

**REQUEST FOR BID (“RFB”)
AVCP TRIBAL TRANSPORTATION PROGRAM PITKA’S POINT COMMUNITY STREETS
RFB CLOSES 4:00 P.M. AKDT ON AUGUST 14, 2020**

THE ASSOCIATION OF VILLAGE COUNCIL PRESIDENTS (“AVCP”) is soliciting proposals for its Tribal Transportation Program to construct the Pitka’s Point Community Streets Project.

IMPORTANT DATES TO REMEMBER:

Deadline for Questions:	August 6, 2020
Bid Closing Date/Time Bids must be received by:	4:00 P.M. AKDT on August 14, 2020

GENERAL INFORMATION:

AVCP is soliciting Bids for State of Alaska licensed, bonded and insured contractor to build the Pitka’s Point Community Streets project.

A. Primary Contacts

All questions, comments, must be directed and mailed/faxed/email to:

AVCP
ATTN: ROBERT HUNTER - Procurement Coordinator
PO Box 219
Bethel, AK 99559-0219
Phone: (907) 543-7322
rhunter@avcp.org

All bids must be sent to:

AVCP
ATTN: ROBERT HUNTER - Procurement Coordinator
PO Box 219
Bethel, AK 99559-0219
Phone: (907) 543-7322
rhunter@avcp.org

B. Bid Documents

Bid Documents shall include all information contained in this Request for Bid, any additional information supplied by AVCP, and any addenda issued prior to bid closure.

Addenda are written or graphic instruments issued by AVCP prior to the bid closure which modify or interpret the Services Bid Documents by additions, deletions, clarification of Respondents’ question or corrections.

C. Respondent’s Representation

The Respondent, by submitting a bid, represents that the Respondent is familiar with the services requested and all requirements of this RFB, including all appendices.

D. Solicitation Review

Respondents should carefully review this solicitation, without delay, for omitted information or ambiguity. Part, or all, of any bid may become an integral part of any contract arising from this solicitation. Furthermore, any contract arising from this solicitation shall not be limited by any matter stated in this solicitation or the

successful bid. The contract formed after receipt of a bid may include additional terms and conditions. AVCP reserves the right to make use of any idea or matter made a part of any bid submitted in response to this solicitation. The right to use any idea or matter made a part of any bid shall not be limited by AVCP acceptance or rejection of the bid containing such idea or matter.

E. Reply to Questions or Comments regarding this Solicitation

At its discretion, AVCP shall choose whether or not to respond to particular questions or comments about this solicitation from Respondents. Additionally, AVCP may at its discretion provide responses to questions or comments to all Respondents or may reply only to the Respondent who submitted the question or comment. All questions must be received in writing seven (7) business days prior to the bid closing to be considered.

F. Amendments to this Solicitation

In the event it becomes necessary to revise any part of this solicitation, a copy of the revision shall be sent to each Respondent who shall timely acknowledge receipt of the original solicitation and advise AVCP of their intention to submit a bid.

G. Submission Date

To be considered, the Respondent's bid must be received by the primary contact identified above no later than **4:00 P.M. AKDT on August 14, 2020**. Email proposals are accepted in PDF format. Bids may be modified until **4:00 P.M. AKDT on August 14, 2020**, by email or in person.

H. Right of Rejection and Cancellation

AVCP reserves the right to reject any and all bids and to waive any and all stated requirements relative to bids. AVCP also reserves the rights of cancellation of this solicitation at any time and for any reason and will provide cancellation notice if it determines that cancellation is in its best interest.

I. Respondent Costs

Any and all costs incurred by each Respondent in connection with the preparation and submission of a bid, including but not limited to travel expenses, shall be the sole responsibility of the Respondent and will not be reimbursed by AVCP.

J. Disclosure of Proposal Contents

AVCP will review bids submitted in such a manner as to avoid disclosure of content to competing Respondents. Nevertheless, all bids and other material submitted in support of any bid shall become, upon receipt by AVCP, property of AVCP, and AVCP reserves the right to use any idea or any other matter contained in any bid or any material accompanying the bids regardless of whether or not the bid is accepted by AVCP.

K. Respondent's Certificate

By submission of a bid, a Respondent is certifying to AVCP that it is not colluding with any other Respondent. AVCP will be privileged upon discovery that such certificate is false to reject the bid or terminate any contract to which it is a party arising from the bid.

L. Information about the Association of Village Council Presidents

AVCP is a Native non-profit corporation operating under the pertinent laws and regulations of the State of Alaska and the United States. AVCP provides governmental programs to its 56 member Tribes, which are located throughout southwest Alaska. AVCP is located in Bethel, Alaska.

M. Minimum Respondent Qualifications

1. No Joint Ventures

AVCP will not enter into a contract with a joint venture for the services made a subject of this solicitation. Nor will AVCP enter into more than one contract to obtain all of the services made a subject of this solicitation.

2. Financial Condition

AVCP will not contract with any Respondent whose financial condition is not satisfactory to AVCP.

3. Business and Insurance License

AVCP will not enter into any contract with any Respondent who is not the holder of a current business license.

4. EEO Policy

AVCP will not enter into any contract with any Respondent who has been debarred from Government contracts pursuant to Executive Order 11246. AVCP will not enter into any contract with any Respondent who will not expressly, in writing, undertake to abide by every applicable law governing equal employment opportunity. Any contract arising from any bid made in response to this request, and any subcontract, will include any term(s) respecting the same matters as is prescribed by such law(s).

5. Minimum Privacy and Confidentiality Standards

AVCP will not contract with any Respondent who will not expressly, in writing, agree to adhere to AVCP standards in connection with privacy of AVCP confidential information and the information of its participating employers.

6. Insurance

The Respondent shall provide evidence of insurance with an insurance carrier or carriers satisfactory to the Tribal Transportation Program covering injury to persons and property suffered by AVCP or by a third party as a result of operations under this contract by the Contractor or by any subcontractor. The Contractor's insurance shall provide protection against injuries to all employees of the Contractor and the employees of any subcontractor engaged in work under this Contract. All insurance policies shall be issued by insurers that (i) are permitted to transact the business of insurance in the State of Alaska under AS 21 and (ii) have a financial rating acceptable to AVCP. A certificate of insurance must be furnished to the AVCP prior to award. The certificate of insurance must provide for notice of cancellation, non-renewal, or material change of conditions in accordance with policy provisions. Insurance Requirements are provided in Appendix B.

7. Bonding

The Respondent will be required to submit a bid guaranty in the amount of 10% of the amount of the proposal. Bonds must be payable to AVCP, and sureties must appear on the list contained in the Department of Treasury Circular 570, entitled "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and Acceptable Reinsuring Companies." A Payment Bond of 100% of the Contract Amount and a Performance Bond of 100% of the Contract Amount are required prior to contractor award. Bonding Forms are provided.

N. Standard Contract Information

1. Written Contract

To be enforceable, any contract arising from this solicitation must be stated in writing, signed by the parties. It will expressly provide that it is, and is intended to be, a complete statement of the entire agreement of the parties and shall include a description of duties, obligations and responsibilities of the parties providing assurances of performance, reliability, security, confidentiality, drug screening policy, and reporting requirements. If any Respondent will require that a written contract with AVCP be in a particular form, or that such a contract contain a particular written provision, such writing should be included as part of the Respondent's bid.

Any or all of any bid may become an integral part of any contract arising from this solicitation. Furthermore, any contract arising from this solicitation shall not be limited by any matter stated in this solicitation or the successful bid. The contract formed after receipt of a bid may include additional terms and conditions.

2. Indemnification

The successful Respondent will, as a part of any contract arising from this solicitation, be required to expressly, in writing, indemnify, save harmless and defend AVCP, its officers, agents and participants from all liability, including costs and expenses, for all actions or claims resulting from injuries or damages (including, without limitation, solely economic damages), sustained by any person or property arising directly or indirectly as a result of any error, omission or negligent act of the successful Respondent, a sub-contractor, or anyone directly or indirectly employed by them in the performance of any portion of any contract arising from this solicitation. Any proposal submitted, to be considered by AVCP must be accompanied by evidence satisfactory to AVCP of Respondent's ability to perform such an undertaking.

3. Payment

AVCP will pay by check for services performed under any contract arising from this bid. The respondent will submit invoices and supplemental documents for review based on an approved schedule of values. If a BPO ("Blank Purchase Order") is required by AVCP, the respondent will submit the BPO for review prior to payment. AVCP shall pay an approved invoice within twenty (20) working days of approval. AVCP will not undertake to pay any tax arising from the transaction whatsoever.

4. Prime Contractor Responsibilities

As part of any contract arising from this solicitation, the successful Respondent will be required to assume responsibility for all services to be furnished whether they are furnished by the successful Respondent or a subcontractor. Furthermore, the successful Respondent will be the only party other than AVCP that is a party to the contract; the only one with whom AVCP will engage in communication respecting matters related to performance under the contract; and the only one to whom any payment required of AVCP under the contract will be made.

5. No Assignment

Any contract arising from this solicitation will expressly bar the successful Respondent's assignment of the contract or any of such Respondent's rights under the contract, without the prior written consent of AVCP; and expressly provide, in substance, that any purported assignment or transfer without such prior written consent will be void and without force or effect. However, Respondent understands that AVCP shall be permitted to assign the contract or any AVCP rights under the contract.

6. Contract Terms

The terms of the proposed contract shall commence on or after acceptance of bid and terminate based on final payment and an executed release of claims. The Respondent shall provide a construction schedule with the bid.

7. Liquidated Damages

Liquidated damages in the amount of three thousand five hundred dollars and zero cents (\$3,500.00) per calendar day will be assessed for each calendar day that work is not substantially complete.

O. Minority Owned Business Enterprise/Women Owned Business Enterprise

If Respondent is asserting Minority Owned Business Enterprise/Women Owned Business Enterprise eligibility or claiming an Alaska Native/American Indian owned business status, provide documentation. AVCP, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.

P. AVCP Furnished Items

AVCP has furnished items related to the construction, which are staged in Pitka's Point. A list of materials is provided in Appendix C. The respondent shall review the materials and determine if additional materials

are required. The respondent shall provide all remaining materials required to finish the project.

Q. Preparation of Bid

Bids shall only be submitted on the forms or legible copies of the Association of Village Council Presidents' forms (Appendix A). All entries shall be legible and in ink or type. Respondents are required to provide an email address on the bid form.

The bid must be signed in ink by the person or persons authorized to sign the Contract for the bidder. If a bidder is a corporation, the bid must be signed by a corporate officer with authority to bind the corporation. If a bidder is a partnership, a partner must sign. Each person signing the bid must initial any changes made to entries on the bid forms.

A complete bid package includes the following:

1. Bid Form
2. Bid Bond
3. Hiring Plan
4. Project Schedule
5. Proposed List of Subcontractors
6. Respondent Questionnaire
7. Contingency/Infectious Disease Plan

R. Non-Responsive Bids

A bid shall be rejected as nonresponsive if it:

1. Does not conform to the requirements of Paragraph 'Q' above;
2. Is not properly signed by an authorized representative of the bidder in ink and in a legally binding manner;
3. Contains unauthorized additions, conditional or alternative bids, or other irregularities that make the bid incomplete, indefinite, or ambiguous;
4. Includes a reservation of the right to accept or reject any award, or to enter into a contract pursuant to an award;
5. Fails to include an acceptable bid guaranty with the bid;
6. A bid may be rejected as nonresponsive, in the Association of Village Council Presidents' discretion, if it:
 - a. Is not typed or completed in ink;
 - b. Fails to include an acknowledgement of receipt of each addendum by assigned number and date of issue; or
 - c. Is missing a bid price for any pay item, except when alternate pay items are authorized.

S. Draft Contract

Respondent's bid may be accompanied by a proposed form of written contract. Respondent's bid should be accompanied by a complete written statement of any contract term that, according to Respondent, must be a term of any contract it makes with AVCP arising from this solicitation.

T. Confidentiality of the Association of Village Council Presidents Information

Information supplied by AVCP to Respondent in connection with this request for proposal is the confidential information of AVCP. Respondent and its employees and agents shall protect the confidentiality of AVCP furnished information and prevent its use and disclosure.

U. Receipt and Opening of Bids

AVCP will only consider bids, revisions, and withdrawals received before the scheduled time of bid receipt.

AVCP is not responsible for prematurely opening or failing to open bids that are improperly addressed or identified.

Unofficial results shall be provided within four (4) days of opening.

V. Compliance with 23 CFR 635.410 – Buy America Act

Bidders shall complete and submit Buy America Certification, with all submitted bids, if applicable.

Davis Bacon Wage Rates:

Contractor shall comply with and shall require its subcontractors to comply with the Davis-Bacon Act (40 U.S.C. 276a to a-7), as supplemented by Department of Labor regulations (29 CFR part 5). AVCP requires the use of Form WH-347 for mandatory Davis Bacon reporting.

W. Federal Aid-Construction Contract Requirements:

Contractor shall comply with all applicable required contract provisions for federal-aid construction contracts found at: <https://www.fhwa.dot.gov/programadmin/contracts/1273/1273.pdf>.

X. Evaluation:

AVCP will evaluate bids based on cost, hiring plan, as well as a scheduling. AVCP will select the Respondent(s) that best meet the needs of AVCP.

AA. Material Sources:

Local material sources available to the contractor are located near the community. AVCP makes no warranty that the material meets specifications. Prospective Respondents are encouraged to examine material sources prior to submitting a Bid. Respondents are responsible for all of the following: (1) determining the availability of such sources; (2) determining the suitability of materials in the off-site sources for use on the project; (3) negotiating and contracting with the owner(s) of off-site material sources for all costs associated with mining, loading and/or hauling materials from such sources; (4) making any necessary improvements to access roads to off-site material sources both before and after use of such sites; (5) obtaining and paying for all necessary permits and/or clearances necessary for use of any off-site material sources; (6) including all costs for the use and transportation of any materials taken from off-site material sources in their bid; and (7) environmental and permits are obtained at no additional cost or time. AVCP will complete quality assurance testing for payment.

BB. Withdrawal or Revision of Bids

Bidders may withdraw a bid in writing delivered by mail, by email in PDF format, or in person, provided that the designated office receives the withdrawal or revision before the time set for opening of bids. All revisions must be received by the bid closing date and time.

CC. Local Hire

Respondent shall provide a Tribal and/or Native hiring preferences. Respondent shall provide a hiring plan with the bid that describes the means and methods of implementation of Pitka's Point, TERO Ordinance. The plan shall include Construction staffing plan that indicates which positions and estimated number of total man hours that will be Tribal and Native employees.

APPENDIX A
AVCP TRANSPORTATION DEPARTMENT BID SHEET
AVCP TRIBAL TRANSPORTATION PROGRAM
PITKA'S POINT COMMUNITY STREETS PROJECT

Description of Bid: Pitka's Point Community Streets Project

To: The Association of Village Council Presidents ("Owner"):

The undersigned, having familiarized him/herself with the local conditions and federal, state, or local requirements affecting the cost of the work, and with the construction plans and specifications including information present in the Request for Bid, this Bid, the Form of Contract, the Scope of Work, the attached Exhibits, and Addenda, in any thereto, hereby proposes to furnish all, equipment, labor, and materials as described in the following:

Description of Materials

All in accordance therewith, for the lump sum of:

BID: _____ Dollars (\$ _____)

The work shall commence at the time stipulated in the Notice to Proceed if issued, or the contract based on contract terms and shall be substantially complete as defined in the Contract. A Notice to Proceed will not be issued if the terms of the contract clearly identify a work commencement period.

In submitting this bid, it is understood that the right is reserved by AVCP to reject any and all bids. If written notice of the acceptance of this bid is mailed, telegraphed or delivered to the undersigned within forty five (45) days after the opening of this bid, or any time thereafter before this bid is withdrawn, the undersigned agrees to execute and deliver a Contract in the prescribed form to the undersigned for signature.

The Undersigned declares, under penalty of perjury under the laws of the United States, that neither s/he or the firm, association, or corporation of which s/he is a member, has, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with this bid.

The undersigned further acknowledges receipt of the following Addenda:

ADDENDUM NO. _____ DATED _____, 2020

COMPANY: _____

ADDRESS: _____

FAX: _____ EMAIL: _____

NAME: _____ TITLE: _____

SIGNATURE: _____ DATE: _____

APPENDIX B
INSURANCE AND FINANCIAL RESPONSIBILITY REQUIREMENTS

The Respondent shall provide proof and maintain, at its own expense, acceptable evidence of financial responsibility (insurance, fully funded self-insurance, financial guarantee bond, cash bond, or letter of credit) with the following terms and conditions:

I. Commercial General Liability:

Coverage shall be at least as broad as ISO form CG 00 01 (Edition 12 04)

Limits: \$1,000,000 Combined Single Limit for Bodily Injury and Property Damage per Occurrence
\$2,000,000 Combined Single Limit for Bodily Injury and Property Damage Aggregate General
aggregate limits shall apply separately to each project and will cover liability for:

Per Project Aggregate

- a. Premises/Operations;
- b. Products/Completed Operations;
- c. Primary & Noncontributory with respect to Contractor's work;
- d. Contractual Liability (liability assumed under an insured contract);
- e. Independent Contractors;
- f. Explosion, collapse and underground hazards.

General liability insurance shall be maintained in effect until final acceptance of the completed construction and, for products liability and completed operations liability at least two years thereafter.

If the general liability insurance is written on a claims-made form, the Contractor shall provide insurance for a period of two years after final payment of this agreement. The policy(s) shall evidence a retroactive date no later than the effective date of this contract.

If the Contractor utilizes a subcontractor(s) to perform any part of the work under this contract, the general liability insurance shall not contain any endorsements that exclude the work of the subcontractor(s).

II. Automobile Liability, to include the following coverages:

- a. Owned auto liability;
- b. Non-owned auto liability;
- c. Hired auto liability (when applicable);
- d. Limit: Not less than \$1,000,000 bodily injury and property damage combined single limit.

III. Workers' Compensation and Employer's Liability:

Limits: Workers' Compensation -Statutory coverage in the state work is being performed.

Employer's Liability: Bodily Injury by Accident - \$1,000,000 each accident
Bodily Injury by Disease - \$1,000,000 each employee Bodily Injury by Disease -
\$1,000,000 policy limit
Organizations using volunteer labor will provide evidence of coverage for
volunteers.

If the work is being performed on or about navigable water, the policy will be endorsed to include, if applicable:

- United States Longshoreman and Harbor Workers Compensation Act Endorsement
- Outer Continental Shelf Act Endorsement;
- Maritime Employers' Liability Coverage Endorsement including coverage for transportation, wages, maintenance and cure;
- Maritime Voluntary Compensation Endorsement Borrowed Servant or Alternate Employer Endorsement In Rem Endorsement.

IV. Crime/Employee Dishonesty Liability:
Limit: \$500,000 per incident.

V. Umbrella/Excess Liability:
Limit: \$5,000,000 per occurrence.

VI. Marine Comprehensive General Liability:

For any work involving maritime or offshore work, Contractor must carry Marine Comprehensive General Liability to include coverage for:

Contractual liability Independent Contractors Products/Completed Operations
Explosion, collapse and underground hazards

Limit: \$1,000,000 Combined Single Limit for Bodily Injury & Property Damage Per Occurrence
\$3,000,000 Combined Single Limit for Bodily & Property Damage Aggregate

VII. Cargo Marine Liability:

All Materials products will be insured for property coverage for the determined value at the time of the waterborne shipment.

Additional Insured Endorsements

The Respondent's insurer(s) will endorse all policies (except Workers' Compensation) to name The Association of Village Council Presidents as an Additional Insured.

Waiver of Subrogation Endorsements

The Respondent's insurer(s) will endorse all policies with a waiver of subrogation in favor of The Association of Village Council Presidents.

General Requirements

- a) All policies (except Workers' Compensation/Employer's Liability) must be endorsed to reflect that this coverage is primary and non-contributory as respects AVCP.
- b) No required coverage may be cancelled, materially changed, or non-renewed, without 30 days prior written notification to AVCP.
- c) Any sub-Contractor(s) will provide coverages at least equal to those required of the Respondent.
- d) Insurer(s) must be filed with the State of Alaska to write insurance business on an admitted basis.
- e) Insurer(s) must be rated at least "A-, VII" or better by A.M. Best.
- f) All coverages shall remain in effect until the completion of the contract.
- g) The Respondent shall provide a certificate or copies of documents evidencing all required coverages, prior to beginning work under any contract resulting from this Request for Proposals.

The Respondent shall file with the contract administrator within five days after date of contract, all financial responsibility to documentation previously mentioned.

VIII. Performance, Payment and Bid Bond Requirements.

The Contractor shall furnish separate performance and payment bonds. The Performance bond shall be for faithful performance of the contract.

The payment bond shall be for security for the payment of all persons for furnishing materials, provisions, or other supplies, or items used in, upon, for, or about the performance of the work contracted to be done, or for performing any work or labor thereon of any kind.

The Contractor shall promptly furnish additional security required to protect the authority and persons supplying labor or materials under this contract if any surety upon any bond furnished with this contract becomes unacceptable to AVCP.

Payment Bond: amount of contract

Performance Bond: amount of contract

Bid Bond: A Certified Check or bank draft, payable to AVCP, U.S. Government bonds, or a satisfactory bid bond executed by the bidder shall be submitted with each bid. Bid securities or bonds shall be no less than five percent (5%) of the bid amount.

IX. Respondent Fidelity

Respondent shall be responsible for the conduct of their employees at any and all times. Should any of Respondent's employees steal any property owned by AVCP, property owned by others but in the care, custody and control of AVCP, or any negotiable instrument, Contractor shall be responsible to AVCP for the value of the stolen property.

X. Contingency Plan Documentation

The Respondent shall provide proof and maintain, at its own expense, a Contingency Plan/Emergency Preparedness Plan. This plan should encompass any and all situations that may adversely affect the contracting company's ability to continue to supply service to AVCP.

**AVCP
Tribal Transportation Program
Bid Bond
Pitka's Point Community Street Project**

_____, as surety ("Surety"),
(Insert Proper Name of Surety)
and

(Insert Proper Name of Contractor)

as principal ("Contractor"), enter into, execute this bond ("Bid Bond"), and bind themselves in favor of the AVCP as obligee ("Owner") in the sum

of \$ _____,
(Insert Sum)

or

_____.% of the Bid for the payment of which sum well and truly to be made, the said Principal and the said Surety, bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the principal has submitted a bid for the Pitka's Point Community Streets for the AVCP project in Pitka's Point Alaska;

WHEREAS, the Owner requires the Contractor to furnish a Performance and Payment Bond containing the terms and conditions set forth herein as a condition to executing the Construction Contract with the Contractor;

NOW THEREFORE, the Surety and the Contractor, both jointly and severally, and for themselves, their heirs, administrators, executors and successors agree:

To enter into a Contract with the AVCP in accordance with the terms of such bid, and give such bonds as may be specified in the bidding or Contract Documents with good and sufficient surety for the faithful performance of such Contract and for the prompt payment of labor and material furnished in the prosecution thereof, or in the event of the failure of the Principal to enter such Contract and give such bond or bonds, if Principal shall pay to the AVCP the difference not to exceed the penalty hereof between the amount specified in said bid and such larger amount for which the AVCP may in good faith contract with another party to perform the Work covered by said bid, then this obligation shall be null and void, otherwise to remain in full force and effect.

