

AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT			1. CONTRACT ID CODE	PAGE	OF PAGES
2. AMENDMENT/MODIFICATION NO.	3. EFFECTIVE DATE	4. REQUISITION/PURCHASE REQ. NO.		5. PROJECT NO. (If applicable)	
6. ISSUED BY	CODE	7. ADMINISTERED BY (If other than Item 6)		CODE	
8. NAME AND ADDRESS OF CONTRACTOR (No., street, county, State and ZIP Code)			(✓)	9A. AMENDMENT OF SOLICITATION NO.	
				9B. DATED (SEE ITEM 11)	
				10A. MODIFICATION OF CONTRACT/ORDER NO.	
				10B. DATED (SEE ITEM 13)	
CODE	FACILITY CODE				

11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS

The above numbered solicitation is amended as set forth in Item 14. The hour and date specified for receipt of Offers is extended, is not extended.

Offers must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended, by one of the following methods:

(a) By completing Items 8 and 15, and returning _____ copies of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.

12. ACCOUNTING AND APPROPRIATION DATA (If required)

13. THIS ITEM APPLIES ONLY TO MODIFICATIONS OF CONTRACTS/ORDERS, IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14.

(✓)	A. THIS CHANGE ORDER IS ISSUED PURSUANT TO: (Specify authority) THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NO. IN ITEM 10A.
	B. THE ABOVE NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (such as changes in paying office, appropriation date, etc.) SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103(b).
	C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF:
	D. OTHER (Specify type of modification and authority)

E. IMPORTANT: Contractor is not, is required to sign this document and return _____ copies to the issuing office.

14. DESCRIPTION OF AMENDMENT/MODIFICATION (Organized by UCF section headings, including solicitation/contract subject matter where feasible.)

Except as provided herein, all terms and conditions of the document referenced in Item 9A or 10A, as heretofore changed, remains unchanged and in full force and effect.

15A. NAME AND TITLE OF SIGNER (Type or print)		16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print)	
15B. CONTRACTOR/OFFEROR	15C. DATE SIGNED	16B. UNITED STATES OF AMERICA	16C. DATE SIGNED
_____ (Signature of person authorized to sign)		BY _____ (Signature of Contracting Officer)	

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STANDARD FORM 30 (Rev. 10-83)
Prescribed by GSA
FAR (48 CFR) 53.243

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<p>SPECIAL CONTRACT REQUIREMENTS (SCRs)</p>
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404 Permit (approval pending receipt of 401 Water Quality Certification) ... Appendix B

Pay Item No.	Estimated Quantity	Unit Bid Price	Amount Bid
20411-0000	SELECT BORROW 20,000 TON	\$ _____	\$ _____
25101-3000	PLACED RIPRAP, CLASS 3 480 CUYD	\$ _____	\$ _____
25101-4000	PLACED RIPRAP, CLASS 4 85 CUYD	\$ _____	\$ _____
30301-1000	DITCH RECONDITIONING 8,000.00 * LNFT	\$ _____	\$ _____
30802-2000	ROADWAY AGGREGATE, METHOD 2 3,800 TON	\$ _____	\$ _____
40201-4700	HOT ASPHALT CONCRETE PAVEMENT, HVEEM TEST, CLASS B, GRADING C OR E 11,500 TON	\$ _____	\$ _____
40202-4700	HOT ASPHALT CONCRETE PAVEMENT, HVEEM TEST, CLASS B, GRADING C OR E, WEDGE OR LEVELING COURSE 700 TON	\$ _____	\$ _____
40205-3000	ANTISTRIP ADDITIVE, TYPE 3 122 TON	\$ _____	\$ _____
40401-0000	MINOR HOT ASPHALT CONCRETE 600 TON	\$ _____	\$ _____
40920-1000	FOG SEAL, EMULSIFIED ASPHALT GRADE CSS-1 OR CSS-1H, SS-1 OR SS-1H 33 TON	\$ _____	\$ _____
41101-0000	PRIME COAT 16 TON	\$ _____	\$ _____

Bid Schedule A

Project: CA PFH 123-1(1)
WASHINGTON ROAD

(5) Consist of providing goods or services that are used only to promote health or education;
or

(6) Have been voluntarily suspended.

(b) Certification. By submission of its offer, the offeror certifies that it does not conduct any restricted business operations in Sudan.

(End of provision)

52.225-22 Notice of Required Use of American Iron, Steel, and Other Manufactured Goods--Buy American Act--Construction Materials (Mar 2009)

(a) Definitions. "Construction material," "domestic construction material," "foreign construction material," "manufactured construction material," "steel," and "unmanufactured construction material," as used in this provision, are defined in the clause of this solicitation entitled "Required Use of Iron, Steel, and Other Manufactured Goods--Buy American Act--Construction Materials" (Federal Acquisition Regulation (FAR) clause 52.225-21).

(b) Requests for determinations of inapplicability. An offeror requesting a determination regarding the inapplicability of section 1605 of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5) (Recovery Act) or the Buy American Act should submit the request to the Contracting Officer in time to allow a determination before submission of offers. The offeror shall include the information and applicable supporting data required by paragraphs (c) and (d) of the clause at FAR 52.225-21 in the request. If an offeror has not requested a determination regarding the inapplicability of 1605 of the Recovery Act or the Buy American Act before submitting its offer, or has not received a response to a previous request, the offeror shall include the information and supporting data in the offer.

(c) Evaluation of offers.

(1) If the Government determines that an exception based on unreasonable cost of domestic construction material applies, the Government will evaluate an offer requesting exception to the requirements of section 1605 of the Recovery Act or the Buy American Act by adding to the offered price of the contract--

(i) 25 percent of the offered price of the contract, if foreign iron, steel, or other manufactured goods are used as construction material based on unreasonable cost of comparable manufactured domestic construction material; and

(ii) 6 percent of the cost of foreign unmanufactured construction material included in the offer based on unreasonable cost of comparable domestic unmanufactured construction material.

(2) If two or more offers are equal in price, the Contracting Officer will give preference to an offer that does not include foreign construction material excepted at the request of the offeror on the basis of unreasonable cost.

(d) Alternate offers.

(1) When an offer includes foreign construction material not listed by the Government in this solicitation in paragraph (b)(2) of the clause at FAR 52.225-21, the offeror also may submit an alternate offer based on use of equivalent domestic construction material.

(2) If an alternate offer is submitted, the offeror shall submit a separate Standard Form 1442 for the alternate offer and a separate cost comparison table prepared in accordance with paragraphs (c) and (d) of the clause at FAR 52.225-21 for the offer that is based on the use of any foreign construction material for which the Government has not yet determined an exception applies.

(3) If the Government determines that a particular exception requested in accordance with paragraph (c) of the clause at FAR 52.225-21 does not apply, the Government will evaluate only those offers based on use of the equivalent domestic construction material, and the offeror shall be required to furnish such domestic construction material for which an exception was requested—

*(i) Will be rejected as nonresponsive if this acquisition is conducted by sealed bidding;
or*

(ii) May be accepted if revised during negotiations.

(End of Provision)

52.228-1 Bid Guarantee. (SEP 1996)

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

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

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

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

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

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

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

(End of provision)

52.233-2 Service of Protest. (SEP 2006)

(a) Protests, as defined in section 33.101 of the Federal Acquisition Regulation, that are filed directly with an agency, and copies of any protests that are filed with the Government Accountability Office (GAO), shall be served on the Contracting Officer (addressed as follows) by obtaining written and dated acknowledgment of receipt from

*Kevin R. Black
Contracting Officer
Federal Highway Administration
12300 W. Dakota Avenue, Suite 360
Lakewood, Colorado 80228*

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

(End of provision)

52.236-27 Site Visit (Construction). (FEB 1995)

(a) The clauses at 52.236-2, Differing Site Conditions, and 52.236-3, Site Investigations and Conditions Affecting the Work, will be included in any contract awarded as a result of this solicitation. Accordingly, offerors or quoters are urged and expected to inspect the site where the work will be performed.

(b) DELETED

(End of provision)

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

This solicitation incorporates one or more solicitation provisions by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. The offeror is cautioned that the listed provisions may include blocks that must be completed by the offeror and submitted with its quotation or offer. In lieu of submitting the full text of those provisions, the offeror may identify the provision by paragraph identifier and provide the appropriate information with its quotation or offer. Also, the full text of a solicitation provision may be accessed electronically at this/these address(es): <http://farsite.hill.af.mil/VFFARa.htm>

(End of provision)

52.252-3 Alterations in Solicitation. (APR 1984)

Portions of this solicitation are altered as follows: NONE

(End of provision)

Contract Clauses

52.202-1 Definitions. (JUL 2004)

52.203-3 Gratuities. (APR 1984)

52.203-5 Covenant Against Contingent Fees. (APR 1984)

52.203-7 Anti-Kickback Procedures. (JUL 1995)

52.203-8 Cancellation, Rescission, and Recovery of Funds for Illegal or Improper Activity. (JAN 1997)

52.203-10 Price or Fee Adjustment for Illegal or Improper Activity. (JAN 1997)

52.203-12 Limitation on Payments to Influence Certain Federal Transactions. (SEP 2007)

52.203-15 Whistleblower Protections under the American Recovery and Reinvestment Act of 2009 (Mar 2009)

(a) The Contractor shall post notice of employees rights and remedies for whistleblower protections provided under section 1553 of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5).

(b) The Contractor shall include the substance of this clause including this paragraph (b) in all subcontracts.

(End of Clause)

52.204-4 Printed or Copied Double-Sided on Recycled Paper. (AUG 2000)

52.204-7 Central Contractor Registration. (APR 2008)

52.204-11 American Recovery and Reinvestment Act – Reporting Requirements (MAR 2009)

(a) Definitions. As used in this clause—

Contract, as defined in FAR 2.101, means a mutually binding legal relationship obligating the seller to furnish the supplies or services (including construction) and the buyer to pay for them. It includes all types of commitments that obligate the Government to an expenditure of appropriated funds and that, except as otherwise authorized, are in writing. In addition to bilateral instruments, contracts include (but are not limited to) awards and notices of awards; job orders or task letters issued under basic ordering agreements; letter contracts; orders,

such as purchase orders, under which the contract becomes effective by written acceptance or performance; and bilateral contract modifications. Contracts do not include grants and cooperative agreements covered by 31 U.S.C. 6301, et seq. For discussion of various types of contracts, see FAR Part 16.

First-tier subcontract means a subcontract awarded directly by a Federal Government prime contractor whose contract is funded by the Recovery Act.

Jobs created means an estimate of those new positions created and filled, or previously existing unfilled positions that are filled, as a result of funding by the American Recovery and Reinvestment Act of 2009 (Recovery Act). This definition covers only prime contractor positions established in the United States and outlying areas (see definition in FAR 2.101). The number shall be expressed as "full-time equivalent" (FTE), calculated cumulatively as all hours worked divided by the total number of hours in a full-time schedule, as defined by the contractor. For instance, two full-time employees and one part-time employee working half days would be reported as 2.5 FTE in each calendar quarter.

Jobs retained means an estimate of those previously existing filled positions that are retained as a result of funding by the American Recovery and Reinvestment Act of 2009 (Recovery Act). This definition covers only prime contractor positions established in the United States and outlying areas (see definition in FAR 2.101). The number shall be expressed as "full-time equivalent" (FTE), calculated cumulatively as all hours worked divided by the total number of hours in a full-time schedule, as defined by the contractor. For instance, two full-time employees and one part-time employee working half days would be reported as 2.5 FTE in each calendar quarter.

Total compensation means the cash and noncash dollar value earned by the executive during the contractor's past fiscal year of the following (for more information see 17 CFR 229.402(c)(2)):

(1) Salary and bonus.

(2) Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.

(3) Earnings for services under non-equity incentive plans. Does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.

(4) Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.

(5) Above-market earnings on deferred compensation which is not tax-qualified.

(6) Other compensation. For example, severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property if the value for the executive exceeds \$10,000.

(b) This contract requires the contractor to provide products and/or services that are funded under the American Recovery and Reinvestment Act of 2009 (Recovery Act). Section 1512(c) of the Recovery Act requires each contractor to report on its use of Recovery Act funds under this contract. These reports will be made available to the public.

(c) Reports from contractors for all work funded, in whole or in part, by the Recovery Act, and for which an invoice is submitted prior to June 30, 2009, are due no later than July 10, 2009. Thereafter, reports shall be submitted no later than the 10th day after the end of each calendar quarter.

(d) The Contractor shall report the following information, using the online reporting tool available at <http://www.FederalReporting.gov>.

(1) The Government contract and order number, as applicable.

(2) The amount of Recovery Act funds invoiced by the contractor for the reporting period. A cumulative amount from all the reports submitted for this action will be maintained by the government's on-line reporting tool.

(3) A list of all significant services performed or supplies delivered, including construction, for which the contractor invoiced in this calendar quarter.

(4) Program or project title, if any.

(5) A description of the overall purpose and expected outcomes or results of the contract, including significant deliverables and, if appropriate, associated units of measure.

(6) An assessment of the contractor's progress towards the completion of the overall purpose and expected outcomes or results of the contract (i.e., not started, less than 50 percent completed, completed 50 percent or more, or fully completed). This covers the contract (or portion thereof) funded by the Recovery Act.

