or in certain circumstances preservation of aquatic resources for the purposes of offsetting unavoidable adverse impacts which remain after all appropriate and practicable avoidance and minimization has been achieved.

Currently serviceable: Useable as is or with some maintenance, but not so degraded as to essentially require reconstruction.

Direct effects: Effects that are caused by the activity and occur at the same time and place.

Discharge: The term "discharge" means any discharge of dredged or fill material into waters of the United States.

Ecological reference: A model used to plan and design an aquatic ecosystem restoration, enhancement, or establishment activity under NWP 27. An ecological reference may be based on: (1) the structure, functions, and dynamics of an aquatic ecosystem type or a riparian area type that currently exists in the region; (2) the structure, functions, and dynamics of an aquatic ecosystem type or riparian area type that existed in the region in the past; and/or (3) indigenous and local ecological knowledge that apply to the aquatic ecosystem type or riparian area type (i.e., a cultural ecosystem). Cultural ecosystems are ecosystems that have developed under the joint influence of natural processes and human management activities (e.g., fire stewardship). An ecological reference takes into account the range of variation of the aquatic habitat type or riparian area type in the region.

Enhancement: The manipulation of the physical, chemical, or biological characteristics of an aquatic resource to heighten, intensify, or improve a specific aquatic resource function(s). Enhancement results in the gain of selected aquatic resource function(s), but may also lead to a decline in other aquatic resource function(s). Enhancement does not result in a gain in aquatic resource area.

Establishment (creation): The manipulation of the physical, chemical, or biological characteristics present to develop an aquatic resource that did not previously exist at an upland site. Establishment results in a gain in aquatic resource area.

High Tide Line: The line of intersection of the land with the water's surface at the maximum height reached by a rising tide. The high tide line may be determined, in the absence of actual data, by a line of oil or scum along shore objects, a more or less continuous deposit of fine shell or debris on the foreshore or berm, other physical markings or characteristics, vegetation lines, tidal gages, or other suitable means that delineate the general height reached by a rising tide. The line encompasses spring high tides and other high tides that occur with periodic frequency but does not include storm surges in which there is a departure from the normal or predicted reach of the tide due to the piling up of water against a coast by strong winds such as those accompanying a hurricane or other intense storm.

Historic Property: Any prehistoric or historic district, site (including archaeological site), building, structure, or other object included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior. This term includes artifacts, records, and remains that are related to and located within such properties. The term includes properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization and that meet the National Register criteria (36 CFR part 60).

Independent utility: A test to determine what constitutes a single and complete non-linear project in the Corps Regulatory Program. A project is considered to have independent utility if it would be constructed absent the construction of other projects in the project area. Portions of a multi-phase project that depend upon other phases of the project do not have independent utility. Phases of a project that would be constructed even if the other phases were not built can be considered as separate single and complete projects with independent utility.

Indirect effects: Effects that are caused by the activity and are later in time or farther removed in distance, but are still reasonably foreseeable.

Loss of waters of the United States: Waters of the United States that are permanently adversely affected by filling, flooding, excavation, or drainage because of the regulated activity. The loss of stream bed includes the acres of stream bed that are permanently adversely affected by filling or excavation because of the regulated activity. Permanent adverse effects include permanent discharges of dredged or fill material that change an aquatic area to dry land, increase the bottom elevation of a waterbody, or change the use of a waterbody. The acreage of loss of waters of the United States is a threshold measurement of the impact to jurisdictional waters or wetlands for determining whether a project may qualify for an NWP; it is not a net threshold that is calculated after considering compensatory mitigation that may be used to offset losses of aquatic functions and services. Waters of the United States temporarily filled, flooded, excavated, or drained, but restored to pre-construction contours and elevations after construction, are not included in the measurement of loss of waters of the United States. Impacts resulting from activities that do not require Department of the Army authorization, such as activities eligible for exemptions under section 404(f) of the Clean Water Act, are not considered when calculating the loss of waters of the United States.

Nature-based solutions: Actions to protect, sustainably manage, and restore natural or modified ecosystems, that address societal challenges effectively and adaptively, simultaneously providing human well-being and biodiversity benefits.