Surety:

Contractor:

Owner:
AVCP
PO Box 219
Bethel, AK 99559-0219
(907) 543-7322

CONTRACTOR:

SURETY:

Seal
(INSERT PROPER NAME OF CONTRACTOR)

Seal
(INSERT PROPER NAME OF SURETY)

By: _____
(SIGNATURE OF AUTHORIZED SIGNATORY)

By: _____
(SIGNATURE OF AUTHORIZED SIGNATORY)

(OFFICE OR TITLE OF PERSON SIGNING)

(OFFICE OR TITLE OF PERSON SIGNING)

AVCP
Tribal Transportation Program
Payment Bond
Pitka's Point Community Streets Project

_____, as surety ("Surety"),
(Insert Proper Name of Surety)
and

(Insert Proper Name of Contractor)
as principal ("Contractor"), enter into, execute this bond ("Payment Bond"), and bind themselves in favor of the AVCP Inc. as obligee ("Owner") in the penal sum

of \$ _____,
(Insert Penal Sum)

as of the _____.
(Insert Date of Construction Contract)

WHEREAS, the Contractor has executed a contract with the Owner of even date herewith ("Construction Contract") for the construction of the Pitka's Point Community Streets Project for the AVCP project in Pitka's Point, Alaska.

WHEREAS, the Owner has required the Contractor to furnish this Payment Bond containing the terms and conditions set forth herein as a condition to executing the Construction Contract with the Contractor;

NOW THEREFORE, the Surety and the Contractor, both jointly and severally, and for themselves, their heirs, administrators, executors and successors agree:

1. The Construction Contract is hereby incorporated herein and by reference made a part hereof to the same extent and effect as though it were copied verbatim herein. The Surety and the Contractor are bound for the full performance of the Construction Contract including without exception all of its terms and conditions, both express and implied, and, without limitation, specifically including Contractor's obligation to pay for labor, materials, services and equipment provided in connection with the Construction Contract performance;
2. For purposes of this Payment Bond, Beneficiary is defined as a person or entity who has actually provided labor, material, equipment, services or other items for use in furtherance of the Construction Contract, and having:
 - (A) A direct contract with the Contractor; or
 - (B) A direct contract with a subcontractor of the Contractor; or
 - (C) Rights, under the laws of the jurisdiction where the Project is located, to file a lien, a claim or notice of lien, or otherwise make a claim against the Project or against funds held by the Owner, if the Project is, or were, subject to such filing.
3. The Surety shall not be obligated hereunder to a Beneficiary other than a Beneficiary having a direct contract with the Contractor unless such Beneficiary has given written notice of its claim to the Contractor and the Surety within the longer of:
 - (A) Ninety (90) days after such Beneficiary provided labor, material, equipment, services or other items for use in furtherance of the Construction Contract; or,
 - (B) The period of time provided by the jurisdiction wherein the Project is located for (1) filing of a lien, claim of lien, notice of lien, if the Project is, or were, subject to such filing, or (2)

- otherwise making a claim against the Project or against funds held by the Owner;
- (C) Stating the amount claimed and identifying, by name and address, the person or entity to whom such labor, material, equipment, services or other items were provided.
4. In no event shall the Surety be obligated hereunder for sums in excess of the Penal Sum.
5. Upon receipt of a claim from a Beneficiary hereunder who has furnished to the Surety proof of the claim duly sworn to by the Claimant, along with adequate supporting documentation which proves the amount claimed is due and payable, the Surety shall promptly, and in no event later than 30 days after receipt of such claim, respond to such claim in writing (furnishing a copy of such response to the Owner) by:
- (A) Making payment of all sums not in dispute; and, stating the basis for disputing any sums not paid.
6. No action shall be commenced by a Beneficiary hereunder after the passage of the longer of one (1) year following final completion of the Construction Contract or, if this bond is provided in compliance with applicable law, any limitation period provided therein. If the limitation period contained in this Paragraph is unenforceable, it shall be deemed amended to provide the minimum period for an action against the Surety on a payment bond by a third-party beneficiary thereof.
7. Any and all notices to the Surety or the Contractor shall be given by Certified Mail, Return Receipt Requested, to the address set forth for each party below:

Surety:

Contractor:

Owner:
AVCP
PO Box 219
Bethel, AK 99559-0219
907) 543-7322

CONTRACTOR:

SURETY:

SEAL
(INSERT PROPER NAME OF CONTRACTOR)

SEAL
(INSERT PROPER NAME OF SURETY)

By: _____
(SIGNATURE OF AUTHORIZED SIGNATORY)

By: _____
(SIGNATURE OF AUTHORIZED SIGNATORY)

(OFFICE OR TITLE OF PERSON SIGNING)

(OFFICE OR TITLE OF PERSON SIGNING)

AVCP
Tribal Transportation Program
Payment Bond
Pitka's Point Community Streets Project

_____ as surety ("Surety"),
(Insert Proper Name of Surety)

and

(Insert Proper Name of Contractor)

as principal (Contractor"), enter into, execute this bond ("Performance Bond"), and bind themselves in favor of the AVCP Inc., as obligee ("Owner"), in the penal sum of

\$ _____, as of the _____.
(Insert Penal Sum) (Insert Date of Construction Contract)

WHEREAS, the Contractor executed a contract with the Owner of even date herewith ("Construction Contract") for the construction of the Pitka's Point Community Streets Project for the ACVP project in Pitka's Point Alaska.

WHEREAS, the Owner required the Contractor to furnish this Performance Bond containing the terms and conditions set forth herein as a condition to executing the Construction Contract with the Contractor;

NOW THEREFORE, the Surety and the Contractor, both jointly and severally, and for themselves, their heirs, administrators, executors and successors agree:

1. The Construction Contract is hereby incorporated herein and by reference made a part hereof to the same extent and effect as though it were copied verbatim herein. The Surety and the Contractor are bound for the full performance of the Construction Contract including without exception all of its terms and conditions, both express and implied.
2. If the Contractor is in default of the Construction Contract and the Owner, by written notice to the Contractor and the Surety, declares the Contractor to be in default and terminates the right of the Contractor to proceed, the Surety shall thereupon promptly notify the Owner in writing as to which of the actions permitted to the Surety in Paragraph 3 it will take.
3. Upon default and termination of the Contractor and notice to the Contractor and Surety as provided in Paragraph 2 above, the Surety shall within 30 days proceed to take one or, at its option, more than one of the following courses of action:
 - (A) Proceed itself, or through others acting on its behalf, to complete full performance of the Construction Contract including, without limitation, correction of defective and nonconforming work performed by or on behalf of the Contractor. During such performance by the Surety the Owner shall pay the Surety from its own funds only such sums as would have been due and payable to the Contractor in the absence of the default and termination.
 - (B) Applicable law permitting, and with the prior written consent of the Owner, obtain bids or proposals from contractors previously identified as being acceptable to the Owner, for full performance of the Construction Contract. The Surety shall furnish the Owner a copy of such bids or proposals upon receipt of same. The Surety shall promptly select, with the

agreement of the Owner, the best responsive bid or proposal and shall promptly tender the contractor submitting it, together with a contract for fulfillment and completion of the Construction Contract executed by the completing contractor, to the Owner for the Owner's execution. Upon execution by the Owner of the contract for fulfillment and completion of the Construction Contract, the completing contractor shall furnish to the Owner a performance bond and a separate payment bond, each in the form of those bonds previously furnished to the Owner for the Project by the Contractor. Each such bond shall be in the penal sum of the (1) fixed price for completion, (2) guaranteed maximum price for completion, or (3) estimated price for completion, whichever is applicable. The Owner shall pay the completing contractor from its own funds only such sums as would have been due and payable to the Contractor under the Construction Contract as and when they would have been due and payable to the Contractor in the absence of the default and termination. To the extent that the Owner is obligated to pay the completing contractor sums which would not have then been due and payable to the Contractor under the Construction Contract, the Surety shall provide the Owner with such sums in a sufficiently timely manner that the Owner can utilize such sums in making timely payment to the completing contractor; or,

- (C) Take any and all other acts, if any, mutually agreed upon in writing by the Owner and the Surety.
4. In addition to those duties set forth hereinabove, the Surety shall promptly pay the Owner all loss, costs and expenses resulting from the Contractor's default(s), including, without limitation, fees, expenses and costs for architects, engineers, consultants, testing, surveying and attorneys, liquidated or actual damages, as applicable, for delay in completion of the Project, and fees, expenses and costs incurred at the direction, request, or as a result of the acts or omissions of the Surety.
 5. In no event shall the Surety be obligated to the Owner hereunder for any sum in excess of the Penal Sum.
 6. The Surety waives notice of any changes to the Construction Contract including, without limitation, changes in the contract time, the contract price, or the work to be performed.
 7. This Performance Bond is provided by the Surety for the sole and exclusive benefit of the Owner and, if applicable, any dual obligee designated by rider attached hereto, together with their heirs, administrators, executors, successors or assigns. No other party, person or entity shall have any rights against the Surety hereunder.
 8. Any and all notices to the Surety, the Contractor or the Owner shall be given by Certified Mail, Return Receipt Requested, to the address set forth for each party below:

Surety:

Contractor:

Owner:
AVCP
PO Box 219
Bethel, AK 99559-0219
(907) 543-7322

9. Any statutory limitation, which may be contractually superseded, to the contrary notwithstanding, any action hereon may be instituted so long as the applicable statute of limitations governing the Construction Contract has not run or expired.

CONTRACTOR:

SURETY:

SEAL
(INSERT PROPER NAME OF CONTRACTOR)

SEAL
(INSERT PROPER NAME OF SURETY)

By: _____
(SIGNATURE OF AUTHORIZED SIGNATORY)

By: _____
(SIGNATURE OF AUTHORIZED SIGNATORY)

(OFFICE OR TITLE OF PERSON SIGNING)

(OFFICE OR TITLE OF PERSON SIGNING)

Appendix C
AVCP Supplied Material

Description	Unit	Quantity
Guardrail Buffered End Guard	Each	6
W-Beam Rail-Straight 12'6" length	Each	46
Steel Posts	Each	92
Composite Block	Each	92
Silt Fence: Roll size 3ft x 100ft	Each	5
Earth Savers, Wheat Straw Wattles	Each	10
North American Green: SC250 Roll size 6.5ft x 55ft	Each	26
R1-1 (Stop Sign) (36"x36")	Each	4
2 1/4"x2 1/4"x10' Perforated Steel Post	Each	4
Safety Fence - Standard, 4 x 100', Orange	Each	2
12" x 20' High Density Polyethylene	Each	20
18" x 20' High Density Polyethylene	Each	24
24" x 20' High Density Polyethylene	Each	1
36" x 20' High Density Polyethylene	Each	4

BUY AMERICA CERTIFICATION

Project Name: AVCP Transportation Department Pitka's Point Community Streets Project

The undersigned Bidder hereby certifies on behalf of itself and all contractors (at all tiers) that it will meet Buy America requirements in 23 CFR 635.410, using one of the following provisions:

- The product contains no steel or iron products manufactured outside the United States.** To be considered domestic, all steel and iron used and all products manufactured from steel and iron must be produced in the United States and all manufacturing processes, including application of a coating, for these materials must occur in the United States. Coating includes all processes that protect or enhance the value of the material to which the coating is applied. The Buy America process does not apply to this project. If there is ANY foreign steel or iron in your product you may not check this box.

- The product has minimal use of steel or iron products manufactured outside the United States.** The Buy America regulation does "not prevent a minimal use of foreign steel and iron materials, if the cost of such materials used does not exceed one-tenth of one percent (0.1 percent) of the total contract cost or \$2,500, whichever is greater. For purposes of this paragraph, the cost is that shown to be the value of the steel and iron products as they are delivered to the project. If this minimal use clause applies to your project, then please provide documentation indicating that this requirement is being met. The Buy America process does not apply to your project.

- The product meets the standards for the FHWA Manufactured Products waiver.** FHWA policy provides for a Buy America waiver for certain manufactured products. To be eligible for the Manufactured Products waiver, the product must consist of less than 90% steel or iron content when it is delivered to the job site for installation. If your product meets this manufactured products definition, please provide documentation of how the product is a manufactured product and submit for approval.

- The product has foreign steel or iron; a Buy America waiver is required.** Bidder certifies that it will comply with the applicable Buy America requirements if a waiver of those requirements is not available or not pursued by the Department. The waiver process can take time and the project may not move forward until a waiver is completed.

A false certification is a criminal act in violation of 18 USC 1001. Should this Agreement be investigated, Proposer has the burden of proof to establish that it is in compliance.

Proposer

Signature of Authorized Official

Name of Authorized Official

Title

Date

AVCP
 PITKA'S POINT COMMUNITY STREETS PROJECT
 PITKA'S, ALASKA
 RESPONDENT QUESTIONNAIRE
 PAGE 2 OF 3

2. What percent of the total value of this contract do you intend _____ %
 to subcontract?

3. Do you propose to purchase any equipment for use on this project?
 No Yes If YES, Describe type, quantity, and approximate cost:

4. Do you propose to rent any equipment for this work?
 No Yes If YES, Describe type, and quantity:

5. Is your bid based on firm offers for all materials necessary for this project?
 No Yes If NO, Please explain:

C. EXPERIENCE

1. Have you had previous construction contracts or subcontracts with AVCP?
 Yes No

Describe the most recent or current contract, its completion date, and scope of work:

2. List, as an attachment to this questionnaire, other construction projects you have completed, the dates of completion, scope of work, and total contract amount of each project completed in the past 12 months.

I hereby certify that the above statements are true and complete.

Name of Contractor

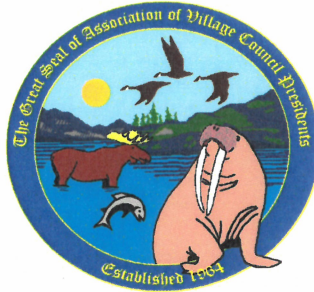
Name and Title of Person Signing

Signature

Date

Division 100
Association of Village Council Presidents
Transportation Standard Specifications for Highway Construction
2017 Edition

**Pitka's Point Community Street Improvement
Pitka's Point, Alaska**



Division 100
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Transportation Standard Specifications for Highway Construction
2017 Edition

Division 200-700
Modifications to Alaska Department of Transportation and Public Facilities
Standard Specifications for Highway Construction
2015 Edition



April 2017

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DIVISION 100–GENERAL PROVISIONS
SECTION 101

DEFINITIONS AND TERMS

101-1.01 GENERAL. The following terms and definitions apply in these Specifications. If a term is not defined, the ordinary, technical, or trade meanings for that term shall apply, within the context in which it is used.

Titles and headings of sections, subsections, and subparts are intended for convenience of reference and will not govern their interpretation.

Cited publications refer to the most recent issue, including interim publications, in effect on the date of the Invitation To Bid, unless specified by year or date.

These Specifications are written to the Bidder or Contractor. Unless otherwise noted, all actions required by the specifications are to be performed by the Bidder, the Contractor, or the Contractor's agent.

Beginning in Division 200 we use imperative mood and active voice to communicate the Contractor's responsibilities in a direct and concise manner. Omission of words or phrases such as “a,” “an,” “the,” “the Contractor shall,” “unless otherwise specified,” or “unless otherwise directed” is intentional. Interpret the Contract as if they were included.

Beginning in Division 200 whenever anything is, or is to be, done, if, as, or, when, or where “acceptable, accepted, approval, approved, authorized, determined, designated, directed, disapproved, ordered, permitted, rejected, required, satisfactory, specified, submit, sufficient, suitable, suspended, unacceptable, unsatisfactory, or unsuitable,” the expression is to be interpreted as if it were followed by the words “by the Engineer” or “to the Engineer.”

101-1.02 ACRONYMS.

Acronyms used in the Contract include the following (publications and plans are italicized):

AAC	Alaska Administrative Code
AASHTO	American Association of State Highway and Transportation Officials
ACI	American Concrete Institute
AITC	American Institute of Timber Construction
ANSI	American National Standards Institute
AKOSH	Alaska Occupational Safety and Health
AS	Alaska Statute
ASDS	Alaska Sign Design Specifications
ASME	American Society of Mechanical Engineers
ASTM	American Society for Testing & Materials
ATM	Alaska Traffic Manual

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ATMM	Alaska Test Methods Manual
ATSSA	American Traffic Safety Services Association
AWPA	American Wood Preservers Association
AWG	American Wire Gage
AWS	American Welding Society
AWWA	American Water Works Association
CFR	Code of Federal Regulations
CRSI	Concrete Reinforcing Steel Institute
DOLWD	Alaska Department of Labor and Workforce Development
ADOT&PF	Alaska Department of Transportation and Public Facilities
EEI	Edison Electrical Institute
EIA	Electronic Industries Association
FHWA	Federal Highway Administration
FM	Factory Mutual
FOP	Field Operating Procedure (see ATMM)
FSS	Federal Specifications and Standards, General Services Administration
IMSA	International Municipal Signal Association
ICEA	Insulated Cable Engineers Association
ITE	Institute of Transportation Engineers
MRP	Mining and Reclamation Plan
MUTCD	Manual on Uniform Traffic Control Devices
NEC	National Electrical Code
NESC	National Electrical Safety Code
NEMA	National Electrical Manufacturers Association
SAE	Society of Automotive Engineers
SSHC	DOT&PF Standard Specifications for Highway Construction
SSPC	Steel Structures Painting Council
SWPPP	Storm Water Pollution Prevention Plan
UL	Underwriters Laboratory
VAC	Voltage Alternating Current
WAQTC	Western Alliance for Quality in Transportation Construction (see ATMM)

101-1.03 DEFINITIONS.

ADDENDA. Clarifications, corrections, or changes to the Plans, Specifications, or other Contract documents issued graphically or in writing by the Department after the advertisement but prior to bid opening.

ADVERTISEMENT. The public announcement, as required by law, inviting bids for specified work or materials.

AGREED PRICE. An amount negotiated between the Department and the Contractor after Contract award for additional work performed or additional materials supplied under the Contract.

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ALASKA TEST METHODS MANUAL. The materials testing manual used by the Department. Contains Alaska Test Methods, WAQTC Test Methods, WAQTC FOPs for AASHTO Test Methods and Alaska Standard Practices for evaluating test results, calibrating testing equipment.

AWARD. Acceptance of the successful bid by the Department. The award is effective upon execution of the Contract by the Contracting Officer.

BASE COURSE. One or more layers of specified material placed on a subbase or subgrade to support a surface course.

BID. The bidder's offer, on the prescribed forms, to perform the specified work at the prices quoted.

BID BOND. A type of bid guaranty.

BIDDER. An individual, firm, corporation, joint venture, or any acceptable combination of individuals and entities submitting a bid for the advertised work.

BID GUARANTY. The security furnished with a bid to guarantee that the bidder will enter into a contract if the Department accepts the bid.

BRIDGE. A structure, including supports, erected over a depression or an obstruction, such as water, highway, or railway; and having a track or passageway for carrying traffic or other moving loads and a length measured along the roadway center of more than 20 feet between undercopings of abutments or spring lines of arches or extreme ends of openings of multiple boxes. The length of a bridge structure is the overall length measured along the line of survey stationing between backs of abutment backwalls or between ends of the bridge floor.

CALENDAR DAY. Every day shown on the calendar, beginning and ending at midnight.

CHANGE ORDER. A written order by the Department to the Contractor making changes to the Contract, within its general scope, and establishing the basis of payment and time adjustment, if any, for the work affected.

COMPLETION DATE. The date on which all Contract work is specified to be completed.

CONSTRUCTION. Physical activity by the Contractor or any Subcontractor using labor, materials or equipment within the Project, or within material sources planned for use on the Project.

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CONTINGENT SUM. A method for paying for a Contract bid item reserved by the Department for specified contingencies. The Contractor shall perform Contingent Sum work only upon the Directive of the Engineer. The basis of payment for Contingent Sum work shall be specified in the Contract or the Directive.

CONTRACT. The written agreement between the Department and the Contractor setting forth the obligations of the parties for the performance and completion of the work.

The Contract includes the Invitation To Bid, Bid Form, Standard Specifications, Standard Modifications, Special Provisions, Plans, Bid Schedule, Contract Forms, Contract Bonds, Addenda, and any Change Orders, Interim Work Authorizations, Directives, or Supplemental Agreements that are required to complete the work in an acceptable manner, all of which constitute one instrument.

CONTRACTING OFFICER (PROCUREMENT OFFICER). The person authorized by the Department to enter into and administer the Contract on behalf of the Department. The Contracting Officer has authority to make findings, determinations, and decisions with respect to the Contract and, when necessary, to modify or terminate the Contract. The Contracting Officer is identified on the Invitation To Bid.

CONTRACT ITEM (PAY ITEM). A specifically described item of Contract work listed on the Bid Schedule or in a Change Order.

CONTRACTOR. The individual, firm, corporation, joint venture, or any acceptable combination of individuals and entities contracting with the Department for performance of the Contract.

CONTRACT TIME. The time allowed under the Contract, including authorized time extensions, for the completion of all work by the Contractor.

CONTROLLING ITEM. Any feature of the work considered at the time by the Engineer: (1) essential to the orderly completion of the work and (2) a feature which, if delayed, will delay the time of completion of the Contract (such as an item of work on the critical path of a network schedule).

COST. Amounts actually incurred by the Contractor in the performance of the Contract that are (1) actually reflected in contemporaneously maintained accounting or other financial records and (2) supported by original source documentation. Costs are to be stated in U.S. dollars.

CULVERT. Any structure not classified as a bridge that provides an opening under the embankment.

DAY. Calendar day unless preceded by the word “working”.

DEPARTMENT. The AVCP.

DIRECTIVE. A written communication to the Contractor from the Engineer enforcing or interpreting a Contract requirement or ordering commencement or suspension of an item of work already established in the Contract.

ENGINEER. The engineer of record and/or authorized representative of the Department's Contracting Officer. The Engineer is responsible for administration of the Contract.

EQUIPMENT. All machinery, tools, apparatus, and supplies necessary to preserve, maintain, construct, and complete the work.

EQUITABLE ADJUSTMENT. An increase or decrease in Contract price or time calculated according to the terms of this Contract.

EXTRA WORK. An item of work not provided for in the Contract as awarded but found essential by the Engineer for the satisfactory completion of the Contract within its intended scope.

HIGHWAY, STREET, OR ROAD. A general term denoting a public way used by vehicles and pedestrians, including the entire area within the right-of-way.

HOLIDAYS. State of Alaska legal holidays are:

1. New Year's Day - January 1
2. Martin Luther King, Jr. Day - Third Monday in January
3. Presidents' Day - Third Monday in February
4. Seward's Day - Last Monday in March
5. Memorial Day - Last Monday in May
6. Independence Day - July 4
7. Labor Day - First Monday in September
8. Alaska Day - October 18
9. Veteran's Day - November 11
10. Thanksgiving Day - Fourth Thursday in November

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11. Christmas Day - December 25

12. Every Sunday

13. Every day designated by public proclamation by the President of the United States or the governor as a legal holiday.

If a holiday listed above falls on a Saturday, Saturday and the preceding Friday are both legal holidays for officers and employees of the State. If the holiday falls on a Sunday, except (12) above, Sunday and the following Monday are both legal holidays (See AS 44.12).

