



# COLORADO

## Parks and Wildlife

Department of Natural Resources

**Big Beaver Dam Outlet Rehabilitation  
Pre-Qualified Invitation for Bid  
BIDDING AND CONTRACT INFORMATION**

**PROJECT NO. C24DM4  
IFB1: IFB1 2025\*0105**

**MANDATORY PRE-BID CONFERENCE: November 12, 2024 at 11:00 am**

**SUBMISSION OF CONTRACTOR'S MINIMUM QUALIFICATIONS AND REFERENCES SUMMARY:  
November 15, 2024 at 5:00 pm**

**NOTIFICATION OF ELIGIBILITY TO BID BASED ON MEETING THE CONTRACTOR'S MINIMUM  
QUALIFICATIONS:  
By November 19, 2024**

**WRITTEN QUESTIONS DUE: November 22, 2024 at 5:00 pm**

**ANSWERS POSTED BY: November 26, 2024 at 5:00 pm**

**BID OPENING: December 6, 2024 at 1:00 pm**

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**C24DM4**

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## **PRE-QUALIFIED INVITATION FOR BIDS**

### **Big Beaver Dam Outlet Rehabilitation**

The Colorado Division of Parks and Wildlife is accepting Contractor Minimum Qualifications and sealed bids by those meeting the minimum qualifications for the **Big Beaver Dam comprehensive outlet works rehabilitation and seepage remediation project**.

This is a Pre-Qualified Invitation For Bid, where qualified bidders must demonstrate that they meet the Contractor Minimum Qualifications as listed in the Contractor Minimum Qualifications and References section below (Page 5-6) in order to be eligible to bid the project.

**A mandatory Pre-Bid Conference will be held at the project address on Tuesday, November 12, 2024 at 11:00 am. Attendance is mandatory for submission of Contractor Minimum Qualifications and submission of a bid.**

**Submission of Contractor Minimum Qualifications will be received by email (as described here-in) no later than Friday, November 15, 2024 at 5:00 pm.**

**Notification of eligibility to bid based on a Contractor's Minimum Qualifications submission that demonstrates the required minimum qualifications are met will be posted as a solicitation addendum on the Vendor Self Service (VSS) website: By Tuesday, November 19, 2024.**

If fewer than two Contractors are determined by CPW to meet the Minimum Qualifications submission, the Colorado Division of Parks and Wildlife reserves the right to cancel this solicitation and pursue a new solicitation.

Sealed bids will be received by Colorado Parks and Wildlife, 6060 Broadway, Denver CO 80216 until **Friday, December 6, 2024 at 1:00 pm**, after which the bids will then be made public. Bids shall be submitted using the form provided in the project specifications. On-line bid submittals are not accepted. Public bid opening will occur in-person at the above address (6060 Broadway) or a virtual option can be provided upon request by emailing the Project Manager (contact info below).

A five-percent (5%) Bid Bond, certified check, or cashier's check is required with bid proposals of \$50,000.00 or more.

Pre-bid conference: **Tuesday, November 12, 2024 at 11:00 am** at the project site.

Project Address: 18374-18782 County Road 8  
Meeker, CO 81641

Project Coordinates: Latitude: 39.969867  
Longitude: -107.647462  
View Google Map Location - [Lake Avery](#)

Contractor Questions: All questions related to the project shall be submitted via e-mail to the Project Manager, **Lincoln Harberger at [Lincoln.harberger@state.co.us](mailto:Lincoln.harberger@state.co.us)**. The deadline for questions is **Friday, November 22, 2024 by 5:00 pm**. Questions submitted after the deadline will not be addressed. All questions and answers will be posted as solicitation amendments on the Vendor Self Service (VSS) website. Bidders may not automatically be notified of the existence of a modification or addendum. It is the responsibility of the bidder to check the VSS website periodically to see if any modifications have been issued. Failure to retrieve such modifications and include their provisions in your bid response may result in your bid being deemed non-responsive.

Plans and specifications are available for all bidders on the web at:

<https://drive.google.com/drive/folders/1wfUVjfxQ4M9n1TnoVqWRfjzFOHTxYhzj?usp=sharing>

The following is a tentative project schedule, which will be revised and expanded by the selected Contractor and submitted to the Project Manager for review:

MANDATORY PRE-BID CONFERENCE	November 12, 2024 at 11:00 am
SUBMISSION OF CONTRACTOR'S MINIMUM QUALIFICATIONS	November 15, 2024 at 5:00 pm
NOTIFICATION OF BID ELIGIBILITY POSTED TO VSS	On or before November 19, 2024
DEADLINE FOR WRITTEN QUESTIONS	November 22, 2024 by 5:00 pm
ANSWERS POSTED TO VSS	On or before November 26, 2024
BID OPENING	December 6, 2024 at 1:00 pm
NOTICE OF INTENT TO AWARD	Mid December 2024 (Tentative)
EXECUTED CONSTRUCTION CONTRACT	Late January 2025 (Tentative)
PRECONSTRUCTION PLANNING AND LONG LEAD SUBMITTALS	February - June 2025
NOTICE TO PROCEED WITH CONSTRUCTION	July 2025 (Tentative)
SUBSTANTIAL COMPLETION	January 2026 (Tentative)

## CONTRACTOR'S MINIMUM QUALIFICATIONS AND REFERENCES

### BIG BEAVER DAM OUTLET REHABILITATION

Interested firms shall submit one (1) copy of the following document.

Submission is via e-mail to the Project Manager, Lincoln Harberger:  
[Lincoln.harberger@state.co.us](mailto:Lincoln.harberger@state.co.us)

The deadline for email submission of this document is **Friday, November 15, 2024 by 5:00 pm.**

Failure to provide a completed Contractor's Minimum Qualification Statement that demonstrates meeting the minimum qualifications listed below will result in being ineligible to bid the project. This format can be expanded up to five (5) total pages maximum.

Contractor's Minimum Qualifications determined at the sole discretion of the Division of Parks and Wildlife Dam Safety Engineers and Subject Matter Experts.

#### Contractor Minimum Qualifications:

1. Construction project experience in the last five (5) years (successfully performed as the Prime Contractor self-performing at least 60% of the labor) on at least two (2) high hazard or significant hazard dam projects in Colorado with a construction contract value of at least \$1 million, and that received final approval and Acceptance of Construction from Colorado Dam Safety State Engineer's Office.
  2. Construction project experience in the last five (5) years (successfully performed as the Prime Contractor self-performing at least 60% of the labor) on at least one (1) dam project at an elevation of 7000 feet or higher, that involved at least thirty (30) cubic yards of placed structural concrete.
  3. Construction project experience in the last five (5) years (successfully performed as the Prime Contractor self-performing at least 60% of the labor) for the diversion and care of surface water on at least one (1) high or significant hazard dam project, including the design, construction, maintenance and removal of a coffer dam.
1. Provide a project description of a maximum of three (3) dam construction projects in the past five (5) years that clearly demonstrate meeting the Contractor Minimum Qualifications listed above. Include the project name, location, DAMID, contract value, date of Final Acceptance of Construction from Colorado Dam Safety State Engineer's Office.

Project #1:

Project #2:
Project #3:

2. Provide reference information for the example projects. Include the owner's name, the reference point of contact, and their phone number.

Project #1:
Project #2:
Project #3:

## **BID SCHEDULE**

### **Big Beaver Dam Outlet Rehabilitation**

DEPARTMENT OF NATURAL RESOURCES  
COLORADO PARKS AND WILDLIFE  
STATE OF COLORADO

\_\_\_\_\_  
Proposes to furnish all labor, equipment, materials, and incidentals needed to complete the Big Beaver Dam Outlet Rehabilitation. The work shall be completed within 180 calendar days from the date of the Notice to Proceed with Construction, or prior to March 1, 2026, whichever comes first. We have read and made, the “Instructions to Bidders”, the “General Conditions for Capital Construction”, the Specifications, and the Construction Drawings part of this bid.

Technical Specifications related to construction materials and methods for work embraced under this Contract shall consist of references to, but not limited to, the **Colorado Department of Transportation Most Current Standard Specifications for Roads and Bridge Construction**. Special attention should be given to these references and revisions noted within.

UNITS: LF= linear foot, SF= square foot, SFF= square face foot, LS= lump sum, SY= square yard, CY= cubic yard, TON= tons, AC= acres

\_\_\_\_\_  
**Service Disabled Veteran Owned Small Business Statement (SDVOSB):** The undersigned bidder shall certify by **checking** below that the corporation, partnership, or sole proprietorship **IS or IS NOT** claiming a 5% bid preference in accordance with C.R.S. 24-103-211. SDVOSB certification must be included with your bid.

Is: ☐      Is Not: ☐

\_\_\_\_\_  
**Colorado Labor:** The undersigned bidder shall certify by **indicating the percentage** of Colorado labor of the total workforce to be utilized for this project in accordance with C.R.S. 8-17-101. Colorado Labor shall be employed to perform at least 80% of the work on a public works project greater than \$500,000.00. A written justification for not meeting this percentage must be included with your bid.

% of Colorado Labor: \_\_\_\_\_

\_\_\_\_\_  
**Addendum Inclusion Statement:** The undersigned bidder shall certify by **listing** below that all Addendums have been considered and included as part of the Contractor’s proposal. The Addendum numbers that the Contractor has included as part of his proposal shall be listed in the space provided.

Addendums: \_\_\_\_\_

**Bid Schedule**  
**Big Beaver Dam Outlet Works Rehabilitation**  
**C24DM4**

Item	Description	Unit	Cost Amount
<b>Base Bid</b>			
1	Pre-Construction Coordination, Mobilization, Site Preparation, General Conditions, Bonds and Insurance	LS	
2	Stormwater, Erosion & Sediment Control	LS	
3	Temporary Access Road	LS	
4	Reservoir Control	LS	
5	Demolition	LS	
6	Reclamation	LS	
7	Intake Structure	LS	
8	Intake Structure Conduit 34-inch x ½-inch x 12 feet Steel Liner	LS	
9	Intake Structure 36-inch Inlet Valve	LS	
10	Concrete Stem Wall	LS	
11	Crest Control Building	LS	
12	36-inch Inlet Valve Hydraulic Pump Unit and Hydraulic Lines	LS	
13	36-inch Cured-in-Placer Pipe Liner	LS	
14	Outlet Stilling Basin Structure	LS	
15	Outlet Stilling Basin Conduit 34-inch x ½-inch x 12 feet Steel Liner	LS	
16	Irrigation Diversion	LS	
17	Instrumentation 2-inch PVC Sch 80 Pipe & Pull Boxes	LS	
<b>BASE BID COST TOTAL</b>			
<b>Alternate A - Outlet Conduit Filter Diaphragm</b>			
1-A	Outlet Conduit Filter Diaphragm	LS	
<b>ALTERNATE A - COST TOTAL</b>			
<b>Alternate B - Right Toe Drain</b>			
1-B	Right Toe Drain	LS	
<b>ALTERNATE B - COST TOTAL</b>			
<b>Alternate C - Left Toe Drain</b>			
1-C	Left Toe Drain	LS	
<b>ALTERNATE C - COST TOTAL</b>			
<b>Alternate D - Left Toe Drain Weir Vault</b>			
1-D	4 foot Wide x 4 foot Long x 6 foot High Weir Vault	LS	
2-D	Instrumentation 2-inch PVC Sch 80 Pipe & Pull Boxes	LS	
<b>ALTERNATE D - COST TOTAL</b>			
<b>Alternate E - 12-inch Inlet Valve</b>			
1-E	12-inch Inlet Valve	LS	
2-E	Modification to Item 8 in the Base Bid to include 12-inch Wye	LS	
3-E	Modification to Item 12 in the Base Bid to include 12-inch Valve operation	LS	
<b>ALTERNATE E - COST TOTAL</b>			
<b>Alternate F - Right Toe Drain and Filter Diaphragm</b>			
1-F	Right Toe Drain and Filter Diaphragm	LS	
<b>ALTERNATE F - COST TOTAL</b>			
<b>Alternate G - Right Toe Drain Weir Vault</b>			
1-G	8 foot Wide x 8 foot Long x 5 foot High Weir Vault	LS	
2-G	TD-2 and TD-3 Piping into Weir Vault	LS	
2-G	Instrumentation 2-inch PVC Sch 80 Pipe & Pull Boxes	LS	
<b>ALTERNATE G - COST TOTAL</b>			



(A Corporate Signature Block)

\_\_\_\_\_

Company Name

A \_\_\_\_\_ Corporation

Date \_\_\_\_\_, 20\_\_\_\_

Colorado VSS Vendor ID# (if available) \_\_\_\_\_

By \_\_\_\_\_

President

Attested to by \_\_\_\_\_

Secretary

(A Partnership Signature Block)

A limited partnership of \_\_\_\_\_, general  
partner;

\_\_\_\_\_ doing business as (dba)

\_\_\_\_\_.

Company Name

Colorado VSS Vendor ID# (if available) \_\_\_\_\_

by \_\_\_\_\_

General Partner

(A Sole Proprietorship Signature Block)

A Sole Proprietorship of \_\_\_\_\_ (dba)

\_\_\_\_\_.

Colorado VSS Vendor ID# (if available) \_\_\_\_\_

by \_\_\_\_\_ Owner

## **INSTRUCTIONS TO BIDDERS**

PROJECT: Big Beaver Dam Outlet Rehabilitation  
PROJECT NO: C24DM4

1. ONLY CONTRACTORS THAT ARE IDENTIFIED BY THE DIVISION OF PARKS AND WILDLIFE AS MEETING THE CONTRACTOR'S MINIMUM QUALIFICATIONS WILL BE ALLOWED TO BID ON THIS PROJECT.
2. Bidders must review the plans and specifications, construction site and conditions in their entirety, and determine the problems that may be encountered in performing the work. The bidder shall include any costs associated with his/her findings in the prices quoted in the proposal. Documents will be available on the State of Colorado VSS website [www.colorado.gov/vss](http://www.colorado.gov/vss). No additional copies of the drawings and specifications will be provided by the Division of Parks and Wildlife at any time before or after the bid opening.
3. All work must conform to the requirements stated in the "General Conditions for Capital Construction".
4. All questions concerning this project shall be in writing directed to the Project Manager identified in the Invitation for Bids. The Invitation for Bids also identifies important dates and deadlines for this project.
5. BID SCHEDULE:
  - A. The bidder shall include on the signature page, their Vendor ID (if available) obtained from registration on the Colorado VSS website.
  - B. The bidder shall complete the Minority Business, Service Disabled Veteran Owned Small Business and Colorado Labor statements as well as acknowledge addendum(s) on the first page of the Bid Schedule.
  - C. All bid items shall include a unit and extended price or the bid will be disqualified. The bidder shall write in words and numerically the total base bid and add/alternate (if applicable) amounts on the included Bid Schedule. If conflicts exist between the written words and the numerical amount, the actual line item unit cost shall take precedence.
  - D. The Bid Schedule shall be signed manually in ink:
    - 1) If the bidder is a corporation, use the corporate signature block, insert the name of the state in which the company was incorporated, and include the Employer Identification Number (E.I.N.) in the appropriate spaces. The bid must be signed by an officer (President or Vice President), and the title indicated. The signature of the officer shall be attested to by the Secretary and properly sealed. Cross out incorrect titles and insert correct ones, if necessary.
    - 2) If the bidder is a partnership, use the partnership signature block. Cross out the word "Limited" if the partnership is a general one. Print each partner's name and note the proportion of the partnership that each partner has. The majority or general partner must sign the proposal. The same person must sign the contract, if awarded. Print the company name in the appropriate space.
    - 3) If the bidder is a proprietorship, use the sole proprietorship signature block, print in the owner's name, Social Security number, and the business name in the blanks provided, and the owner signs the owner blank.
6. BID BOND: A bid bond is required for all competitive sealed bids when the price exceeds

\$50,000. A bid guarantee in an amount not less than five percent (5%) of the total bid price must be submitted in the form of a firm commitment, such as a bid bond, bank money order, certified check or cashier's check. Checks or money orders should be made payable to the Treasurer, State of Colorado. An irrevocable letter of credit is not acceptable as a bid guarantee. 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.

7. **PERFORMANCE BOND, LABOR AND MATERIAL BOND:** The successful bidder shall furnish a bond in the amount of 100% of the contract price for performance and for material and labor payment when bid is equal to or exceeds \$150,000. The bond shall be executed on the standard State of Colorado form. The State requests that the Surety and Contractor leave the date of the Contract found on the first page of each bond form, blank and we will 'pen' in the date after the Controller executes the Contract. These bonds will be submitted along with the standard State Agreement form within 10 days of the "Notice of Award."
8. **VENDOR BOND ASSISTANCE:** Any vendors that need support responding to solicitations may contact the Colorado Supplier Diversity Navigator at the Statewide Equity Office of Supplier Diversity [dhr.colorado.gov/statewide-equity-office/supplier-diversity](https://dhr.colorado.gov/statewide-equity-office/supplier-diversity). Services provided include assistance with responding to solicitations, interpretation of solicitation documents, technical assistance referrals, availability of resources, and bond assistance under the Construction Statewide Bond Assistance Program [dhr.colorado.gov/statewide-equity-office/supplier-diversity/construction-and-bond-assistance](https://dhr.colorado.gov/statewide-equity-office/supplier-diversity/construction-and-bond-assistance), through which eligible contractors can apply for assistance in securing the required bonding. The office can be reached during normal business hours by calling 303-866-5765 or emailing [DPA\\_SupplierDiversityHelp@state.co.us](mailto:DPA_SupplierDiversityHelp@state.co.us).
9. **RESIDENT BIDDER PREFERENCE:** When a contract for commodities or services is to be awarded to a bidder (projects >\$500,000), a resident bidder shall be allowed a preference against a nonresident bidder equal to the preference given or required by the state in which the nonresident bidder is a resident. (§24-103-906 C.R.S.) A resident bidder is authorized to transact business in the State of Colorado, maintains a place of business in Colorado and pays unemployment compensation taxes.
10. **SERVICE DISABLED VETERAN OWNED SMALL BUSINESSES (SDVOSB's):** SDVOSB's, who are incorporated or organized in Colorado or maintain a place of business or have an office in Colorado and who are officially registered and verified as a SDVOSB by the Center for Veteran Enterprise within the U.S. Department of Veterans Affairs. ([www.vip.vetbiz.gov](http://www.vip.vetbiz.gov)), may receive a 5% preference on their bid. This preference applies only to the price, and the SDVOSB's must still meet all other qualifications required in the bid. SDVOSB's claiming this preference shall submit documentation of SDVOSB certification Issued through the U.S. Department of Veterans Affairs in their response to the solicitation. Bid submissions without this documentation will not be given a preference.
11. **COLORADO LABOR:** Colorado Labor shall be employed to perform at least eighty percent (80%) of the work on a public works project (>\$500,000) per CRS 8-17-101. BIDS/CORE notice to require bidder to indicate 80% Colorado labor in bid or proposal and provide written justification if the 80% Colorado labor is not included in the bid. The justification is a requirement of the bid or proposal submittal. State Agency shall waive the 80% requirement and post justification on its web site; if there is reasonable evidence to demonstrate insufficient Colorado labor to perform the work and, if compliance with the 80% would create

an undue burden that would substantially prevent a project from proceeding to completion. Posting of the agency's written waiver should include but not be limited to contractor's justification for insufficient available Colorado labor and the agency's determination that there is an undue burden negatively impacting the project schedule, budget/appropriation, quality/standards of care or any other specific requirement of the project due to compliance with the 80% Colorado labor requirement. The posting of rational should be made on the date of the award and remain for not less than thirty (30) calendar days in a conspicuous web site location of the state agency under the title - "Reporting Requirements for Public Projects as per HB13-1292".

12. FINAL REPORTING FOR IRON, STEEL, OR RELATED MANUFACTURED ITEMS: This requirement only applies when a contract for a public works project is to be awarded to a bidder (projects >\$500,000), for a project that does not receive any federal moneys. At the completion of the project, the Contractor shall provide an accounting of the value and origin of the five most costly manufactured goods incorporated into the project. For the purposes of this reporting, "manufactured goods" contain over fifty percent iron or steel content when it is delivered to the job site for installation. If all the manufacturing processes for the final product take place in the United States, the product shall be considered as originating there.

13. BUILD AMERICA, BUY AMERICA

Note: This term effective as of January 13, 2023. For more information on DOI's approved waiver, see:

<https://www.doi.gov/grants/BuyAmerica/GeneralApplicabilityWaivers>.

For the purposes of this Invitation for Bid, waivers to the Build America, Buy America requirements will not be accepted. If a bidder believes any of these requirements cannot be met, the bidder shall submit in writing, prior to the deadline to submit questions, an explanation of why the requirements cannot be met. All submitted bids must meet the Build America, Buy America requirements in full.

The Contractor will be required to complete and submit a signed Vendor Invoice Certification Form (Appendix G) with each invoice on this project.

- A. As required by Section 70914 of the Bipartisan Infrastructure Law (also known as the Infrastructure Investment and Jobs Act), P.L. 117-58, on or after May 14, 2022, none of the funds under a federal award that are part of Federal financial assistance program for infrastructure may be obligated for a project unless all of the iron, steel, manufactured products, and construction materials used in the project are produced in the United States, unless subject to an approved waiver. The requirements of this section must be included in all subawards, including all contracts and purchase orders for work or products under this program. Recipients of an award of Federal financial assistance are hereby notified that none of the funds provided under this award may be used for a project for infrastructure unless:
- i. All iron and steel used in the project are produced in the United States--this means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States;

- ii. All manufactured products used in the project are produced in the United States – this means the manufactured product was manufactured in the United States; and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation; and
  - iii. All construction materials are manufactured in the United States—this means that all manufacturing processes for the construction material occurred in the United States.
- B. The Buy America preference only applies to articles, materials, and supplies that are consumed in, incorporated into, or affixed to an infrastructure project. As such, it does not apply to tools, equipment, and supplies, such as temporary scaffolding, brought to the construction site and removed at or before the completion of the infrastructure project. Nor does a Buy America preference apply to equipment and furnishings, such as movable chairs, desks, and portable computer equipment that are used at or within the finished infrastructure project, but are not an integral part of the structure or permanently affixed to the infrastructure project.

For further information on the Buy America preference, please visit <https://www.doi.gov/grants/BuyAmerica>.

Additional information can also be found at the White House Made in America Office website: <https://www.whitehouse.gov/omb/management/madein-america>

### C. Definitions

- i. “Construction materials” includes an article, material, or supply that is or consists primarily of:
  - 1. non-ferrous metals;
  - 2. plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables);
  - 3. glass (including optic glass);
  - 4. lumber; or
  - 5. drywall.
- ii. “Construction Materials” does not include cement and cementitious materials, aggregates such as stone, sand, or gravel, or aggregate binding agents or additives.
- iii. “Domestic content procurement preference” means all iron and steel used in the project are produced in the United States; the manufactured products used in the project are produced in the United States; or the construction materials used in the project are produced in the United States.
- iv. “Infrastructure” includes, at a minimum, the structures, facilities, and equipment for, in the United States, roads, highways, and bridges; public transportation; dams, ports, harbors, and other maritime facilities; intercity passenger and freight railroads; freight and intermodal facilities; airports; water systems, including drinking water and wastewater systems; electrical transmission facilities and

systems; utilities; broadband infrastructure; and buildings and real property. Infrastructure includes facilities that generate, transport, and distribute energy.

- v. “Project” means the construction, alteration, maintenance, or repair of infrastructure in the United States.

14. APPRENTICESHIP UTILIZATION CERTIFICATION: In order to comply with CRS 24-92-115 regarding statutorily required utilization of apprenticeship programs for certain trades, the awarded bidder will be required to complete a copy of the compliance form available at <<https://drive.google.com/file/d/1J4MSGuLyZTO3FgTcvgKrybAoalDkC8am/view>> prior to execution of the contract. Please indicate on the Apprenticeship Utilization Survey document attached to the solicitation. Please review the “Special Considerations for Public Projects” section of the Contract Sample for additional details regarding applicable apprenticeship utilization statutes.

15. SUBMITTAL OF BID: The completed Bid must be received by the deadline identified in the Invitation for Bid. You must include as part of your bid the following items:

- A. Provide completed Bid Schedule as described above.
- B. Provide Bid Bond (if required) as described above.
- C. SDVOSB certification issued through the U.S Department of Veterans Affairs (if applicable).
- D. Colorado Labor Justification if not using 80% Colorado Labor (if applicable).
- E. Apprenticeship Utilization Survey.

This information is to be enclosed in a sealed envelope marked "SEALED BID". Include the bid opening date and time.

The envelope shall be addressed to:

ATTN: Lincoln Harberger CAPD - (C24DM4)  
6060 Broadway  
Denver, CO 80216

Bidders Name and Address should appear in the Upper Left Corner of the envelope.

16. METHOD OF AWARD: The lowest responsible bid, taking into account the Colorado resident bidder preference provision of Colorado Law, will be determined by and the purchase order or contract will be issued, to the extent that the total dollar amount is within available funds to finance the construction. If all bids exceed such amount, the right is reserved to reject all bids. The Division of Parks and Wildlife reserves the right to reject any or all proposals, to waive informalities, and to accept any proposal deemed desirable.

Additive alternates will be used in determining the lowest responsible bidder within the amount available to finance the contract. Additive Alternates may or may not be selected based on the available funds. Additive Alternates may be added in any combination to the contract to arrive at the selection of the lowest responsible bidder. An equal number of alternates shall be added to the base bid of each bidder within funds available to finance the contract for purposes of determining the lowest responsible bidder.

The bidder must be registered to do business in the State of Colorado with the Secretary of State [www.sos.state.co.us](http://www.sos.state.co.us). A Certificate of Good Standing will be required to process the Agreement.

If Federal funds are utilized for this project, the contract cannot be awarded to a contractor which has been disbarred or suspended or is otherwise excluded from or ineligible for participation in federal assistance programs. The excluded parties list can be found at the following web site: <https://www.sam.gov/>

17. UNIT COST: The price quoted in the proposal shall include the costs of labor, materials, equipment, and incidentals required to provide a fully complete and functioning unit as shown and described in the plans and specifications. The price stated in the proposal shall be complete, and represent total payment for each item in the proposal. No additional payment will be made for the work presented in the proposal.
18. INSURANCE: The successful bidder will be required to submit proof of insurance at the time of executing the agreement. Proof of insurance must be submitted on certificates showing the minimum coverage amounts.
  - A. The Contractor is required to procure and maintain at all times during the term of this contract the insurance coverage listed below:
    - 1) Workers' Compensation and Employer's Liability Insurance, as required by state statute, including occupational disease, covering all of contractor or subcontractor employees acting within the course and scope of their employment.
    - 2) Commercial General Liability Insurance written on ISO occurrence form CG 00 01 10/93 or equivalent, covering premises operations, fire damage, independent contractors, products and completed operations, blanket contractual liability, personal injury, and advertising liability with minimum limits as follows:
      - a. \$1,000,000 combined single limit written on an occurrence basis;
      - b. \$1,000,000 general aggregate;
      - c. \$1,000,000 products and completed operations aggregate; and
      - d. \$50,000 any one fire.
      - e. If any aggregate limit is reduced below \$1,000,000 because of claims made or paid, the contractor shall immediately obtain additional insurance to restore the full aggregate limit and furnish to the State a certificate or other document satisfactory to the State showing compliance with this provision.
    - 3) Automobile Liability Insurance covering any auto (including owned, hired and non-owned autos) with a minimum limit as follows: \$1,000,000 each accident combined single limit.
    - 4) Pollution liability policy with minimum limits of \$1,000,000 each occurrence and \$1,000,000 Annual Aggregate covering any environmental damage caused by the contractor or subcontractor during the Work with the State included as an additionally insured party.
  - B. The State of Colorado shall be named as an *Additional Insured* on the Commercial General Liability, Automobile Liability, policy insurance certificates and Colorado Parks and Wildlife must be named as the certificate holder for all coverages 1-4 noted above (leases and construction contracts will require the additional insured coverage for completed operations on endorsements CG 2010 11/85, CG 2037, or equivalent). Coverage required of the contract will be primary over any insurance or self-insurance program carried by the State of Colorado.
  - C. The Insurance shall include provisions preventing cancellation or non-renewal without

- at least 45 days prior notice to the State by certified mail.
- D. The Insurance shall include a waiver of subrogation for all coverages.
  - E. The contractor will require all insurance policies in any way related to the contract and secured and maintained by the contractor to include clauses stating that each carrier will waive all rights of recovery, under subrogation or otherwise, against the State of Colorado, its agencies, institutions, organizations, officers, agents, employees and volunteers.
  - F. All policies evidencing the insurance coverage required hereunder shall be issued by insurance companies satisfactory to the State. No later than 15 days prior to the expiration date of any such coverage, the contractor shall deliver the State certificates of insurance evidencing renewals thereof.
19. If the successful bidder, upon acceptance of his bid by the OWNER, fails to execute such further contractual documents, and give such bond(s) (including any necessary coinsurance or reinsurance agreements) as may be required within ten (10) days after receipt of the Notice of Award, the contract may be terminated for default. In such event the CONTRACTOR shall be liable for any cost of procuring the work which exceeds the amount of his bid, and the bid guarantee shall be available toward offsetting such difference.
20. The bidder is not to give any information concerning his proposal to any other bidder or receive any information concerning another proposal.
21. SALES TAX: The Division of Parks and Wildlife is exempt from paying Colorado sales tax. Any materials and supplies purchased for this contract are exempt. The Contractor will need to obtain an exemption number from the Department of Revenue for this project and each subcontractor is required to obtain one under the general contractor.
22. QUANTITIES: Quantities stated in the bid schedule and construction documents are estimates only and may increase or decrease during construction. The contractor will perform the required quantity of work based on the unit prices stated in the Bid Schedule except as provided in Section 4.2 of the "General Conditions for Capital Construction."
23. WORK STOPPAGE: Work stoppage is a possibility. The contractor must request all shutdowns or stoppages in writing. If a shutdown is granted, the Division will pay for only work that has been totally completed. No advanced payment of mobilization will be made.
24. CONSTRUCTION SCHEDULE: The Contractor shall submit a written project schedule and supporting data to the Project Manager as soon as possible after the receipt of the Notice of Award. The schedule shall describe key milestones and duration of project activities. The supporting data for the schedule shall include a complete list of anticipated submittals and due dates, and the key ordering and delivery lead times. The Contractor shall schedule the sequence of construction to consider the delivery of long lead-time items. It shall be the Contractor's responsibility to notify the Project Manager of any problem in conforming to the Contract Documents, Specifications, and Construction Drawings for any element of the proposed improvements prior to its construction.
25. SCHEDULE OF VALUES/WORK SCHEDULE: The Contractor shall provide the Project Manager for review and acceptance, and prior to the commencement of any Work, a breakdown of the Contract cost proposal into values representing the various distinct stages, or units of the whole project, as a basis for making partial and final payments. Stages or specialty items shall be described in terms of a percentage to the whole. The schedule of values



shall be shown on a proposed time line estimating the actual Work schedule. The schedule shall indicate starting and completion dates for the various stages of Work and shall be in a format acceptable to the Project Manager.

