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“Standard and Supplemental Specifications for Road and Bridge Construction 2020 V2.3 Edition” can be found at the following link:

<https://www.mdt.mt.gov/other/webdata/external/const/specifications/2020/SPEC-BOOK/2020-SPEC-BOOK-V2.3.pdf>

**Specification Revisions
September 9, 2021**

The Department has revisions to 19 Standard Specifications and updated Section 208 ENVIRONMENTAL PROTECTION.

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NO CHANGES TO THE PROPOSED DRAFT FINAL ACCEPTANCE

101.03 DEFINITIONS

Stormwater Construction General Permit

Will be hereby referred to as the General Permit.

CONTRACT

The written agreement between the Department and the Contractor detailing the obligations of the parties for the performance of the prescribed work.

The contract includes the proposal; ~~contract form~~ signed contract award form; contract bond; specifications; general and detail plans; Detailed Drawings; Notice to Proceed; Materials Manual; and all change orders, extra work orders, including authorized contract time extensions, that are required to complete the project.

REASON: The name of the form has been changed.

COMMENTS:

NO CHANGES TO THE PROPOSED DRAFT
FINAL ACCEPTANCE

~~107.11 ENVIRONMENTAL PROTECTION~~

~~107.12 FOREST PROTECTION~~

~~107.23 DISCOVERY OF UNDERGROUND STORAGE TANKS~~

~~107.24 DISCOVERY AND REMOVAL OF UNKNOWN HAZARDOUS MATERIALS~~

REASON: SECTION 208 has been rewritten for ENVIRONMENTAL PROTECTION and the above Subsections are now under 208.

COMMENTS:

**NO CHANGES TO THE PROPOSED DRAFT
FINAL ACCEPTANCE**

105.16 CLAIMS FOR ADJUSTMENT AND DISPUTES

The Department may, at any time during the claims process, provide an equitable adjustment to resolve the claim in accordance with Subsection 109.04.3.

REASON: To resolve a claim if both parties agree.

COMMENTS:

NO CHANGES TO THE PROPOSED DRAFT FINAL ACCEPTANCE

105.16.1 Notice of Claim

Submit a notice of claim using the Department's Notice of Claim form [MDT-CON-105-16-1A](#) no later than ~~the next 3~~ business days after the day of disagreements that are to be the subject of a claim for additional compensation, time extension, contract change, or other remedy. Provide full details in the written notice why additional compensation, time extension, contract change, or other remedy is warranted. Attach to the notice of claim all documentation showing the history of the disagreement.

REASON: Give the Contractor more time to submit the notice of claim.

COMMENTS: Add language in the standard specs referencing partnering, utilized to settle disputes, then timing starts. Wants partnering added to specs and not buried in memos.

Wants partnering process and dispute resolution not to overlap ability/timeline to file claim.

NO CHANGES TO THE PROPOSED DRAFT

FINAL ACCEPTANCE

105.16.2 Claim Process

If an agreeable resolution is not reached within 14 calendar days of the written notice, the Contractor may submit a Certified Claim ~~using by completing~~ the Certified Claim form [MDT-CON-105-16-2](#) to the Project Manager no more than ~~7-14~~ calendar days after receipt of the Project Manager's response. The form is available from the Project Manager or the Department's website. Include all Claim Cost Records to date with the Certified Claim. ~~Submit electronic. Provide~~ copies to the DCE and the CES Engineer of the Engineering Division. The Project Manager will continue to attempt to resolve the disagreement after the Certified Claim is submitted.

Detail the following, if applicable, in the Certified Claim:

- A. Summary.** (label page 1.1 through page 1.X) Include a detailed, factual statement of the claim for additional compensation and contract time, if any, with necessary dates and locations of work involved in the claim. Also include detailed facts supporting the Contractor's position.
- B. Proof of Notice.** (label page 2.1 through page 2.X) Submit notice of claim with all attachments that was furnished to the Department. Include the date when the written notice was given.
- C. Supporting Documents.** (label page 3.1 through page 3.X) Furnish copies of the contract specifications that support the Contractor's claim.
- D. Theory of Entitlement.** (label page 4.1 through page 4.X) Include a narrative of how or why the specific contract specifications support the claim.
- E. Itemized Lists.** (label page 5.1 through page 5.X) Provide an itemized list of claimed damages that resulted from the event with a narrative of the theories and records and documents used to arrive at the value of the damages.
- F. Time Requests.** (label page 6.1 through page 6.X) Provide additional contract time requests if the claim is for a combination of additional compensation and contract time. Submit a copy of the schedule that was in effect when the event occurred and a detailed narrative which explains how the event impacted contract time. In addition, if the Department-caused delay is claimed, provide the following:
 - 1. Include the specific days and dates under claim;
 - 2. Provide detailed facts about the specific acts or omissions of the Department that allegedly caused the delay, and the specific reasons why the resulting delay was unreasonable; and
 - 3. Provide a schedule evaluation that accurately describes the impacts of the claimed delay.
- G. Expense Records.** (label page 7.1 through page 7.X) Submit copies of actual expense records. Include documents that contain the detailed records which support and total to the exact amount of additional compensation requested. Include the information and calculations necessary to support that amount. At a minimum, provide the following:
 - 1. Direct materials.

2. Direct equipment. The rate claimed for each piece of equipment not to exceed the actual cost. For each piece of equipment, include a detailed description of the equipment and attachments, specific days and dates of use or standby, and specific hours of use or standby;

3. Direct labor; and

4. Other categories as specified by the Contractor or the Agency.

H. Supporting Records. (label page 8.1 through page 8.X) Provide additional supporting records and documents including copies of, or excerpts from the following:

1. Any documents that support the claim, such as manuals standard to the industry and used by the Contractor; and

2. Any daily reports or diaries related to the event, photographs or media that help explain the issue or event.

I. Certification. (label page 9.1 through 9.X) Provide a certified statement, signed by a representative authorized to execute change orders, by the Contractor, subcontractor, supplier, or entity originating the claim as to the validity of facts and costs

J. Lower Tier Claim. (label page 10.1 through 10.X) If the claim includes work done or costs incurred by any subcontractors, suppliers, or any entity other than the Contractor, the following are required:

1. Copies of the Contractor's, subcontractor's, supplier's and entity's (at all tiers above the level of which the claim originates) separate evaluation of entitlement;

2. Copies of the Contractor's, subcontractor's, supplier's and entity's (at all tiers above the level of which the claim originates) independent verification and evaluation of the amount of damages sought; and

3. An authorized representative to execute change orders on behalf of the Contractor, Subcontractor, Supplier and Entity (at all tiers above the level of which the claim originates).

If the Project Manager determines that additional information, records, or documentation is needed to allow proper evaluation of the claim submittal, the Project Manager will request the information, records, or documentation. Submit the requested information to the Project Manager within 14 calendar days.

~~A. Reasons for each requested remedy, referenced to the applicable contract provisions;~~

~~B. Objections to the Project Manager's response; and~~

~~C. Basis for and amount of any additional compensation, extension of time, contract change, or other remedy, including any potential solutions.~~

If the claim includes requests for delay compensation, follow all procedures in Subsection [108.07.6](#).

REASON: Currently a Standard Special Provision with the following exception: The Contractor will have more time to submit a certified claim.

COMMENTS:

PROPOSED DRAFT

106.09 DOMESTIC MATERIALS

Material inspection of pre-cast products ~~and~~; prefabricated steel products, ~~or prefabrication plants will may~~ take place at the point of manufacture. Material inspection of prestressed concrete items and prefabricated bridges and steel bridge members included in subsections 1, 2, and 3 of section 556.03.1 will take place at the point of manufacture. Pre-cast concrete plants and prefabricated steel plants may be inspected by the Department or may be required to maintain a third-party certification, or both. The Department reserves the right to determine the level of inspection when not otherwise stated in these specifications or the contract. When the Department inspects these products or facilities, T the District Materials Lab, Helena Materials Bureau, or Department representative will inspect the manufacturing of these items and verify that the fabricator is maintaining supporting documentation.

All pre-cast products containing steel and prefabricated steel products delivered to the project must be accompanied by signed documentation from the end product manufacturer (pre-cast plant or prefabrication plant) which states that all steel used in the product has been produced by manufacturing processes, including coating of steel or iron, that have occurred entirely in the United States (melted/recycled and manufactured in the U.S.) melted/recycled and manufactured entirely in the United States and they have maintained supporting documentation. When products or facilities have been inspected by the Department as described above, Original mill test reports from steel fabricators or suppliers are not required to be submitted to the Project Manager for pre-cast and prefabricated steel products, however aAll supporting documentation (original mill test reports and certification of all manufacturing processes, including coatings) must be maintained by the fabricator and made available to the Department as requested. When products or facilities have not been inspected by the Department as described above, submit documentation as required by Section MT 601 of the Montana Materials Manual. Submit a form 406 with the appropriate level of signed documentation by the end product manufacturer or prefabrication plant that all steel incorporated has been produced by manufacturing processes, including coating of steel or iron, that have occurred entirely in the United States (melted/recycled and manufactured in the U.S.) melted/recycled and manufactured entirely in the United States. All supporting documentation (original mill test reports) must be maintained by the fabricator and made available to the Department as requested.

