



July 9, 2025

The Honorable Jesse Bjorkman
Chair, Senate Transportation Committee
Alaska State Capitol, Room 427
Juneau, AK, 99801

Thank you for the opportunity to submit this amended response following the May 13, 2025, Senate Transportation Committee hearing. We understand the committee requested additional clarification on a few outstanding items, and we appreciate your continued engagement. With the legislative session now concluded, we want to express our gratitude for your partnership and wish you well during the interim. As always, the department remains available should you need further information or assistance.

Northern Region Construction Bid Activity

During the hearing, Senator Tobin noted the number of projects currently scheduled out of the Northern Region and asked whether this schedule aligns with past years. The department has compiled the following data comparing bid activity for projects opened between February 13 and May 13 over the last four years:

Year	Number of Projects with Bid Openings	Total Low Bid Amount
2022	11	\$97,144,372.53
2023	6	\$47,248,102.12
2024	9	\$51,185,270.43
2025	10	\$57,454,411.79

Please note these totals reflect competitively-bid projects and do not include Construction Manager/General Contractor (CMGC) project data. As the table indicates, the number and scale of bid openings in 2025 are consistent with prior years, showing a relatively stable project delivery trend for the Northern Region.

Utility Relocation Agreements: HEA and GCI

Senator Bjorkman inquired about differences in the utility relocation agreement language used with Homer Electric Association (HEA) and GCI for the Kenai Spur Road Rehabilitation project, along with an explanation of DOT&PF's acceptance decisions.

Both HEA and GCI are currently presented with identical Build America, Buy America (BABA) language in their draft utility agreements for this project. The department has been working closely with our legal staff to finalize standard BABA-compliant boilerplate language that will be consistently applied across utility companies. As part of this process, we also coordinated directly with utility providers and their legal representatives to incorporate necessary BABA language into agreements under development.

Due to the iterative nature of this coordination, some earlier versions of the draft agreements may have reflected temporary differences. To assist the committee in reviewing the final versions, we have enclosed draft copies of both the HEA and GCI agreements, their respective appendices, and a comparison document that highlights any changes.

If there are particular concerns about differences across agreement iterations, the department is happy to provide additional clarification.

Timeline for CRISI Grant Application – Port Mackenzie Rail Extension

In response to Senator Shower's question regarding the status of the CRISI grant application for the Port Mackenzie rail extension, we'd like to clarify that this is an Alaska Railroad Corporation (ARRC) grant. ARRC is the applicant and would be the direct recipient of the award to execute the project.

ARRC has confirmed that they intend to apply during the next CRISI grant cycle once the federal Notice of Funding Opportunity (NOFO) is released. While the NOFO has not yet been published, it is anticipated soon. Once released, there will be a submission window followed by a federal review period. Grant awards are expected to be announced in late 2025 or early 2026.

We will continue to monitor the grant timeline closely and provide updates to the committee as new information becomes available.

Update on 2025 Construction Season Bidding Progress

We apologize for not providing a quantitative update during the May 13, 2025, Senate Transportation Committee hearing in response to Senator Kiehl's question. We appreciate the opportunity to follow up.

As requested, DOT&PF has reviewed project delivery data between February 13 and May 13, 2025. Based on AASHTOware system readouts, the total value of highway and bridge contracts awarded during that time was higher than the same window in 2024.

For a broader perspective, DOT&PF typically reports construction delivery on a federal fiscal year (FFY) basis. From October 1, 2024, through May 31, 2025 (FFY2025), the department

Chair Bjorkman

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awarded \$417.4 million in construction contracts. In comparison, during the same timeframe in FFY2024, \$401.6 million was awarded.

We look forward to reporting in 2026 on our continued progress and any associated challenges.

Sincerely,

A handwritten signature in blue ink, appearing to read "Ryan Anderson".

Ryan Anderson P.E.
Commissioner

Enclosed: HEA Utility Agreement (Kenai Spur Project)
 HEA Appendix – Buy America/Build America Compliance
 GCI Utility Agreement (Kenai Spur Project)
 GCI Appendix – Buy America/Build America Compliance
 Utility Agreement Comparison – GCI vs HEA
 Appendix Comparison – GCI vs HEA
 Regional Construction Award Info 2024
 Regional Construction Award Info 2025

cc: Andy Mills, Legislative Liaison
 Jordan Shilling, Director, Governor's Legislative Office

**STATE OF ALASKA
DEPARTMENT OF TRANSPORTATION
AND PUBLIC FACILITIES**

**UTILITY AGREEMENT
(WORK BY STATE OR UTILITY)**

Region: **CENTRAL**

Agreement No.: **1-CFHWY00253-18-33**

Project No.: **0221(019)/CFHWY00253**

RSA No.: **N/A**

Utility Work Order No.: **18-0291 / 22937**

This Agreement made and entered into this _____ day of _____, by and between the State of Alaska, acting by and through the Department of Transportation and Public Facilities, hereinafter called the DEPARTMENT, and **GCI Communication Corp (GCI)** hereinafter called the COMPANY.

WITNESSETH:

WHEREAS, the DEPARTMENT, in the interest of public safety and convenience proposes to construct, reconstruct or otherwise improve a portion of the DEPARTMENT facility known as **Kenai Spur Highway Rehab: Sports Lake Road to Swires Road - Phase II** which shall require the adjustment, relocation, or removal of the COMPANY's facilities along, over, under, or within said DEPARTMENT facility such adjustment, relocation, or removal work to hereinafter be described as "relocation work", and

WHEREAS, the DEPARTMENT, under the provisions of Alaska Statute (AS) 19.25.020(c), is authorized to reimburse the COMPANY for the costs of said relocation work, and

WHEREAS, the DEPARTMENT and the COMPANY have reviewed the plans for said highway improvements and are in mutual agreement as to the scope of the relocation work to be performed, as described in the attached "Certificate of Finding", marked "Exhibit B";

NOW THEREFORE, in consideration of the mutual undertaking as herein recited, the DEPARTMENT and the COMPANY do hereby agree as follows:

SECTION I. RELOCATION WORK TO BE ACCOMPLISHED

- A. The COMPANY and DEPARTMENT hereby agree to the relocation of the required facilities in accordance with the provisions set forth in the United States Code of Federal Regulations 23 C.F.R., Part 645, Subpart A Utility Relocations, Adjustments and Reimbursement, dated April 1, 1992, and any supplements and revisions thereto, which by reference are made a part thereof, and hereinafter called 23 C.F.R. Part 645.

- B. The plans and specifications of the relocation work to be performed, attached hereto as "Exhibit C" and "Exhibit D" and by reference made a part of this Agreement, are to be included in and made a part of any DEPARTMENT or COMPANY administered contract for accomplishing any part or all of said relocation work.
- C. The betterments and/or additions for the COMPANY as specified in this Agreement and are part of the DEPARTMENT's contract will be accomplished in accordance with REIMBURSABLE SERVICE AGREEMENT (RSA) No. N/A attached hereto and by reference made a part of this Agreement.

SECTION II. METHODS OF RELOCATION

It is in the best interest of the DEPARTMENT and the COMPANY for the said relocation work to be accomplished by the method(s) described and checked hereinafter:

- X (1) By force account with the COMPANY's regular construction or maintenance forces.
- X (2) By an approved and qualified contractor paid under a contract let by the COMPANY.
- (3) By a contract let by the DEPARTMENT either as a utility contract or as an item in the general project contract.

SECTION III. COMPANY LIABILITY

- A. The COMPANY shall indemnify, defend, and hold harmless the DEPARTMENT from liability resulting from injuries or damages sustained by any person or persons or property as a direct result of an act of commission or omission of the COMPANY in the performance of the relocation work undertaken by the COMPANY.
- B. The COMPANY shall assume all legal liability which is related in any way to the presence, operation, or maintenance of said relocation facilities.
- C. The COMPANY shall assume all direct and out-of-pocket costs incurred by the DEPARTMENT caused as a direct result of a failure of the COMPANY to perform the relocation work within the time required by this Agreement unless due to causes beyond the control of the COMPANY.
- D. The COMPANY's relocation work is part of a project funded by the Federal Highway Administration (FHWA) and therefore required to comply with the applicable domestic preference provisions contained in the Buy America Act, 23 U.S.C. §313, 23 C.F.R. §635.410, and the Build America, Buy America Act (BABA), adopted in Title IX of the Infrastructure Investment and Jobs Act, Public Law No. 117-58 (IIJA) and implemented through 2 C.F.R. Part 184. For additional terms regarding the referenced domestic preference requirements see Appendix A, incorporated into this Agreement by reference.

SECTION IV. UTILITY CONSTRUCTION PHASE

- A. The COMPANY shall give the DEPARTMENT's Regional Utilities Engineer prior notice before commencing with the relocation work.
- B. The relocation work shall be performed in a workmanlike manner and in compliance with the provisions of the Utility Permit, this Agreement, and applicable Federal, State, and Local Statutes, Codes, and Regulations.
- C. Both parties will allow duly authorized inspectors free access to all stages of the work and all disputes arising from such inspection will be settled by the Commissioner or his delegated representative.
- D. During the performance of the work being performed under the DEPARTMENT's general contract, the COMPANY or its authorized representative shall make all construction orders or changes to the construction through the DEPARTMENT's Project Engineer. Any negotiated changes to the contract between the COMPANY and the Contractor shall be made through the DEPARTMENT's Project Engineer.
- E. All relocation work by the COMPANY shall be completed on or before _____**
_____ or within _____ days by the above indicated METHOD OF RELOCATION, in accordance with the plans and specifications included in "Exhibit C" and "Exhibit D", subject to the following conditions beyond the control of the COMPANY which may adversely affect this date/time:

****Relocation work shall be coordinated with the DEPARTMENT's Contractor in accordance with Section(s) 651-1.03 & 688 of the Special Provisions included in "Exhibit D" and the Standard Specifications for Highway Construction (2020 Edition).**

SECTION V. COSTS BY COMPANY

- A. The COMPANY shall develop the relocation and/or engineering and inspection costs by the method described and checked hereafter:
- Either _____ (1) Actual and related indirect costs accumulated in accordance with a work order accounting procedure prescribed by the applicable Federal or State regulatory body.
- Or X (2) Actual and related indirect costs accumulated in accordance with an accounting procedure established by the COMPANY and approved by the DEPARTMENT.
- B. The DEPARTMENT shall receive fair and adequate credit for any salvage value, including scrap, which will accrue to the COMPANY as a result of said relocation work.