26. SCHEDULE OF VALUES: Submit typed schedule of values on AIA Form G703, or a similar typewritten format on white 8-1/2" x 11" paper. Use the Table of Contents of these Contract Documents as a basis of format. Identify each line item with number and title of the Specification section. The schedule of values shall aggregate the total contract amount, and be divided so as to facilitate payments to subcontractors and suppliers. Upon request by the Project Manager, support values given with data that will substantiate their correctness. The schedule, when approved by the Project Manager, will be used as a basis for the Contractor's application for payment. Break down installed costs into delivered costs of products and total installed costs with overhead and profit. Provide a summary of the cost and origin of the five most costly manufactured items containing more than fifty percent iron or steel to be installed on the project. Revise the schedule to list change orders for each application for payment.
27. SCHEDULE OF SUBCONTRACTORS, MAJOR EQUIPMENT AND MATERIALS SUPPLIERS: The Contractor shall provide the Owner, prior to the commencement of any Work, a detailed listing of subcontractors and major equipment and materials suppliers indicating their name, address, description of service or equipment and materials being provided, if they are a woman owned or minority owned business enterprise (WBE/MBE), and their vested monetary interest in the contract. The Contractor shall not award any Work to a subcontractor, transfer or assign any portion of the Contract Work, without the written approval of the Owner. Records shall be maintained throughout the duration of the Contract and periodically submitted at the time the Contractor submits progress payment applications. The Owner will use these records to verify the Contractor's level of indebtedness prior to making final payment.
28. DIVISION APPROVAL OF INDEPENDENT TESTING LABORATORY AND SURVEYOR: The Contractor shall submit the name and qualifications of the independent testing laboratory and the registered land surveyor to the Project Manager as soon as possible after the receipt of the Notice of Award. The Division may request personal interviews, and retains the right to reject the proposed candidates without reservation. If a candidate is rejected, the Contractor shall provide an alternative that is acceptable, and work shall not begin until approval is obtained.
29. CONSTRUCTION CONTROL PLAN: A traffic, excavation, and construction access control plan shall be submitted by the Contractor and approved by the Owner prior to the commencement of work. The disruption to project area visitors shall be kept to a minimum. The plan shall take into consideration all users, including motorists, cyclists, and pedestrians. The Contractor shall provide all lights, signs, barricades, flagmen, or other devices necessary to provide for public safety in accordance with the current United States Department of Transportation's Manual of Uniform Traffic Control Devices.
30. STORMWATER MANAGEMENT PLAN: This project will disturb more than 1 acre of ground, so a State stormwater control permit is required. The Contractor must submit a copy of the permit certification and the Stormwater Management Plan to the Owner for approval prior to the commencement of Work. The plan shall describe how the work shall remain in substantial compliance with the requirements of the Stormwater Management Program of

the State Health Department.

31. Colorado Parks and Wildlife shall not be obligated or liable for any cost incurred by any company or individual reviewing this proposed project or prior to the issuance of a contract approved by the Controller of the State of Colorado or such assistant as he may designate. Any and all costs, to review the project, inspect the proposed construction site, prepare and or submit bids will be the sole responsibility of the bidder.
32. A submission in response to the solicitation acknowledges acceptance by the proposer of all unaltered terms and conditions, as set forth herein. Any proposed exception taken to the State's Terms and Conditions must be clearly and thoroughly identified and supported and acceptable alternatives must be proposed. Failure to do so shall be deemed a waiver of any rights to subsequently raise exception and/or request modification, except as outlined or specified in this solicitation. Submission of exceptions does not guarantee their acceptance, however, and such submittal will be taken into consideration during proposal review and scoring by the evaluation team. The state reserves the right to reject any changes suggested to PO or Contact terms and conditions and award to the next most advantageous qualified responsive vendor.
33. PROTESTED SOLICITATIONS AND AWARDS: An aggrieved party may file a protest concerning a material issues(s), at any phase of solicitation, including but not limited to, specifications, award or a disclosure of information marked confidential in the bid. The protest shall be submitted via email to the DNR Procurement Official as noted below within ten (10) business days after such aggrieved person knows, or should have known, of the facts giving rise thereto. Reference CRS 24-109-102, as amended, and Procurement Rule R-24-109-102-01, et seq.

DNR Procurement Official: Ion Cotsapas, [ion.cotsapas@state.co.us](mailto:ion.cotsapas@state.co.us)

The written protest shall include, as a minimum, the following:

- A. The name and address of the protestor;
  - B. Appropriate identification of the procurement by bid or award number;
  - C. A statement of the reasons for the protest, and any available exhibits, evidence, or documents substantiating the protest.
34. ACH/EFT PAYMENTS: Contractors are highly encouraged to consider signing up for ACH/EFT payments. ACH/EFT payments provide the advantage of ensuring quick and secure payments for the goods and services that vendors provide to the State. ACH/EFT payments help avoid the unnecessary, and sometimes inevitable delays in mail, and the possibility of lost warrants which will further delay vendor payment. DNR's goal is to pay vendors as soon as possible - signing up for the ACH/EFT is an important step in making this happen. For additional information about signing up for ACH/EFT payments, please contact the Project Manager identified in the Invitation for Bids
  35. In accordance with procurement code and CRS 24-103-904 titled "Purchasing Preference for Environmentally Preferable Products", bidders responding to this solicitation may seek to qualify for the preference and governmental bodies conducting this solicitation shall award a contract to a bidder who offers environmentally preferable products subject to the condition in the code and procurement rules.

36. **ALTERNATIVE PRODUCTS:** Certain materials and equipment have been specified by manufacturers' trade names. This was done to establish the minimum quality and type of product desired. Alternatives to the manufacturers' products may be used if the Project Manager determines they are equal. The Award will be based on the products identified in the plans.
37. **PREVAILING WAGES:** A public construction project in the amount of five hundred thousand dollars or more shall be subject to the State prevailing wage rate, of the regular, holiday, and overtime wages paid and the general prevailing payments on behalf of employees to lawful welfare, pension, vacation, apprentice training, and educational funds in the State, for each employee needed to execute the contract. Payments to the funds must constitute an ordinary business expense deduction for federal income tax purposes by contractors and subcontractors. Contractors are required to pay their employees at weekly intervals and shall comply with the enforcement provisions of C.R.S. §24-92-209. Contractors awarded a project of this size will be required to utilize the LCPTracker cloud-based labor compliance and certified payroll application. Upon award, the Contractor will need to return a completed copy of this form for LCPTracker enrollment:  
<https://drive.google.com/file/d/13Xvu5GttmOerEViwQsXlnbVI40YwsllD/view>.

The applicable prevailing wages for this project are attached in Appendix XX. Please review the "Special Considerations for Public Projects" section of the Contract Sample for additional details regarding compliance with the prevailing wages statutes.

38. **NOTICE OF CONTRACTOR'S SETTLEMENT:** If the project exceeds \$150,000.00, a Final Settlement will be advertised via electronic media on the Colorado VSS website at [www.colorado.gov/vss](http://www.colorado.gov/vss).
39. **CONTRACT CLOSE OUT: Final Payment Statement:** In addition to submittals required by the conditions of the Contract, provide submittals required by governing authorities and submit a final statement of accounting giving total adjusted Contract Sum, previous payments and sum remaining due. Provide a final summary of the cost and origin of the five most costly manufactured items containing more than fifty percent iron or steel that were installed on the project. The Contractor shall submit lien waivers for all subcontractors and material suppliers as part of the final payment statement.
40. **LIQUIDATED DAMAGES:** The parties agree that time is of the essence of the Contract and of the Specifications wherever a definite and certain length of time is fixed for the performances of any act. A daily charge will be made against the Contractor for each calendar day that any work remains uncompleted after the elapse of contract time. This daily charge will be deducted from any money due to the Contractor. This deduction will not be considered a penalty, but as liquidated damages.

The liquidated damages set forth is an amount, agreed to by the Contractor and the Division, as reasonably representing additional project construction administration costs incurred by the Division and projected loss of revenue to the Park if the Contractor fails to complete performance within the contract time. For this project, the **Liquidated Damages will be \$1000.00 per day.**

Due account shall be taken of any adjustment of the contract time for completion of the work granted under the provisions of subsection 8.5 of the General Conditions for Capital

Construction. Permitting the Contractor to continue and finish the work or any part thereof after elapse of contract time will not operate as a waiver on the part of the Division on any of its rights under the Contract.

Any deduction assessed as liquidated damages under this section shall not relieve the Contractor from liability for any damages or costs resulting from delays to other contractors on the project or other projects caused by a failure of the assessed Contractor to complete the work according to contract times.

41. WORK HOURS ON PROJECT SITE: All work on this project site will be allowed as follows: 7am to 7pm or otherwise approved by the Project Manager.

42. PERFORMANCE MONITORING CRS §§ 24-106-107:

A. PERFORMANCE MEASURES AND STANDARDS:

Performance measures and Standards as defined in the General Conditions for Capital Construction shall be the basis for this Contract. This includes but is not limited to the following:

- 1) The Contractor shall prepare a project schedule at project startup and continue to update the schedule throughout construction providing detailed justifications for construction delays and schedule changes.
- 2) The Contractor shall submit all required product information as defined in the Construction Drawings & Specifications. In turn, the State's Project Manager shall review and comment within 10 days of receipt.
- 3) The State's Project Manager and the Contractor shall conduct Construction Progress Meetings and Quantity Verification Inspections at least monthly or as otherwise determined necessary during Construction activities.

B. ACCOUNTABILITY:

Project and Contract administration will provide accountability by documenting and evaluating the progression of construction and the ability to follow the agreed upon construction schedule. The Contractor shall report regularly on achievement of the performance measures and standards specified above and failure to do so allows the governmental body to withhold payment until successful completion of all or part of the contract and the achievement of established performance standards. Payment by the State to the Contractor shall be made without delay upon successful completion of all or any part of the contract in accordance with the payment schedule specified in the contract or as otherwise agreed upon by the parties.

C. MONITORING REQUIREMENTS:

- D. The State will evaluate the Contractor's performance by preparing monthly progress reports and monthly construction schedule updates provided by the Contractor as well as performing site visits to verify quantities based on the Bid Schedule, inspections to verify quality of work, and reviews of performance data as construction progresses to ensure that the results, objectives and obligations of the contract are met.

NONCOMPLIANCE RESOLUTION:

Methods and mechanisms as defined in the General Conditions for Capital Construction shall be used to resolve any situation in which the State's monitoring assessment determines noncompliance, including termination of the contract.

END OF SECTION  
Apprenticeship Utilization Survey

**Pursuant to CRS 24-92-115**

The bidder acknowledges that they have reviewed Apprenticeship Utilization provisions contained in the Sample Contract and the Apprenticeship Utilization Certification form available at: <https://drive.google.com/file/d/1J4MSGuLyZTO3FgTcvgKrybAoalDkC8am/view>

If awarded the project, the bidder (choose one):

- ☐ Reasonably expects to be able to comply with the requirements outlined in the Apprenticeship Utilization Certification form and should be able to supply a completed version of that form prior to contract execution.
- ☐ Does not expect to be able to comply with the requirements outlined in the Apprenticeship Utilization Certification form. Please use the space provided below to explain this expectation.



# COLORADO

## Parks and Wildlife

Department of Natural Resources

### Big Beaver Dam Outlet Rehabilitation SPECIFICATIONS

PROJECT I.D. NO. C24DM4  
IFB1: IFB1 2025\*0105

MANDATORY PRE-BID CONFERENCE: November 12, 2024 at 11:00 am

BID OPENING: December 6, 2024 at 1:00 pm



# COLORADO

## Parks and Wildlife

Department of Natural Resources

**Big Beaver Dam Outlet Rehabilitation  
CONSTRUCTION DRAWINGS**

PROJECT I.D. NO. C24DM4  
IFB1: IFB1 2025\*0105

**MANDATORY PRE-BID CONFERENCE: November 12, 2024 at 11:00 am**

**BID OPENING: December 6, 2024 at 1:00 pm**



# COLORADO

## Parks and Wildlife

Department of Natural Resources

### Big Beaver Dam Outlet Rehabilitation APPENDICES

PROJECT I.D. NO. C24DM4  
IFB1: IFB1 2025\*0105

MANDATORY PRE-BID CONFERENCE: November 12, 2024 at 11:00 am

BID OPENING: December 6, 2024 at 1:00 pm



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## APPENDIX A

### *General Conditions for Capital Construction*

July 18, 2018



State of Colorado  
Department of Natural Resources

Colorado Parks and Wildlife

TO ALL CONTRACTORS

The General Conditions for Capital Construction dated 2018 are a part of all contracts.

It shall be the responsibility of the Contractor to possess and retain this document for bidding purposes for all Colorado Parks and Wildlife projects.

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## SECTION 1 - DEFINITIONS AND TERMS

## 1.1 ABBREVIATIONS:

Wherever the following abbreviations are used in these Specifications or on the Plans they shall be construed the same as the respective expressions represented:

AAN	American Association of Nurserymen
AAR	Association of American Railroads
AASHTO	American Association of State Highway Officials
ACI	American Concrete Institute
AGC	Associated General Contractors of America
AGA	American Gas Association
AI	Asphalt Institute
AIEE	American Institute of Electrical Engineers
AIA	American Institute of Architects
AISC	American Institute of Steel Construction
AISI	American Iron and Steel Institute
AITC	American Institute of Timber Construction
ANSI	American National Standards Institute, Inc.
ARA	American Railway Association
AREA	American Railway Engineering Association
ASCE	American Society of Civil Engineers
ASHRAE	American Society of Heating Refrigeration and Air Conditioning Engineers
ASME	American Society of Mechanical Engineers
ASTM	American Society of Testing and Materials
AWG	American Wire Gauge
AWPA	American Wood Preservers' Association
AWS	American Welding Society
AWWA	American Water Works Association
CDOT	Colorado Department of Transportation
CDPHE	Colorado Department of Health and Environment
CRS	Colorado Revised Statutes, 1973, as amended
CRSI	Concrete Reinforcing Steel Institute
DFPA	Douglas Fir Plywood Association
DIPRA	Ductile Iron Pipe Research Association
EIA	Electronic Industries Association
FHWA	Federal Highway Administration
FSS	Federal Specifications and Standards
GC	General Conditions for Capital Construction
GSA	General Services Administration
ICBO	International Conference of Building Officials
IEEE	Institute of Electrical and Electronics Engineers
IES	Illuminating Engineers Society
IMSA	International Municipal Signal Association
IPCEA	Insulated Power Cable Engineers Association
ITE	Institute of Transportation Engineers
NBS	National Bureau of Standards
NEC	National Electrical Code
NEMA	National Electrical Manufacturers' Association
OSHA	Occupation Safety and Health Association
IPC	International Plumbing Code
IBC	International Building Code
UL	Underwriters' Laboratories Incorporated

**ADVERTISEMENT:** A public announcement inviting Proposals for work to be performed or materials to be furnished.

**AWARD:** The acceptance by the Division of a Proposal.

**BASIS OF PAYMENT:** The terms under which "work" is paid, designated as a "Pay Item," which is paid for in accordance with the quantity measured and the "Pay Unit."

**BID DOCUMENTS:** All documents, whether attached or incorporated by reference, utilized for soliciting Proposals. The advertisement will indicate with reasonable accuracy the quantity and location of the work to be done or the character and quantity of the material to be furnished and the time and place of the opening of Proposals. These documents may be called Invitation for Bid (IFB), Documented Quotation (DQ) or Request for Proposal (RFP).

**BIDDER:** An individual, firm, corporation, or other legal entity submitting a Proposal for the advertised work. A contractor intending to contract with the Division for performance of prescribed work.

**CALENDAR DAY:** Each and every day shown on the calendar, beginning and ending at midnight.

**CAPITAL PROGRAM MANAGER:** The Capital Program Manager of the Division authorized by the Director to represent the Division in the functions of carrying out the capital construction program acting either directly or through authorized representatives.

**CERTIFIED INVOICE:** An invoice from a supplier which has been endorsed by the Contractor guaranteeing that the material, service or labor was purchased and received for the project and establishing the value of same for which reimbursement is to be made.

**CHANGE ORDER:** A written order issued to the Contractor by the Division covering contingencies, extra work, increases or decreases in contract quantities, and additions, deletions, or other alterations to the Bid Documents within the scope of the Contract, and establishing the basis of payment and time adjustments for the work affected by the changes. The Change Order is the only method authorized for changing the Contract.

**CITY OR TOWN:** A subdivision of the county used to designate or identify the location of the proposed work.

**CONSTRUCTION REQUIREMENT:** Specifications covering performance of work required for proper completion and acceptance.

**CONTRACT:** The written agreement between the Division and the Contractor setting forth the rights and obligations of the parties thereunder, including but not limited to the performance of the work, the furnishing of labor and materials and the basis of payment. The Contract Documents which may include but not limited to Purchase Order, Bid Documents, General Conditions for Capital Construction, Contract Proposal, Agreement, Bid Schedule, Contract Bond, Certificate of Insurance, Specifications, Special Conditions, general and detailed Plans, Letter of Award and Notice to Proceed, and any Change Orders and Amendments that are required to complete the construction of the work in an acceptable manner, including authorized extensions thereof, all of which constitute one instrument.

**CONTRACT BOND:** The approved form of security, executed by the Contractor and the Contractor Surety or Sureties, guaranteeing complete performance of the Contract and all Change Orders pertaining thereto and the payment of all legal obligations pertaining to the construction of the project.

**CONTRACT ITEM (PAY ITEM):** A specifically described unit of work for which a price is provided in the Contract.

**CONTRACT TERM:** The time from execution of the contract to the completion of the warranty period.

**CONTRACTOR:** The individual, firm, or corporation, or other legal entity contracting with the State of Colorado through the Colorado Parks and Wildlife for performance of prescribed work.

**COUNTY:** The county in which the work is to be done.

**DEPARTMENT:** State Department of Natural Resources, which is a department within the executive branch of the State of Colorado.

**DIRECTOR:** The Director of Colorado Parks and Wildlife.

**DIVISION:** Colorado Parks and Wildlife, which is a Division within the State Department of Natural Resources.

**EQUIPMENT:** All machinery and equipment, together with the necessary supplies for upkeep and maintenance, and also tools and apparatus necessary for the proper construction and acceptable completion of the work.

**EXECUTIVE DIRECTOR:** The Executive Director of the Colorado Department of Natural Resources.

**EXPRESSION BY OR TO THE PROJECT MANAGER:** In order to avoid cumbersome and confusing repetition of expressions in these Specifications, it is provided that whenever anything is, or is to be done, if, as, of, when, or where "contemplated, required, determined, directed, specified, interpretation, interpreted, authorized, ordered, given, designated, indicated, considered necessary, deemed necessary, permitted, reserved, suspended, established, approval, approved, disapproved, acceptable, unacceptable, suitable, accepted, satisfactory, unsatisfactory, sufficient, insufficient, rejected, or condemned" it shall be understood as if the expression were followed by the words "by the Project Manager" or "to the Project Manager."

**EXTRA WORK:** Work not provided for in the Contract as awarded but found by the Project Manager to be essential or appropriate to the satisfactory completion of the Contract within its intended scope.

**HOLIDAYS:** Holidays recognized by the State of Colorado are:

- New Year's Day
- Dr. Martin Luther King Jr.'s Birthday
- President's Day
- Memorial Day
- Independence Day
- Labor Day
- Columbus Day
- Veterans Day
- Thanksgiving Day
- Christmas Day

When New Year's Day, Independence Day, Veterans Day or Christmas Day fall on Saturday or Sunday, the following Monday or preceding Friday shall be considered a holiday.

Additional legal holidays, when designated by the Governor or the President of the United States, will also be recognized by the State.

**INSPECTOR:** The Project Manager's authorized representative assigned to make detailed inspections of contract performance.

**LABORATORY:** A testing laboratory certified or having expertise in the area of testing required and acceptable to the Project Manager.

**MATERIALS:** All components required for use in the construction of the project.

**METHOD OF MEASUREMENT:** The manner in which a "pay item" or "bid item" is measured to conform with the "Pay Unit."

**NOTICE TO PROCEED:** Written notice to the Contractor to proceed with the contract work including the date of beginning of contract time.



**PERFORMANCE TIME:** The number of calendar days allowed or specified date for completion of the Project as identified in the Bid Documents, including authorized time extensions. Where a calendar date of completion is specified, the Project shall be completed on or before that date.

**PLANS:** The drawings or reproductions provided by the Division which show the location, character, dimensions, and details of the work to be done.

**PROJECT:** The specific area of work together with all appurtenances and construction to be performed thereon under the Contract.

**PROJECT MANAGER:** The Director's duly authorized representative who is in direct charge of the work and is responsible for the administration and completion of the project under contract. The Project Manager is also responsible for acting on written appeals made by the Contractor relating to contract claims for additional compensation or extension of contract time.

**PROPOSAL:** The offer of a Bidder, on the prescribed form, to perform the work at the prices quoted. Also called Bid or Schedule.

**PROPOSAL FORM:** The documents furnished by the Division on which the offer of a Bidder is submitted. Also called Bid Proposal.

**PROPOSAL GUARANTY (BID SURETY):** The security furnished with a Proposal to guarantee that the Bidder will enter into the Contract if the Contractor's Proposal is accepted.

**PURCHASE ORDER:** A document, in a form prescribed by the Colorado State Controller, prepared and approved by an authorized employee of the State for the purpose of encumbering funds and securing construction services from the Contractor.

**QUESTIONNAIRE:** The specified forms on which the Contractor shall furnish required information as to the Contractor's ability to perform and finance the work.

**SALVAGEABLE MATERIAL:** Material that can be saved or salvaged. Unless designated or directed by the Project Manager or shown on the Plans, all salvageable materials shall remain the property of the Division.

**SHUTDOWN:** The authorized period of time when work is suspended.

**SPECIAL CONDITIONS:** Specifications covering conditions peculiar to an individual project.

**SPECIFICATIONS:** A general term applied to all directions, provisions and requirements pertaining to performance of the work.

**SPECIFIED COMPLETION DATE:** The date on which the contract work is specified to be completed.

**STATE:** The State of Colorado acting through its authorized representative.

**STRUCTURES:** Bridges, dams, culverts, catch basins, drop inlets, retaining walls, raceways, cribbing, manholes, buildings, sewers, service pipes, underdrains, foundation drains, and other features which may be encountered in the work.

**SUBCONTRACTORS:** An individual or entity to whom the Contractor sublets part of the Contract.

**SUPERINTENDENT:** The Contractor's authorized representative in responsible charge of the work.

**SURETY:** The corporation, partnership or individual, other than the Contractor, executing a Bond furnished by the Contractor.

**TITLES OR HEADINGS:** The titles or headings of the sections and subsections herein are intended for convenience of reference and shall not be considered as having any bearing on their interpretation.

**WORK:** The furnishing of all labor, materials, equipment, and incidentals necessary to successfully complete the project according to all duties and obligations imposed by the Contract.

**WORKING DAY:** Any day, exclusive of Saturdays, Sundays and holidays, on which weather and other conditions not under the control of the Contractor will permit construction operations to proceed with the normal working force engaged in performing those items controlling the completion of the work.

**WORKING DRAWINGS:** Stress sheets, shop drawings, erection plans, falsework plans, framework plans, cofferdam plans, bending diagrams for reinforcing steel, or any other supplementary plans or similar data which the Contractor is required to submit to the Project Manager for review and approval.

End of

DEFINITIONS AND TERMS

## SECTION 2 - BIDDING REQUIREMENTS AND CONDITIONS

## 2.1 QUALIFICATIONS OF BIDDERS

Prior to Award to the low Bidder, when requested by the Division, the Bidder must file an experience questionnaire and a confidential financial statement. The statement shall include a complete report of the Bidder's financial resources and liabilities, equipment, past record and personnel.

## 2.2 PROPOSAL

- (a) Contents of Proposal shall include those documents defined in the Bidding Documents as required in order for the bid to be considered responsive.
- (b) The Plans, Specifications, GCs and other documents designated in the Proposal will be considered a part of the Proposal whether attached or not. None of these documents shall be modified by the Bidder.

## 2.3 DISQUALIFICATION OF PROPOSALS

The Division reserves the right to disqualify or refuse to accept a Proposal if in the opinion of the Division a Bidder is in default for any of the following reasons:

- (1) Lack of competency and/or adequate machinery, plant and/or other equipment.
- (2) Uncompleted work which, in the judgment of the Division, might hinder or prevent the prompt completion of additional work if awarded.
- (3) Failure to pay or satisfactorily settle all bills due for labor and material on former contracts.
- (4) Failure to comply with any qualification or regulation of the Division.
- (5) Default under previous contracts.
- (6) Unsatisfactory performance on previous work.
- (7) Failure to make timely submittal of required forms per contract provisions on previous contract(s).
- (8) More than one Proposal for the same work from an individual, firm or corporation under the same or different name.
- (9) Evidence of collusion among the Bidders. Participants in such collusion will not receive recognition as Bidders for any future work of the Division.

## 2.4 INTERPRETATION OF QUANTITIES IN BID PROPOSAL

- (a) Except as otherwise provided in this section and the method of measurement for individual items, the quantities appearing in the Bid proposal are estimates prepared for the comparison of Proposals. Payment to the Contractor will be made in accordance with the following procedures except as set out in [Section 4.2](#) for variances from such estimates.
- (b) Payment will be made for actual quantities measured and accepted.
- (c) The estimated quantities of work to be performed and materials to be furnished may be increased, decreased, or omitted at the sole discretion of the Division.

## 2.5 EXAMINATION OF PLANS, SPECIFICATIONS, SPECIAL CONDITIONS AND SITE OF WORK

- (a) The Bidder is expected to examine the site of the proposed work, the Proposal, Plans, Specifications, Special Conditions, and contract forms before submitting a Proposal. The submission of a Proposal will be considered conclusive evidence that the Bidder has made this examination and is aware of the conditions to be encountered in performing the work according to the Contract.
- (b) Boring logs and other records of subsurface investigations (when existing) are available for inspection by Bidders. These logs and records are made available so that all Bidders have access to identical subsurface information that is available to the Division and is not intended as a substitute for personal investigation, interpretation and judgment of the Bidders.
- (c) The Division does not warrant the adequacy of boring logs and other records of subsurface investigations, and such information is not considered to be a part of the Contract. When a log of testing borings is included in the subsurface investigation record, the data shown in the individual log of each test boring apply only to that particular boring and are not intended to be conclusive as to the character of any material between or around test borings. If Bidders use this information in preparing a Proposal it is used at their own risk, and Bidders are responsible for all conclusions, deductions, and inferences drawn from such information.
- (d) Bidders may conduct subsurface investigations at the project site at Bidder's expense. The Division will afford them this opportunity prior to public opening of Proposals. The Contractor shall notify the Division of the Contractor's intention to investigate the site. The Project Manager shall review and approve the Contractor's plan (including insurance) prior to commencement of the investigation. Bidder is responsible for restoration of the site at the direction of the Project Manager.
- (e) If a Bidder discovers an apparent error or omission in the Proposal form, estimated quantities, Plan, or Specifications, the Bidder shall immediately notify the Project Manager to enable the Division to make any necessary revisions.