INSPECTOR. The Engineer's representative authorized to make detailed inspections of Contract performance and materials.

INTERIM WORK AUTHORIZATION. A written order by the Engineer initiating changes to the Contract, within its general scope, until a subsequent Change Order is executed.

INVITATION TO BID. The advertisement for bids for all work or materials on which bids are required.

MAJOR CONTRACT ITEM. A Contract item with a total value of 5 percent or more of the Contract award amount.

MATERIALLY UNBALANCED BID. A mathematically unbalanced bid that either (a) gives rise to a reasonable doubt that it will ultimately result in the lowest overall cost to the Department, even though it may be the lowest bid or (b) is so unbalanced as to be tantamount to allowing a significant advance payment.

MATERIALS. Substances specified for use in the construction of the project.

MATERIALS CERTIFICATION LIST (MCL). A list of materials for which certifications must be submitted to the Engineer. The MCL will also designate electrical products requiring listing by an approved independent electrical testing laboratory. The MCL is included in the Contract documents as an appendix.

MATHEMATICALLY UNBALANCED BID. A bid (a) where each pay item fails to carry its share of the cost of the work plus the bidder's overhead and profit, or (b) based on nominal prices for some pay items and enhanced prices for other pay items.

MEDIAN. The portion of a divided highway separating the traveled ways.

MINOR CONTRACT ITEM. A Contract item with a total value of less than 5 percent of the Contract award amount.

NOTICE OF INTENT TO AWARD. The written notice by the Department announcing the apparent successful bidder and establishing the Department's intent to award the Contract when all required conditions are met.

NOTICE TO PROCEED. Written notice to the Contractor to begin the Contract work.

ORIGINAL GROUND (OG). The ground surface prior to the start of work.

PATHWAY. A paved or unpaved path for multiple uses.

PAVEMENT STRUCTURE. The combination of subbase, base course, and surface course placed on a subgrade to support the traffic load and distribute the traffic load to the roadbed.

PAYMENT BOND. The security furnished by the Contractor and the Contractor's Surety to guarantee payment of all persons who supply labor and material in prosecution of the work provided for in the contract.

PERFORMANCE BOND. The security furnished by the Contractor and the Contractor's Surety to guarantee performance and completion of the work provided for in the contract.

PLANS. The Department's contract drawings, profiles, typical cross sections, standard drawings, and supplemental drawings or reproductions showing the location, character, dimensions, and details of the work.

PRECONSTRUCTION CONFERENCE. A meeting between the Contractor and the Engineer to discuss the project before the Contractor begins the work.

PROFILE. The vertical elevation of the surface of the layer at the location indicated. On a roadbed it is typically indicated at the longitudinal centerline of the top layer of pavement. On a material or fabrication it may be used to indicate a thickness of material or thickness of a coating.

PROJECT. (a) The specific section of the highway or other property and related facilities on which construction is to be performed, or (b) the work that is to be performed under the Contract whether completed or partially completed.

QUALIFIED PRODUCTS LIST. A list of products that the Department has found conforms to the SSHC.

RESOURCES. Labor, equipment, materials, supplies, tools, transportation, and supervision necessary to perform the work.

RESPONSIBLE BIDDER. A bidder that the Department determines has the skill, ability, financial resources, legal capacity to contract, equipment, required licenses, integrity, satisfactory record of performance and that is otherwise fully capable of performing the Contract.

RESPONSIVE BID. A bid that the Department determines conforms in all material respects with the solicitation for bids.

RETAINAGE. A percentage of a payment established in advance under a contract or subcontract to be withheld from a progress payment due on the contract or subcontract. Payment or a percentage of payment withheld for unsatisfactory performance is not retainage.

RIGHT-OF-WAY. Land or property or an interest in property available for a project. The uses allowed in portions of right-of-way may be restricted.

ROADBED. Graded portion of a highway within top and side slopes, prepared as a foundation for the pavement structure and shoulders.

ROADSIDE. A general term denoting the area adjoining the outer edge of the roadway. Extensive areas between the roadways of a divided highway may also be considered roadside.

ROADWAY. Portion of a highway including shoulders, for vehicular use.

SHOULDER. Portion of the roadway adjacent to the traveled way for accommodation of stopped vehicles for emergency use, and for lateral support of base and surface courses.

SIDEWALK. Portion of the project constructed for the exclusive use of pedestrians.

SPECIAL PROVISION. Addition or revision that amends or supersedes the Standard Specifications or Standard Modifications, and is applicable to an individual project.

SPECIALTY ITEM. A Contract item identified in the Contract that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid on the contract.

SPECIFICATIONS. General term applied to all Contract terms, conditions, directions, provisions, and requirements.

STANDARD DRAWING. Drawing approved by the Department for repetitive use, showing details to be used where appropriate.

STANDARD MODIFICATION. Addition or revision that amends or supersedes the Standard Specification, and is approved by the Department for general application and repetitive use.

STANDARD SPECIFICATIONS. A book or electronic file of specifications approved by the Department for general application and repetitive use.

STATE. The State of Alaska, acting through its authorized representative.

STATION. A distance of 100 feet measured horizontally, usually along centerline.

STRUCTURE. Bridge, culvert, catch basin, drop inlet, retaining wall, cribbing, manhole, end wall, building, sewer, service pipe, underdrain, foundation drain, or other similar feature that may be encountered in the work.

SUBBASE. Layer of specified material between the subgrade and base course.

SUBCONTRACTOR. Individual or legal entity to whom or to which the Contractor sublets part of the Contract.

SUBGRADE. The soil or embankment upon which the pavement structure is constructed.

SUBSIDIARY. Work or material not measured or paid for directly. Compensation for such work is included in the payment for other items of work.

SUBSTANTIAL COMPLETION. The point at which the project (1) can be safely and effectively used by the public without further delays, disruption, or other impediments; and (2) pavement structure, shoulder, drainage, sidewalk, permanent signing and markings, guardrail and other traffic barrier, safety appurtenance, utilities, lighting and all bridge deck and parapet work is complete.

For projects that will not be opened to the traveling public or are being built in phases, the work is substantially complete when it is ready for the subsequent project.

SUBSTRUCTURE. All portions of a bridge below the bearings of simple and continuous spans, skewbacks of arches and tops of footings of rigid frames, including back walls, wing walls, and wing protection railings.

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

SUPERSTRUCTURE. The entire bridge structure above the substructure.

SUPPLEMENTAL AGREEMENT. Negotiated written agreement between the Department and the Contractor authorizing performance of work beyond the general scope of, but in conjunction with, the original Contract. Supplemental agreements are new procurements under the State Procurement Code, AS 36.30.

SURETY. Corporation, partnership, or individual, other than the Contractor, executing a bond furnished by the Contractor.

SURFACE COURSE. Top homogenous layer of the pavement structure. It is designed to withstand the wear of traffic and the disintegrating effects of climate. Sometimes called the wearing course.

TRAFFIC CONTROL PLAN (TCP). One or more project-specific plans detailing the routing of vehicular or pedestrian traffic through or around a construction area including the location of all traffic control devices.

TRAIL. An unpaved path for multiple uses.

TRAVELED WAY. Portion of the roadway designed for vehicle use, excluding shoulders,

UTILITY. Line, facility, or system for producing, transmitting, or distributing communications, power, electricity, light, heat, gas, oil, crude products, water, steam, waste, storm water not connected with highway drainage, or other similar commodity, including a publicly owned fire or police signal system, street lighting system, or railroad which directly or indirectly serves the public. Also means a utility company, inclusive of any subsidiary.

WORK. Depending on the context, (a) The act of furnishing all resources for the project and performing all duties and obligations required by the Contract or (b) the physical construction, facility or end-product that is contemplated under the Contract, whether completed or partially completed.

WORKING DAYS. Calendar days, except Saturdays and state holidays.

WORKING DRAWINGS. Stress sheets, shop drawings, erection plans, falsework plans, framework plans, cofferdam plans, bending diagrams for reinforcing steel, wiring diagrams and schematics, traffic control plans, night work lighting plans, or any other supplementary plans or similar data which the Contractor is required to submit to the Engineer for approval.

SECTION 104

SCOPE OF WORK

104-1.01 INTENT OF CONTRACT.

The intent of the Contract is to provide for the construction and completion of every detail of the described work. The Contractor shall furnish all labor, material, supervision, equipment, tools, transportation, supplies, and other resources required to complete the work in the time specified and in accordance with the Contract.

The Contractor is responsible for the means, methods, techniques, sequence, and procedures of construction, safety, and quality control, and is responsible to perform and furnish the work in accordance with the Contract documents.

104-1.02 CHANGES.

- 1) Within Contract Scope. The Engineer may order changes within the general scope of the Contract at any time, and without notice to sureties, including altering, ordering additions to, or ordering deletions of quantities of any item or portion of the work. These changes shall be made by a written Change Order and shall not invalidate the Contract or release the sureties.
 - a) If the change does not materially differ in character or unit cost from specified Contract work, the Contractor shall perform the work at the original contract measurement methods and prices, subject to the provisions of Subsection 109-1.04.
 - b) If the change is materially different in character or unit cost from that specified in the Contract, a new Contract Item will be established, and an equitable adjustment to Contract price and Contract time shall be calculated by one of the following methods:
- 2) The Engineer and Contractor agree upon an adjustment to Contract price and Contract time, and the Engineer issues a change order for the described work;
- 3) The Engineer requires the Contractor to proceed with the described work, with an adjustment to contract price and contract time, calculated by time and materials basis under Subsection 109-1.05, and the Engineer issues a change order for the work.
 - a) The Contractor shall keep complete daily records of the cost of such work; or
 - b) The Engineer may issue a unilateral Change Order requiring the Contractor to proceed with the work with an adjustment to the payment amount or Contract time based on the Engineer's estimate of reasonable value. The Contractor shall keep complete daily records of the cost of such work.
 - c) If the Engineer eliminates a Contract item, the Contractor shall accept compensation under Subsection 109-1.09.

- i) Outside Contract Scope. Changes determined to be outside the general scope of the Contract shall be made only by Supplemental Agreement issued in accordance with AVCP's procurement regulations. Additional bonding or insurance may be required.
- ii) Cost and Pricing Data. Before a Change Order or Supplemental Agreement covering work for which there is no established Contract price will be approved, the Contractor shall submit detailed cost or pricing data regarding the changed work. The cost or pricing data shall include an itemization of production rates and all costs including labor, materials, and equipment required for the work. The Contractor shall certify that the data submitted are, to the best of its knowledge and belief, accurate, complete, and current as of a mutually agreed date and that the data will continue to be accurate and complete during the performance of the changed work.

104-1.03 DIFFERING SITE CONDITIONS.

The Contractor shall immediately notify the Engineer in writing and specifically describe the alleged differing site condition if the Contractor discovers:

- 1) Subsurface or latent physical conditions at the site, differing materially from those shown in the Contract documents, that could not have been discovered by a careful examination of the site; or
- 2) Unknown physical conditions at the site, of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract.

Failure to give the Engineer immediate written notice of the alleged differing site condition as required under this section constitutes a waiver of any future claim arising from or relating to the alleged differing site condition.

Unless otherwise directed by the Engineer, the Contractor shall leave the affected area undisturbed and suspend work in that area until the Engineer investigates the conditions.

If the Engineer finds that such conditions differ materially and increase or decrease the cost of, or the time required for, performance of the Contract, the Engineer will prepare a Change Order for an Equitable Adjustment to the Contract. The Contractor shall cooperate with the Engineer's preparation of the Change Order.

If the Contractor and the Engineer are unable to reach an agreement concerning the alleged differing site condition, the Contractor may file a claim under Subsection 105-1.17.

The Contractor shall keep accurate and detailed records of the actual cost of the work done as a result of the alleged differing site condition and shall allow the Engineer access to those records. Failure to keep records, to provide the Engineer with access to those records, or to give the notice required above will bar any recovery for the alleged differing site condition.

104-1.04 USE OF MATERIALS FOUND ON THE WORK.

Before using borrow, the Contractor shall utilize Useable Excavation to construct the selected material layers on the project. For the purposes of this subsection, Useable Excavation is material encountered in the excavation that meets the requirements of Subsection 703-2.07 Selected Material. For excavating the Useable Excavation and constructing the selected material layers with Useable Excavation, the Contractor shall be paid only the unit bid price for excavation. Hauling, placing, compacting and other activities required to construct the selected material layers with Useable Excavation shall be subsidiary to excavation, and the Contractor shall not be paid additional sums for those activities. The Engineer may approve the use of borrow when Useable Excavation is not available.

The Engineer may authorize the Contractor to use the Useable Excavation for Contract items other than construction of the selected material layers on the project, and the Contractor shall be paid both for the excavation of the Useable Excavation and for the other Contract item for which it is acceptably used. If this action results in a shortage of material for the selected material layers:

- 1) The Contractor shall replace Useable Excavation used for other Contract items on a yard for yard basis with borrow acceptable to the Engineer; and
- 2) This replacement shall be at the Contractor's expense and at no additional cost to the Department. The Contractor shall pay any royalties required for the borrow.

The Contractor shall not excavate or remove any material that is within the right-of-way but outside the slope and grade lines described in the Contract, without written authorization from the Engineer.

The Contractor may temporarily use material from a structure that is designated to be removed to erect a new structure, but shall not cut or otherwise damage such material without the Engineer's approval.

104-1.05 CLEANUP.

The Contractor shall remove all rubbish, temporary structures, excess materials, and equipment from the project site, from AVCP owned materials sources, and from all work areas before project completion.

End of Section

SECTION 105

CONTROL OF WORK

105-1.01 AUTHORITY OF THE ENGINEER.

The Engineer has immediate charge of the engineering details of the project and is responsible for Contract administration. The Engineer has authority to reject defective material and suspend work being performed improperly. The Engineer has authority to accept completed work, issue Directives, issue Interim Work Authorizations, issue Change Orders, and recommend Contract payments.

The Engineer will decide all questions about the quality and acceptability of the materials furnished and the work performed by the Contractor, the Contractor's rate of progress, Contract interpretation and all other questions relating to Contract performance.

The Engineer has authority to suspend work for reasons listed under Subsection 108-1.06. If the suspension is to protect workers or the public from imminent harm, the Engineer may orally order the suspension of work. Following an oral order of suspension, the Engineer will promptly give written notice of suspension. In other circumstances, the Engineer will give the Contractor written notice of suspension before suspension of work. A notice of suspension will state the defects or reasons for a suspension, the corrective actions required to stop suspension, and the time allowed to complete corrective actions. If the Contractor fails to take the corrective action within the specified time, the Engineer may:

- 1) Suspend the work until it is corrected; and
- 2) Employ others to correct the condition and deduct the cost from the Contract amount.

The Engineer may, at reasonable times, inspect any part of the plant or place of business of the Contractor or any subcontractor that is related to Contract performance, including private or commercial plants, shops, offices, or other places of business.

The Engineer may audit all books and records related to performance of the Contract, whether kept by the Contractor or a subcontractor, including cost or pricing data submitted under Subsection 104-1.02.

105-1.02 PLANS AND WORKING DRAWINGS.

The Department shall provide the Contractor at least two full size sets of the conformed Plans and Contract including Special Provisions. If cross-sections are available, one set will be provided if requested in writing by the Contractor. The Contractor shall keep a complete set of these documents available on the project site at all times.

The Contractor shall supplement structure plans with working drawings that include all details that may be required to adequately control the work and that are not included in the Plans

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furnished by the Department. The Contractor shall not perform work or order materials until the working drawings for such work, or for changes, are approved by the Engineer.

The Contractor shall submit to the Engineer for approval of any required preliminary detail or working drawings. The project name and number shall be stated in the title block for all drawings, as shall the state bridge number, when applicable. The Contractor shall submit drawings in either an electronic or paper format that is acceptable to the Engineer. When paper copies are submitted, provide three sets.

The Contractor shall submit drawings to the Engineer in time to allow for review and correction before beginning the work detailed in the drawing. The Engineer shall return one set of these drawings, either approved or marked with corrections to be made, and shall retain the other sets. The Engineer's approval of working drawings does not change the Contract requirements or release the Contractor of the responsibility for successful completion of the work.

The Contractor is responsible for the accuracy of dimensions and details and for conformity of the working drawings with the Plans and Specifications. The Contractor shall indicate clearly on the working drawings any intended deviations from the Plans and Specifications and itemize and explain each deviation in the Contractor's transmittal letter. The Engineer may order the Contractor to comply with the Plans and Specifications at the Contractor's sole expense if the approved working drawings deviate from the Plans and Specifications and the Contractor failed to itemize and explain the deviations in the Contractor's transmittal letter.

Once the Contractor receives approval of the working drawings, the Contractor shall furnish to the Engineer:

- 1) Enough additional copies to provide eight approved sets of prints;
- 2) One set of reproducible transparencies (polyester film); and
- 3) If requested, an electronic file in AutoCAD drawing interchange format (.DXF).
- 4) The Contractor shall include the cost of furnishing all working drawings in the Contract price.

105-1.03 CONFORMITY WITH PLANS AND SPECIFICATIONS.

Work performed and materials furnished shall conform to the Plans and Specifications and approved Working Drawings and be within specified tolerances. When tolerances are not specified, the Engineer will determine the limits allowed in each case.

The project shall be constructed to the tolerances shown with the table below:

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Construction Tolerances ⁽¹⁾

Staking Phase	Horizontal	Vertical
Existing Government network control points	±0.06 feet	±0.035 feet × \sqrt{M} ⁽²⁾
Local supplemental control points set from existing Government network points	±0.03 feet	±0.01 feet × \sqrt{N} ⁽³⁾
Centerline points ⁽⁴⁾ — (PC), (PT), (POT), and (POC) including references	±0.03 feet	±0.03 feet
Other centerline points	±0.16 feet	±0.16 feet
Cross-section points and slope stakes ⁽⁵⁾	±0.16 feet	±0.16 feet
Slope stake references ⁽⁵⁾	±0.16 feet	±0.16 feet
Culverts, ditches, and minor drainage structures	±0.16 feet	±0.06 feet
Retaining walls and curb and gutter	±0.06 feet	±0.03 feet
Bridge substructures	±0.03 feet ⁽⁶⁾	±0.03 feet
Bridge superstructures	±0.03 feet ⁽⁶⁾	±0.03 feet
Clearing and grubbing limits	±2.00 feet	—
Roadway subgrade finish stakes ⁽⁷⁾	±0.16 feet	±0.03 feet
Roadway finish grade stakes ⁽⁷⁾	±0.16 feet	±0.03 feet

- (1) At 95% confidence level. Tolerances are relative to existing Government network control points.
- (2) M is the distance in miles.
- (3) N is the number of instrument setups.
- (4) Centerline points: PC - point of curve, PT - point of tangent, POT - point on tangent, POC - point on curve.
- (5) Take the cross-sections normal to the centerline ±1 degree.
- (6) Bridge control is established as a local network and the tolerances are relative to that network.
- (7) Includes paved ditches.

All work or material not conforming to the Plans and Specifications and approved Working Drawings is considered unacceptable unless the Engineer finds that reasonably acceptable work has been produced. In this event, the Engineer may allow non-conforming work or material to remain in place, but at a reduced price. The Engineer will document the basis of acceptance and payment by Change Order, unless the contract specifies a method to adjust the price of that item.

The failure of the Department to strictly enforce the Contract in one or more instances does not waive its right to do so in other or future instances.

105-1.04 COORDINATION OF PLANS, SPECIFICATIONS, AND SPECIAL PROVISIONS.

These Standard Specifications, the Standard Drawings, Standard Modifications, Plans, Special Provisions, and all supplementary documents are essential parts of the Contract. They are intended to complement each other and describe and provide for a complete project. A requirement occurring in one is as binding as if occurring in all.

In case of conflict, calculated dimensions will govern over scaled dimensions. In the event that any of the following listed contract documents conflict with another listed contract document, the order of precedence is:

- 1) Special Provisions
- 2) Plans
- 3) Standard Modifications
- 4) Standard Specifications
- 5) Standard Drawings

The Contractor shall not take advantage of any apparent error or omission in the Contract documents. The Contractor may not base a claim for additional compensation or Contract time on a patent error, omission, or conflict in the Contract documents. The Contractor shall notify the Engineer immediately of any apparent errors or omissions in the Contract documents. The Engineer will make any corrections or interpretations necessary to fulfill the intent of the Contract.

105-1.05 COOPERATION BY CONTRACTOR.

The Contractor shall give the work the constant attention necessary for its progress, and shall cooperate fully with the Engineer, Department staff, and other contractors in every way possible.

Either the Contractor's Superintendent or an acting Superintendent with authority to represent and act for the Contractor shall be available within the proximity of the project whenever work is occurring. The Contractor shall employ, as its agent, a competent superintendent thoroughly experienced in the type of work being performed and capable of reading and thoroughly understanding the Plans and Specifications. The Contractor shall provide 24-hour contact information for the Superintendent. The Contractor shall ensure that the superintendent is available at all times to receive and execute Directives and other instructions from the Engineer, to supervise workers and to coordinate the work of subcontractors. The Contractor shall give the superintendent full authority to supply the resources required. The Contractor shall furnish superintendence regardless of the amount of work sublet.

105-1.06 UTILITIES.

- 1) Bid Considerations. Bidders shall include in their bid the cost of:

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- a. All utility work that is specified in the Contract as work to be performed by the Contractor;
- b. Working around or through all permanent and temporary utilities shown on the Plans, in both their present and adjusted positions;
- c. Accommodating the removal, adjustment, or relocation of utilities shown on the Plans by entities other than the Contractor;
- d. Construction and removal of temporary utilities, to provide temporary utility service during the construction or repair of a permanent utility; and
- e. Other utility work not specifically identified as compensable in Subparagraph 4 Compensation.

The Department will show the approximate locations of utilities it knows to be within the work zone on the Plans. Bidders shall expect that the location, elevation and nature of utilities may vary from what is shown on the Plans and shall factor those contingencies into the bid price. Additional utilities may exist that are not shown on the Plans. Compensation related to utilities not shown on the plans will only be available in accordance with Subparagraph 4 Compensation.

When an entity other than the Contractor is to remove, adjust, or relocate any utility, or perform other utility related work within the project boundaries, the applicable completion dates or specific calendar days to complete the removal, adjustment, relocation, or other utility related work may be stated in Section 651. If no date is stated, the Contractor shall work cooperatively with the utility owner during the Project.

- 2) Cooperation with Utility Owners. The Contractor assumes the obligation of coordinating their activities with utility owners, and shall cooperate with utility owners to facilitate removal, adjustment, or relocation operations, avoid duplication of work, and prevent unnecessary interruption of services. When a utility owner is identified in the Contract as being responsible for removing, adjusting, or relocating a utility, the Contractor shall give the utility owner 15 days advance written notice regarding the dates when the utility owner is required to begin and end operations.

The Contractor shall cooperate with utility owners to determine a utility progress schedule for all parties' utility work. The Contractor shall submit the schedule to the Engineer before beginning that portion of utility work. The Contractor shall update the utility progress schedule monthly and shall note time delays and their cause.

Utility owners are not required to work in more than one location at a time, and shall be allowed to complete a specific section of work prior to commencing another section. Utility owners will not normally perform adjustment or relocation of underground utilities when the ground is frozen. Utility owners may prohibit the Contractor, through the Engineer, from working near utilities when the ground is frozen.