(7) A narrative description of the employment impact of work funded by the Recovery Act. This narrative should be cumulative for each calendar quarter and only address the impact on the contractor's workforce. At a minimum, the contractor shall provide—

(i) A brief description of the types of jobs created and jobs retained in the United States and outlying areas (see definition in FAR 2.101). This description may rely on job titles, broader labor categories, or the contractor's existing practice for describing jobs as long as the terms used are widely understood and describe the general nature of the work; and

(ii) An estimate of the number of jobs created and jobs retained by the prime contractor, in the United States and outlying areas. A job cannot be reported as both created and retained.

(8) Names and total compensation of each of the five most highly compensated officers of the Contractor for the calendar year in which the contract is awarded if—

(i) In the Contractor's preceding fiscal year, the Contractor received—

(A) 80 percent or more of its annual gross revenues from Federal contracts (and subcontracts), loans, grants (and subgrants) and cooperative agreements; and

(B) \$25,000,000 or more in annual gross revenues from Federal contracts (and subcontracts), loans, grants (and subgrants) and cooperative agreements; and

(ii) The public does not have access to information about the compensation of the senior executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986.

(9) For subcontracts valued at less than \$25,000 or any subcontracts awarded to an individual, or subcontracts awarded to a subcontractor that in the previous tax year had gross income under \$300,000, the Contractor shall only report the aggregate number of such first tier subcontracts awarded in the quarter and their aggregate total dollar amount.

(10) For any first-tier subcontract funded in whole or in part under the Recovery Act, that is over \$25,000 and not subject to reporting under paragraph 9, the contractor shall require the subcontractor to provide the information described in (i), (ix), (x), and (xi) below to the contractor for the purposes of the quarterly report. The contractor shall advise the subcontractor that the information will be made available to the public as required by section 1512 of the Recovery Act. The contractor shall provide detailed information on these first-tier subcontracts as follows:

(i) Unique identifier (DUNS Number) for the subcontractor receiving the award and for the subcontractor's parent company, if the subcontractor has a parent company.

(ii) Name of the subcontractor.

(iii) Amount of the subcontract award.

(iv) Date of the subcontract award.

(v) The applicable North American Industry Classification System (NAICS) code.

(vi) Funding agency.

(vii) A description of the products or services (including construction) being provided under the subcontract, including the overall purpose and expected outcomes or results of the subcontract.

(viii) Subcontract number (the contract number assigned by the prime contractor).

(ix) Subcontractor's physical address including street address, city, state, and country. Also include the nine-digit zip code and congressional district if applicable.

(x) Subcontract primary performance location including street address, city, state, and country. Also include the nine-digit zip code and congressional district if applicable.

(xi) Names and total compensation of each of the subcontractor's five most highly compensated officers, for the calendar year in which the subcontract is awarded if--

(A) In the subcontractor's preceding fiscal year, the subcontractor received—

(1) 80 percent or more of its annual gross revenues in Federal contracts (and subcontracts), loans, grants (and subgrants), and cooperative agreements; and

(2) \$25,000,000 or more in annual gross revenues from Federal contracts (and subcontracts), loans, grants (and subgrants), and cooperative agreements; and

(B) The public does not have access to information about the compensation of the senior executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986.

(End of Clause)

52.209-6 Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment. (SEP 2006)

52.211-10 Commencement, Prosecution, and Completion of Work. (APR 1984) - Alternate 1 (APR 1984)

The Contractor shall be required to (a) commence work under this contract within 10 calendar days after the date the Contractor receives the notice to proceed, (b) prosecute the work diligently, and (c) complete the entire work ready for use not later than *{refer to Subsection 108.01 as amended in the Special Contract Requirements}*. The time stated for completion shall include final cleanup of the premises.

The completion date is based on the assumption that the successful offeror will receive the notice to proceed by *the 70th day following the bid opening*. The completion date will be extended by the number of calendar days after the above date that the Contractor receives the notice to proceed, except to the extent that the delay in issuance of the notice to proceed results from the failure of the Contractor to execute the contract and give the required performance and payment bonds within the time specified in the offer.

(End of clause)

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

(a) If the Contractor fails to complete the work within the time specified in the contract, the Contractor shall pay liquidated damages to the Government in the amount of *{See Table 108-1 on Page 41 of FP 03}* for each calendar day of delay until the work is completed or accepted.

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

(End of clause)

52.211-13 Time Extensions. (SEP 2000)**52.211-18 Variation in Estimated Quantity. (APR 1984)**~~**52.214-26 Audit and Records - Sealed Bidding. (OCT 1997)**~~*52.214-26 Audit and Records – Sealed Bidding (Mar 2009) Alternate I (Mar 2009)*

(a) As used in this clause, “records” includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form.

(b) Cost or pricing data. If the Contractor has been required to submit cost or pricing data in connection with the pricing of any modification to this contract, the Contracting Officer, or an authorized representative of the Contracting Officer, in order to evaluate the accuracy, completeness, and currency of the cost or pricing data, shall have the right to examine and audit all of the Contractor’s records, including computations and projections, related to—

- (1) The proposal for the modification;*
- (2) The discussions conducted on the proposal(s), including those related to negotiating;*
- (3) Pricing of the modification; or*
- (4) Performance of the modification.*

(c) The Comptroller General of the United States, an appropriate Inspector General appointed under section 3 or 8G of the Inspector General Act of 1978 (5 U.S.C. App.), or an authorized representative of either of the foregoing officials, shall have access to and the right to--

- (1) Examine any of the Contractor's or any subcontractors' records that pertain to, and involve transactions relating to, this contract or a subcontract hereunder; and*
- (2) Interview any officer or employee regarding such transactions.*

(d) Availability. The Contractor shall make available at its office at all reasonable times the materials described in paragraph (b) of this clause, for examination, audit, or reproduction, until 3 years after final payment under this contract, or for any other period specified in Subpart 4.7 of the Federal Acquisition Regulation (FAR). FAR Subpart 4.7, Contractor Records Retention, in effect on the date of this contract, is incorporated by reference in its entirety and made a part of this contract.

(1) If this contract is completely or partially terminated, the records relating to the work terminated shall be made available for 3 years after any resulting final termination settlement.

(2) Records pertaining to appeals under the Disputes clause or to litigation or the settlement of claims arising under or relating to the performance of this contract shall be made available until disposition of such appeals, litigation, or claims.

(e)(1) Except as provided in paragraph (e)(2), the Contractor shall insert a clause containing the provisions of this clause, including this paragraph (e), in all subcontracts.

(2) The authority of the Inspector General under paragraph (c)(2) of this clause does not flow down to subcontracts.

(End of Clause)

52.214-27 Price Reduction for Defective Cost or Pricing Data - Modifications - Sealed Bidding. (OCT 1997)

52.214-28 Subcontractor Cost or Pricing Data - Modifications - Sealed Bidding. (OCT 1997)

52.215-21 Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data - Modifications. (OCT 1997)

52.219-8 Utilization of Small Business Concerns. (MAY 2004)

52.219-11(DEVIATION) Special 8(a) Contract Conditions. (DEVIATION) (FEB 1990)

The Small Business Administration (SBA) agrees to the following:

(a) (DELETED)

(b) (DELETED)

(c) Except for novation agreements and advance payments, delegates to the [insert name of contracting agency] the responsibility for administering the subcontract to be awarded hereunder with complete authority to take any action on behalf of the Government under the terms and conditions of the subcontract; provided, however, that the [insert name of contracting agency] shall

give advance notice to the SBA before it issues a final notice terminating the right of a subcontractor to proceed with further performance, either in whole or in part, under the subcontract for default or for the convenience of the Government.

(d) That payments to be made under this contract will be made directly to the subcontractor by the **FHWA**.

(e) That the subcontractor awarded a subcontract hereunder shall have the right of appeal from decisions of the Contracting Officer cognizable under the "Disputes" clause of said subcontract.

(f) To notify the **FHWA** Contracting Officer immediately upon notification by the subcontractor that the owner or owners upon whom 8(a) eligibility was based plan to relinquish ownership or control of the concern

52.219-14 Limitations on Subcontracting (DEC 1996)

(a) This clause does not apply to the unrestricted portion of a partial set-aside.

(b) By submission of an offer and execution of a contract, the Offeror/Contractor agrees that in performance of the contract in the case of a contract for -

(1) *Services (except construction)*. At least 50 percent of the cost of contract performance incurred for personnel shall be expended for employees of the concern.

(2) *Supplies (other than procurement from a nonmanufacturer of such supplies)*. The concern shall perform work for at least 50 percent of the cost of manufacturing the supplies, not including the cost of materials.

(3) *General construction*. The concern will perform at least 15 percent of the cost of the contract, not including the cost of materials, with its own employees.

(4) *Construction by special trade contractors*. The concern will perform at least 25 percent of the cost of the contract, not including the cost of materials, with its own employees.

(End of clause)

52.219-18 Notification of Competition Limited to Eligible 8(a) Concerns (JUN 2003)

(a) Offers are solicited only from small business concerns expressly certified by the Small Business Administration (SBA) for participation in the SBA's 8(a) Program and which meet the following criteria at the time of submission of offer—

(1) The Offeror is in conformance with the 8(a) support limitation set forth in its approved business plan; and

(2) The Offeror is in conformance with the Business Activity Targets set forth in its approved business plan or any remedial action directed by the SBA.

(b) By submission of its offer, the Offeror represents that it meets all of the criteria set forth in paragraph (a) of this clause.

(c) Any award resulting from this solicitation will be made to the Small Business Administration, which will subcontract performance to the successful 8(a) offeror selected through the evaluation criteria set forth in this solicitation.

(d) (1) *Agreement.* A small business concern submitting an offer in its own name shall furnish, in performing the contract, only end items manufactured or produced by small business concerns in the United States or its outlying areas. If this procurement is processed under simplified acquisition procedures and the total amount of this contract does not exceed \$25,000, a small business concern may furnish the product of any domestic firm. This paragraph does not apply to construction or service contracts.

(2) The _____ [*insert name of SBA's contractor*] will notify the _____ [*insert name of contracting agency*] Contracting Officer in writing immediately upon entering an agreement (either oral or written) to transfer all or part of its stock or other ownership interest to any other party.

(End of clause)

52.219-28 Post-Award Small Business Program Rerepresentation. (JUN 2007)

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

52.222-3 Convict Labor. (JUN 2003)

52.222-4 Contract Work Hours and Safety Standards Act - Overtime Compensation. (JUL 2005)

52.222-6 Davis-Bacon Act. (JUL 2005)

52.222-7 Withholding of Funds. (FEB 1988)

52.222-8 Payrolls and Basic Records. (FEB 1988)

52.222-9 Apprentices and Trainees. (JUL 2005)

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

52.222-11 Subcontracts (Labor Standards). (JUL 2005)

52.222-12 Contract Termination - Debarment. (FEB 1988)

52.222-13 Compliance with Davis-Bacon and Related Act Regulations. (FEB 1988)

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

52.222-15 Certification of Eligibility. (FEB 1988)

52.222-21 Prohibition of Segregated Facilities. (FEB 1999)

52.222-26 Equal Opportunity. (MAR 2007)

52.222-27 Affirmative Action Compliance Requirements for Construction. (FEB 1999)

52.222-35 Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans. (SEP 2006)

52.222-36 Affirmative Action for Workers with Disabilities. (JUN 1998)

52.222-37 Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans. (SEP 2006)

52.222-39 Notification of Employee Rights Concerning Payment of Union Dues or Fees. (DEC 2004)

(a) Definition. As used in this clause--

United States means the 50 States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, and Wake Island.

(b) Except as provided in paragraph (e) of this clause, during the term of this contract, the Contractor shall post a notice, in the form of a poster, informing employees of their rights concerning union membership and payment of union dues and fees, in conspicuous places in and about all its plants and offices, including all places where notices to employees are customarily posted. The notice shall include the following information (except that the information pertaining to National Labor Relations Board shall not be included in notices posted in the plants or offices of carriers subject to the Railway Labor Act, as amended (45 U.S.C. 151-188)).

Notice to Employees

Under Federal law, employees cannot be required to join a union or maintain membership in a union in order to retain their jobs.

Under certain conditions, the law permits a union and an employer to enter into a union-security agreement requiring employees to pay uniform periodic dues and initiation fees. However, employees who are not union members can object to the use of their payments for certain purposes and can only be required to pay their share of union costs relating to collective bargaining, contract administration, and grievance adjustment.

If you do not want to pay that portion of dues or fees used to support activities not related to collective bargaining, contract administration, or grievance adjustment, you are entitled to an appropriate reduction in your payment. If you believe that you have been required to pay dues or fees used in part to support activities not related to collective bargaining, contract administration, or grievance adjustment, you may be entitled to a refund and to an appropriate reduction in future payments.

For further information concerning your rights, you may wish to contact the National Labor Relations Board (NLRB) either at one of its Regional offices or at the following address or toll free number:

National Labor Relations Board
Division of Information
1099 14th Street, N.W.
Washington, DC 20570
1-866-667-6572
1-866-316-6572 (TTY)

To locate the nearest NLRB office, see NLRB's website at <http://www.nlr.gov>.

(c) The Contractor shall comply with all provisions of Executive Order 13201 of February 17, 2001, and related implementing regulations at 29 CFR part 470, and orders of the Secretary of Labor.

(d) In the event that the Contractor does not comply with any of the requirements set forth in paragraphs (b), (c), or (g), the Secretary may direct that this contract be cancelled, terminated, or suspended in whole or in part, and declare the Contractor ineligible for further Government contracts in accordance with procedures at 29 CFR part 470, Subpart B--Compliance Evaluations, Complaint Investigations and Enforcement Procedures. Such other sanctions or remedies may be imposed as are provided by 29 CFR part 470, which implements Executive Order 13201, or as are otherwise provided by law.