C. The costs of any betterments to the facilities being relocated not required to accommodate the DEPARTMENT's project construction and made at the election of the COMPANY shall be borne by the COMPANY.

(1) When the betterment is accomplished under the DEPARTMENT's general contract, the COMPANY shall reimburse the DEPARTMENT in accordance with RSA No. N/A attached hereto and made a part of this Agreement.

D. Records of all reimbursable costs for labor services, materials and equipment incurred by the COMPANY shall be available to the DEPARTMENT by the COMPANY, with separate records as to the costs of contract bid items and force account items. On Federal-aid projects, these records shall be in conformance with the requirements of 23 C.F.R. Part 645A, Relocations, Adjustments and Reimbursement, and shall be available for inspection by the appropriate Federal agency.

E. Records of all reimbursable costs for labor, materials, and equipment shall be retained for three years after the receipt of final payment in accordance with 23 C.F.R. Part 17.5(c)(2), Recordkeeping and Retention Requirements for Federal-aid Highways, Records of State Highway Agencies.

SECTION VI. REIMBURSEMENT

Consistent with the terms of this Agreement the DEPARTMENT will reimburse the COMPANY upon the presentation of certified bills prepared in accordance with the requirements of 23 C.F.R. Part 645 and the provisions of this Agreement. As shown in the attached Estimate, "Exhibit A", the estimated amount of reimbursement, after deduction for any credit due the DEPARTMENT, is **\$1,080,981**.

SECTION VII. BILLINGS BY COMPANY

Billings and payments shall be made as follows:

A. Preliminary Engineering Billings.

1. When the COMPANY receives the Authority-to-Proceed (ATP) letter, all reimbursable Preliminary Engineering (PE) billings shall be submitted to the DEPARTMENT within 90 days. PE Authority is cutoff when the Agreement is executed by the DEPARTMENT.

B. Partial Billings.

1. At the request of the COMPANY, the DEPARTMENT will accept Partial Billings. Such billings shall show backup, including the Project, Agreement, and COMPANY assigned Work Order numbers, the Termini, and the dates covering the period that the billed work was performed.
2. Each Billing shall contain a recapitulation showing the total cost to date, and the amount of previous billings.

C. Final Billings.

1. The COMPANY, upon completion of all its relocation work and/or upon notification by the DEPARTMENT that all relocation or improvement work performed by the DEPARTMENT is completed, shall submit its Final Billing with appropriate backup as soon as practical and not later than 120 days.
2. The Final Billings shall show backup as required, including the Project, Agreement, and Utility Work Order numbers, the Termini, the dates on which the first and last billed item of expense occurred, and the location where the accounts and records may be audited.

D. Certification

All billings shall contain a statement prepared on the COMPANY's letterhead as follows:

“The Utility hereby certifies that the attached Billing No. _____ (Partial or Final) is a true and just statement of costs incurred by our Company in adjusting or relocating our facilities on the above referenced project during the period from _____ to _____, and that payment has not been received.

The Utility hereby certifies that this billing complies with the Buy America provisions set forth in 23 US Code 313, 23 Code of Federal Regulations, Part 635.410, and the Build America, Buy America Act (BABA), adopted in Title IX of the Infrastructure Investment and Jobs Act, Public Law No. 117-58 (IIJA) and implemented through 2 C.F.R. Part 184, and that material certifications will be retained for three years after the receipt of final payment.

CERTIFIED AS BEING CORRECT:

BY: _____
TITLE: _____
DATE: _____”

E. Payment

1. Payment of billings properly prepared, submitted and approved for payment will be made within 45 days.
2. Billings are subject to a retainage for disputed amounts until resolved.
3. The DEPARTMENT reserves the right to perform an audit.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first above mentioned.

CONTRACT REVIEW:

STATE OF ALASKA
DEPARTMENT OF TRANSPORTATION
AND PUBLIC FACILITIES

By: _____

Title: Utility Lead

Date: _____

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UTILITY COMPANY ACCEPTANCE:

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GCI COMMUNICATION CORP

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By: _____

Title: _____

Date: _____

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RECOMMENDED FOR APPROVAL:

STATE OF ALASKA
DEPARTMENT OF TRANSPORTATION
AND PUBLIC FACILITIES

By: _____

Title: Regional Utilities Engineer

Date: _____

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NOTICE TO PROCEED:

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STATE OF ALASKA
DEPARTMENT OF TRANSPORTATION
AND PUBLIC FACILITIES

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By: _____

Title: Preconstruction Engineer

Date: _____

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APPENDIX A

DOMESTIC PREFERENCE PROVISION. Two separate domestic preference laws apply to this Project:

The first is the Buy America Act (Buy America), codified at 23 U.S.C. §313 and implemented through regulations found at 23 C.F.R. §635.410. The Buy America Act applies to iron and steel material used on FHWA-funded projects.

The second is the Build America, Buy America Act (BABA), adopted in Title IX of the Infrastructure Investment and Jobs Act, Public Law No. 117-58 (IIJA) and implemented through 2 C.F.R. Part 184. On FHWA-funded projects, BABA governs use of “construction materials,” as that term is defined in 2 C.F.R. §184.3.

BABA also addresses use of “manufactured products” (defined in 2 C.F.R. §184.3) on federally funded projects. However, on FHWA-funded projects, unique rules apply to manufactured products. These rules include the following:

- (1) Due to a general waiver concerning manufactured products that FHWA issued before adoption of BABA, FHWA does not currently enforce domestic preference requirements on manufactured products as a class.
- (2) However, there is an exception to the rule stated in subparagraph (1). That is, if (a) a manufactured product is “predominantly of iron or steel or a combination of both” (Predominantly Iron/Steel) (defined in 2 C.F.R. §184.3) or (b) component(s) of a manufactured product that does not fall within the scope of subparagraph (2)(a) but is Predominantly Iron/Steel in and of itself, then Buy America’s domestic preference applies to the manufactured product or to the component(s) of the manufactured product, as the case may be. For further information, see 89 FR 17789, “Buy America Requirements for Manufactured Products.”
- (3) Despite the waiver referenced in subparagraph (1), the DEPARTMENT requires the COMPANY to identify manufactured products used on a project. As noted below, the cost of manufactured products is a factor used in determining BABA’s non-domestic content allowance on a given project.

Notwithstanding Buy America’s and BABA’s domestic preference mandates, each of these laws provides a small non-domestic content allowance.

Buy America provides a minimal use allowance for non-domestic steel and iron, so long as the cost of such materials used does not exceed one-tenth of one percent (0.1%) of the total contract cost or \$2,500, whichever is greater.

BABA permits de minimis use of non-domestic construction materials, where the permitted amount is the lesser of \$1,000,000 or 5% of total applicable costs for the project. The 5% threshold is based on the following formula:

$$\frac{(\text{total value of non-compliant construction materials used in the project})}{\left(\frac{\text{total applicable project costs}}{(\text{steel, iron, manufactured products, and construction materials})} \right)}$$

This threshold is based on the actual cost of the steel, iron, manufactured products, and construction materials, not just the anticipated cost of those materials.

The COMPANY's Scope of Work, described in the Utility Agreement, is part of a larger transportation improvement project undertaken by the DEPARTMENT and funded by the U.S. Department of Transportation. That project is described herein as the "Project." All work performed by the COMPANY pursuant to the Utility Agreement is the "Scope of Work."

BUY AMERICA MINIMAL USE. For purposes of this document and the COMPANY's Utility Agreement, "Project Minimal Use" refers to Buy America's non-domestic steel and iron content allowance for the entire Project. The parties agree and understand that as of the date of the Utility Agreement the exact amount of the Project Minimal Use is unknown.

For purposes of this document and the COMPANY's Utility Agreement, "Scope of Work Minimal Use" refers to Buy America's non-domestic steel and iron content allowance only when calculated using the total cost of performance of the Scope of Work pursuant to the Utility Agreement. Consistent with Buy America, the COMPANY shall ensure that all iron and steel, including Predominantly Iron/Steel manufactured products, iron/steel components of manufactured products, and construction materials permanently incorporated into the Scope of Work, are "produced in the United States" (see 2 C.F.R. §184.3 for definition), unless the DEPARTMENT has obtained a waiver on the COMPANY's behalf or has otherwise given the COMPANY express prior written permission to use said materials. If an item is not "produced in the United States" then it is non-domestic. For the avoidance of doubt, the COMPANY will not permanently incorporate any non-domestic materials into the Scope of Work without the prior written permission of DEPARTMENT.

A preliminary Non-Domestic Minimal Use & De Minimis Register, form 25D-60-U, describing all non-domestic materials to be incorporated into the Scope of Work known by the COMPANY at the time the COMPANY signs the Utility Agreement, is attached to the Utility Agreement. The parties agree and understand that this form will be supplemented and amended as needed by the COMPANY following execution of the Utility Agreement.

The parties agree and understand that the total value of all non-domestic products and materials described in the form 25D-60-U, as amended, submitted by the COMPANY may not exceed the COMPANY's Scope of Work Minimal Use absent express prior written approval by the DEPARTMENT. However, the parties further agree and understand that so long as the overall Project Minimal Use remains within the Buy America non-domestic steel and iron content allowance, the Project will remain compliant with Buy

America requirements. The DEPARTMENT will therefore track all costs of non-domestic steel and/or iron content to be integrated into the Project to ensure that the overall Project Minimal Use is not exceeded.