The Department has sole discretion to grant permits for utility work within the state right-of-way. The Contractor shall allow parties with utility permits to work and make excavations in the project.

If utility owners do not complete their work in a timely manner, the Engineer may direct the Contractor to temporarily relocate the utilities, to construct new utilities, or to make necessary repairs to complete the utility work.

3) Utility Work. The Contractor shall:

- a. Make all necessary arrangements with utility owners to locate all utilities that may be within an area of work before excavation in that area, in accordance with AS 42.30.400;
- b. Provide right-of-way staking and construction staking with lines and grades before excavation in that area;
- c. Prevent damage to utilities or utility property within or adjacent to the project;
- d. Carefully uncover utilities where they intersect the work;
- e. Immediately stop excavating in the vicinity of a utility and notify the Engineer and the utility owner if an underground utility is discovered that was not field marked or was inaccurately field marked;
- f. Promptly notify the utility owner and the Engineer in the event of accidental interruption of utility service, and cooperate with the utility owner and the Engineer until service is restored;
- g. Take all precautions necessary to protect the safety of workers and the public when performing work involving utilities;
- h. Follow an approved traffic control plan;
- i. Keep the length of open trench excavation to a minimum, backfill trenches as work is completed;
- j. Cover open trenches with metal plates capable of bearing traffic where traffic will cross trenches;
- k. Maintain continuous utility service and install temporary utility systems where needed;
- l. Ensure all excavation conforms to AS 42.30.400 – 42.30.490;
- m. Ensure all excavation and utility work conforms to excavation requirements in 29 CFR

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1926, Subpart P, and confined space requirements in 29 CFR 1926.21(b)(6);

- n. Ensure all work undertaken near energized high voltage overhead electrical lines or conductors conforms to AS 18.60.670, AS 18.60.675, AS 18.60.680 or other applicable law;
- o. Ensure all work undertaken near energized high voltage underground electric lines or conductors conforms to all applicable laws and safety requirements of the utility owner;
- p. When required by the utility owner, provide for a cable watch of overhead power, underground power, telephone, and gas;
- q. Obtain plan approval from the local fire authority, and provide for the continued service of fire hydrants, before working around fire hydrants;
- r. Do all pressure testing or camera testing required to verify utility acceptance in a timely manner; and
- s. Coordinate the Storm Water Pollution Prevention Plan (SWAP) (Section 641) with their work and the utility companies' work.

4) Compensation.

Except as otherwise specifically provided in this Subparagraph 4, no equitable adjustment will be paid by the Department:

- a. Due to any variations in location, elevation, and nature of utilities shown on the Plans, or the operation of removing, adjusting, or relocating them;
- b. For any delays, inconvenience, or damage sustained as a result of interference from utility owners, interference from utilities, or interference from the operation of removing, adjusting, or relocating utilities; or
- c. For any adjustments or relocations of utilities requested for the Contractor's convenience.

Except as otherwise specifically provided in this Subparagraph 4, the Engineer will issue a Change Order with equitable adjustment if:

- a. Utilities not shown on the Plans require removal, adjustment, or relocation;
- b. Conflicts occur between utilities not shown on the Plans and other necessary work; or
- c. Conflicts due to the required elevation of a utility occur between new and existing utilities that are both shown on the Plans.

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When the Contractor damages utilities, the utility owner may choose to repair the damage or require the Contractor to repair the damage. When the Contractor damages utilities:

1. No equitable adjustment will be paid by the Department, and the Contractor shall be solely responsible for repair costs and expenses, when:
 - a) The Contractor failed to obtain field locates before performing the work that resulted in the damage;
 - b) The utility was field located by the utility owner or operator, and the field locate is accurate within 24 horizontal inches if the utility is buried 10 feet deep or less, or the field locate is accurate within 30 horizontal inches if the utility is buried deeper than 10 feet;
 - c) The plan profile or the field locate does not indicate or inaccurately indicates the elevation of a buried utility;
 - d) The utility is visible in the field; or
 - e) The Contractor could otherwise reasonably have been aware of the utility.
2. The Engineer will issue a Change Order with an equitable adjustment for the cost of repairing damage if:
 - a. The field locate by the owner or operator of a buried utility erred by more than 24 horizontal inches if the utility is buried 10 feet deep or less, or 30 horizontal inches if the utility is buried deeper than 10 feet;
 - b. The utility was not shown on the Plans or other Contract documents, and the Contractor could not reasonably have been expected to be aware of the utility's existence; or
 - c. The Contractor made a written request for a field locate in accordance with AS 42.30.400, the utility owner did not locate the utility in accordance with AS 42.30.410, and the Contractor could not reasonably have been expected to be aware of the utility's existence or location.

If a delay is caused by a utility owner, is beyond the control of the Contractor, and is not the result of the Contractor's fault or negligence, the Engineer may issue a Change Order with an equitable adjustment to contract time, but no equitable adjustment will be made for the cost of delay, inconvenience or damage. Additional contract time may be granted if the cause of delay is because a utility owner is to perform utility work:

- a. By dates stated in the Special Provisions, and the utility work is not completed by the dates stated; or

- b. In cooperation with the Contractor, and the utility owner does not complete the work in a timely manner, based on a written progress schedule agreed upon by the Contractor and the utility owner.
- c. If the Engineer orders the Contractor to make necessary construction or repairs due to incomplete utility work by utility owners, the Contractor will be paid as specifically provided for in the Contract, or the Engineer will issue a Change Order with equitable adjustment.

105-1.07 COOPERATION BETWEEN CONTRACTORS.

The Department may, at any time, contract for and perform other or additional work on or near the Project. The Contractor shall allow other contractors reasonable access across or through the Project.

The Contractor shall cooperate with other contractors working on or near the Project, and shall conduct work without interrupting or inhibiting the work of other contractors. All contractors working on or near the Project shall accept all liability, financial or otherwise, in connection with their Contract. No claim shall be made by the Contractor or paid by the Department for any inconvenience, delay, damage or loss of any kind to the Contractor due to the presence or work of other contractors working on or near the Project.

The Contractor shall coordinate and sequence the work with other contractors working within the same project limits. The Contractor shall properly join the work with work performed by other contractors and shall perform the work in the proper sequence to that of the others. The Contractor shall arrange, place, and dispose of materials without interfering with the operations of other contractors on the same project. The Contractor shall defend, indemnify and save harmless the Department from any damages or claims caused by inconvenience, delay, or loss that the Contractor causes to other contractors.

105-1.08 SURVEY CONTROL.

The Department will provide sufficient horizontal and vertical control data to establish the planned lines, grades, shapes, and structures. The Contractor shall provide all additional survey work to maintain control during the project.

105-1.09 DUTIES OF THE INSPECTOR.

The Department's inspectors are authorized to examine all work done and materials furnished, but cannot approve work or materials. Only the Engineer can approve work or materials. The inspectors can reject work or materials until any issues can be referred to and decided by the Engineer. The inspectors may not alter or waive any Contract requirements, issue instructions contrary to the Contract or act as foremen for the Contractor.

105-1.10 INSPECTION OF WORK.

All materials and each part and detail of the work shall be subject to inspection by the Department. The Contractor shall allow safe access to all parts of the work and provide information and assistance to the Engineer to ensure a complete and detailed inspection.

Any work done or materials used without inspection by an authorized Department representative may be ordered removed and replaced at the Contractor's expense, unless the Department failed to inspect after being given reasonable written notice that the work was to be performed.

The Contractor shall remove and uncover portions of finished work when directed. After inspection, the Contractor shall restore the work to Contract requirements. The cost to uncover and restore work shall be at the Contractor's expense, except the Department will pay the cost to uncover and restore work if (1) an authorized Department representative had previously inspected the work or the Contractor had provided reasonable prior written notice that the work was to be performed and (2) the Department finds the uncovered work to be acceptable. If the Department finds the uncovered work to be unacceptable, the cost to correct the work, or remove and replace the work, shall be at the Contractor's expense.

Representatives of Contract funding agencies have the right to inspect the work. This right does not make that entity a party to the Contract and does not interfere with the rights of parties to the Contract.

The Department's observations, inspections, tests and approvals shall not relieve the Contractor from properly fulfilling its Contract obligations and performing the work in accordance with the Contract. Work that has been inspected but contains latent or hidden defects shall not be deemed acceptable even though it has been inspected and found to be in accordance with the Contract.

105-1.11 REMOVAL OF UNACCEPTABLE AND UNAUTHORIZED WORK.

All work that does not conform to the requirements of the Contract shall be deemed unacceptable by the Engineer, unless otherwise determined acceptable under Subsection 105-1.03. The Contractor shall correct, or remove and replace, work or material that the Engineer deems unacceptable, as ordered by the Engineer and at no additional cost to the Department.

The Contractor shall establish necessary lines and grades before performing work. Work done before necessary lines and grades are established, work done contrary to the Department's instructions, work done beyond the limits shown in the Contract, or any extra work done without authority, will be considered as unauthorized and shall not be paid for by the Department, and may be ordered removed or replaced at no additional cost to the Department.

If the Contractor fails to promptly correct, remove, or replace unacceptable or unauthorized work as ordered by the Engineer, the Engineer may employ others to remedy or remove and replace the work and will deduct the cost from the Contract payment.

105-1.12 LOAD RESTRICTIONS.

The Contractor shall comply with all vehicle legal size and weight regulations of 17 AAC 25 and the Administrative Permit Manual, and shall obtain permits from the DOT&PF Division of Measurement Standards & Commercial Vehicle Enforcement before moving oversize or overweight equipment on a state highway.

The Engineer may permit oversize and overweight vehicle movements within the project limits provided the Contractor submits a written request and an acceptable Traffic Control Plan under Subsection 643-1.03. No overloads will be permitted on a pavement, base or structure that will remain in place in the completed project. The Contractor shall be responsible for all damage done by their equipment due to overloads, and for damage done by a load placed on a material that is curing and has not reached adequate strength to support the load.

105-1.13 MAINTENANCE DURING CONSTRUCTION.

The Contractor shall maintain the entire project and related project facilities located within the project (between the beginning of project and end of project shown on the Plans) from the date construction begins until the Contractor receives a letter of project completion. The Contractor shall maintain these areas continually and effectively on a daily basis, with adequate resources to keep them in satisfactory condition at all times. The Contractor shall maintain those areas outside the project that are affected by the work, such as haul routes, detour routes, structures, material sites, and equipment storage sites during periods of their use.

The Engineer may relieve the Contractor of this maintenance responsibility for specified portions of the project:

- 1) During a seasonal suspension of work (Subsection 643-3.07); or
- 2) Following partial completion (Subsection 105-1.14); or
- 3) Following substantial completion (Subsection 105-1.15).
- 4) The local political subdivision is responsible for routine snow removal and ice control only on those portions of the project that the Department accepts for maintenance and that are open for public use.

The Contractor shall maintain previously constructed work until a subsequent course, layer, or structure covers that work. The Contractor shall repair damage done to the work as described in Subsection 107-1.15.

All costs of maintenance work shall be subsidiary to the prices bid on the various contract items, and the Contractor will not be paid an additional amount for such work.

If in the Engineer's opinion, the Contractor at any time fails to provide adequate maintenance, the Engineer will notify the Contractor of such noncompliance. The notification will specify the areas or structures for which there is inadequate maintenance, the corrective maintenance required,

and the time allowed to complete corrective maintenance. If the Contractor fails to take the corrective action within the specified time, the Engineer may:

- 1) Suspend the work until corrective maintenance is completed;
- 2) Assess a traffic price adjustment against the Contract Amount when an adjustment rate is specified in the Contract; and
- 3) Employ others for corrective maintenance and deduct the cost from the Contract amount.

105-1.14 PARTIAL COMPLETION.

The Contractor may submit a written request for partial acceptance of a substantially complete geographically separate portion of the project. The Engineer will accept the portion in writing before project completion and relieve the Contractor of further maintenance responsibility for the completed work except as listed under Subsection 621 3.04 Period of Establishment if the Engineer inspects the portion and finds that it is substantially complete to Contract requirements, and acceptance is in the best interest of the AVCP.

Partial completion of the portion neither voids nor alters any Contract terms.

105-1.15 PROJECT COMPLETION.

The Contractor shall notify the Engineer, in writing, upon substantial completion of all work provided for under the Contract. The Engineer will then schedule and conduct the final inspection. If the inspection discloses that any work is incomplete or unsatisfactory, the Engineer will give the Contractor a list of work items that must be completed or corrected to reach substantial completion and to reach final completion. The Contractor shall promptly complete or correct any work determined unsatisfactory by the final inspection and request a re-inspection.

The Engineer will identify the date of substantial completion in a letter of substantial completion. The letter of substantial completion will relieve the Contractor of further maintenance responsibility of the completed work. The letter of substantial completion will not stop Contract time or relieve the Contractor of the obligation to fully complete the work as required by the Contract specifications.

When all physical work and cleanup provided for under the Contract is found to be complete, except for work specified under Subsection 621-3.04 Period of Establishment, the Engineer will issue a letter of project completion. Project completion stops the Contract time, but does not relieve the Contractor of any other Contract obligations.

105-1.16 FINAL ACCEPTANCE AND RECORD RETENTION.

The Department will issue the letter of Final Acceptance after all of the following:

- 1) Project completion;
- 2) Receipt of all certificates, as-builts, warranties, and other required documents;

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- 3) Receipt of the Contractor's Release, with no exceptions;
- 4) Certification of payment of payroll and revenue taxes by DOLWD and State Department of Revenue; and
- 5) Final payment under the Contract.

Final Acceptance will release the Contractor from further Contract obligations, except those:

- 1) Specified under Subsection 107-1.19;
- 2) Required by law or regulation; or
- 3) Continuing obligations established by provisions of this Contract, such as warranty, guaranty, indemnity, insurance, or bond.

The Contractor and the subcontractors shall maintain all books and records relating to performance of the Contract for three years after the date of final payment of the Contract and each subcontract.

105-1.17 CLAIMS.

The Contractor shall notify the Engineer as soon as the Contractor becomes aware of any act or occurrence that may form the basis of a claim for additional compensation or an extension of Contract time or of any dispute regarding a question of fact or interpretation of the Contract. The Engineer has no obligation to investigate any fact or occurrence that might form the basis of a claim or to provide any additional compensation or extension of Contract time unless the Contractor notifies the Engineer in a timely manner of all facts the Contractor believes form the basis for the claim.

If the Contractor believes that he is entitled to an extension of Contract time, the Contractor must state the contract section on which the extension request is based, provide the Engineer with sufficient information to demonstrate that the Contractor has suffered excusable delay, and show the specific amount of time to which the Contractor is claiming entitlement. The Department will not grant an extension Contract time if the Contractor does not timely submit revised schedules in accordance with Subsection 108-1.03.

If the basis of claim or dispute is not resolved by agreement within seven days of the date the Engineer is notified by the Contractor, the Contractor shall within the next fourteen days submit a Contractor Intent to Claim to the Engineer. Failure to submit a Contractor Intent to Claim as required under this section constitutes a waiver of any future claim arising from or relating to the alleged act or occurrence.

If the Contractor believes additional compensation or time is warranted, the Contractor shall immediately begin keeping complete, accurate, and specific daily records concerning every detail

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of the potential claim including actual costs incurred, and shall give the Engineer access to any such records and furnish the Engineer copies, if requested. Equipment costs must be based on the Contractor's internal rates for ownership, depreciation, and operating expenses and not on published rental rates. In computing damages, or costs claimed for a change order, or for any other claim against the Department for additional time, compensation or both, the contractor must establish actual damages based on internal costs for equipment, labor or efficiencies. Total cost, modified total cost or jury verdict forms of presentation of damage claims are not permitted. Labor inefficiencies must be shown to actually have occurred and can be proven solely based on job records. Theoretical studies are not a permissible means of showing labor inefficiencies. Home office overhead will not be allowed as a component of any claim against the Department.

The Contractor shall submit a written claim to the Contracting Officer within 90 days after the date the Contractor became aware of the basis of the claim or should have known of the basis of the claim, whichever is earlier. The Contracting Officer will issue written acknowledgement of the receipt of the claim.

The Contractor waives any right to claim if the Engineer was not notified properly or afforded the opportunity to inspect conditions or monitor actual costs or if the Claim is not filed on the date required.

- 1) The written Claim must include all of the following:
 - a. The act, event, or condition giving rise to the claim;
 - b. The Contract provisions that apply to the claim and that provide for the requested relief;
 - c. The item or items of Contract work affected and how they were affected;
 - d. The specific relief requested, including Contract time if applicable, and the basis upon which it was calculated;
 - e. Revised progress schedules under Subsection 108-1.03; and
 - f. A certification signed by the Contractor that to the best of the contractor's knowledge and belief, the data submitted is accurate, complete, and current and is the actual cost to the contractor or additional time for performing the additional work or supplying the additional materials.

- 2) The claim, in order to be considered, must show:
 - a. That the Contractor suffered damages or delay;
 - b. The damages or delay were caused by the act, event, or condition listed in the claim; and
 - c. That the Contract entitled the Contractor for relief due to the act, event, or condition specified in the Claim.

The Department may request the Contractor to provide additional information relating to the claim at any time before issuing a decision. The Contractor shall provide the Department with the requested additional information within 30 days of receiving a request. Failure to furnish the additional information may be regarded as a waiver of the claim.

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The Contracting Officer will issue a decision within 90 days of receipt of all information relating to the claim. The time for the Contracting Officer to issue a decision may be extended in accordance with AVCP procedures.

The Contracting Officer's decision is final and conclusive.

Criminal and civil penalties authorized under AS 36.30.687 (including, but not limited to, forfeiture of all claimed amounts) may be imposed on the Contractor if the Contractor makes or uses a misrepresentation in support of a claim, or defrauds or attempts to defraud the Department at any stage of prosecuting a claim under this Contract.

End of Section

SECTION 106

CONTROL OF MATERIAL

106-1.01 SOURCE OF SUPPLY AND QUALITY REQUIREMENTS.

The Contractor shall furnish all materials required to complete the work except those specified to be furnished by the Department. The Contractor shall supply materials that are new and that meet Contract requirements.

The Contractor shall notify the Engineer of proposed sources of materials at least 30 days before shipment, and shall submit to the Engineer and to the Department's State Materials Engineer a complete list of materials to be purchased from suppliers sufficiently in advance of fabrication or shipment to permit the Department to inspect the materials.

The Department's inspectors may inspect any materials, including those originating outside Alaska, at the supply source or other locations. Materials may be conditionally approved at the supply source or other location, but are subject to field inspection and may be ordered removed under Subsection 105-1.11 if they do not conform to Contract requirements. Inspectors are authorized to reject materials that do not conform to specifications. Inspectors will report their actions to the Engineer.

The Contractor shall submit a manufacturer's certificate of compliance for each item listed on the Material Certification List. The Engineer may authorize the use of materials based on a manufacturer's certificate of compliance, see Subsection 106-1.05. Materials incorporated into the project on the basis of a manufacturer's certificate of compliance may be tested at any time, whether in place or not, and, if they do not conform to Contract specifications, they may be rejected and ordered removed under Subsection 105-1.11.

The Contractor may request substitution of specified materials with equivalent materials. Requests for substitution shall be submitted to the Engineer, and shall include a manufacturer's statement that certifies, for each lot delivered:

- 1) Conformance to the specified performance, testing, quality or dimensional requirements; and
- 2) Suitability for the use intended in the Contract work.

The Engineer will determine the acceptability of a proposed substitute for use in the project. If a substitute is approved, a Change Order will be executed. The Department is never required to accept substitution. The Contractor shall not incorporate substitute materials into the project without written approval from the Engineer. The Engineer may test substitute materials at any time, whether in place or not, and, if the substitute materials do not meet Contract specifications, they may be rejected and ordered removed under Subsection 105-1.11.

BUY AMERICA PROVISION.

On projects using federal funds, the Contractor shall comply with the requirements of 23 CFR 635.410, Buy America Requirements, and shall submit a completed Material Origin Certificate, Form 25D-60, prior to award of the contract. All steel and iron products which are incorporated into the work, shall be manufactured in the United States except that minor amounts of steel and iron products of foreign manufacture may be used, provided the aggregate cost of such does not exceed one tenth of one percent (0.001) of the total contract amount, or \$2500, whichever is greater. For the purposes of this paragraph, the cost is the value of the products as they are delivered to the project including freight.

“Manufactured in the United States” means that all manufacturing processes starting with the initial mixing and melting through the final shaping, welding, and coating processes must be undertaken in the United States. The definition of “manufacturing process” is smelting or any subsequent process that alters the material’s physical form, shape or chemical composition. These processes include rolling, extruding, machining, bending, grinding, drilling, etc. The application of coatings, such as epoxy coating, galvanizing, painting or any other coating that protects or enhances the value of steel or iron materials shall also be considered a manufacturing process subject to the “Buy America Requirements.”

Buy America does not apply to raw materials (iron ore), pig iron, and processed, pelletized and reduced iron ore. It also does not apply to temporary steel items (e.g., temporary sheet piling, temporary bridges, steel scaffolding, and falsework). Further, it does not apply to materials which remain in place at the Contractor’s convenience (e.g., sheet pilings, and forms).

The North American Free Trade Agreement (NAFTA) does not apply to the Buy America requirement. There is a specific exemption within NAFTA (article 1001) for grant programs such as the Federal-aid highway program.

When steel and iron products manufactured in the United States are shipped to a foreign country where non steel or iron products are installed on or in them (e.g., electronic components in a steel cabinet), the steel and iron is considered to meet the requirements of this subsection.

The Contractor shall take whatever steps are necessary to ensure that all manufacturing processes for each covered product comply with this provision. Non-conforming products shall be replaced at no expense to the AVCP. Failure to comply may also subject the Contractor to default and/or debarment. False statements may result in criminal penalties prescribed under Title 18 US Code Section 1001 and 1020.

106-1.02 MATERIAL SOURCES.

1) General. The Contractor shall:

- a. utilize Useable Excavation according to Subsection 104-1.04 before using material sources listed in Subsection 106-1.02.4. When there is insufficient useable excavation furnish additional required materials from sources of the Contractor’s choice, except that

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- the Contractor shall use a mandatory source when identified in the Contract;
- b. produce a sufficient quantity of materials meeting the specifications to complete the project;
 - c. As a subsidiary cost: clear and grub, strip, drill and blast, excavate, crush, sort, blend, screen, wash, stockpile, haul, and rehandle material as needed to produce and deliver the specified product;
 - d. determine the type of equipment and methods to be used;
 - e. expect variations in material quality within the deposits, and procure material only from acceptable portions of the deposit, regardless of source ownership; and
 - f. prevent erosion, sedimentation, and pollution within a materials source. The Contractor agrees that:
 - g. the costs to explore and develop material sources, including all production effort, are subsidiary to the cost of providing the specified material;
- 2) The Engineer may order the Contractor to procure material only from certain portions of the source and may reject material from other portions of the source that does not conform to the specifications; and.
- a. all material required may not be procurable from any one source and the Contractor may need to change between sources. That contingency is to be factored into the unit bid price for the Contract Item.
- 3) Inspection and Acceptance. The Contractor shall perform sampling and testing during materials processing and placement in accordance with its Quality Control Plan (Subsection 106-1.03, Testing and Acceptance) and shall obtain acceptable material samples from locations designated within the source.