(e) The requirement to post the employee notice in paragraph (b) does not apply to--

(1) Contractors and subcontractors that employ fewer than 15 persons;

(2) Contractor establishments or construction work sites where no union has been formally recognized by the Contractor or certified as the exclusive bargaining representative of the Contractor's employees;

(3) Contractor establishments or construction work sites located in a jurisdiction named in the definition of the United States in which the law of that jurisdiction forbids enforcement of union-security agreements;

(4) Contractor facilities where upon the written request of the Contractor, the Department of Labor Deputy Assistant Secretary for Labor-Management Programs has waived the posting requirements with respect to any of the Contractor's facilities if the Deputy Assistant Secretary finds that the Contractor has demonstrated that--

(i) The facility is in all respects separate and distinct from activities of the Contractor related to the performance of a contract; and

(ii) Such a waiver will not interfere with or impede the effectuation of the Executive order;

or

(5) Work outside the United States that does not involve the recruitment or employment of workers within the United States.

(f) The Department of Labor publishes the official employee notice in two variations; one for contractors covered by the Railway Labor Act and a second for all other contractors. The Contractor shall--

(1) Obtain the required employee notice poster from the Division of Interpretations and Standards, Office of Labor-Management Standards, U.S. Department of Labor, 200 Constitution Avenue, NW, Room N-5605, Washington, DC 20210, or from any field office of the Department's Office of Labor-Management Standards or Office of Federal Contract Compliance Programs;

(2) Download a copy of the poster from the Office of Labor-Management Standards website at <http://www.olms.dol.gov>; or

(3) Reproduce and use exact duplicate copies of the Department of Labor's official poster.

(g) The Contractor shall include the substance of this clause in every subcontract or purchase order that exceeds the simplified acquisition threshold, entered into in connection with this contract, unless exempted by the Department of Labor Deputy Assistant Secretary for Labor-Management Programs on account of special circumstances in the national interest under authority of 29 CFR 470.3(c). For indefinite quantity subcontracts, the Contractor shall include the substance of this clause if the value of orders in any calendar year of the subcontract is expected to exceed the simplified acquisition threshold. Pursuant to 29 CFR part 470, Subpart B--Compliance Evaluations, Complaint Investigations and Enforcement Procedures, the Secretary of Labor may direct the Contractor to take such action in the enforcement of these regulations, including the imposition of sanctions for noncompliance with respect to any such subcontract or purchase order. If the Contractor becomes involved in litigation with a subcontractor or vendor, or is threatened with such involvement, as a result of such direction, the Contractor may request the United States, through the Secretary of Labor, to enter into such litigation to protect the interests of the United States.

(End of clause)

52.222-50 Combating Trafficking in Persons. (AUG 2007)

52.223-3 Hazardous Material Identification and Material Safety Data. (JAN 1997)

52.223-5 Pollution Prevention and Right-to-Know Information. (AUG 2003)

52.223-6 Drug-Free Workplace. (MAY 2001)**52.223-14 Toxic Chemical Release Reporting. (AUG 2003)****52.224-1 Privacy Act Notification. (APR 1984)****52.224-2 Privacy Act. (APR 1984)**~~**52.225-9 Buy American Act – Construction Materials. (JAN 2005)**~~~~(a) *Definitions.* As used in this clause—~~

~~Component means an article, material, or supply incorporated directly into a construction material.~~

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

~~Cost of components means—~~

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

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

~~Domestic construction material means—~~

~~(1) An unmanufactured construction material mined or produced in the United States; or~~

~~(2) A construction material manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind for which nonavailability determinations have been made are treated as domestic.~~

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

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

~~(b) Domestic preference:~~

~~(1) This clause implements the Buy American Act (41 U.S.C. 10a-10d) by providing a preference for domestic construction material. The Contractor shall use only domestic construction material in performing this contract, except as provided in paragraphs (b)(2) and (b)(3) of this clause.~~

~~(2) This requirement does not apply to the construction material or components listed by the Government as follows: NONE~~

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

~~(i) The cost of domestic construction material would be unreasonable. The cost of a particular domestic construction material subject to the requirements of the Buy American Act is unreasonable when the cost of such material exceeds the cost of foreign material by more than 6 percent;~~

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

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

~~(e) Request for determination of inapplicability of the Buy American Act:~~

~~(1) (i) Any Contractor request to use foreign construction material in accordance with paragraph (b)(3) of this clause shall include adequate information for Government evaluation of the request, including=~~

~~(A) A description of the foreign and domestic construction materials;~~

~~(B) Unit of measure;~~

~~(C) Quantity;~~

~~(D) Price;~~

~~(E) Time of delivery or availability;~~

~~(F) Location of the construction project;~~

~~(G) Name and address of the proposed supplier; and~~

~~(H) A detailed justification of the reason for use of foreign construction materials cited in accordance with paragraph (b)(3) of this clause.~~

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

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

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

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

~~(3) Unless the Government determines that an exception to the Buy American Act applies, use of foreign construction material is noncompliant with the Buy American Act.~~

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

~~Foreign and Domestic Construction Materials Price Comparison~~

Construction			
Material Description	Unit of Measure	Quantity	Price (Dollars)*
Item 1:			
Foreign construction material	_____	_____	_____
Domestic construction material	_____	_____	_____
Item 2:			
Foreign construction material	_____	_____	_____
Domestic construction material	_____	_____	_____

~~*Include all delivery costs to the construction site and any applicable duty (whether or not a duty free entry certificate is issued).~~

~~List name, address, telephone number, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary.~~

~~Include other applicable supporting information.~~

52.225-21 Required Use of American Iron, Steel and Other Manufactured Goods -- Buy American Act—Construction Materials (Mar 2009)

(a) Definitions. As used in this clause—

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

“Domestic construction material” means—

- (1) An unmanufactured construction material mined or produced in the United States;*
- (2) A construction material manufactured in the United States*

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

“Manufactured construction material” means any construction material that is not unmanufactured construction material.

“Steel” means any alloy that includes at least 50 percent iron, between .02 and 2 percent carbon, and may include other elements.

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

“Unmanufactured construction material” means raw material brought to the construction site for incorporation into the building or work that has not been—

- (1) Processed into a specific form and shape; or*
- (2) Combined with other raw material to create a material that has different properties than the properties of the individual raw materials.*

(b) Domestic preference.

(1) This clause implements –

(i) Section 1605 of the American Recovery and Reinvestment Act of 2009 (Recovery Act) (Pub. L. 111-5), by requiring, unless an exception applies, that all iron, steel, and other manufactured goods used as construction material in the project are produced in the United States; and

(ii) The Buy American Act (41 U.S.C. 10a - 10d) by providing a preference for unmanufactured domestic construction material

(2) The Contractor shall use only domestic construction material in performing this contract, except as provided in paragraphs (b)(3) and (b)(4) of this clause.

(3) This requirement does not apply to the construction material or components listed by the Government as follows: NONE

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

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

(A) The cost of domestic iron, steel, or other manufactured goods used as construction material is unreasonable when the cumulative cost of such material will increase the cost of the contract by more than 25 percent;

(B) The cost of unmanufactured construction material is unreasonable when the cost of such material exceeds the cost of foreign material by more than 6 percent;

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

(iii) The application of the restriction of section 1605 of the Recovery Act or the Buy American Act to a particular construction material would be inconsistent with the public interest.

(c) Request for determination of inapplicability of Section 1605 of the Recovery Act or the Buy American Act.

(1) (i) Any Contractor request to use foreign construction material in accordance with paragraph (b)(4) of this clause shall include adequate information for Government evaluation of the request, including--

(A) A description of the foreign and domestic construction materials;

(B) Unit of measure;

(C) Quantity;

(D) Cost;

(E) Time of delivery or availability;

(F) Location of the construction project;

(G) Name and address of the proposed supplier; and

(H) A detailed justification of the reason for use of foreign construction materials cited in accordance with paragraph (b)(4) of this clause.

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

(iii) The cost of construction material shall include all delivery costs to the construction site and any applicable duty.

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

(2) If the Government determines after contract award that an exception to the section 1605 of the Recovery Act or the Buy American Act applies and the Contracting Officer and the Contractor negotiate adequate consideration, the Contracting Officer will modify the contract to allow use of the foreign construction material. However, when the basis for the exception is the unreasonable cost of a domestic construction material, adequate consideration is not less than the differential established in paragraph (b)(4)(i) of this clause.

(3) Unless the Government determines that an exception to Section 1605 of the Recovery Act or the Buy American Act applies, use of foreign construction material is noncompliant with Section 1605 of the American Recovery and Reinvestment Act or the Buy American Act.

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

Foreign and Domestic Construction Materials Price Comparison

<i>Construction</i>			
<u><i>Material Description</i></u>	<u><i>Unit of Measure</i></u>	<u><i>Quantity</i></u>	<u><i>Cost (Dollars)*</i></u>
<i>Item 1:</i>			
<i>Foreign construction material</i>	_____	_____	_____
<i>Domestic construction material</i>	_____	_____	_____
<i>Item 2:</i>			
<i>Foreign construction material</i>	_____	_____	_____
<i>Domestic construction material</i>	_____	_____	_____

** Include all delivery costs to the construction site and any applicable duty (whether or not a duty-free entry certificate is issued).*

List name, address, telephone number, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary.

Include other applicable supporting information.

(End of Clause)

- 52.227-2 Notice and Assistance Regarding Patent and Copyright Infringement. (DEC 2007)**
- 52.227-4 Patent Indemnity--Construction Contracts. (DEC 2007)**
- 52.228-2 Additional Bond Security. (OCT 1997)**
- 52.228-5 Insurance - Work on a Government Installation. (JAN 1997)**
- 52.228-11 Pledges of Assets. (FEB 1992)**
- 52.228-12 Prospective Subcontractor Requests for Bonds. (OCT 1995)**
- 52.228-15 Performance and Payment Bonds - Construction. (NOV 2006)**
- 52.229-3 Federal, State, and Local Taxes. (APR 2003)**
- 52.232-5 Payments under Fixed-Price Construction Contracts. (SEP 2002)**
- 52.232-17 Interest. (OCT 2008)**
- 52.232-23 Assignment of Claims. (JAN 1986)**
- 52.232-27 Prompt Payment For Construction Contracts. (OCT 2008)**
- 52.232-33 Payment by Electronic Funds Transfer - Central Contractor Registration. (OCT 2003)**
- 52.233-1 Disputes. (JUL 2002)**
- 52.233-3 Protest after Award. (AUG 1996)**
- 52.233-4 Applicable Law for Breach of Contract Claim. (OCT 2004)**
- 52.236-2 Differing Site Conditions. (APR 1984)**
- 52.236-3 Site Investigation and Conditions Affecting the Work. (APR 1984)**
- 52.236-4 Physical Data. (APR 1984)**

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

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

(b) Weather conditions: *Contract National Weather Service.*

(c) Transportation facilities: NA

(d) _____ *

*See Page A-3 of Standard Form 1442.

(End of Clause)

52.236-5 Material and Workmanship. (APR 1984)

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

52.236-7 Permits and Responsibilities. (NOV 1991)

52.236-8 Other Contracts. (APR 1984)

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

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

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

52.236-12 Cleaning Up. (APR 1984)

52.236-13 Accident Prevention. (NOV 1991)

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

52.236-17 Layout of Work. (APR 1984)

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

52.236-26 Preconstruction Conference. (FEB 1995)

52.242-13 Bankruptcy. (JUL 1995)

52.242-14 Suspension of Work. (APR 1984)

52.243-4 Changes. (JUN 2007)

52.244-6 Subcontracts for Commercial Items. (DEC 2008)

52.245-1 Government Property. (JUN 2007)

52.245-9 Use and Charges. (JUN 2007)

52.246-12 Inspection of Construction. (APR 1996)

52.248-3 Value Engineering - Construction. (SEP 2006) - Alternate I (APR 1984)

52.249-2 Termination for Convenience of the Government (Fixed-Price). (MAY 2004) - Alternate I (SEP 1996)

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

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

This contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. Also, the full text of a clause may be accessed electronically at this/these address(es):
<http://farsite.hill.af.mil/VFFARa.htm>

(End of Clause)

52.252-4 Alterations in Contract. (APR 1984)

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

(End of clause)

52.252-6 Authorized Deviations in Clauses. (APR 1984)

52.253-1 Computer Generated Forms. (JAN 1991)

1252.242-73 Contracting Officer's Technical Representative. (OCT 1994)

Section 107
LEGAL RELATIONS AND RESPONSIBILITY TO THE PUBLIC

107.01 Laws to be Observed. Add the following:

This procurement action will be conducted as part of the American Recovery and Reinvestment Act (Recovery Act) dated February 17, 2009 and will be subject to unprecedented levels of transparency and accountability so Americans know where their tax dollars are going and how they are being spent. Contract reporting will be required to accurately track, monitor and report on taxpayer funds. The Recovery Act requires extensive reporting from the prime recipients of Federal funding. See subsection 109.08(c) for the required reporting form. Allow access to contractor records by the Government Accountability Office (GAO) and Office of Inspector General (OIG).

To the maximum extent practicable, the Contractor shall ensure fixed-price sub-contracts are awarded as a result of this contract and shall ensure they are awarded through the use of competitive procedures.

The Contractor shall ensure that it provides maximum practicable opportunities for small businesses to compete for sub-contracts resulting from this award.

Section 401 and 404 of the Clean Water Act.

The Federal Highway Administration has applied for ~~the 404 permit and~~ the 401 certification, the anticipated receipt date is prior to bid opening.