BABA DE MINIMIS. For purposes of this document and the COMPANY's Utility Agreement, "Project De Minimis" refers to BABA's non-domestic construction materials content allowance for the entire Project. The parties agree and understand that as of the date of the Utility Agreement the exact amount of the Project De Minimis is unknown.

For purposes of this document and the COMPANY's Utility Agreement, "Scope of Work De Minimis" refers to BABA's non-domestic construction materials content allowance only when calculated using the COMPANY's cost estimate of applicable materials necessary for its Scope of Work. Consistent with BABA on FHWA-funded projects, the COMPANY shall ensure that all iron and steel, including Predominantly Iron/Steel manufactured products, iron/steel components of manufactured products, and construction materials permanently incorporated into the Scope of Work are "produced in the United States" (see 2 C.F.R. §184.3 for definition), unless the DEPARTMENT has obtained a waiver on the COMPANY's behalf, or has given the COMPANY express prior written permission to use said materials. If an item is not "produced in the United States," then it is non-domestic.

A preliminary Certificate of Buy America Act Compliance form 25D-62-U, describing all non-domestic materials to be incorporated into the Scope of Work known by the COMPANY at the time the COMPANY signs the Utility Agreement, is attached to the Utility Agreement. The parties agree and understand that this form will be supplemented and amended as needed by the COMPANY following execution of the Utility Agreement.

The entity certifying form 25D-62-U may be the manufacturer, fabricator, vendor, or supplier; provided they have sufficient control and knowledge of the manufacturing process to accept responsibility and certify full and complete conformance with 23 C.F.R. §635.410 and 2 C.F.R. Part 184. In lieu of manufacturer, fabricator, vendor, or supplier certification on form 25D-62-U, COMPANY may provide other documentation of compliance with 23 C.F.R. §635.410 and 2 C.F.R. Part 184. The COMPANY shall also certify form 25D-62-U and retain additional certifications and backup documentation to signed form 25D-62-U. False statements may result in criminal penalties prescribed under AS 36.30.687 and Title 18 U.S. Code Section 1001 and 1020.

The parties agree and understand that the total value of all non-domestic products and materials described in the form 25D-62-U, as amended, submitted by the COMPANY may not exceed the COMPANY's Scope of Work De Minimis absent express prior written approval by the DEPARTMENT. However, the parties further agree that so long as the overall Project De Minimis remains within the BABA non-domestic construction materials allowance, the Project will remain compliant with BABA. The DEPARTMENT will therefore track all costs of non-domestic construction materials to be integrated into the Project to ensure that the overall Project De Minimis is not exceeded.

MISC. The COMPANY may not rely on a waiver being granted. However, at the COMPANY's request, and if the DEPARTMENT deems it reasonable and practicable, the DEPARTMENT will be responsible for seeking and obtaining a waiver on the COMPANY's behalf for use of any non-domestic materials.

The COMPANY will support the waiver application by providing information about its efforts to obtain domestically sourced materials.

The United States, Mexico, Canada Agreement (USMCA) does not apply to the Buy America requirement.

Buy America does not apply to construction materials or iron or steel products that the COMPANY has brought temporarily to the construction site and removed at or before the completion of the project. Further, it does not apply to any materials which remain in place at the COMPANY's convenience. Buy America does not apply to iron ore, pig iron, and processed, pelletized and reduced iron ore.

The following materials are exempt from BABA requirements per Section 70917(c) of P.L. 117-58:

1. cement and cementitious materials
2. aggregates such as stone, sand, or gravel
3. aggregate binding agents or additives

Note: The law regarding domestic preferences is rapidly evolving. This document is intended to reflect the state of the law at the time of contracting. In the event the content of this document conflicts with other DEPARTMENT resources, e.g., the Alaska Utilities Manual, this document prevails.

PURCHASE OF NON-DOMESTIC MATERIALS. In order to facilitate the overall Project, the DEPARTMENT may authorize the purchase of agreed to non-domestic products and materials listed on the COMPANY's form 25D-60-U or form 25D-62-U immediately upon execution of the Utility Agreement to avoid later cost-increases, unavailability, or other issues. At all times, the COMPANY and the DEPARTMENT will work closely together to minimize the necessary purchase of non-domestic products and materials through all reasonable means. To further compliance with Buy America and BABA, the DEPARTMENT will also work with the COMPANY on the re-use of existing materials, as necessary. The DEPARTMENT will work with the COMPANY on issues of storage of materials purchased in advance for the Project as needed. In an effort to avoid changes that would impact the COMPANY's Scope of Work, the DEPARTMENT will consult with the COMPANY on any Project change orders that may impact the COMPANY's Scope of Work to ensure overall Project compliance with Buy America and BABA. The Parties will use their best efforts to anticipate changes in the Project and technology that may impact the COMPANY's Scope of Work and will regularly discuss these types of changes, including impacts on materials declared on forms 25D-60-U or 25D-62-U, as the Project proceeds.

TERMINATION OR DELAY DUE TO INABILITY TO COMPLY WITH BUY AMERICA AND/OR BABA. The parties acknowledge that at the time of entering the Utility Agreement the total value of the Project, and therefore the total minimal use and de minimis allowances under both Buy America and BABA, are not known by the parties. In the event that the DEPARTMENT determines that it will be impossible for the Project to proceed in compliance with either Buy America or BABA, the DEPARTMENT may delay the project until such time as compliance is possible or terminate the Utility Agreement for its convenience, both of which will be without the fault of the COMPANY. If the DEPARTMENT delays the Project or terminates the Utility Agreement for convenience, the COMPANY

will not be liable for any penalties or other costs resulting from any project delays or cancellation relating to compliance with Buy America and BABA requirements. Following termination of the Utility Agreement for convenience, the COMPANY shall deliver to the DEPARTMENT a cost bill within thirty (30) days of notice of the termination, detailing all costs incurred by the COMPANY up to the date of termination and not yet reimbursed, including costs reasonably related to the termination of the Utility Agreement. The DEPARTMENT shall make final payment to the COMPANY within forty-five (45) days of receiving and approving a properly prepared termination cost bill.

DEFINITION OF PREDOMINANTLY STEEL OR IRON PRODUCTS. Products and materials where the cost of the iron and steel, or a combination of both, exceeds 50 percent of the total cost of all its components. The cost of iron and steel is the cost of the iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the product, or a good faith estimate of the cost of iron or steel components.

To be classified as domestic, all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

IRON AND STEEL MINIMAL USE. All predominantly steel and iron, or a combination of both, products 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 Project amount, or \$2,500, whichever is greater. For this purpose, the cost is the value of the products as they are delivered to the Project, including shipping.

CONSTRUCTION MATERIALS. The following list contains the categories of construction materials, and the requirements for domestic origin (see 2 C.R.F. §184.3). Construction materials are an article, material, or supply that is:

1. Non-ferrous metals. All manufacturing processes, from initial smelting or melting through final shaping, coating, and assembly, occurred in the United States.
2. Plastic and Polymer-based products. All manufacturing processes, from initial combination of constituent plastic or polymer-based inputs, or, where applicable, constituent composite materials, until the item is in its final form, occurred in the United States.
3. Glass. All manufacturing processes, from initial batching and melting of raw materials through annealing, cooling, and cutting, occurred in the United States.
4. Fiber Optic Cable (including drop cable). All manufacturing processes, from the initial ribboning, if applicable, through buffering, fiber stranding and jacketing, occurred in the United States. All manufacturing processes also include the standards for glass and optical fiber, but not for non-ferrous metals, plastic and polymer-based products, or any others.
5. Optical Fiber. All manufacturing processes, from the initial preform fabrication stage through the completion of the draw, occurred in the United States.

6. Lumber. All manufacturing processes, from initial debarking through treatment and planing, occurred in the United States.
7. Drywall. All manufacturing processes, from initial blending of mined or synthetic gypsum plaster and additives through cutting and drying of sandwiched panels, occurred in the United States.
8. Engineered Wood. All manufacturing processes from the initial combination of constituent materials until the wood product is in its final form, occurred in the United States.

If one construction material contains as inputs other construction materials, it remains classified as a construction material for the purposes of this section. Minor additions of articles, materials, supplies, or binding agents to a construction material do not change the categorization of the construction material.

MANUFACTURED PRODUCTS. Articles, materials, or supplies that have been processed into a specific form and shape or combined with other articles, materials, or supplies to create a product with different properties than the individual articles, materials, or supplies.

If an item is classified as an iron or steel product, a construction material, or an exempted material per Section 70917(c) of P.L. 117-58 then it is not a manufactured product.

An article, material, or supply classified as a manufactured product may include components that are construction materials, iron or steel products, or an exempted material per Section 70917(c) of P.L. 117-58.

REFERENCED LINKS



23 U.S.C. §313



23 C.F.R. §635.410



Infrastructure Investment and Jobs Act,
Public Law No. 117-58 (IIJA)



2 C.F.R. Part 184



89 Federal Register 17789

**STATE OF ALASKA
DEPARTMENT OF TRANSPORTATION
AND PUBLIC FACILITIES**

**UTILITY AGREEMENT
(WORK BY STATE OR UTILITY)**

Region: **CENTRAL**

Agreement No.: **1-CFHWY00253-18-34**

Project No.: **0221(019)/CFHWY00253**

RSA No.: **N/A**

Utility Work Order No.: **033010 & 033842**

This Agreement made and entered into this _____ day of _____, by and between the State of Alaska, acting by and through the Department of Transportation and Public Facilities, hereinafter called the DEPARTMENT, and **Homer Electric Association, Inc (HEA)** hereinafter called the COMPANY.