The Department will sample and test materials to determine the quality of the source, at its expense, as part of its Acceptance Testing (106-1.03.2). The Department will reject materials when the samples do not meet specifications. The Department may reject a proposed materials site when samples do not meet specifications.

- 1) Awareness Training. The operator of the Contractor's sand and gravel surface mine or other similar materials source shall provide Site-Specific Hazard Awareness Training in compliance with 30 CFR 46.11 for all the Engineer's personnel before beginning operations. All other workers shall be given training in compliance with 30 CFR 46 before exposure to mine hazards. The training must be offered at each surface mine that will be used to supply processed aggregates. A qualified person must provide the training. The training shall be in accordance with the operator's written training plan approved by the Mine Safety and Health Administration, covering the following items:

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Site-specific health and safety risks;

- a. Recognition and avoidance of hazards;
- b. Restricted areas;
- c. Warning and evacuation signals;
- d. Evacuation and emergency procedures;
- e. Other special safety procedures; and
- f. A site tour.

The Contractor shall require the Engineer's personnel to sign the Visitor's Log Book upon completion of the training to indicate that training was provided. Training is a subsidiary cost.

2) Type of Sources. When there is insufficient Useable Excavation, as defined in 104-1.04, the Contractor shall supply additional required material from one or more of the following sources:

a. Contractor-Furnished Sources. For a material source that is a commercial plant as defined in Subsection 108-1.01.3.a the Contractor shall:

- (1) acquire the necessary rights and permits to obtain material from a commercial plant;
- (2) pay as subsidiary costs all related costs to obtain and use material from the source; and
- (3) be solely responsible for the quality and quantity of materials.

b. For all Contractor-Furnished sources that are not a commercial plant, the Contractor shall:

- (1) Acquire the necessary rights and permits to take materials from the sources including state- owned sources that are not under the Department's control;
- (2) Pay as subsidiary costs all related costs to obtain, develop, and use the sources, including but not limited to permit and environmental review costs and mineral royalties;
- (3) Be solely responsible for quality and quantity of materials; and;
- (4) Obtain all necessary rights, permits, and plan approvals before clearing or disturbing the ground in the material source. The contractor shall certify in writing to the Engineer that all permits and clearances relating to the use of the material source have been obtained prior to any clearing or ground disturbance in the materials source.

- (5) No equitable adjustment or other compensation will be made for any additional costs, including increased length of haul, if the Contractor:
- a. Chooses to change material sources for any reason;
 - b. Is unable to produce a sufficient quantity or quality of materials from Contractor-Furnished sources; or
 - c. Encounters unexpected, unforeseen, or unusual conditions within Contractor-Furnished sources.
- c. Mandatory Sources. The Department may identify material sources in the Contract from which the Contractor is required to take a specified quantity of material. No other source will be permitted for that portion of material unless prior approval is obtained from the Engineer. The Contract will specifically define these sources as Mandatory Sources and define rights and stipulations for each site. The Department will provide a materials report for these sources.
- (1) The Contractor acknowledges that samples from within a source may not be representative of the entire source. The Contractor must expect variations of quality and quantity within the source and shall factor that contingency into the unit bid price for the material. No equitable adjustment will be paid for variations encountered within the source.
 - (2) When using a Mandatory Source, if it is found that the quality or quantity of material producible from the Mandatory Source does not meet project requirements, and a change of source is necessary for that reason alone, a Change Order with equitable adjustment will be made.
- d. Designated Sources. The Department may identify material sources in the Contract which are available to the Contractor but which the Contractor is not required to use. The Contract will specifically define these sources as Designated Sources and define rights and stipulations for each site. The Department will provide a materials report for these sources.
- 1) The Contractor acknowledges that samples from within a source may not be representative of the entire source. The Contractor must expect variations of quality and quantity within the source and shall factor that contingency into the unit bid price for the material. No equitable adjustment will be paid for variations encountered within the source.
 - 2) If the Contractor elects to use a Designated Source, and it is found that the quality or quantity of material producible from the Designated Source does not meet project requirements, and a change of source is necessary for that reason alone, a Change Order with equitable adjustment will be made. If the Contractor chooses to change

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between or among sources for any other reason than quantity or quality of material, no equitable adjustment will be paid.

- e) Available Sources. The Department may identify other material sources that are available for use for the project by the Contractor. The Contract will specifically define these sources as Available Sources. The Department makes no guarantee as to quality or quantity of material in Available Sources. The Contractor is responsible for determining the quality and quantity of material, and if additional sources are needed. The Contractor shall be responsible for identifying the rights and stipulations for each site with the owner of the site.
- (1) When the Department furnishes copies of existing boring logs, test results, or other data in its possession concerning Available Sources, the Contractor is responsible for determining the accuracy and completeness of this data, for any assumptions the Contractor makes based on this data, and for exploring all Available Sources to the Contractor's satisfaction.
- (2) The Department makes no representation, guarantees, or warranty whatsoever, expressed or implied, as to:
- a. The quality or quantity of materials producible from an Available Source, even if such information is indicated in a Materials Report or Soils Investigation Report;
 - b. Whether boring logs, test results or data reliably represent current existing subsurface conditions;
 - c. Whether interpretations of the boring logs, test results, or other data are correct;
 - d. Whether moisture conditions and indicated water tables vary from those found at the time borings were made;
 - e. Whether the ground at the location of the borings was physically disturbed or altered after the boring was made; and
 - f. The condition, materials, or proportions of the materials between borings, regardless of any subsurface information the Department may make available.
 - g. The availability of subsurface information from the Department shall not relieve the Contractor from any risks, or of any duty to make on-site examinations and investigations, or of any other responsibility under the Contract or as may be required by law.
 - h. No equitable adjustment will be made if the quality or quantity of material available from an Available Source is not as represented in any information provided by the Department, nor if a change of source is necessary for any other reason whatsoever. The use of Available Sources is entirely at the Contractor's

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option and the Contractor bears all risk associated with their decision to use an Available Source.

- f. Excluded Material Sources. Department owned, managed, or permitted material sources not identified in the Contract are excluded from use for the project. This exclusion does not prevent the Contractor from considering material sources as provided for under section 4 of this Subsection, nor does it prevent post-award consideration of other material sources as provided under Subsection 104-1.06.
- g. Rights, Permits and Plan Approvals for Material Sources. Before disturbing the site of a material source, the Contractor shall acquire and pay for all necessary rights, permits and plan approvals indicated in this Subsection and in Subsection 107-1.02. For each material site the Contractor shall:
- (1) Acquire approval for a Mining and Reclamation Plan (MRP) or receive an exemption, in accordance with AS 27.19. The MRP shall include:
 - (a) Plan and cross-sectional views of the site;
 - (b) Applicable boundaries or property lines;
 - (c) Areas and depths to be developed;
 - (d) Locations of access roads, stripping, sorting, and waste piles, crushing and plant sites, stockpile sites, drainage features, erosion and pollution control features; and
 - (e) Condition the Contractor will leave the site after the materials extraction is completed, including reseeding.
 - (f) Submit a SWPPP as required by Section 641.
 - h. Reclamation. After completing work in a materials source, the Contractor shall finish and grade work areas to a neat, acceptable condition in accordance with the approved MRP. Reclamation of a Contractor-furnished source will be in accord with the Contractor's MRP.

106-1.03 TESTING AND ACCEPTANCE.

Materials are subject to inspection and testing by the Department at any time before, during, or after they are incorporated into the project. Use of untested materials is at the Contractor's risk. The Contractor shall remove and replace unacceptable material according to Subsection 105-1.11.

- 1) **Quality Control.** The Contractor is responsible for the quality of construction and materials used in the work. Quality control is process control, and includes all activities that ensure that a product meets Contract specifications. Quality control is subsidiary to the applicable items. The Contractor shall perform quality control as follows:

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- a. Submit a Quality Control Plan no less than five working days before the preconstruction conference. Include, for each item being produced, the methods to be used for sampling and testing, the proposed testing frequency, personnel qualifications, and equipment descriptions. Include the use of control charts, chart update frequency, chart posting location, and criteria for corrective action.
 - b. Sample materials during manufacturing or processing and perform quality control tests, as needed, to ensure materials produced conform to the Contract Specifications. Document quality control tests and make them available to the Engineer on a daily basis. Engineer shall be informed in advance of all testing to be completed.
 - c. Sample and test according to test methods required in the Specifications. All sampling and testing needs to be completed by a third party.
- 2) Acceptance Testing. The Department has the exclusive right and responsibility for determining the acceptability of the construction and incorporated materials.

The Department will sample materials and perform acceptance tests at its expense. Copies of tests will be furnished to the Contractor upon request.

The Contractor shall not rely on the Department's acceptance testing for its quality control. The Department's acceptance testing is not a substitute for the Contractor's quality control. The Engineer may retest materials that have failed the Department's acceptance test, but is not required to do so. The Department may use Contractor third party testing as acceptance testing at its discretion.

- 3) Quality Level Analysis (QLA). All statistical Quality Level Analysis (QLA) is computed using the Engineer's Price Adjustment program. The program calculates all intermediate values to 16 decimal places. Pay factors are rounded to the nearest 0.001. The basis of payment for production lots of selected pay items is adjusted using statistical analysis of acceptance test results. Analysis is based on an Acceptable Quality Level (AQL) of 90 percent. The AQL is the minimum Percent within Limits (PWL) at which the material is considered fully acceptable and receives a 1.000 pay factor. As an incentive to produce quality material, a pay factor greater than 1.000 is possible. The maximum pay factor obtainable is 1.050.

The procedure for estimating the PWL uses the number (n), the arithmetic mean (\bar{X}), and the sample standard deviation (s), of acceptance test results as shown below. If the sample standard deviation is less than 0.001, then it is set at 0.001.

- a. The arithmetic mean is computed:
Where: X_i = test result for subplot i .
 $\sum_{i=1}^n$ = sum of values from subplot 1 to n .

$$\bar{X} = \frac{\sum_{i=1}^n X_i}{n}$$

b. The sample standard deviation is computed:
$$s = \sqrt{\frac{\sum_{i=1}^n (x_i - \bar{x})^2}{(n-1)}}$$

The upper specification limit (USL) and lower specification limit (LSL) are equal to the Target Value (TV) plus and minus the allowable tolerances as defined in the pay item specification.

Quality Indexes are computed as shown below. The maximum Quality Index obtainable is 10.000.

- h. The Upper Quality Index (QU) is computed:
$$Q_U = \frac{USL - \bar{x}}{s}$$
- i. The Lower Quality Index (QL) is computed:
$$Q_L = \frac{\bar{x} - LSL}{s}$$

The computed QU and QL are used with AASHTO R 9 to determine the Percent within Upper Limits (PWL_U) and Percent within Lower Limits (PWL_L).

e. The PWL used in pay factor determination is:
$$PWL = (PWL_U + PWL_L) - 100$$

When material requirements are one-sided, with only an upper or lower limit, then the PWL is equal to the percent within the side that has a limit. For example, if a material only has an upper specification (maximum) limit, then PWL= PWL_U. Also, two-sided specification limits with one side that cannot be exceeded (like 100% passing) will be analyzed as if they are one-sided.

f. The pay factor (PF) for any given PWL is:
$$PF = 0.55 + \frac{PWL}{200}$$

Where: PWL varies from 50.000 to 100.000.

106-1.04 PLANT INSPECTION.

The Department may periodically inspect manufacturing methods, manufactured lots and materials at the source of production. The Department may approve, conditionally approve, or reject them.

The Contractor shall:

1. Notify the Department of the production and fabrication schedule at least 30 days before beginning work on any item requiring inspection, and notify the Department 48 hours before beginning production or fabrication;

Give the inspector full and safe access to all parts of the plant used to manufacture or produce materials; and

2. Cooperate fully and assist the inspector during the inspection.

Materials may be rejected if the Department requests a plant inspection and the materials are produced or fabricated without a plant inspection. The materials may be tested at any time before final acceptance, whether in place or not, and whether approved at a plant inspection or not. If the materials do not meet Contract specifications, they may be rejected and ordered removed under Subsection 105-1.11. If rejected materials are incorporated into the project, the Department may require those materials to be removed and replaced at the Contractor's expense under Subsection 105-1.11.

106-1.05 CERTIFICATES OF COMPLIANCE.

The Engineer may authorize the use of certain materials or assemblies based on a manufacturer's certificate of compliance. The certificate must state that the material or assembly fully complies with Contract requirements, include the project name and number, and be signed by the manufacturer. The certificate must accompany each lot of the materials or assemblies delivered to the project and must clearly identify the lot.

The Contractor shall submit a manufacturer's certificate of compliance, or test data as required by the Contract documents. The Contractor shall submit additional manufacturer's certificates of compliance if required by the Contract or by the Engineer.

Materials or assemblies incorporated into the project on the basis of a manufacturer's certificate of compliance may be tested at any time, whether in place or not, and, if they do not meet Contract specifications, they may be rejected and ordered removed under Subsection 105-1.11. The Engineer may refuse permission to incorporate materials or products into the project based on a manufacturer's certificate of compliance that does not meet specifications.

106-1.06 STORAGE OF MATERIALS.

Materials shall be stored to preserve their quality and fitness for the work, and so they can be readily inspected. Materials inspected before storage may be inspected again, before or after being incorporated into the project. The Contractor shall:

1. Use only approved portions of the project site for storage of materials and equipment or plant operations;
2. Provide any additional space needed for such purposes without extra compensation;
3. Restore Department-owned or controlled storage and plant sites to their original condition without extra compensation;
4. Obtain the landowner's or lessee's written permission before storing material on private property, and furnish copies of the permission to the Engineer, if requested; and
5. Restore privately owned or leased storage sites, without extra compensation from the Department, to their original condition or as agreed to between the Contractor and the private owner.

106-1.07 DEPARTMENT-FURNISHED MATERIAL.

Material furnished by the Department will be made available to the Contractor at a state yard or delivered at the locations specified in the Special Provisions.

The Contractor shall include the cost of handling and placing all materials after they are delivered in the Contract price for the item in connection with which they are used. The Contractor is responsible for all material delivered to the Contractor. Deductions will be made from any monies due the Contractor to make good shortages and deficiencies from any cause whatsoever, for any damage that may occur after delivery, and for demurrage charges.

106-1.08 SUBMITTAL PROCEDURE.

The Contractor shall complete a Submittal Register, and shall submit it to the Engineer on forms provided by the Department or similar forms of the Contractor's choice as approved by the Engineer. The intent of the Submittal Register is to provide a blueprint for the smooth flow of specified project documents. The Contractor shall fill it out sequentially by bid item and allow at least three spaces between bid items. The Submittal Register shall list all working drawings, schedules of work, and other items required to be submitted to the Department by the Contractor including but not limited to: Progress Schedule, anticipated dates of material procurement, Construction Phasing Plan, Traffic Control Plan, Storm Water Pollution Prevention Plan, Quality Control Program, Utility Progress Schedule, Blasting Plan, Mining Plan, annual EEO reports, DBE payment documentation and subcontracts.

The Contractor shall submit materials (product) information to the Engineer for review, as required by the Contract.

Unless otherwise specified, provide all submittals in an electronic format acceptable to the Engineer.

If the Contract has a duration of 180 days or less, the Contractor shall, within fifteen days after the date of the Notice to Proceed, submit to the Department for review all submittals and the submittal register. If the Contract has a duration greater than 180 days, the Contractor shall, within fifteen days after the date of the Notice to Proceed, submit to the Department for review, an anticipated schedule for transmitting submittals.

Each submittal shall include a Submittal Summary sheet. The Contractor shall sign submittals and submit them to the Engineer. Electronic submittals that are submitted by email from the Contractor's email account are considered signed. The Department will return submittals to the Contractor as either: approved, conditionally approved with the conditions listed, or rejected with the reasons listed. The Contractor may resubmit a rejected submittal to the Engineer with more information or corrections. The Department's approval of a submittal in no way relieves the Contractor of its responsibility for the means, methods, techniques, sequence, and procedures of construction, safety, and quality control.

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The Contractor shall be responsible for timely submittals. Failure by the Department to review submittals within 30 days or as otherwise provided in the applicable subsection may be the basis for a request for extension of Contract time but not for additional compensation.

Payment for a specific contract item will not be made until the Department has received the Submittal Register for all items and approved all required submittals for that specific contract item.

When material invoices, freight bills, and mill certificates are submitted, they shall provide sufficient information for the Engineer to identify: the date, supplier and origin of invoice (bill, certificate); project name and number where material will be incorporated; manufacturer, product number, quantity, cost and bid item.

End of Section

SECTION 107

LEGAL RELATIONS AND RESPONSIBILITY TO PUBLIC

107-1.01 LAWS TO BE OBSERVED.

The Contractor shall keep fully informed of, observe, and comply with all federal, state, and local laws, ordinances, and regulations, and all orders and decrees of bodies or tribunals having any jurisdiction or authority, that in any manner affect those engaged or employed on the work or which in any way affect the conduct of the work.

The Contractor and the Surety shall defend, indemnify, and hold harmless the AVCP and its representatives against any claim or liability related to violations of any laws, regulations or decrees by the Contractor, the Contractor's agents, the Contractor's employees, a subcontractor at any tier, or a supplier or service provider.

The Contractor has the affirmative duty to keep informed of and comply with all laws. The Contractor is not entitled to and shall not rely on any Department employee's interpretation, whether oral or written, of any law, ordinance, or regulation.

The contractor is responsible for conspicuously displaying required posters in an area readily accessible to workers.

For Federal Funded jobs display posters required by law or funding agency including posters listed on the FHWA website <http://www.fhwa.dot.gov/programadmin/contracts/poster.cfm>

107-1.02 PERMITS, LICENSES, AND TAXES.

The terms, conditions, and stipulations in permits obtained either by the Department or by the Contractor are made a part of this Contract. Permits obtained by the Department for this project are attached to these Specifications as appendices. Contact names and phone numbers for permits obtained by the Department are shown on the individual permits.

The Department will:

1. Secure permits and licenses that the Department determines are required for the construction of the proposed project, and the use of mandatory sources, designated sources and designated waste disposal areas for the proposed project; and,
2. Modify Department-acquired permits during the performance of the contract, if deemed necessary by the Engineer.

The Contractor shall:

1. Acquire any permits and licenses required to complete the project that are not acquired by the Department;

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2. Provide qualified professionals to collect data or perform studies necessary to acquire permits for the use of sites not previously permitted;
3. Give all notices required for the prosecution of the work;
4. Abide by all permits and licenses whether acquired by the Department or by the Contractor;
5. Notify the Engineer promptly if any activity cannot be performed as specified in the permits, and cease conducting the activity until permit modifications or any required additional permits are obtained;
6. Obtain modifications to permits acquired by the Contractor;
7. Pay all charges, fees and taxes; and
8. Provide proof of payment of all taxes before the Department makes final payment.
9. Provide copies of all permits, applicable Federal and State notifications, to the Engineer at the Preconstruction Conference, or if obtained after the Preconstruction Conference, within five days of receipt.
10. Provide the information necessary to comply with the Alaska Department of Environmental Conservation, Alaska Pollutant Discharge Elimination System (APDES) to discharge stormwater from the construction site. Requirements for this permit are given under Section 641, Erosion and Pollution Control.
11. Obtain through the Engineer a written statement from the State Historic Preservation Officer stating that material disposal, extraction, stockpiling or staging on or off project site is not expected to impact cultural resources.

The provision of permits acquired by the Contractor, and of notices and information under this section does not shift or create responsibility for compliance with Federal or State law to the Department, or otherwise impose a duty for oversight or review.

In addition, before using an area not previously permitted for use by the Contract, the Contractor shall:

1. Contact all government agencies having possible or apparent permit authority over that area;
2. Obtain all required permits and licenses from those agencies;
3. Obtain permission from any property owners or lessees with an interest in the property; and
4. Provide all of the following to the Engineer:

- a. All permits or clearances necessary to use the site for its intended purpose(s);
- b. A written statement that all permits or clearances necessary have been obtained;
- c. Written evidence that the Contractor has contacted all of the relevant agencies and that no additional permits are required on the part of the Contractor, including at a minimum the name of the agency and staff person contacted, the date contacted, and result of coordination; and
- d. A plan that identifies how the site will be finally stabilized and protected.

The Engineer may reject a proposed site if the Contractor fails to provide any of the above information or to demonstrate that a proposed site can be finally stabilized to eliminate future adverse impacts on natural resources and the environment.

107-1.03 PATENTED DEVICES, MATERIALS AND PROCESSES.

If the Contractor employs any design, device, material, or process covered by patent, trademark, or copyright, the Contractor shall obtain and provide the Engineer with a copy of a suitable legal agreement with the patentee or owner.

The Contractor and the Surety shall defend, indemnify, and hold harmless the State and its representatives and any affected third party or political subdivision from any claim, cause of action, and damages for infringement arising from or relating to the Contractor's use of a patented design, device, material, process, trademark, or copyright.

107-1.04 WAGE RATES.

The Contractor and all subcontractors shall pay the current prevailing rate of wages as per AS 36.05.010 and this Contract. On federally funded projects the Contractor and all subcontractors shall pay the higher of the appropriate wage rates published by the Alaska Department of Labor and the U.S. Department of Labor, for each individual job classification. The Contractor and all subcontractors shall file certified payroll with the Alaska Department of Labor and Workforce Development (DOLWD) and with the Engineer for all work performed on the project. Submit certified payrolls electronically to the DOLWD and the Engineer.

Before beginning work the Contractor shall file a Notice of Work with DOLWD and pay all required fees. After finishing work the Contractor shall file a Notice of Completion with DOLWD and pay all additional fees required by increases in the Contract amount.

107-1.05 FEDERAL AID PROVISIONS.

When the United States government pays all or any portion of the cost of a project, the Contractor shall observe all federal laws, rules, and regulations applicable to the project.

The Contractor shall allow appropriate federal officials access to inspect the work. The federal government is not a party to the Contract. Federal inspections will not form the basis for any claim for interference with the rights of the Contract parties.

107-1.06 SANITARY, HEALTH, AND SAFETY PROVISIONS.

The Contractor shall provide and maintain neat and sanitary accommodations for employees that meet all federal, state and local requirements.

The Contractor shall comply with federal, state, and local laws, rules, and regulations concerning construction safety and health standards, including U.S. Mine Safety and Health Administration rules when the project includes pit or quarry operations.

The Contractor shall not expose the public to, or require any workers to work under, conditions that are unsanitary, hazardous, or dangerous to health or safety.

The Contractor is responsible for ensuring all workers are adequately protected. The Contractor shall have a safety and health management program that complies with AKOSH requirements, and includes:

1. A worksite hazard analysis;
2. A hazard prevention and control plan including personal protective equipment and safe work procedures required for specific tasks;
3. New employee training and periodic worker training regarding safety and health;
4. Regular safety meetings with written documentation of attendance, safety topics discussed, worker safety complaints, and corrective actions taken; and
5. A designated safety officer, employed by the Contractor, who monitors the construction site and is responsible for implementing the safety and health management program.

The Contractor shall defend, indemnify and hold harmless the AVCP from all claims, causes of action and judgments arising from or relating to the Contractor's failure to comply with any applicable federal, state or local safety requirement, regulation or practice, whether or not listed above.

107-1.07 ARCHAEOLOGICAL OR HISTORICAL DISCOVERIES.