## 2.6 PREPARATION OF PROPOSAL

- (a) The Bidder shall submit their Proposal upon the forms furnished by the Division and shall include all required documentation as identified in the Bidding Documents. The Bidder shall specify a unit price for each pay item for which a quantity is given and shall also show the products of the respective unit price and quantities in the column provided for that purpose. The total amount of the Proposal obtained by adding the amounts of the several items shall be specified in words and figures. All the words and figures shall be in ink or typed. In cases of a discrepancy between the unit price multiplied by the quantity and the total amount, the result of the unit price multiplied by the quantity shall govern.
- (b) When an item in the Proposal contains a choice to be made by the Bidder, the Bidder shall indicate the Contractor's choice in accordance with the Specifications for that particular item, and thereafter no further choice will be permitted.

The Bidder's Proposal must be signed by any agent of the Contractor legally qualified and acceptable to the State.

## 2.7 IRREGULAR PROPOSALS

Proposals (Bids) will be considered irregular and may be rejected for any of the following reasons:

- (1) If the Proposal is on a form other than that prescribed by the Division, or if the form is altered or any part thereof is detached, or if the form does not contain original signatures.
- (2) If there are unauthorized additions, conditional or alternate proposals, or irregularities of any kind that tend to make the Proposal incomplete, indefinite, or ambiguous.
- (3) If the Bidder fails to acknowledge in the Proposal receipt of all addendums current on the date of opening of Proposals.

- (4) If the Proposal does not contain a unit price for each pay item listed, except in the case of authorized alternative pay items, the mathematical products of the respective unit prices and the estimated quantities, and the total amount of the Bid obtained by adding such mathematical products.
- (5) If the Division determines that any of the unit bid prices are materially unbalanced to the potential detriment of the Division. There are two types of unbalanced Bids: (1) mathematically unbalanced and, (2) materially unbalanced. The mathematically unbalanced Bid is a Bid containing lump sum or unit pay items which do not reflect reasonable actual costs plus a reasonable proportionate share of the Bidder's anticipated profit, overhead costs, and other indirect costs, but not necessarily to the detriment of the Division. These costs should all relate to the performance of the items in question. The materially unbalanced Bid is a Bid which the Division determines leaves reasonable doubt that award will result in the lowest ultimate cost to the Division, or that award is in the public interest.
- (6) If the contractor submitting the Bid is affiliated with another contractor that has submitted a Bid on the same public project.
- (7) If the Bidder has been found in default or asked in writing to show why it should not be found in default on a State contract.
- (8) The Division reserves the right to reject any or all Bids, to waive technicalities or to advertise for new Bids, if in the judgment of the Division it is in the State's best interest.

## 2.8 PROPOSAL GUARANTY

A Proposal may be rejected if not accompanied by a guaranty (if applicable) and in an amount not less than the amount indicated in the Bidding Documents.

## 2.9 DELIVERY OF PROPOSALS

For projects identified as sealed bids, each Proposal not submitted through the State's electronic bid system shall be submitted in a sealed envelope. The envelope shall be marked to clearly indicate it is a "SEALED BID" and identified by the bid number. When sent by mail the sealed Proposal shall be addressed to the Division at the address and in care of the official in whose office the Bids are to be received and enclosed in a separate outside envelope clearly to indicate its contents. All Proposals shall be filed prior to the time and at the place specified in the Bidding Documents. Proposals received after the time for opening of Bids will be returned to the Bidder unopened.

## 2.10 WITHDRAWAL OR REVISION OF PROPOSALS

A Bidder may withdraw or revise a Proposal after it has been deposited with the Division, but prior to the time set for opening of Bids. Withdrawal of Bids may be made either in writing or in person; however, any Bid withdrawn for the purpose of revision must be redeposited before the time set for opening of Bids.

## 2.11 COMBINATION OR CONDITIONAL PROPOSALS

- (a) If Proposal forms are issued for projects in combination and separately, the Bidder may submit Proposals either on the combination or on separate units of the combination. The Division reserves the right to make awards on combination or separate Proposals to the advantage of the Division. Combination Proposals will be considered, only when specified.
- (b) The Division may choose to add, reduce, or eliminate any bid item or combination of bid items so the construction contract shall not exceed the budgeted funds allocated for this project. The contract shall be awarded to the low bidder of the bid items selected by the Division.

- (c) **DEDUCTIBLE ALTERNATES:** The lowest responsible Bid, taking into account the Colorado resident bidder preference provision of Colorado law, will be determined by and the contract will be awarded on the base bid combined with deductible alternates, deducted in numerical order in which they are listed in the alternates bid form provided by the Principal Representative. The subtraction of alternates shall result in a sum total within available funds. If this bid exceeds such amount, the right is reserved to reject all bids. An equal number of alternates shall be subtracted from the base bid of each bidder within funds available for purposes of determining the lowest responsible bidder.
- (d) **ADDITIVE ALTERNATES:** The lowest responsible Bid, taking into account the Colorado resident bidder preference provision of Colorado law, will be determined by and the contract will be awarded on the base bid plus all additive alternates added in the numerical order in which they are listed in the alternates bid form provided by the Principal Representative. The addition of alternates shall result in a sum total within available funds. If this bid exceeds such amount, the right is reserved to reject all bids. An equal number of alternates shall be added to the base bid of each bidder within funds available for purposes of determining the lowest responsible bidder.
- (e) **BEST VALUE ALTERNATES:** The State may, at its discretion award alternates in any order, if the award of the alternate items does not change the lowest successful base bidder.
- (f) **DEDUCTIBLE AND ADDITIVE ALTERNATES:** Additive alternates will not be used if deductible alternates are used and deductible alternates will not be used if additive alternates are used.

## 2.12 PUBLIC OPENING OF PROPOSALS

Proposals will be opened and read publicly at the time and place indicated in the Bidding Documents. Bidders, their authorized agents, and other interested parties are invited to attend the bid opening.

## 2.13 MATERIAL GUARANTY

The successful Bidder may be required to furnish a complete statement of the origin, composition, and manufacture of materials used in the construction of the work together with samples, which have been tested for conformance with contract provisions.

End of

BIDDING REQUIREMENTS AND CONDITIONS

## SECTION 3 - AWARDS AND EXECUTION OF CONTRACT

## 3.1 CONSIDERATION OF PROPOSALS

- (a) After the Proposals are opened and read, they will be compared on the basis of the summation of the products of the quantities shown in the Bid proposal by the unit bid prices. The results of such comparison will be available to the public. In the event of a discrepancy between said unit prices and extensions, the unit bid price shall govern.
- (b) The right is reserved to reject any or all Proposals, to waive technicalities or to advertise for new Proposals, if in the judgment of the awarding authority, the best interests of the Division will be promoted.
- (c) The Division reserves the right to settle Bid discrepancies and irregularities as defined in this subsection and in [Section 2.7](#) that occur in the low Bidder's Proposal at the time the Contract is awarded. Bid discrepancies will be settled with the understanding that the low Bidder waives any claims against the Division because of the Bidder's mistakes in the Bid Proposal.

## 3.2 AWARD OF CONTRACT

If the Contract is awarded, the Award will be made with reasonable promptness after the opening of Proposals to the lowest Bidder whose Proposal complies with all the requirements prescribed. The successful Bidder will be notified in writing of the acceptance of the Proposal and the Award of the Contract.

## 3.3 CANCELLATION OF AWARD

The Division reserves the right to cancel the Award of any Contract at any time before the signing of said Contract by all parties without any liability against the Division.

## 3.4 RETURN OF PROPOSAL GUARANTY

- (a) All Proposal guaranties consisting of Bid Bonds will be retained by the Division.
- (b) All Proposal guaranties consisting of certified checks or cashier's checks will be treated as follows:
  - (1) For the two lowest Bidders, the Proposal guaranty will be held until the successful Bidder has provided satisfactory Performance Bond. Proposal guaranty will then be returned immediately to the second lowest Bidder. The Proposal guaranty will not be returned to the successful Bidder until the Performance Bond has been furnished and the Contract has been executed.
  - (2) For all other Bidders, the Proposal guaranty will be returned promptly after the opening of Bids and verification of the Proposals.

## 3.5 BOND AND INSURANCE REQUIREMENTS

- (a) If the Award is for more than one hundred and fifty thousand dollars (\$150,000), the Contractor shall, duly execute and deliver to and file with the Division a good and sufficient Bond or other acceptable Surety approved by the Division in a penal sum equal to one-hundred percent of the total amount payable by the terms of the Contract. Such Bond shall be duly executed by a qualified corporate surety, conditioned for the due and faithful performance of the Contract, and in addition shall provide that if the Contractor or the Contractor's subcontractors fail to duly pay for any labor, materials, team hire, sustenance, provisions, provender or other supplies used or consumed by such Contractor or the Contractor's subcontractor in performance of the work contracted to be done, the Surety will pay the same in an amount not exceeding the sum specified in the Bond, together with interest at the rate of eight percent per annum. If the scope of work is changed resulting in an increase in the contract price, the amount of the Bond required shall be increased by a like amount. If

the change results in a decrease in the contract price, the amount of the Bond required may be decreased by a like amount.

- (b) The Contractor shall deliver to the Division a Certificate of Insurance in the amounts designated on the Bid Documents.

### 3.6 EXECUTION AND APPROVAL OF CONTRACT

The Contract shall be signed and returned by the successful Bidder together with the Contract Bonds and certificate(s) of insurance within 15 calendar days after the date of Award. If the signed Contract, Bonds, and insurance certificate(s) are returned by the successful Bidder within 15 calendar days after award, and are technically correct, and if the Contract is not executed by the Division within 60 calendar days from date of receipt of a complete and accurate Contract Documents accepted by the Division, the Bidder shall have the right to withdraw the Proposal without penalty. The Contract will not be considered effective until it has been fully executed by all of the parties to the Contract.

### 3.7 FAILURE TO EXECUTE CONTRACT

Failure to execute the Contract and file acceptable Bonds and/or provide requisite Certificates of Insurance within 15 calendar days after the date of Award shall be just cause for the cancellation of the Award and the forfeiture of the Proposal guaranty, which shall become the property of the Division, not as a penalty, but in liquidation of damages sustained. Award may then be made to the next lowest responsible Bidder, or the work may be re-advertised or otherwise as the Division may decide.

End of

AWARDS AND EXECUTION OF CONTRACT



## SECTION 4 - SCOPE OF WORK

## 4.1 INTENT OF CONTRACT

The intent of the Contract is to provide for the construction and completion in every detail of the work described. The Contractor shall furnish all labor, materials, equipment, tools, transportation and supplies required to complete the work in accordance with the Special Conditions, Plans, Specifications and terms of the Contract.

## 4.2 ALTERATIONS OF PLANS OR CHARACTER OF WORK AND VARIATIONS IN PLAN QUANTITIES

- (a) Differing Site Conditions. During the progress of work, if subsurface or latent physical conditions are encountered at the site differing materially from those indicated in the Contract or if unknown physical conditions of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in the work provided for in the Contract, are encountered at the site, the party discovering such conditions shall promptly notify the other party in writing of the specific differing conditions before the site is disturbed and before the affected work is performed.

Upon written notification, the Project Manager will investigate the conditions, and if the Project Manager determines that the conditions materially differ and cause an increase or decrease in the cost or time required for the performance of any work under the Contract, an adjustment, excluding loss of anticipated profits, will be made and the Contract modified in writing accordingly. The Project Manager will notify the Contractor of the determination whether or not an adjustment of the Contract is warranted. No contract adjustment which results in a benefit to the Contractor will be allowed unless the Contractor has provided the required written notice.

- (b) Suspensions of Work Ordered by the Project Manager. If the performance of all or any portion of the work is suspended or delayed by the Project Manager in writing for an unreasonable period of time (not originally anticipated, customary, or inherent to the construction industry) and the Contractor believes that additional compensation and/or contract time is due as a result of such suspension or delay, the Contractor shall submit to the Project Manager in writing a request for adjustment within seven calendar days of receipt of the notice to resume work. The request shall set forth the reasons and support for such adjustment.

- (1) Upon receipt, the Project Manager will evaluate the Contractor's request. If the Project Manager agrees that the cost and/or time required for the performance of the Contract has increased as a result of such suspension and the suspension was caused by conditions beyond the control of and not the fault of the Contractor, its suppliers, or subcontractors, and not caused by the weather, the Project Manager will make an adjustment (excluding profit) and modify the Contract in writing accordingly. Weather or climatic conditions are not justifiable reasons for contract price adjustments unless the Division has altered or increased the quantities as designated in [Section 4.2\(c\)](#) and [4.3](#) where the extension of time has delayed the Contractor in work completion. The Project Manager will notify the Contractor of the determination whether or not an adjustment of the Contract is warranted. No contract adjustment will be allowed unless the Contractor has submitted the request for adjustment within seven calendar days of receipt of the notice to resume work.

- (2) No contract adjustment will be allowed under this clause to the extent that performance would have been suspended or delayed by any other cause, or for which an adjustment is provided for or excluded under any other term or condition of this Contract.

- (3) No contract adjustment will be allowed if the suspension was caused or based in whole or in any part by the Contractor.

- (c) Significant Changes in the Character of Work. The Project Manager reserves the right to make, in writing, at any time during the work, such changes in quantities and such alterations in the work as are necessary to satisfactorily complete the project. Such changes in quantities and alterations shall

not invalidate the Contract nor release the Surety, and the Contractor agrees to perform the work as altered.

- (1) If the alterations or changes in quantities significantly change the character of the work under the Contract, whether such alterations or changes are in themselves significant changes to the character of the work, or by affecting other work cause such other work to become significantly different in character, an adjustment, excluding loss of anticipated profit, will be made to the Contract. The basis for the adjustment shall be agreed upon prior to the performance of the work. If a basis cannot be agreed upon, then an adjustment will be made either for or against the Contractor in such amount as the Project Manager may determine to be fair and equitable.
- (2) If the alterations or changes in quantities do not significantly change the character of the work to be performed under the Contract, the altered work will be paid for as provided elsewhere in the Contract. The term "significant change" shall be construed to apply only to the following circumstances:
  - I. When the character of the work as altered differs materially in kind or nature from that involved or included in the original proposed construction, or
  - II. When the alterations increase or decrease the scope of the total project by more than 25 percent unless agreed by the Contractor.

#### 4.3 EXTRA WORK

The Contractor shall perform unforeseen work, for which there is no price included in the Contract, whenever it is deemed necessary or desirable in order to complete fully the work as contemplated when authorized in writing by the Project Manager. Such work shall be performed in accordance with the Contract and as directed, and will be paid for as provided under [Section 9.4](#) or at a price agreed upon in advance of the performance of the work.

#### 4.4 RIGHTS IN AND USE OF MATERIALS FOUND ON THE WORK

The Project Manager may authorize the Contractor's use of materials found in the excavation for completing pay items other than excavation. Payment will be made for both the excavation of such materials at the corresponding contract unit price, and for the pay item for which the excavated material is used, unless otherwise negotiated and approved through a Change Order. The Division will not charge the Contractor royalty or additional cost of select material for the removed material. The Contractor shall not excavate or remove any material from within the construction area which is not within the grading limits, as indicated by the slope and grade lines, without written authorization from the Project Manager.

#### 4.5 FINAL CLEANING UP

Before final acceptance, the work area and all ground occupied by the Contractor in connection with the work shall be cleaned of all rubbish, excess materials, temporary structures and equipment, and all parts of the work shall be left in an acceptable condition. The cost of final cleanup will not be paid for separately but shall be included in the work.

End of  
SCOPE OF WORK

**SECTION 5 - CONTROL OF WORK****5.1 AUTHORITY OF THE PROJECT MANAGER**

- (a) The Project Manager will decide all questions regarding the quality and acceptability of materials furnished, work performed, and the rate of progress of the work; all interpretation of the Plans and Specifications; and the acceptable fulfillment of the Contract.
- (b) The Project Manager will, in writing, suspend the work, wholly or in part when the Contractor fails to correct conditions unsafe for the workers or the general public; for failure to carry out contract provisions; for failure to carry out orders; for periods of unsuitable weather; for conditions unsuitable for the prosecution of the work, or for any other condition or reason determined to be in the public interest.

**5.2 PLANS AND SHOP DRAWINGS**

- (a) Plans will show details of construction lines, grades, typical cross sections, location and design of all structures. Only general features will be shown for steel and prestressed concrete structures.
- (b) The Plans shall be supplemented by shop drawings as necessary to adequately control the work. Shop drawings may consist of drawings, diagrams, illustrations, schedules, calculations, and other data prepared by the Contractor, subcontractor, manufacturer, supplier, or distributor, which will illustrate how specific portions of the work shall be fabricated and/or installed in accordance with the Contract.
- (c) Shop drawings are not part of the Contract Documents.
- (d) The Contractor shall approve shop drawings prior to submission to the Project Manager for review. The Contractor's approval shall be recorded by an appropriate stamp with the date and signature on each drawing. Where design notes and catalog cuts are submitted, only the first sheet will require the approval stamp. Shop drawings received directly from fabricators or suppliers or from contractors without Contractor's approval will be returned without action for resubmittal in accordance with these Specifications.
- (e) Shop drawings shall be submitted to the state electronically. After checking and review by the - Project Manager, will be returned for use by the Contractor and the fabricator or supplier.
- (f) Shop drawings returned to the Contractor will be stamped and the stamp marked to indicate one of the following:
  - (1) NO EXCEPTION TAKEN - Signifies material or equipment represented by the Submittal conforms with the design concept and complies with the information given in the Contract Documents. Contractor is to proceed with fabrication or procurement of the items and with related work.
  - (2) MAKE CORRECTIONS NOTED - Signifies material or equipment represented by the submittal conforms with the design concept and complies with the information given in the Contract Documents and in accordance with Project Manager's notations. Contractor is to proceed with the Work in accordance with Project Manager's notations.
  - (3) REVISE AND RESUBMIT - Signifies material or equipment represented by the submittal conforms with the basic design concept, however, it does not comply with the information given in the Contract Documents. Contractor is to submit a revised submittal responsive to the notations marked on the returned submittal and to the information in the Contract Documents.
  - (4) REJECTED - Signifies material or equipment represented by the submittal does not conform with the design concept or comply with the information given in the Contract Documents and is not acceptable for use in the Work. Contractor is to submit material or equipment responsive to the

## Contract Documents.

- (g) Checking is only for general conformance with the design concept of the project and general compliance with the information given in the contract documents. Any action shown is subject to the requirements of the plans and specifications. Contractor is responsible for: dimensions which shall be confirmed and correlated at the job site; fabrication processes and techniques of construction; coordination of the Contractor's work with that of all other trades and the satisfactory performance of the Contractor's work. Changes to the reviewed shop drawings required additional review by the Project Manager.
- (h) Review of the shop drawings shall not relieve the Contractor of the obligation to meet all requirements of the Contract and shall not relieve the Contractor of the responsibility for the correctness of the shop drawings. Changes to the approved shop drawings requires re-approval.
- (i) The time required for the Division's approval of each submittal will not exceed four weeks after shop drawings are received by the Project Manager.
- (j) If the Contractor's controlling operations are delayed or interfered with by reason of the Division's failure to return shop drawings within the specified four weeks' time, an extension of contract completion time commensurate with the delay in completion of the work thus caused will be granted.
- (k) All shop drawings shall be submitted electronically, the Contractor may be required to submit hard copies of submittals at the Project Manager's discretion.
- (l) Any work performed on the project, regarding work requiring shop drawings, will not be accepted until after the shop drawings have been reviewed by the Project Manager and the work is in conformance with the drawings and the provisions of the Contract.
- (m) The Contractor shall keep one set of Plans and shop drawings available on the project site at all times.
- (n) Payment for preparing and furnishing all shop drawings will not be paid for separately but shall be included in the work.

**5.3 CONFORMITY WITH PLANS AND SPECIFICATIONS**

- (a) All work performed and all materials furnished shall conform to the lines, grades, cross sections, dimensions, and material requirements, including tolerances, shown in the Contract.
- (b) For those items of work where working tolerances are not specified, the Contractor shall perform the work in a manner consistent with reasonable and customary manufacturing and construction practices.
- (c) When the Project Manager finds that the materials furnished, the work performed, or the finished product does not conform with the Contract but that reasonably acceptable work has been produced, the Project Manager will determine the extent the work will be accepted and remain in place. If accepted, the Project Manager will (1) document the basis for acceptance by Change Order which will provide for an appropriate adjustment in the contract price for such work or materials not otherwise provided for in this subsection or (2) notify the Contractor in writing that the Contract unit price will be adjusted; (3) in lieu of a price adjustment, permit correction or replacement of the finished product provided the correction or replacement does not adversely affect the work.
- (d) When the Project Manager finds the materials furnished, work performed, or the finished product are not in conformity with the Contract and has resulted in an inferior or unsatisfactory product, the work or materials shall be removed and replaced or otherwise corrected by and at the expense of the Contractor. The Project Manager shall promptly notify the Contractor of such unacceptable materials, work or finished product.

#### 5.4 COORDINATION OF PLANS, SPECIFICATIONS, AND SPECIAL CONDITIONS

- (a) The Specifications, the Plans, Special Conditions, these GC's, and all supplementary documents are essential parts of the Contract, and a requirement occurring in one is as binding as though occurring in all. They are intended to be complementary and to describe and provide for a complete work.
- (b) In case of discrepancy the order of precedence is as follows:
  - (1) Contract or Purchase Order, Change Orders or Amendments
  - (2) Purchase Order
  - (3) Special Conditions
  - (4) Specifications
  - (5) Detailed Plans
  - (6) Standard Plans
  - (7) Calculated dimensions will govern over scaled dimensions
  - (8) GCs
- (c) If the manufacturer of an approved product's specifications is more stringent than those contained in the Contract, the manufacturer's specification shall govern.
- (d) The Contractor shall not take advantage of any apparent error or omission in the Contract. If the Contractor discovers an error or omission, the Project Manager shall immediately be notified. The Project Manager will make corrections and interpretations as necessary to fulfill the intent of the Contract.

#### 5.5 COOPERATION BY CONTRACTOR

- (a) The Contractor shall give the work the constant attention necessary to facilitate the progress thereof, and shall cooperate with the Project Manager, the Division's inspectors, and other contractors in every way possible.
- (b) The Contractor shall have on the site at all times, as the Contractor's agent, a competent superintendent capable of reading and thoroughly understanding the Plans and Specifications and thoroughly experienced in the type of work being performed. The superintendent shall have full authority to execute orders or directions of the Project Manager without delay, and to promptly supply such materials, equipment, tools, labor and incidentals as may be required. Such superintendent shall be furnished regardless of the amount of work sublet.
- (c) When circumstances dictate that the Superintendent cannot physically be at the work site the Contractor shall provide the Project Manager with a minimum 2 days notice of the method, times and places where the Superintendent can be contacted or alternatively provide an individual who has the authority to act in the Superintendent's absence for the Project Manager's approval.

#### 5.6 PROTECTION OF UTILITIES

- (a) The Contractor's attention is directed to the importance of protecting all utilities encountered on all projects. These may include, but are not limited to, communication and power lines, water lines, sewer lines, gas lines, railroad tracks and other overhead and underground utilities.
- (b) Before any excavation is begun in the vicinity of the water lines, railroad tracks, structures, sewer lines, gas lines, or other conduits, each utility company concerned must be notified in advance of such excavation, and such excavation shall not be made until an authorized representative or the owner of the utility is on the site and has designated the location of their facilities.
- (c) The Contractor shall be responsible for all damages to any and all public utilities encountered on a project, which damages are due to the Contractor's negligence. Such damages shall include all physical damages to utilities and also all damages due to interruption of service of such utilities, when such damages and interruptions are caused by Contractor's negligence.

- (d) Where alterations or moving of utilities is not required to permit construction of the project, the Contractor shall take such measures as necessary in properly protecting these utilities throughout the Contractor's construction operations, and shall cooperate at all times with the proper authorities and owners in maintaining service on railroads, conduits, pole lines, transmission lines, pipelines, sewers, etc., affected by the project.
- (e) The cost of damages due to Contractor's non-negligent operation, or cost of protecting utilities where alteration or moving is not required to permit construction of the project, shall be included in the original contract prices for the project.
- (f) Should pipe lines, water lines, or gas mains, electrical conduits, sewer pipes, overhead wiring, telephone lines, telegraph lines, power lines or any other such utilities not specifically mentioned and provided for elsewhere as a part of this Contract, have to be moved, repaired, reconditioned or revised due to the construction, or moved temporarily to permit construction of the project, the party or parties owning or operating such utilities shall perform the actual work of moving, repairing, reconditioning or revising such utilities. The cost of this work shall be borne by the Division or the utility companies involved unless the Contract provides otherwise. The Division will make the determination as to whether the Division or the utility company will be responsible.

#### 5.7 COOPERATION BETWEEN CONTRACTORS

- (a) The Division reserves the right to contract for and perform other or additional work on or near the work covered by the Contract.
- (b) When separate contracts are let within the limits of any one project, each contractor shall conduct the work without interfering or hindering the progress or completion of the work being performed by other contractors. Contractors working on the same project shall cooperate with each other as directed.
- (c) Each contractor involved shall assume all liability, financial or otherwise, in connection with the Contract and shall protect and save harmless the Division from any and all damages or claims that may arise because of inconvenience, delay, or loss because of the presence and operations of contractors working within the limits of the same or adjacent project.

#### 5.8 CONSTRUCTION STAKES, LINES AND GRADES

- (a) Construction work shall not be performed until adequate lines and grades have been established by the Division or by the Contractor.
- (b) Contractor Surveying: Unless otherwise state the Division will provide control points and bench marks as described in the Contract. The Contractor shall furnish and set construction stakes establishing lines and grades. The Project Manager may order extra surveying which will be paid for at an agreed upon rate.
- (c) Division Surveying: If identified in the contract documents that the Division will provide surveying, then the Division will furnish one set of construction stakes and marks establishing lines and grades for proper prosecution of the work.
- (d) The Contractor shall be responsible for the accuracy of all the vertical and horizontal control it transfers and establishes. The Contractor shall be held responsible for the preservation of all stakes and marks, and if any are destroyed, disturbed or removed by the Contractor, subcontractors, or suppliers, the cost of replacing them will be charged against the Contractor.
- (e) A minimum of five working days will be required as advance notice to the Project Manager to provide project control staking.

**5.9 AUTHORITY AND DUTIES OF PROJECT MANAGER**

- (a) As the direct representative of the Division, the Project Manager has immediate charge of the details of each construction project. The Project Manager is responsible for the administration and completion of the project. The Project Manager has the authority to reject defective material and to suspend any work that is being improperly performed, and to otherwise accept or reject work in accordance with [Sections 5.12](#) and [5.16](#).
- (b) The Project Manager is responsible for initial decisions relating to Contractor claims for additional compensation or extension of contract time.

**5.10 AUTHORITY AND DUTIES OF THE INSPECTOR**

- (a) Inspectors employed by the Division are authorized to inspect all work done and materials furnished. This inspection may extend to all or any part of the work and to the preparation, fabrication or manufacture of the materials to be used.
- (b) The inspector is not authorized to alter or waive the provisions of the Contract. The inspector is not authorized to issue instructions contrary to the provisions of the Contract or to act as foreman for the Contractor. The inspector is not authorized to accept or reject work.

**5.11 INSPECTION OF WORK**

- (a) All materials and each part of detail of the work shall be subject to inspection by the Project Manager or their delegate. The Project Manager shall be allowed access to all parts of the work and shall be furnished with such information and assistance by the Contractor as is required to make a complete and detailed inspection.
- (b) If the Project Manager requests it, the Contractor at any time before acceptance of the work, shall remove or uncover portions of the finished work as may be directed. After examination, the Contractor shall restore said portions of the work to the standard required by the Specifications. Should the work thus exposed or examined prove acceptable, the uncovering, or removing and the replacing of the covering or making good of the parts removed, will be paid for as extra work; but should the work so exposed or examined prove unacceptable, the covering or removing and the replacing of the covering or making good of the parts removed will be at the Contractor's expense.
- (c) Any work done or materials used without supervision or inspection by an authorized Division representative may be ordered removed and replaced at the Contractor's expense unless the Division's representative failed to inspect after having been given reasonable notice in writing that the work was to be performed.
- (d) When any third party is to pay a portion of the cost of the work covered by the Contract, its representative shall have the right to inspect the work. Such inspection shall not make any unit of that third party a party to the Contract, and shall not interfere with the rights of either party to the Contract.
- (e) All inspections and all tests conducted by the Division are for the convenience and benefit of the Division. These inspections and tests do not constitute acceptance of the materials or work tested or inspected, and the Division may reject or accept any work or materials at any time prior to the inspection pursuant to [Section 5.16](#) whether or not previous inspections or tests were conducted by the Project Manager or authorized representative.

**5.12 REMOVAL OF UNACCEPTABLE AND UNAUTHORIZED WORK**

- (a) Unacceptable work is work that does not conform to the requirements of the Contract.
- (b) Unacceptable work, resulting from any cause, found to exist prior to the final acceptance of the work, shall be removed and replaced in an acceptable manner at the Contractor's expense. The fact



that the Project Manager or an inspector may have overlooked the unacceptable work shall not constitute an acceptance of any part of the work.

- (c) Unauthorized work is work that was done without adequate lines and grades having been established by the Project Manager or by the Contractor, work done contrary to the instructions of the Project Manager, work done beyond the lines shown on the Plans, or extra work done without the Project Manager's written authorization. Unauthorized work will not be paid for under the provisions of the Contract, and may be ordered removed or replaced at the Contractor's expense.
- (d) If the Contractor fails to comply with any order of the Project Manager made under the provisions of this subsection, the Project Manager will have authority to cause unacceptable work to be remedied or removed and replaced, and unauthorized work to be removed. The Project Manager will deduct the costs from any monies due or to become due the Contractor.