WITNESSETH:

WHEREAS, the DEPARTMENT, in the interest of public safety and convenience proposes to construct, reconstruct or otherwise improve a portion of the DEPARTMENT facility known as **Kenai Spur Highway Rehab: Sports Lake Road to Swires Road - Phase II** which shall require the adjustment, relocation, or removal of the COMPANY's facilities along, over, under, or within said DEPARTMENT facility such adjustment, relocation, or removal work to hereinafter be described as "relocation work", and

WHEREAS, the DEPARTMENT, under the provisions of Alaska Statute (AS) 19.25.020(c), is authorized to reimburse the COMPANY for the costs of said relocation work, and

WHEREAS, the DEPARTMENT and the COMPANY have reviewed the plans for said highway improvements and are in mutual agreement as to the scope of the relocation work to be performed, as described in the attached "Certificate of Finding", marked "Exhibit B";

NOW THEREFORE, in consideration of the mutual undertaking as herein recited, the DEPARTMENT and the COMPANY do hereby agree as follows:

SECTION I. RELOCATION WORK TO BE ACCOMPLISHED

- A. The COMPANY and DEPARTMENT hereby agree to the relocation of the required facilities in accordance with the provisions set forth in the United States Code of Federal Regulations 23 C.F.R., Part 645, Subpart A Utility Relocations, Adjustments and Reimbursement, dated April 1, 1992, and any supplements and revisions thereto, which by reference are made a part thereof, and hereinafter called 23 C.F.R. Part 645.

- B. The plans and specifications of the relocation work to be performed, attached hereto as "Exhibit C" and "Exhibit D" and by reference made a part of this Agreement, are to be included in and made a part of any DEPARTMENT or COMPANY administered contract for accomplishing any part or all of said relocation work.
- C. The betterments and/or additions for the COMPANY as specified in this Agreement and are part of the DEPARTMENT's contract will be accomplished in accordance with REIMBURSABLE SERVICE AGREEMENT (RSA) No. N/A attached hereto and by reference made a part of this Agreement.

SECTION II. METHODS OF RELOCATION

It is in the best interest of the DEPARTMENT and the COMPANY for the said relocation work to be accomplished by the method(s) described and checked hereinafter:

- X (1) By force account with the COMPANY's regular construction or maintenance forces.
- X (2) By an approved and qualified contractor paid under a contract let by the COMPANY.
- (3) By a contract let by the DEPARTMENT either as a utility contract or as an item in the general project contract.

SECTION III. COMPANY LIABILITY

- A. The COMPANY shall indemnify, defend, and hold harmless the DEPARTMENT from liability resulting from injuries or damages sustained by any person or persons or property as a direct result of an act of commission or omission of the COMPANY in the performance of the relocation work undertaken by the COMPANY.
- B. The COMPANY shall assume all legal liability which is related in any way to the presence, operation, or maintenance of said relocation facilities.
- C. The COMPANY shall assume all direct and out-of-pocket costs incurred by the DEPARTMENT caused as a direct result of a failure of the COMPANY to perform the relocation work within the time required by this Agreement unless due to causes beyond the control of the COMPANY.
- D. The COMPANY's relocation work is part of a project funded by the Federal Highway Administration (FHWA) and therefore required to comply with the applicable domestic preference provisions contained in the Buy America Act, 23 U.S.C. §313, 23 C.F.R. §635.410, and the Build America, Buy America Act (BABA), adopted in Title IX of the Infrastructure Investment and Jobs Act, Public Law No. 117-58 (IIJA) and implemented through 2 C.F.R. Part 184. For additional terms regarding the referenced domestic preference requirements see Appendix A, incorporated into this Agreement by reference.

SECTION IV. UTILITY CONSTRUCTION PHASE

- A. The COMPANY shall give the DEPARTMENT's Regional Utilities Engineer prior notice before commencing with the relocation work.
- B. The relocation work shall be performed in a workmanlike manner and in compliance with the provisions of the Utility Permit, this Agreement, and applicable Federal, State, and Local Statutes, Codes, and Regulations.
- C. Both parties will allow duly authorized inspectors free access to all stages of the work and all disputes arising from such inspection will be settled by the Commissioner or his delegated representative.
- D. During the performance of the work being performed under the DEPARTMENT's general contract, the COMPANY or its authorized representative shall make all construction orders or changes to the construction through the DEPARTMENT's Project Engineer. Any negotiated changes to the contract between the COMPANY and the Contractor shall be made through the DEPARTMENT's Project Engineer.
- E. All relocation work by the COMPANY shall be completed on or before _____**
_____ or within _____ days by the above indicated METHOD OF RELOCATION, in accordance with the plans and specifications included in "Exhibit C" and "Exhibit D", subject to the following conditions beyond the control of the COMPANY which may adversely affect this date/time:

****Relocation work shall be coordinated with the DEPARTMENT's Contractor in accordance with Section(s) 651-1.03 & 688 of the Special Provisions included in "Exhibit D" and the Standard Specifications for Highway Construction (2020 Edition).**

SECTION V. COSTS BY COMPANY

- A. The COMPANY shall develop the relocation and/or engineering and inspection costs by the method described and checked hereafter:
- Either _____ (1) Actual and related indirect costs accumulated in accordance with a work order accounting procedure prescribed by the applicable Federal or State regulatory body.
- Or X (2) Actual and related indirect costs accumulated in accordance with an accounting procedure established by the COMPANY and approved by the DEPARTMENT.
- B. The DEPARTMENT shall receive fair and adequate credit for any salvage value, including scrap, which will accrue to the COMPANY as a result of said relocation work.

C. The costs of any betterments to the facilities being relocated not required to accommodate the DEPARTMENT's project construction and made at the election of the COMPANY shall be borne by the COMPANY.

(1) When the betterment is accomplished under the DEPARTMENT's general contract, the COMPANY shall reimburse the DEPARTMENT in accordance with RSA No. N/A attached hereto and made a part of this Agreement.

D. Records of all reimbursable costs for labor services, materials and equipment incurred by the COMPANY shall be available to the DEPARTMENT by the COMPANY, with separate records as to the costs of contract bid items and force account items. On Federal-aid projects, these records shall be in conformance with the requirements of 23 C.F.R. Part 645A, Relocations, Adjustments and Reimbursement, and shall be available for inspection by the appropriate Federal agency.

E. Records of all reimbursable costs for labor, materials, and equipment shall be retained for three years after the receipt of final payment in accordance with 23 C.F.R. Part 17.5(c)(2), Recordkeeping and Retention Requirements for Federal-aid Highways, Records of State Highway Agencies.

SECTION VI. REIMBURSEMENT

Consistent with the terms of this Agreement the DEPARTMENT will reimburse the COMPANY upon the presentation of certified bills prepared in accordance with the requirements of 23 C.F.R. Part 645 and the provisions of this Agreement. As shown in the attached Estimate, "Exhibit A", the estimated amount of reimbursement, after deduction for any credit due the DEPARTMENT, is **\$2,169,390**.

SECTION VII. BILLINGS BY COMPANY

Billings and payments shall be made as follows:

A. Preliminary Engineering Billings.

1. When the COMPANY receives the Authority-to-Proceed (ATP) letter, all reimbursable Preliminary Engineering (PE) billings shall be submitted to the DEPARTMENT within 90 days. PE Authority is cutoff when the Agreement is executed by the DEPARTMENT.

B. Partial Billings.

1. At the request of the COMPANY, the DEPARTMENT will accept Partial Billings. Such billings shall show backup, including the Project, Agreement, and COMPANY assigned Work Order numbers, the Termini, and the dates covering the period that the billed work was performed.
2. Each Billing shall contain a recapitulation showing the total cost to date, and the amount of previous billings.

C. Final Billings.

1. The COMPANY, upon completion of all its relocation work and/or upon notification by the DEPARTMENT that all relocation or improvement work performed by the DEPARTMENT is completed, shall submit its Final Billing with appropriate backup as soon as practical and not later than 120 days.
2. The Final Billings shall show backup as required, including the Project, Agreement, and Utility Work Order numbers, the Termini, the dates on which the first and last billed item of expense occurred, and the location where the accounts and records may be audited.

D. Certification

All billings shall contain a statement prepared on the COMPANY's letterhead as follows:

“The Utility hereby certifies that the attached Billing No. _____ (Partial or Final) is a true and just statement of costs incurred by our Company in adjusting or relocating our facilities on the above referenced project during the period from _____ to _____, and that payment has not been received.

The Utility hereby certifies that this billing complies with the Buy America provisions set forth in 23 US Code 313, 23 Code of Federal Regulations, Part 635.410, and the Build America, Buy America Act (BABA), adopted in Title IX of the Infrastructure Investment and Jobs Act, Public Law No. 117-58 (IIJA) and implemented through 2 C.F.R. Part 184, and that material certifications will be retained for three years after the receipt of final payment.

CERTIFIED AS BEING CORRECT:

BY: _____
TITLE: _____
DATE: _____”

E. Payment

1. Payment of billings properly prepared, submitted and approved for payment will be made within 45 days.
2. Billings are subject to a retainage for disputed amounts until resolved.
3. The DEPARTMENT reserves the right to perform an audit.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first above mentioned.

CONTRACT REVIEW:

STATE OF ALASKA
DEPARTMENT OF TRANSPORTATION
AND PUBLIC FACILITIES

By: _____

Title: Utility Lead

Date: _____

*

*** UTILITY COMPANY ACCEPTANCE:**

*

* HOMER ELECTRIC ASSOCIATION, INC

*

*

*

*

*

*

* By: _____

*

* Title: _____

*

* Date: _____

*

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*

RECOMMENDED FOR APPROVAL:

STATE OF ALASKA
DEPARTMENT OF TRANSPORTATION
AND PUBLIC FACILITIES

By: _____

Title: Acting Regional Utilities Engineer

Date: _____

*

*** NOTICE TO PROCEED:**

*

* STATE OF ALASKA
* DEPARTMENT OF TRANSPORTATION
* AND PUBLIC FACILITIES

*

*

*

*

* By: _____

*

* Title: Preconstruction Engineer

*

* Date: _____

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APPENDIX A

DOMESTIC PREFERENCE PROVISION. Two separate domestic preference laws apply to this Project:

The first is the Buy America Act (Buy America), codified at 23 U.S.C. §313 and implemented through regulations found at 23 C.F.R. §635.410. The Buy America Act applies to iron and steel material used on FHWA-funded projects.