Navigable waters: Waters subject to section 10 of the Rivers and Harbors Act of 1899. These waters are defined at 33 CFR part 329.

Non-tidal wetland: A non-tidal wetland is a wetland that is not subject to the ebb and flow of tidal waters. Non-tidal wetlands contiguous to tidal waters are located landward of the high tide line (i.e., spring high tide line).

Open water: For purposes of the NWPs, an open water is any area that in a year with normal patterns of precipitation has water flowing or standing above ground to the extent that an ordinary high water mark can be determined. Aquatic vegetation within the area of flowing or standing water is either non-emergent, sparse, or absent. Vegetated shallows are considered to be open waters. Examples of “open waters” include rivers, streams, lakes, and ponds.

Ordinary High Water Mark: The term ordinary high water mark means that line on the shore established by the fluctuations of water and indicated by physical characteristics such as a clear, natural line impressed on the bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding areas.

Perennial stream: A perennial stream has surface water flowing continuously year-round during a typical year.

Practicable: Available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes.

Pre-construction notification: A request submitted by the project proponent to the Corps for confirmation that a particular activity is authorized by nationwide permit. The request may be a permit application, letter, or similar document that includes information about the proposed work and its anticipated environmental effects. Pre-construction notification may be required by the terms and conditions of a nationwide permit, or by regional conditions. A pre-construction notification may be voluntarily submitted in cases where pre-construction notification is not required and the project proponent wants confirmation that the activity is authorized by nationwide permit.

Preservation: The removal of a threat to, or preventing the decline of, aquatic resources by an action in or near those aquatic resources. This term includes activities commonly associated with the protection and

maintenance of aquatic resources through the implementation of appropriate legal and physical mechanisms. Preservation does not result in a gain of aquatic resource area or functions.

Re-establishment: The manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions to a former aquatic resource. Re-establishment results in rebuilding a former aquatic resource and results in a gain in aquatic resource area and functions.

Rehabilitation: The manipulation of the physical, chemical, or biological characteristics of a site with the goal of repairing natural/historic functions to a degraded aquatic resource. Rehabilitation results in a gain in aquatic resource function, but does not result in a gain in aquatic resource area.

Restoration: The manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions to a former or degraded aquatic resource. For the purpose of tracking net gains in aquatic resource area, restoration is divided into two categories: re-establishment and rehabilitation.

Riffle and pool complex: Riffle and pool complexes are special aquatic sites under the 404(b)(1) Guidelines. Riffle and pool complexes sometimes characterize steep gradient sections of streams. Such stream sections are recognizable by their hydraulic characteristics. The rapid movement of water over a course substrate in riffles results in a rough flow, a turbulent surface, and high dissolved oxygen levels in the water. Pools are deeper areas associated with riffles. A slower stream velocity, a streaming flow, a smooth surface, and a finer substrate characterize pools.

Riparian areas: Riparian areas are lands next to streams, lakes, and estuarine-marine shorelines. Riparian areas are transitional between terrestrial and aquatic ecosystems, through which surface and subsurface hydrology connects riverine, lacustrine, estuarine, and marine waters with their adjacent wetlands, non-wetland waters, or uplands. Riparian areas provide a variety of ecological functions and services and help improve or maintain local water quality. (See general condition 23.)

Shellfish seeding: The placement of shellfish seed and/or suitable substrate to increase shellfish production. Shellfish seed consists of immature individual shellfish or individual shellfish attached to shells or shell fragments (i.e., spat on shell). Suitable substrate may consist of shellfish shells, shell fragments, or other appropriate materials placed into waters for shellfish habitat.

Single and complete linear project: A linear project is a project constructed for the purpose of getting people, goods, or services from a point of origin to a terminal point, which often involves multiple crossings of one or more waterbodies at separate and distant locations. The term “single and complete project” is defined as that portion of the total linear project proposed or accomplished by one owner/developer or partnership or other association of owners/developers that includes all crossings of a single water of the United States (i.e., a single waterbody) at a specific location. For linear projects crossing a single or multiple waterbodies several times at separate and distant locations, each crossing is considered a single and complete project for purposes of NWP authorization. However, individual channels in a braided stream or river, or individual arms of a large, irregularly shaped wetland or lake, etc., are not separate waterbodies, and crossings of such features cannot be considered separately.