### 5.13 LOAD RESTRICTIONS

- (a) The Contractor shall comply with all legal load restrictions in the hauling of equipment or materials on public roads beyond the limits of the project. A special permit will not relieve the Contractor of liability for damage resulting from the moving of equipment or material.
- (b) The operation of equipment or hauling loads which cause damage to structures, the roadway or any other construction will not be permitted. Hauling of materials over the base course or surface course under construction shall be limited by the Contractor to methods and equipment that will prevent damage to the pavement structure. Loads will not be permitted on a concrete pavement or structure before the expiration of the curing period. The Contractor shall be responsible for the repair of all damage and related expense resulting from hauling equipment and construction operations.
- (c) If a vehicle's gross weight exceeds the legal limit, and the material transported by the vehicle is delivered to the project, the material and the scale ticket (certificate of correct weight) will not be accepted, except a 500 lbs tolerance will be allowed for overweight loads.

### 5.14 MAINTENANCE DURING CONSTRUCTION

The Contractor shall maintain the site during construction (including daily clean-up) and until the project is accepted or the Division takes possession. This maintenance shall constitute continuous and effective work prosecuted day by day, with adequate equipment and forces to the end that the project or structure is kept in satisfactory condition at all times. All cost of maintenance work during construction and before the project is accepted shall be included in the unit prices bid on the various pay items and the Contractor will not be paid an additional amount for such work.

### 5.15 FAILURE TO MAINTAIN PROJECT OR STRUCTURE

If the Contractor, at any time, fails to comply with the provisions of [Section 5.14](#), the Project Manager will immediately notify the Contractor of such non-compliance. If the Contractor fails to remedy unsatisfactory maintenance within 24 hours after receipt of such notice, the Project Manager may immediately proceed to maintain the project, and the entire cost of this maintenance will be deducted from monies due or to become due the Contractor on the contract.

### 5.16 ACCEPTANCE

- (a) Substantial Completion:

The terms "Substantial Completion" or "Substantially Complete" mean the stage in the progress of the work when the construction is sufficiently complete, in accordance with the Contract Documents as modified by any Change Orders, so that the Work, or at the discretion of the Project Manager, any designated portion thereof, is available for its intended use by the Division and a Notice of Substantial Completion can be issued. Portions of the Project may, at the discretion of the Project Manager, be designated as Substantially Complete.



- (b) Partial Acceptance: If at any time during prosecution of the project the Contractor completes a unit or portion of the project, such as a structure, or a section of road that can be used advantageously, s/he may request the Project Manager to make final inspection of that unit. If the Project Manager finds upon inspection that in the Project Manager's judgment the unit has been completed in compliance with the Contract, s/he may accept that unit as being completed and the Contractor may be relieved of further responsibility for that unit. Such partial acceptance shall in no way void or alter any of the terms of the Contract.
- (c) Final Acceptance:
  - (1) Upon due notice from the Contractor of presumptive completion of the entire project, the Project Manager will make an inspection. If all construction provided for and contemplated by the Contract is found completed to the Contractor's satisfaction, that inspection shall constitute the final inspection and the Project Manager will make the final acceptance as of the date of the final inspection as specified in [Section 9.8](#).
  - (2) If any Change Orders are necessary, the Project Manager will prepare the final forms as specified in [Section 9.8](#).
  - (3) If, however, the inspection discloses any work, in whole or in part, as being unsatisfactory, the Project Manager will give the Contractor the necessary instruction for correction of same, and the Contractor shall immediately comply with and execute such instructions. Upon correction of the work another inspection will be made which shall constitute the final inspection provided the work has been corrected as required and no Change Orders are necessary. In such event, the Project Manager will make the final acceptance.

#### 5.17 CLAIMS FOR ADJUSTMENT AND DISPUTES

- (a) All claims filed by the Contractor based upon:
  - (1) Work or materials not clearly defined in the Contract,
  - (2) Extra work not ordered by the Project Manager in accordance with [Section 4.3](#)
  - (3) Extensions of time made pursuant to [Section 8.5](#), or
  - (4) Any other cause, resulting in requests for additional compensation or time, or in the suspension or termination of the Contract, shall be governed by this subsection.
- (b) Upon discovery of any facts which formulate the basis of a potential claim, the Contractor shall give immediate oral and written notice to the Project Manager prior to commencing with work to enable the Division to obtain its independent evidence of these facts.
- (c) Within seven calendar days after the discovery of the facts giving rise to a claim, the Contractor shall formally notify the Project Manager in writing of the intent to file a claim as defined in [Section 5.17\(a\)](#). The Contractor's formal notification of intent to file a claim shall describe the contractual and legal basis of the claim and factual evidence supporting the claim.
- (d) If immediate and formal notifications are not properly given by the Contractor according to these GC's, the Contractor shall not be entitled to any additional compensation or extension of time for any cause related to the claim, including any act or failure to act by the state, and the Contractor shall not be entitled to any claim. Any claim based upon any cause, for which prior and formal notifications to file a claim are not properly given by the Contractor, will be considered invalid and will be denied by the Project Manager on the basis that proper notifications as required herein, were not given. The Contractor's prior and formal notifications of intent to file a claim and subsequent Division acknowledgement of those notifications shall not be construed as proving or substantiating the validity of the Contractor's claim as related to the contractual basis of the claim, factual information

related to the claim, or cost, or amount of time extension related to the claim.

- (e) When the Contractor provides immediate and formal notifications of intent to file a claim pursuant to [Section 5.17\(b\)](#), the claim will be reviewed by the Project Manager who will render a written decision to the Contractor to either affirm the claim as valid or deny the claim, in whole or in part, in accordance with all Contract Documents and the following procedure:
- (1) At any time prior to final acceptance of the project, made pursuant to [Section 5.16\(c\)](#), and regardless of what correspondence or documents have been previously transmitted, the Contractor shall formally submit to the Project Manager a complete claim package including a quantification of all alleged costs and time impacts, and all supporting documents which represent the final position the Contractor wishes to have considered by the Division. The time period within which the Contractor is to provide such written documentation may be extended by the Project Manager if requested by the Contractor and if the Project Manager determines an extension would enhance the claim record and improve the potential for resolution of the claim. If the Contractor fails to provide such written documentation prior to final acceptance of the project, or within an extended time period authorized by the Project Manager, the Project Manager will base the decision upon the information previously submitted in the Contractor's notification of intent to file a claim and pertinent Specification and Contract Documents.
  - (2) It will be the responsibility of the Contractor to keep full and complete records of the costs and additional time incurred for any claim. The Contractor shall permit the Project Manager to examine and copy those records and any other records as may be required by the Project Manager to determine the facts or contentions involved in the claim. The Contractor shall retain those records until there is a final resolution of the claim or for three years after final acceptance of the project, whichever is longer.
  - (3) The Project Manager:
    - I. Will review the information in the Contractor's written notification of intent to file a claim,
    - II. Will review all written documents as submitted by the Contractor in support of the claim, and may consider any other information available in rendering a decision.
    - III. Will assemble and maintain a claim record comprised of all written documents submitted by the Contractor in support of the claim and all other written documents considered by the Project Manager in reaching a decision. All documentation the Contractor wants considered shall be made available to the Project Manager and will be made a part of the claim record during the review of the claim. Once the claim record has been assembled by the Project Manager, the submission of additional information, other than clarification and data supporting previously submitted documentation, at any subsequent levels of review by anyone, will not be permitted.
    - IV. Will provide a copy of the complete claim record along with the written decision to the Contractor describing the contractual basis and factual information considered by the Project Manager in reaching a decision.
  - (4) The Project Manager will render a written decision to the Contractor within 60 days from the receipt of the Contractor's submission of all written documentation supporting the claim. If more than one claim has been filed by the Contractor on the project, the Project Manager will have the right to consolidate claims and issue one decision on all such claims provided that consolidation of claims does not extend the time period within which the Project Manager is to render a decision. If the Project Manager fails to render a written decision to the Contractor within the specified 60 day time period, or within any extended time period as agreed to by both parties, the Contractor must either (1) accept this as a denial of the claim, or file a contract dispute in accordance with C.R.S. 24-109-106.
- (f) If the Contractor disagrees with the written decision of the Project Manager, the Contractor must

either:

- (1) Accept the Project Manager's decision as final,
- (2) File a contract dispute in accordance with C.R.S. 24-109-106.

End of  
CONTROL OF WORK

## SECTION 6 - CONTROL OF MATERIAL

### 6.1 SOURCE OF SUPPLY AND QUALITY REQUIREMENTS

- (a) The materials used on the work shall meet all quality requirements of the Contract. In order to expedite the inspection and testing of materials, the Contractor shall notify the Project Manager of the Contractor's proposed sources of materials prior to delivery. At the option of the Project Manager, materials may be approved at the source of supply before delivery is started. If it is found after trial that sources of supply for previously approved materials do not produce uniform and satisfactory products, or if the product from any source proves unacceptable at any time, the Contractor shall furnish materials from other sources.
- (b) When alternative materials are permitted for an item in the Contract, the Contractor will be required to state in writing the material s/he intends to furnish for that item.
- (c) Reference on the Plans and/or Specifications to a particular product, or to the product of a specific manufacturer, followed by the phrase "or approved equal" is intended only to establish a standard of quality, durability and design, and shall not be construed as limiting competition. Products of other manufacturers will be acceptable provided such products, in the Project Manager's judgment, are equal to that specified; the burden of proof shall be the Contractor's responsibility. Product availability and date of delivery will be a factor in determining the acceptance of an approved equal.
- (d) Product submittal shall require approval for specified manufacturers' products as well as approved "or equal" products.

### 6.2 SAMPLES, TESTS, CITED SPECIFICATIONS

- (a) It is the intent of the Division and these GC's that all materials or the finished product in which the materials are used will be inspected and tested. Any work in which untested and unacceptable materials are used without approval or written permission of the Project Manager, shall be performed at the Contractor's risk and may be considered as unacceptable and unauthorized and will not be paid for.
- (b) Unless otherwise designated, when ACI, ASTM or other specifications or other methods are cited, the reference shall be to latest edition as revised or updated by approved supplements or interim editions published and issued prior to the date of Bidding Documents.

### 6.3 PLANT INSPECTION

- (a) The Project Manager may inspect the materials at the source. In the event plant inspection is made, the following conditions shall be met:
  - (1) The Project Manager shall have the cooperation and assistance of the Contractor and the producer with whom s/he has contracted for materials.
  - (2) The Project Manager shall have full entry at all times to such parts of the plant as may concern the manufacture or reproduction of the materials being furnished.
  - (3) Adequate safety measures shall be provided and maintained.
- (b) It is understood that the Division reserves the right to retest all materials prior to incorporation into the work which have been tested and accepted as the source of supply after the same have been delivered and to reject all materials which, when retested, do not meet the requirements of these GC's or those established for the specific project.

### 6.4 STORAGE OF MATERIALS

Materials shall be stored to assure the preservation of their quality and fitness for the work. Stored materials, even though approved before storage, may again be inspected prior to their use in the work. Stored materials shall be located so as to facilitate their prompt inspection. Approved portions of the project may be used for storage purposes and for placing of the Contractor's plant and equipment, but any additional space required therefore must be provided by the Contractor at the Contractor's expense. Private property shall not be used for storage purposes without written permission of the owner or lessee, and if requested by the Project Manager, copies of such written permission shall be furnished him/her. All storage sites shall be restored to their original conditions by the Contractor at the Contractor's expense. This shall not apply to the stripping or storing of topsoil, or other materials salvaged from the work.

#### 6.5 HANDLING MATERIALS

All materials shall be handled in such manner as to preserve their quality and fitness for the work. Aggregates shall be transported from the storage site to the work in vehicles so constructed as to prevent loss or segregation of materials.

#### 6.6 UNACCEPTABLE MATERIALS

All materials not conforming to the requirements of the Specifications at the time they are used shall be considered as unacceptable and all such materials will be rejected and shall be removed immediately from the site of the work unless otherwise instructed by the Project Manager. Rejected material, the defects of which have been corrected, shall not be used until approval has been given.

#### 6.7 DIVISION FURNISHED MATERIALS

- (a) Material furnished by the Division will be made available to the Contractor at the points specified in the Contract.
- (b) The cost of handling and placing materials after they are made available to the Contractor shall be included in the contract price for the item.
- (c) The Contractor will be held responsible for all material received until it is incorporated in the work and accepted.
- (d) Any charges resulting from the Contractor's failure to accept the material at the designated time and point of delivery will be deducted from monies due the Contractor.

End of

CONTROL OF MATERIAL

## SECTION 7 - LEGAL RELATIONS AND RESPONSIBILITY TO PUBLIC

## 7.1 LAWS TO BE OBSERVED

The Contractor shall keep fully informed of all federal and state laws, all local laws, ordinances, and regulations and all orders and decrees of bodies or tribunals having any jurisdiction of authority, which in any manner affect those engaged or employed on the work, or which in any way affect the conduct of the work. The Contractor shall at all times observe and comply with all such laws, ordinances, regulations, orders, and decrees; and shall protect and indemnify the State and its representatives against any claim or liability arising from or based on the violation of any such law, ordinance, regulation, order or decree, whether by the Contractor or the Contractor's employees. Preferences for Colorado labor are applicable to the Contract if public works are undertaken thereunder and financed in whole or in part with State funds, in accordance with the provisions of 8-17-101 and 102, CRS.

## 7.2 PERMITS, LICENSES, AND TAXES

- (a) Licenses, Permits, and Other Authorizations Contractor shall secure, prior to the Effective Date, and maintain at all times during the term of the Contract, at its sole expense, all licenses, certifications, permits, and other authorizations required to perform its obligations under the Contract, and shall ensure that all employees, agents and Subcontractors secure and maintain at all times during the term of their employment, agency or subcontract, all license, certifications, permits and other authorizations required to perform their obligations in relation to the Contract.
- (b) Prior to beginning work on the project, the Contractor shall furnish the Project Manager a written list of all permits required for the proper completion of the project. The list shall clearly identify the type of permit or permits that must be obtained before work on any particular phase or phases of work can be started. Copies of the fully executed permits shall be furnished to the Project Manager.
- (c) The State is exempt from federal excise taxes under I.R.C. Chapter 32 (26 U.S.C., Subtitle D, Ch. 32) (Federal Excise Tax Exemption Certificate of Registry No. 84-730123K) and from Colorado state and local government sales and use taxes under §§39-26-704(1), et seq. C.R.S. (Colorado Sales Tax Exemption Identification Number 98-02565). The State shall not be liable for the payment of any excise, sales, or use taxes, regardless of whether any political subdivision of the state imposes such taxes on Contractor. Contractor shall be solely responsible for any exemptions from the collection of excise, sales or use taxes that Contractor may wish to have in place in connection with this Contract.

## 7.3 PATENTED DEVICES, MATERIALS AND PROCESSES

If the Contractor employs any design, device, material or process covered by letters of patent or copyright and not specifically required by the Contract, s/he shall provide for such use by suitable legal agreement with the patentee or owner. The Contractor and the Surety shall indemnify and save harmless the State, any affected third party, or political subdivision from any and all claims for infringement by reason of the use of any such patented design, device, material or process, or trademark or copyright, and shall indemnify the State for any costs, expenses and damages which it may be obligated to pay by reason of any infringement, at any time during the prosecution or after the completion of the work.

## 7.4 FEDERAL AID PROVISIONS

- (a) When the United States government participates in the cost of a project, the federal laws and the rules and regulations made pursuant to such laws must be observed by the Contractor, and the work shall be subject to the inspection of the appropriate federal agency.
- (b) Such inspection shall not make the United States government a party to the Contract and shall not interfere with the rights of the parties to the Contract.

**7.5 SANITARY PROVISIONS**

The Contractor shall observe all rules and regulations of federal, state and local health officials. The Contractor shall not require any worker to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to health or safety.

**7.6 PUBLIC CONVENIENCE AND SAFETY**

The Contractor shall at all times so conduct the work as to assure the least possible obstruction to traffic. The safety and convenience of the general public and the residents adjacent to the project and the protection of persons and property shall be provided for by the Contractor.

**7.7 BARRICADES AND WARNING SIGNS**

The Contractor shall provide, erect, and maintain all necessary barricades, suitable and sufficient lights, danger signals, signs and other traffic control devices, and shall take all necessary precautions for the protection of the work and safety of the public in accordance with applicable regulations and guidelines. Access closed to traffic shall be protected by effective barricades, and obstructions shall be illuminated during hours of darkness. Suitable warning signs shall be provided to properly control and direct traffic.

**7.8 USE OF EXPLOSIVES**

- (a) When explosives are utilized in the prosecution of the work, the Contractor shall not endanger life, property, or new work. The Contractor shall be responsible for all damage resulting from the use of explosives.
- (b) The Contractor's explosives shall be stored in a secure manner in compliance with laws and ordinances, and storage places shall be clearly marked. When electric blasting caps are used, stored or moved in the vicinity of the work, warning signs prohibiting the use of radio transmitters and mobile telephones shall be posted on all roads within 350 feet of the blasting operation.
- (c) The Contractor shall notify property owners and public utility companies having structures in the proximity of the work of the intention to use explosives. Notice shall be given sufficiently in advance to enable them to protect their property.
- (d) In advance of doing any blasting work involving the use of electric blasting caps within 200 feet of any railroad's track or structures, the Contractor shall notify the proper authority of the company as to the location, date, time and approximate duration of such blasting operations.
- (e) At the conclusion of each day of blasting, all spent surface blasting components shall be removed. At the conclusion of blasting and excavation work, the Contractor shall properly dispose of all spent blasting components. At the completion of final grading, the Contractor shall inspect the project and remove all exposed blasting components.

**7.9 PROTECTION AND RESTORATION OF PROPERTY AND LANDSCAPE**

- (a) The Contractor shall preserve private and public property and protect it from damage. Land monuments and property marks shall not be disturbed or moved until their location has been witnessed or referenced and their removal approved.
- (b) The Contractor shall be responsible for the damage or injury to property resulting from (1) the Contractor's neglect, misconduct, or omission in the manner or method of execution or non-execution of the work, or (2) the Contractor's defective work or the use of unacceptable materials.
- (c) The Contractor's responsibility shall not be released until the work has been completed in compliance with the Contract. The Contractor shall restore damaged or injured property, at the Contractor's expense, to a condition similar or equal to that existing before the damage or injury occurred, by repairing, rebuilding, or restoring the property.



- (d) Existing trees, shrubs, bushes or grass outside the designated work areas but inside project limits that are damaged due to the Contractor's operations shall be replaced in kind at the Contractor's expense.

#### 7.10 FOREST PROTECTION

- (a) The Contractor shall comply with all regulations of the State Department of Natural Resources, the National Forest Supervisor, or other authority having jurisdiction governing the protection of forests, and shall observe all sanitary laws and regulations with respect to the performance of work within or adjacent to State or National Forests. The Contractor shall keep the areas in an orderly condition, dispose of all refuse, obtain permits for the construction and maintenance of all construction camps, stores, warehouses, residences, latrines, cesspools, septic tanks, and other structures in accordance with the regulations and instructions issued by the Forest Supervisor.
- (b) The Contractor shall take all reasonable precaution to prevent forest fires, and shall make every possible effort to notify a forest official at the earliest possible moment of the location and extent of any fire seen by the Contractor. The Contractor, subcontractors, and their employees shall prevent and suppress forest fires and provide assistance in this effort as directed by forest officials.

#### 7.11 RESPONSIBILITY FOR DAMAGE CLAIMS

- (a) The Contractor shall indemnify and save harmless the Division, its officers, and employees from suits, actions, or claims of any type or character brought because of any and all injuries or damage received or sustained by any person, persons, or property on account of the operations of the Contractor; or failure to comply with the provisions of the Contract; or on account of or in consequence of neglect of the Contractor in safeguarding the work; or through use of unacceptable materials in constructing the work; or because of any act or omission, neglect, or misconduct of the Contractor; or because of any claims or amounts recovered from any infringements of patent, trademark, or copyright, unless the design, device, material or process involved is specifically required by the Contract; or from any claims or amounts arising or recovered under the Worker's Compensation Act, or other law, ordinance, order, or decree. The Division may retain as much of any monies due the Contractor under the Contract as may be determined by the Division to be in the public interest.
- (b) The Contractor shall procure and maintain, until final acceptance of the project, insurance as directed by the Division.

#### 7.12 CONTRACTOR'S RESPONSIBILITY FOR WORK

Until final written acceptance of the project by the Project Manager, the Contractor shall be responsible and shall protect the work against injury or damage from all causes whether arising from the execution or the non-execution of the work, including but not limited to action of the elements, traffic, fire, theft, vandalism, or third party negligence. The Contractor shall rebuild, repair, restore or replace all work that is injured or damaged prior to final acceptance at no cost to the Division. Loss, injury, or damage to the Work due to unforeseeable causes beyond the control of and without fault or negligence of the Contractor, including but not restricted to acts of God, such as earthquakes, tornado, or other cataclysmic phenomenon of nature, or acts of the public enemy or of governmental authorities, shall be restored by the Contractor under the provision of [Section 4.2](#) or [4.3](#), as applicable. During periods that work is suspended, the Contractor shall be responsible for the work under the Contract and shall prevent damage to the project, provide for drainage, and shall erect necessary temporary structures, signs, or other facilities required to maintain the project. During the suspension period, the Contractor shall maintain in a growing condition all newly established plantings, seeding, and sodding furnished under the Contract, and shall protect new tree growth and other vegetative growth against injury.

#### 7.13 CONTRACTOR'S RESPONSIBILITY FOR UTILITY PROPERTY AND SERVICES

- (a) At points where the Contractor's operations are adjacent to properties of railways, communication and power companies or are adjacent to other property, damage to which might result in considerable expense, loss or inconvenience, work shall not be commenced until all arrangements



necessary for the protection thereof have been made.

- (b) The Contractor shall cooperate with the owners of any underground or overhead utility lines in removal and rearrangement operations in order that these operations may progress in a reasonable manner that duplication of rearrangement work may be reduced to a minimum, and that services rendered by those parties will not be unnecessarily interrupted.
- (c) In the event of interruption to water or utility services as a result of accidental breakage or as a result of being exposed or unsupported, the Contractor shall promptly notify the proper authority and shall cooperate with the said authority in the restoration of service. If water service is interrupted, repair work shall be Continuous until the service is restored.

#### 7.14 FURNISHING RIGHT OF WAY

The Division will be responsible for the securing of all necessary right-of-way in advance of construction. Any exceptions will be indicated in advance in the Contract.

#### 7.15 PERSONAL LIABILITY OF PUBLIC OFFICIALS

The Project Manager or authorized representatives are acting solely as agents and representatives of the Division when carrying out and exercising the power or authority granted to them under the Contract. There shall not be any liability on them either personally or as employees of the Division.

#### 7.16 NO WAIVER OF LEGAL RIGHTS

- (a) Upon completion of the Project, the Division will make final inspection and notify the Contractor of acceptance. Final acceptance shall not preclude the Division from correcting any measurement, estimate, or certificate made before or after completion of the Contract, nor from recovering from the Contractor or Surety or both, overpayment sustained because the Contractor failed to fulfill the obligations under the Contract. A waiver on the part of the Division of any breach of any part of the Contract shall not be held to be a waiver of any other or subsequent breach.
- (b) The Contractor, without prejudice to the terms of the Contract, shall be liable to the Division, for latent defects, fraud, or such gross mistakes as may amount to fraud, or as regards the Division's rights under any warranty or guaranty.

#### 7.17 AFFIDAVIT RELATIVE TO COLLUSION

The Contractor may be required to file a sworn statement executed by, or on behalf of, the person, firm, association or corporation to whom such Contract is to be awarded, certifying that such person, firm, association or corporation has not, either directly or indirectly entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with such Contract. This sworn statement shall be by the successful Bidder before such persons as are authorized by the laws of the State to administer oaths. The original of such sworn statement shall be filed with the Division prior to award of the Contract or at any time thereafter.

#### 7.18 ARCHAEOLOGICAL AND PALEONTOLOGICAL DISCOVERIES

When the Contractor's operations encounter plant or animal fossils, remains of prehistoric or historic structures, prehistoric or historic artifacts (bottle dumps, charcoal from subsurface hearths, old pottery, potsherds, stone tools, arrowheads, etc.), the Contractor's affected operations shall immediately cease. The Contractor shall notify the Project Manager of the discovery of these materials. When ordered to proceed, the Contractor shall conduct operations in the vicinity of the discoveries as directed. The work will be paid for by the Division as provided in [Section 4.2](#) when contract unit prices exist, or as extra work as provided in [Section 4.3](#) when no unit prices exist. Delays to the Contractor because of the materials encountered may be cause for extension of contract time in accordance with [Section 8.5](#).

## 7.19 AIR AND WATER POLLUTION

In accordance with the requirements pertaining to "Legal Relations and Responsibility to the Public," the Contractor's attention is directed to the "Colorado Air Quality Control Act," Title 25, Article 7 CRS and regulations promulgated thereunder and to the "Colorado Water Quality Control Act," Title 25, Article 8 CRS and regulations promulgated thereunder. The Contractor will be required to comply with these acts and to the following additional requirements in connection therewith:

- (a) If the Contractor anticipates, or if construction activities result in any change from or noncompliance with permits or certifications, then the Contractor shall detail the anticipated changes or noncompliance in a written report to the Project Manager, and revise existing permits or certifications or obtain new permits or certifications as necessary. The report shall be submitted within two days from the time the Contractor becomes aware of the change or noncompliance. Within five days after receipt of the report, the Project Manager will approve or reject the request for change in writing, or detail a course of action.
- (b) Unless called for on the Plans, excavation from the roadway, channel changes, cofferdams, etc., shall not be deposited in or near to rivers, streams or impoundments, so that it will be washed away by high water runoff.
- (c) The Contractor shall comply with the "Protection of Fishing Streams," Title 33, Article 5 CRS; "Clean Water Act," 33 USC 1344 and regulations promulgated; certifications issued.
- (d) Frequent fording of live streams with construction equipment will not be permitted. Temporary bridges or other structures shall be used wherever stream crossings are deemed necessary. Unless otherwise approved in writing, mechanized equipment shall not be operated in live streams except as may be required to construct channel changes and structures.
- (e) Rivers, streams and impoundments shall be promptly cleared of all falsework, piling, debris, or other obstructions placed therein or caused by the construction operations.
- (f) The Contractor may be legally required to obtain permits associated with specific activities within, or off the project site, such as borrow pits, concrete or asphalt plant sites, waste disposal sites, or other facilities. It is the Contractor's responsibility to obtain these permits. The Contractor shall consult with the Project Manager, or contact the Colorado Department of Public Health and Environment or other appropriate federal, state, or local agency to determine the need for any permit, but it is the Contractor's sole responsibility to make the final determination as to the need for such permits.
- (g) The Contractor shall conduct the work in a manner that minimizes pollution of any waters, including wetlands.
- (h) Required dewatering of excavations shall be conducted in a manner that avoids pollution and erosion. Water from dewatering operations shall not be directly discharged into any state waters including wetlands, irrigation ditches, canals, or storm sewers, unless allowed by a permit. Discharge into sanitary sewers will not be allowed unless written permission is obtained from the owner or controlling authority and this disposal method is approved in writing by the Project Manager. Unless prohibited by law or otherwise specified in the Contract, the water from dewatering operations shall be contained in basins for dissipation by infiltration or evaporation, shall be hauled away from the project for disposal in accordance with applicable laws and regulations, or shall be land applied to approved non-wetland vegetated areas and allowed to soak into the soil. Depending upon the quality of the water, land application of water to vegetated areas may require a written concurrence or permit from CDPHE. Based on guidelines and criteria from CDPHE, the Contractor shall determine the quality of the water, obtain applicable concurrences or permits, and furnish copies of the concurrences or permits obtained to the Project Manager.
- (i) At least 15 days prior to commencing dredging or fill operations in a watercourse, the Contractor shall provide written notification to owners or operators of domestic or public water supply intakes or diversion facilities, if these facilities are within five miles downstream from the dredging or fill

operations.