The second is the Build America, Buy America Act (BABA), adopted in Title IX of the Infrastructure Investment and Jobs Act, Public Law No. 117-58 (IIJA) and implemented through 2 C.F.R. Part 184. On FHWA-funded projects, BABA governs use of “construction materials,” as that term is defined in 2 C.F.R. §184.3.

BABA also addresses use of “manufactured products” (defined in 2 C.F.R. §184.3) on federally funded projects. However, on FHWA-funded projects, unique rules apply to manufactured products. These rules include the following:

- (1) Due to a general waiver concerning manufactured products that FHWA issued before adoption of BABA, FHWA does not currently enforce domestic preference requirements on manufactured products as a class.
- (2) However, there is an exception to the rule stated in subparagraph (1). That is, if (a) a manufactured product is “predominantly of iron or steel or a combination of both” (Predominantly Iron/Steel) (defined in 2 C.F.R. §184.3) or (b) component(s) of a manufactured product that does not fall within the scope of subparagraph (2)(a) but is Predominantly Iron/Steel in and of itself, then Buy America’s domestic preference applies to the manufactured product or to the component(s) of the manufactured product, as the case may be. For further information, see 89 FR 17789, “Buy America Requirements for Manufactured Products.”
- (3) Despite the waiver referenced in subparagraph (1), the DEPARTMENT requires the COMPANY to identify manufactured products used on a project. As noted below, the cost of manufactured products is a factor used in determining BABA’s non-domestic content allowance on a given project.

Notwithstanding Buy America’s and BABA’s domestic preference mandates, each of these laws provides a small non-domestic content allowance.

Buy America provides a minimal use allowance for non-domestic steel and iron, so long as the cost of such materials used does not exceed one-tenth of one percent (0.1%) of the total contract cost or \$2,500, whichever is greater.

BABA permits de minimis use of non-domestic construction materials, where the permitted amount is the lesser of \$1,000,000 or 5% of total applicable costs for the project. The 5% threshold is based on the following formula:

$$\frac{(\text{total value of non-compliant construction materials used in the project})}{\left(\frac{\text{total applicable project costs}}{(\text{steel, iron, manufactured products, and construction materials})} \right)}$$

This threshold is based on the actual cost of the steel, iron, manufactured products, and construction materials, not just the anticipated cost of those materials.

The COMPANY's Scope of Work, described in the Utility Agreement, is part of a larger transportation improvement project undertaken by the DEPARTMENT and funded by the U.S. Department of Transportation. That project is described herein as the "Project." All work performed by the COMPANY pursuant to the Utility Agreement is the "Scope of Work."

BUY AMERICA MINIMAL USE. For purposes of this document and the COMPANY's Utility Agreement, "Project Minimal Use" refers to Buy America's non-domestic steel and iron content allowance for the entire Project. The parties agree and understand that as of the date of the Utility Agreement the exact amount of the Project Minimal Use is unknown.

For purposes of this document and the COMPANY's Utility Agreement, "Scope of Work Minimal Use" refers to Buy America's non-domestic steel and iron content allowance only when calculated using the total cost of performance of the Scope of Work pursuant to the Utility Agreement. Consistent with Buy America, the COMPANY shall ensure that all iron and steel, including Predominantly Iron/Steel manufactured products, iron/steel components of manufactured products, and construction materials permanently incorporated into the Scope of Work, are "produced in the United States" (see 2 C.F.R. §184.3 for definition), unless the DEPARTMENT has obtained a waiver on the COMPANY's behalf or has otherwise given the COMPANY express prior written permission to use said materials. If an item is not "produced in the United States" then it is non-domestic. For the avoidance of doubt, the COMPANY will not permanently incorporate any non-domestic materials into the Scope of Work without the prior written permission of DEPARTMENT.

A preliminary Non-Domestic Minimal Use & De Minimis Register, form 25D-60-U, describing all non-domestic materials to be incorporated into the Scope of Work known by the COMPANY at the time the COMPANY signs the Utility Agreement, is attached to the Utility Agreement. The parties agree and understand that this form will be supplemented and amended as needed by the COMPANY following execution of the Utility Agreement.

The parties agree and understand that the total value of all non-domestic products and materials described in the form 25D-60-U, as amended, submitted by the COMPANY may not exceed the COMPANY's Scope of Work Minimal Use absent express prior written approval by the DEPARTMENT. However, the parties further agree and understand that so long as the overall Project Minimal Use remains within the Buy America non-domestic steel and iron content allowance, the Project will remain compliant with Buy

America requirements. The DEPARTMENT will therefore track all costs of non-domestic steel and/or iron content to be integrated into the Project to ensure that the overall Project Minimal Use is not exceeded.

BABA DE MINIMIS. For purposes of this document and the COMPANY's Utility Agreement, "Project De Minimis" refers to BABA's non-domestic construction materials content allowance for the entire Project. The parties agree and understand that as of the date of the Utility Agreement the exact amount of the Project De Minimis is unknown.

For purposes of this document and the COMPANY's Utility Agreement, "Scope of Work De Minimis" refers to BABA's non-domestic construction materials content allowance only when calculated using the COMPANY's cost estimate of applicable materials necessary for its Scope of Work. Consistent with BABA on FHWA-funded projects, the COMPANY shall ensure that all iron and steel, including Predominantly Iron/Steel manufactured products, iron/steel components of manufactured products, and construction materials permanently incorporated into the Scope of Work are "produced in the United States" (see 2 C.F.R. §184.3 for definition), unless the DEPARTMENT has obtained a waiver on the COMPANY's behalf, or has given the COMPANY express prior written permission to use said materials. If an item is not "produced in the United States," then it is non-domestic.

A preliminary Certificate of Buy America Act Compliance form 25D-62-U, describing all non-domestic materials to be incorporated into the Scope of Work known by the COMPANY at the time the COMPANY signs the Utility Agreement, is attached to the Utility Agreement. The parties agree and understand that this form will be supplemented and amended as needed by the COMPANY following execution of the Utility Agreement.

The entity certifying form 25D-62-U may be the manufacturer, fabricator, vendor, or supplier; provided they have sufficient control and knowledge of the manufacturing process to accept responsibility and certify full and complete conformance with 23 C.F.R. §635.410 and 2 C.F.R. Part 184. In lieu of manufacturer, fabricator, vendor, or supplier certification on form 25D-62-U, COMPANY may provide other documentation of compliance with 23 C.F.R. §635.410 and 2 C.F.R. Part 184. The COMPANY shall also certify form 25D-62-U and retain additional certifications and backup documentation to signed form 25D-62-U. False statements may result in criminal penalties prescribed under AS 36.30.687 and Title 18 U.S. Code Section 1001 and 1020.

The parties agree and understand that the total value of all non-domestic products and materials described in the form 25D-62-U, as amended, submitted by the COMPANY may not exceed the COMPANY's Scope of Work De Minimis absent express prior written approval by the DEPARTMENT. However, the parties further agree that so long as the overall Project De Minimis remains within the BABA non-domestic construction materials allowance, the Project will remain compliant with BABA. The DEPARTMENT will therefore track all costs of non-domestic construction materials to be integrated into the Project to ensure that the overall Project De Minimis is not exceeded.

MISC. The COMPANY may not rely on a waiver being granted. However, at the COMPANY's request, and if the DEPARTMENT deems it reasonable and practicable, the DEPARTMENT will be responsible for seeking and obtaining a waiver on the COMPANY's behalf for use of any non-domestic materials.

The COMPANY will support the waiver application by providing information about its efforts to obtain domestically sourced materials.

The United States, Mexico, Canada Agreement (USMCA) does not apply to the Buy America requirement.

Buy America does not apply to construction materials or iron or steel products that the COMPANY has brought temporarily to the construction site and removed at or before the completion of the project. Further, it does not apply to any materials which remain in place at the COMPANY's convenience. Buy America does not apply to iron ore, pig iron, and processed, pelletized and reduced iron ore.

The following materials are exempt from BABA requirements per Section 70917(c) of P.L. 117-58:

1. cement and cementitious materials
2. aggregates such as stone, sand, or gravel
3. aggregate binding agents or additives

Note: The law regarding domestic preferences is rapidly evolving. This document is intended to reflect the state of the law at the time of contracting. In the event the content of this document conflicts with other DEPARTMENT resources, e.g., the Alaska Utilities Manual, this document prevails.

PURCHASE OF NON-DOMESTIC MATERIALS. In order to facilitate the overall Project, the DEPARTMENT may authorize the purchase of agreed to non-domestic products and materials listed on the COMPANY's form 25D-60-U or form 25D-62-U immediately upon execution of the Utility Agreement to avoid later cost-increases, unavailability, or other issues. At all times, the COMPANY and the DEPARTMENT will work closely together to minimize the necessary purchase of non-domestic products and materials through all reasonable means. To further compliance with Buy America and BABA, the DEPARTMENT will also work with the COMPANY on the re-use of existing materials, as necessary. The DEPARTMENT will work with the COMPANY on issues of storage of materials purchased in advance for the Project as needed. In an effort to avoid changes that would impact the COMPANY's Scope of Work, the DEPARTMENT will consult with the COMPANY on any Project change orders that may impact the COMPANY's Scope of Work to ensure overall Project compliance with Buy America and BABA. The Parties will use their best efforts to anticipate changes in the Project and technology that may impact the COMPANY's Scope of Work and will regularly discuss these types of changes, including impacts on materials declared on forms 25D-60-U or 25D-62-U, as the Project proceeds.