Single and complete non-linear project: For non-linear projects, the term “single and complete project” is defined at 33 CFR 330.2(i) as the total project proposed or accomplished by one owner/developer or partnership or other association of owners/developers. A single and complete non-linear project must have independent utility (see definition of “independent utility”). Single and complete non-linear projects may not be “piecemealed” to avoid the limits in an NWP authorization.

Stormwater management: Stormwater management is the mechanism for controlling stormwater runoff for the purposes of reducing downstream erosion, water quality degradation, and flooding and mitigating the adverse effects of changes in land use on the aquatic environment.

Stormwater management facilities: Stormwater management facilities are those facilities, including but not limited to, stormwater retention and detention ponds and best management practices, which retain water for a period of time to control runoff and/or improve the quality (i.e., by reducing the concentration of nutrients, sediments, hazardous substances and other pollutants) of stormwater runoff.

Stream bed: The substrate of the stream channel between the ordinary high water marks. The substrate may be bedrock or inorganic particles that range in size from clay to boulders. The substrate may also be comprised, in part, of organic matter, such as large or small wood fragments, leaves, algae, and other organic materials. Wetlands contiguous to the stream bed, but outside of the ordinary high water marks, are not considered part of the stream bed.

Stream channelization: The manipulation of a stream's course, condition, capacity, or location that causes more than minimal interruption of normal stream processes. A channelized jurisdictional stream remains a water of the United States.

Structure: An object that is arranged in a definite pattern of organization. Examples of structures include, without limitation, any pier, boat dock, boat ramp, wharf, dolphin, weir, boom, breakwater, bulkhead, revetment, riprap, jetty, artificial island, artificial reef, permanent mooring structure, power transmission line, permanently moored floating vessel, piling, aid to navigation, or any other manmade obstacle or obstruction.

Tidal wetland: A tidal wetland is a jurisdictional wetland that is inundated by tidal waters. Tidal waters rise and fall in a predictable and measurable rhythm or cycle due to the gravitational pulls of the moon and sun. Tidal waters end where the rise and fall of the water surface can no longer be practically measured in a predictable rhythm due to masking by other waters, wind, or other effects. Tidal wetlands are located channelward of the high tide line.

Tribal lands: Any lands title to which is either: 1) held in trust by the United States for the benefit of any Indian tribe or individual; or 2) held by any Indian tribe or individual subject to restrictions by the United States against alienation.

Tribal rights: Those rights legally accruing to a tribe or tribes by virtue of inherent sovereign authority, unextinguished aboriginal title, treaty, statute, judicial decisions, executive order or agreement, and that give rise to legally enforceable remedies.

Vegetated shallows: Vegetated shallows are special aquatic sites under the 404(b)(1) Guidelines. They are areas that are permanently inundated and under normal circumstances have rooted aquatic vegetation, such as seagrasses in marine and estuarine systems and a variety of vascular rooted plants in freshwater systems.

Waterbody: For purposes of the NWPs, a waterbody is a "water of the United States." If a wetland is adjacent to a waterbody determined to be a water of the United States, that waterbody and any adjacent wetlands are considered together as a single aquatic unit (see 33 CFR 328.4(c)(2)).

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Omaha District

Regional Conditions to the 2026 Nationwide Permits in the State of Colorado

Regional Conditions Applicable to All Nationwide Permits within the State of Colorado

1. Construction of Diversions and Intakes. The permittee must submit a pre-construction notification (PCN) to the District Engineer in accordance with general condition 32 prior to commencing any activity that involves the construction of new water diversions and intakes. This regional condition does not apply to maintenance activities covered by Nationwide Permit (NWP) 3.

2. Open Trenching in Perennial Streams. The permittee must submit a PCN to the District Engineer in accordance with general condition 32 prior to commencing any activity that involves open trenching in perennial streams.