- (j) Upon completion of wetland or in-stream construction activities, all temporary fills shall be removed in their entirety and disposed of in an upland location outside of flood plains unless otherwise specified in the Contract. Affected areas shall be returned to their pre-existing elevation unless otherwise specified in the Contract.
- (k) Construction operations in state waters, including wetlands, shall be restricted to:
  - (1) Channel change areas designated in the Contract.
  - (2) Areas designated in the Contract which must be entered to construct structures.
  - (3) Areas where water must be forded no more than four times per day to facilitate construction. Forded waters more than four times per day will not be permitted. Whenever fording waters more than four times per day is necessary, a temporary bridge or other structure shall be used.
  - (4) Areas authorized by the Corps of Engineers.
- (l) Work in, or near, wetlands shall be performed in a manner that will minimize harm to the wetlands. Wetland areas outside of the project site shall not be used for storage, parking, waste disposal, access, borrow material, or any other construction support activity.
- (m) Pollutant by-products of construction, plastic concrete, asphalt, solids, sludges, pollutants removed in the course of treatment of wastewater, excavation or excess fill material, and material from sediment traps shall be handled, stockpiled, and disposed of in a manner that prevents entry into state waters, including wetlands.
- (n) The use of chemicals such as soil stabilizers dust palliatives, herbicides, growth inhibitors, fertilizers, deicing salts, etc., during construction shall be in accordance with the manufacturer's recommended application rates, frequency, and instructions. These chemicals shall not be used, stored, or stockpiled within 50 horizontal feet (15 m) of the ordinary high water line of any state waters, including wetlands, except when otherwise specified in the Contract.
- (o) Construction waste or salvable material, excess excavated material, fill material, construction equipment, fuels, lubricants, and other petroleum distillates shall not be stored or stockpiled within 50 horizontal feet (15 m) of any wetland, state waters, or the ordinary high water line of any state waters. Equipment fueling and servicing shall occur only within accepted designated areas.
- (p) The quantity of materials stored on the project shall be limited, as much as practical, to that quantity required to perform the work in an orderly sequence. All materials stored on-site shall be stored in a neat, orderly manner, in their original containers, with the original manufacturer's label. Materials shall not be stored in a location where they may be carried into a state water at any time.
- (q) Spill prevention and containment measures shall be used at storage, and equipment fueling and servicing areas to prevent the pollution of any state waters, including wetlands. All spills shall be cleaned up immediately after discovery, or contained until appropriate cleanup methods can be employed. Manufacturer's recommended methods for spill cleanup shall be followed, along with proper disposal methods.
- (r) Use of heavy equipment in or around state waters, including wetlands, will not be allowed, except as specified in the Contract and permits, unless otherwise directed by the Project Manager. If any such work is allowed, the equipment shall be of such type that will produce minimal environmental damage. For allowed work in wetlands, the equipment shall be on fiber, wooden, earthen, or metallic mats to prevent undue disturbance and damage to the wetlands area. Where practical, equipment shall be operated from banks or shoulder above riparian and wetland areas.
- (s) The Contractor shall prevent grass or brush fires that will expose areas of soil to erosion.

- (t) The construction activity shall not block the movement of those species of aquatic life indigenous to the waterbody.
- (u) The construction activities shall not impair Indian tribal rights, including, but not limited to, water rights, and treaty fishing and hunting rights.
- (v) Discharges of pollutants into breeding areas of migratory waterfowl, or into fish spawning areas during spawning seasons shall not be permitted unless allowed by permits from appropriate regulatory agencies.
- (w) The Contractor shall be liable for any penalty (including monetary fines) charged to the Division caused by the Contractor's noncompliance with any water quality permit or certification. Monetary fines shall be deducted from any money due to the Contractor. If the monetary fine is in excess of all the money due to the Contractor, then the Contractor shall pay to the Division the amount of such excess.
- (x) The Contractor will not receive additional compensation, or time extensions, for any disruption of work or loss of time caused by any actions brought against the Contractor for failure to comply with water quality controls.
- (y) In the event that a spill occurs as a direct result of the Contractor's actions or negligence, the clean-up of such spill shall be performed by the Contractor at the Contractor's expense.
- (z) The Contractor shall be liable for any monitoring or testing as required in the permits.

## 7.20 ANTI DISCRIMINATION

The Contractor agrees to comply with the letter and spirit of the Colorado Anti-discrimination Act of 1957, as amended, and other applicable laws respecting discrimination and unfair employment practices (24-34-402, CRS, as amended), and as required by Executive Orders, Equal Opportunity and Affirmative Action, and other legislation.

## 7.21 GENERAL

- (a) The laws of the State of Colorado and rules and regulations issued pursuant thereto shall be applied in the interpretation, execution and enforcement of this Contract. Any provisions of this Contract whether or not incorporated herein by reference which provides for arbitration by an extra-judicial body or person or which is otherwise in conflict with said laws, rules and regulations shall be considered null and void. Nothing contained in any provision incorporated herein by reference which purports to negate this or any other Special Provision in whole or in part shall be valid or enforceable or available in any action at law whether by way of complaint, defense or otherwise. Any provision rendered null and void by the operation of this provision will not invalidate the remainder of this Contract to the extent that the Contract is capable of execution.
- (b) The signatories to the Contract Document aver that they are familiar with 18-8-301, et seq., (Bribery and Corrupt Influences) and 18-8-401, et seq., (Abuse of Public Office), CRS as amended, and that no violation of such provisions is present.
- (c) The signatories aver that to their knowledge, no State employee has any personal or beneficial interest whatsoever in the service or property described in the Contract Documents.
- (d) CORA Disclosure: To the extent not prohibited by federal law, the Contract and the performance measures and standards required under Section 24-103.5-101 CRS, if any, are subject to public release through the CORA.

End of

LEGAL RELATIONS AND RESPONSIBILITY TO PUBLIC

**SECTION 8 - PROSECUTION AND PROGRESS****8.1 SUBLETTING OF CONTRACT**

- (a) Contractor's rights and obligations under the Contract are personal and may not be transferred or assigned without the prior, written consent of the State. Any attempt at assignment or transfer without such consent shall be void. Any assignment or transfer of Contractor's rights and obligations approved by the State shall be subject to the provisions of the Contract
- (b) The Contractor shall not subcontract any portion of the Contract without written notification to the Project Manager. No subcontract, shall release the Contractor of liability under the Contract and Bonds.

**8.2 NOTICE TO PROCEED**

- (a) The "Notice to Proceed" will stipulate the date on which it is expected the Contractor will begin the construction and from which date Performance Time will be charged. Commencement of work on the site by the Contractor will be deemed and taken as a waiver on the Contractor's part of this notice and contract time will commence.
- (b) The Contractor shall commence work under the Contract on or prior to the 10th day following the date of Notice to Proceed, or in accordance with the selected start date allowed in the Contract.

**8.3 PROSECUTION AND PROGRESS**

The Contractor shall furnish the Project Manager with a schedule for approval in accordance with the Bid Documents.

**8.4 CHARACTER OF WORKERS, METHODS AND EQUIPMENT**

- (a) The Contractor shall employ resources for completing work to full completion in the manner and time required by the Contract.
- (b) All workers shall have skill and experience to perform the work assigned to them.
- (c) Any person employed by the Contractor or by any subcontractor who does not perform the work in a proper and skillful manner shall, at the written request of the Project Manager, be removed by the Contractor or subcontractor and shall not be employed on the project without the approval of the Project Manager.
- (d) Should the Contractor fail to remove this person or persons or fail to furnish skilled and experienced personnel for the proper prosecution of the work, the Project Manager may suspend the work by written notice until compliance is achieved.
- (e) All equipment used on the project shall be of size and mechanical condition to meet requirements of the work and to produce a satisfactory quality of work. Equipment used shall not cause injury to roadways, adjacent property, or other structures.
- (f) When the methods and equipment to be used are not prescribed in the Contract, the Contractor shall use any methods or equipment that will accomplish the contract work in conformity with the Contract requirements.
- (g) When the methods and equipment to be used are specified in the Contract, other methods and equipment shall not be used in the performance of the work unless the Contractor receives written authorization from the Project Manager.
- (h) If the Contractor desires to use a method or equipment other than specified in the Contract, the Con-

tractor may request approval from the Project Manager. The request shall include a full description of the methods and equipment proposed to be used and the Contractor's explanation for the proposed change. The Contractor will be fully responsible for producing work in conformity with Contract requirements. If the substituted methods or equipment do not produce results conforming to Contract requirements, the Contractor shall complete the remaining construction with the originally specified methods and equipment. Deficient work shall be removed, repaired, or replaced to conform to the specified quality by and at the Contractor's expense. No increase will be made in the basis of payment for the construction items involved nor in contract time when a change in methods or equipment is authorized.

## 8.5 DETERMINATION AND EXTENSION OF PERFORMANCE TIME

- (a) The number of calendar days allowed or specified date for the completion of the work included in the Contract will be stated in the Bid Documents.
- (b) No extension of time will be granted for any adverse weather conditions unless in the sole discretion of the Project Manager the weather conditions in question prevented safe and workmanlike prosecution of work.
- (c) The Contractor shall not carry on construction operations on Saturdays, Sundays, or Holidays unless previously arranged with Project Manager, except for pre-wetting, making emergency repairs and providing proper protection of the work. Saturdays, Sundays and Holidays will be counted against the Performance Time.
- (d) The Performance Time in the Contract as awarded is based on the original quantities as defined in [Section 2.4](#). If satisfactory fulfillment of the Contract requires performance of work in greater quantities than those set forth in the Proposal, the Performance Time allowed for the Project may be increased on a basis commensurate with the amount and difficulty of the added work after written request by the Contractor.
- (e) If the Contractor finds it impossible for reasons beyond the Contractor's control to complete the work within the Performance Time as specified or as extended, the Contractor may at any time prior to the expiration of the Performance Time, make a written request to the Project Manager for an extension of time setting forth therein the Contractor's reasons which the Contractor believes will justify the granting of the Contractor's request.
- (f) The Contractor's plea that insufficient time was specified is not a valid reason for extension of time. If the Project Manager finds that the work was delayed because of conditions beyond the control and without the fault of the Contractor, the Project Manager may extend the time for completion in such amount as the conditions justify and approved in accordance with these GC's. The extended time for completion shall then be in full force and affect the same as though it were the original time for completion.
- (g) Delays due to slow delivery of materials or of fabrication scheduling for reasons of late ordering, financial considerations or other causes which could have been foreseen and prevented, will be considered as within the Contractor's control, and each day of such delay will count against Performance Time. However, delay in the delivery of materials to the Contractor, due to some unusual market condition such as those caused by industry-wide strike, national disaster, area-wide shortage or other reason beyond the control of the Contractor, which affects the completion time shall be considered a basis for extension of contract time.
- (h) Certified copies of correspondence between the Contractor and the Contractor's supplier, pertinent to the delay claimed by the Contractor will be considered in determining extension of contract time. All such correspondence shall be submitted by the Contractor in sufficient time so that time adjustments can be made concurrently with the delay.
- (i) When Final Acceptance has been duly made by the Project Manager as prescribed in [Section 5.16\(c\)](#) the daily time charge will cease.



- (j) If flooding, unusual water conditions, or unanticipated construction problems beyond the Contractor's control alter the work schedule or work conditions in such a manner that prosecution of work would cause harm to the site or construction, the Contractor may request that work be temporarily Shutdown (the duration of an authorized shutdown is not assessed against the contract time) until the conditions which precluded prosecution of the work no longer exist.
- (k) The Contractor's request shall set forth the reasons s/he believes the work should be temporarily halted and the estimate of the time of work suspension.
- (l) The Contractor shall not suspend the work until s/he has received written approval from the Project Manager and shall resume with the work promptly when notified to resume operations.
- (m) The Division shall have the authority to suspend the work, either in whole or in part for such period or periods as may be deemed necessary due to unsuitable weather, faulty workmanship, improper superintendence, Contractor's failure to carry out orders or to perform provisions of the Bid Documents, or other legal items or circumstances as directed by the Project Manager.

#### 8.6 FAILURE TO COMPLETE WORK ON TIME

- (a) The parties agree that time is of the essence of the Contract and of the Specifications wherever a definite and certain length of time is fixed for the performance of any act. A daily charge will be made against the Contractor for each working day, or calendar day, that any work remains uncompleted after the elapse of contract time. This daily charge will be deducted from any money due the Contractor. This deduction will not be considered a penalty but as liquidated damages.
- (b) The liquidated damages set forth below is an amount, agreed to by the Contractor and the Division, as reasonably representing additional construction engineering and administration costs incurred by the Division, if the Contractor fails to complete the Project within the Performance Time. The liquidated damages set forth do not include any additional actual loss or damage that the Division might incur as a result of the Contractor's delay, such as but not limited to increased costs to other contractors.
- (c) Refer to the Special Conditions for the amount of liquidated damages. If an amount of liquidated damages does not appear in the Special Conditions, liquidated damages shall be charged at \$150 per day, which is a reasonable estimate of the additional expense incurred by the Division. The Special Conditions may specify higher liquidated damages amounts due to the particular circumstances of the Project, such as but not limited to the potential loss of revenue to the Division.
- (d) Due account shall be taken of any adjustment of the Performance Time for completion of the work granted under the provisions of [Section 8.5](#).
- (e) Permitting the Contractor to continue and finish the work or any part thereof after elapse of Performance Time will not operate as a waiver on the part of the Division of any of its rights under the Contract.
- (f) Any deduction assessed as liquidated damages under this subsection shall not relieve the Contractor from additional liability for any actual damages or costs resulting from delays to other contractors on the project or other projects caused by a failure of the assessed Contractor to complete the work according to Performance Time.

#### 8.7 DEFAULT OF CONTRACT

- (a) If the Contractor:
  - (1) Fails to begin the work under the Contract within the time specified in the Notice to Proceed, or
  - (2) Fails to perform the work with sufficient workers and equipment or with sufficient materials to



assure the prompt completion of said work, or

- (3) Fails to perform the work in accordance with Contract requirements or refuses to remove and replace rejected materials or unacceptable work, or
  - (4) Discontinues the prosecution of the work, or
  - (5) Fails to resume work which has been discontinued within a reasonable time after notice to do so, or
  - (6) Becomes insolvent or is declared bankrupt, or commits any act of bankruptcy or insolvency, or
  - (7) Allows any final judgment to remain unsatisfied for a period of 10 days, or
  - (8) Makes an assignment for the benefit of creditors, or
  - (9) Fails to comply with Contract requirements regarding minimum wage payments or EEO requirements, or
  - (10) Is a party to fraud, or
  - (11) For any other cause whatsoever, fails to carry on the work in an acceptable manner;
- (b) The Project Manager will give notice in writing to the Contractor and the Surety of such delay, neglect or default.
  - (c) If the Contractor or Surety does not correct such default and proceed with the Contract within 10 days after the date of the Project Manager's notice, the Division will have full power and authority, without violating the Contract, to take the prosecution of the work from the Contractor. The Division may appropriate or use the Contractor's materials and equipment, and may enter into an agreement for the completion of the Contract according to the terms and provisions thereof, or use other methods as, in the opinion of the Project Manager, will be required for the completion of the Contract.
  - (d) All costs and charges incurred by the Division, together with the cost of completing the work under contract, will be deducted from any monies due or which may become due said Contractor. If such expense exceeds the sum which would have been payable under the Contract, then the Contractor and the Surety shall be liable and shall pay to the Division the amount of such excess.

## 8.8 TERMINATION OF CONTRACT

- (a) Termination Notice: The Division may terminate work under the Contract in whole or in part if the Project Manager determines that termination is in the Division's best interest. Contract termination will be initiated by the Project Manager's written Contract Termination Notice to the Contractor. The notice will specify the effective date.
- (b) Cancelled Commitments: The Contractor, after receiving the Contract Termination Notice, shall cancel any outstanding commitments for procurement of materials, supplies, equipment, and miscellaneous items. In addition, the Contractor shall use reasonable effort to cancel or divert any outstanding subcontract commitments to the extent they relate to any work terminated. With respect to such cancelled commitments the Contractor shall:
  - (1) Settle all outstanding liabilities and all claims arising out of these canceled commitments. Such settlements will be approved by the Project Manager and shall be final; and
  - (2) Assign to the Division all of the rights, title and interest of the Contractor under the terminated orders and subcontracts, as directed by the Project Manager. The Division will then have the right to settle or pay any or all claims arising out of the termination of these commitments.

- (c) Termination Claim: The Contractor shall submit the termination claim to the Project Manager within 90 days after the termination notice effective date. During the 90 day period, the Contractor may make a written request for a time extension in preparing the claim. Any time extension must be approved by the Project Manager. If the Contractor fails to submit the termination claim within the time allowed, the Project Manager may determine the amount due the Contractor by reason of the termination.
- (d) Payment:
  - (1) Subject to paragraph (c) above, the Contractor and Project Manager may agree upon the whole or any part of the amount to be paid to the Contractor because of the termination. The amount may include reasonable cancellation charges incurred by the Contractor. The amount may also include any reasonable loss upon outstanding commitments for subcontracts which the Contractor is unable to cancel, provided the Contractor has made reasonable effort to divert the commitments to other activities. The amount agreed upon shall be embodied in a Contract Amendment and the Contractor shall be paid that amount.
  - (2) Payments claimed and agreed to pursuant to termination shall be based on the contract unit prices. Payment for partially completed lump sum items may be made in the proportion that the partially completed work is to the total lump sum item. Where work performed is of a nature that it is impossible to separate the costs of uncompleted work from completed units, the Contractor will be paid the actual cost incurred for the necessary preparatory work and other work accomplished.
  - (3) The Division may, from time to time, under terms and conditions it may prescribe, make partial payments against costs incurred by the Contractor in connection with the Contract termination. The total of such payments shall not exceed the amount, as determined by the Project Manager, the Contractor will be entitled to hereunder.
- (e) Disposition of Work and Inventory: The Contractor shall transfer title and deliver to the Division, as directed by the Project Manager, such items which, if the Contract had been completed, would have been furnished to the Division including:
  - (1) Completed and partially completed work; and
  - (2) Materials or equipment produced or in process or acquired in connection with the performance of the work terminated by the notice.
- (f) Other than the above, any termination inventory resulting from the Contract termination may, with written approval of the Project Manager, be sold or acquired by the Contractor under the conditions prescribed by and at prices approved by the Project Manager. The proceeds of any such disposition shall be applied to reduce any payments to the Contractor under the Contract, or shall otherwise be credited to the cost of work covered by the Contract, or paid in a manner as directed by the Project Manager. Until final disposition, the Contractor shall protect and preserve all the material related to the Contract which is in the Contractor's possession and in which the Division has or may acquire an interest.
- (g) Cost Records: The Contractor agrees to make cost records available to the extent necessary to determine the validity and amount of each item claimed.
- (h) Contractual Responsibilities: Termination of a Contract or portion thereof shall not relieve the Contractor of contractual responsibilities for the work completed, nor shall it relieve the Surety of its obligation for and concerning any just claim arising out of the work performed.

End of

PROSECUTION AND PROGRESS

## SECTION 9 - MEASUREMENT AND PAYMENT

## 9.1 MEASUREMENT OF QUANTITIES

- (a) All work completed under the Contract will be measured by the Project Manager according to United States standard measure.
- (b) A station when used as a definition or terms of measurement will be 100 linear feet.
- (c) A method of measurement and computations to be used in determination of quantities of material furnished and of work performed under the Contract will be those methods generally recognized as conforming to good engineering practice.
- (d) Unless otherwise specified, longitudinal measurements for area computations will be made horizontally. Unless otherwise specified, transverse measurements for area computations will be the neat dimensions shown on the Plans or as altered by the Project Manager to fit field conditions.
- (e) All items which are measured by the linear foot, such as pipe, culverts, guardrail, underdrains, etc., will be measured parallel to the base of foundation upon which such structures are placed unless otherwise shown on the Plans.
- (f) In computing volumes of excavation, the average end area method or other acceptable methods will be used.
- (g) The term "gage" when used in connection with the measurement of plates, will mean the U.S. Standard Gage.
- (h) When the term "gage" refers to the measurement of wire, it will mean the wire gage specified in AASHTO M 32.
- (i) The term "ton" will mean the short ton consisting of 2,000 lbs.
- (j) Trucks used to haul material being paid for by weight shall be weighed empty at such times as the Project Manager directs, and each truck shall bear a plainly legible identification mark.
- (k) Materials to be measured by volume in the hauling vehicle shall be hauled in approved vehicles and measured therein at the point of delivery. Vehicles for this purpose may be of any size or type acceptable to the Project Manager, provided that the body is of such shape that the actual contents may be readily and accurately determined. All vehicles shall be loaded to at least their water level capacity and loads shall be leveled when the vehicle arrives at the point of delivery.
- (l) The weight of inherent moisture in the material will not be deducted. Water added for the Contractor's convenience will not be paid for.
- (m) Rental of equipment will be measured by time in hours of actual working time and necessary traveling time of the equipment within the limits of the project unless special equipment has been ordered by the Project Manager in connection with force account work, in which case travel time and transportation to the project will be measured. If equipment has been ordered held on the job on a standby basis by the Project Manager, standby rental rates will be paid for the equipment.
- (n) When requested by the Contractor and approved by the Project Manager in writing, material specified to be measured by the cubic yard may be weighed and such weights will be converted to cubic yards for payment purposes. Factors for conversion from weight measurement to volume measurement and vice versa will be determined by the Project Manager and shall be agreed to by the Contractor before such method of measurement of pay quantities is used.
- (o) The term "lump sum" when used as an item of payment will mean complete payment for the work de-

scribed in the Contract.

- (p) When a complete structure or structural unit (in effect, "lump sum" work) is specified as the unit of measurement, the unit will include all necessary fittings and accessories.
- (q) When standard manufactured items are specified such as fence, wire, plates, rolled shapes, pipe conduit, etc., and these are identified by gage, unit weight, section dimensions, etc., such identification shall be considered to be nominal weights or dimensions. Unless more stringently controlled by tolerances in cited Specifications, manufacturing tolerances established by the industries involved will be accepted.

## 9.2 SCOPE OF PAYMENT

- (a) The Contractor shall receive and accept compensation provided for in the Contract as full payment for furnishing all materials and for performing all work under the Contract in a complete and acceptable manner and for all risk, loss, damage or expense of whatever character arising out of the nature of the work or the prosecution thereof, subject to the provisions of [Section 7.16](#).
- (b) Work or materials for which there are pay items and which are to be paid for separately will be included in the appropriate pay item. Work or materials that are essential to the project but for which there are no pay items will not be measured and paid for separately but shall be included in the appropriate pay item. Payment for any pay item listed in the Bid proposal of approximate quantities in the Contract Documents include all work necessary for their proper completion.
- (c) The State shall pay each invoice within 45 days following the State's receipt of that invoice, so long as the amount invoiced correctly represents work completed by the Contractor and previously accepted by the State during the term that the invoice covers. Receipt of an invoice shall not constitute acceptance of any Work performed or deliverables provided under the Contract.
- (d) Amounts not paid by the State within 45 days of the State's acceptance of the invoice shall bear interest on the unpaid balance beginning on the 45<sup>th</sup> day at the rate of 1% per month, as required by Section 24-30-202(24)(a), CRS, until paid in full; provided, however, that interest shall not accrue on unpaid amounts that the State disputes in writing. Contractor shall invoice the State separately for accrued interest on delinquent amounts, and the invoice shall reference the delinquent payment, the number of day's interest to be paid and the interest rate.
- (e) The State is prohibited by law from making commitments beyond the term of the current State fiscal year. Payment to Contractor beyond the current State fiscal year is contingent on the appropriation and continuing availability of contract funds in any subsequent year (as provided in the Colorado Special Provisions). If federal funds or funds from any other non-State funds constitute all or some of the contract funds the State's obligation to pay Contractor shall be contingent upon such non-State funding continuing to be made available for payment. Payments to be made pursuant to this Contract shall be made only from contract funds, and the State's liability for such payments shall be limited to the amount remaining of such contract funds. If State, federal or other funds are not appropriated, or otherwise become unavailable to fund this Contract, the State may, upon written notice, terminate this Contract, in whole or in part, without incurring further liability. The State shall, however, remain obligated to pay for Services and Goods that are delivered and accepted prior to the effective date of notice of termination, and this termination shall otherwise be treated as if the Contract were terminated in the public interest as described in [Section 8.8](#).
- (f) If the State determines that the amount of any invoice is not correct, then the invoice shall be corrected prior to payment. The State may recover, at the State's discretion, payments made to Contractor in error for any reason, including, but not limited to, overpayments or improper payments, and unexpended or excess funds received by Contractor. The State may recover such payments by deduction from subsequent payments under this Contract, deduction from any payment due under any other contracts, grants or agreements between the State and Contractor, or by any other appropriate method for collecting debts owed to the State.

### 9.3 COMPENSATION FOR ALTERED QUANTITIES

- (a) When the accepted quantities of work vary from the quantities in the Bid Documents, the Contractor shall accept as payment in full, so far as contract items are concerned, payment at the original contract prices for the accepted quantities of work done. Allowance, except as provided in [Section 4.2](#), will not be made for any increased expense, loss of expected reimbursement, or loss of anticipated profits suffered or claimed by the Contractor resulting either directly from such alterations or indirectly from unbalanced allocation among the contract items of overhead expense on the part of the Bidder and subsequent loss of expected reimbursements therefore or from any other cause.
- (b) Should any such alteration directly cause the loss of any work or materials already furnished by the Contractor under the terms of the original Contract, s/he will be reimbursed for the actual cost of such work or of salvaging such materials. Any such materials may, at the option of the Division, be purchased at the actual cost to the Contractor, as evidenced by certified invoices.

### 9.4 EXTRA AND FORCE ACCOUNT WORK

- (a) Extra work performed in accordance with the requirements and provisions of [Section 4.3](#) will be paid for at the unit prices or lump sum stipulated in the order authorizing the work, or the Division may require the Contractor to do such work on a force account basis to be compensated in the following manner:
  - (1) Labor: For all labor and foremen in direct charge of the specific operations, the Contractor shall receive the rate of wage (or scale) paid and agreed upon in writing before beginning work for each and every hour that said labor and foreman are actually engaged in the work.
  - (2) The Contractor shall receive the actual costs paid to, or in behalf of, workers by reason of subsistence and travel allowances as evidenced by receipts but not to exceed State of Colorado per diem rates or other employment contract generally applicable to the classes of labor employed on the work.
  - (3) An amount equal to 67 percent of the sum of the above items will also be paid the Contractor to cover overhead, general superintendence, additional bond, property damage and liability insurance, workmen's compensation insurance premiums, unemployment insurance contributions, and social security.
  - (4) Should the Contractor allow the Superintendent to engage in the physical performance of construction work the Superintendent shall be compensated at the rate at which s/he is performing (laborer, operator, etc.), however, the 67 percent multiplier rate as designated above will not be applied.
- (b) In addition to the 67 percent stated above, the actual amount of fringe benefits will be paid to the Contractor for those work classifications which may carry fringe benefits, as certified in writing by the Contractor. (Fringe benefits are those payments made by the Contractor to a third party or trustee to cover such things as, but not limited to, health and welfare, pensions, vacations and apprenticeship programs, etc.).
- (c) The Project Manager shall have the authority to approve the manpower as to type and numbers.
- (d) Materials: For materials accepted by the Project Manager and used, the Contractor or subcontractor shall receive the actual cost of such materials delivered on the work, including transportation charges paid by him/her, exclusive of machinery rentals as hereinafter set forth, to which cost 15 percent will be added.
- (e) Subcontractor: When extra work on a force account basis is performed by a subcontractor on the project, in accordance with the provisions of an extra work order, a percentage based on the

following table will be allowed as additional to the percentages in (a) and (b) above, to reimburse the prime Contractor for the administrative expenses incurred in connection with the work. Bid items in the original Contract are not to be considered.

(1)	To \$1,000	10 percent
(2)	Over \$1,000 to \$10,000	\$100 plus 5 percent of excess over \$1,000
(3)	Over \$10,000	\$550 plus 3 percent of excess over \$10,000

Approval of this additional percentage will be made after receipted invoices are furnished by the Contractor.

- (f) **Equipment:** For any machinery or special equipment (other than small tools) including fuel and lubricants, plus transportation costs, the use of which has been authorized by the Project Manager, the Contractor shall receive the rental rates agreed upon in writing before such work is begun for the actual time that such equipment is in operation on the work.
- (g) **Miscellaneous:** No additional allowance will be made for general superintendence, the use of small tools or other costs for which no specific allowance is herein provided.
- (h) **Compensation:** The Contractor's representative and the Project Manager shall compare records of the cost of work done as ordered on a force account basis.
- (i) **Statements:** No payment will be made for work performed on force account basis until the Contractor has furnished the Project Manager with itemized statements of cost of such force account work including certified payrolls.

Statements shall be accompanied and supported by certified invoices for all materials used and transportation charges. However, if materials used on the force account work are not specifically purchased for such work but are taken from the Contractor's stock, then in lieu of the invoices, the Contractor shall furnish an affidavit certifying that such materials were taken from the Contractor's stock, that the quantity claimed was actually used, and that the price and transportation claimed represent the actual cost to the Contractor.

## 9.5 ELIMINATED ITEMS

Should any items contained in the Contract be found unnecessary for the proper completion of the work, the Project Manager will notify the Contractor in writing to eliminate the item. Such action will not invalidate the Contract. The Contractor, by Change Order, will be reimbursed for actual work done and all costs incurred, including mobilization of materials and equipment prior to the elimination of the items.

## 9.6 PARTIAL PAYMENTS

- (a) **Standard Amount Retained:**
  - (1) Requests for partial payment will be accepted from the Contractor once each month as the work progresses. Said payments will be based upon estimates prepared by the Project Manager of the value of the work performed and materials placed in accordance with [Section 9.7](#). The Division will deduct money from the partial payments in amounts considered necessary to protect the interests of the State (pursuant to Section 24-91-103 CRS), and will retain this money until after completion of the entire Contract.
  - (2) If the total Contract Amount exceeds \$150,000.00 then the State will retain a portion of each payment to the Contractor. Unless it is determined that a larger amount is necessary to protect the interests of the State, the amount to be retained from partial payments will be five percent (5%) of the value of the work performed to date. If the State fails to retain 5% of any payment the State may withhold a higher amount of a subsequent payment in order to offset such omission.