REASON: Spec Update

COMMENTS: Make minor wording change to be consistent with Spec Book.

FINAL ACCEPTANCE

106.09 DOMESTIC MATERIALS

Material inspection of pre-cast products and; prefabricated steel products, ~~or prefabrication plants will~~ may take place at the point of manufacture. Material inspection of prestressed concrete items and prefabricated bridges and steel bridge members included in Subsections 556.03.1 (1), (2), and (3) 1, 2, and 3 of section 556.03.1 will take place at the point of manufacture. Pre-cast concrete plants and prefabricated steel plants may be inspected by the Department or may be required to maintain a third-party certification, or both. The Department reserves the right to determine the level of inspection when not otherwise stated in these specifications or the contract. When the Department inspects these products or facilities, ~~the~~ District Materials Lab, Helena Materials Bureau, ~~or~~ Department representative will inspect the manufacturing of these items and verify that the fabricator is maintaining supporting documentation.

All pre-cast products containing steel and prefabricated steel products delivered to the project must be accompanied by signed documentation from the end product manufacturer (pre-cast plant or prefabrication plant) which states that all steel used in the product has been produced by manufacturing processes, including coating of steel or iron, that have occurred entirely in the United States (melted/recycled and manufactured in the U.S.) melted/recycled and manufactured entirely in the United States and they have maintained supporting documentation. When products or facilities have been inspected by the Department as described above, ~~Original~~ mill test reports from steel fabricators or suppliers are not required to be submitted to the Project Manager for pre-cast and prefabricated steel products, however aAll supporting documentation (original mill test reports and certification of all manufacturing processes, including coatings) must be maintained by the fabricator and made available to the Department as requested. When products or facilities have not been inspected by the Department as described above, submit documentation as required by Section MT 601 of the Montana Materials Manual. Submit a form 406 with the appropriate level of signed documentation by the end product manufacturer ~~or prefabrication plant~~ that all steel incorporated has been produced by manufacturing processes, including coating of steel or iron, that have occurred entirely in the United States (melted/recycled and manufactured in the U.S.) melted/recycled and manufactured entirely in the United States. All supporting documentation (original mill test reports) ~~must be maintained by the fabricator and made available to the Department as requested.~~

PROPOSED DRAFT

107.13.1 Insurance on All Contracts

Maintain commercial general liability insurance, and Owner's and Contractor's liability insurance in full force, ~~from the effective date stipulated in the Notice to Proceed until Commission acceptance of the project, unless written approval is given by the CES Engineer to cancel the policy.~~ Maintain Owner's and Contractor's liability insurance in full force from the ~~effective contract award date stipulated in the Notice to Proceed until the Final Acceptance (form MDT-CON-105-17-2) is approved by the Department~~ within twenty calendar days after award until the Final Acceptance (form MDT-CON-105-17-2) is approved by the Department, unless written approval is given by the CES Engineer to cancel the policy.

REASON: Update

COMMENTS: General Liability must be carried until the Commission accepts the contract and Owners & Contractor Protective Liability must be carried until the Final Acceptance of the project.

FINAL ACCEPTANCE

107.13.1 Insurance on All Contracts

Maintain commercial general liability insurance in full force, effective within 20 calendar days after award ~~from the effective date stipulated in the Notice to Proceed~~ until Commission acceptance of the project, unless written approval is given by the CES Engineer to cancel the policy. Maintain Owner's and Contractor's liability insurance in full force effective within 20 calendar days after award ~~from the effective date stipulated in the Notice to Proceed~~ until the Final Acceptance (form [MDT-CON-105-17-2](#)) is approved by the Department.

PROPOSED DRAFT

555.03.3 Placing and Fastening

TABLE 555-2

~~MINIMUM BAR EMBEDMENT~~ Rebar Cover

Bar Location	Embedment
Top of Slab	2$\frac{3}{8}$ <u>1</u> / ₂ inches (60 mm)
Bottom of Slab	1-inch (25 mm)
Stirrups and Ties	1½ inches (38 mm)
Footing and Pier Shafts	3 inches (75 mm)

REASON: Match LRFD Bridge Deck Design Memo

COMMENTS: Change Embedment to Cover in the Table.

FINAL ACCEPTANCE

TABLE 555-2

~~MINIMUM BAR EMBEDMENT~~ Rebar Cover

Bar Location	Embedment <u>Cover</u>
Top of Slab	2$\frac{3}{8}$ <u>1</u> / ₂ inches (60 mm)
Bottom of Slab	1-inch (25 mm)
Stirrups and Ties	1½ inches (38 mm)
Footing and Pier Shafts	3 inches (75 mm)

**NO CHANGES TO THE PROPOSED DRAFT
FINAL ACCEPTANCE**

607.03.4 Constructing Barbed and Woven Wire Fence

Treat cut or trimmed areas on posts and braces with 3 applications of ACZA-or copper naphthenate (CuN) solution containing a minimum of 2% copper metal in accordance with AWPA M4.

REASON: Allow the use of Ammoniacal Copper Zinc Arsenate (ACZA) as a field treatment.

COMMENTS:

PROPOSED DRAFT

607.04.1 New Fence

New fence is measured by the foot (m). The measurements are made on the fence line along the top wire or rail or along a line parallel thereto, from end post to end post including wing fences to structures. Gates, cattle guards, or other openings are measured separately. Double sections of fence erected across depressions are measured for payment. All other temporary closures are included in the measurement of temporary fence. ~~Temporary fence materials ordered by the Contractor but not used in the work will not be measured or paid for. Temporary fence removal is not measured separately.~~

607.04.9 Temporary Fence

Temporary fence is measured by the foot (m). The measurements are made on the fence line along the top wire or along a line parallel thereto, from end post to end post, Temporary braces, panels, gates, and deadmen are not measured for payment. Temporary fence materials ordered by the Contractor but not used in the work will not be measured or paid for. Temporary fence removal is not measured separately.

607.05 BASIS OF PAYMENT

Payment for the completed and accepted quantities is made under the following:

<u>Pay Item</u>	<u>Pay Unit</u>
Deadman	Each
Dozer Operation	Hour (see Subsection 210.05)
Fence Panels	Each
Gates	Foot (m)
New Fence	Foot (m)
New Wood or Metal Posts	Each
Remove and Reset Fence	Foot (m)
Remove Fence	Foot (m)
<u>Temporary Fence</u>	<u>Foot (m)</u>

REASON: Clarification

COMMENTS: Make minor wording change to be consistent with Spec Book.

FINAL ACCEPTANCE

607.04.1 New Fence

New fence is measured by the foot (m). The measurements are made on the fence line along the top wire or rail or along a line parallel thereto, from end post to end post including wing fences to structures. Gates, cattle guards, or other openings are measured separately. Double sections of fence erected across depressions are measured for payment. All other temporary closures are included in the measurement of temporary fence. ~~Temporary fence materials ordered by the Contractor but not used in the work will not be measured or paid for. Temporary fence removal is not measured separately.~~

607.04.9 Temporary Fence

Temporary fence is measured by the foot (m). The measurements are made on the fence line along the top wire or along a line parallel thereto, from end post to end post, Temporary braces, panels, gates, and deadmen are not measured for payment. Temporary fence materials ordered by the Contractor but not used in the work will not be measured for payment. Temporary fence removal is not measured for payment.

607.05 BASIS OF PAYMENT

Payment for the completed and accepted quantities is made under the following:

<u>Pay Item</u>	<u>Pay Unit</u>
Deadman	Each
Dozer Operation	Hour (see Subsection 210.05)
Fence Panels	Each
Gates	Foot (m)
New Fence	Foot (m)
New Wood or Metal Posts	Each
Remove and Reset Fence	Foot (m)
Remove Fence	Foot (m)
<u>Temporary Fence</u>	<u>Foot (m)</u>

NO CHANGES TO THE PROPOSED DRAFT FINAL ACCEPTANCE

617.03.11 Service and Control Assembly

Treat injuries, cuts, and holes in poles after treatment with three applications of ACZA or copper naphthenate (CuN) solution containing a minimum 2% copper metal in accordance with AWPA M4.

REASON: Allow the use of Ammoniacal Copper Zinc Arsenate (ACZA) as a field treatment.

COMMENTS:

**NO CHANGES TO THE PROPOSED DRAFT
FINAL ACCEPTANCE**

703.14 CLASS 4 TREATED TIMBER POLES

Furnish ANSI Class 4 poles as specified in the contract. Pressure-treat poles with ACZA, or CCA, a 5% solution of pentachlorophenol, or copper naphthenate (CuN) in accordance with AWWA Standards and Commodity Specification D and use Category 4A.