3. Peatlands. All NWPs, with the exception of 3, 5, 6, 20, 27, 32, 37, and 38, are revoked for the discharge of dredged or fill material in peatlands. For NWPs 3, 5, 6, 20, 27, 32, 37, and 38, the permittee must submit a PCN to the District Engineer in accordance with general condition 32 prior to commencing work in peatlands. The term peatland includes fens and bogs. For the purposes of this regional condition, a peatland is defined as a wetland with organic soil that is classified as a histosol in the Natural Resources Conservation Service (NRCS) guidance document titled Field Indicators of Hydric Soils in the United States (Version 9.0, 2024). A copy of the document can be obtained from the NRCS at https://www.nrcs.usda.gov/resources/guides-and-instructions/field-indicators-of-hydric-soils.

4. Stream Stabilization. The permittee must submit a PCN to the District Engineer in accordance with general condition 32 prior to commencing any stream stabilization activity that utilizes non-native material. The permittee must also submit a PCN to the District Engineer in accordance with general condition 32 prior to commencing any stream stabilization activity that exceeds the placement of ¼ cubic yard of material per linear foot on average below the plane of the ordinary high water mark for streams with an average width of less than 20 feet (measured at the plane of ordinary high water).

Non-native materials include clean brick, broken concrete, cinder block, slab material, wire mesh, such as gabion baskets, grout, and sheet piling. The use of broken concrete with exposed rebar, tires (loose or formed into bales), or other materials listed under general condition 6 is prohibited in all waters of the United States. Rock rip rap, and woody debris are considered native material.

For all stream stabilization activities involving non-native material, permittees must demonstrate that alternative engineering methods utilizing native materials are not practicable (with respect to cost, existing technology, and logistics), before the use of non-native material is allowed as suitable fill.

5. Gold Medal Waters. The permittee must submit a PCN to the District Engineer in accordance with general condition 32 prior to commencing all activities located in waters identified as "Gold Medal" by the Colorado Wildlife Commission. Upon receipt of a complete PCN, the U.S. Army Corps of Engineers (Corps) will initiate Agency Coordination with Colorado Parks and Wildlife (CPW) as outlined in the procedures under general condition 32(d) of the NWPs. Pre-application consultation with CPW is not required but highly recommended. If a pre-application consultation is conducted with CPW, providing written documentation of CPW's response to the project may satisfy the coordination requirements resulting in quicker processing times. Please visit CPW's website at cpw.state.co.us to determine the location of Gold Medal waters and the appropriate office for coordination.

6. Water Quality Certification. In accordance with 33 CFR 330.4(c), the conditions of Clean Water Act Section 401 water quality certifications are incorporated as conditions of the Section 404 NWPs. The requirements for water quality certifications in the State of Colorado can be found at spa.usace.army.mil/reg/wqc.

Regional Conditions Applicable to Specific Nationwide Permits within the State of Colorado

7. Nationwide Permit No. 27: Aquatic Ecosystem Restoration, Enhancement, and Establishment Activities.

   a. PCN is required for activities that qualify for Nationwide Permit 27 and involve streambed form modifications, or the creation/modification of riffle pool complexes. To evaluate whether the activity is ecologically appropriate for the specific stream reach, the Corps will coordinate with Colorado Parks and Wildlife (CPW), or the appropriate Tribal entity, in accordance with the procedures set forth in General Condition 32(d).

   To assist in agency coordination with CPW or appropriate Tribal entity, drawings must include the following:

   (1) Plan view of all work clearly identifying types and locations of

structures/impacts, along with dimensions, and approximate extents of aquatic resources within the project area, including wetlands and riffle and pool complexes. To aid in visual understanding, this plan can be overlaid on a recent aerial image of the project site. The plan should also include information such as the existing and proposed bank slopes, width-to-depth ratio of the channel, and sinuosity.

(2) Cross-sectional and longitudinal profile views to scale of the existing stream channel and the proposed channel modifications, including dimensions (length, width and height of the structures or work).

PCNs will be determined incomplete if the information required for coordination with CPW or appropriate Tribal entity is not provided.

b. Use of concrete and grout. The use of concrete/grouting is not allowed in perennial streams unless the Corps determines on a case-by-case basis that the impacts will result in minimal adverse effects to the aquatic resource. Projects proposing the use of concrete/grouting will require a PCN.