- (3) The withheld percentage of the contract price of any such work, improvement, or construction shall be retained until the Contract is completed satisfactorily and finally accepted by the Project Manager.

- (b) Subcontractor and Supplier Claims:

The Division may withhold, in addition to the standard amount, funds for all claims against the Contractor filed by subcontractors and suppliers, pursuant to Sections 38-26-107 and 24-91-103, CRS.

## 9.7 PAYMENT FOR MATERIAL ON HAND

- (a) Partial payments may be made to the extent of the delivered cost of materials to be incorporated in the work as evidenced by certified invoices, when produced on the project, delivered on the project or stored in acceptable storage places in the State of Colorado in which case the Contractor must furnish evidence to the Project Manager that such materials are stored subject to or under the control of the Division. Payment for such materials will not relieve the Contractor of responsibility for loss or damage of the stored materials.
- (b) Partial payment will not be made on living or perishable plant materials until planted on the project.

## 9.8 ACCEPTANCE AND FINAL PAYMENT

- (a) When the project has been accepted as provided in [Section 5.16](#), the Project Manager will prepare the final estimate (pay application) of the quantities of the various classes of work performed. After acceptance of such final estimate by the Contractor and all appropriate State officials and receipt of proof of advertisement in accordance with notice provisions contained in 38-26-107, CRS, s/he will be paid the entire sum found to be due after deducting all previous payments and all amounts to be retained or deducted under the provisions of the Contract and the appropriate statutes.
- (b) All prior partial estimates and payments shall be subject to correction in the final estimate and payment.
- (c) Final payment, based on the final estimate and subject to all provisions of the Contract, shall be made after the Contractor has indicated, by signature or other written acknowledgement of the final estimate form. The Contractor's signature or other written acknowledgement indicates that the Project is full and complete, and the Contractor releases the Division and Department from all claims or damages arising from the prosecution of work under the Contract.

## 9.9 CORRECTION OF WORK AFTER FINAL PAYMENT (WARRANTY PERIOD)

Neither the final advertisement, nor payment nor any provisions in the Contract shall relieve the Contractor of responsibility for faulty materials or workmanship. Contractor shall be liable for defects in concrete work which appear within a period of two years from the date of final acceptance of the project and one year for all other construction work from the date of final acceptance (unless otherwise indicated in the Bid Documents) unless defects are discovered after the one or two year period which are the result of faulty materials or workmanship, in which case the provisions of the first sentence of this paragraph shall apply. The Project Manager will give notice to the Contractor of observed defects with reasonable promptness.

End of

MEASUREMENT AND PAYMENT



# APPENDIX B

## STATE OF COLORADO CONSTRUCTION AGREEMENT

### SIGNATURE PAGE

#### THE PARTIES HERETO HAVE EXECUTED THIS CONTRACT

Each person signing this Contract represents and warrants that he or she is duly authorized to execute this Contract and to bind the Party authorizing his or her signature.

<b>CONTRACTOR</b> Insert Contractor's Full Legal Name, including "Inc.", "LLC", etc...  Signature: _____  Printed Name: _____  Title: _____  Date: _____	<b>STATE OF COLORADO</b> Jared S. Polis, Governor Colorado Department of Natural Resources Dan Gibbs, Executive Director <b>Division Name</b>  Signature: _____  Printed Name: _____  Title: _____  Date: _____
2nd State or Contractor Signature if Needed  _____ By: Name & Title of Person Signing for Signatory  Date: _____	<b>LEGAL REVIEW</b> Phil Weiser, Attorney General  By: _____ Assistant Attorney General  Date: _____
In accordance with §24-30-202 C.R.S., this Contract is not valid until signed and dated below by the State Controller or an authorized delegate.  <b>STATE CONTROLLER</b> <b>Robert Jaros, CPA, MBA, JD</b>  Signature: _____  Printed Name: _____  Title: _____  Effective Date: _____	

### Project Summary Table

<b>State Agency</b> Department of Natural Resources Division Name, ("Division Acronym")	<b>Bid Number:</b>
<b>Contractor</b> Insert Contractor's Full Legal Name, including "Inc.", "LLC", etc... Address	<b>Project Name and Purpose</b> Project name and brief description of project work
<b>Contract Maximum Amount</b>	<b>Performance Time</b> # Days Calendar Days  OR Month Day, Year

#### 1. PARTIES

This Contract is entered into by and between Contractor named above and on the Signature Page for this Contract (the "Contractor"), and the State of Colorado acting by and through the State agency named above and on the Project Summary Table for this Contract (the "State" or "Division Acronym"). Contractor and the State agree to the terms and conditions in this Contract.

#### 2. TERM AND EFFECTIVE DATE

- a. The Effective Date for this Contract is the date on which this Contract is approved and signed by the Colorado State Controller or designee, as shown on the Signature Page for this Contract.
- b. This Contract shall not be valid or enforceable until the Effective Date. The State shall not be bound by any provision of this Contract before the Effective Date, and shall have no obligation to pay Contractor for any work performed or expense incurred before the Effective Date or after the expiration or earlier termination of this Contract.
- c. Contractor's performance under this Contract will not begin until the issuance of the Notice to Proceed as specified in the General Conditions (the "GCs").
- d. The State is entering into this Contract to serve the public interest of the State of Colorado as determined by its Governor, General Assembly, or Courts. If this Contract ceases to further the public interest of the State, the State, in its discretion, may terminate this Contract in whole or in part.

#### 3. AUTHORITY

Authority for the State to enter into this Contract exists in 33-10-107(1)(d) C.R.S. The Contractor was selected under the procurement code, 24-103-204 24-103-202 C.R.S.

#### 4. CONTRACT DOCUMENTS

The GCs and the Contract Documents described therein are all incorporated by reference and made a part of this Contract.

In the event of a conflict or inconsistency between this Contract and any Exhibit or attachment, such conflict or inconsistency shall be resolved by reference to the documents in the following order of priority

1. Exhibit X, Federal Provisions
2. The Colorado Special Provisions included in the main body of this agreement
3. Contract or Purchase Order, Change Orders or Amendments

4. Purchase Order
5. Special Conditions
6. Specifications
7. Detailed Plans
8. Standard Plans
9. Calculated dimensions will govern over scaled dimensions
10. GCs

## **5. CONTRACTOR PERFORMANCE**

- a. Contractor shall perform its obligations under this Contract in accordance with the professional standards of care, skill and diligence in Contractor's industry, trade, or profession to the satisfaction of the State and its Project Manager in strict accordance with the provisions of the Contract Documents.
- b. The Contractor shall furnish all the work, labor and materials and perform all the work required for the complete and prompt execution of everything described or shown in, or reasonably implied from the Contract Documents above described project.
- c. The Contractor shall complete the entire project within the Performance Time as shown in the Project Summary Table. The Contractor shall begin work within ten days from the Notice to Proceed and to prosecute the work with due diligence to completion. The Contractor agrees that the completion of the project within the Performance Time is an essential feature of this Contract and agrees to proceed with due diligence, taking all precautions and making all necessary arrangements to ensure the completion of the work within the prescribed time.
- d. The Contractor agrees that failure to complete the work within the time allowed shall be considered as a breach of the Contract and entitle the State of Colorado to collect liquidated damages for delay in completion, in accordance with the bid documents.

## **6. PAYMENT**

The State shall pay the Contractor an amount not to exceed the Contract Maximum Amount specified in the Project Summary Table for performance of this Contract, subject to any additions or deductions as provided in the Contract Documents. Payments under this Contract are subject to the terms and conditions outlined in the GCs.

## **7. INSURANCE**

Contractor shall obtain and maintain, and ensure that each Subcontractor shall obtain and maintain, insurance as specified in this section at all times during the term of this Contract. All insurance policies required by this Contract shall be issued by insurance companies as approved by the State.

### **A. Workers' Compensation**

Workers' compensation insurance as required by state statute, and employers' liability insurance covering all Contractor or Subcontractor employees acting within the course and scope of their employment.

### **B. General Liability**

Commercial general liability insurance covering premises operations, fire damage, independent contractors, products and completed operations, blanket contractual liability, personal injury, and advertising liability with minimum limits as follows:

- i. \$1,000,000 each occurrence;
- ii. \$1,000,000 general aggregate;
- iii. \$1,000,000 products and completed operations aggregate; and

- iv. \$50,000 any one fire.
- C. Automobile Liability

Automobile liability insurance covering any auto (including owned, hired and non-owned autos) with a minimum limit of \$1,000,000 each accident combined single limit.
- D. Pollution Liability Insurance

If Contractor is providing directly or indirectly Work with pollution/environmental hazards, the Contractor must provide or cause those conducting the Work to provide Pollution Liability Insurance coverage. Pollution Liability policy must include contractual liability coverage. The State of Colorado must be included as additional insureds on the policy. The policy limits shall be in the amount of \$1,000,000 with maximum deductible of \$25,000 to be paid by the Subcontractor/Vendor.
- E. Professional Liability Insurance

Professional liability insurance covering any damages caused by an error, omission or any negligent act with minimum limits as follows:

  - i. \$1,000,000 each occurrence; and
  - ii. \$1,000,000 general aggregate.
- F. Additional Insured

The State shall be named as additional insured on all commercial general liability policies (leases and construction contracts require additional insured coverage for completed operations) required of Contractor and Subcontractors.
- G. Primacy of Coverage

Coverage required of Contractor and each Subcontractor shall be primary and noncontributory over any insurance or self-insurance program carried by Contractor or the State.
- H. Cancellation

The above insurance policies shall include provisions preventing cancellation or non-renewal, except for cancellation based on non-payment of premiums, without at least 30 days prior notice to Contractor and Contractor shall forward such notice to the State in accordance with **§14** within seven days of Contractor's receipt of such notice.
- I. Subrogation Waiver

Except with respect to Professional Liability Insurance, all insurance policies secured or maintained by Contractor or its Subcontractors in relation to this Contract shall include clauses stating that each carrier shall waive all rights of recovery under subrogation or otherwise against Contractor or the State, its agencies, institutions, organizations, officers, agents, employees, and volunteers.
- J. Public Entities

If Contractor is a "public entity" within the meaning of the Colorado Governmental Immunity Act, §§24-10-101, *et seq.*, C.R.S. (the "GIA"), Contractor shall maintain, in lieu of the liability insurance requirements stated above, at all times during the term of this Contract such liability insurance, by commercial policy or self-insurance, as is necessary to meet its liabilities under the GIA. If a Subcontractor is a public entity within the meaning of the GIA, Contractor shall ensure that the Subcontractor maintains at all times during the terms of this Contract, in lieu of the liability insurance requirements stated above, such liability insurance, by commercial policy or self-insurance, as is necessary to meet the Subcontractor's obligations under the GIA.
- K. Certificates

Contractor shall provide to the State certificates evidencing Contractor's insurance coverage required in this Contract within seven Business Days following the Effective Date. Contractor shall provide to the State certificates evidencing Subcontractor insurance coverage required under this Contract within seven

Business Days following the Effective Date, except that, if Contractor's subcontract is not in effect as of the Effective Date, Contractor shall provide to the State certificates showing Subcontractor insurance coverage required under this Contract within seven Business Days following Contractor's execution of the subcontract. No later than 15 days before the expiration date of Contractor's or any Subcontractor's coverage, Contractor shall deliver to the State certificates of insurance evidencing renewals of coverage. At any other time during the term of this Contract, upon request by the State, Contractor shall, within seven Business Days following the request by the State, supply to the State evidence satisfactory to the State of compliance with the provisions of this section.

## **8. GENERAL PROVISIONS**

### **a. Binding Effect**

Except as otherwise provided in the GCs, all provisions of this Contract, including the benefits and burdens, shall extend to and be binding upon the Parties' respective successors and assigns.

### **b. Captions and References**

The captions and headings in this Contract are for convenience of reference only, and shall not be used to interpret, define, or limit its provisions. All references in this Contract to sections (whether spelled out or using the § symbol), subsections, exhibits or other attachments, are references to sections, subsections, exhibits or other attachments contained herein or incorporated as a part hereof, unless otherwise noted.

### **c. Counterparts**

This Contract may be executed in multiple, identical, original counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

### **d. Entire Understanding**

This Contract represents the complete integration of all understandings between the Parties related to the project, and all prior representations and understandings related to the project, oral or written, are merged into this Contract. Prior or contemporaneous additions, deletions, or other changes to this Contract shall not have any force or effect whatsoever, unless embodied herein.

### **e. Jurisdiction and Venue**

All suits or actions related to this Contract shall be filed and proceedings held in the State of Colorado and exclusive venue shall be in the City and County of Denver.

### **f. Modification**

Except as otherwise provided in this Contract, any modification to this Contract shall only be effective if agreed to in a formal amendment to this Contract, properly executed and approved in accordance with applicable Colorado State law and State Fiscal Rules.

### **g. Statutes, Regulations, Fiscal Rules, and Other Authority**

Any reference in this Contract to a statute, regulation, State Fiscal Rule, fiscal policy or other authority shall be interpreted to refer to such authority then current, as may have been changed or amended since the Effective Date of this Contract.

### **h. Severability**

The invalidity or unenforceability of any provision of this Contract shall not affect the validity or enforceability of any other provision of this Contract, which shall remain in full force and effect, provided that the Parties can continue to perform their obligations under this Contract in accordance with the intent of the Contract.

### **i. Survival of Certain Contract Terms**

Any provision of this Contract that imposes an obligation on a Party after termination or expiration of the Contract shall survive the termination or expiration of the Contract and shall be enforceable by the other Party.

### **j. Third Party Beneficiaries**

Except for the Parties' respective successors and assigns described in this §7, this Contract does not and is not intended to confer any rights or remedies upon any person or entity other than the Parties. Enforcement of this Contract and all rights and obligations hereunder are reserved solely to the Parties. Any services or benefits which third parties receive as a result of this Contract are incidental to the Contract, and do not create any rights for such third parties.

k. **Waiver**

A Party's failure or delay in exercising any right, power, or privilege under this Contract, whether explicit or by lack of enforcement, shall not operate as a waiver, nor shall any single or partial exercise of any right, power, or privilege preclude any other or further exercise of such right, power, or privilege.

l. **Indemnification**

To the extent authorized by law, Contractor shall indemnify, save, and hold harmless the State, its employees, agents and assignees (the "Indemnified Parties"), against any and all costs, expenses, claims, damages, liabilities, court awards and other amounts (including attorneys' fees and related costs) incurred by any of the Indemnified Parties in relation to any act or omission by Contractor, or its employees, agents, Subcontractors, or assignees in connection with this contract.

**9. COLORADO SPECIAL PROVISIONS (COLORADO FISCAL RULE 3-3)**

These Special Provisions apply to all contracts except where noted in italics.

A. **STATUTORY APPROVAL. §24-30-202(1), C.R.S.**

This Contract shall not be valid until it has been approved by the Colorado State Controller or designee. If this Contract is for a Major Information Technology Project, as defined in §24-37.5-102(2.6), then this Contract shall not be valid until it has been approved by the State's Chief Information Officer or designee.

B. **FUND AVAILABILITY. §24-30-202(5.5), C.R.S.**

Financial obligations of the State payable after the current State Fiscal Year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.

C. **GOVERNMENTAL IMMUNITY.**

Liability for claims for injuries to persons or property arising from the negligence of the State, its departments, boards, commissions committees, bureaus, offices, employees and officials shall be controlled and limited by the provisions of the Colorado Governmental Immunity Act, §24-10-101, et seq., C.R.S.; the Federal Tort Claims Act, 28 U.S.C. Pt. VI, Ch. 171 and 28 U.S.C. 1346(b), and the State's risk management statutes, §§24-30-1501, et seq. C.R.S. No term or condition of this Contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, contained in these statutes.

D. **INDEPENDENT CONTRACTOR.**

Contractor shall perform its duties hereunder as an independent contractor and not as an employee. Neither Contractor nor any agent or employee of Contractor shall be deemed to be an agent or employee of the State. Contractor shall not have authorization, express or implied, to bind the State to any agreement, liability or understanding, except as expressly set forth herein. **Contractor and its employees and agents are not entitled to unemployment insurance or workers compensation benefits through the State and the State shall not pay for or otherwise provide such coverage for Contractor or any of its agents or employees. Contractor shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this Contract. Contractor shall (i) provide and keep in force workers' compensation and unemployment compensation insurance in the amounts required by law, (ii) provide proof thereof when requested by the State, and (iii) be solely responsible for its acts and those of its employees and agents.**

E. **COMPLIANCE WITH LAW.**

Contractor shall comply with all applicable federal and State laws, rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices.

F. **CHOICE OF LAW, JURISDICTION, AND VENUE.**

Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this Contract. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations shall be null and void. All suits or actions related to this Contract shall be filed and proceedings held in the State of Colorado and exclusive venue shall be in the City and County of Denver.

G. **PROHIBITED TERMS.**

Any term included in this Contract that requires the State to indemnify or hold Contractor harmless; requires the State to agree to binding arbitration; limits Contractor's liability for damages resulting from death, bodily injury, or damage to tangible property; or that conflicts with this provision in any way shall be void ab initio. Nothing in this Contract shall be construed as a waiver of any provision of §24-106-109 C.R.S.

H. **SOFTWARE PIRACY PROHIBITION.**

State or other public funds payable under this Contract shall not be used for the acquisition, operation, or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions. Contractor hereby certifies and warrants that, during the term of this Contract and any extensions, Contractor has and shall maintain in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that Contractor is in violation of this provision, the State may exercise any remedy available at law or in equity or under this Contract, including, without limitation, immediate termination of this Contract and any remedy consistent with federal copyright laws or applicable licensing restrictions.

I. **EMPLOYEE FINANCIAL INTEREST/CONFLICT OF INTEREST. §§24-18-201 and 24-50-507, C.R.S.**

The signatories aver that to their knowledge, no employee of the State has any personal or beneficial interest whatsoever in the service or property described in this Contract. Contractor has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of Contractor's services and Contractor shall not employ any person having such known interests.

**J. VENDOR OFFSET AND ERRONEOUS PAYMENTS. §§24-30-202(1) and 24-30-202.4, C.R.S.**

**[Not applicable to intergovernmental agreements]** Subject to §24-30-202.4(3.5), C.R.S., the State Controller may withhold payment under the State's vendor offset intercept system for debts owed to State agencies for: **(i)** unpaid child support debts or child support arrearages; **(ii)** unpaid balances of tax, accrued interest, or other charges specified in §§39-21-101, *et seq.*, C.R.S.; **(iii)** unpaid loans due to the Student Loan Division of the Department of Higher Education; **(iv)** amounts required to be paid to the Unemployment Compensation Fund; and **(v)** other unpaid debts owing to the State as a result of final agency determination or judicial action. The State may also recover, at the State's discretion, payments made to Contractor in error for any reason, including, but not limited to, overpayments or improper payments, and unexpended or excess funds received by Contractor by deduction from subsequent payments under this Contract, deduction from any payment due under any other contracts, grants or agreements between the State and Contractor, or by any other appropriate method for collecting debts owed to the State.

**10. FEDERAL FUNDING AND REGULATIONS**

- a. All or a portion of this Contract may be funded by federally provided funds pursuant to Assistance Listing Number #/Federal Agency if no Federal Assistance Listing Number #. This Contract is subject to and contingent upon the continuing availability of federal funds for the purposes hereof.
- b. The Contractor shall comply with all applicable federal statutes, regulations, policies, guidelines, OMB Circulars and other requirements, including as they relate to the application, acceptance and use of federal funds for this federally assisted Project including, but not limited to, Office of Management and Budget Circular 2CFR200 and 32 CFR section 33.26, including Exhibit X, Federal Provisions, which is attached to this Contract.
- c. Federal Audit -The Office of Management and Budgets (OMB) Circular No. 2CFR200 subpart F Audit Requirements defines audit requirements under the Single Audit Act Amendments of 1996 (31 U.S.C. 7501-7507) expending \$750,000 or more from all sources (direct or from pass-through entities) are required to have a single audit under the circular. The OMB defines Federal financial assistance within the scope of the circular as assistance received or administered in the form of grants, cooperative agreements, loans, loan guarantees, property (including donated surplus property), interest subsidies, insurance, food commodities, direct appropriations and other assistance. The Circular also requires pass-through entities to monitor the activities of sub-recipients and ensure that sub-recipients meet the audit requirements.
- d. Whistleblower Rights. The Contractor, any subcontractors, and all of their employees working on this Agreement are subject to the whistleblower rights and remedies in the pilot program on the Award Recipient employee whistleblower protections established at 41 USC 4712 by section 828 of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112-239). The Contractor and any subcontractor will inform its employees in writing, in the predominant language of the workforce, of the employee whistleblower rights and protections under 41 USC 4712.
- e. Davis-Bacon Act
  - i. Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations



(29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or Subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

f. Build America, Buy America

Note: This term effective as of January 13, 2023. For more information on DOI’s approved waiver, see: <https://www.doi.gov/grants/BuyAmerica/GeneralApplicabilityWaivers>.

- i. As required by Section 70914 of the Bipartisan Infrastructure Law (also known as the Infrastructure Investment and Jobs Act), P.L. 117-58, on or after May 14, 2022, none of the funds under a federal award that are part of Federal financial assistance program for infrastructure may be obligated for a project unless all of the iron, steel, manufactured products, and construction materials used in the project are produced in the United States, unless subject to an approved waiver. The requirements of this section must be included in all subawards, including all contracts and purchase orders for work or products under this program. Recipients of an award of Federal financial assistance are hereby notified that none of the funds provided under this award may be used for a project for infrastructure unless:
  1. All iron and steel used in the project are produced in the United States--this means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States;
  2. All manufactured products used in the project are produced in the United States —this means the manufactured product was manufactured in the United States; and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation; and
  3. All construction materials are manufactured in the United States—this means that all manufacturing processes for the construction material occurred in the United States.

- ii. The Buy America preference only applies to articles, materials, and supplies that are consumed in, incorporated into, or affixed to an infrastructure project. As such, it does not apply to tools, equipment, and supplies, such as temporary scaffolding, brought to the construction site and removed at or before the completion of the infrastructure project. Nor does a Buy America preference apply to equipment and furnishings, such as movable chairs, desks, and portable computer equipment, that are used at or within the finished infrastructure project, but are not an integral part of the structure or permanently affixed to the infrastructure project.

For further information on the Buy America preference, please visit <https://www.doi.gov/grants/BuyAmerica>.

Additional information can also be found at the White House Made in America Office website: <https://www.whitehouse.gov/omb/management/madein-america>.

- iii. **Waivers**

When necessary, recipients may apply for, and the Department of the Interior (DOI) may grant, a waiver from these requirements, subject to review by the Made in America Office. The DOI may waive the application of the domestic content procurement preference in any case in which it is determined that one of the below circumstances applies:

1. Non-availability Waiver: the types of iron, steel, manufactured products, or construction materials are not produced in the United States in sufficient and reasonably available quantities or of a satisfactory quality;
2. Unreasonable Cost Waiver: the inclusion of iron, steel, manufactured products, or construction materials produced in the United States will increase the cost of the overall project by more than 25 percent; or
3. Public Interest Waiver: applying the domestic content procurement preference would be inconsistent with the public interest.

There may be instances where an award qualifies, in whole or in part, for an existing DOI general applicability waiver as described at:

<https://www.doi.gov/grants/BuyAmerica/GeneralApplicabilityWaivers>.

If the specific financial assistance agreement, infrastructure project, or non-domestic materials meets the criteria of an existing general applicability waiver within the limitations defined within the waiver, the recipient is not required to request a separate waiver for non-domestic materials. If a general applicability waiver does not already apply, and a recipient believes that one of the above circumstances applies to an award, a request to waive the application of the domestic content procurement preference may be submitted to the financial assistance awarding officer in writing. Waiver requests shall include the below information. The waiver shall not include any Privacy Act information, sensitive data, or proprietary information within their waiver request. Waiver requests will be posted to <https://www.doi.gov/grants/buyamerica> and are subject to public comment periods of no less than 15 days. Waiver requests will also be reviewed by the Made in America Office.

1. Type of waiver requested (non-availability, unreasonable cost, or public interest).
2. Requesting entity and Unique Entity Identifier (UEI) submitting the request.
3. Department of Interior Bureau or Office who issued the award.
4. Federal financial assistance listing name and number (reference block 2 on DOI Notice of Award).
5. Financial assistance title of project (reference block 8 on DOI Notice of Award).
6. Federal Award Identification Number (FAIN).

7. Federal funding amount (reference block 11.m. on DO Notice of Award).
  8. Total cost of Infrastructure expenditures (includes federal and non-federal funds to the extent known).
  9. Infrastructure project description(s) and location(s) (to the extent known).
  10. List of iron or steel item(s), manufactured goods, and construction material(s) the recipient seeks to waive from Buy America requirements. Include the name, cost, countries of origin (if known), and relevant PSC or NAICS code for each.
  11. A certification that the recipient made a good faith effort to solicit bids for domestic products supported by terms included in requests for proposals, contracts, and nonproprietary communications with the prime contractor.
  12. A statement of waiver justification, including a description of efforts made (e.g., market research, industry outreach) by the recipient, in an attempt to avoid the need for a waiver. Such a justification may cite, if applicable, the absence of any Buy America-compliant bids received in response to a solicitation.
  13. Anticipated impact if no waiver is issued. Approved waivers will be posted at <https://www.doi.gov/grants/BuyAmerica/ApprovedWaivers>; recipients requesting a waiver will be notified of their waiver request determination by an awarding officer.
- Questions pertaining to waivers should be directed to the financial assistance awarding officer.

iv. Definitions

1. “Construction materials” includes an article, material, or supply that is or consists primarily of:
  - non-ferrous metals;
  - plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables);
  - glass (including optic glass);
  - lumber; or
  - drywall.
2. “Construction Materials” does not include cement and cementitious materials, aggregates such as stone, sand, or gravel, or aggregate binding agents or additives.
3. “Domestic content procurement preference” means all iron and steel used in the project are produced in the United States; the manufactured products used in the project are produced in the United States; or the construction materials used in the project are produced in the United States.
4. “Infrastructure” includes, at a minimum, the structures, facilities, and equipment for, in the United States, roads, highways, and bridges; public transportation; dams, ports, harbors, and other maritime facilities; intercity passenger and freight railroads; freight and intermodal facilities; airports; water systems, including drinking water and wastewater systems; electrical transmission facilities and systems; utilities; broadband infrastructure; and buildings and real property. Infrastructure includes facilities that generate, transport, and distribute energy.
5. “Project” means the construction, alteration, maintenance, or repair of infrastructure in the United States.

## 11. CONTRACTOR CERTIFICATION AND ADJUSTMENTS FOR ERRORS

In accordance with 24 30 1404 (1), C.R.S. as amended, the Contractor has executed a schedule, which is attached hereto and made a part hereof by reference as **Exhibit X, Contractor Rate Schedule**, in having a duly authorized representative of Contractor sign this Contract, Contractor hereby certifies that:

- a. The wage rates and other factual unit costs supporting the compensation to be paid by the State for these professional services are accurate, complete and current; and
- b. The Contractor understands the original Contract price and that any additions shall be adjusted to exclude any significant sums by which the State determines the contract price had been increased due to inaccurate, incomplete, or non-current wage rates and other factual unit costs; and
- c. All such Contract adjustments shall be made within one year following the end of this Contract.