REASON: Allow additional wood preservatives to be used

COMMENTS:

**NO CHANGES TO THE PROPOSED DRAFT
FINAL ACCEPTANCE**

706.01 STRUCTURAL TIMBER AND LUMBER

Furnish timbers and lumber being:

- A. Standard sawn Douglas fir, ~~or Larch,~~ or Southern Yellow Pine. Coastal and Intermountain varieties of Douglas Fir are allowed. See additional treatment requirements for Intermountain Douglas Fir in Subsection 706.04.2-

REASON: *Spec Update*

COMMENTS:

NO CHANGES TO THE PROPOSED DRAFT FINAL ACCEPTANCE

706.04.1 Treating

Use one of the following preservatives:

~~1.1.1.1.—Ammoniacal Copper Zinc Arsenate (ACZA) meeting AWPA Standard P225% by weight solution of pentachlorophenol meeting AWPA Standards P35 using solvent meeting AWPA P9 Type A~~

•

~~1.1.1.2.● Chromated Copper Arsenate, Type C (CCA) meeting AWPA Standard P23.~~

• ~~Copper nNaphthenate Solvent Type A (CuN)solution meeting AWPA Standard P36 using solvent meeting AWPA P9 Type A.~~

• 5% by weight solution of Pentachlorophenol Solvent Type A (PCP-A) meeting AWPA Standards P35.

•

Treated timber or lumber to receive paint must permit the paint to adhere to the treated surface without discoloration.

Meet AASHTO M 133 requirements for all preservatives and their sampling and testing methods.

Treat injuries, cuts, and holes in wood after treatment with three applications of ACZA or copper naphthenate solution containing a minimum of 2% copper metal meeting AWPA M4 requirements.

REASON: *Allow additional wood preservatives to be used.*

COMMENTS:

NO CHANGES TO THE PROPOSED DRAFT FINAL ACCEPTANCE

706.04.2 Incising

Incise timber and lumber 3 inches (63 mm actual thickness) thick or greater on all four sides.

Incise timber and lumber less than 3 inches (63 mm actual thickness) thick on the wide faces only, unless otherwise specified. Ensure incision depth and pattern ~~for all material~~ are dense enough to achieve uniform depth of penetration as specified in Section 8 of Commodity Specification A, part 12 of AWPA standard T1.

Incise Intermountain Douglas Fir ~~then and~~ treat to refusal with preservative. Meet and retention requirements ~~in meeting~~ AWPA standards listed in **706.04.1**. Refusal ~~being specified is~~ defined as maintainingas the pressure and temperature ~~being maintained or constant or be~~ increasing pressure and temperature,ed within a range ~~with that is~~ good practice for the material being treated, until the quantity of preservative absorbed in each of any two consecutive half hours in not more than 2% of the amount already injected. 1½-inch (38 mm actual dimension) center-matched material used for flumes, boxes, etc., does not need to be incised.

Ensure incised wood meets the penetration and retention requirements appropriate for the identified Use Category Commodity Specification.

REASON: *Spec Update*

COMMENTS:

NO CHANGES TO THE PROPOSED DRAFT FINAL ACCEPTANCE

706.04.3 Inspection

Wood products will be inspected in accordance with [MT 404](#). ~~W~~Only wood products with worm holes and any staining due to fungus will be inspected in the white. ~~along with the m~~Moisture content of Intermountain Douglas Fir will also be inspected in the white. ~~For inspecting wood in the white~~Provide the Department a minimum of 72 hours advanced notice for inspection in the white. must be given and must beWood products must be traceable from inspection in the white to inspection of the treated product. If stain is present in the wood use only material with blue stain. The correct moisture content for Intermountain Douglas Fir is 22% ± 2% and the method to obtain this moisture content is outlined in the AWWPA standards.

REASON: *Spec Update*

COMMENTS:

**NO CHANGES TO THE PROPOSED DRAFT
FINAL ACCEPTANCE**

712.02.8 Wood Fence Posts and Brace Rails

Treat injuries, cuts, and holes in timber ~~pile-posts~~ after treatment in accordance with Subsection [706.04](#).

REASON:

COMMENTS:

SECTION 208 has been rewritten and now includes the following:

Information previously found in Subsections:

~~107.11 ENVIRONMENTAL PROTECTION~~

~~107.12 FOREST PROTECTION~~

~~107.23 DISCOVERY OF UNDERGROUND STORAGE TANKS~~

~~107.24 DISCOVERY AND REMOVAL OF UNKNOWN HAZARDOUS MATERIALS~~

Information previously found in Special Provisions:

~~Contractor Furnished Borrow Source Requirements For Cwa 404 Permit~~

Contaminated Soils

Montana Floodplain And Floodway Management Act

Migratory Bird Treaty Act Compliance - Structures

Migratory Bird Treaty Act Compliance – Structures-Maintenance

Migratory Bird Treaty Act Compliance -Vegetation Removal

Work In Bear Habitat

AIS Watercraft And Equipment Inspection

Protection Of Storm Water Drainage System And Compliance With Local Permit Requirements

~~Prequalified Stream Restoration Contractors~~

SECTION 208 ENVIRONMENTAL PROTECTION

208.01 GENERAL

Comply with all state, local, tribal, and federal laws and regulations controlling pollution of the environment. ~~Take precautions to P~~prevent pollution of aquatic resources from sediment, fuels, oils, bitumen, chemicals, solid waste, or other harmful materials. ~~Take precautions to P~~prevent pollution of the atmosphere from particulate and gaseous matter.

Do not begin work in areas covered by the permits, authorizations, or notifications until all are received from the regulatory agency. Allow a minimum of 45 calendar days to receive required permits, authorizations, or notifications from the date of the submittal of a complete request, unless a different timeframe is specified by the regulatory agency. The Department is not responsible for delays caused by incomplete or inaccurate submittals by the Contractor.

Obtain and submit to the Project Manager all required environmental permits, authorizations, and notifications necessary for activities relating to construction activities, including those secured for sites outside of the project limits before construction activities start in permitted area. Submit to the Project Manager, within 7 calendar days of sending or receiving, all correspondence to or from regulatory agencies regarding potential noncompliance or violations.

Defend, indemnify, and hold harmless the Department from legal actions or fines resulting from violations of the rules, regulations, permits, authorizations, and notifications due to any Contractor act, omission, neglect, or ~~Contractor~~ misconduct.

208.02 MATERIALS

Use materials meeting contract requirements or approved by the Project Manager if permanent and temporary materials are not specified.

208.03 CONSTRUCTION

208.03.1 Water Pollution Control

- A. General.** Plan, install, inspect, and maintain temporary and permanent water pollution control (i.e., BMPs) to provide economical, effective, and continuous erosion and sediment control, prevent pollution during and after completion of construction activities, and preserve existing aquatic resources. Erosion and sediment control is required on all projects as necessary to minimize damage to the highway and adjacent properties and abate pollution of surface and ground water resources.

Contractor failure to provide erosion, sediment, and water pollution controls may cause the Department to provide the work and deduct those costs from monies due or to become due the Contractor, or otherwise billed to the Contractor. The Department may also stop the work or withhold any payments due until acceptable corrective action is taken.

- B. Spill Prevention and Waste Disposal.** Prevent chemicals, fuels, lubricants, bitumen, raw sewage, and other wastes from entering ~~regulated~~ aquatic resources. Dispose of all wastes, refuse, and discarded materials in accordance with approved methods and applicable rules, laws and regulations for disposal of solid waste.
- C. Protection of Storm Water Drainage Systems.** Protect regulated Small Municipal Separate Storm Sewer Systems (MS4). Contact the local authorities to determine if

additional requirements are in place for construction storm water discharges that would affect the project.

1. Obtain any additional permits, licenses, or permissions ~~that may be~~ required as a result of the local MS4 permit and the applicable Storm Water Management Program.
2. Implement appropriate BMPs to protect existing storm drain inlets, gutter systems, storm sewer, and/or open ditch systems within and adjacent to the project from discharge of contaminants, such as sediment or construction debris.
3. Do not discharge any construction related waters not composed entirely of storm water. Do not discharge washwater, water used for dust suppression, cooling, or curing waters, saw cutting waters, or any other non-storm waters to the MS4.
4. Contact the Project Manager who will coordinate with the Department's DEES if further clarification is required prior to or during construction.

D. Erosion and Sediment Control Measures. Control erosion, sediment, and water pollution during all work and work suspensions. Design, install, and maintain erosion and sediment controls to control stormwater discharges, including both peak flow rates and total stormwater volume, to minimize erosion at outlets and to minimize downstream channel and stream bank erosion.

1. **Temporary Control Measures.** Install BMPs prior to, or concurrently with, soil disturbance activities. When BMP installation is concurrent with the soil disturbance activity, limit the work to an area that can be protected by BMPs no later than the same day the work is performed. Failure to install BMPs within the same day will result in suspension of all work relating to those BMPs.