Comply with the terms and conditions of the 404 permit and with the terms and conditions, if any, specified in the 401 certification by the Regional Water Quality Control Board. Comply with the terms and conditions of any permits that are issued for the performance of work within the jurisdictional waters of the U.S.

FHWA will be responsible to meet special conditions 2, 3, 4 and 5 of the 404 permit. See Appendix B.

National Pollutant Discharge Elimination System (NPDES)

Obtain a separate NPDES permit associated with industrial activity for any mobile asphalt and concrete plants that provide material for the project.

Implement the requirements of the (NPDES) for erosion control due to storm water runoff during construction as specified under the NPDES General Permit No. CAS000002 for California.

(a) General. Designate the erosion control/water quality supervisor according to Subsection 157.03 who will be responsible for implementing the Storm Water Pollution Prevention Plan (SWPPP). Ensure familiarity with SWPPP procedures and practices and ensure that emergency procedures and the SWPPP are updated as needed and available for inspection.

(b) Preparation of SWPPP. At least three weeks prior to beginning construction provide a draft SWPPP for the project, which includes the following information and forms:

- (1) Site Description
- (2) Expected sequencing of operations and construction schedule
- (3) Weather monitoring procedure
- (4) Descriptions and details of erosion and sediment controls, including dust control
- (5) Erosion Control Details and Quantities provided in the Plans
- (6) Controls for other potential onsite storm water pollutants
- (7) Spill prevention, control, and countermeasures plan (see (e) below)
- (8) Applicable specifications and Special Contract Requirements
- (9) Maintenance and inspection procedures and forms
- (10) Description of potential non-storm water discharges at the site
- (11) Copy of Notice of Intent (NOI) form submitted by CFLHD
- (12) Blank Notice of Termination (NOT) form
- (13) Contractor and Subcontractor Certification forms
- (14) Other record keeping forms and procedures
- (15) "Good housekeeping" practices and requirements

Modify the erosion and sediment control details, layout sheets, and quantities included in the plans if necessary to address project site conditions and proposed construction operations and include them in the SWPPP.

To comply with the General Permit, jointly review the draft SWPPP with the CO and agree to any needed revisions. Jointly approve and sign the revised SWPPP. The approved SWPPP will describe and ensure the implementation of practices, which will be used to reduce the pollutants in storm water discharges to assure compliance with the terms and conditions of the General Permit. When the SWPPP is approved and signed by the CO and Contractor, it will be the document in force on the project. Implement the SWPPP as required throughout the construction period.

Place the SWPPP and all updates in a three-ring binder so that completed inspection forms and other records may be inserted. Maintain a current copy of the SWPPP, including a copy of the permit, NOI, Waste Discharge Identification (WDID), and all associated records and forms at the job site throughout the duration of the project. Make the SWPPP available for public inspection and for the inspection and use of the CO.

Maintain all related erosion control elements in proper working order throughout construction. Do not perform clearing and grubbing or earthwork until the SWPPP has been implemented.

Prior to construction, the Contractor and all subcontractors must sign certifications (included in the SWPPP) that they understand the requirements of the General Permit. Ensure that all subcontractors comply with the requirements of the General Permit.

At the completion of the project, provide the CO with the SWPPP, including inspection forms and all data used in developing and modifying the SWPPP. The Contractor is also required to retain a copy for a period of at least three years from the date the site is finally stabilized.

(c) **Notice of Intent (NOI).** Post the NOI at the construction site bulletin board throughout the duration of the project.

(d) **Erosion Controls.** Implement soil erosion controls according to the SWPPP and Section 157.

(e) **Controls for Other Pollutants.** Implement controls to eliminate the discharge of pollutants (other than erodible soil) into storm water, such as pollutants from materials stored onsite. Include the implementation of spill prevention and material management controls and practices to prevent the release of pollutants into storm water. Include these controls and practices and storage procedures for chemicals, construction materials and other pollution prevention measures in the **Spill Prevention, Control, and Countermeasures** Section of the SWPPP. In addition, contact the appropriate federal, state, and local authorities to determine the quantity of discharge that initiates reporting of petroleum products and hazardous material spills to those authorities. List the quantities in the SWPPP for all petroleum products and hazardous material used on the project.

A spill prevention, control and countermeasures plan is required if the volume of fuel or oil in a single container exceeds 600 gallons, or if the total storage volume of petroleum products at any one site exceeds 1,320 gallons.

Develop a sampling and analysis program for pollutants not visually detectable in storm water consistent with “Section B: Monitoring and Reporting Requirements” of the General Permit.

(f) **“Good Housekeeping” Practices and Requirements.** Specify the Contractor’s “good housekeeping” practices and requirements, including vehicle wash-down areas, onsite and offsite tracking control, protection of equipment storage and maintenance areas, and sweeping of highways and roadways related to hauling activities in the SWPPP.

Take precautions to prevent pollution of streams, lakes, and reservoirs with fuels, oil, bitumens, calcium chloride, magnesium chloride, Portland cement, fresh Portland cement concrete, raw sewage, muddy water, chemicals or other harmful materials. Do not discharge these materials into channels leading to any stream, lake or reservoir.

Locate machinery servicing and refueling areas away from streambeds and washes to reduce the possibility and minimize the impacts of accidental spills or discharges.

Remove non-waste materials, such as used cans, oils, machine and equipment parts, paint, hazardous materials, plastic and rubber parts, discarded metals, and building materials from the construction site and dispose of at an approved landfill.

Where the Contractor’s working area encroaches on a running or intermittent stream, construct and maintain adequate barriers to prevent the discharge of any contaminants into the stream.

Do not operate mechanical equipment in running streams unless approved in writing by the CO. Fording of running streams with construction equipment will not be permitted. Obtain approval from the CO to use temporary bridges or other structures whenever crossings are necessary.

Immediately clear streams, lakes and reservoirs of all work items, debris or other obstructions inadvertently placed thereby or resulting from construction operations.

(g) Inspections and Revisions to the SWPPP. Conduct inspections before and within 24 hours after storm events and once each 24-hour period during extended storm events. Conduct a minimum of one site inspection per month for areas that receive less than 20 inches of annual rainfall. Inspection frequency can be reduced to one per month if: 1) the site is temporarily stabilized, 2) runoff is unlikely due to winter conditions (site is covered with snow, ice, or the ground is frozen, or 3) during seasonal arid and semi-arid periods (areas with an average rainfall of 20 inches or less). Conduct a minimum of one site inspection every seven calendar days where the mean annual rainfall equals 20 inches or more. The area of inspection includes, but is not limited to, disturbed areas that have not been finally stabilized, areas used for storage of materials, locations where vehicles enter or exit the site, and all of the erosion and sediment controls that are included in the SWPPP. Monitor rainfall with a rain gauge accurate to the nearest 0.5 inches of rain.

Document the inspections on forms provided in the SWPPP. Be consistent with the State Water Quality Control Board inspection forms, and sign according to the requirements of the SWPPP and the General Permit. Retain inspection forms onsite in the SWPPP notebook throughout the construction period.

Revisions to the SWPPP may be necessary during construction to make improvements or to respond to unforeseen conditions noted during construction or site inspections. For that purpose, specify in the SWPPP the mechanism whereby revisions may be proposed by the Contractor or the CO and incorporated into the plan, including review and approval of minor changes. Jointly approve and sign each revision to the SWPPP before implementation. Implement approved modifications within 7 calendar days following the date of the inspection when deficiencies or necessary corrections were first noted.

107.02 Protection and Restoration of Property and Landscape. Add to the end of the second paragraph:

Remove and salvage the USGS Brass Cap Benchmark (WR68/1943) located on the existing box culvert over Washington Creek. Return this Benchmark to the CO.

Delete the sixth paragraph and substitute the following:

Before beginning work in an area, contact the local Utility Locator Service, at the phone number shown in the plans, to have all utilities located. Protect utilities from construction operations. Cooperate with utility owners to expedite the relocation or adjustment of their utilities to minimize interruption of service, duplication of work, and delays.

Add the following:

The locations of the utilities shown in the plans have been certified to a Quality Level B, with spot locations certified to a Quality Level A according to the CLFHD Utility Data Quality Certification requirements (<http://www.cflhd.gov/design/survey-map-row/>).

Status of Utilities:

	<i>Company</i>	<i>Utility Type</i>	<i>Contact Name</i>	<i>Phone Number</i>	<i>Status 1, 2, 3, or 4</i>
1	SBC	UG Telephone Line	Bill Kramer	(530)477-3231	2
2	PGE	OH Electric Line	Ken Moylan	(530)477-3245	4

Status 1: The utilities are in conflict with the project and REQUIRE relocation by OTHERS DURING construction.

Status 2: The utilities are in conflict with the project and REQUIRE relocation by the Contractor DURING construction.

Status 3: The utilities are in conflict with the project and REQUIRE relocation BEFORE construction.

Status 4: The utilities are located within the project rights of way but require NO relocation.

Add the following:

An existing underground telephone line is located between Sta. 0+00 (SR 20) and 127+00 (switchback #1). Protect the existing telephone line from any damage and adjust as required. SBC will complete the elimination of above ground pedestal boxes and Contractor is responsible to coordinate the work. Where the existing telephone line is encountered, hand excavate to expose, lower, and bury below proposed roadway grade. Fill over adjusted telephone lines with lean concrete backfill as directed by the CO. All work is to be completed as directed by SBC. The pedestal abandonments include Sta. 79+00 to 93+50, 126+00 to 127+00. Contractor to take extra caution at potential locations of conflict including but not limited to culvert and drainage inlets all excavations over existing facilities.

The underground telephone cable is owned by SBC; contact Bill Kramer at (530) 477-3231.

Nevada County is still working to obtain the permanent easement at Station 34+00 left. This will be obtained prior to award.

107.03 Bulletin Board. Add the following:

(g) "Beck" poster, according to FAR Clause 52.222-39 Notification of Employee Rights Concerning Payment of Union Dues or Fees.

107.08 Sanitation, Health, and Safety. Add the following:

Naturally occurring asbestos was identified in the project limits in concentrations greater than 0.25 percent by volume, from approximately MP 1.4 to MP 2.6 (STA 73+00 to STA 137+00). This material is not suitable as an aggregate source for pavement or concrete. Any disturbance to the surface materials (both native and embankment fill) should be avoided wherever possible. Construction activities along the project shall conform to the requirements of the California Air Resources Board (ARB). The ARB has established standards for construction in areas containing naturally occurring asbestos. These requirements are provided in Section 93105 Asbestos Airborne Toxic Control Measure for Construction, Grading, Quarrying and Surface Mining Operations.

107.10 Environmental Protection. Delete the text and substitute the following:

(a) Spills of Petroleum Products or Hazardous Materials. Properly clean up, mitigate, and remedy, if necessary, all spills of petroleum products, hazardous materials, or other chemical or biological products released from construction, fleet, or other support vehicles, or stationary sources. Respond in accordance with federal, state, and local regulations.

Immediately report to the CO any spill of petroleum products or a hazardous material. Report the spill to the appropriate federal, state, and local authorities, if the spill is a reportable quantity.

(b) Water pollution. Do not operate mechanized equipment or discharge or otherwise place any material within the wetted perimeter of any waters of the U.S. within the scope of the Clean Water Act (33 USC § 1251 et seq.). This includes wetlands unless authorized by a permit issued by the U.S. Army Corps of Engineers according to 33 USC § 1344, and, if required, by any State agency having jurisdiction over the discharge of material into the waters of the U.S. In the event of an unauthorized discharge:

- (1) Immediately prevent further contamination;
- (2) Immediately notify appropriate authorities; and
- (3) Mitigate damages as required.

Comply with the terms and conditions of any permits that are issued for the performance of work within the wetted perimeter of the waters of the U.S.

Separate work areas, including material sources, by the use of a dike or other suitable barrier that prevents sediment, petroleum products, chemicals, or other liquid or solid material from entering the waters of the U.S. Use care in constructing and removing the barriers to avoid any discharge of material into, or the siltation of, the water. Remove and properly dispose of the sediment or other material collected by the barrier.

(c) Vehicles and equipment. All vehicles and equipment entering the project area must be clean of noxious weeds and free from oil leaks and are subject to inspection. Wash all construction equipment to thoroughly remove all dirt, plant, and other foreign material prior to entering the project. Particular attention must be shown to the under carriage and any surface where soil

containing exotic seeds may exist. These efforts are critical to prevent the introduction and establishment of non-native plant species into the project area. Make arrangements for the CO to inspect each piece of equipment before entering the project. The CO will maintain records of inspections. Equipment found operating on the project that has not been inspected, or has oil leaks will be shut down and subject to citation.

In general, when gasoline, diesel fuel, antifreeze, hydraulic fluid or any other chemical contained within the vehicle is released to the pavement or ground, proper corrective, clean-up, and safety actions specified in the SWPPP must be immediately implemented. All vehicles with load rating of 2 tons or greater should carry, at minimum, enough absorbent materials to effectively immobilize the total volume of fluids contained within the vehicle.

Repair oil leaks immediately on discovery. Do not use equipment that is leaking. Have oil pans and absorbent material in place prior to beginning repair work. Have the "on scene" capability of catching and absorbing leaks or spillages of petroleum products including antifreeze from breakdowns or repair actions with approved absorbent materials. Keep a supply of acceptable absorbent materials at the job site in the event of spills, as defined in the SWPPP. Sand or soil are not approved absorbent materials.