## **12. SPECIAL CONSIDERATIONS FOR PUBLIC PROJECTS**

- a. Applicable Prevailing Wages §24-92-203 CRS
  - i. The general prevailing rate of the regular, holiday, and overtime wages paid and the payments on behalf of employees to the welfare, pension, vacation, apprentice training, and education funds are attached to this Contract as **Exhibit X, Prevailing Wages**. These rates shall remain the same for the duration of the work of this Project.
- b. Posting of Prevailing Wage Rates §24-92-207 CRS
  - i. The Contractor and each subcontractor who performs work on this Project shall post in conspicuous places on the project site, where employees are employed, posters that contain the current prevailing rate of wages and the current prevailing rate of payments to the funds required to be paid for each employee employed to execute this Contract, and the rights and remedies of any employee described in §24-92-210 CRS for nonpayment of any wages earned pursuant to this section. The posters shall be furnished to the Contractor and subcontractors by the Colorado Department of Personnel and Administration in a form and manner to be determined by that department.
  - ii. Failure of the Contractor or subcontractor to comply with this section shall be deemed guilty of a class 3 misdemeanor and shall pay to the State one hundred dollars for each calendar day of noncompliance as determined by the State.
- c. Payment of Wages and Unclaimed Prevailing Wages Special Trust Fund §24-92-204 CRS
  - i. The Contractor and any subcontractors shall pay all the employees employed directly on the site of the work, unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account, the full amounts accrued at time of payment computed at wage rates not less than those stated in the competitive solicitation, regardless of any contractual relationships that may be alleged to exist between the Contractor or subcontractor and the employees.
  - ii. The Contractor and any subcontractors shall prepare and submit payroll reports to the State on a monthly basis that disclose all relevant payroll information, including the name and address of any entities to which fringe benefits are paid, and that the State is required to review the certified payroll reports in a timely manner as required by this Contract.
  - iii. The Contractor and any subcontractors shall maintain on the site where this public project is being constructed a daily log of employees employed each day on the public project. The log shall include, at a minimum, for each employee his or her name, primary job title, and employer, and shall be kept on a form prescribed by the State through the Colorado Department of Personnel and Administration. The log shall be available for inspection on the site at all times by the State.
  - iv. If the Contractor or any subcontractor fails to pay wages as are required by this Contract, the State shall not approve a warrant or demand for payment to the Contractor until the

Contractor furnishes the State with evidence satisfactory to the State that such wages so required by this Contract have been paid; except that the State shall approve and pay any portion of a warrant or demand for payment to the Contractor to the extent the State has been furnished evidence satisfactory to the State that the Contractor or one or more subcontractors has paid such wages required by this Contract, even if the Contractor has not furnished evidence that all of the subcontractors have paid wages as required by this Contract. Any Contractor or subcontractor may use the following procedure in order to satisfy the requirements of this section:

1. The Contractor or subcontractor may submit to the State, for each employee to whom such wages are due, a check as required by the State. Such check shall be payable to that employee or to the State so it is negotiable by either of those parties. Each such check shall be in an amount representing the difference between the accrued wages required to be paid to that employee by this Contract and the wages actually paid by the Contractor or subcontractor
  2. If any check submitted as described above cannot be delivered to the employee within a reasonable period as determined by the State, then it shall be negotiated by the State and the proceeds deposited in the unclaimed property trust fund created in section §38-13-116.6 CRS. Nothing in this section shall be construed to lessen the responsibility of the Contractor or subcontractor to attempt to locate and pay any employee to whom wages are due.
- d. Apprenticeship Contributions §24-92-208 CRS
- i. The apprenticeship contribution rate and fringe benefit requirements applicable to this Contract have been established in accordance with the apprenticeship contribution of the collective bargaining agreement of the applicable trade in the geographic locality of the Project. The Colorado Department of Personnel and Administration, Office of the State Architect publishes copies of the applicable rates and has made them available at <https://drive.google.com/file/d/1ZrsbxqMODrcmx6yYe-QAs61ImqRJ7zfN/view>.
  - ii. In order to comply with the applicable apprenticeship contribution statutes, the Contractor must do one of the following:
    1. If the Contractor is signatory to the applicable collective bargaining agreement, the Contractor shall pay no more than the apprenticeship contribution rates available above; or,
    2. If the Contractor is not signatory to a collective bargaining agreement but is a member of a multi-employer trade association that sponsors an apprenticeship program registered with the United States Department of Labor's Employment and Training Administration or recognized by the United States Department of Labor or directly sponsor such a program for their own employees, the Contractor shall pay the determined apprenticeship contribution to that program or to a state apprenticeship council registered with the United States Department of Labor; or,
    3. If the Contractor does not qualify for either option specified above, the Contractor shall be required to pay the amount of the apprenticeship contribution to affected workers in cash payments in addition to the other components of the required prevailing wage and fringe benefit package.
  - iii. The apprenticeship contribution rate shall be deducted from the prevailing wage rate package to avoid double payment by the Contractor.
- e. Apprenticeship Utilization §24-92-115 CRS

- i. The Contractor shall submit to the State documentation in a form substantially similar to the template available at  
<<https://docs.google.com/document/d/1J4MSGuLyZTO3FgTcvgKrybAoalDkC8am/edit>> that each subcontractor used for mechanical, sheet metal, fire suppression, sprinkler fitting, electrical, and plumbing work participates in apprenticeship programs registered with the United States Department of Labor's Employment and Training Administration or state apprenticeship councils recognized by the United States Department of Labor and have a proven record of graduating apprentices as follows:
  - 1. Beginning July 1, 2021, through June 30, 2026, a minimum of fifteen percent of its apprentices for at least three of the past five years;
  - 2. Beginning July 1, 2026, through June 30, 2031, a minimum of twenty percent of apprentices for at least three of the past five years; and
  - 3. Beginning July 1, 2031, and each year thereafter, a minimum of thirty percent of apprentices for at least three of the past five years.
- ii. The Contractor shall supply supporting documentation from the United States Department of Labor's Office of Apprenticeship verifying the information provided. The Contractor agrees to provide additional documentation to the State regarding affected apprenticeship training programs relating to the requirements of this section as requested.
- iii. If the States determines that a subcontractor subject to this section has willfully falsified documentation or willfully misrepresented their qualifications required to comply with this section, the State shall direct the Contractor to terminate the subcontractor contract immediately and the subcontractor will be immediately removed from the Public Project. At the discretion of the director of the Colorado Department of Personnel and Administration, the State may initiate the process to debar the Contractor pursuant to §24-109-105 CRS, and may pursue any other remedy provided by law.

# APPENDIX C

"General Decision Number: C020240003 09/20/2024

Superseded General Decision Number: C020230003

State: Colorado

Construction Type: Heavy

Counties: Alamosa, Archuleta, Baca, Bent, Chaffee, Cheyenne, Clear Creek, Conejos, Costilla, Crowley, Custer, Delta, Dolores, Eagle, Elbert, Fremont, Garfield, Gilpin, Grand, Gunnison, Hinsdale, Huerfano, Jackson, Kiowa, Kit Carson, La Plata, Lake, Las Animas, Lincoln, Logan, Mineral, Moffat, Montezuma, Montrose, Morgan, Otero, Ouray, Park, Phillips, Pitkin, Prowers, Rio Blanco, Rio Grande, Routt, Saguache, San Juan, San Miguel, Sedgwick, Summit, Teller, Washington and Yuma Counties in Colorado.

## HEAVY CONSTRUCTION PROJECTS

Note: Contracts subject to the Davis-Bacon Act are generally required to pay at least the applicable minimum wage rate required under Executive Order 14026 or Executive Order 13658. Please note that these Executive Orders apply to covered contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but do not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(1).

If the contract is entered into on or after January 30, 2022, or the contract is renewed or extended (e.g., an option is exercised) on or after January 30, 2022:	<ul style="list-style-type: none"><li>. Executive Order 14026 generally applies to the contract.</li><li>. The contractor must pay all covered workers at least \$17.20 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in 2024.</li></ul>
If the contract was awarded on or between January 1, 2015 and January 29, 2022, and the contract is not renewed or extended on or after January 30, 2022:	<ul style="list-style-type: none"><li>. Executive Order 13658 generally applies to the contract.</li><li>. The contractor must pay all covered workers at least \$12.90 per hour (or the</li></ul>

	applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on that contract in 2024.
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The applicable Executive Order minimum wage rate will be adjusted annually. If this contract is covered by one of the Executive Orders and a classification considered necessary for performance of work on the contract does not appear on this wage determination, the contractor must still submit a conformance request.

Additional information on contractor requirements and worker protections under the Executive Orders is available at <http://www.dol.gov/whd/govcontracts>.

Modification Number	Publication Date
0	01/05/2024
1	02/23/2024
2	07/05/2024
3	07/19/2024
4	08/02/2024
5	09/06/2024
6	09/20/2024

\* ELEC0012-006 09/01/2024

ALAMOSA, ARCHULETA, BACA, BENT, CHAFFEE, CONEJOS, COSTILLA, CROWLEY, CUSTER, FREMONT, HUERFANO, KIOWA, LAS ANIMAS, MINERAL, OTERO, PROWERS, PUEBLO, RIO GRANDE, SAGUACHE COUNTIES

	Rates	Fringes
Electricians:.....	\$ 33.55	15.71
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ELEC0068-011 06/01/2024		

CLEAR CREEK, EAGLE, GILPIN, GRAND, JACKSON, LAKE, LOGAN, MORGAN, PHILLIPS, SEDGWICK, SUMMIT, WASHINGTON AND YUMA COUNTIES

	Rates	Fringes
ELECTRICIAN.....	\$ 44.95	19.08
-----		
ELEC0111-002 09/01/2023		



	Rates	Fringes
Line Construction:		
Groundmen.....	\$ 24.61	21.25%+7.40
Line Equipment Operator.....	\$ 39.77	21.25%+7.40
Lineman and Welder.....	\$ 55.22	24.25%+7.40

-----  
 \* ELEC0111-008 01/01/2024

DOLORES, GARFIELD, GUNNISON, HINSDALE, LA PLATA, MOFFAT,  
 MONTEZUMA, RIO BLANCO, AND ROUTT COUNTIES

	Rates	Fringes
ELECTRICIAN.....	\$ 30.00	12.70

-----  
 ELEC0111-010 01/01/2024

OURAY, PITKIN, SAN JUAN AND SAN MIGUEL COUNTIES

	Rates	Fringes
ELECTRICIAN.....	\$ 35.20	13.86

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 \* ELEC0111-014 01/01/2024

DELTA AND MONTROSE COUNTIES

	Rates	Fringes
ELECTRICIAN.....	\$ 30.00	12.70

-----  
 ELEC0113-004 06/01/2024

CHEYENNE, ELBERT, KIT CARSON, LINCOLN, PARK AND TELLER COUNTIES

	Rates	Fringes
ELECTRICIAN.....	\$ 38.20	18.10

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 ENGI0009-004 05/01/2024

	Rates	Fringes
Power equipment operators:		
Mechanic.....	\$ 35.58	15.20
Motor Grader: Blade-finish..	\$ 35.58	15.20
Motor Grader: Blade-rough...	\$ 35.03	15.20

Roller: self-propelled, all types over 5 tons.....	\$ 35.03	15.20
Roller: self-propelled, rubber tires under 5 tons...	\$ 34.58	15.20
Trackhoe.....	\$ 35.20	15.20

-----  
PLUM0003-003 06/01/2024

CLEAR CREEK, GILPIN, GRAND, JACKSON, LAKE, LOGAN, MORGAN,  
PHILLIPS, SEDGWICK, SUMMIT, WASHINGTON, AND YUMA. PARTS OF  
ELBERT, EAGLE, KIT CARSON, LINCOLN, AND PARK COUNTIES

	Rates	Fringes
PLUMBER.....	\$ 50.68	20.15

-----  
PLUM0058-010 07/01/2024

ALAMOSA, BACA, BENT, CHAFFEE, CHEYENNE, CONEJOS, COSTILLA,  
CROWLEY, CUSTER, ELBERT (Southern portion including towns of  
Elbert, Matherson and Simla), FREMONT, HUERFANO, KIOWA, KIT  
CARSON (Including towns of Dfalgler, Siebert, Vona, Stratton  
and Bethune), LAS ANIMAS, LINCOLN (Including towns of Geona and  
Arriba in the southern portion of the county), MINERAL, OTERO,  
PARK (Including towns of Fauplay, Hartsel and Lake George),  
PROWERS, PUEBLO, RIO GRANDE, AND SAGUACHE COUNTIES

	Rates	Fringes
PLUMBER.....	\$ 45.90	17.17

-----  
PLUM0058-012 07/01/2024

TELLER COUNTY

	Rates	Fringes
PLUMBER Includes HVAC Work.....	\$ 45.90	17.17

-----  
\* PLUM0145-004 07/01/2024

ARCHULETA, DELTA, DOLORES, EAGLE (Eagle County is divided from  
where Pitkin and Lake Counties join on the north, and in a  
straight line to and including the town of Edwards and  
northerly to the south east corner of Routt County), GARFIELD,  
GUNNISON, HINSDALE, LA PLATA, MOFFAT, MONTEZUMA, MONTROSE,  
OURAY, PITKIN, RIO BLANCO, ROUTT, SAN JUAN AND SAN MIGUEL

# COUNTIES

	Rates	Fringes
PLUMBER.....	\$ 38.67	15.08
-----		
* SUC02001-005 12/20/2001		
	Rates	Fringes
Carpenters:		
Form Building and Setting...	\$ 16.16 **	.82
All Other Work.....	\$ 15.72 **	
Cement Mason/Concrete Finisher...	\$ 14.76 **	2.28
Laborer, common.....	\$ 11.11 **	3.80
PIPEFITTER.....	\$ 18.13	1.84
Power equipment operators:		
Backhoe.....	\$ 15.93 **	3.58
Bobcat/Skid Loader.....	\$ 20.22	4.41
Bulldozer.....	\$ 15.08 **	4.44
Excavator.....	\$ 15.39 **	
Front End Loader.....	\$ 15.86 **	3.59
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WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

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\*\* Workers in this classification may be entitled to a higher minimum wage under Executive Order 14026 (\$17.20) or 13658 (\$12.90). Please see the Note at the top of the wage determination for more information. Please also note that the minimum wage requirements of Executive Order 14026 are not currently being enforced as to any contract or subcontract to which the states of Texas, Louisiana, or Mississippi, including their agencies, are a party.

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>.

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)).

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

#### Union Rate Identifiers

A four letter classification abbreviation identifier enclosed in dotted lines beginning with characters other than ""SU"" or ""UAVG"" denotes that the union classification and rate were prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2014. PLUM is an abbreviation identifier of the union which 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. 07/01/2014 is the effective date of the most current negotiated rate, which in this example is July 1, 2014.

Union prevailing wage rates are updated to reflect all rate changes in the collective bargaining agreement (CBA) governing this classification and rate.

## Survey Rate Identifiers

Classifications listed under the ""SU"" identifier indicate that no one rate prevailed for this classification in the survey and the published rate is derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As this weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SULA2012-007 5/13/2014. SU indicates the rates are survey rates based on a weighted average calculation of rates and are not majority rates. LA indicates the State of Louisiana. 2012 is the year of 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. 5/13/2014 indicates the survey completion date for the classifications and rates under that identifier.

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

## Union Average Rate Identifiers

Classification(s) listed under the UAVG identifier indicate that no single majority rate prevailed for those classifications; however, 100% of the data reported for the classifications was union data. EXAMPLE: UAVG-OH-0010 08/29/2014. UAVG indicates that the rate is a weighted union average rate. OH indicates the state. The next number, 0010 in the example, is an internal number used in producing the wage determination. 08/29/2014 indicates the survey completion date for the classifications and rates under that identifier.

A UAVG rate will be updated once a year, usually in January of each year, to reflect a weighted average of the current negotiated/CBA rate of the union locals from which the rate is based.

## State Adopted Rate Identifiers

Classifications listed under the ""SA"" identifier indicate that the prevailing wage rate set by a state (or local) government was 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. 01/03/2024 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.

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## WAGE DETERMINATION APPEALS PROCESS

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

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

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

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

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

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

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

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

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

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

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

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END OF GENERAL DECISION"



**US Army Corps  
of Engineers®**  
Albuquerque District

# 2021 Nationwide Permit Summary

## NATIONWIDE PERMIT 3

### Maintenance

Effective Date: February 25, 2022

Expiration Date: March 14, 2026

(NWP Final Notice, [86 FR 73522](#))

*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.

### **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 NWP 4 and 48 or is a shellfish seeding or habitat restoration activity authorized by NWP 27.

## *6. Suitable Material*

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

## *7. Water Supply Intakes*

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

#### *8. Adverse Effects from Impoundments*

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

#### *9. Management of Water Flows*

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

#### *10. Fills Within 100-Year Floodplains*

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

#### *11. Equipment*

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

#### *12. Soil Erosion and Sediment Controls*

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

#### *13. Removal of Temporary Structures and Fills*

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

#### *14. Proper Maintenance*

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

#### *15. Single and Complete Project*

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

## *16. Wild and Scenic Rivers*

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

(b) If a proposed NWP activity will occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a “study river” for possible inclusion in the system while the river is in an official study status, the permittee must submit a pre-construction notification (see [general condition 32](#)). The district engineer will coordinate the PCN with the Federal agency with direct management responsibility for that river. Permittees shall not begin the NWP activity until notified by the district engineer that the Federal agency with direct management responsibility for that river has determined in writing that the proposed NWP activity will not adversely affect the Wild and Scenic River designation or study status.

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

## *17. Tribal Rights*

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

## *18. Endangered Species*

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

(b) Federal agencies should follow their own procedures for complying with the requirements of the ESA (see [33 CFR 330.4\(f\)\(1\)](#)). If pre-construction notification is required for the proposed activity, the Federal permittee must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements. The district engineer will verify that the appropriate documentation has been submitted. If the appropriate documentation has not been submitted, additional ESA section 7 consultation may be necessary for the activity and the respective federal agency would be responsible for fulfilling its obligation under section 7 of the ESA.

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

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

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

(f) If the non-federal permittee has a valid ESA section 10(a)(1)(B) incidental take permit with an approved Habitat Conservation Plan for a project or a group of projects that includes the proposed NWP activity, the non-federal applicant should provide a copy of that ESA section 10(a)(1)(B) permit with the PCN required by paragraph (c) of this general condition. The district engineer will coordinate with the agency that issued the ESA section 10(a)(1)(B) permit to determine whether the proposed NWP activity and the associated incidental take were considered in the internal ESA section 7 consultation conducted for the ESA section 10(a)(1)(B) permit. If that coordination results in concurrence from the agency that the proposed NWP activity and the associated incidental take were considered in the internal ESA section 7 consultation for the ESA

section 10(a)(1)(B) permit, the district engineer does not need to conduct a separate ESA section 7 consultation for the proposed NWP activity. The district engineer will notify the non-federal applicant within 45 days of receipt of a complete pre-construction notification whether the ESA section 10(a)(1)(B) permit covers the proposed NWP activity or whether additional ESA section 7 consultation is required.

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

### *19. Migratory Birds and Bald and Golden Eagles*

The permittee is responsible for ensuring that an action authorized by an NWP complies with the Migratory Bird Treaty Act and the Bald and Golden Eagle Protection Act. The permittee is responsible for contacting the appropriate local office of the U.S. Fish and Wildlife Service to determine what measures, if any, are necessary or appropriate to reduce adverse effects to migratory birds or eagles, including whether “incidental take” permits are necessary and available under the Migratory Bird Treaty Act or Bald and Golden Eagle Protection Act for a particular activity.

### *20. Historic Properties*

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

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

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

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

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

(e) Prospective permittees should be aware that section 110k of the NHPA ([54 U.S.C. 306113](#)) prevents the Corps from granting a permit or other assistance to an applicant who, with intent to avoid the requirements of section 106 of the NHPA, has intentionally significantly adversely affected a historic property to which the permit would relate, or having legal power to prevent it, allowed such significant adverse effect to occur, unless the Corps, after consultation with the Advisory Council on Historic Preservation (ACHP), determines that circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant. If circumstances justify granting the assistance, the Corps is required to notify the ACHP and provide documentation specifying the circumstances, the degree of damage to the integrity of any historic properties affected, and proposed mitigation. This documentation must include any views obtained from the applicant, SHPO/THPO, appropriate Indian tribes if the undertaking occurs on or affects historic properties on tribal lands or affects properties of interest to those tribes, and other parties known to have a legitimate interest in the impacts to the permitted activity on historic properties.

## *21. Discovery of Previously Unknown Remains and Artifacts*

Permittees that discover any previously unknown historic, cultural, or archeological remains and artifacts while accomplishing the activity authorized by an NWP, they must immediately notify the district engineer of what they have found, and to the maximum extent practicable, avoid construction activities that may affect the remains and artifacts until the required coordination has been completed. The district engineer will initiate the Federal, Tribal, and state coordination



required to determine if the items or remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

## *22. Designated Critical Resource Waters*

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

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

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

## *23. Mitigation*

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

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

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

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

(d) Compensatory mitigation at a minimum one-for-one ratio will be required for all losses of stream bed that exceed 3/100-acre and require pre-construction notification, unless the district engineer determines in writing that either some other form of mitigation would be more environmentally appropriate, or the adverse environmental effects of the proposed activity are no



more than minimal and provides an activity-specific waiver of this requirement. This compensatory mitigation requirement may be satisfied through the restoration or enhancement of riparian areas next to streams in accordance with paragraph (e) of this general condition. For losses of stream bed of 3/100-acre or less that require pre-construction notification, the district engineer may determine on a case-by-case basis that compensatory mitigation is required to ensure that the activity results in only minimal adverse environmental effects. Compensatory mitigation for losses of streams should be provided, if practicable, through stream rehabilitation, enhancement, or preservation, since streams are difficult-to-replace resources (see [33 CFR 332.3\(e\)\(3\)](#)).

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

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

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

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

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

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

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

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

(g) Compensatory mitigation will not be used to increase the acreage losses allowed by the acreage limits of the NWPs. For example, if an NWP has an acreage limit of 1/2-acre, it cannot be used to authorize any NWP activity resulting in the loss of greater than 1/2-acre of waters of the United States, even if compensatory mitigation is provided that replaces or restores some of the lost waters. However, compensatory mitigation can and should be used, as necessary, to ensure that an NWP activity already meeting the established acreage limits also satisfies the no more than minimal impact requirement for the NWPs.

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

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

## *24. Safety of Impoundment Structures*

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

## *25. Water Quality*

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

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

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

## *26. Coastal Zone Management*

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

## *27. Regional and Case-By-Case Conditions*

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

## *28. Use of Multiple Nationwide Permits*

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

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

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

## *29. Transfer of Nationwide Permit Verifications*

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

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

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(Transferee)

---

(Date)

## *30. Compliance Certification*

Each permittee who receives an NWP verification letter from the Corps must provide a signed certification documenting completion of the authorized activity and implementation of any required compensatory mitigation. The success of any required permittee-responsible mitigation,

including the achievement of ecological performance standards, will be addressed separately by the district engineer. The Corps will provide the permittee the certification document with the NWP verification letter. The certification document will include:

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

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

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

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

### *32. Pre-Construction Notification*

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

- (1) He or she is notified in writing by the district engineer that the activity may proceed under the NWP with any special conditions imposed by the district or division engineer; or
- (2) 45 calendar days have passed from the district engineer's receipt of the complete PCN, and the prospective permittee has not received written notice from the district or division

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

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

- (1) Name, address, and telephone numbers of the prospective permittee;
- (2) Location of the proposed activity;
- (3) Identify the specific NWP or NWP(s) the prospective permittee wants to use to authorize the proposed activity;
- (4) (i) A description of the proposed activity; the activity's purpose; direct and indirect adverse environmental effects the activity would cause, including the anticipated amount of loss of wetlands, other special aquatic sites, and other waters expected to result from the NWP activity, in acres, linear feet, or other appropriate unit of measure; a description of any proposed mitigation measures intended to reduce the adverse environmental effects caused by the proposed activity; and any other NWP(s), regional general permit(s), or individual permit(s) used or intended to be used to authorize any part of the proposed project or any related activity, including other separate and distant crossings for linear projects that require Department of the Army authorization but do not require pre-construction notification. The description of the proposed activity and any proposed mitigation measures should be sufficiently detailed to allow the district engineer to determine that the adverse environmental effects of the activity will be no more than minimal and to determine the need for compensatory mitigation or other mitigation measures.  
  
(ii) For linear projects where one or more single and complete crossings require pre-construction notification, the PCN must include the quantity of anticipated losses of wetlands, other special aquatic sites, and other waters for each single and complete crossing of those wetlands, other special aquatic sites, and other waters (including those single and complete crossings authorized by an NWP but do not require PCNs). This information will be used by the district engineer to evaluate the cumulative adverse environmental effects of the proposed linear project and does not change those non-PCN NWP activities into NWP PCNs.



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

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

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

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

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

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

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

request for section 408 permission from, or review by, the Corps office having jurisdiction over that USACE project.

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

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

(2) Agency coordination is required for: (i) All NWP activities that require pre-construction notification and result in the loss of greater than 1/2-acre of waters of the United States; (ii) NWP 13 activities in excess of 500 linear feet, fills greater than one cubic yard per running foot, or involve discharges of dredged or fill material into special aquatic sites; and (iii) NWP 54 activities in excess of 500 linear feet, or that extend into the waterbody more than 30 feet from the mean low water line in tidal waters or the ordinary high water mark in the Great Lakes.

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

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



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

### **District Engineer's Decision**

1. In reviewing the PCN for the proposed activity, the district engineer will determine whether the activity authorized by the NWP will result in more than minimal individual or cumulative adverse environmental effects or may be contrary to the public interest. If a project proponent requests authorization by a specific NWP, the district engineer should issue the NWP verification for that activity if it meets the terms and conditions of that NWP, unless he or she determines, after considering mitigation, that the proposed activity will result in more than minimal individual and cumulative adverse effects on the aquatic environment and other aspects of the public interest and exercises discretionary authority to require an individual permit for the proposed activity. For a linear project, this determination will include an evaluation of the single and complete crossings of waters of the United States that require PCNs to determine whether they individually satisfy the terms and conditions of the NWP(s), as well as the cumulative effects caused by all of the crossings of waters of the United States authorized by an NWP. If an applicant requests a waiver of an applicable limit, as provided for in NWPs 13, 36, or 54, the district engineer will only grant the waiver upon a written determination that the NWP activity will result in only minimal individual and cumulative adverse environmental effects.

2. When making minimal adverse environmental effects determinations the district engineer will consider the direct and indirect effects caused by the NWP activity. He or she will also consider the cumulative adverse environmental effects caused by activities authorized by an NWP and whether those cumulative adverse environmental effects are no more than minimal. The district engineer will also consider site specific factors, such as the environmental setting in the vicinity of the NWP activity, the type of resource that will be affected by the NWP activity, the functions provided by the aquatic resources that will be affected by the NWP activity, the degree or magnitude to which the aquatic resources perform those functions, the extent that aquatic resource functions will be lost as a result of the NWP activity (*e.g.*, partial or complete loss), the duration of the adverse effects (temporary or permanent), the importance of the aquatic resource functions to the region (*e.g.*, watershed or ecoregion), and mitigation required by the district engineer. If an appropriate functional or condition assessment method is available and practicable to use, that assessment method may be used by the district engineer to assist in the minimal adverse environmental effects determination. The district engineer may add case-specific special conditions to the NWP authorization to address site-specific environmental concerns.

3. If the proposed activity requires a PCN and will result in a loss of greater than 1/10-acre of wetlands or 3/100-acre of stream bed, the prospective permittee should submit a mitigation proposal with the PCN. Applicants may also propose compensatory mitigation for NWP activities with smaller impacts, or for impacts to other types of waters. The district engineer will consider any proposed compensatory mitigation or other mitigation measures the applicant has included in the proposal in determining whether the net adverse environmental effects of the proposed activity are no more than minimal. The compensatory mitigation proposal may be either conceptual or detailed. If the district engineer determines that the activity complies with the terms and conditions of the NWP and that the adverse environmental effects are no more than

minimal, after considering mitigation, the district engineer will notify the permittee and include any activity-specific conditions in the NWP verification the district engineer deems necessary. Conditions for compensatory mitigation requirements must comply with the appropriate provisions at [33 CFR 332.3\(k\)](#). The district engineer must approve the final mitigation plan before the permittee commences 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. If the prospective permittee elects to submit a compensatory mitigation plan with the PCN, the district engineer will expeditiously review the proposed compensatory mitigation plan. The district engineer must review the proposed compensatory mitigation plan within 45 calendar days of receiving a complete PCN and determine whether the proposed mitigation would ensure that the NWP activity results in no more than minimal adverse environmental effects. If the net adverse environmental effects of the NWP activity (after consideration of the mitigation proposal) are determined by the district engineer to be no more than minimal, the district engineer will provide a timely written response to the applicant. The response will state that the NWP activity can proceed under the terms and conditions of the NWP, including any activity-specific conditions added to the NWP authorization by the district engineer.

4. If the district engineer determines that the adverse environmental effects of the proposed activity are more than minimal, then the district engineer will notify the applicant either: (a) That the activity does not qualify for authorization under the NWP and instruct the applicant on the procedures to seek authorization under an individual permit; (b) that the activity is authorized under the NWP subject to the applicant's submission of a mitigation plan that would reduce the adverse environmental effects so that they are no more than minimal; or (c) that the activity is authorized under the NWP with specific modifications or conditions. Where the district engineer determines that mitigation is required to ensure no more than minimal adverse environmental effects, the activity will be authorized within the 45-day PCN period (unless additional time is required to comply with general conditions [18](#), [20](#), and/or [31](#)), with activity-specific conditions that state the mitigation requirements. The authorization will include the necessary conceptual or detailed mitigation plan or a requirement that the applicant submit a mitigation plan that would reduce the adverse environmental effects so that they are no more than minimal. When compensatory mitigation is required, no work in waters of the United States may occur until the district engineer has approved a specific mitigation plan or has determined that prior approval of a final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation.

### **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. NWP's do not authorize interference with any existing or proposed Federal project (see [general condition 31](#)).

### **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 habitat and riparian area restoration, enhancement, or establishment activity under NWP 27. An ecological reference may be based on the structure, functions, and dynamics of an aquatic habitat type or a riparian area type that currently exists in the region where the proposed NWP 27 activity is located. Alternatively, an ecological reference may be based on a conceptual model for the aquatic habitat type or riparian area type to be restored, enhanced, or established as a result of the proposed NWP 27 activity. 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.

*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



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# 2021 Nationwide Permit Summary

## **NATIONWIDE PERMIT 18**

### **Minor Discharges**

Effective Date: February 25, 2022

Expiration Date: March 14, 2026

(NWP Final Notice, [86 FR 73522](#))

*Minor Discharges.* Minor discharges of dredged or fill material into all waters of the United States, provided the activity meets all of the following criteria:

- (a) The quantity of discharged dredged or fill material and the volume of area excavated do not exceed 25 cubic yards below the plane of the ordinary high water mark or the high tide line;
- (b) The discharge of dredged or fill material will not cause the loss of more than 1/10 acre of waters of the United States; and
- (c) The discharge of dredged or fill material is not placed for the purpose of a stream diversion.