Maintain all temporary erosion control, sediment control, and other pollution control measures until it is no longer needed or conflicts with the work. If devices that conflict with the work are removed, replace these devices no later than the end of each shift.

Re-grade work sites to match the surrounding terrain after the devices are removed.

Repair or replace damaged, inadequate, non-functioning, or non-conforming devices. Initiate work to fix the problem immediately after discovering the problem. Unless specified differently in permits or authorizations, complete this work as soon as practicable, but no later than 7 calendar days after discovering any deficiencies.

Temporary pollution control measures required due to the Contractor's negligence, carelessness, failure to maintain, or failure to install designed permanent controls in place of temporary controls are at Contractor expense.

2. **Permanent Control Measures.** Install permanent pollution controls concurrently or immediately following work that disturbs natural ground.

E. Inspections. Conduct inspections as specified in the permit. When no permit is required, conduct inspections to evaluate performance and maintenance needs of water pollution controls in accordance with the following schedule unless specified differently in permits or authorizations:

- At least once per month, per site, and

- Within 24 hours of a storm event of 0.25 inches (6.5 mm) or greater.

Use the Department's most current SWPPP Inspection Report when no permit is required. Use the Department's form or another agency's form that conforms to permit requirements when a permit is required. Provide ~~one~~1 copy of the signed inspection report to the Project Manager.

Failure to conduct inspections and submit inspection reports renders the BMPs unacceptable.

Immediately report potential noncompliance in accordance with applicable regulations, guidance, and permit conditions. The Contractor is wholly responsible for all violations including but not limited to those that result during the times when the required monitoring is not conducted, inspection report forms are not submitted, BMPs are ineffective, required maintenance or monitoring of BMPs is not performed.

BMPs will be inspected during construction and during the final inspection to ensure they are installed, maintained, and functioning as required by the contract and permits. BMPs will be inspected as part of the final walk-through to ensure they are adequate, maintained, and functioning properly.

- F. Erosion Control Plan.** MPDES permits are issued by the DEQ for discharges within the state of Montana not including Indian Countries. NPDES permits are issued by the EPA for discharges inside the boundaries of Indian Countries. Some Tribal governments also have NPDES review authority and/or separate permitting authority.

For projects requiring MPDES and/or NPDES General Permit coverage, submit one NOI package and the associated fees for ground disturbance areas within the project limits to the appropriate permitting agency. Use Department furnished blank erosion control plans to complete the SWPPP as required by the General Permit. Provide a copy of the NOI package submitted and confirmation for receipt of a complete NOI package from the permitting agency to the Project Manager prior to conducting any ground disturbance activities.

Be responsible for erosion, sediment, and water pollution control for Contractor furnished material sources, staging areas, plant sites, or any other Contractor caused ground disturbance outside the project limits. Submit a separate NOI package and the associated fees to the permitting agency for ground disturbance areas outside the project limits. Contractor furnished material sources, staging areas, plant sites, or any other Contractor caused ground disturbance outside the project limits, are the Contractor's responsibility and must be submitted under a separate NOI package from the ground disturbance within the project limits. Although these areas are permitted separately, the areas of disturbance are considered cumulative with the project disturbance area when determining the requirement for permit coverage.

Comply with the conditions of the permit. Revise and/or update the SWPPP to reflect current conditions, pollution prevention measures, and installed BMPs in accordance with permit requirements. Submit all changes to the Project Manager.

Do not transfer or terminate the General Permit coverage until the BMPs are inspected and accepted and all records required under the permit, including inspection, and monitoring reports, are furnished to the Project Manager. The Department may

require that certain non-biodegradable BMPs be removed and/or replaced by another type of natural fiber, 100% biodegradable BMP as a condition of permit transfer.

When submitting the MPDES General Permit transfer package/application to the Department, include a check for the permit transfer fee. Make the check for the fee payable to the DEQ.

208.03.2 Aquatic Resource Protection

A. General. ~~Unless permitted or authorized, a~~Avoid all equipment traffic, fill material, staging activities and other disturbances to all aquatic resources. When working above aquatic resources, employ positive means to ~~protect~~prevent all material from entering aquatic resources below.

~~In areas adjacent to aquatic resources; or in areas immediately adjacent to the highway susceptible to sediment transport, conduct construction, staging and paving operations in a manner to prevent materials from entering these areas. Conduct construction, staging and paving operations in a manner to prevent materials from entering areas adjacent to aquatic resources or in area immediately adjacent to the roadway susceptible of sediment transport.~~

Any impacts to these areas and associated consequences, without the proper permitting, are the responsibility of the Contractor. The Contractor must secure the appropriate permits or authorizations prior to working in these areas. If complete avoidance of these areas is not possible, contact the Project Manager who will coordinate the permitting effort with the DEES or the District Biologist ~~or the DEES~~.

Unless authorized with approved permits and authorizations, meet the following requirements:

1. Do not operate mechanized equipment in ~~any~~ regulated aquatic resource, unless authorized in accordance with Subsection 208.03.2(B)
2. Isolate work zones from flowing and standing waters during construction, unless authorized in accordance with Subsection 208.03.2(B)
3. Do not spill or dump material from equipment into regulated aquatic resources.
4. Do not discharge wastewater from washout of concrete related equipment, concrete finishing, saw cutting, wet concrete, hydraulic demolition, etc. into any regulated aquatic resource.
5. Do not place fill or other materials in ~~any~~ regulated aquatic resource unless included in the contract and authorized in accordance with Subsection 208.03.2(B)
6. Locate staging or storage areas at least 50 feet (15.2 m) horizontally from ~~any~~ aquatic resource, top of stream bank, or the highest anticipated water level during the construction period, whichever is furthest from the resource.
7. Store and handle petroleum products, chemicals, cement, and other deleterious materials to prevent their entering regulated aquatic resources.
8. Provide sediment and erosion controls for topsoil stockpiles, staging areas, access roads, channel changes, and instream excavations.
9. Shape and contour streambeds and stream banks to their pre-disturbed condition to match adjacent undisturbed ground, unless included in the contract.

10. Clean, maintain, and operate equipment so that petroleum-based products do not leak or spill into any regulated aquatic resource.

B. Temporary Facilities and Construction Activities. Obtain required permits and authorizations for the installation, maintenance, operation, and removal of temporary facilities such as work bridges, work pads, cofferdams, temporary detours, diversions, etc. Department obtained permits and authorizations do not typically include removal and disposal of existing structures, access to and from authorized locations, sequencing, and construction methodology to construct authorized features, impacts to areas outside of the planned construction footprint, and other items potentially affecting an aquatic resource. Submit Temporary Facility and Construction Activity permit applications for COE 404 and SPA 124 Notifications in accordance with Subsection [208.03.3](#).

Plan temporary construction facilities to:

1. Minimize disturbance to regulated aquatic resources.
2. Not restrict or impede fish passage in streams.
3. Not restrict water flow anticipated during use; and
4. Remove temporary facilities as soon as practicable once they are no longer needed.

Complete application forms in accordance with the permitting agency requirements. Plans included as part of the application forms must at a minimum contain the following information:

1. Details depicting regulated aquatic resource features before installation of temporary construction facilities and after removal.
2. Location of facilities relative to permanent work and regulated aquatic resources.
3. Plan and elevation views of facilities showing regulated aquatic resources.
4. Anticipated high water elevation during use of the facilities.
5. Waterway openings and clearances.
6. Type of bridge bent, pier, and superstructure construction (wood, steel, concrete, etc.).
7. Quantity and type of material proposed for use.
8. Written description for installing, operating, maintaining, and removing facilities including proposed construction techniques, containment plans, equipment, stockpile and storage areas, temporary erosion and sediment control measures, site re-vegetation/restoration and weed control plans.
9. Estimated time the temporary facilities are to be in place; and
10. A plan for and written description of existing structure removal, if applicable, as described in Subsection [208.03.2\(C\)](#).

Shape and contour areas disturbed by the installation or removal of temporary construction facilities to match adjacent undisturbed ground upon removal of the facilities.

Submit the plans and application packages, ~~their~~ subsequent modifications, or ~~their~~ revisions to the Project Manager. The Department will review each submittal of the plans and application packages, ~~their~~ subsequent modifications, or ~~their~~ revisions, and either

request additional information or revisions or submit to applicable resource and regulatory agencies within 21 calendar days. Resource and regulatory agency review time does not begin until the Department submits the application to the applicable agencies. Do not begin work on temporary construction facilities or modifications to approved plans until receiving written notification from the Project Manager that all the required approvals from the regulatory and resource agencies have been obtained and distributed. The Department will distribute COE 404 and SPA 124 approvals within 5 business days of receipt of all required approvals.

C. Existing Bridge and Structure Removal. Provide the Project Manager a plan and written description detailing how the existing bridge(s) and/or structure(s) are to be removed. Include in the description what methods and equipment are to be used to remove the bridge deck, superstructure, piers, footings, and end bents, and, if applicable, containment plan. Conduct work in accordance with Section 202.