TERMINATION OR DELAY DUE TO INABILITY TO COMPLY WITH BUY AMERICA AND/OR BABA. The parties acknowledge that at the time of entering the Utility Agreement the total value of the Project, and therefore the total minimal use and de minimis allowances under both Buy America and BABA, are not known by the parties. In the event that the DEPARTMENT determines that it will be impossible for the Project to proceed in compliance with either Buy America or BABA, the DEPARTMENT may delay the project until such time as compliance is possible or terminate the Utility Agreement for its convenience, both of which will be without the fault of the COMPANY. If the DEPARTMENT delays the Project or terminates the Utility Agreement for convenience, the COMPANY

will not be liable for any penalties or other costs resulting from any project delays or cancellation relating to compliance with Buy America and BABA requirements. Following termination of the Utility Agreement for convenience, the COMPANY shall deliver to the DEPARTMENT a cost bill within thirty (30) days of notice of the termination, detailing all costs incurred by the COMPANY up to the date of termination and not yet reimbursed, including costs reasonably related to the termination of the Utility Agreement. The DEPARTMENT shall make final payment to the COMPANY within forty-five (45) days of receiving and approving a properly prepared termination cost bill.

DEFINITION OF PREDOMINANTLY STEEL OR IRON PRODUCTS. Products and materials where the cost of the iron and steel, or a combination of both, exceeds 50 percent of the total cost of all its components. The cost of iron and steel is the cost of the iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the product, or a good faith estimate of the cost of iron or steel components.

To be classified as domestic, all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

IRON AND STEEL MINIMAL USE. All predominantly steel and iron, or a combination of both, products 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 Project amount, or \$2,500, whichever is greater. For this purpose, the cost is the value of the products as they are delivered to the Project, including shipping.

CONSTRUCTION MATERIALS. The following list contains the categories of construction materials, and the requirements for domestic origin (see 2 C.R.F. §184.3). Construction materials are an article, material, or supply that is:

1. Non-ferrous metals. All manufacturing processes, from initial smelting or melting through final shaping, coating, and assembly, occurred in the United States.
2. Plastic and Polymer-based products. All manufacturing processes, from initial combination of constituent plastic or polymer-based inputs, or, where applicable, constituent composite materials, until the item is in its final form, occurred in the United States.
3. Glass. All manufacturing processes, from initial batching and melting of raw materials through annealing, cooling, and cutting, occurred in the United States.
4. Fiber Optic Cable (including drop cable). All manufacturing processes, from the initial ribboning, if applicable, through buffering, fiber stranding and jacketing, occurred in the United States. All manufacturing processes also include the standards for glass and optical fiber, but not for non-ferrous metals, plastic and polymer-based products, or any others.
5. Optical Fiber. All manufacturing processes, from the initial preform fabrication stage through the completion of the draw, occurred in the United States.

6. Lumber. All manufacturing processes, from initial debarking through treatment and planing, occurred in the United States.
7. Drywall. All manufacturing processes, from initial blending of mined or synthetic gypsum plaster and additives through cutting and drying of sandwiched panels, occurred in the United States.
8. Engineered Wood. All manufacturing processes from the initial combination of constituent materials until the wood product is in its final form, occurred in the United States.

If one construction material contains as inputs other construction materials, it remains classified as a construction material for the purposes of this section. Minor additions of articles, materials, supplies, or binding agents to a construction material do not change the categorization of the construction material.

MANUFACTURED PRODUCTS. Articles, materials, or supplies that have been processed into a specific form and shape or combined with other articles, materials, or supplies to create a product with different properties than the individual articles, materials, or supplies.

If an item is classified as an iron or steel product, a construction material, or an exempted material per Section 70917(c) of P.L. 117-58 then it is not a manufactured product.

An article, material, or supply classified as a manufactured product may include components that are construction materials, iron or steel products, or an exempted material per Section 70917(c) of P.L. 117-58.

REFERENCED LINKS



23 U.S.C. §313



23 C.F.R. §635.410



Infrastructure Investment and Jobs Act,
Public Law No. 117-58 (IIJA)



2 C.F.R. Part 184



89 Federal Register 17789

APPENDIX A

DOMESTIC PREFERENCE PROVISION. Two separate domestic preference laws apply to this Project:

The first is the Buy America Act (Buy America), codified at 23 U.S.C. §313 and implemented through regulations found at 23 C.F.R. §635.410. The Buy America Act applies to iron and steel material used on FHWA-funded projects.

The second is the Build America, Buy America Act (BABA), adopted in Title IX of the Infrastructure Investment and Jobs Act, Public Law No. 117-58 (IIJA) and implemented through 2 C.F.R. Part 184. On FHWA-funded projects, BABA governs use of “construction materials,” as that term is defined in 2 C.F.R. §184.3.

BABA also addresses use of “manufactured products” (defined in 2 C.F.R. §184.3) on federally funded projects. However, on FHWA-funded projects, unique rules apply to manufactured products. These rules include the following:

- (1) Due to a general waiver concerning manufactured products that FHWA issued before adoption of BABA, FHWA does not currently enforce domestic preference requirements on manufactured products as a class.
- (2) However, there is an exception to the rule stated in subparagraph (1). That is, if (a) a manufactured product is “predominantly of iron or steel or a combination of both” (Predominantly Iron/Steel) (defined in 2 C.F.R. §184.3) or (b) component(s) of a manufactured product that does not fall within the scope of subparagraph (2)(a) but is Predominantly Iron/Steel in and of itself, then Buy America’s domestic preference applies to the manufactured product or to the component(s) of the manufactured product, as the case may be. For further information, see 89 FR 17789, “Buy America Requirements for Manufactured Products.”
- (3) Despite the waiver referenced in subparagraph (1), the DEPARTMENT requires the COMPANY to identify manufactured products used on a project. As noted below, the cost of manufactured products is a factor used in determining BABA’s non-domestic content allowance on a given project.

Notwithstanding Buy America’s and BABA’s domestic preference mandates, each of these laws provides a small non-domestic content allowance.

Buy America provides a minimal use allowance for non-domestic steel and iron, so long as the cost of such materials used does not exceed one-tenth of one percent (0.1%) of the total contract cost or \$2,500, whichever is greater.

BABA permits de minimis use of non-domestic construction materials, where the permitted amount is the lesser of \$1,000,000 or 5% of total applicable costs for the project. The 5% threshold is based on the following formula:

$$\frac{(\text{total value of non-compliant construction materials used in the project})}{\left(\frac{\text{total applicable project costs}}{(\text{steel, iron, manufactured products, and construction materials})} \right)}$$

This threshold is based on the actual cost of the steel, iron, manufactured products, and construction materials, not just the anticipated cost of those materials.

The COMPANY's Scope of Work, described in the Utility Agreement, is part of a larger transportation improvement project undertaken by the DEPARTMENT and funded by the U.S. Department of Transportation. That project is described herein as the "Project." All work performed by the COMPANY pursuant to the Utility Agreement is the "Scope of Work."

BUY AMERICA MINIMAL USE. For purposes of this document and the COMPANY's Utility Agreement, "Project Minimal Use" refers to Buy America's non-domestic steel and iron content allowance for the entire Project. The parties agree and understand that as of the date of the Utility Agreement the exact amount of the Project Minimal Use is unknown.

For purposes of this document and the COMPANY's Utility Agreement, "Scope of Work Minimal Use" refers to Buy America's non-domestic steel and iron content allowance only when calculated using the total cost of performance of the Scope of Work pursuant to the Utility Agreement. Consistent with Buy America, the COMPANY shall ensure that all iron and steel, including Predominantly Iron/Steel manufactured products, iron/steel components of manufactured products, and construction materials permanently incorporated into the Scope of Work, are "produced in the United States" (see 2 C.F.R. §184.3 for definition), unless the DEPARTMENT has obtained a waiver on the COMPANY's behalf or has otherwise given the COMPANY express prior written permission to use said materials. If an item is not "produced in the United States" then it is non-domestic. For the avoidance of doubt, the COMPANY will not permanently incorporate any non-domestic materials into the Scope of Work without the prior written permission of DEPARTMENT.

A preliminary Non-Domestic Minimal Use & De Minimis Register, form 25D-60-U, describing all non-domestic materials to be incorporated into the Scope of Work known by the COMPANY at the time the COMPANY signs the Utility Agreement, is attached to the Utility Agreement. The parties agree and understand that this form will be supplemented and amended as needed by the COMPANY following execution of the Utility Agreement.

The parties agree and understand that the total value of all non-domestic products and materials described in the form 25D-60-U, as amended, submitted by the COMPANY may not exceed the COMPANY's Scope of Work Minimal Use absent express prior written approval by the DEPARTMENT. However, the parties further agree and understand that so long as the overall Project Minimal Use remains within the Buy America non-domestic steel and iron content allowance, the Project will remain compliant with Buy

America requirements. The DEPARTMENT will therefore track all costs of non-domestic steel and/or iron content to be integrated into the Project to ensure that the overall Project Minimal Use is not exceeded.

BABA DE MINIMIS. For purposes of this document and the COMPANY's Utility Agreement, "Project De Minimis" refers to BABA's non-domestic construction materials content allowance for the entire Project. The parties agree and understand that as of the date of the Utility Agreement the exact amount of the Project De Minimis is unknown.

For purposes of this document and the COMPANY's Utility Agreement, "Scope of Work De Minimis" refers to BABA's non-domestic construction materials content allowance only when calculated using the COMPANY's cost estimate of applicable materials necessary for its Scope of Work. Consistent with BABA on FHWA-funded projects, the COMPANY shall ensure that all iron and steel, including Predominantly Iron/Steel manufactured products, iron/steel components of manufactured products, and construction materials permanently incorporated into the Scope of Work are "produced in the United States" (see 2 C.F.R. §184.3 for definition), unless the DEPARTMENT has obtained a waiver on the COMPANY's behalf, or has given the COMPANY express prior written permission to use said materials. If an item is not "produced in the United States," then it is non-domestic.