When the Contractor's operation encounters prehistoric artifacts, burials, remains of dwelling sites, paleontological remains, shell heaps, land or sea mammal bones, tusks, or other items of historical significance, the Contractor shall:

1. Immediately cease operations at the site of the find;
2. Immediately notify the Engineer of the find; and
3. Not disturb or remove the finds or perform further operations at the site of the finds until directed by the Engineer.

The Engineer will issue an appropriate Change Order if the Engineer orders suspension of the Contractor's operations or orders the Contractor to perform extra work in order to protect an archaeological or historical find.

107-1.08 RAILWAY-HIGHWAY PROVISIONS.

The Contractor shall conduct all operations on or near a railroad according to the Contract, any contract between the Department and the railroad, and any permits issued by the railroad. The Department shall obtain permits for hauling materials across railroad tracks at locations specified in the Contract. If the Contractor desires additional crossings, the Contractor shall obtain any required permits at the Contractor's expense.

107-1.09 CONSTRUCTION OVER OR ADJACENT TO WATERS.

The Contractor shall fully comply with all laws, regulations and permits issued by agencies of the United States and the State of Alaska when working in, over or adjacent to wetlands, tidelands, anadromous fish streams, eagle nests, navigable waters, or coastal waters.

The Contractor shall ensure that all work in, over or adjacent to navigable waters is conducted so that free navigation of the waterways is not obstructed and that existing navigable depths are not impaired, except as allowed by the U.S. Coast Guard and the U.S. Army Corps of Engineers.

107-1.10 USE OF EXPLOSIVES.

The Contractor shall obey all laws, regulations and permits applicable to using, handling, loading, transporting, or storing explosives. When using explosives, the Contractor shall take utmost care not to endanger life, property, new construction, or existing portions of the project and facilities that are to remain in place after the project is complete.

The Contractor shall provide notice to property owners, the traveling public and utility companies in the vicinity before using explosives. The Contractor shall provide notice to the Federal Aviation Administration when required by law. The Contractor shall notify police and fire authorities in the vicinity before transporting or using explosives. The Contractor shall provide notice sufficiently in advance to enable all potentially affected parties to take whatever steps they may deem necessary to protect themselves and their property from injury or damage.

The Contractor is liable for all property damage, injury, or death resulting from the use of explosives on the project. The Contractor shall indemnify, hold harmless, and defend the AVCP from all claims related to the use of explosives on the project, including claims from government agencies alleging that explosives were handled, loaded, transported, used, or stored improperly.

107-1.11 PROTECTION/RESTORATION OF PROPERTY AND LANDSCAPE.

1. Restoring Areas. Areas used by the Contractor, including haul routes, shall be restored to their original condition after the Contractor's operations are completed. The original condition of an area shall be determined as follows: Prior to commencement of operations, the Engineer

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and the Contractor shall inspect each area and haul route that will be used by the Contractor and take photographs to document their condition. After construction operations are completed, the condition of each area and haul route will be compared to the earlier photographs. Prior to demobilization the Contractor shall repair damages attributed to its operations. The Contractor agrees that all costs associated with repairs shall be subsidiary to other items of work and will not be paid for directly.

2. Material Disposal Sites. Offsite disposal areas may be at locations of the Contractor's choice, provided the Contractor obtains written permission from the land owner for such disposal and a waiver of all claims against the State for any damage to such land which may result there from, together with all permits required by law for such disposal. A copy of such permission, waiver of claims, and permits shall be filed with the Engineer before commencing work on private property. The Contractor's selected disposal sites shall also be inspected and approved by the Engineer prior to use of the sites.
3. Property marks. The Contractor shall:
 - a. Be responsible for and protect from disturbance all land monuments and property marks until the Engineer has approved the witnessing or otherwise referenced their locations; and
 - b. Not move such monuments or marks without the Engineer's approval.
4. Damage to property. The Contractor shall:
 - a. Be responsible for all damage to public or private property resulting from any act, omission, neglect, or misconduct in the manner or method of executing the work;
 - b. Be responsible for all damage to public or private property resulting from defective work or materials at any time, before, during, or after project completion; and
 - c. Restore all such damaged property to a condition similar or equal to that existing before the damage occurred, at no additional cost to the Department.
5. Protection of natural resources. The Contractor shall:
 - a. Conduct work in a manner that minimizes disturbance to and protects natural resources in compliance with all federal, state, and local laws and regulations;
 - b. When working near designated wetlands, as defined by the Corps of Engineers, place no fill, nor operate equipment outside the permitted area;
 - c. When working in or near designated anadromous fish streams, as defined by AS 41.14.840 and AS 41.14.870, place no fill or dredge material, nor operate equipment, within or on the banks of the stream (including fording) except as permitted by the State Fish Habitat Permit

issued for the project; and

6. Hazardous materials. Hazardous materials include but are not limited to petroleum products, oils, solvents, paints, lead based paints, asbestos, and chemicals that are toxic, corrosive, explosive, or flammable. Except as otherwise specified in this Contract, the Contractor shall:
 - a. Not excavate, nor use for fill, any material at any site suspected of or found to contain hazardous materials or petroleum fuels;
 - b. Not raze and remove, or dispose of structures that contain asbestos or lead-based paints;
 - c. Not stockpile, nor dispose of, any material at any site suspected of or found to contain hazardous materials or petroleum;
 - d. Report immediately to the Engineer any known or suspected hazardous material discovered, exposed, or released into the air, ground, or water during construction of the project;
 - e. Report any containment, cleanup, or restoration activities anticipated or performed as a result of such release or discovery;
 - f. Handle and dispose of hazardous material with properly trained and licensed personnel who follow an approved Hazardous Material Control Plan as per Section 641.
7. Protected areas. The Contractor shall not use land from any park, recreation area, wildlife or waterfowl refuge, or any historical site located inside or outside of the project limits for excess fill disposal, staging activities, equipment or material storage, or for any other purposes unless permitted by the Contract or unless all permits and clearances necessary for such work have been obtained by the Contractor as detailed in Subsection 107-1.02.
8. Solid waste. The Contractor shall remove all debris, trash, and other solid waste from the project site as soon as possible and in accordance with the Alaska Department of Environmental Conservation Solid Waste Program.

107-1.12 FOREST PROTECTION.

The Contractor shall:

1. Comply with all laws and regulations of the United States and the State of Alaska, local governments, or other authorities governing the protection of forests and the carrying out of work within forests;
2. Keep forest areas in an orderly condition;
3. Dispose of all refuse and obtain permits for the construction and maintenance of all construction camps, stores, warehouses, residences, latrines, cesspools, septic tanks, and other structures in accordance with the requirements of the supervising authorities;

4. Take all reasonable precautions to prevent and suppress forest fires;
5. Require workers and subcontractors, both independently and at the request of officials, to do all reasonably within their power to prevent and suppress and to assist in preventing and suppressing forest fires; and
6. Make every possible effort to notify the appropriate forestry agency at the earliest moment of the location and extent of any forest fire.

107-1.13 RESPONSIBILITY FOR DAMAGE CLAIMS.

The Contractor shall indemnify, hold harmless, and defend the AVCP and its agents and employees from any and all claims or actions for injuries or damages whatsoever sustained by any person or property that arise from or relate to, directly or indirectly, the Contractor's performance of the Contract; however, this provision has no effect if, but only if, the sole proximate cause of the injury or damage is the Department's negligence.

This Contract does not create a third party benefit to the public or any member of the public, nor does it authorize any person or entity not a party to this Contract to maintain a suit based on this Contract or any term or provision of the Contract, whether for personal injuries, property damage, or any other claim or cause of action.

107-1.14 OPENING SECTIONS OF THE PROJECT TO TRAFFIC.

The Engineer may, at their discretion, order the Contractor to open sections of the work to traffic prior to completion of the entire project. Openings under this section shall not constitute (a) acceptance of the opened sections or any other part of the work or (b) a waiver of any other provision of the Contract.

The Engineer may establish a time period for completing any features of the opened section of work that are behind schedule.

The Contractor shall:

1. Maintain the opened portions of the work without additional compensation;
2. Perform all necessary repairs or renewals on the opened sections of the work without additional compensation; and
3. Conduct the remainder of the work with minimum interference to traffic.

107-1.15 CONTRACTOR'S RESPONSIBILITY FOR WORK.

The Contractor shall be responsible for implementing all preventative measures necessary to protect, prevent damage, and repair damage to the work from all causes at no additional cost to the Department. This duty continues from the date construction begins until the date specified in a letter of Substantial Completion or Partial Acceptance of a specific section of the project. Where

there is a Partial Acceptance, the duty ends only as to the accepted portion of the work. This duty continues during periods of suspended work, except in specific sections the Department has agreed to maintain under Subsection 643-3.07.

The Contractor shall rebuild, repair, restore, and make good all losses or damages to any portion of the work including that caused by vandalism, theft, accommodation of public traffic, and weather. The Department will only be responsible for loss or damage due to unforeseeable causes beyond the control of and without the Contractor's fault or negligence, such as Acts of God, the public enemy, and governmental authorities.

In case of suspension of work from any cause, the Contractor shall take such precautions as may be necessary to prevent damage to the work or facilities affected by the work. This will include providing for drainage and erecting any necessary temporary structures, signs, or other facilities and maintaining all living material such as plantings, seeding, and soddings.

107-1.16 RESERVED.

107-1.17 FURNISHING RIGHT-OF-WAY.

The Department will secure all necessary right-of-way or property in advance of construction. Any exceptions will be indicated in the Contract.

107-1.18 PERSONAL LIABILITY OF PUBLIC OFFICIALS.

There shall be no liability upon the Engineer and their authorized representatives, either personally or as officials of the AVCP, in carrying out any of the provisions of this Contract, or in exercising any power or authority granted to them by or within the scope of the Contract, it being understood that in all such matters the Engineer and their authorized representatives act solely as agents and representatives of the AVCP. The Contractor shall bring no suit related to or arising under this Contract naming as defendants any AVCP officer, employee or representative in either their personal or official capacities, and shall include a prohibition to that effect in all subcontracts entered into for this Project.

107-1.19 NO WAIVER OF LEGAL RIGHTS.

The Department shall not be precluded nor estopped by any measurement, estimate, or certificate made either before or after the completion and acceptance of the work and payment, from showing the true amount and character of the work performed and materials furnished by the Contractor, nor from showing that any measurement, estimate, or certificate is untrue or is incorrectly made, nor that the work or materials do not in fact conform to the Contract.

The Department shall not be precluded nor estopped, notwithstanding any measurement, estimate, or certificate and payment, from recovering from the Contractor or the Contractor's Sureties, or both, such damages as it may sustain by reason of the Contractor's failure to comply with the terms of the Contract.

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Neither the acceptance by the Department, or by any representative of the Department, nor any payment for or acceptance of the whole or any part of the work, nor any extension of time, nor any possession taken by the Department, shall operate as a waiver by the Department of any portion of the Contract or of any right of the Department to damages. A waiver by the Department of any breach of the Contract shall not be held to be a waiver of any other subsequent breach.

107-1.20 GRATUITY AND CONFLICT OF INTEREST.

The Contractor shall not extend any loan, gratuity, or gift of money of any form whatsoever to any employee of the Department, nor will the Contractor rent or purchase any equipment or materials from any employee of the Department or to the best of the Contractor's knowledge from any agent of any employee of the Department. The Contractor shall execute and furnish the Department an affidavit certifying that the Contractor has complied with this section before final acceptance.

End of Section

SECTION 108

PROSECUTION AND PROGRESS

108-1.01 SUBCONTRACTING OF CONTRACT.

The Contractor shall submit a Contractor Self Certification for Subcontractors and Lower Tier Subcontractors, Form, before the Contractor or any subcontractor subcontracts, sells, transfers, assigns, or otherwise disposes of the Contract or any portion of the Contract. The Department has authority to review subcontracts and to deny permission to subcontract work. The Department may penalize the Contractor for false statements or omissions made in connection with subcontractors.

The Contractor shall perform, with the Contractor's own organization, work amounting to at least 50 percent of the difference between the original Contract price and the price of designated Specialty Items. For the purpose of this Subsection, work is defined as the dollar value of the services, equipment, materials, and manufactured products furnished under the Contract. The Engineer will determine the value of the subcontracts based on Contract unit prices or upon reasonable value, if entire items are not subcontracted.

The Department's consent to the subcontracting, sale, transfer, assignment, or disposal of all or a part of the Contract shall not relieve the Contractor and the Surety of responsibility for fulfillment of the Contract or for liability under the bonds regardless of the terms of the transfer or sublet approvals.

1. The Contractor shall ensure that for all subcontracts (agreements):
 - a. The Department is furnished with one completed Contractor Self Certification, for each subcontract;
 - b. The required prompt payment provisions of AS 36.90.210 are included in all subcontracts;
 - c. A clause is included requiring the Contractor to pay the subcontractor for satisfactory performance according to AS 36.90.210 and within eight (8) working days after receiving payment from which the subcontractor is to be paid;
 - d. A clause is included requiring the Contractor to pay the subcontractor interest, according to AS 45.45.010(a), for the period beginning the day after the required payment date and ending on the day payment of the amount due is made;
 - e. A clause is included requiring the Contractor to pay the subcontractor all retainage due under the subcontract, within eight (8) working days after final payment is received from the Department, or after the notice period under AS 36.25.020(b) expires, whichever is later;
 - f. A clause is included requiring the Contractor to pay interest on retainage, according to AS 36.90.250 and AS 45.45.101(a):

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temporary factories that are set up or reopened in the vicinity of the project to supply materials exclusively or nearly exclusively for the project.

- c. Hauling. Hauling from the project to roadside production, temporary plants, or commercial plants, from roadside production or temporary plants to the project, from roadside production or temporary plants to commercial plants, and all other hauling not specifically excluded in this subsection.
 - d. Other Contractors. All other contractors working on the project site under contract with the Contractor are considered subcontractors unless specifically excluded in this subsection.
4. The following will not be considered as subcontracting, but the Contractor shall comply with the prompt payment provisions of AS 36.90:
- a. Commercial Plants. The purchase of sand, gravel, crushed stone, crushed slag, batched concrete aggregates, ready-mixed concrete, asphalt paving mix, and any other material or fabrication produced at and furnished from established and recognized commercial plants that sell to both public and private purchasers.
 - b. Hauling. Delivery of materials from a commercial plant to a different commercial plant and delivery from a commercial plant to the project site by vehicles owned and operated by the commercial plants or by commercial freight companies that have a contract with the commercial plant. Commercial freight companies are trucking or hauling companies that deliver multiple types of materials to multiple clients, both public and private, on an established route and on a recurrent basis.
 - c. Contractors' General Business. Work within permanent home offices, branch plants, fabrication plants, tool yards, and other establishments that are part of a contractor's or subcontractor's general business operations.
5. Owner-Operators. Hauling of materials for the project by bona fide truck owner-operators who are listed as such on the certified payroll of the Contractor or approved subcontractor is not considered subcontracting for purposes of AS 36.30.115.

The Contractor shall ensure that the required prompt payment provisions of AS 36.90.210 are included in contracts with owner-operators.

6. The Contractor shall collect and maintain at the project site current and valid copies of the following to prove that each trucker listed is a bona fide owner-operator:
- a. Alaska Driver's License with appropriate CDL class and endorsements;
 - b. Business license for trucking with supporting documents that list the driver as the business owner or corporate officer;
 - c. Documents showing the driver's ownership interest in the truck, including copies of:

(1) Truck registration; and

(2) Lease (if truck is not registered in driver's name or in the name of the driver's company).

The Contractor shall maintain legible copies of these records for a period of at least three years after final acceptance of the project.

7. Owner-operators must qualify as independent contractors under the current Alaska Department of Labor's criteria. Owner-operators may be required to show:
 - a. The owner-operators right to control the manner in which the work is to be performed;
 - b. The owner-operator's opportunity for profit or loss depending upon their managerial skill;
 - (1) The owner-operator's investment in equipment or materials required for their task, or the employment of helpers;
 - (2) Whether the service rendered requires a special skill;
 - (3) The degree of permanence of the working relationship; and
 - (4) Whether the service rendered is an integral part of the owner-operator's business.

The status of owner-operators is subject to evaluation throughout the project period. If the criteria for an independent contractor are not met, the Contractor shall submit amended payrolls listing the driver as an employee subject to all labor provisions of the Contract.

The Contractor shall issue each owner-operator a placard in a form approved by the Engineer that identifies both the truck driver and the vehicle. The placard shall be prominently displayed on the vehicle so that it is visible to scale operators and inspectors.

Notwithstanding the Department's definitions of contracting and subcontracting, the Contractor shall be responsible for determining and complying with all federal and state laws and regulations regarding contracting, subcontracting, and payment of wages. The Contractor shall promptly pay any fines or penalties assessed for violations of those laws and regulations, and shall promptly comply with the directives of any government agency having jurisdiction over those matters.

108-1.02 NOTICE TO PROCEED.

The Department will issue a Notice to Proceed authorizing construction to begin and indicating the date when Contract time will begin. The Contractor shall not begin construction before the effective date of the Notice to Proceed. The Department will, in its sole discretion, refuse to pay for construction begun before the effective date of the Notice to Proceed. The Contractor shall notify the Engineer at least 48 hours before construction begins at the project site.

108-1.03 PROSECUTION AND PROGRESS.

The Contractor shall meet with the Engineer at the regional construction office for a preconstruction conference before beginning construction. The Engineer will schedule the Preconstruction Conference no less than five days after the following have been received:

1. A progress schedule, in a format acceptable to the Engineer, showing the order in which the Contractor proposes to carry out the work and the contemplated dates on which the Contractor and the subcontractors will start and finish each of the salient features of the work, including any scheduled periods of shutdown. The schedule shall indicate the anticipated hours of operation and any anticipated periods of multiple-shift work.
2. A list showing anticipated dates for procurement of materials and equipment, ordering of articles of special manufacture, furnishing of plans, drawings and other data required under Subsection 105-1.02 and for other events such as inspection of structural steel fabrication.
3. A list showing all proposed subcontractors and material suppliers.
4. A Construction Phasing plan, as required under Subsection 643-1.05.
5. A Storm Water Pollution Prevention Plan and a Hazardous Material Control Plan, with the line of authority and designated field representatives, as required under Section 641.
6. A letter designating the Contractor's Project Superintendent, defining that person's responsibility and authority, and providing a specimen signature.
7. A letter designating an Equal Employment Opportunity Officer and a Disadvantaged Business Enterprise Officer, and designating those person's responsibilities and authority.
8. A Quality Control Plan, as required under Subsection 106-1.03.
9. A letter designating a Safety Officer, and designating that person's responsibilities and authority.

The Contractor shall provide adequate materials, labor and equipment to ensure the completion of the project according to the Plans and Specifications. The work shall be performed as vigorously and as continuously as weather conditions or other interferences may permit. The Contractor shall take into consideration and make due allowances at the Contractor's expense for foreseeable delays and interruptions to the work such as unfavorable weather, frozen ground, equipment breakdowns, shipping delays, quantity overruns, utility work, permit restrictions, and other foreseeable delays and interruptions. The Contractor shall identify these allowances on the progress schedule.

The Contractor shall adjust forces, equipment and work schedules as necessary to ensure completion of the work within the Contract time, and shall notify the Engineer at least 24 hours before resuming suspended operations. Upon a substantial change to the work schedule or

when directed by the Engineer, the Contractor shall submit a revised progress schedule in the form required, including a written explanation for each revision made in the schedule or methods of operation.

The Engineer's review or approval of the documents, plans, and schedules provided by the Contractor under this section shall not change the Contract requirements, release the Contractor of the responsibility for successful completion of the work or relieve the Contractor of the duty to comply with applicable laws. The Engineer's review or approval of schedules shall not indicate agreement with any assertions of delay or claims by the Contractor.

It is the Contractor's responsibility to prepare and submit documents that satisfy all applicable contract requirements. By reviewing and approving the Contractor's documents, the Department does not warrant that following the Contractor's documents will result in successful performance of the work. The Department's failure to discover defects in the Contractor's documents, the assumptions upon which they are based or conditions that prevent the Contractor from performing the work as indicated in the documents will not entitle the Contractor to additional compensation or time. If the Contractor becomes aware of any act or occurrence that may form the basis of a claim for additional compensation or an extension of time, it must specifically advise the Engineer of these conditions in accordance with Subsection 105-1.17.

108-1.04 LIMITATION OF OPERATIONS.

The Contractor shall not open up work to the detriment of work already started. The Contractor shall minimize interference with traffic within the project. The Contractor shall not stop or otherwise impede traffic outside the project limits without the Engineer's prior written permission. The Engineer may require the Contractor to finish a section of work in progress before starting additional sections if the Engineer determines it is necessary for the convenience of the public or the Department.

108-1.05 CHARACTER OF WORKERS, METHODS, AND EQUIPMENT.

The Contractor shall employ sufficient labor and equipment to complete the work required under the Contract and to complete it on time.

The Contractor shall ensure that all workers on the project have the skills and experience necessary to properly perform their assigned work. Workers engaged in special work or skilled work shall have sufficient experience in that work and in the operation of the equipment required to properly perform that work.

The Contractor shall comply with any written order by the Engineer to remove workers, who, in the opinion of the Engineer, perform the work in an unskilled manner, who are intemperate or disorderly, or who jeopardize the safety of the public, other workers or Engineer's personnel. The Contractor shall allow removed workers to return to the project only with the Engineer's written permission. The Engineer may suspend the work if the Contractor fails to furnish suitable and sufficient personnel necessary to perform the work, or fails to remove any worker at the Engineer's order.

The Contractor shall not use prisoner labor on the project.

The Contractor shall use equipment of the appropriate size and mechanical condition to produce the specified quality and quantity of work by the means specified in the Contract, if any, and shall ensure that the equipment does not damage roadways or property.

The Contractor shall ensure all equipment, materials, and articles incorporated into the work are new and of the specified quality, unless the Contract specifically permits otherwise.

The Contractor shall provide the Engineer with a list of all powered equipment that will be used on the project, showing the make, model, year, capacity, horsepower, and related information. The Contractor shall update this list when equipment is added or removed from the work site, but need not update more frequently than weekly.

When the methods and equipment to be used by the Contractor are not prescribed by the contract, the Contractor is free to use any method, means or equipment that is satisfactory to produce the specified work in conformity with the Contract, except as provided above. At the request of the Engineer, the Contractor shall demonstrate that the method, means and equipment chosen will produce the work specified in the Contract in the time allowed under the Contract. The Contractor shall bear all costs and impacts associated with any means, methods and equipment chosen by the Contractor. No suggestion, statement or observation from the Engineer or other Department representatives shall alter this responsibility.

If the Contract specifies a particular method, means or type of equipment for performance of the work, the Contractor must use that method, means or equipment unless the Contractor first requests, in writing, permission to alter the Contract requirement and receives prior written approval from the Engineer.

108-1.06 CONTRACT TIME, EXTENSION OF CONTRACT TIME AND SUSPENSION OF WORK.

Contract time will be specified in calendar days, by completion date, or both.

1. **Calendar Days.** When the contract time is specified on a calendar days basis, all work under the Contract shall be completed within the number of calendar days specified. If no starting day is specified in the Contract, the count of Contract time begins on the day following receipt of the Notice to Proceed by the Contractor.