Use oil pans and absorbent materials to prevent leaks, spills and draining petroleum fluids from falling onto bare ground and paved surfaces during servicing of equipment. Dig up soils contaminated with such fluids, place in appropriate safety containers, and dispose of according to state and/or federal regulations.

(d) Environmental Clearances.

(1) Contractor-Selected, Non-Commercial Areas. Contractor-selected, non-commercial areas include, but are not limited to, material sources, disposal sites, waste areas, haul roads, and staging areas. (A commercial source is a current operating concern, which has in the recent past provided same-type materials or services). These requirements do not apply for areas identified by the FHWA as having previously received clearance.

Prior to construction activities in Contractor-selected, non-commercial areas, provide the following to the CO and the FHWA Environmental Section (12300 West Dakota Avenue, Lakewood, CO 80228/Fax 720-963-3610):

(a) A report with documentation, according to the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation, to determine if prehistoric or historic buildings, structures, sites, objects, or districts listed or eligible for listing in the National Register of Historic Places (NRHP) are present and if they will be affected by the proposed activity. Include information identifying the location, total land area, and type of activity proposed. The FHWA will review this documentation. The FHWA will coordinate with the State Historic Preservation Officer (SHPO) and other parties, which will require the following time frames:

- (1) Coordination on a “no effect” determination may require 30 days or longer.
- (2) Coordination on eligibility and affects may require 45 days or longer.
- (3) Coordination on mitigation of adverse effects may require 60 days or longer.

(b) Written documentation that such activities will not affect any “Waters of the U.S.” as defined by the U.S. Army Corps of Engineers. Provide documentation by an individual capable of performing wetland delineations according to the 1987 Corps of Engineers’ manual. Documentation of effects to wetlands or other Waters of the U.S. will be submitted to the CO and to the FHWA Environmental section. If wetlands are affected, coordination with the Corps of Engineers may require 45 days or longer.

(c) Written documentation that such activities will not affect any species protected under the Endangered Species Act (ESA). Provide documentation prepared by a biological specialist. The written documentation will include a “no effect,” a “may affect-is not likely to adversely affect,” or a “may affect-is likely to adversely affect,” determination according to Section 7 of the Endangered Species Act. Submit the documentation to the CO and the FHWA Environmental Section. If the determination is “may affect-is not likely to adversely affect” or “may affect-is likely to adversely affect,” the FHWA will coordinate with the U.S. Fish and Wildlife Service (FWS), which will require the following time frames:

- (1) May affect-is not likely to adversely affect” may require 45 days or longer.
- (2) May affect-is likely to adversely affect” may require 150 days or longer.

Contract time will not be increased due to the submittal and approval process for the above three items.

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

The following Forest Service fire prevention plan involving emergency curtailment of operations is in effect on this project. The CO will order the suspension of burning and other operations when directed to do so by the Forest Service. No adjustment in the contract completion date will be made for partial or total suspensions of burning operations.

Section 108 PROSECUTION AND PROGRESS

108.01 Commencement, Prosecution, and Completion of Work: Add the following:

Limit operations as follows unless granted by written approval from the CO for specific project operations:

- Construction work is permitted between the hours of 6 a.m. and 8 p.m.
- Construct the box culvert at Washington Creek during the low water flow season defined as June 1 to September 30. During the high water flow season (October 1 to May 30) work will not be allowed below the ordinary high water mark.
- Avoid additional disturbance in the serpentine areas to reduce the spread of cheat grass, i.e., use areas that have already been disturbed and lack vegetation.

Perform no work except to maintain traffic control devices, erosion control devices, the roadway driving surface, and to control dust during the listed Federal holidays and surrounding days:

- Memorial Day Weekend: 12:00 Noon Friday to 6:00 am Tuesday.
- Independence Day: 12:00 Noon July 3 to 6:00 am July 5.
If July 4 falls on a weekend, Friday, or Monday, do not work the weekend.
- Labor Day Weekend: 12:00 Noon Friday to 6:00 am Tuesday.
- Thanksgiving: 12:00 Noon Wednesday to 6:00 am Monday.
- Christmas/New Years Holiday: 12:00 Noon December 23 to 6:00 am January 2.
If December 23 or January 1 falls on a Monday, do not work the adjacent weekend and do not work on December 23. If January 1 falls on a Friday, do not work the weekend.

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

Exemptions to scheduled days off may be granted by written approval from the CO for specific project operations and/or for periods of limited duration.

A Notice to Proceed must be issued before commencement of any work. **All construction work must be completed by November 25, 2009.**

~~During extended periods of unanticipated work shutdowns, such as severe weather and/or holidays, there will be no delays to public traffic and the roadway will be open to two-lane traffic with a minimum width of 24 feet.~~

If a winter shutdown is required, there will be no delays to public traffic and the roadway will be open to two-lane traffic with a minimum width of 24 feet. If a winter shutdown is required, complete all preparation activities by November 1. These activities include patching all damaged pavement and installing temporary and permanent erosion control devices. All existing surfacing within the project limits damaged by construction activities must be patched

or repaired prior to a winter shutdown or by November 1 at no cost to the Government, if a winter shutdown is anticipated. Repair and patch all damaged pavement according to Section 417 to provide a maintainable temporary roadway surface during the winter shutdown.

Alternate one-way traffic operations are required for the reconstruction locations at Sta. 79+00 to 94+00, Sta. 126+15 to 129+45, and Sta. 216+98 to 220+62. Temporary traffic signal systems (two each) are included in the contract to provide maintenance of traffic in these locations. The Contractor may elect to use one or two systems dependent upon their proposed construction sequencing. Two temporary traffic signal systems are included for the option to work on more than one location at a time.

All existing surfacing within the project limits damaged by construction activities must be patched or repaired at no cost to the Government. These activities include installing temporary and permanent erosion control devices. Repair and patch all damaged pavement according to Section 417 to provide a maintainable temporary roadway surface.

Section 109 MEASUREMENT AND PAYMENT

109.02 Measurement Terms and Definitions.

(m) Square yard. Delete the text and substitute the following:

9 square feet. Measure on a plane parallel to the surface being measured. No deductions from the area computation will be made for individual fixtures having an area of 9 square feet or less. Do not measure overlaps.

109.08 Progress Payments.

(b) Closing date and invoice submittal date. Delete the last sentence and substitute the following:

Submit invoices to the designated billing office by the 7th day after the closing date. Invoices received by the designated billing office after the 16th day following the closing date will not be accepted for payment processing that month. Include late, unprocessed invoice submittals in the following month's invoice.

(c) Invoice Requirements Add the following:

(9) As required by the American Recovery and Reinvestment Act of 2009 (ARRA), provide data and information related to labor utilization for the prime contractor as well as any and all lower tier subcontracts used in connection with the work. ~~The description of required information and the related forms will be provided by the CO.~~ Use form ARRA 109-1 to report this information. This form can be found at our webpage at:

<http://www.cflhd.gov/procurement/construction/reference-links.cfm>

Initial information is to be provided within 15 days of contract award. Follow-up and recurring reports will be due with each monthly invoice. The monthly progress payment will not be made until the required ARRA information and data has been received and is current.

(e) Processing progress payment requests.

(1) Proper invoices. Delete the title and text and substitute the following:

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

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

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

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

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

(2) Defective invoices. Delete the title and text and substitute the following:

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

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

(b) Defective invoices. If the invoice does not meet the requirements of Subsection 109.08(d), the invoice will be deemed defective, the Contractor so notified according to FAR Clause 52.232-27(a)(2), and no progress payment will be made that month. Correct the deficiencies and resubmit the invoice the following month.

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

(f) Partial payments. Add the following after the first paragraph:

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

Section 152 CONSTRUCTION SURVEY AND STAKING

Construction Requirements

152.02 General. Delete the first paragraph and substitute the following:

The Government will furnish to the Contractor one copy of each of the following information:

- 3D coordinates and offset distance from centerline for subgrade and surface course finishing stakes at 50-foot intervals and miscellaneous intermediate stations for the following station ranges:
 - Sta. 13+25 to 19+00, Roadway widening section
 - Sta. 79+00 to 94+00, Reconstruction and realignment section
 - Sta. 125+00 to 130+00, Roadway reconstruction
 - Sta. 216+00 to 221+00, Washington Creek box culvert and roadway reconstruction
 - Sta. 247+50 to 255+00, Roadway realignment section

- Slope stake books containing centerline grade and slope staking information at 50-foot station intervals and miscellaneous intermediate stations for the following station ranges:
 - Sta. 13+25 to 19+00, Roadway widening section
 - Sta. 79+00 to 94+00, Reconstruction and realignment section
 - Sta. 125+00 to 130+00, Roadway reconstruction
 - Sta. 216+00 to 221+00, Washington Creek box culvert and roadway reconstruction
 - Sta. 247+50 to 255+00, Roadway realignment section

- Furnish water to the Government-provided field laboratory which is clear and free of oil, acid, rust, alkali, sugar, and vegetable substances. Furnish 120/240-volt, 60-cycle, single-phase current adequate to operate all of the Government field laboratory facilities at all times as required by the CO. Supply enough power to support a 200 amp service panel. Equip the power supply with a regulator that limits the voltage of the power furnished to the laboratory to not less than 220 volts and not more than 240 volts.
- All equipment provided by the Government and replaced by the Contractor will remain with the laboratory and will become the property of the Government.
- Use of the laboratory is limited to testing materials in connection with this contract.

154.03B Field Laboratory (Contractor-Furnished). If the Government-furnished field laboratory alternative for Bid Item 15401-0000 is not utilized, furnish a laboratory equipped with all test equipment necessary to satisfy the requirements of the contract.

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

Ensure test equipment has been checked, calibrated, standardized and/or otherwise verified in accordance with AASHTO and ASTM standards by an individual qualified to do this work.

Ensure mobile laboratories receive an equipment inspection after the laboratory has been moved to its permanent location on the project site and anytime it is moved thereafter. Inspect equipment within 45 days of actual use in project testing and at least once a year thereafter. Do not use equipment that has not been inspected or is found to be deficient. Mark deficient equipment and it take out-of-service until it is repaired or replaced and shown by subsequent inspection to perform as required. Maintain records documenting these inspections in the laboratory. Provide certification(s) stating the equipment conforms to testing requirements and provide evidence of current inspection.

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

Section 155 SCHEDULES FOR CONSTRUCTION CONTRACTS

Construction Requirements

155.03 Bar Chart Method (BCM). Delete the text and substitute the following:

Bar Chart Method schedule will not be allowed.

155.05 Written Narrative. Add the following:

(j) List anticipated monthly and cumulative contract earnings (including, for schedule updates, any contract modifications) for each month from the beginning of construction operations through the completion of the work. Calculate and list each month's anticipated earnings through the close of business on the date provided by the CO as the cut-off date for monthly project pay estimates.

155.06 Schedule Updates. Delete the second paragraph and substitute the following:

Submit 3 copies of an updated construction schedule for acceptance at least every month and a minimum of 7 days prior to the estimate close date or when: ...

Section 156 PUBLIC TRAFFIC

Construction Requirements

156.03 Accommodating Traffic During Work. Delete the last two sentences of the first paragraph and substitute the following:

Submit situation-specific traffic control implementation drawings and alternate traffic control proposals according to Subsection 104.03 for acceptance at least 14 days before intended use.

156.04 Maintaining Roadways During Work.

(a) Add the following:

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

Add the following:

Provide immediate access through the project to all emergency vehicles including fire-fighting equipment in the event of a forest fire. Be prepared, at all times, to immediately halt construction operations and restore the roadway such that emergency vehicles may pass through the project.

156.06 Limitations on Construction Operations.

(c) Delete the first sentence and substitute the following:

For alternate one-way traffic control, provide minimum lane widths as stated in the phasing plans (12 feet minimum) as directed by the CO. For two-way traffic, provide a minimum roadway width of 22 feet.

design and construction provided for under the contract may be used in lieu of certifications. Provide the names and relevant experience of all personnel. Furnish supporting tools and equipment (e.g., calculator, computer, and software, and appropriate and commonly-used drafting tools for the assigned task).

All calculations, notes, and supporting documentation become the property of the government upon completion of the work.

623.05 Acceptance. Additional surveying services will be evaluated under Section 152.

Hired technical services will be evaluated under Subsections 106.02 and 106.04

Measurement

623.06 Measure the Section 623 items listed in the bid schedule according to Subsection 109.02 and the following as applicable.

Round portions of an hour up to the nearest half hour. Measure time in excess of 40 hours per week at the same rate as the first 40 hours.

For surveying services, the minimum field survey crew is two persons. Measure surveying service by the crew hour. Do not measure time spent in making preparations, performing calculations, plotting cross-sections and other data, and processing computer data, and other efforts necessary to successfully accomplish the ordered survey services.

Do not measure time for worker's transportation time to and from the project site.

Measure office technical services by the hour as ordered by the CO for performing calculations, plotting cross-sections and other data, and processing computer data.

Payment

623.07 The accepted quantities will be paid at the contract price per unit of measurement for the Section 623 pay item listed in the bid schedule. Payment will be full compensation for the work prescribed in this section. See Subsection 109.05.

Section 633 PERMANENT TRAFFIC CONTROL

Material

633.02 Add the following:

Meet the requirements of the latest Caltrans Specifications and Standard Drawings for Markers and Delineators for Caltrans Class 1, Type E for all delineators.

Section 634
PERMANENT PAVEMENT MARKINGS

Construction Requirements

634.03 General. Delete the last sentence of the first paragraph and substitute the following:

Within pavement reconstruction areas and curve widening locations: For simple curve widening locations (widening only on one side) shift the centerline striping location such that the centerline stripe is midway between the normal edge of shoulders. The shift from the staked centerline will be towards the widened lane one-half the total curve widening specified for the given station as shown in the plans.