A preliminary Certificate of Buy America Act Compliance form 25D-62-U, describing all non-domestic materials to be incorporated into the Scope of Work known by the COMPANY at the time the COMPANY signs the Utility Agreement, is attached to the Utility Agreement. The parties agree and understand that this form will be supplemented and amended as needed by the COMPANY following execution of the Utility Agreement.

The entity certifying form 25D-62-U may be the manufacturer, fabricator, vendor, or supplier; provided they have sufficient control and knowledge of the manufacturing process to accept responsibility and certify full and complete conformance with 23 C.F.R. §635.410 and 2 C.F.R. Part 184. In lieu of manufacturer, fabricator, vendor, or supplier certification on form 25D-62-U, COMPANY may provide other documentation of compliance with 23 C.F.R. §635.410 and 2 C.F.R. Part 184. The COMPANY shall also certify form 25D-62-U and retain additional certifications and backup documentation to signed form 25D-62-U. False statements may result in criminal penalties prescribed under AS 36.30.687 and Title 18 U.S. Code Section 1001 and 1020.

The parties agree and understand that the total value of all non-domestic products and materials described in the form 25D-62-U, as amended, submitted by the COMPANY may not exceed the COMPANY's Scope of Work De Minimis absent express prior written approval by the DEPARTMENT. However, the parties further agree that so long as the overall Project De Minimis remains within the BABA non-domestic construction materials allowance, the Project will remain compliant with BABA. The DEPARTMENT will therefore track all costs of non-domestic construction materials to be integrated into the Project to ensure that the overall Project De Minimis is not exceeded.

MISC. The COMPANY may not rely on a waiver being granted. However, at the COMPANY's request, and if the DEPARTMENT deems it reasonable and practicable, the DEPARTMENT will be responsible for seeking and obtaining a waiver on the COMPANY's behalf for use of any non-domestic materials.

The COMPANY will support the waiver application by providing information about its efforts to obtain domestically sourced materials.

The United States, Mexico, Canada Agreement (USMCA) does not apply to the Buy America requirement.

Buy America does not apply to construction materials or iron or steel products that the COMPANY has brought temporarily to the construction site and removed at or before the completion of the project. Further, it does not apply to any materials which remain in place at the COMPANY's convenience. Buy America does not apply to iron ore, pig iron, and processed, pelletized and reduced iron ore.

The following materials are exempt from BABA requirements per Section 70917(c) of P.L. 117-58:

1. cement and cementitious materials
2. aggregates such as stone, sand, or gravel
3. aggregate binding agents or additives

Note: The law regarding domestic preferences is rapidly evolving. This document is intended to reflect the state of the law at the time of contracting. In the event the content of this document conflicts with other DEPARTMENT resources, e.g., the Alaska Utilities Manual, this document prevails.

PURCHASE OF NON-DOMESTIC MATERIALS. In order to facilitate the overall Project, the DEPARTMENT may authorize the purchase of agreed to non-domestic products and materials listed on the COMPANY's form 25D-60-U or form 25D-62-U immediately upon execution of the Utility Agreement to avoid later cost-increases, unavailability, or other issues. At all times, the COMPANY and the DEPARTMENT will work closely together to minimize the necessary purchase of non-domestic products and materials through all reasonable means. To further compliance with Buy America and BABA, the DEPARTMENT will also work with the COMPANY on the re-use of existing materials, as necessary. The DEPARTMENT will work with the COMPANY on issues of storage of materials purchased in advance for the Project as needed. In an effort to avoid changes that would impact the COMPANY's Scope of Work, the DEPARTMENT will consult with the COMPANY on any Project change orders that may impact the COMPANY's Scope of Work to ensure overall Project compliance with Buy America and BABA. The Parties will use their best efforts to anticipate changes in the Project and technology that may impact the COMPANY's Scope of Work and will regularly discuss these types of changes, including impacts on materials declared on forms 25D-60-U or 25D-62-U, as the Project proceeds.

TERMINATION OR DELAY DUE TO INABILITY TO COMPLY WITH BUY AMERICA AND/OR BABA. The parties acknowledge that at the time of entering the Utility Agreement the total value of the Project, and therefore the total minimal use and de minimis allowances under both Buy America and BABA, are not known by the parties. In the event that the DEPARTMENT determines that it will be impossible for the Project to proceed in compliance with either Buy America or BABA, the DEPARTMENT may delay the project until such time as compliance is possible or terminate the Utility Agreement for its convenience, both of which will be without the fault of the COMPANY. If the DEPARTMENT delays the Project or terminates the Utility Agreement for convenience, the COMPANY

will not be liable for any penalties or other costs resulting from any project delays or cancellation relating to compliance with Buy America and BABA requirements. Following termination of the Utility Agreement for convenience, the COMPANY shall deliver to the DEPARTMENT a cost bill within thirty (30) days of notice of the termination, detailing all costs incurred by the COMPANY up to the date of termination and not yet reimbursed, including costs reasonably related to the termination of the Utility Agreement. The DEPARTMENT shall make final payment to the COMPANY within forty-five (45) days of receiving and approving a properly prepared termination cost bill.

DEFINITION OF PREDOMINANTLY STEEL OR IRON PRODUCTS. Products and materials where the cost of the iron and steel, or a combination of both, exceeds 50 percent of the total cost of all its components. The cost of iron and steel is the cost of the iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the product, or a good faith estimate of the cost of iron or steel components.

To be classified as domestic, all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

IRON AND STEEL MINIMAL USE. All predominantly steel and iron, or a combination of both, products 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 Project amount, or \$2,500, whichever is greater. For this purpose, the cost is the value of the products as they are delivered to the Project, including shipping.

CONSTRUCTION MATERIALS. The following list contains the categories of construction materials, and the requirements for domestic origin (see 2 C.R.F. §184.3). Construction materials are an article, material, or supply that is:

1. Non-ferrous metals. All manufacturing processes, from initial smelting or melting through final shaping, coating, and assembly, occurred in the United States.
2. Plastic and Polymer-based products. All manufacturing processes, from initial combination of constituent plastic or polymer-based inputs, or, where applicable, constituent composite materials, until the item is in its final form, occurred in the United States.
3. Glass. All manufacturing processes, from initial batching and melting of raw materials through annealing, cooling, and cutting, occurred in the United States.
4. Fiber Optic Cable (including drop cable). All manufacturing processes, from the initial ribboning, if applicable, through buffering, fiber stranding and jacketing, occurred in the United States. All manufacturing processes also include the standards for glass and optical fiber, but not for non-ferrous metals, plastic and polymer-based products, or any others.
5. Optical Fiber. All manufacturing processes, from the initial preform fabrication stage through the completion of the draw, occurred in the United States.

6. Lumber. All manufacturing processes, from initial debarking through treatment and planing, occurred in the United States.
7. Drywall. All manufacturing processes, from initial blending of mined or synthetic gypsum plaster and additives through cutting and drying of sandwiched panels, occurred in the United States.
8. Engineered Wood. All manufacturing processes from the initial combination of constituent materials until the wood product is in its final form, occurred in the United States.

If one construction material contains as inputs other construction materials, it remains classified as a construction material for the purposes of this section. Minor additions of articles, materials, supplies, or binding agents to a construction material do not change the categorization of the construction material.

MANUFACTURED PRODUCTS. Articles, materials, or supplies that have been processed into a specific form and shape or combined with other articles, materials, or supplies to create a product with different properties than the individual articles, materials, or supplies.

If an item is classified as an iron or steel product, a construction material, or an exempted material per Section 70917(c) of P.L. 117-58 then it is not a manufactured product.

An article, material, or supply classified as a manufactured product may include components that are construction materials, iron or steel products, or an exempted material per Section 70917(c) of P.L. 117-58.

REFERENCED LINKS



23 U.S.C. §313



23 C.F.R. §635.410



Infrastructure Investment and Jobs Act,
Public Law No. 117-58 (IIJA)



2 C.F.R. Part 184



89 Federal Register 17789

**STATE OF ALASKA
DEPARTMENT OF TRANSPORTATION
AND PUBLIC FACILITIES**

**UTILITY AGREEMENT
(WORK BY STATE OR UTILITY)**

Region: **CENTRAL**Agreement No.: ~~1-CFHwy00253-18-341~~-CFHwy00253-18-33Project No.: **0221(019)/CFHwy00253**RSA No.: **N/A**Utility Work Order No.: ~~033010 & 033842~~18-0291 / 22937

This Agreement made and entered into this _____ day of _____, by and between the State of Alaska, acting by and through the Department of Transportation and Public Facilities, hereinafter called the DEPARTMENT, and ~~Homer Electric Association, Inc (HEAGCI)~~ Communication Corp (GCI) hereinafter called the COMPANY.

WITNESSETH:

WHEREAS, the DEPARTMENT, in the interest of public safety and convenience proposes to construct, reconstruct or otherwise improve a portion of the DEPARTMENT facility known as **Kenai Spur Highway Rehab: Sports Lake Road to Swires Road - Phase II** which shall require the adjustment, relocation, or removal of the COMPANY's facilities along, over, under, or within said DEPARTMENT facility such adjustment, relocation, or removal work to hereinafter be described as "relocation work", and

WHEREAS, the DEPARTMENT, under the provisions of Alaska Statute (AS) 19.25.020(c), is authorized to reimburse the COMPANY for the costs of said relocation work, and

WHEREAS, the DEPARTMENT and the COMPANY have reviewed the plans for said highway improvements and are in mutual agreement as to the scope of the relocation work to be performed, as described in the attached "Certificate of Finding", marked "Exhibit B";

NOW THEREFORE, in consideration of the mutual undertaking as herein recited, the DEPARTMENT and the COMPANY do hereby agree as follows:

SECTION I. RELOCATION WORK TO BE ACCOMPLISHED

- A. The COMPANY and DEPARTMENT hereby agree to the relocation of the required facilities in accordance with the provisions set forth in the United States Code of Federal Regulations ~~23 C.F.R., Part 645, Subpart A~~ 23 C.F.R., Part 645, Subpart A Utility Relocations, Adjustments and Reimbursement, dated April 1, 1992, and any supplements and revisions thereto, which by reference are made a part thereof, and hereinafter called ~~23 C.F.R. Part 645~~ 23 C.F.R. Part 645.