Provide the anticipated start date of removal work and estimated time to complete the work. Include details of erosion, sediment, and pollution control, and containment measures used during removal.

Remove contract-related debris from the regulated aquatic resources within 48 hours of placement.

Maintain constant progress on all in-stream work until completed.

D. Aquatic and Invasive Species (AIS) Watercraft and Equipment Inspection. State laws, regulations, and rules are in effect in Montana to prevent the spread of AIS. The following website includes information to aid in the prevention of AIS: <http://cleandraindry.mt.gov/>.

1. Contact FWP at least 2 weeks prior to operating equipment in or working within an aquatic resource. FWP may require additional inspection or action for AIS prior to equipment use in any aquatic resource in the State of Montana.

**TABLE 208-1
FWP CONTACT INFORMATION**

Contact	Phone Number
Fisheries Front Desk	(406) 444-2449
Watercraft Inspection Program Coordinator	(406) 444-5383 – Office
Watercraft Inspection Specialist	(406) 444-5540 – Office

2. Ensure all watercraft vessels and equipment that enters Montana from out of state, crosses the continental divide, or enters the Flathead basin is inspected by FWP prior to launch in an aquatic resource in the State of Montana.

3. Clean, drain, dry all watercraft and equipment according to FWP guidelines after exiting any aquatic resource and prior to launch into or use in another aquatic resource.

3.4. Provide inspection certification to the Project Manager upon request.

~~E. **Prequalified Stream Restoration Contractors.** When required by the Contract, hire a prequalified stream restoration contractor to complete the bioengineered bank work and assist in the riprap installation and portions of the riverbank revegetation work as shown in the plans.~~

- ~~1. A list of pre-qualified stream restoration contractors is located at the following website: <http://www.mdt.mt.gov/business/contracting/prequalified.shtml>~~
- ~~2. Contractors not currently pre-qualified by the Department to perform stream restoration work can obtain pre-qualification information from the CES Bureau, (406) 444-6015, 2701 Prospect Ave., Helena, Montana. A complete Statement of Qualifications (SOQ) must be received a minimum of 14 calendar days prior to the bid opening as specified in the Invitation for Bids.~~
- ~~3. Adjustments may be necessary to minimize disturbance to existing vegetation or other river features and to field-fit the design. Ensure all adjustments are approved by Project Manager prior to execution of the work. The Project Manager will coordinate the proposed changes with the District Biologist prior to approval.~~

~~Include the costs associated with hiring a prequalified stream restoration contractor in the unit bid item for Stream Restoration Specialist.~~

208.03.3 Regulations and Permitting

~~A. Clean Water Act Permit (CWA 404).~~

~~1. **Pre-existing pit or material within construction limits.** If borrow material proposed for use as fill in a water of the U.S. in association with a project will be obtained from an existing commercial pit, existing private pit (i.e., permitted and bonded prior to contract advertisement), or from within the construction limits of this project, submit a completed Contractor's Borrow Source Worksheet to the Project Manager. The DEES will review the form and send it to the Project Development Engineer for USACOE authorization. The Borrow Source Worksheet for Source Material to be used as fill in a Water of the U.S. is located at: <http://www.mdt.mt.gov/publications/forms.shtml>.~~

~~Once the Department determines the Borrow Source Worksheet and supporting information is acceptable, the Project Development Engineer will request approval from the USACOE. Do not place fill within a water of the U.S. until the Project Manager has notified the Contractor that the fill material source(s) is authorized by the USACOE.~~

~~2. **New or Expanded Existing Pit.** If borrow material proposed for use as fill in a water of the U.S. in association with this project will be obtained from a new borrow site(s) or from an expansion of an existing pit, obtain clearances listed below.~~

~~a. **Protection of Archeological and Historical Findings – National Historic Preservation Act compliance.**~~

~~Submit the legal description, the acreage involved, description of the work activity, site plans including haul roads, and a current land use and description to the Project Manager for review by the DEES who will coordinate with the Department Archaeologist. Within 10 working days, the Project Manager will notify the Contractor if the presence or potential presence of cultural resources exists in the proposed contractor furnished site(s) and recommend whether a professional cultural resource survey is required.~~

~~If no cultural resources are identified, the Project Manager will provide written notification that no further cultural evaluation is required.~~

~~If a survey is recommended, hire a professional cultural resource consultant to perform a cultural resource survey. Professional cultural resource consultants may be hired at the Contractor's discretion. A directory of professional cultural resource consultants is available for your convenience from the Montana State Historic Preservation Office at <http://mhs.mt.gov/Portals/11/shpo/docs/Consultants.pdf>.~~

~~Submit the completed survey to the Project Manager for submittal to the Department Archeologist. If no cultural resources are identified through this analysis, the Project Manager will provide written notification that no further cultural evaluation is required.~~

~~If the cultural resource consultant identifies any cultural resources (historic or archaeological properties) within the proposed Contractor furnished site(s), the Department, in consultation with the State and/or Tribal Historic Preservation Officer (SHPO and/or THPO), will determine whether the cultural resources may be eligible for listing in the National Register of Historic Places. Choose one of the following options if significant (eligible for the National Register) cultural resources are found within the proposed contractor furnished borrow site(s):~~

~~i.———Do not disturb the proposed area(s).~~

~~ii.———Request the Department continue with the National Historic Preservation Act, Section 106 process outlined in 36 CFR 800. Use a professional cultural resource consultant to perform all field work, archaeological test excavations, data recovery, mapping, reporting, etc. required to complete the requirements of 36 CFR 800.~~

~~Contact the Project Manager for coordination with the Department Archaeologist if you have questions or require further guidance pertaining to Section 106 requirements.~~

~~**b.—Protection of Threatened and Endangered Species—Endangered Species Act compliance.**~~

~~Hire a professional natural resource consultant to prepare the Biological Assessment for evaluation of potential effects to Threatened and Endangered Species. A list of professional consultants is available for your convenience from the Department of Administration website at: <http://svc.mt.gov/gsd/apps/ESContractorList.aspx?ServiceCategory=24>.~~

~~The consultant must complete a Biological Assessment for all federally listed threatened and endangered, proposed and candidate species potentially occurring in the project area. Use the species list by County provided by the Montana USFWS Field Office found at: http://www.fws.gov/montanafieldoffice/Endangered_Species/Listed_Species/countylist.pdf.~~

~~Follow the Biological Assessment format and instructions provided by the Montana USFWS Field Office found at: http://www.fws.gov/montanafieldoffice/Endangered_Species/Listed_Species/Consultation_Requirements_and_BA_format.pdf. Include in the Biological Assessment the legal description, the affected acreage, aerial and site photos,~~

~~site plans, and description all proposed infrastructure development including but not limited to haul roads, utilities, fencing, description of the action, operation and duration, description of reclamation, including timeline, and a current land use and description. Submit the Biological Assessment to the Project Manager for submittal to the DEES who will coordinate with the District Biologist.~~

~~Within 10 working days, the Project Manager will notify the Contractor of USFWS acknowledgement of determinations of effect or requirement for further consultation.~~

~~If further consultation is required, the following options are available to the Contractor:~~

~~i. Do not disturb the proposed area(s).~~

~~ii. Request the Department continue with the USFWS consultation process outlined in Section 7 of the Endangered Species Act (ESA) which may require additional time of up to 135 days and implementation of conservation measures.~~

~~The Contractor is solely responsible for complying with any conservation measures/restrictions that result from or are contained in the USFWS response.~~

~~Contact the Project Manager for coordination with the District Biologist if you have questions or require further guidance pertaining to ESA requirements.~~

~~**c. Borrow Source Worksheet Approval.** Submit a completed Contractor's Borrow Source Worksheet for review and authorization. Attach the documents and approvals obtained in items a and b above. Borrow Source Worksheets submitted without necessary clearances attached will not be processed. The Borrow Source Worksheet for Source Material to be used as fill in a Water of the U.S. is located at: <http://www.mdt.mt.gov/publications/forms.shtml>.~~

~~Once the Department determines the Borrow Source Worksheet and supporting information is acceptable, the Project Development Engineer will request approval from the USACOE. Do not initiate work for the purposes of obtaining material to be placed as fill in a Water of the U.S. until the Project Manager has notified the Contractor that fill material source(s) is authorized by the USACOE.~~

- A. General Storm Water Permits.** Follow the requirements of the NPDES and MPDES Storm Water Permits. Coverage under the General Permit is required for any construction activity that disturbs an area of at least one acre or has the potential of discharge. DEQ administers the MPDES permit. If the project is located on one of Montana's Indian Reservations, NPDES permit authorization is issued by the EPA. Permit authorization is obtained by submitting a complete application package, including the NOI to the appropriate regulatory entities. The EPA allows electronic submittal of the NOI. Obtain the permit authorization directly from the DEQ or EPA.
- B. Reserved**
- C. Construction De-Watering Permit.** A Construction De-Watering General Permit Authorization is required for any construction activity that discharges sediment-laden water from the work area, such as cofferdams, trenches, excavation pits, or other work types identified in the permit, to state waters. Obtain authorization from the Water

Protection Bureau, DEQ before discharging into any state waters. If sediment-laden water is land-applied and will not reach state waters, then a discharge permit is not required.