Within all other areas: Place the centerline stripe along the existing striped centerline, as recorded under Subsection 152.03(n).

Add the following:

The Contractor may use, upon approval, permanent pavement marking materials and layouts meeting current state approved standards that are practiced in the region of the project in lieu of contract requirements, if the state standards meet the requirements of the MUTCD. The material substituted must be equivalent to that required in the specifications. Obtain the CO's approval before incorporating into the work. When requesting approval, furnish to the CO the applicable state standards (specifications and drawings), manufacturer's name and address, supplier's certification indicating material is produced to state approved specifications, pricing data showing cost difference for labor and materials, and any other available information describing application and performance. When directed, submit samples for approval at the Contractor's expense. Within 14 days, the CO will inform the Contractor as to the acceptance of the request. The unit price for the contract item(s) will be reduced to reflect any cost savings.

Use permanent pavement marking materials and layouts in conformance with current State of California Department of Transportation approved standards that are practiced in the region of the project. The work shall consist of furnishing and placing retroreflective pavement markers and constructing pavement recesses at the locations shown on the plans or where directed by the Engineer.

The markers shall conform to the shape, dimensions and tolerances, be of the type and color shown on the plans, or meet the most current State approved standard specifications. Pavement recesses shall be Type 2 as required by the plans and shall be constructed to the shape and dimensions shown on the plans or meet the most current State approved standard specifications. Certificates of compliance shall be furnished for pavement markers.

Section 635
TEMPORARY TRAFFIC CONTROL

635.07 Construction Signs. Add the following to the end of the first paragraph:

Provide the same type of sheeting on all post-mounted construction signs that pertain to the project.

635.13 Temporary Pavement Markings and Delineation. Delete the text and substitute the following:

Before opening a pavement surface to traffic, remove all conflicting pavement markings by sandblasting or other methods that do not damage the surface or texture of the pavement. Make removal pattern uneven so it does not perpetuate the outline of the removed pavement markings. Lightly coat sandblasted or removal areas on asphalt surfaces with emulsified asphalt.

Provide pavement markings or delineation and signing according to Section 156, the MUTCD, and project plans. Install and maintain temporary pavement markings that are neat, crack free, true, straight, and unbroken.

For seasonal suspensions, apply permanent pavement marking pattern with temporary traffic paint.

Install permanent pavement markings within 14 days. If permanent pavement markings are not placed within 14 days, provide, at no cost to the contract, additional temporary delineation equivalent to the permanent pavement marking pattern required by the contract. Do not apply temporary traffic paint to the final surface.

For temporary pavement markings, use preformed retroreflective tape, traffic paint, or temporary raised pavement markers as follows:

(a) Temporary Markings. For temporary pavement markings, use preformed retroreflective tape, traffic paint, or temporary raised pavement markers as indicated in the plans and as follows:

(1) Preformed retroreflective tape. Apply according to the manufacturer's instructions. Remove all loose temporary preformed retroreflective tape before placing additional pavement layers.

(2) Temporary traffic paint. Apply temporary traffic paint at a 15-mil minimum wet film thickness (0.9 gallons per 100 square feet). Immediately apply type 1 glass beads on the paint at a minimum rate of 6 pounds per gallon of paint.

(3) Raised pavement markers. When chip seals, slurry seals, or tack coats are used after marker placement, protect the markers with an approved protective cover, which is removed after the asphalt material is sprayed.

Remove all temporary pavement markers before placing additional pavement layers. Remove all temporary pavement markings from the surface course before placing permanent pavement markings.

APPENDIX A

Bid Bonds and Bidder's Information

APPENDIX B

404 Permit
(approval pending receipt of
401 Water Quality Certification)



DEPARTMENT OF THE ARMY
U.S. ARMY ENGINEER DISTRICT, SACRAMENTO
CORPS OF ENGINEERS
1325 J STREET
SACRAMENTO CA 95814-2922

REPLY TO
ATTENTION OF

March 3, 2009

Regulatory Division (SPK-2006-00687)

Chris Longley
Federal Highway Administration
Central Federal Lands Highway Division
12300 W Dakota Avenue, Suite 380
Lakewood, CO 80228

Dear Mr. Longley:

We are responding to your February 17, 2009, request for a Department of the Army permit for the Washington Road (Forest Highway 123) Improvement Project. This approximately 145-acre project involves activities, including discharges of dredged or fill material, in waters of the United States to rehabilitate and reconstruct a portion of Washington Road, also known as Forest Highway 123, and its associated culverts. The site is located in Sections 12, 13, 24, and 25, Township 17 North, Range 10 East, MDB&M, Latitude 39.336850° North, Longitude 120.802985° West, near the Town of Washington, Nevada County, California.

Based on the information you provided, the proposed activity in approximately 0.052 acres of seasonal wetlands and intermittent and perennial streams is authorized by Nationwide Permit Number 23. However, until Section 401 Water Quality Certification for the activity has been issued or waived, our authorization is denied without prejudice. Once you have provided us evidence of water quality certification, the activity is authorized and the work may proceed subject to the conditions of certification and the Nationwide Permit. Your work must comply with the general terms and conditions listed on the enclosed Nationwide Permit information sheets, and the following special conditions:

1. All terms and conditions of the Section 401 Water Quality Certification are expressly incorporated as conditions of this permit.
2. To mitigate for the loss of 0.010 acre of seasonal wetlands and 0.042 acre of other waters, you shall submit a check to this office in the amount of \$7,800.00 (0.010 acre x \$150,000/acre + 0.042 acre x \$150,000/acre) payable to the National Fish and Wildlife Foundation (NFWF). Prior to proceeding with any activity otherwise authorized by this permit, you must receive written notification from the Corps that the check has been deposited in NFWF's Sacramento District Wetlands Conservation Fund.
3. You shall have a biologist, who is familiar with seasonal wetlands and intermittent and perennial streams, monitor all construction activities within 100 feet of the project boundary. The monitor shall ensure no unauthorized activities occur within the project boundary during project implementation.
4. To provide a permanent record of the completed work, you shall provide two complete sets of as-builts of the completed work to the Corps of Engineers. The as-builts shall indicate changes made from the original plans in indelible red ink. These as-builts shall be provided to this office no later than 60 days after the completion of construction.

5. To document pre- and post-project construction conditions, you shall submit pre-construction photos of the project site prior to project implementation and post-construction photos of the project site within 30 days after project completion.

6. You must allow representatives from the Corps of Engineers to inspect the authorized activity and any mitigation, preservation, or avoidance areas at any time deemed necessary to ensure that it is being or has been accomplished in accordance with the terms and conditions of your permit Nationwide Permit.

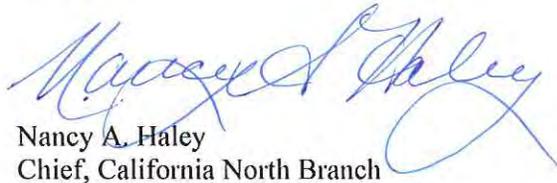
You must sign the enclosed Compliance Certification and return it to this office within 30 days after completion of the authorized work.

This verification is valid for two years from the date of this letter or until the Nationwide Permit is modified, reissued, or revoked, whichever comes first. Failure to comply with the General Conditions of this Nationwide Permit, or the project-specific Special Conditions of this authorization, may result in the suspension or revocation of your authorization.

We appreciate your feedback. At your earliest convenience, please tell us how we are doing by completing our customer survey at http://www.spk.usace.army.mil/customer_survey.html. Your passcode is "conigliaro".

Please refer to identification number SPK-2006-00687 in any correspondence concerning this project. If you have any questions, please contact Erin Hess at our California North Branch, 1325 J Street, Room 1480, Sacramento, California, 95814-2922, email erin.e.hess@usace.army.mil, or telephone (916) 557-6740. You may also use our website: www.spk.usace.army.mil/regulatory.html.

Sincerely,



Nancy A. Haley
Chief, California North Branch

Enclosure(s)

Copy furnished without enclosure(s)

Daryl Lamb, Federal Highway Administration, Central Federal Lands Highway Division, 12300 W
Dakota Avenue, Suite 380, Lakewood, CO 80228

Daniel Liddle, PBS&J, 4601 DTC Boulevard, Suite 700, Denver, Colorado 80237

William Marshall, Storm Water and Water Quality Certification Unit, California Regional Water Quality
Control Board, Central Valley Region, 11020 Sun Center Drive #200, Rancho Cordova, California
95670-6114

Kent Smith, California Department of Fish and Game, Region 2, 1701 Nimbus Drive, Rancho Cordova,
California 95670-4599

U.S. Fish and Wildlife Service, Endangered Species Division, 2800 Cottage Way, Suite W2605,
Sacramento, California 95825-3901

Rodney R. McInnis, Acting Regional Administrator, National Marine Fisheries Service, 650 Capital Mall,
Suite 8-300, Sacramento, California 95814-4706

COMPLIANCE CERTIFICATION

Permit File Number: SPK-2006-00687

Nationwide Permit Number: 23

Permittee: Chris Longley
Federal Highway Administration
Central Federal Lands Highway Division
12300 W Dakota Avenue, Suite 380
Lakewood, CO 80228

County: Nevada

Date of Verification: March 3, 2009

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

U.S. Army Corps of Engineers
Regulatory Division
California North Branch
1325 J Street, Room 1480,
Sacramento, California, 95814-2922
FAX (916) 557-6877

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

* * * * *

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

Signature of Permittee

Date



U S Army Corps of
Engineers
Sacramento District

Nationwide Permit Summary

33 CFR Part 330; Issuance of Nationwide Permits – March 19, 2007 includes corrections of May 8, 2007 and addition of regional conditions December 2007

23. Approved Categorical Exclusions. Activities undertaken, assisted, authorized, regulated, funded, or financed, in whole or in part, by another Federal agency or department where:

(a) That agency or department has determined, pursuant to the Council on Environmental Quality's implementing regulations for the National Environmental Policy Act (40 CFR part 1500 et seq.), that the activity is categorically excluded from environmental documentation, because it is included within a category of actions which neither individually nor cumulatively have a significant effect on the human environment; and

(b) The Office of the Chief of Engineers (Attn: CECW-CO) has concurred with that agency's or department's determination that the activity is categorically excluded and approved the activity for authorization under NWP 23.

The Office of the Chief of Engineers may require additional conditions, including pre-construction notification, for authorization of an agency's categorical exclusions under this NWP.

Notification: Certain categorical exclusions approved for authorization under this NWP require the permittee to submit a pre-construction notification to the district engineer prior to commencing the activity (see general condition 27). The activities that require pre-construction notification are listed in the appropriate Regulatory Guidance Letters. (Sections 10 and 404)

Note: The agency or department may submit an application for an activity believed to be categorically excluded to the Office of the Chief of Engineers (Attn: CECW-CO). Prior to approval for authorization under this NWP of any agency's activity, the Office of the Chief of Engineers will solicit public comment. As of the date of issuance of this NWP, agencies with approved categorical exclusions are the: Bureau of Reclamation, Federal Highway Administration, and U.S. Coast Guard. Activities approved for authorization under this NWP as of the date of this notice are found in Corps Regulatory Guidance Letter 05-07, which is available at:

<http://www.usace.army.mil/inet/functions/cw/cecwo/reg/rglindx.htm>. Any future approved categorical exclusions will be announced in Regulatory Guidance Letters and posted on this same web site.

A. Nationwide Permit General Conditions

Note: To qualify for NWP authorization, the prospective permittee must comply with the following general conditions, as appropriate, 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.

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 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. Culverts placed in streams must be installed to maintain low flow conditions.

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.

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 and storm water management activities, 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.

13. Removal of Temporary Fills. 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.

15. Wild and Scenic Rivers. No 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. Information on Wild and Scenic Rivers may be obtained from the appropriate Federal land management agency in the area (e.g., National Park Service, U.S. Forest Service, Bureau of Land Management, U.S. Fish and Wildlife Service).

16. 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.

17. Endangered Species.

(a) No activity is authorized under any NWP which is likely to 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 destroy or adversely modify the critical habitat of such species. No

activity is authorized under any NWP which "may affect" a listed species or critical habitat, unless Section 7 consultation addressing the effects of the proposed activity has been completed.

(b) Federal agencies should follow their own procedures for complying with the requirements of the ESA. Federal permittees must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements.

(c) Non-federal permittees shall notify the district engineer if any listed species or designated critical habitat might be affected or is in the vicinity of the project, or if the project is located in designated critical habitat, 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 designated critical habitat, the pre-construction notification must include the name(s) of the endangered or threatened species that may be affected by the proposed work or that utilize the designated critical habitat that may be affected by the proposed work. 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. In cases where the non-Federal applicant has identified listed species or critical habitat that might be affected or is in the vicinity of the project, and has so notified the Corps, the applicant shall not begin work until the Corps has provided notification the proposed activities will have "no effect" on listed species or critical habitat, or until Section 7 consultation has been completed.

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

(e) Authorization of an activity by a 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 U.S. FWS or the NMFS, both lethal and non-lethal "takes" of protected species are in violation of the ESA. Information on the location of threatened and endangered species and their critical habitat can be obtained directly from the offices of the U.S. FWS and NMFS or their world wide Web pages at <http://www.fws.gov/> and <http://www.noaa.gov/fisheries.html> respectively.

18. Historic Properties.

(a) In cases where the district engineer determines that the activity may affect properties listed, or eligible for listing, in the National Register of Historic Places, the activity is not authorized, 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. Federal permittees must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements.