Calendar days shall continue to be counted against Contract time until and including the date of project completion. Calendar days shall not be counted during the period from November 1 through April 30, except for days that the Contractor is working on the projectsite.

2. **Completion Date.** When the contract time is specified on a completion date basis, all work under the Contract shall be completed by the specified completion date.
3. **Reasons for Suspension of Work and Extension of Contract Time.** The Department may order a suspension of work for any reason listed in this subparagraph 3, items a through p.

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The Department shall not pay additional compensation, but may extend Contract time only, if there are delays in the completion of controlling items of work from unforeseeable causes that are beyond the Contractor's control and are not the result of the Contractor's fault or negligence, including:

- a. Acts of God;
 - b. Acts of the public enemy;
 - c. Fires;
 - d. Floods;
 - e. Epidemics;
 - f. Quarantine restrictions;
 - g. Strikes;
 - h. Freight embargoes;
 - i. Unusually severe weather;
 - j. In accordance with Subsection 105-1.06.4.d, delays by utility owners beyond completion dates specified in the Special Provisions for relocating or adjusting utilities and related facilities; or
 - k. Delays of subcontractors, suppliers and fabricators from unforeseeable causes beyond the control of the subcontractors, suppliers or fabricators and that are not the fault of the subcontractors, suppliers or fabricators, including those causes listed in this Subparagraph 3, Items a through j.
4. No additional Contract time or additional compensation will be allowed due to delays caused by or suspensions ordered due to:
- a. Failure to correct unsafe conditions for the workers or the public;
 - b. Adverse weather that is not unusually severe;
 - c. Failure to carry out Contract provisions;
 - d. Failure to carry out orders given by the Engineer; or
 - e. Failure to timely obtain materials, equipment, or services.

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The Contractor shall notify the Engineer as soon as the Contractor becomes aware of any act or occurrence that may form the basis of a request for a time extension under this section. The Contractor shall submit a request for a time extension to the Engineer within 10 days of the act or occurrence, and if an agreement is not reached, the Contractor may submit a Claim under Subsection 105-1.17.

The time allowed in the Contract, as awarded, is based on performing the original estimated quantities of work set out in the bid schedule. An assertion that insufficient time was originally specified shall not constitute a valid reason for extension of contract time. If satisfactory fulfillment of the Contract requires extra work, the Department may extend Contract time on a basis commensurate with the amount and difficulty of the extra work, provided that the extra work is for a controlling item.

5. Suspension of Work. The Engineer will suspend work on the project, in whole or in part, for such periods and for such reasons as the Engineer determines to be reasonable, necessary, in the public interest, or for the convenience of the Department.
 - a. The Engineer will issue a written order to suspend, delay, or interrupt all or any part of the work. The Contractor shall not be compensated for the suspension, delay, or interruption if it is imposed for a reasonable time under the circumstances.
 - b. Unless another Contract section specifically provides otherwise, the Contractor will be compensated by equitable adjustment for a suspension, delay, or interruption of the work only if:
 - (1) The period of suspension, delay, or interruption is for an unreasonable time under the circumstances and another Contract section allows compensation in the event of a suspension, delay, or interruption of the work under the circumstances that actually caused the suspension, delay, or interruption; or
 - (2) The delay, suspension, or interruption results from the Department's failure to fulfill a contractual obligation to the Contractor within the time period specified in the Contract or, if no time period is specified, within a reasonable time.
 - c. No equitable adjustment will be made under this subsection for any suspension, delay, or interruption of the work if the Contractor's performance would have been suspended, delayed, or interrupted by any other cause for which:
 - (1) The Department is not responsible under the Contract, including the Contractor's fault or negligence; or
 - (2) An equitable adjustment is either provided for or excluded under any other section of this Contract.
 - (3) Claims for equitable adjustments under this section shall be filed under Subsection 105-1.17 except that:
 - i. The Contractor must give written notice of intent to claim no later than 20 days

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after the event giving rise to the delay, suspension, or interruption; and

- ii. The claim may not include any costs incurred more than 20 days before the Contractor files the Contractor's written notice of intent to claim.

108-1.07 FAILURE TO COMPLETE ON TIME.

For each calendar day that the work is not substantially complete after the expiration of the Contract time or the completion date has passed, the Engineer shall deduct the full daily charge corresponding to the original Contract amount shown in Table 108-1 from progress payments.

For each calendar day that the work is substantially complete but the project is not complete, after the expiration of the Contract time or the completion date has passed, the Engineer shall deduct 20 percent of the daily charge corresponding to the original Contract amount shown in Table 108-1 from progress payments.

If no money is due the Contractor, the Department may recover these sums from the Contractor, from the Surety, or from both. These are liquidated damages and not penalties. These charges shall reimburse the Department for its additional administrative expenses incurred due to the Contractor's failure to complete the work within the time specified.

**TABLE 108-1
DAILY CHARGE FOR LIQUIDATED DAMAGES
FOR EACH CALENDAR DAY OF DELAY**

Original Contract Amount		Daily Charge
From More Than	To and Including	
\$ 0	\$ 100,000	\$ 300
100,000	500,000	550
500,000	1,000,000	1,000
1,000,000	2,000,000	1,000
2,000,000	5,000,000	1,500
5,000,000	10,000,000	2,500
10,000,000	-----	3,000

Permitting the Contractor to continue work after the Contract time has elapsed or the completion date has passed does not waive the Department's rights to collect liquidated damages under this section.

108-1.08 DEFAULT OF CONTRACT.

The Contracting Officer will give a written Notice of Default to the Contractor and the Surety if the Contractor:

1. Fails to begin work under the Contract within the time specified;
2. Fails to perform the work with sufficient workers, equipment, or materials to ensure the prompt completion of the work;

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3. Performs the work unsuitably or neglects or refuses to remove materials or to replace rejected work;
4. Discontinues the prosecution of the work;
5. Fails to resume work that has been discontinued within a reasonable time after notice to do so;
6. Becomes insolvent except that if the Contractor declares bankruptcy, termination shall be in accordance with the Federal Bankruptcy Code. In the event that the Contractor declares bankruptcy, the Contractor agrees that the Contract will be assumed by the Surety in a timely manner so as to complete the Contract by the date specified in the Contract;
7. Allows any final judgment to stand against the Contractor unsatisfied for a period of 60 days;
8. Makes an assignment for the benefit of creditors, without the consent of the Engineer;
9. Fails to comply with applicable minimum wage or civil rights requirements;
10. Is a party to fraud, deceit, misrepresentation, or malfeasance in connection with the Contract;
or
11. Fails to perform the work in an acceptable manner for any other cause whatsoever.

The written Notice of Default will include a notice to cure and will establish a date by which the cure must be completed. The Contracting Officer may allow more time to cure than originally stated in the Notice to Default if the Contracting Officer deems it to be in the best interests of the Department. Failure to cure the delay, neglect, or default within the time specified in the Contracting Officer's Notice of Default authorizes the Department to terminate the contract. The Department will provide the Contractor and the Contractor's Surety with a written Notice of Termination.

After the Notice of Termination is issued, the Department may take over the work without further notice; may complete it by itself, by contract or otherwise; and may take possession of and use materials, appliances, equipment, or plant on the work site necessary for completing the work.

The Department may transfer the obligation to perform the work from the Contractor to the Surety. In that event, the Surety shall submit its plan for completion of the work, including any contracts or agreements with third parties for completion, to the Department for approval before beginning work. The Surety must follow the Contract requirements for approval of subcontracts, except that the limitation on percent of work subcontracted will not apply. On receipt of the transfer notice, the Surety shall take possession of all materials, tools, equipment, and appliances at the work site, employ an appropriate work force, and complete the Contract work as specified. The Contract specifications and requirements shall remain in effect, except that the Department will make subsequent Contract payments directly to the Surety. The Contractor forfeits any right

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to claim for the work and is not entitled to receive any further balance of the amount to be paid under the Contract.

The Contractor and the Contractor's Surety are jointly and severally liable for any damage to the Department resulting from the Contractor's delay, neglect, or default, whether or not the Department terminates the Contractor's right to prosecute the work. The Department's damages include any increased costs incurred by the Department in completing the work or paying for the work to be completed. The Department's rights and remedies are in addition to any other rights and remedies provided by law or under the Contract.

If, after notice of termination of the Contractor's right to proceed under this clause, it is determined that the Contractor was not in default, or that the default was excusable, the rights and obligations of the parties will be determined under Subsection 108-1.09, Termination for Convenience.

108-1.09 TERMINATION FOR CONVENIENCE.

1. Notice. The Contracting Officer may terminate the Contract in whole or in part due to:
 - a. Executive Orders of the President of the United States or the Governor of the State of Alaska with respect to the prosecution of war or the interest of national defense, or any disaster declaration.
 - b. Restraining orders or injunctions by a court of competent jurisdiction affecting prosecution of the work based on acts or omissions of persons or agencies other than the Contractor.
 - c. Any reason determined by the Contracting Officer to be in the best interest of the Department.

The Contracting Officer will issue a written Notice of Termination to the Contractor. The Notice of Termination shall state the extent to which performance of work under the Contract is terminated, the effective date of the termination, and for which of the above-listed reasons the Contract is terminated.

2. Required Actions. Unless otherwise directed by the Contracting Officer, upon receipt of a Notice of Termination the Contractor shall immediately:
 - a. Stop work as directed in the Notice.
 - b. Place no further orders or subcontracts for materials, services, or facilities except as approved to complete work not terminated.
 - c. Terminate all orders and subcontracts for the terminated work.
 - d. Accomplish either (1) or (2) below as directed by the Contracting Officer:

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- (1) Assign to the Department all right, title and interest in any terminated orders or subcontracts. The Contracting Officer will settle all claims on the terminated orders or subcontracts.
 - (2) Settle any outstanding liabilities and claims arising from termination of orders and subcontracts. Settlements must be limited to costs allowed under this Section.
- e. Submit to the Contracting Officer a list, certified as to quantity and quality, of all materials acquired or produced for incorporation into the project and that are properly allocable to the terminated portion of the project, exclusive of items disposed of under Subsection 108-1.09.2.f., below.
- f. Dispose of materials in the Contractor's possession or control that were acquired or produced but not incorporated into the project as of the termination date as directed by the Contracting Officer under either (1) or (2) below:
- (1) Transfer title and deliver the materials to the Department. The Department will pay for the materials at the actual cost delivered to the project or storage site, including transportation charges, to which cost 15% will be added.
 - (2) Sell the materials. Credit will not have to be extended to prospective purchasers.

The Contractor may acquire the materials if the Contracting Officer approves the sale price and the Contractor meets any other conditions prescribed by the contracting Officer.

- g. At the sole discretion of the Contracting Officer, the proceeds of any sale, transfer, or disposition of materials may be:
- (1) applied to reduce any payments to be made by the Department under the Contract,
 - (2) credited to the cost of the work, or
 - (3) paid in any other manner as directed.
- i. Deliver to the Department completed or partially completed plans, drawings, information, and other property required to be furnished under the Contract.
 - ii. Take all necessary actions and comply with all directives to protect contract-related property in which the Department has or may acquire an interest.
 - iii. Complete work not terminated.
 - iv. The Contractor shall proceed immediately with performance of the above obligations notwithstanding any delay in determining or adjusting the amount of any item or reimbursable cost under this clause.

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3. Claim. The Contractor shall submit any termination claim to the Contracting Officer within 90 days after the effective date of termination, unless the date for submitting a claim is extended in writing by the Contracting Officer.
 - a. Without duplication of any amount paid for under Subsection 108-1.09.2., the claim may be for the total of:
 - (1) costs incurred in performing the terminated work from the date of Contract award to the effective date of the termination subject to the provisions of Subsection 108-1.09.3.b. regarding reimbursement of equipment costs and Subsection 108-1.09.3.c. regarding unallowable items.
 - (2) payments approved by the Contracting Officer under Subsection 108-1.09.2.d.(2) to settle the termination claims of suppliers and subcontractors to the extent not covered under Subsection 108-1.09.3.a.(1).
 - (3) reasonably incurred costs for:
 - i. accounting, legal, clerical, and other costs reasonably necessary for preparation of the termination claim and settlement negotiations, excluding costs incurred after the date an appeal is filed with the Appeals Officer under Subsection 108-1.09.8.
 - ii. settling subcontractor and supplier claims, excluding the amounts of those settlements paid under Subsection 108-1.09.3.a.(2).
 - iii. reasonable profit on the costs included in Subsection 108-1.09.3.a(1) based on the Contractor's bid rate for profit or as determined under any other reasonable accounting method. However, if it appears that the Contractor would have sustained a loss on the entire Contract had it been completed, the Contracting Officer will allow no profit and will reduce the settlement to reflect the indicated rate of loss under Subsection 108-1.09.4. The Department will not pay profit on costs included in Subsections 108-1.09.3.a.(2) and 108-1.09.3.a.(3).
 - b. Equipment claims will be reimbursed as follows:
 - (1) Contractor-owned equipment usage, based on the Contractor's ownership and operating costs for each piece of equipment as determined from the Contractor's accounting records. Do not base equipment claims on published rental rates.
 - (2) Idle time for Contractor-owned equipment, based on the Contractor's internal ownership and depreciation costs. Idle equipment time is limited to the actual period of time equipment is idle as a direct result of the termination, not to exceed 30 days. Operating expenses will not be included for payment of idle equipment time.
 - (3) Rented equipment, based on reasonable, actual rental costs. Equipment leased under "capital leases" as defined in Financial Accounting Standard No. 13 will be considered

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Contractor-owned equipment. Equipment leased from an affiliate, division, subsidiary or other organization under common control with the Contractor will be considered Contractor-owned equipment, unless the affiliate, division, subsidiary or other organization has an established practice of leasing to unaffiliated lessees.

- c. The following costs are not payable under a termination settlement agreement or Contracting Officer's determination of the termination claim, or on appeal:
 - (1) Loss of anticipated profits or consequential or compensatory damages
 - (2) Unabsorbed home office overhead (also termed "General & Administrative Expense") related to ongoing business operations
 - (3) Bidding and project investigative costs
 - (4) Direct costs of repairing equipment to render it operable for use on the terminated work
4. Adjustment for Loss. If the Contractor would have sustained a loss on the entire Contract had it been completed, the Department will not pay the Contractor more than the total of:
 - a. The amount due for termination claim costs under Subsection 108-1.09.3.a.(3); plus
 - b. The remainder of the total allowable claim amount due reduced by multiplying the remainder by the ratio of (1) the total contract price to (2) the remainder plus the estimated cost to complete the entire Contract; minus
 - c. All disposal and other credits, all advance and progress payments and all other amounts previously paid under the Contract.
5. Deductions. In arriving at the amount due under this Subsection, the Department will deduct:
 - a. All previous payments made before termination;
 - b. Any claim which the Department may have against the Contractor;
 - c. The proceeds of the sale or transfer of any materials, supplies, or other items acquired for the terminated work and not otherwise recovered by or credited to the Department;
 - d. All partial payments made under this Section; and
 - e. Any adjustment for loss determined under Subsection 108-1.09.4.
6. Agreed Settlement. The Contractor shall make every effort to arrive at a claim settlement with the Contracting Officer that is fair to both parties, that reflects the reasonable and allocable incurred costs allowable under Subsection 108-1.09.3, that includes a profit under Subsection 108-1.09.3.a.(4) or, where appropriate, a loss adjustment under Subsection 108-1.09.4, and

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that takes into account the Contractor's reasonable business judgment in performing the work.

The total settlement, whether determined under this Subsection 108-1.09.6 or under Subsection 108-1.09.7, exclusive of the costs listed in Subsection 108-1.09.3.a.(3), may not exceed the total contract price as reduced by previous payments made and the contract price of work not terminated.

If an agreement is reached in whole or in part, the Department will amend the contract and will pay the agreed amount.

7. **Determined Settlement.** If the Contractor fails to submit a termination claim within the time allowed, or if an agreement is not reached on the amount due, the Contracting Officer may determine in a Contracting Officer's Decision, the amount due under Subsection 108-1.09 on the basis of information available to the Department.
8. **Right of Appeal.** The Contractor may appeal a Contracting Officer's Decision within the time and in the manner specified in Subsection 105-1.17.
9. **Partial Payments.** In the sole discretion of the Contracting Officer, the Department may make partial payments against costs incurred by the Contractor in connection with the terminated portion of the Contract. The sum of these partial payments will not exceed the Contracting Officer's estimate of the total amount that will be due as a result of the termination. The estimate will be based on available information. The Contracting Officer may adjust the estimate as additional information becomes available. If the Contracting Officer orders an audit of the Contractor's financial or project records, the Contracting Officer may decline to make partial payments until the audit is completed.
10. **No Waiver of Rights.** The termination of work by the Department does not affect or extinguish any of the rights of the Department against the Contractor or the Contractor's Surety then existing or which may thereafter accrue. Any retention or payment of monies by the Department due under the terms of the Contract will not release the Contractor or the Contractor's Surety from the contractual obligations or warranties made under Subsection 107-1.19 or elsewhere in the Contract.
11. **Retaining Records.** The Contractor shall unless otherwise provided for in the Contract or by applicable statute, keep all books, records, documents, and other evidence bearing on the Contractor's cost and expenses under the Contract and relating to the work terminated for a period of 3 years after final settlement under this Contract. Records must be made available to the Department at the Contractor's office and at all reasonable times.
12. **Definitions.** In this Subsection 108-1.09, the term "cost" and the term "expense" mean a monetary amount in U.S. Dollars actually incurred by the Contractor, actually reflected in the Contractor's contemporaneously maintained accounting or other financial records and supported by original source documentation.

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13. Cost Principles. The Department may use the federal cost principles at 48 CFR §§ 31.201-1 to 31.205-52 (or succeeding cost principles for fixed price contracts) as guidelines in determining allowable costs under this Subsection to the extent they are applicable to highway construction contracts and consistent with the specifications of this Contract. The provisions of this contract control where they are more restrictive than, or inconsistent with, these federal cost principles.

End of Section

SECTION 109

MEASUREMENT AND PAYMENT

109-1.01 GENERAL.

Wherever the Contract provides that certain work is subsidiary or it is without extra compensation, the payment for that work is included in the payment for other items of work and no further or additional payment shall be made for that work.

When more than one type of material or work is specified for a pay item, letter or numeric suffixes included within parentheses following the pay item number are used to differentiate the types.

Lump sum items will not be measured for payment. The Contractor shall accept the bid amount for a lump sum item as complete payment for all work necessary to complete that item. Quantities shown for lump sum items are approximate. No adjustment in the lump sum price will be made if the quantity furnished is more or less than the estimated quantity unless the Contract specifically states otherwise.

109-1.02 MEASUREMENT OF QUANTITIES.

All work completed under the Contract will be measured using the U.S. Customary system of measure. The Engineer may agree for purposes of making progress payments to use a method of measurement other than the methods described below. However, all final payments for quantities will be calculated using one or more of the methods of measurement described below and in the applicable pay item section. Unless otherwise specified, work will be measured as follows:

1. Acre (43,560 ft²). Horizontally, unless specified on the ground surface. No deductions will be made for individual fixtures with an area of 500 ft² or less.
2. Contingent Sum. Measured as specified in the Contract or Directive authorizing the work. The method of payment may include: (1) a lump sum basis, (2) a price multiplied by the units of work performed, (3) a pay adjustment based on the quality of work, or (4) a deduction from the contract amount.
 - a. Cubic Yard (yd³). At the location specified using method a, below. Methods b through e may be used with written approval of the Engineer.
 - b. Average End Area. End area is the calculated area between original ground cross section and either the design cross section or at the Engineer's discretion the final cross section. Volume of material is calculated using the average of end areas multiplied by the distance along centerline between end areas. In extreme cases where most of the earthwork lays along a single horizontal curve the Engineer may compute volume using the average of end areas multiplied by the distance

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- along centroid of cross section between end areas.
- c. Three-Dimensional. Where it is impractical to measure material by cross sectioning due to erratic location of isolated deposits, acceptable methods involving three-dimensional measurements may be used.
 - d. Neat Line. Structures will be measured according to neat lines shown on the Plans or as altered to fit field conditions.
 - e. Nominal. Volume calculated as nominal width times nominal thickness times the average length of each piece.
 - f. Weight. With the Engineer's written approval, material that is specified to be measured by volume may be weighed and converted to volume for payment purposes. The Engineer will determine the appropriate conversion factors. When liquid asphalt is a pay item, ASTM D4311 will be used to convert from weight to volume at 60 °F.
3. Cubic Yard Vehicle Measure (CYVM). Material measured by volume in the hauling vehicle will be measured at the point of delivery. Vehicles may be of any acceptable size or type provided that the volume of the actual contents may be readily and accurately determined. Vehicles shall be loaded to the measured vehicle volume. If vehicles are not loaded to the measured vehicle volume, the Engineer at their discretion may apply a percentage of full factor to the measured volume. Loads shall be leveled when directed. No payment will be made for loads that exceed the legal capacity of the vehicle.
 4. Linear Foot (LF). From end to end, in place, parallel to the centerline of the item or ground surface on which the items are placed.
 5. Thousand Feet Board Measure (MBM). Nominal volume based on nominal widths and thickness times actual extreme length of each piece. One thousand feet board measure = $1,000 \text{ ft}^2 \times 1 \text{ inch thick}$.
 6. Thousand Gallon (MGal). By using method a, below. Methods b or c may be used with written approval of the Engineer.
 - a. Measured or calibrated volume tank;
 - b. Metered volume, using a certified calibrated meter; or
 - c. Weighed under this subsection and converted to volume, using a specified or approved conversion factor.
 7. Mile. From end to end, measured horizontally along centerline.

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8. Pound. Using a certified scale or the net weight of packaged material as labeled by the manufacturer. The Engineer will accept nominal weights for standard manufactured items, unless otherwise specified. The Engineer will accept industry-established manufacturing tolerances, unless otherwise specified.
9. Square Foot (ft²). Parallel to the surface being measured. No deductions will be made for individual fixtures with an area of 1 ft² or less. Transverse measurement for area computations will be the neat dimensions shown on the Plans or as directed by the Engineer.
10. Square Yard (yd²). Parallel to the surface being measured. No deductions will be made for individual fixtures with an area of 1 yd² or less. Transverse measurement for area computations will be the neat dimensions shown on the Plans or as directed by the Engineer.
11. Station (100 feet). Horizontally, parallel to centerline.
12. Ton (2,000 pounds). By using method a or c, below. Method b may be used with written approval of the Engineer.
 - a. Commercial Weighing System. Permanently installed and certified commercial scale that meets the requirements for the project weighing system.
 - b. Invoices. Supplier's invoice with net weight or volume converted to weight for bulk material that is shipped by truck or rail and is not passed through a mixing plant. Periodic check weighing may be required. Net certified weights or volumes of asphalt materials are subject to correction for temperature and foaming. All materials are subject to correction for material that is lost, wasted, or otherwise not incorporated into the work, for computing quantities.
 - c. Project Weighing System. Approved automatic digital scale and scale house. All scales are subject to approval according to the Weights and Measures Act, AS 45.75. Scales must record weight to the nearest 100 pounds. The Contractor shall maintain scale accuracy to within 0.5 percent of the correct weight throughout the range of use.

Spring balances and belt conveyor scales shall not be used to determine pay weight.

The Contractor may use proportioning (batch) scales for weighing material for payment when the batching equipment includes an approved and certified automatic weighing, cycling, and monitoring system.