*Notification:* The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if: (1) The discharge of dredged or fill material or the volume of area excavated exceeds 10 cubic yards below the plane of the ordinary high water mark or the high tide line, or (2) the discharge of dredged or fill material is in a special aquatic site, including wetlands. (See [general condition 32](#)) (Authorities: Sections 10 and 404)

## **Nationwide Permit General Conditions**

*Note:* To qualify for NWP authorization, the prospective permittee must comply with the following general conditions, as applicable, in addition to any regional or case-specific conditions imposed by the division engineer or district engineer. 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. The activity must not restrict or impede the passage of normal or high flows unless the primary purpose of the activity is to impound water or manage high flows. The activity may alter the pre-construction course, condition, capacity, and location of open waters if it benefits the aquatic environment (e.g., stream restoration or relocation activities).

#### *10. Fills Within 100-Year Floodplains*

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

#### *11. Equipment*

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

#### *12. Soil Erosion and Sediment Controls*

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

#### *13. Removal of Temporary Structures and Fills*

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

#### *14. Proper Maintenance*

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

#### *15. Single and Complete Project*

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

## *16. Wild and Scenic Rivers*

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

(b) If a proposed NWP activity will occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a “study river” for possible inclusion in the system while the river is in an official study status, the permittee must submit a pre-construction notification (see [general condition 32](#)). The district engineer will coordinate the PCN with the Federal agency with direct management responsibility for that river. Permittees shall not begin the NWP activity until notified by the district engineer that the Federal agency with direct management responsibility for that river has determined in writing that the proposed NWP activity will not adversely affect the Wild and Scenic River designation or study status.

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

## *17. Tribal Rights*

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

## *18. Endangered Species*

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

(b) Federal agencies should follow their own procedures for complying with the requirements of the ESA (see [33 CFR 330.4\(f\)\(1\)](#)). If pre-construction notification is required for the proposed activity, the Federal permittee must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements. The district engineer will verify that the appropriate documentation has been submitted. If the appropriate documentation has not been submitted, additional ESA section 7 consultation may be necessary for the activity and the respective federal agency would be responsible for fulfilling its obligation under section 7 of the ESA.



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

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

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

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

7 consultation for the proposed NWP activity. The district engineer will notify the non-federal applicant within 45 days of receipt of a complete pre-construction notification whether the ESA section 10(a)(1)(B) permit covers the proposed NWP activity or whether additional ESA section 7 consultation is required.

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

### *19. Migratory Birds and Bald and Golden Eagles*

The permittee is responsible for ensuring that an action authorized by an NWP complies with the Migratory Bird Treaty Act and the Bald and Golden Eagle Protection Act. The permittee is responsible for contacting the appropriate local office of the U.S. Fish and Wildlife Service to determine what measures, if any, are necessary or appropriate to reduce adverse effects to migratory birds or eagles, including whether “incidental take” permits are necessary and available under the Migratory Bird Treaty Act or Bald and Golden Eagle Protection Act for a particular activity.

### *20. Historic Properties*

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

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

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

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

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

(e) Prospective permittees should be aware that section 110k of the NHPA ([54 U.S.C. 306113](#)) prevents the Corps from granting a permit or other assistance to an applicant who, with intent to avoid the requirements of section 106 of the NHPA, has intentionally significantly adversely affected a historic property to which the permit would relate, or having legal power to prevent it, allowed such significant adverse effect to occur, unless the Corps, after consultation with the Advisory Council on Historic Preservation (ACHP), determines that circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant. If circumstances justify granting the assistance, the Corps is required to notify the ACHP and provide documentation specifying the circumstances, the degree of damage to the integrity of any historic properties affected, and proposed mitigation. This documentation must include any views obtained from the applicant, SHPO/THPO, appropriate Indian tribes if the undertaking occurs on or affects historic properties on tribal lands or affects properties of interest to those tribes, and other parties known to have a legitimate interest in the impacts to the permitted activity on historic properties.

## *21. Discovery of Previously Unknown Remains and Artifacts*

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

## *22. Designated Critical Resource Waters*

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

- (a) Discharges of dredged or fill material into waters of the United States are not authorized by NWPs 7, 12, 14, 16, 17, 21, 29, 31, 35, 39, 40, 42, 43, 44, 49, 50, 51, 52, 57 and 58 for any activity within, or directly affecting, critical resource waters, including wetlands adjacent to such waters.
- (b) For NWPs 3, 8, 10, 13, 15, 18, 19, 22, 23, 25, 27, 28, 30, 33, 34, 36, 37, 38, and 54, notification is required in accordance with [general condition 32](#), for any activity proposed by permittees in the designated critical resource waters including wetlands adjacent to those waters. The district engineer may authorize activities under these NWPs only after she or he determines that the impacts to the critical resource waters will be no more than minimal.

## *23. Mitigation*

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

- (a) The activity must be designed and constructed to avoid and minimize adverse effects, both temporary and permanent, to waters of the United States to the maximum extent practicable at the project site (*i.e.*, on site).
- (b) Mitigation in all its forms (avoiding, minimizing, rectifying, reducing, or compensating for resource losses) will be required to the extent necessary to ensure that the individual and cumulative adverse environmental effects are no more than minimal.
- (c) Compensatory mitigation at a minimum one-for-one ratio will be required for all wetland losses that exceed 1/10-acre and require pre-construction notification, unless the district engineer determines in writing that either some other form of mitigation would be more environmentally appropriate, or the adverse environmental effects of the proposed activity are no more than minimal and provides an activity-specific waiver of this requirement. For wetland losses of 1/10-acre or less that require pre-construction notification, the district engineer may determine on a case-by-case basis that compensatory mitigation is required to ensure that the activity results in only minimal adverse environmental effects.
- (d) Compensatory mitigation at a minimum one-for-one ratio will be required for all losses of stream bed that exceed 3/100-acre and require pre-construction notification, unless the district engineer determines in writing that either some other form of mitigation would be more environmentally appropriate, or the adverse environmental effects of the proposed activity are no more than minimal and provides an activity-specific waiver of this requirement. This compensatory mitigation requirement may be satisfied through the restoration or enhancement of riparian areas next to streams in accordance with paragraph (e) of this general condition. For losses of stream bed of 3/100-acre or less that require pre-construction notification, the district

engineer may determine on a case-by-case basis that compensatory mitigation is required to ensure that the activity results in only minimal adverse environmental effects. Compensatory mitigation for losses of streams should be provided, if practicable, through stream rehabilitation, enhancement, or preservation, since streams are difficult-to-replace resources (see [33 CFR 332.3\(e\)\(3\)](#)).

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

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

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

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

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

(4) If permittee-responsible mitigation is the proposed option, the prospective permittee is responsible for submitting a mitigation plan. A conceptual or detailed mitigation plan may be used by the district engineer to make the decision on the NWP verification request, but a final mitigation plan that addresses the applicable requirements of [33 CFR 332.4\(c\)\(2\)](#) through [\(14\)](#) must be approved by the district engineer before the permittee begins work in

waters of the United States, unless the district engineer determines that prior approval of the final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation (see [33 CFR 332.3\(k\)\(3\)](#)). If permittee-responsible mitigation is the proposed option, and the proposed compensatory mitigation site is located on land in which another federal agency holds an easement, the district engineer will coordinate with that federal agency to determine if proposed compensatory mitigation project is compatible with the terms of the easement.

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

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

(g) Compensatory mitigation will not be used to increase the acreage losses allowed by the acreage limits of the NWPs. For example, if an NWP has an acreage limit of 1/2-acre, it cannot be used to authorize any NWP activity resulting in the loss of greater than 1/2-acre of waters of the United States, even if compensatory mitigation is provided that replaces or restores some of the lost waters. However, compensatory mitigation can and should be used, as necessary, to ensure that an NWP activity already meeting the established acreage limits also satisfies the no more than minimal impact requirement for the NWPs.

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

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

#### *24. Safety of Impoundment Structures*

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



## *25. Water Quality*

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

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

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

## *26. Coastal Zone Management*

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

## *27. Regional and Case-By-Case Conditions*

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

## *28. Use of Multiple Nationwide Permits*

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

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

the maximum acreage loss of waters of the United States for the total project cannot exceed 1/3-acre.

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

### *29. Transfer of Nationwide Permit Verifications*

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

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

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(Transferee)

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(Date)

### *30. Compliance Certification*

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

- (a) A statement that the authorized activity was done in accordance with the NWP authorization, including any general, regional, or activity-specific conditions;
- (b) A statement that the implementation of any required compensatory mitigation was completed in accordance with the permit conditions. If credits from a mitigation bank or in-lieu fee program are used to satisfy the compensatory mitigation requirements, the certification must include the



documentation required by [33 CFR 332.3\(l\)\(3\)](#) to confirm that the permittee secured the appropriate number and resource type of credits; and

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

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

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

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

### *32. Pre-Construction Notification*

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

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

or division engineer notifies the permittee in writing that an individual permit is required within 45 calendar days of receipt of a complete PCN, the permittee cannot begin the activity until an individual permit has been obtained. Subsequently, the permittee's right to proceed under the NWP may be modified, suspended, or revoked only in accordance with the procedure set forth in [33 CFR 330.5\(d\)\(2\)](#).

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

- (1) Name, address, and telephone numbers of the prospective permittee;
- (2) Location of the proposed activity;
- (3) Identify the specific NWP or NWP(s) the prospective permittee wants to use to authorize the proposed activity;
- (4)
  - (i) A description of the proposed activity; the activity's purpose; direct and indirect adverse environmental effects the activity would cause, including the anticipated amount of loss of wetlands, other special aquatic sites, and other waters expected to result from the NWP activity, in acres, linear feet, or other appropriate unit of measure; a description of any proposed mitigation measures intended to reduce the adverse environmental effects caused by the proposed activity; and any other NWP(s), regional general permit(s), or individual permit(s) used or intended to be used to authorize any part of the proposed project or any related activity, including other separate and distant crossings for linear projects that require Department of the Army authorization but do not require pre-construction notification. The description of the proposed activity and any proposed mitigation measures should be sufficiently detailed to allow the district engineer to determine that the adverse environmental effects of the activity will be no more than minimal and to determine the need for compensatory mitigation or other mitigation measures.
  - (ii) For linear projects where one or more single and complete crossings require pre-construction notification, the PCN must include the quantity of anticipated losses of wetlands, other special aquatic sites, and other waters for each single and complete crossing of those wetlands, other special aquatic sites, and other waters (including those single and complete crossings authorized by an NWP but do not require PCNs). This information will be used by the district engineer to evaluate the cumulative adverse environmental effects of the proposed linear project and does not change those non-PCN NWP activities into NWP PCNs.
  - (iii) Sketches should be provided when necessary to show that the activity complies with the terms of the NWP. (Sketches usually clarify the activity and when provided results in a quicker decision. Sketches should contain sufficient detail to provide an illustrative description of the proposed activity (*e.g.*, a conceptual plan), but do not need to be detailed engineering plans);
- (5) The PCN must include a delineation of wetlands, other special aquatic sites, and other waters, such as lakes and ponds, and perennial and intermittent streams, on the project site. Wetland delineations must be prepared in accordance with the current method required by the Corps. The permittee may ask the Corps to delineate the special aquatic sites and other waters on the project site, but there may be a delay if the Corps does the delineation,

especially if the project site is large or contains many wetlands, other special aquatic sites, and other waters. Furthermore, the 45-day period will not start until the delineation has been submitted to or completed by the Corps, as appropriate;

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

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

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

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

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

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

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

(2) Agency coordination is required for: (i) All NWP activities that require pre-construction notification and result in the loss of greater than 1/2-acre of waters of the United States; (ii) NWP 13 activities in excess of 500 linear feet, fills greater than one cubic yard per running foot, or involve discharges of dredged or fill material into special aquatic sites; and (iii) NWP 54 activities in excess of 500 linear feet, or that extend into the waterbody more than 30 feet from the mean low water line in tidal waters or the ordinary high water mark in the Great Lakes.

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

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

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

### **District Engineer's Decision**

1. In reviewing the PCN for the proposed activity, the district engineer will determine whether the activity authorized by the NWP will result in more than minimal individual or cumulative adverse environmental effects or may be contrary to the public interest. If a project proponent requests authorization by a specific NWP, the district engineer should issue the NWP verification for that activity if it meets the terms and conditions of that NWP, unless he or she determines, after considering mitigation, that the proposed activity will result in more than minimal individual and cumulative adverse effects on the aquatic environment and other aspects of the public interest and exercises discretionary authority to require an individual permit for the

proposed activity. For a linear project, this determination will include an evaluation of the single and complete crossings of waters of the United States that require PCNs to determine whether they individually satisfy the terms and conditions of the NWP(s), as well as the cumulative effects caused by all of the crossings of waters of the United States authorized by an NWP. If an applicant requests a waiver of an applicable limit, as provided for in NWPs 13, 36, or 54, the district engineer will only grant the waiver upon a written determination that the NWP activity will result in only minimal individual and cumulative adverse environmental effects.

2. When making minimal adverse environmental effects determinations the district engineer will consider the direct and indirect effects caused by the NWP activity. He or she will also consider the cumulative adverse environmental effects caused by activities authorized by an NWP and whether those cumulative adverse environmental effects are no more than minimal. The district engineer will also consider site specific factors, such as the environmental setting in the vicinity of the NWP activity, the type of resource that will be affected by the NWP activity, the functions provided by the aquatic resources that will be affected by the NWP activity, the degree or magnitude to which the aquatic resources perform those functions, the extent that aquatic resource functions will be lost as a result of the NWP activity (*e.g.*, partial or complete loss), the duration of the adverse effects (temporary or permanent), the importance of the aquatic resource functions to the region (*e.g.*, watershed or ecoregion), and mitigation required by the district engineer. If an appropriate functional or condition assessment method is available and practicable to use, that assessment method may be used by the district engineer to assist in the minimal adverse environmental effects determination. The district engineer may add case-specific special conditions to the NWP authorization to address site-specific environmental concerns.

3. If the proposed activity requires a PCN and will result in a loss of greater than 1/10-acre of wetlands or 3/100-acre of stream bed, the prospective permittee should submit a mitigation proposal with the PCN. Applicants may also propose compensatory mitigation for NWP activities with smaller impacts, or for impacts to other types of waters. The district engineer will consider any proposed compensatory mitigation or other mitigation measures the applicant has included in the proposal in determining whether the net adverse environmental effects of the proposed activity are no more than minimal. The compensatory mitigation proposal may be either conceptual or detailed. If the district engineer determines that the activity complies with the terms and conditions of the NWP and that the adverse environmental effects are no more than minimal, after considering mitigation, the district engineer will notify the permittee and include any activity-specific conditions in the NWP verification the district engineer deems necessary. Conditions for compensatory mitigation requirements must comply with the appropriate provisions at [33 CFR 332.3\(k\)](#). The district engineer must approve the final mitigation plan before the permittee commences 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. If the prospective permittee elects to submit a compensatory mitigation plan with the PCN, the district engineer will expeditiously review the proposed compensatory mitigation plan. The district engineer must review the proposed compensatory mitigation plan within 45 calendar days of receiving a complete PCN and determine whether the proposed mitigation would ensure that the NWP activity results in no more than minimal adverse environmental effects. If the net adverse environmental effects of the NWP activity (after consideration of the mitigation proposal) are determined by the district engineer to be no more than minimal, the district engineer will provide



a timely written response to the applicant. The response will state that the NWP activity can proceed under the terms and conditions of the NWP, including any activity-specific conditions added to the NWP authorization by the district engineer.

4. If the district engineer determines that the adverse environmental effects of the proposed activity are more than minimal, then the district engineer will notify the applicant either: (a) That the activity does not qualify for authorization under the NWP and instruct the applicant on the procedures to seek authorization under an individual permit; (b) that the activity is authorized under the NWP subject to the applicant's submission of a mitigation plan that would reduce the adverse environmental effects so that they are no more than minimal; or (c) that the activity is authorized under the NWP with specific modifications or conditions. Where the district engineer determines that mitigation is required to ensure no more than minimal adverse environmental effects, the activity will be authorized within the 45-day PCN period (unless additional time is required to comply with general conditions [18](#), [20](#), and/or [31](#)), with activity-specific conditions that state the mitigation requirements. The authorization will include the necessary conceptual or detailed mitigation plan or a requirement that the applicant submit a mitigation plan that would reduce the adverse environmental effects so that they are no more than minimal. When compensatory mitigation is required, no work in waters of the United States may occur until the district engineer has approved a specific mitigation plan or has determined that prior approval of a final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation.

### **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](#)).

### **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 habitat and riparian area restoration, enhancement, or establishment activity under NWP 27. An ecological reference may be based on the structure, functions, and dynamics of an aquatic habitat type or a riparian area type that currently exists in the region where the proposed NWP 27 activity is located. Alternatively, an ecological reference may be based on a conceptual model for the aquatic habitat type or riparian area type to be restored, enhanced, or established as a result of the proposed NWP 27 activity. 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.

*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 coarse 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. 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 NWP, 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\(c\)\(2\)](#)).

### **Additional Information**

For additional information concerning the nationwide permits or for a written determination regarding a specific project, please contact the office below:

*New Mexico:*

Albuquerque District Office  
4101 Jefferson Plaza NE  
Albuquerque, NM 87109-3435  
Telephone: (505) 342-3280

*Southern New Mexico and Western Texas:*

Las Cruces Regulatory Office  
200 E Griggs Avenue  
Las Cruces, NM 88001-3516  
Telephone: (505) 554-7943

*Northwestern New Mexico, Southwestern Colorado, and the San Luis Valley of Colorado:*

Durango Regulatory Office  
1970 E 3rd Avenue, Suite 109  
Durango, CO 81301-5025  
Telephone: (970) 259-1582

*Northwestern Colorado:*

Grand Junction Regulatory Office  
400 Rood Avenue, Room 224  
Grand Junction, CO 81501-2520  
Telephone: (970) 243-1199

*Southeastern Colorado:*

Pueblo Regulatory Office  
201 W 8<sup>th</sup> Street, Suite 350  
Pueblo, CO 81003-3435  
Telephone: (719) 543-9459

Information about the U.S. Army Corps of Engineers regulatory program, including NWP's, may also be accessed on our website at [www.spa.usace.army.mil/reg](http://www.spa.usace.army.mil/reg).

This NWP is effective February 25, 2022, and expires on March 14, 2026.

Summary Version: February 25, 2022

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*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.

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*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.

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*New Mexico:*

Albuquerque District Office  
4101 Jefferson Plaza NE  
Albuquerque, NM 87109-3435  
Telephone: (505) 342-3280

*Southern New Mexico and Western Texas:*

Las Cruces Regulatory Office  
200 E Griggs Avenue  
Las Cruces, NM 88001-3516  
Telephone: (505) 554-7943

*Northwestern New Mexico, Southwestern Colorado, and the San Luis Valley of Colorado:*

Durango Regulatory Office  
1970 E 3rd Avenue, Suite 109  
Durango, CO 81301-5025  
Telephone: (970) 259-1582

*Northwestern Colorado:*

Grand Junction Regulatory Office  
400 Rood Avenue, Room 224  
Grand Junction, CO 81501-2520  
Telephone: (970) 243-1199

*Southeastern Colorado:*

Pueblo Regulatory Office  
201 W 8<sup>th</sup> Street, Suite 350  
Pueblo, CO 81003-3435  
Telephone: (719) 543-9459

Information about the U.S. Army Corps of Engineers regulatory program, including NWP, may also be accessed on our website at [www.spa.usace.army.mil/reg](http://www.spa.usace.army.mil/reg).

This NWP is effective February 25, 2022, and expires on March 14, 2026.

Summary Version: February 25, 2022



# APPENDIX E



## STATE OF COLORADO OFFICE OF THE STATE ARCHITECT STATE BUILDINGS PROGRAM

### PERFORMANCE BOND

Institution/Agency: \_\_\_\_\_  
Project No./Name: \_\_\_\_\_

**BONDING COMPANY: DO NOT MAKE ANY CHANGES TO THE LANGUAGE IN THIS BOND.**

#### KNOW ALL PERSONS BY THESE PRESENTS:

That the Contractor:

as Principal and hereinafter called "Principal,"

and:

as Surety and hereinafter called "Surety," a corporation organized and existing under the laws of \_\_\_\_\_ are held and firmly bound unto the STATE OF COLORADO acting by and through the Institution/Agency identified above hereinafter called "Principal Representative," and to all subcontractors and any others who have supplied or furnished or shall supply or furnish materials, rental machinery, tools, or equipment actually used in the performance of the hereinafter identified Contract, or who have performed or shall perform labor in the performance of or in connection with said Contract, hereinafter called "Obligees" in the sum of:

\_\_\_\_\_ Dollars (\$\_\_\_\_\_)  
(Written Amount) (Numerical Amount)

together with interest at the rate of eight per cent (8%) per annum on all payments becoming due in accordance with said Contract, from the time such payments shall become due until such payment shall be made, for the payment of which, well and truly made to the Obligees, the Principal and the Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly, by these presents.

**WHEREAS**, the Principal and the State of Colorado acting by and through the Principal Representative have entered into a certain Contract, hereinafter called "Contract," dated

\_\_\_\_\_ for the construction of the  
(Leave blank, to be completed by Institution/Agency upon Contract execution)

PROJECT identified above, which Contract is hereby by reference made a part hereof;

**NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION,** is such that, if the Principal shall promptly, fully and faithfully perform all the undertakings, covenants, terms, conditions and agreements of said Contract during the original term of said Contract any extensions thereof that may be granted by the Principal Representative with or without notice to the Surety, and during the life of any guaranty required under the Contract, and shall also well and truly perform and fulfill all undertakings, covenants, terms, conditions and agreements of any and all duly authorized modifications of said Contract that may hereafter be made, notice of which modifications to the Surety being hereby waived, then this obligation shall be null and void; otherwise it shall remain in full force and effect.

**AND THE SAID SURETY,** for value received hereby stipulates and agrees that whenever the Principal shall be, and declared by the Principal Representative to be in default under said Contract, the State of Colorado having performed its obligations thereunder, the Surety may promptly remedy the default or shall promptly (1) Complete the Contract in accordance with its terms and conditions, or (2) Obtain a bid or bids for submittal to the Principal Representative for completing the Contract in accordance with its terms and conditions, and upon determination by the Principal Representative and Surety of the lowest responsible bidder, arrange for a contract between such bidder and the State of Colorado acting by and through the Principal Representative and make available as work progresses (even though there should be a default or a succession of defaults under the contract or contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion, less the balance of the contract price but not exceeding, including other costs and damages for which the Surety may be liable hereunder, the amount hereinbefore set forth. The term "balance of the contract price" as herein used shall mean the total amount payable to the Principal under the Contract and any amendments thereto, less the amount properly paid by the State of Colorado to the Contractor.

No right of action shall accrue on this bond to or for the use of any person or corporation other than the State of Colorado.

**IN WITNESS WHEREOF** said Principal and Surety have executed this Bond, on

\_\_\_\_\_  
(If left blank, the Institution/Agency will date this bond to match the Contract Execution date)

(Corporate Seal)

**THE PRINCIPAL**

**ATTEST:**

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

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

\_\_\_\_\_  
Secretary

(Corporate Seal)

**SURETY**

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

Attorney-in-fact

**THIS BOND MUST BE ACCOMPANIED BY POWER OF ATTORNEY, EFFECTIVELY DATED**

Note: This bond is issued simultaneously with another bond conditioned for the full and faithful payment for all labor and material of the contract.

# APPENDIX F



## STATE OF COLORADO OFFICE OF THE STATE ARCHITECT STATE BUILDINGS PROGRAM

### LABOR AND MATERIAL BOND

Institution/Agency: \_\_\_\_\_  
Project No./Name: \_\_\_\_\_

**BONDING COMPANY: DO NOT MAKE ANY CHANGES TO THE LANGUAGE IN THIS BOND.**

#### KNOW ALL PERSONS BY THESE PRESENTS:

That the Contractor:

as Principal and hereinafter called "Principal,"

and:

as Surety and hereinafter called "Surety," a corporation organized and existing under the laws of \_\_\_\_\_ are held and firmly bound unto the STATE OF COLORADO acting by and through the Institution/Agency identified above hereinafter called "Principal Representative," and to all subcontractors and any others who have supplied or furnished or shall supply or furnish materials, rental machinery, tools, or equipment actually used in the performance of the hereinafter identified Contract, or who have performed or shall perform labor in the performance of or in connection with said Contract, hereinafter called "Obligees" in the sum of:

\_\_\_\_\_ Dollars (\$ \_\_\_\_\_)  
(Written Amount) (Numerical Amount)

together with interest at the rate of eight per cent (8%) per annum on all payments becoming due in accordance with said Contract, from the time such payments shall become due until such payment shall be made, for the payment of which, well and truly made to the Obligees, the Principal and the Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly, by these presents.

**WHEREAS**, the Principal and the State of Colorado acting by and through the Principal Representative have entered into a certain Contract, hereinafter called "Contract," dated

\_\_\_\_\_ for the construction of the  
(Leave blank, to be completed by Institution/Agency upon Contract execution)

PROJECT identified above, which Contract is hereby by reference made a part hereof;

**NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION** is such that if the Principal and the Surety shall fully indemnify and save harmless the State of Colorado and the Principal Representative from and against any and all costs and damages, including patent infringements, which either may suffer by reason of any failure or failures of the Principal promptly and faithfully to perform all terms and conditions of said Contract and shall fully reimburse and repay the State of Colorado and the Principal Representative all outlay and expense which the State of Colorado and the Principal Representative may incur in making good any such failure or failures, and further, if the Principal and his subcontractors shall duly and promptly pay for any and all labor, materials, team hire, sustenance, provisions, provender, rental machinery, tools, or equipment and other supplies which have been or shall be used or consumed by said Principal or his subcontractors in the performance of the work of said Contract , and it said Principal shall duly and promptly pay all his subcontractors the sums due them for any and all materials, rental machinery, tools, or equipment and labor that have been or shall be furnished, supplied, performed or used in connection with performance of said Contract, and shall also fully indemnify and save harmless the State of Colorado and the Principal Representative to the extent of any and all expenditures which either or both of them may be required to make by reason of any failures or defaults by the Principal or any subcontractor in connection with such payments; then this obligation shall be null and void, otherwise it shall remain in full force and effect.

It is expressly understood and agreed that any alterations which may be made in the terms of said Contract or in the work to be done under said Contract, or any extension(s) of time for the performance of the Contract, or any forbearance on the part of either the State of Colorado or the Principal to any of the others, shall not in any way release the Principal and the Surety, or either of them, their heirs, executors, administrators, successors or assigns from their liability hereunder, notice to the Surety of any such alteration, extension or forbearance being hereby waived.

**IN WITNESS WHEREOF**, the Principal and the Surety have executed this Bond, on

\_\_\_\_\_  
(If left blank, the Institution/Agency will date this bond to match the Contract Execution date)

(Corporate Seal)

**THE PRINCIPAL**

**ATTEST:**

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

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

\_\_\_\_\_  
Secretary

(Corporate Seal)

**SURETY**

\_\_\_\_\_  
By  
: \_\_\_\_\_  
Attorney-in-fact

**THIS BOND MUST BE ACCOMPANIED BY POWER OF ATTORNEY, EFFECTIVELY DATED**

Note: This bond is issued simultaneously with another bond conditioned for the full and faithful performance of the contract.

# APPENDIX G

## The Build America, Buy America Act Vendor Invoice Certification

The Build America, Buy America Act (“the Act”). Pub. L. No. 117-58, §§ 70901-52 requires that on or after May 14, 2022, “none of the funds made available for a Federal financial assistance program for infrastructure may be obligated for a project unless all of the iron, steel, manufactured products, and construction materials used in the project are produced in the United States.”

- All *iron and steel* used in the project are produced in the United States. This means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States,
- All manufactured products used in the project are produced in the United States. This means the *manufactured product* was manufactured in the United States, and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation, and
- All *construction materials* are manufactured in the United States. This means that all manufacturing processes for the construction material occurred in the United States. Construction materials include an article, material, or supply that is or consists primarily of non-ferrous metals, plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables), glass (including optic glass), lumber, or drywall. Construction materials do not include cement and cementitious materials, aggregates such as stone, sand, or gravel, or aggregate binding agents or additives.

The Buy America preference only applies to articles, materials, and supplies consumed in, incorporated into, or affixed to an infrastructure project. As such, it does not apply to tools, equipment, and supplies, such as temporary scaffolding, brought to the construction site and removed at or before the completion of the infrastructure project. Nor does the Buy America preference apply to equipment and furnishings, such as movable chairs, desks, and portable computer equipment, used at or within the finished infrastructure project but are not an integral part of the structure or permanently affixed to the infrastructure project.

**I certify that all expenses for this invoice meet the requirements of The Build America, Buy America Act (“the Act”). Pub. L. No. 117-58, §§ 70901-52**

Project Title \_\_\_\_\_

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

Vendor Invoice Number \_\_\_\_\_

Vendor Invoice Date \_\_\_\_\_

Company Name \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

Signature \_\_\_\_\_