(c) Non-federal permittees must submit a pre-construction notification to the district engineer if the authorized activity may have the potential to cause effects to any historic properties listed, 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 may be affected by the proposed work 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 resources can be sought from the State Historic Preservation Officer or Tribal Historic Preservation Officer, as appropriate, and the National Register of Historic Places (see 33 CFR 330.4(g)). The district engineer shall make a reasonable and good faith effort to carry out appropriate identification efforts, which may include background research, consultation, oral history interviews, sample field investigation, and field survey. Based on the information submitted and these efforts, the district engineer shall determine whether the proposed activity has the potential to cause an effect on the historic properties. Where the non-Federal applicant has identified historic properties which the activity may have the potential to cause effects and 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 or that consultation under Section 106 of the NHPA has been completed.

(d) 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. Section 106 consultation is not required when the Corps determines that the activity does not have the potential to cause effects on historic properties (see 36 CFR §800.3(a)). If NHPA section 106 consultation is required and will occur, the district engineer will notify the non-Federal applicant that he or she cannot begin work until Section 106 consultation is completed.

(e) Prospective permittees should be aware that section 110k of the NHPA (16 U.S.C. 470h-2(k)) 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, explaining 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.

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

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

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

20 Mitigation. The district engineer will consider the following factors when determining appropriate and practicable mitigation necessary to ensure that adverse effects on the aquatic environment are 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) will be required to the extent necessary to ensure that the adverse effects to the aquatic environment are 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 some other form of mitigation would be more environmentally appropriate and provides a project-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 minimal adverse effects on the

aquatic environment. Since the likelihood of success is greater and the impacts to potentially valuable uplands are reduced, wetland restoration should be the first compensatory mitigation option considered.

(d) For losses of streams or other open waters that require pre-construction notification, the district engineer may require compensatory mitigation, such as stream restoration, to ensure that the activity results in minimal adverse effects on the aquatic environment.

(e) Compensatory mitigation will not be used to increase the acreage losses allowed by the acreage limits of the NWP. For example, if an NWP has an acreage limit of 1/2 acre, it cannot be used to authorize any project 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 a project already meeting the established acreage limits also satisfies the minimal impact requirement associated with the NWPs.

(f) Compensatory mitigation plans for projects in or near streams or other open waters will normally include a requirement for the establishment, maintenance, and legal protection (e.g., conservation easements) of riparian areas next to open waters. In some cases, riparian areas may be the only compensatory mitigation required. Riparian areas should consist of native species. 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. 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 compensatory mitigation, the district engineer may waive or reduce the requirement to provide wetland compensatory mitigation for wetland losses.

(g) Permittees may propose the use of mitigation banks, in-lieu fee arrangements or separate activity-specific compensatory mitigation. In all cases, the mitigation provisions will specify the party responsible for accomplishing and/or complying with the mitigation plan.

(h) Where certain functions and services of waters of the United States are permanently adversely affected, such as the conversion of a forested or scrub-shrub wetland to a herbaceous wetland in a permanently maintained utility line right-of-way, mitigation may be required to reduce the adverse effects of the project to the minimal level.

21. Water Quality. Where States and authorized Tribes, or EPA where applicable, have not previously certified compliance of an NWP with CWA Section 401, individual 401 Water Quality Certification must be obtained or waived (see 33 CFR

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

22. 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)). The district engineer or a State may require additional measures to ensure that the authorized activity is consistent with state coastal zone management requirements.

23. 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 section 401 Water Quality Certification, or by the state in its Coastal Zone Management Act consistency determination.

24. Use of Multiple Nationwide Permits. The use of more than one NWP for a single and complete project is prohibited, except when the acreage loss of waters of the United States authorized by the NWPs does not 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.

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

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

(Transferee)

(Date)

26. Compliance Certification. Each permittee who received an NWP verification from the Corps must submit a signed certification regarding the completed work and any required mitigation. The certification form must be forwarded by the Corps with the NWP verification letter and will include:

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

(b) A statement that any required mitigation was completed in accordance with the permit conditions; and

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

27. 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, as a general rule, 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) Forty-five 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 17 that listed species or critical habitat might be affected or in the vicinity of the project, or to notify the Corps pursuant to general condition 18 that the activity may have the potential to cause effects to historic properties, the permittee cannot begin the activity until receiving written notification from the Corps that 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 (see 33 CFR 330.4(g)) is completed. Also, work cannot begin under NWPs 21, 49, or 50 until the permittee has received written approval from the Corps. If the proposed activity requires a written waiver to exceed specified limits of an NWP, the permittee cannot 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 project;

(3) A description of the proposed project; the project's purpose; direct and indirect adverse environmental effects the project would cause; 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. The description should be sufficiently detailed to allow the district engineer to determine that the adverse effects of the project will be minimal and to determine the need for compensatory mitigation. Sketches should be provided when necessary to show that the activity complies with the terms of the NWP. (Sketches usually clarify the project and when provided result in a quicker decision.);

(4) The PCN must include a delineation of special aquatic sites and other waters of the United States 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 of the United States, but there may be a delay if the Corps does the delineation, especially if the project site is large or contains many waters of the United States. Furthermore, the 45 day period will not start until the delineation has been submitted to or completed by the Corps, where appropriate;

(5) If the proposed activity will result in the loss of greater than 1/10 acre of wetlands and a PCN is required, the prospective permittee must submit a statement describing how the mitigation requirement will be satisfied. As an alternative, the prospective permittee may submit a conceptual or detailed mitigation plan.

(6) If any listed species or designated critical habitat might be affected or is in the vicinity of the project, or if the project is located in designated critical habitat, for non-Federal applicants the PCN must include the name(s) of those endangered or threatened species that might be affected by the proposed work or utilize the designated critical habitat that may be affected by the proposed work. Federal applicants must provide documentation demonstrating compliance with the Endangered Species Act; and

(7) For an activity that may affect a historic property listed on, determined to be eligible for listing on, or potentially eligible for listing on, the National Register of Historic Places, for non-Federal applicants the PCN must state which historic property may be affected by the proposed work or include a vicinity map indicating the location of the historic

property. Federal applicants must provide documentation demonstrating compliance with Section 106 of the National Historic Preservation Act.

(c) Form of Pre-Construction Notification: The standard individual permit application form (Form ENG 4345) may be used, but the completed application form must clearly indicate that it is a PCN and must include all of the information required in paragraphs (b)(1) through (7) of this general condition. A letter containing the required information may also be used.

(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 NWP's and the need for mitigation to reduce the project's adverse environmental effects to a minimal level.

(2) For all NWP 48 activities requiring pre-construction notification and for other NWP activities requiring pre-construction notification to the district engineer that result in the loss of greater than 1/2-acre of waters of the United States, the district engineer will immediately provide (e.g., via facsimile transmission, overnight mail, or other expeditious manner) a copy of the PCN to the appropriate Federal or state offices (U.S. FWS, state natural resource or water quality agency, EPA, State Historic Preservation Officer (SHPO) or Tribal Historic Preservation Office (THPO), and, if appropriate, the NMFS). With the exception of NWP 37, these agencies will then have 10 calendar days from the date the material is transmitted to telephone or fax the district engineer notice that they intend to provide substantive, site-specific comments. 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, but 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.

(3) 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.

(4) Applicants are encouraged to provide the Corps multiple copies of pre-construction notifications to expedite agency coordination.

(5) For NWP 48 activities that require reporting, the district engineer will provide a copy of each report within 10 calendar days of receipt to the appropriate regional office of the NMFS.

(e) 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 the proposed activity requires a PCN and will result in a loss of greater than 1/10 acre of wetlands, the prospective permittee should submit a mitigation proposal with the PCN. Applicants may also propose compensatory mitigation for projects with smaller impacts. The district engineer will consider any proposed compensatory mitigation the applicant has included in the proposal in determining whether the net adverse environmental effects to the aquatic environment of the proposed work are 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 effects on the aquatic environment are minimal, after considering mitigation, the district engineer will notify the permittee and include any conditions the district engineer deems necessary. The district engineer must approve any compensatory mitigation proposal before the permittee commences work. 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 plan within 45 calendar days of receiving a complete PCN and determine whether the proposed mitigation would ensure no more than minimal adverse effects on the aquatic environment. If the net adverse effects of the project on the aquatic environment (after consideration of the compensatory mitigation proposal) are determined by the district engineer to be minimal, the district engineer will provide a timely written response to the applicant. The response will state that the project can proceed under the terms and conditions of the NWP.

If the district engineer determines that the adverse effects of the proposed work are more than minimal, then the district engineer will notify the applicant either: (1) That the project does not qualify for authorization under the NWP and instruct the applicant on the procedures to seek authorization under an individual permit; (2) that the project is authorized under the NWP subject to the applicant's submission of a mitigation plan that would reduce the adverse effects on the aquatic environment to the minimal level; or (3) that the project 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 effects occur to the aquatic environment, the activity will be authorized within the 45-day PCN period. The authorization will include the necessary conceptual or specific mitigation or a requirement that the applicant

submit a mitigation plan that would reduce the adverse effects on the aquatic environment to the minimal level. When mitigation is required, no work in waters of the United States may occur until the district engineer has approved a specific mitigation plan.

(a) **28. 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.

B. Regional Conditions:

I. Sacramento District (All States, except Colorado)

1. When pre-construction notification (PCN) is required, the prospective permittee shall notify the Sacramento District in accordance with General Condition 27 using either the South Pacific Division Preconstruction Notification (PCN) Checklist or a completed application form (ENG Form 4345). In addition, the PCN shall include:

a. A written statement explaining how the activity has been designed to avoid and minimize adverse effects, both temporary and permanent, to waters of the United States;

b. Drawings, including plan and cross-section views, clearly depicting the location, size and dimensions of the proposed activity. The drawings shall contain a title block, legend and scale, amount (in cubic yards) and size (in acreage) of fill in Corps jurisdiction, including both permanent and temporary fills/structures. The ordinary high water mark or, if tidal waters, the high tide line should be shown (in feet), based on National Geodetic Vertical Datum (NGVD) or other appropriate referenced elevation; and

c. Pre-project color photographs of the project site taken from designated locations documented on the plan drawing.

2. The permittee shall complete compensatory mitigation required by special conditions of the NWP verification before or concurrent with construction of the authorized activity, except when specifically determined to be impracticable by the Sacramento District. When project mitigation involves use of a mitigation bank or in-lieu fee program, payment shall be made before commencing construction.

3. The permittee shall record the NWP verification with the Registrar of Deeds or other appropriate official charged with the responsibility for maintaining records of title to or interest in real property against areas (1) designated to be preserved as part of mitigation for authorized impacts, including any associated covenants or restrictions, or (2) where structures such as boat ramps or docks, marinas, piers, and permanently moored vessels will be constructed in or adjacent to navigable waters (Section 10 and Section 404). The recordation shall also include a map showing the surveyed location of the authorized structure and any associated areas preserved to minimize or compensate for project impacts.

4. The permittee shall place wetlands, other aquatic areas, and any vegetative buffers preserved as part of mitigation for impacts into a separate "preserve" parcel prior to discharging

dredged or fill material into waters of the United States, except where specifically determined to be impracticable by the Sacramento District. Permanent legal protection shall be established for all preserve parcels, following Sacramento District approval of the legal instrument.

5. The permittee shall allow Corps representatives to inspect the authorized activity and any mitigation areas at any time deemed necessary to determine compliance with the terms and conditions of the NWP verification. The permittee will be notified in advance of an inspection.

6. For NWPs 29, 39, 40, 42, 43, 44, and 46, requests to waive the 300 linear foot limitation for intermittent or ephemeral waters of the U.S. shall include an evaluation of functions and services provided by the waterbody taking into account the watershed, measures to be implemented to avoid and minimize impacts, other measures to avoid and minimize that were found to be impracticable, and a mitigation plan for offsetting impacts.

7. Road crossings shall be designed to ensure fish passage, especially for anadromous fisheries. Permittees shall employ bridge designs that span the stream or river, utilize pier or pile supported structures, or involve large bottomless culverts with a natural streambed, where the substrate and streamflow conditions approximate existing channel conditions. Approach fills in waters of the United States below the ordinary high water mark are not authorized under the NWPs, except where avoidance has specifically been determined to be impracticable by the Sacramento District.

8. For NWP 12, clay blocks, bentonite, or other suitable material shall be used to seal the trench to prevent the utility line from draining waters of the United States, including wetlands.

9. For NWP 13, bank stabilization shall include the use of vegetation or other biotechnical design to the maximum extent practicable. Activities involving hard-armoring of the bank toe or slope requires submission of a PCN per General Condition 27.

10. For NWP 23, the PCN shall include a copy of the signed Categorical Exclusion document and final agency determinations regarding compliance with Section 7 of the Endangered Species Act, Essential Fish Habitat under the Magnusson-Stevens Act, and Section 106 of the National Historic Preservation Act.

11. For NWP 44, the discharge shall not cause the loss of more than 300 linear feet of streambed. For intermittent and ephemeral streams, the 300 linear foot limit may be waived in writing by the Sacramento District. This NWP does not authorize discharges in waters of the United States supporting anadromous fisheries.

12. For NWPs 29 and 39, channelization or relocation of intermittent or perennial drainage, is not authorized, except when, as determined by the Sacramento District, the relocation would result in a net increase in functions of the aquatic ecosystem within the watershed.