Weigh scales used with a storage silo may be used to weigh the final product for payment, provided the scales are approved and certified.

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Vehicle scales shall be maintained with the platform level and rigid bulkheads at each end. The platform must be long enough to permit simultaneous weighing of the hauling vehicle including coupled vehicles, in a single draft. Double draft weighing is not allowed.

13. Scale Requirements. The Contractor shall:

- a. Ensure that vehicle scale(s) are installed and maintained to the standards listed in the National Institute of Standards and Technology (NIST), Handbook 44, Specifications, Tolerances and other Technical Requirements for Commercial Weighing and Measuring Devices, as adopted by AS 45.75.050(d);
- b. Contact the Division of Measurement Standards/Commercial Vehicle Enforcement (MSCVE) to coordinate scale inspections before use, at required intervals or as directed by the Engineer and for clarification or possible exceptions to this section;
- c. Ensure that a weatherproof housing is provided to protect the scale indicating/recording equipment and allows the scale operator convenient access to the weigh indicator, scale computer, ticket printer, and sequential printer;
- d. Use competent personnel to operate the scale system;
- e. For all projects advertised after May 1, 2015, furnish and maintain on-site, NIST Class-F cast iron test weights in denominations of 500lb and/or 1000lb. The required minimum for vehicle scales is 4000lbs; the required minimum for hopper scales is 2000lb. Test weights shall have a recognized calibration certificate on file which is dated no more than two years from date of Notice to Proceed. Test weights will be used as directed by the Engineer or MSCVE for initial accuracy calibration testing and may be used for subsequent scale testing or inspection. Projects accessible by direct road access from the communities identified on the dot.alaska.gov/mscve website, 5 days before bid opening, are exempt from the requirement to furnish and maintain on-site test weights;
- f. Provide the following information on any scale used to weigh materials for payment:
 - (1) Owner of the scales and scale locations;
 - (2) Manufacturer's name, model serial number, maximum capacity, and type of scales (single beam, double beam, self-reading, etc.)
 - (3) Date(s) the scales were installed and/or adjusted;
 - (4) Scale service company inspections and accuracy checks (attach copy);
 - i. Division of Measurement Standards inspections and accuracy checks (attach copy); and

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ii. Time and dates of notification of any malfunctions.

14. Electronic Computerized Weighing System. The Contractor shall use an electronic computerized weighing system (ECWS) with the following minimum capabilities:

15. Computer. A computer with a self-reading scale system that includes the scale load cell, a sealed direct reading weight indicator, scale computer, ticket printer, and sequential printer, and that can record a complete shift's transaction in an electronic format approved by the Engineer.

The computer must store project numbers, all pay item descriptions for multiple projects and products that are weighed, and the following information for each hauling vehicle used on the project:

- a. Vehicle identification number marked on the vehicle;
- b. Tare weight; and
- c. Maximum allowable gross vehicle weight (MAVW).

During weighing operations, the ECWS must compare each vehicle's gross weight to its MAVW. If the vehicle exceeds its MAVW, the system must alert the scale operator that an "overload" exists. The system must not issue a ticket for an overload.

The computer must have a battery backup and protection for power surges or brown outs. The computer system must retain all stored data during a power outage and must operate during a power outage to allow the scale operator to shut down the hard drive without losing information.

16. Tickets. The ECWS must have a ticket printer that prints a legible, serially numbered weigh ticket for the Engineer with the following information on each ticket in the order listed:

- a. Project number;
- b. Item number and description;
- c. Date weighed;
- d. Time weighed;
- e. Ticket number;
- f. Vehicle Identification Number;
- g. Maximum allowable gross vehicle weight;

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- h. Gross weight;
 - i. Tare weight;
 - j. Net weight;
 - k. Subtotal item net weight for each haul unit since start of shift; and
 - l. Accumulated item net weight for all haul units since start of shift. Tickets must show all weights to the nearest 100 pounds.
 - m. After printing, the weigh ticket must automatically advance to a perforation so it can be torn off and handed to the driver. Each ticket shall be initialed by the scale operator before handoff to the driver.
17. Sequential Printer. A sequential printer that prints out all transactions (keystrokes) made by the computer concurrently with the ticket printer. For permanent commercial scales, the printer may print at the end of the company's daily shift with the Engineer's approval. The printer must print all scales transactions including tares, voided tickets, and data changes made by the scale operator. The printer must allow for advancing the paper manually so that the scale operator can write notes on the paper when special situations occur, such as voided tickets, incorrect vehicle identification number used, etc. The scale operator shall also note these special situations in the Scales Diary.
- The sequential printout shall be submitted to the Engineer at the end of each shift.
18. Data Files. Submit electronic data files to the Engineer at the end of each shift, with all ticket information produced during the shift recorded. These Data files must be complete and correct without conversion or manipulation.
19. Scale Diary. The scale operator shall keep a Scale Diary in an electronic format acceptable to the Engineer. The scale operator shall complete the Scale Diary with the following information: dates of action, type of material, source, time the scale opened and time the scale closed, times of scale balance, ticket sequence, time the haul for each material started and stopped, voided ticket numbers, vehicle identification numbers, times of tare and tare weights, and the scale operator's signature. The Scale Diary shall include the following information on any scale used to weigh materials for payment:
- a. Owner of the scales and scale locations;
 - b. Manufacturer's name, model serial number, maximum capacity, and type of scales (single beam, double beam, self-reading, etc.);

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- c. Date(s) the scales were installed and/or adjusted;
- d. Scale service company inspections and accuracy checks (attach copy);
- e. Division of Measurement Standards inspections and accuracy checks (attach copy); and
- f. Time and dates of notification of any malfunctions.

The Scale Diary shall be given to the Engineer at the end of each shift. The Scale Diary is the property of the Department.

20. Weighing Procedures, the scale operator shall tare hauling vehicles and record tare weights at least once daily; perform additional tares and record additional tare weights as directed by the Engineer; perform tares in the presence of the Engineer when requested; and ensure that each hauling truck displays a unique, legible identification mark.

The Engineer will calculate the MAVW for each vehicle and list all vehicles and their MAVW(s) in the scale house. The MAVW is either the maximum allowable legal weight determined by the Engineer when the Contractor cannot haul overloads, or the manufacturer's recommended maximum allowable gross vehicle weight as certified by the Contractor when vehicles are allowed to haul overloads. Only MAVWs that the Engineer has provided in writing shall be used. Tickets may not be issued to a vehicle until the Engineer provides the MAVW.

No payment will be made for any material weighed without using the ECWS, unless the Contractor obtains the Engineer's prior written authorization. If the ECWS malfunctions or breaks down, weights shall be manually weighed and recorded for up to 48 hours as directed by the Engineer. The manual weighing operation shall meet all other Contract requirements.

The system must generate a report either during or at the end of the day or shift that summarizes the number of loads and total net weight for each date, project, and product. The scale operator shall submit the original report to the Engineer at the end of each shift.

No payment for any hauled material on a given date will be made until the following are delivered to the Engineer:

- a. Sequential printout;
- b. Daily data; and
- c. Scale Diary.

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The Contractor will not receive payment for any material hauled in a vehicle that does not conform to the requirements of Subsection 105-1.12, Load Restrictions, and this Subsection. The Contractor shall dump material from non-conforming vehicles until they conform, and then reweigh the vehicles.

When a weighing device indicates less than true weight, the Contractor will not receive additional payment for material previously weighed and recorded. When a weighing device indicates more than true weight, all material received after the last previously correct weighing accuracy test will be reduced by the percentage of error that exceeds 0.5 percent.

If the Engineer incurs extra construction engineering expenses from checking non-machine data entries or other data irregularities, the total value of those expenses will be deducted from the value of the Contract item before payment.

The Contractor shall accept natural variations in the specific gravity of aggregates, without adjustment in Contract unit price.

109-1.03 SCOPE OF PAYMENT.

The Department will make payment at the Contract price or prices for each item shown on the bid schedule or as modified by change order with specified price adjustments. The Contractor shall accept the Contract prices as full and complete payment for (a) furnishing all equipment, materials, tools, and labor necessary to complete the work in a complete and acceptable manner, and for (b) all of the Contractor's risk, loss, damage, or expense of whatever character arising from or relating to the work and performance of the work.

109-1.04 COMPENSATION FOR ALTERED QUANTITIES.

Payment to the Contractor for unit price items shall be made only for the actual quantities of work performed and accepted or materials furnished, in conformance with the Contract. When the accepted quantities of work or materials vary from the quantities stated in the bid schedule, the Contractor shall accept payment at the original Contract unit prices for the quantities of work and materials furnished, completed and accepted as payment in full. Payment at the Contract unit price shall compensate the Contractor for all costs, expenses, and profit that the Contractor is entitled to receive for the altered quantities, except as provided below:

1. When the final quantity of a Major Contract Item varies more than 25 percent above or below the bid quantity, either party to the Contract may receive an equitable adjustment in the Contract unit price of that item. If the final quantity of work is:
2. Greater than 125 percent of the bid quantity, the equitable adjustment will be made only for those units that are in excess of 125 percent of the bid quantity.
3. Less than 75 percent of the bid quantity, the equitable adjustment will be made for those units of work done and accepted, except that the total payment for the item

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shall not exceed 75 percent of the total amount bid for the item.

Except as provided above and in Subsection 104-1.02, no allowance shall be made for any increased expenses, loss of expected reimbursement, or loss of anticipated profits suffered or claimed, either directly from alterations in quantities or indirectly from unbalanced allocations among the contract items on the part of the bidder and subsequent loss of expected reimbursements, or any other causes.

109-1.05 COMPENSATION FOR EXTRA WORK ON TIME AND MATERIALS BASIS.

When the Engineer orders extra work to be performed on a time and materials basis, compensation will be computed as follows:

1. Labor. Based on the sum of a. through f.
 - a. Total hours worked times the straight time rate of pay. The rates of pay are those indicated on the certified payroll for all labor and foremen in direct charge of the specific operations. Rates shall not exceed those for comparable labor currently employed on the project, and shall not include general superintendence.
 - b. Overtime hours worked times the difference between the overtime rate and the straight time rate. No markup is allowed.
 - c. Fringe benefit rate times the total hours worked. Fringe benefits include Health and Welfare, Pension Fund, etc., when such amounts are required by collective bargaining agreement or other employment contracts generally applicable to the classes of labor employed on the project.
 - d. Workers' Compensation Insurance at 8 percent of a. The actual net rate may be used if it exceeds 10 percent and if proof of rates is furnished within 30 days of the completion of the extra work.
 - e. Either subsistence and travel allowances or prorated camp costs. If an employee is due and receives subsistence or camp privileges on their days off, divide that cost by the number of days worked that week and add to their daily subsistence entitlement. If the employee did not work an entire day on time and materials work, prorate the entitlement for the hours worked on time and materials.
 - f. Markup at 35 percent of the sum of a., c., d., and e. This includes and shall fully compensate the Contractor for all overhead and profit, including general superintendence, additional bond, property damage liability insurance, unemployment insurance contributions, social security and other taxes, administrative overhead costs, and profit.
2. Materials. Actual invoiced material and delivery costs plus 15 percent markup. The material must be approved and incorporated into the work. The Contractor shall furnish

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to the Engineer proof of payment for materials used in the work plus applicable transportation charges. For Contractor-produced materials, certify in writing the Contractor's actual direct costs, the quantities used, and attach cost spreadsheets and production documentation to verify the costs.

3. Equipment. Includes machinery and special equipment (other than small tools) necessary for the work and authorized by the Engineer. No additional compensation will be made for overhead, profit, maintenance, service, repairs, fuels, lubricants, or replacement parts.
4. Hourly Rental Rate. Based on rental rates in the current edition and appropriate volume of the Rental Rate Blue Book, by Equipment Watch, Penton Media, Inc.

The regular hourly rental rate is equal to the equipment rate plus the estimated hourly operating cost. These rates apply for equipment used during the Contractor's regular shift of 10 hours per day. No markup is allowed.

The equipment rate is equal to the age adjusted monthly rate for the basic equipment plus the age adjusted monthly rate for applicable attachments, both divided by 176, and multiplied by the regional adjustment factor. The equipment rate is per hour.

The age adjusted monthly rate is that resulting from application of the age adjustment formula, to eliminate replacement cost allowances in machine depreciation and contingency cost allowances.

Only the attachments required for the time and materials work will be included.

- a. Hourly Overtime Rate. Half of the equipment rate plus the full estimated hourly operating cost. The overtime rate will apply to hours the equipment is used in excess of 10 hours per day, either on the Contractor's normal work or on time and materials, and either on single or multiple shifts. No markup is allowed.
- b. Hourly Stand-by Rate. Half of the equipment rate, for equipment ordered on stand-by during the Contractor's normal work shift, not to exceed eight hours per day. No operating costs or markup is allowed.
- c. Unlisted Equipment. For equipment not listed in The Blue Book, the Contractor and the Engineer may agree to a rate before extra work is begun. If agreement is not reached, the Engineer has authority to establish a rate based on similar equipment in Rental Rate Blue Book or prevailing commercial rates. No markup is allowed.
- d. Leased or Rented Equipment. Equipment that must be rented or leased specifically for work required under this section and authorized in writing by the Engineer shall be paid at invoice price plus 15 percent markup.

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Equipment rented or leased for other work under the Contract and used for work under this section shall be paid based on 3.a., b., and c. (above) with no markup, except that the adjusted monthly rate is the monthly rate determined directly from the submitted rental or lease agreement.

- a. Transportation of Equipment. The actual cost of moving equipment to and from the work site. To receive reimbursement for transportation of equipment, the Contractor shall obtain the equipment from the nearest approved source and use the equipment exclusively for time and materials work. Payment for move-out will not exceed the amount of the move-in. No markup is allowed, except on operator's wages.

Basis of payment:

- a. If by common carrier: paid freight bill or invoice.
 - b. If hauled with the Contractor's own resources: hourly rental rate for hauling unit plus operator wages.
 - c. If equipment must be moved under its own power: half of the normal hourly rental rate plus operator's wages.
1. Work by a Subcontractor or Owner-Operator. For time and materials work performed by an approved subcontractor or owner-operator under items 1 through 3 above, the Contractor will receive a 5 percent markup for administrative costs. No percentage will be paid on work covered under bid items in the original Contract. No percentage over the amount covered above will be paid for work done by a lower tier subcontractor.
 2. Work by a Specialty Subcontractor. The Contractor shall obtain the Engineer's advance agreement that the specialty item needed is beyond the Contractor's ability or expertise or that of the Contractor's other subcontractors. For work on a specialty item performed by an approved specialty subcontractor, the Contractor will receive the approved invoice cost of work or service plus a 15 percent markup for administrative costs.
 3. Records. The Engineer will maintain a daily record of labor, equipment and materials utilized in the extra work. The Engineer will present this record to the Contractor at the end of each day's work for verification and signature.
 4. Compensation. Payment for time and materials work will be made in the progress estimate following receipt of the verified daily records and all required supporting information from the Contractor. If, at any time, a unit price or lump sum basis of compensation is agreed to for work being performed under this subsection, that compensation will be set forth in writing as a Change Order.

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109-1.06 PROGRESS PAYMENTS.

The Department will make monthly progress payments to the Contractor based on estimates of the value of work performed and materials on hand under Subsection 109-1.07. At the Departments discretion, a progress payment may be made twice monthly if the value of the estimate exceeds \$10,000.

Contractor's failure to pay subcontractors or subcontractor's failure to pay lower tier subcontractors, according to prompt payment provisions required under Subsection 108-1.01 is considered unsatisfactory performance.

The Department will not withhold payment as retainage but may withhold payment for unsatisfactory performance. If satisfactory progress is being made and subcontractors are paid according to Subsection 108-1.01 and AS 36.90.210, the Engineer will authorize 100 percent payment for the estimated value of work accomplished, less any authorized deductions.

If the Engineer finds that satisfactory progress is not being made or payment for satisfactory work by a subcontractor or lower tier subcontractor is not paid according to Subsection 108-1.01, the Engineer may withhold up to 100 percent of the total amount earned from subsequent progress payments. The Engineer may withhold up to 200 percent of the estimated cost to complete final punch list items for unsatisfactory performance until those items are complete. The Engineer will notify the Contractor in writing within eight (8) working days of a request for a progress payment of the reasons why part or all of the payment is being withheld for unsatisfactory performance and what actions may be taken by the Contractor to receive full payment.

Payments of withheld amounts will be made in accordance with AS 36.90.200. No interest will be paid to the Contractor for amounts withheld for unsatisfactory performance except if the Department fails to pay the amount withheld within twenty one (21) calendar days after the Contractor satisfactorily completes the remedial actions identified by the Engineer, as provided in AS 36.90.200(e).

The Contractor shall pay interest on retainage withheld from subcontractors, and at an interest rate according to AS 36.90.250 and AS 45.45.010(a).

109-1.07 PAYMENT FOR MATERIAL ON HAND.

1. Partial Payment. The Engineer will make partial payment for materials designated for incorporation into the work. The material shall:
 - a. Meet Contract requirements;
 - b. Be delivered and stockpiled at the project or other approved location;
 - c. Be supported by invoices, freight bills, and other required information; and

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- d. Not be living or perishable.
2. Payment Requests. The Contractor shall make each payment request in writing and:
 - a. List stockpiled items, quantities of each, and stockpile location(s);
 - b. Certify that materials meet the applicable Contract specifications;
 - c. For purchased materials, attach copies of invoices, freight bills, and manufacturer's published storage recommendations;
 - d. For Contractor-produced materials, attach production statements showing quantities and dates produced and copies of process quality control test results; and
 - e. Include other information requested by the Engineer.
 3. Storage Conditions. The Contractor shall protect material from damage or loss while in storage. The Contractor shall:
 - a. Physically separate stockpiled materials from other materials at the storage location;
 - b. Clearly label materials with the project name and number; and
 - c. Store materials per the manufacturer's recommendations.

If storage conditions become unsatisfactory, liens are filed on any materials, or the storage location is changed without approval, the Engineer will deduct any previous payments made for such materials.

4. Method of Payment. The Engineer will include payments for acceptably stockpiled materials in the progress estimate following receipt of the Contractor's written request and all required documentation. The Engineer will:
 - a. Pay for materials purchased by the Contractor at the delivered cost but not to exceed 85% of the Contract amount for those items.
 - b. Pay for materials produced by the Contractor at up to 50% of the Contract amount for those items.
 - c. Deduct the Department's cost to inspect materials stored off the limits of the project.
 - d. Deduct partial payment quantities as they are incorporated into the project.

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The Contractor shall release and discharge the Department from any liability for damages or delays related to the storage or transport of, and to the payment for, material on hand.

End of Section

Division 200-700
Modifications to Alaska Department of Transportation and Public Facilities
Standard Specifications for Highway Construction
2015 Edition

**Division 200 through 800
Modifications to Alaska Department of Transportation and Public
Facilities
Standard Specifications for Highway Construction
2015 Edition**

Attention

The Alaska Department of Transportation and Public Facilities (ADOT&PF) Standard Specifications for Highway Construction, 2015 Edition, are hereby incorporated in their entirety, by reference. The following Special Contract Requirements (SCR) amend and supplement the following Sections as required for this project.

DIVISION 200 – EARTHWORK

**SECTION 201
CLEARING AND GRUBBING**

201-3.01 GENERAL.

Add the following to the first paragraph:

All clearing operations shall be accordance with USFWS “Land Clearing Timing Guidance for Alaska,” latest edition.

https://www.fws.gov/alaska/fisheries/fieldoffice/anchorage/pdf/vegetation_clearing.pdf

End of Section

**SECTION 203
EXCAVATION AND EMBANKMENT**

203-2.01 MATERIALS.

3. Borrow: *Replace with following:*

Borrow shall meet 703-2.07, 1. Type A.

203-3.03 EMBANKMENT CONSTRUCTION.

Add the following:

All permanent cut and fill slopes shall be hydro seeded in accordance with Section 618.

End of Section

**SECTION 204
STRUCTURES EXCAVATION FOR CONDUITS
AND MINOR STRUCTURES**

204-5.01 BASIS OF PAYMENT.

Replace fourth paragraph with the following:

Backfill and Bedding material is subsidiary.

End of Section

DIVISION 300 – BASES

**SECTION 305
STOCKPILED MATERIAL**

305-3.01 CONSTRUCTION REQUIREMENTS.

Add the following:

All local and imported materials shall be stockpiled in accordance with this section.

305-4.01 METHOD OF MEASUREMENT.

Delete first sentence replace with the following:

No allowance will be made for stockpile losses.

305-5.01 BASIS OF PAYMENT.

Delete and replace with the following:

All work performed under this section is subsidiary.

End of Section

DIVISION 600 – MISCELLANEOUS CONSTRUCTION

**SECTION 604
MANHOLES AND INLETS**

604-5.01 BASIS OF PAYMENT.

Add the following:

Bed Course Material required is subsidiary.

End of Section

**SECTION 613
MONUMENTS AND MARKERS**

613-3.01 CONSTRUCTION REQUIREMENTS.

Add the following:

4. Inlet and outlet of culverts 24-inch in diameter or larger.

End of Section

**SECTION 633
SILT FENCE**

630-5.01 BASIS OF PAYMENT.

Replace with the following:

Silt fence is subsidiary to Section 641.

End of Section

**SECTION 618
SEEDING**

618-2.03. MATERIAL.

Add the following:

Mulch shall be Hydra Cx, or equal.

618-3.03. APPLICATION.

2. Dry Method. Delete section:

618-5.01 BASIS OF PAYMENT.

Replace with the following:

Seeding including water, mulch and fertilizer is subsidiary to pay item 641.

End of Section

SECTION 635

INSULATION BOARD

635-5.01 BASIS OF PAYMENT.

Replace with the following:

Insulation board required is subsidiary to 203.

End of Section

SECTION 639

DRIVEWAYS

639-5.01 BASIS OF PAYMENT.

Delete the second paragraph and replace with the following:

Materials required to construct driveways is subsidiary to the pay item.

SECTION 640

MOBILIZATION AND DEMOBILIZATION

640-3.01 CONSTRUCTION REQUIREMENTS.

Add the following:

The contractor shall prepare a detailed Emergency Preparedness Plan for review and approval of AVCP. The plan shall be an appendix to the Contractors' Safety Plan.

End of Section

SECTION 642

CONSTRUCTION SURVEYING AND MONUMENTS

642-3.01 GENERAL.

Delete the third paragraph and replace with the following:

All work under this section will be completed by, or under the responsible charge of, a person registered in the State of Alaska as a Professional Land Surveyor.

Revise item 9 to read as follows:

1. Staking, referencing and other actions required to locate, and preserve or restore, land monuments and property corners.

642-3.03 MONUMENTS.

Replace the fourth paragraph with the following:

All monuments within the limits of work have not been identified in the plans. The contractor is responsible to search for all monuments of record that may be disturbed by the contractor's work, and to preserve or replace all existing monuments in accordance with this Section. No additional payment will be included for this work. It is subsidiary to Item 642(1) Construction Surveying.

642-3.04 OFFICE ENGINEERING.

Delete third sentence and replace with:

Perform the work by, or under the responsible charge of, a person registered in the State of Alaska as a Professional Land Surveyor.

End of Section

END OF SPECIAL CONTRACT REQUIREMENT