- D. Short-term Turbidity Standard (318 Authorization).** Obtain authorization as required under Section 75-5-318 MCA, for any activity that will cause a short term increase in turbidity.
- E. Clean Water Act Section 404.** Follow the provisions of the Federal Clean Water Act, including the requirements of Section 404.

Temporary facilities and construction activities in and around waters of the U.S. may be covered by a COE 404 Permit. Adhere to applicable permit conditions and/or NWP Fact Sheets, Regional Conditions, and 401 Certification requirements. Obtain a 404 Permit for temporary facilities and/or construction activities that are not covered by the 404 Permit obtained by the Department for permanent structures. These construction activities may include, but are not limited to, temporary work bridges, work pads, cofferdams, diversions, temporary fills and berms, haul roads, and other work that involves the placement of fill or dredged materials into waters of the U.S.

Prepare the application and submit to the Project Manager for Department review and submittal to the COE.

- F. Section 10 Rivers and Harbors Act Permits.** Follow the requirements of the Rivers and Harbors Act, including requirements of Section 10. COE permits are required for structures or work in, over, under or affecting navigable waters of the U.S. In Montana, navigable waters of the U.S. include, but are not limited to the: Kootenai River, Missouri River, and Yellowstone River. Section 10 permits can be issued concurrently with the Section 404 permits described above. Adhere to applicable permit conditions and/or NWP Fact Sheets, Regional Conditions, and 401 Certification requirements.

G. Stream Protection Act 124 (SPA 124). Follow the requirements of the Montana Stream Protection Act (SPA). The SPA is administered by FWP.

1. Meet the requirements listed in Subsection 208.03.2
2. Install and maintain BMPs and temporary erosion control measures where appropriate to protect the streams and adjacent areas listed in the contract. Conduct all work in a manner that minimizes turbidity and other disturbance to these areas.
3. All surface applied erosion control and sediment control materials used in or adjacent to the streams listed in the contract must comply with Subsection 713.12 and be comprised of 100% natural fiber and biodegradable material to ensure decomposition. This condition also applies to mesh materials used for wattles, rolled materials, and bank wraps placed within the bed and banks of the streams listed in contract.
4. Limit the clearing of vegetation to only what is necessary for the construction of the project within riparian areas. Restore temporary access routes and any temporarily disturbed areas to original conditions, including original contours and vegetation reclamation.
5. Remove existing piers/footings or other substructure located within the ordinary high-water mark to at least 3 feet (915 mm) below the existing thalweg (lowest channel bottom elevation) of the stream, or completely. Remove existing piers/footings or

other substructure located outside the ordinary high-water mark to at least to 3 feet (915 mm) below the finished grade or existing ground surface elevation, whichever is lower or according to plans. Shape and contour disturbed areas to blend with the surrounding terrain or as shown on plans.

6. Obtain a SPA 124 for temporary facilities and/or construction activities that are not covered under the SPA 124 obtained by the Department. These activities may include, but are not limited to, work bridges, work pads, cofferdams, temporary detours, diversions, removal and disposal of existing structures, access, sequencing, and construction methodology.

Prepare ~~and submit the~~ - application ~~and submit it~~ to the Project Manager for Department review and submittal to FWP.

H. Reserved

- I. **Tribal Permits.** Work within reservations may require additional permits and submittals to tribal authorities. Coordinate with the Department to determine requirements and receive assistance in obtaining permits.

1. **Aquatic Lands Protection Ordinance (ALPO) #117.** The ALPO provides regulation of all waters and aquatic lands on the Blackfeet Reservation to prevent or minimize their degradation. Obtain an ALPO permit for any project within or near aquatic resources.

2. **The Shoreline Protection Office of the Confederated Salish and Kootenai Tribes (CSKT) Tribal Council.** The CSKT administers the following Tribal Ordinances:

- a. **Shoreline Protection Ordinance 64A.** This ordinance is required for any work along the shoreline of Flathead Lake.
- b. **Aquatic Lands Conservation Ordinance (ALCO) 87A.** This ordinance is required for the alteration of aquatic lands, wetlands, or Flathead Reservation waters from activities such as dredging, filling, irrigation diversions and returns, drainage ditches, and maintenance repairs of these resources.

Tribal permits are required for construction activities within the project limits and may be required for temporary facilities outside the project limits. If required, coordinate with the Department, and obtain tribal permits from the tribal office for additional activities and facilities not covered by tribal permits obtained by the Department.

- J. Floodplain Permit. When a Contract is located within a regulated floodplain, follow the requirements of the Montana Floodplain and Floodway Management Act. ~~Any-All~~ construction projects within a designated 100-year floodplain ~~is-are~~ required to have a floodplain development permit prior to the start of construction. ~~The DNRC administer this permit through the Floodplain Management Section or local floodplain administrators. The local County and City floodplain administrators issue floodplain permits with technical assistance from the DNRC.~~

~~J.~~ The Department obtains this permit for permanent facilities. Obtain the Floodplain Permit from the local floodplain administrator for temporary facilities if required.

~~The Department obtains this permit for permanent facilities. Obtain the Floodplain Permit from the DNRC or the local floodplain administrator for temporary facilities if required.~~

~~This~~ The permanent facilities floodplain permit does not cover the construction of temporary facilities such as work bridges, work pads, cofferdams, temporary detours, diversions, etc. ~~This~~ Additionally, this permit does not include access to and from authorized locations, sequencing, or construction methodology required to construct authorized features, or other impacts to areas outside of the planned construction footprint.

1. Requirements.

- a. Contact the local floodplain administrator ~~indicated above~~ to determine floodplain permitting requirements, if any, for the temporary facilities and any other work within the floodplain not covered here or within the preconstruction floodplain permit.
- b. If a floodplain permit is required, complete and submit the Joint Application for Proposed Work in Montana's Streams, Wetlands, Floodplains, and Other Water Bodies and required information directly to the floodplain administrator according to the floodplain permitting requirements along with the applicable fee. The Joint Application Form can be downloaded from:
<http://dnrc.mt.gov/divisions/water/operations/floodplain-management/permitting-and-regulations>.
- c. If a floodplain permit is not required, but the floodplain administrator requires other information, prepare and submit it directly to the floodplain administrator.
- d. Submit the application and other required information to the Project Manager concurrently with the submittals required in Subsections [208.03.2](#) and [208.03.3](#). Obtain all required permits or authorizations and provide the Project Manager copies or permit approvals before starting activities that require permits.

208.03.4 Plant and Animal Protection

A. Migratory Bird Treaty Act. Complete operations in compliance with the Migratory Bird Treaty Act. Migratory birds (including but not limited to swallows and other ~~song~~ birdssongbirds) are protected under the Migratory Bird Treaty Act. It is unlawful to pursue, hunt, take, capture or kill; attempt to take, capture or kill; possess, offer to or sell, barter, purchase, deliver or cause to be shipped, exported, imported, transported, carried or received any migratory bird, part, nest, egg or product, manufactured or not. Direct disturbance of an occupied migratory bird nest (with birds or eggs) is prohibited under the law.

The Migratory Bird Treaty Act does not prohibit the destruction of most unoccupied (without birds or eggs) migratory bird nests, provided that no possession occurs during the destruction. The destruction of unoccupied nests of eagles and other threatened and endangered species is not allowed.

~~Contact the Department District Biologist~~ If further instruction, clarification, or consultation is required prior to or during construction contact the Project Manager who will coordinate with the District Biologist.

1. **Vegetation Removal.** Perform ~~any~~ required cutting of trees or shrubs between August 16th and April 15th, and when no active nests are present. Remove only those trees and shrubs in direct conflict with the permanent construction limits. Where possible, do not remove, but trim trees and shrubs as necessary for equipment access and construction activities.
2. **Structures.** Use one or a combination of the following measures for structure removal or work that may directly impact active nests:
 - a. It is permissible to remove non-active nests (without birds or eggs), partially completed nests or new nests as they are built (prior to occupation).
 - b. Conduct work that may impact active nests outside of the nesting season, typically between the dates of August 16 and April 15, and when no active nests are present, or
 - c. Install nesting deterrents meeting the requirements below prior to the nesting season as follows:
 - i. Cover or enclose all potential nesting surfaces on the structure tightly with mesh netting or other suitable material to prevent birds from establishing new nests. Use netting or other material with no opening or mesh size greater than ½-inch. Maintain the material/enclosure until the structure is removed or work is completed, or
 - ii. Thoroughly aApply a non-toxic, non-lethal, bird roosting or landing repellent gel or liquid (do not use smell or taste deterrents) on all potential nesting surfaces on the structure in accordance with the manufacturer’s instructions. Reapply the repellent as needed to maintain adequate coverage to prevent new nests from being established, or
 - iii. Prepare a description of alternate methods of effectively keeping birds from establishing nests during the nesting season and submit them along with proposed installation dates and methods to the Project Manager for review.
3. **Structure Maintenance.** If the Department has installed nesting deterrents, maintain existing deterrents until the structure is removed or the work is completed to ensure active nests do not become established on the structure. Install additional nesting deterrents as needed.