13. For NWP 33, temporary fills for construction access in waters of the United States supporting fisheries shall be accomplished with clean, washed spawning quality gravels where practicable as determined by the Sacramento District, in consultation with appropriate federal and state wildlife agencies.

14. For NWP 46, the discharge shall not cause the loss of greater than 0.5 acres of waters of the United States or the loss of more than 300 linear feet of ditch, unless this 300 foot linear foot limit is waived in writing by the Sacramento District.

15. For NWPs 29, 39, 40, 42, and 43, upland vegetated buffers shall be established and maintained in perpetuity, to the maximum extent practicable, next to all preserved open waters, streams and wetlands including created, restored, enhanced or preserved waters of the U.S., consistent with General Condition 20. Except in unusual circumstances, vegetated buffers shall be at least 50 feet in width.

16. All NWPs except 3, 6, 20, 27, 32, 38, and 47, are revoked for activities in histosols and fens and in wetlands contiguous with fens. Fens are defined as slope wetlands with a histic epipedon that are hydrologically supported by groundwater. Fens are normally saturated throughout the growing season, although they may not be during drought conditions. For NWPs 3, 6, 20, 27, 32, and 38, prospective permittees shall submit a PCN to the Sacramento District in accordance with General Condition 27.

17. For all NWPs, when activities are proposed within 100 feet of the point of groundwater discharge of a natural spring, prospective permittees shall submit a PCN to the Sacramento District in accordance with General Condition 27. A spring source is defined as any location where ground water emanates from a point in the ground. For purposes of this condition, springs do not include seeps or other discharges which lack a defined channel.

II. California Only

1. In the Lake Tahoe Basin, all NWPs are revoked. Activities in this area shall be authorized under Regional General Permit 16 or through an individual permit.

2. In the Primary and Secondary Zones of the Legal Delta, NWPs 29 and 39 are revoked. New development activities in the Legal Delta will be reviewed through the Corps' standard permit process.

III. Nevada Only

1. In the Lake Tahoe Basin, all NWPs are revoked. Activities in this area shall be authorized under Regional General Permit 16 or through an individual permit.

IV. Utah Only

1. For all NWPs, except NWP 47, prospective permittees shall submit a PCN in accordance with General Condition 27 for any activity, in waters of the United States, below 4217 feet mean sea level (msl) adjacent to the Great Salt Lake and below 4500 feet msl adjacent to Utah Lake.

2. A PCN is required for all bank stabilization activities in a perennial stream that would affect more than 100 linear feet of stream

3. For NWP 27, facilities for controlling stormwater runoff, construction of water parks such as kayak courses, and use of grout or concrete to construct in-stream structures are not authorized. A PCN is required for all projects exceeding 1500 linear feet as measured on the stream thalweg, using in stream structures exceeding 50 cubic yards per structure and/or incorporating grade control structures exceeding 1 foot vertical

drop. For any stream restoration project, the post project stream sinuosity shall be appropriate to the geomorphology of the surrounding area and shall be equal to, or greater than, pre project sinuosity. Sinuosity is defined as the ratio of stream length to project reach length. Structures shall allow the passage of aquatic organisms, recreational water craft or other navigational activities unless specifically waived in writing by the District Engineer.

V. Colorado Only

1. Final Regional Conditions Applicable to Specific Nationwide Permits within Colorado.

a. Nationwide Permit Nos. 12 and 14, Utility Line Activities and Linear Transportation Projects. In the Colorado River Basin, utility line and road activities crossing perennial water or special aquatic sites require notification to the District Engineer in accordance with General Condition 27 (Pre-Construction Notification).

b. Nationwide Permit No. 13 Bank Stabilization. In Colorado, bank stabilization activities necessary for erosion prevention in streams that average less than 20 feet in width (measured between the ordinary high water marks) are limited to the placement of no more than 1/4 cubic yard of suitable fill* material per running foot below the plane of the ordinary high water mark. Activities greater than 1/4 cubic yard may be authorized if the permittee notifies the District Engineer in accordance with General Condition 27 (Pre-Construction Notification) and the Corps determines the adverse environmental effects are minimal. [* See (g) for definition of Suitable Fill]

c. Nationwide Permit No. 27 Aquatic Habitat Restoration, Establishment, and Enhancement Activities.

(1) For activities that include a fishery enhancement component, the Corps will send the Pre-Construction Notification to the Colorado Division of Wildlife (CDOW) for review. In accordance with General Condition 27 (Pre-Construction Notification), CDOW will have 10 days from the receipt of Corps notification to indicate that they will be commenting on the proposed project. CDOW will then have an additional 15 days after the initial 10-day period to provide those comments. If CDOW raises concerns, the applicant may either modify their plan, in coordination with CDOW, or apply for a standard individual permit.

(2) For activities involving the length of a stream, the post-project stream sinuosity will not be significantly reduced, unless it is demonstrated that the reduction in sinuosity is consistent with the natural morphological evolution of the stream (sinuosity is the ratio of stream length to project reach length).

(3) Structures will allow the upstream and downstream passage of aquatic organisms, including fish native to the reach, as well as recreational water craft or other navigational activities, unless specifically waived in writing by the District Engineer. The use of grout and/or concrete in

building structures is not authorized by this nationwide permit.

(4) The construction of water parks (i.e., kayak courses) and flood control projects are not authorized by this nationwide permit.

d. Nationwide Permits Nos. 29 and 39; Residential Developments and Commercial and Institutional Developments. A copy of the existing FEMA/locally-approved floodplain map must be submitted with the Pre-Construction Notification. When reviewing proposed developments, the Corps will utilize the most accurate and reliable FEMA/locally-approved pre-project floodplain mapping, not post-project floodplain mapping based on a CLOMR or LOMR. However, the Corps will accept revisions to existing floodplain mapping if the revisions resolve inaccuracies in the original floodplain mapping and if the revisions accurately reflect pre-project conditions.

2. Final Regional Conditions Applicable to All Nationwide Permits within Colorado

e. Removal of Temporary Fills. General Condition 13 (Removal of Temporary Fills) is amended by adding the following: When temporary fills are placed in wetlands in Colorado, a horizontal marker (i.e. fabric, certified weed-free straw, etc.) must be used to delineate the existing ground elevation of wetlands that will be temporarily filled during construction.

f. Spawning Areas. General Condition 3 (Spawning Areas) is amended by adding the following: In Colorado, all Designated Critical Resource Waters (see enclosure 1) are considered important spawning areas. Therefore, In accordance with General Condition 19 (Designated Critical Resource Waters), the discharge of dredged or fill material is not authorized by the following nationwide permits in these waters: NWP 7, 12, 14, 16, 17, 21, 29, 31, 35, 39, 40, 42, 43, 44, 49, and 50. In addition, in accordance with General Condition 27 (Pre-Construction Notification), notification to the District Engineer is required for use of the following nationwide permits in these waters: NWP 3, 8, 10, 13, 15, 18, 19, 22, 23, 25, 27, 28, 30, 33, 34, 36, 37 and 38".

g. Suitable Fill. In Colorado, use of broken concrete as fill material requires notification to the District Engineer in accordance with General Condition 27 (Pre-Construction Notification). Permittees must demonstrate that soft engineering methods utilizing native or non-manmade materials are not practicable (with respect to cost, existing technology, and logistics), before broken concrete is allowed as suitable fill. Use of broken concrete with exposed rebar is prohibited in perennial waters and special aquatic sites.

h. Invasive Aquatic Species. General Condition 11 is amended by adding the following condition for work in perennial or intermittent waters of the United States: If heavy equipment is used for the subject project that was previously working in another stream, river, lake, pond, or wetland within 10 days of initiating work, one the

following procedures is necessary to prevent the spread of New Zealand Mud Snails and other aquatic hitchhikers:

(1) Remove all mud and debris from equipment (tracks, turrets, buckets, drags, teeth, etc.) and keep the equipment dry for 10 days. OR

(2) Remove all mud and debris from Equipment (tracks, turrets, buckets, drags, teeth, etc.) and spray/soak equipment with either a 1:1 solution of Formula 409 Household Cleaner and water, or a solution of Sparquat 256 (5 ounces Sparquat per gallon of water). Treated equipment must be kept moist for at least 10 minutes. OR

(3) Remove all mud and debris from equipment (tracks, turrets, buckets, drags, teeth, etc.) and spray/soak equipment with water greater than 120 degrees F for at least 10 minutes.

3. Final Regional Conditions for Revocation/Special Notification Specific to Certain Geographic Areas

i. Fens: All Nationwide permits, except permit Nos. 3, 6, 20, 27, 32, 38 and 47, are revoked in fens and wetlands adjacent to fens. Use of nationwide permit Nos. 3, 20, 27 and 38, requires notification to the District Engineer, in accordance with General Condition 27 (Pre-Construction Notification), and the permittee may not begin the activity until the Corps determines the adverse environmental effects are minimal. The following defines a fen:

Fen soils (histosols) are normally saturated throughout the growing season, although they may not be during drought conditions. The primary source of hydrology for fens is groundwater. Histosols are defined in accordance with the U.S. Department of Agriculture, Natural Resources Conservation Service publications on Keys to Soil Taxonomy and Field Indicators of Hydric Soils in the United States (<http://soils.usda.gov/technical/classification/taxonomy>).

j. Springs: Within the state of Colorado, all NWP, except permit 47 (original 'C'), require preconstruction notification pursuant to General Condition 27 for discharges of dredged or fill material within 100 feet of the point of groundwater discharge of natural springs. A spring source is defined as any location where groundwater emanates from a point in the ground. For purposes of this regional condition, springs do not include seeps or other discharges which do not have a defined channel.

4. Additional Information

The following provides additional information regarding minimization of impacts and compliance with existing general Conditions:

a. Permittees are reminded of the existing General Condition No. 6 which prohibits the use of unsuitable material. Organic debris, building waste, asphalt, car bodies, and trash are not suitable material. Also, General Condition 12 requires appropriate erosion and sediment controls (i.e. all fills must be permanently stabilized to

prevent erosion and siltation into waters and wetlands at the earliest practicable date). Streambed material or other small aggregate material placed along a bank as stabilization will not meet General Condition 12. Also, use of erosion control mats that contain plastic netting may not meet General Condition 12 if deemed harmful to wildlife.

b. Designated Critical Resource Waters in Colorado. In Colorado, a list of designated Critical Resource Waters has been published in accordance with General Condition 19 (Designated Critical Resource Waters). This list will be published on the Albuquerque District Regulatory home page (<http://www.spa.usace.army.mil/reg/>)

c. Federally-Listed Threatened and Endangered Species. General condition 17 requires that non-federal permittees notify the District Engineer if any listed species or designated critical habitat might be affected or is in the vicinity of the project. Information on such species, to include occurrence by county in Colorado, may be found at the following U.S. Fish and Wildlife Service website:
http://www.fws.gov/mountain%2Dprairie/endspp/name_county_search.htm

C. 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.

D. 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, establishment (creation), enhancement, or preservation of aquatic resources for the purpose of compensating for 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.

Discharge: The term "discharge" means any discharge of dredged or fill material.

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.

Ephemeral stream: An ephemeral stream has flowing water only during, and for a short duration after, precipitation events in a typical year. Ephemeral stream beds are located above the water table year-round. Groundwater is not a source of water for the stream. Runoff from rainfall is the primary source of water for stream flow.

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.

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 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.

Intermittent stream: An intermittent stream has flowing water during certain times of the year, when groundwater provides water for stream flow. During dry periods, intermittent streams may not have flowing water. Runoff from rainfall is a supplemental source of water for stream flow.

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. 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 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. The loss of stream bed includes the linear feet of stream bed that is filled or excavated. 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 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.

Non-tidal wetland: A non-tidal wetland is a wetland that is not subject to the ebb and flow of tidal waters. The definition of a wetland can be found at 33 CFR 328.3(b). 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 NWP, 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 standing or flowing 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: An ordinary high water mark is a line on the shore established by the fluctuations of water and indicated by physical characteristics, or by other appropriate means that consider the characteristics of the surrounding areas (see 33 CFR 328.3(e)).

Perennial stream: A perennial stream has flowing water year-round during a typical year. The water table is located above the stream bed for most of the year. Groundwater is the primary source of water for stream flow. Runoff from rainfall is a supplemental source of water for stream flow.

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.

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 adjacent to streams, lakes, and estuarine-marine shorelines. Riparian areas are transitional between terrestrial and aquatic ecosystems, through which surface and subsurface hydrology connects waterbodies with their adjacent uplands. Riparian areas provide a variety of ecological functions and services and help improve or maintain local water quality. (See general condition 20.)

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 project: 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 project must have independent utility (see definition). For linear projects, a "single and complete project" is 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 waterbody several times at separate and distant locations, each crossing is considered a single and complete project. 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.

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 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 wetland (i.e., water of the United States) that is inundated by tidal waters. The definitions of a wetland and tidal waters can be found at 33 CFR 328.3(b) and 33 CFR 328.3(f), respectively. 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, which is defined at 33 CFR 328.3(d).

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 jurisdictional water of the United States that, during a year with normal patterns of precipitation, has water flowing or standing above ground to the extent that an ordinary high water mark (OHWM) or other indicators of jurisdiction can be determined, as well as any wetland area (see 33 CFR 328.3(b)). If a jurisdictional wetland is adjacent--meaning bordering, contiguous, or neighboring--to a jurisdictional waterbody displaying an OHWM or other indicators of jurisdiction, that waterbody and its adjacent wetlands are considered together as a single aquatic unit (see 33 CFR 328.4(c)(2)). Examples of "waterbodies" include streams, rivers, lakes, ponds, and wetlands.