It is permissible to remove non-active nests (without birds or eggs), partially completed nests or new nests as they are built (prior to occupation).

Remove the structure when no active nests are present. If active nests become established, remove the structure outside of the nesting season, typically between the dates of August 16 and April 15.

Compliance with the Migratory Bird Treaty Act is incidental to other items of the contract.

- B. **Bald and Golden Eagle Protection Act.** Complete operations in compliance with the Bald and Golden Eagle Protection Act. The Bald and Golden Eagle Protection Act (16 U.S.C. 668-668c) prohibits anyone, without a permit issued by the Secretary of the Interior, from “taking” bald eagles, including their parts, nests, or eggs. The act provides criminal penalties for persons who “take, possess, sell, purchase, barter, offer to sell, purchase or barter, transport, export or import, at any time or any manner, any bald eagle or golden eagle, alive or dead, or any part, nest, or egg thereof.” The act defines

“take” as “pursue, shoot, shoot at, poison, wound, kill, capture, trap, collect, molest or disturb.”

For purposes of this contract, “disturb” means: “to agitate or bother a bald or golden eagle to a degree that causes, or is likely to cause, based on the best scientific information available, 1) injury to an eagle; 2) a decrease in its productivity, by substantially interfering with normal breeding, feeding, or sheltering behavior; or 3) nest abandonment, by substantially interfering with normal breeding, feeding, or sheltering behavior.”

In addition to immediate impacts, this definition also covers impacts that result from human induced alterations initiated around a previously used nest site during a time when eagles are not present, if, upon the eagle’s return, such alterations agitate or bother an eagle to a degree that interferes with or interrupts normal breeding, feeding, or sheltering habits, and causes injury, death, or nest abandonment.

C. Endangered Species Act (ESA). Complete operations in compliance with the ESA (16 U.S.C 1531 et seq.). The ESA provides a program for the conservation of threatened and endangered plants and animals and the habitats in which they are found. The ESA prohibits any taking of a threatened or endangered species. The definition of “take” includes to harass, harm, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct.

D. Reserved

E. Bear Habitat. When working within bear habitat, adhere to the following requirements:

- Promptly clean up any project related spills or debris.
- Camping is allowed in designated camping areas only.
- Store all food, food related items, petroleum products, antifreeze, garbage, and personal hygiene items inside a closed, hard-sided vehicle or commercially manufactured bear resistant container.
- Remove garbage from the project site daily and dispose of it in accordance with all applicable regulations.
- Notify the Project Manager of ~~any~~ animal carcasses found in the area.
- Notify the Project Manager of ~~any~~ bears observed in the vicinity of the project.

F. Forest Protection. Observe sanitary laws and regulations regarding the performance of the work within or adjacent to state or national forests and parks. Keep all areas in a neat condition, dispose of all refuse, and obtain permits for the construction and maintenance of construction camps, stores, warehouses, residences, latrines, cesspools, septic tanks, and other structures.

Prevent, suppress, and assist in preventing and suppressing forest fires, and immediately notify a forest official of the location and extent of any fire discovered.

Maintain spark arresters to meet the forest Supervisor’s requirements on all steam, gas, or diesel-driven machinery and on all flues at construction camps.

208.03.5 Noxious Weeds

A. Noxious Weed Management. Follow the requirements of the County Noxious Weed Management Act, Section 7-22- 21 MCA, Section 80-7-912 MCA and all county and

contract noxious weed control requirements. Determine the specific noxious weed control requirements not specified in the contract of each county where the project is located before submitting a bid.

Any product containing forage ~~per Section 80-7-903 MCA~~ must be ~~certified~~ noxious weed seed free ~~by the Montana Department of Agriculture~~.

Noxious weeds include those species designated by the Montana Department of Agriculture. The most recent list of designated noxious weeds is available from the Montana Department of Agriculture, or local county Extension Service or Weed District. The Montana Department of Agriculture web site with noxious weed information is: <https://agr.mt.gov/Noxious-Weeds>~~http://agr.mt.gov/agr/Programs/Weeds/~~

Clean all equipment and vehicles prior to their transport into the project area. Equipment or vehicles with visible dirt or plant parts will not be allowed into the project area until they are cleaned to the satisfaction of the Project Manager.

All costs incurred to meet the county weed control requirements are incidental to other items of the contract.

- B. Noxious Weed Control.** When Noxious Weed Control is included as a bid item, provide noxious weed control to all lands within the right-of-way within the project limits.

Monitor the construction, borrow and staging areas during the growing season and treat noxious weeds before plants develop viable seed. Noxious weeds may be controlled through hand-pulling or herbicide application. Select the most effective and appropriate means of control based upon the species and size of infestation and environmental conditions.

If the control is accomplished with the application of herbicides, use only a licensed commercial pesticide applicator certified to apply general and restricted-use herbicides. Use herbicides that meet all applicable state and federal pesticide laws and that are registered with the Montana Department of Agriculture as required by the Montana Pesticide Act. Apply herbicides in a manner that provides immediate control but does not jeopardize or cause potential harm to final reclamation objectives. Follow all applicable state and federal pesticide laws. If it is determined that herbicide application caused or contributed to the failure of reclamation, take corrective action at no additional cost to the Department.

Do not perform noxious weed control on areas that have received final seeding.

208.03.6 Seeding

- A. Temporary Seeding.** Temporarily seed or implement other soil stabilization measures approved by the Project Manager on all disturbed soil areas as required by permits/authorizations. When no permit is required, temporarily seed or implement other soil stabilization measures approved by the Project Manager on all disturbed soil areas when grading activities will not resume for a period of 14 calendar days or more by the 14th day after the last disturbance. Permanently seed areas not requiring further disturbance if they fall within the seeding dates. Temporarily seed using a sterile variety of Triticale at a rate of 25 lbs PLS per acre drilled or 50 lbs PLS per acre broadcast.
- B. Erosion Seeding.** Conduct erosion seeding on freshly exposed slopes steeper than 3H:1V that will not be top soiled or re-disturbed, unless implementing other soil

stabilization measures in accordance with permits or as approved by the Project Manager. Manually broadcast seed on disturbed areas at the completion of each day, regardless of season. Excessively rocky slopes that cannot be excavated by ripping are exempt from erosion seeding. Broadcast seed a sterile variety of Triticale at a rate of 50 lbs PLS per acre.

Erosion seeding does not replace or substitute for final seeding activities specified in the contract.

208.03.7 Air Quality

Operate all equipment including, but not limited to, hot mix paving plants, concrete batch plants, generators, aggregate crushers, and screens, etc. to meet the minimum air quality standards and applicable requirements established by federal, state, tribal, and local agencies. Secure necessary air quality permits from the appropriate regulatory entity.

Use reasonable precautions to prevent or reduce dust on the project caused by construction operations or traffic, to follow all federal, state, tribal, and local laws and regulations.

Use water, liquid magnesium chloride, liquid calcium chloride, or other dust palliative approved by the Project Manager. Use only Contractor owned water sources or water that is obtained under a purchased water right according to applicable laws.

Dust control for compliance with all laws and regulations is not measured for payment. Include the cost for dust control in the item of work being performed that results in dust. Any violations or fines associated with dust control/dust control operations are the responsibility of the Contractor.

No additional payment will be made for the use or installation of dust or smoke control devices, for the disruption of work or loss of time occasioned by the installation of such control devices, or for any other related reasons.

208.03.8 Discovery of Underground Storage Tanks and Removal of Unknown Hazardous Materials

A. Underground Storage Tanks. Take the following action if an underground storage tank or tanks are encountered, the existence or location which was previously unknown to the Department or Contractor, on the project within the project limits.

1. Immediately stop work in the vicinity and notify the Project Manager.
2. Immediately notify the local fire authority and protect people and property from fire, explosion, vapor, and other potential hazards, and prevent further release of the tank's contents. Take all action requested by the Project Manager.
3. Notify the DEQ within 24 hours if there is evidence of soil or groundwater contamination resulting from a tank leak or pipe leak, at:
Underground Storage Tank Program
Department of Environmental Quality
Environmental Remediation Division, Petroleum Technical Section
1-800-457-0568
4. Perform the tank removal and closure work as permitted by DEQ.
5. Do not resume work in the immediate vicinity of the tank or piping until approved by the Project Manager.

Costs incurred from the discovery of underground storage tanks within the project limits will be paid for as extra work in accordance with Subsection 104.03. Costs from the discovery of underground storage tanks outside the project limits are not the Department's responsibility.

- B. Removal of Unknown Hazardous Materials.** If hazardous material is discovered within the project limits, the existence or location of which was previously unknown to the Department or the Contractor or not identified in the contract, immediately stop work in that area and notify the Project Manager. Hazardous material includes, but is not limited to contaminated soil, contaminated water, asbestos, PCBs, petroleum, PCPs, hazardous waste or radioactive material. If the area is determined to pose a hazard to the traveling public, close off all access to the area as directed. Work may continue in unaffected areas believed to be safe.

Once notified of the contaminated site, the Department will determine whether a separate Contractor will be used to assess and clean up the contaminated site before permitting the Contractor to resume work in the contaminated area. If the Department determines that the Contractor can perform the work, meet the requirements of Subsection [107.26](#). The work will be paid for under Subsection [104.03](#). Obtain all necessary clearances (procedures, permits, etc.) from the regulatory agencies before starting any work.

If the Contractor does not perform the work, it waives any potential claim for itself, its subcontractors, and suppliers for damages for delay from the Department's securing another Contractor to perform the clean-up work.

The Department will equitably compensate the Contractor under Subsection [109.04.3](#) for costs associated with the delay to work in the affected area.

- C. Contaminated Soil.** Contaminated soils are generally recognized by a petroleum odor and/or gray or black staining of the native material or fill. If contaminated soils are encountered, suspend work, and notify the Project Manager. State and Federal laws require that the discovery of previously unknown contamination be reported within 24 hours of discovery. The Project Manager will coordinate with the Department's Environmental Services Bureau to report the release to the DEQ or the EPA, if within Tribal lands.

Once reported, the Contractor may be advised by the Department to sample the soil to determine disposal or re-use options. Disposal of the soil must be at a licensed soil disposal facility. Analytical testing of the soil at an accredited laboratory will be necessary prior to disposal.

Be responsible for compliance with all OSHA, EPA, and DEQ regulations pertaining to worker safety and the excavation of contaminated soil. The Contractor is required to follow all applicable laws, rules and regulations including but not limited to, Section 107, the Montana Water Quality Act; the Montana Solid Waste Management Act; the Montana Comprehensive Environmental Cleanup and Responsibility Act; the Montana Hazardous Waste Management Act; MC 75-11-301 et seq. (Petroleum Storage Tank Cleanup); and 29 CFR 1910 and 1920 (OSHA); and 40 CFR 260-265 (Hazardous Waste).

Obtain and pay for all analytical testing. Testing and disposal of the contaminated soil is measured by the unit of Contaminated Soil for the work performed as directed in writing by the Project Manager. Payment for Contaminated Soil is made in accordance with Subsection 109.04.

208.03.9 Noise Pollution

Adhere to local noise ordinances, laws, and regulations, and follow all requirements contained in the contract regarding noise pollution.

208.04 METHOD OF MEASUREMENT

Temporary erosion and sediment control devices for use within the project limits are measured as lump sum and will not be measured separately. Only erosion and sediment controls within the project right-of-way and installed in accordance with manufacturer specifications or the [Detailed Drawings](#) will be paid for. BMPs and associated permit costs for Contractor furnished material sources, staging areas, plant sites, or any other site not within project limits are not measured for payment.

Permit fees and monitoring costs associated with obtaining and maintaining permit coverage for ground disturbance areas both within and outside the project limits are considered incidental to the project and are not measured separately for payment.

Normal maintenance of BMPs, in accordance with permit requirements and the contract, are considered incidental to the work and no additional measurements will be made. Maintenance includes:

- Removal of BMPs no longer required.
- Removal of sediment and debris in front of and around BMPs.
- Repair and replacement of incorrectly installed devices.
- Mobilization and travel for inspections and maintenance; and
- Maintenance until the permit is terminated or transferred.

Replacement of satisfactory BMPs requested by the Department at the final inspection will be measured in accordance with the Erosion Control Rate Schedule.

208.04.1 Temporary Erosion and Sediment Controls - Units

Temporary Erosion and Sediment Control (TESC) devices are measured by the unit of control devices used and accepted. A unit is the base value for establishing the relative value of each type of TESC device. The relative value of each TESC device in units is shown in the Erosion Control Rate Schedule.

Temporary and erosion seeding are measured parallel to the ground line and include seedbed preparation, fertilizing and seeding.

These will not be used to correct deficiencies of lump sum items.

208.04.2 Protection of Storm Water Drainage Systems

Work performed, including permit applications, necessary to protect the MS4 from contaminants as a result of Contractor operations is not measured for payment. Work performed to prevent pollution and control sediment transport due to storm water are measured as lump sum.

If the contract does not have a bid item for Temporary Erosion Control or BMP Administration, work will be measured in accordance with Subsection 208.04.1.

208.04.3 Reserved

208.04.4 Noxious Weed Control

Noxious Weed Control within the project limits is measured by force account methodology in accordance with Subsection 109.04. Noxious Weed Control in areas outside of the project limits is not measured for payment.

Work performed within the project limits is paid by units of Noxious Weed Control.

208.05 BASIS OF PAYMENT

No additional payment will be made for the fees or monitoring costs associated with the General Permit for storm water discharges associated with construction activity. Include these costs in the temporary erosion control bid item. Include fees associated with transferring the permit in the Lump Sum Temporary Erosion Control bid item.

BMPs are rendered unacceptable if the following are disregarded:

- ~~Failure to P~~provide erosion and sediment controls that prevent discharges to adjacent properties and/or aquatic resources.
- Implement BMPs identified in the SWPPP.
- Update the SWPPP as required by the General Permit.
- Conduct BMP inspections and submit inspection reports.

Payment for BMPs installed will be withheld until SWPPP deficiencies are remedied and the inspection reports have been completed and received by the Project Manager.

Payment for the completed and accepted quantities is made under the following:

<u>Pay Item</u>	<u>Pay Unit</u>
BMP Administration	Lump Sum
Noxious Weed Control	Unit
Stream Restoration Specialist	Lump Sum
Temporary Erosion Control	Unit
Temporary Erosion Control - LS	Lump Sum

Payment at the contract unit price is full compensation for all resources necessary to complete the work in accordance with the contract.

208.05.1 Temporary Erosion and Sediment Control - Lump Sum

Partial payment for Temporary Erosion Control will be monthly based on the lump sum contract price as follows:

**TABLE 208-2
TEMPORARY EROSION CONTROL
LUMP SUM PROGRESS PAYMENTS**

% Of Contract Amount Paid	% Of Erosion Control Bid Amount
First estimate after start of erosion control work	60
25	70
50	80
75	90
Conditional final acceptance	100

Include the cost of temporary erosion control in the cost of the lump sum item. Anticipate probable adverse weather and stream flow conditions.

A request may be submitted for compensation resulting from the addition of BMPs due to acts of God described in Subsection [107.17](#) or extra work added by change order. Include documentation in the request that demonstrates such an event has occurred. Payment for quantities required by an event or extra work, and approved by the Project Manager, will be measured and paid for in accordance with the Erosion Control Rate Schedule at a unit price of \$1.00 per unit.

The installation of additional BMPs requested by the Department at the final inspection will be measured and paid for in accordance with the Erosion Control Rate Schedule.

208.05.2 Temporary Erosion and Sediment Control - Units

Temporary erosion and sediment controls are paid for at the contract unit price per temporary erosion control. The units of each type of temporary erosion control paid for will be calculated by multiplying the measured quantity of each device by the assigned value per units shown in the Erosion Control Rate Schedule.

Payment for completed and accepted temporary erosion/sediment control devices will be made in accordance with one of the following categories:

- 1. Category No. 1 - New Installation.** When a device is new and used for the first time it will be paid at 100% of the rate schedule.
- 2. Category No. 2 - Reuse.** When a previously used BMP material that meets contract specifications is placed in a new location, it will be paid at 75% of the rate schedule.

Maintenance of BMPs, in accordance with the MPDES/NPDES permit(s) and the contract, is not paid for separately. Include this work in the unit price bid for temporary erosion control devices.

No additional compensation is made for the removal of BMPs that are no longer required.

208.05.3 Protection of Storm Water Drainage Systems

Prevention of pollution and control sediment due to storm water is paid under the Temporary Erosion Control – Lump Sum or BMP Administration bid items. If there are no bid items for the contract, payment will be made in accordance with Subsection 104.04 and paid as miscellaneous work.

Failure to comply with the requirements of Section 208 may result in a deduction for each instance of non-compliance in accordance with Table 208-3.

**TABLE 208-3
ENVIRONMENTAL COMPLIANCE DEDUCTION**

Original Contract Amount		Deduction (%)
From More Than	To and Including	
\$ 0	\$ 1,000,000	1%
\$ 1,000,000	\$ 5,000,000	0.5%
\$ 5,000,000	—	0.25%