- B. The plans and specifications of the relocation work to be performed, attached hereto as "Exhibit C" and "Exhibit D" and by reference made a part of this Agreement, are to be included in and made a part of any DEPARTMENT or COMPANY administered contract for accomplishing any part or all of said relocation work.
- C. The betterments and/or additions for the COMPANY as specified in this Agreement and are part of the DEPARTMENT's contract will be accomplished in accordance with REIMBURSABLE SERVICE AGREEMENT (RSA) No. N/A attached hereto and by reference made a part of this Agreement.

SECTION II. METHODS OF RELOCATION

It is in the best interest of the DEPARTMENT and the COMPANY for the said relocation work to be accomplished by the method(s) described and checked hereinafter:

- X (1) By force account with the COMPANY's regular construction or maintenance forces.
- X (2) By an approved and qualified contractor paid under a contract let by the COMPANY.
- (3) By a contract let by the DEPARTMENT either as a utility contract or as an item in the general project contract.

SECTION III. COMPANY LIABILITY

- A. The COMPANY shall indemnify, defend, and hold harmless the DEPARTMENT from liability resulting from injuries or damages sustained by any person or persons or property as a direct result of an act of commission or omission of the COMPANY in the performance of the relocation work undertaken by the COMPANY.
- B. The COMPANY shall assume all legal liability which is related in any way to the presence, operation, or maintenance of said relocation facilities.
- C. The COMPANY shall assume all direct and out-of-pocket costs incurred by the DEPARTMENT caused as a direct result of a failure of the COMPANY to perform the relocation work within the time required by this Agreement unless due to causes beyond the control of the COMPANY.
- D. The COMPANY's relocation work is part of a project funded by the Federal Highway Administration (FHWA) and therefore required to comply with the applicable domestic preference provisions contained in the Buy America Act, 23 U.S.C. §313, 23 C.F.R. §635.410, and the Build America, Buy America Act (BABA), adopted in Title IX of the Infrastructure Investment and Jobs Act, Public Law No. 117-58 (IIJA) and implemented through 2 C.F.R. Part 184. For additional terms regarding the referenced domestic preference requirements see Appendix A, incorporated into this Agreement by reference.

SECTION IV. UTILITY CONSTRUCTION PHASE

- A. The COMPANY shall give the DEPARTMENT's Regional Utilities Engineer prior notice before commencing with the relocation work.
- B. The relocation work shall be performed in a workmanlike manner and in compliance with the provisions of the Utility Permit, this Agreement, and applicable Federal, State, and Local Statutes, Codes, and Regulations.
- C. Both parties will allow duly authorized inspectors free access to all stages of the work and all disputes arising from such inspection will be settled by the Commissioner or his delegated representative.
- D. During the performance of the work being performed under the DEPARTMENT's general contract, the COMPANY or its authorized representative shall make all construction orders or changes to the construction through the DEPARTMENT's Project Engineer. Any negotiated changes to the contract between the COMPANY and the Contractor shall be made through the DEPARTMENT's Project Engineer.
- E. All relocation work by the COMPANY shall be completed on or before _____**
_____ or within _____ days by the above indicated METHOD OF RELOCATION, in accordance with the plans and specifications included in "Exhibit C" and "Exhibit D", subject to the following conditions beyond the control of the COMPANY which may adversely affect this date/time:

****Relocation work shall be coordinated with the DEPARTMENT's Contractor in accordance with Section(s) ~~651-1.03 & 688~~651-1.03 & 688 of the Special Provisions included in "Exhibit D" and the Standard Specifications for Highway Construction (2020 Edition).**

SECTION V. COSTS BY COMPANY

- A. The COMPANY shall develop the relocation and/or engineering and inspection costs by the method described and checked hereafter:
- Either _____ (1) Actual and related indirect costs accumulated in accordance with a work order accounting procedure prescribed by the applicable Federal or State regulatory body.
- Or X (2) Actual and related indirect costs accumulated in accordance with an accounting procedure established by the COMPANY and approved by the DEPARTMENT.
- B. The DEPARTMENT shall receive fair and adequate credit for any salvage value, including scrap, which will accrue to the COMPANY as a result of said relocation work.

C. The costs of any betterments to the facilities being relocated not required to accommodate the DEPARTMENT's project construction and made at the election of the COMPANY shall be borne by the COMPANY.

(1) When the betterment is accomplished under the DEPARTMENT's general contract, the COMPANY shall reimburse the DEPARTMENT in accordance with RSA No. N/A attached hereto and made a part of this Agreement.

D. Records of all reimbursable costs for labor services, materials and equipment incurred by the COMPANY shall be available to the DEPARTMENT by the COMPANY, with separate records as to the costs of contract bid items and force account items. On Federal-aid projects, these records shall be in conformance with the requirements of ~~23 C.F.R. Part 645A~~, 23 C.F.R. Part 645A, Relocations, Adjustments and Reimbursement, and shall be available for inspection by the appropriate Federal agency.

E. Records of all reimbursable costs for labor, materials, and equipment shall be retained for three years after the receipt of final payment in accordance with 23 C.F.R. Part 17.5(c)(2), Recordkeeping and Retention Requirements for Federal-aid Highways, Records of State Highway Agencies.

SECTION VI. REIMBURSEMENT

Consistent with the terms of this Agreement the DEPARTMENT will reimburse the COMPANY upon the presentation of certified bills prepared in accordance with the requirements of ~~23 C.F.R. Part 645~~ 23 C.F.R. Part 645 and the provisions of this Agreement. As shown in the attached Estimate, "Exhibit A", the estimated amount of reimbursement, after deduction for any credit due the DEPARTMENT, is ~~\$2,169,390~~ \$1,080,981.

SECTION VII. BILLINGS BY COMPANY

Billings and payments shall be made as follows:

A. Preliminary Engineering Billings.

1. When the COMPANY receives the Authority-to-Proceed (ATP) letter, all reimbursable Preliminary Engineering (PE) billings shall be submitted to the DEPARTMENT within 90 days. PE Authority is cutoff when the Agreement is executed by the DEPARTMENT.

B. Partial Billings.

1. At the request of the COMPANY, the DEPARTMENT will accept Partial Billings. Such billings shall show backup, including the Project, Agreement, and COMPANY assigned Work Order numbers, the Termini, and the dates covering the period that the billed work was performed.
2. Each Billing shall contain a recapitulation showing the total cost to date, and the amount of previous billings.

C. Final Billings.

1. The COMPANY, upon completion of all its relocation work and/or upon notification by the DEPARTMENT that all relocation or improvement work performed by the DEPARTMENT is completed, shall submit its Final Billing with appropriate backup as soon as practical and not later than 120 days.
2. The Final Billings shall show backup as required, including the Project, Agreement, and Utility Work Order numbers, the Termini, the dates on which the first and last billed item of expense occurred, and the location where the accounts and records may be audited.

D. Certification

All billings shall contain a statement prepared on the COMPANY's letterhead as follows:

“The Utility hereby certifies that the attached Billing No. _____ (Partial or Final) is a true and just statement of costs incurred by our Company in adjusting or relocating our facilities on the above referenced project during the period from _____ to _____, and that payment has not been received.

The Utility hereby certifies that this billing complies with the Buy America provisions set forth in ~~23 US Code 313, 23 Code of Federal Regulations, Part 635.410, and the Build America, Buy America Act (BABA), adopted in Title IX of the Infrastructure Investment and Jobs Act, Public Law No. 117-58 (IIJA) and implemented through 2 C.F.R. Part 184,~~ 23 US Code 313, 23 Code of Federal Regulations, Part 635.410, and the Build America, Buy America Act (BABA), adopted in Title IX of the Infrastructure Investment and Jobs Act, Public Law No. 117-58 (IIJA) and implemented through 2 C.F.R. Part 184, and that material certifications will be retained for three years after the receipt of final payment.

CERTIFIED AS BEING CORRECT:

BY: _____
TITLE: _____
DATE: _____”

E. Payment

1. Payment of billings properly prepared, submitted and approved for payment will be made within 45 days.
2. Billings are subject to a retainage for disputed amounts until resolved.
3. The DEPARTMENT reserves the right to perform an audit.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first above mentioned.

CONTRACT REVIEW:

STATE OF ALASKA
DEPARTMENT OF TRANSPORTATION
AND PUBLIC FACILITIES

By: _____

Title: Utility Lead

Date: _____

*

UTILITY COMPANY ACCEPTANCE:

*

~~HOMER ELECTRIC ASSOCIATION, INC~~
GCI COMMUNICATION CORP

*

*

*

*

*

* By: _____

*

* Title: _____

*

* Date: _____

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RECOMMENDED FOR APPROVAL:

STATE OF ALASKA
DEPARTMENT OF TRANSPORTATION
AND PUBLIC FACILITIES

By: _____

Title: Acting Regional Utilities Engineer

Date: _____

*

NOTICE TO PROCEED:

*

STATE OF ALASKA
DEPARTMENT OF TRANSPORTATION
AND PUBLIC FACILITIES

*

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*

*

* By: _____

*

* Title: Preconstruction Engineer

*

* Date: _____

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Regional Construction Contract Award Information				LOA Date Range: 2/13/2024 Through 5/13/2024			Region:	All		
Reg & Award Date	Contract ID	Contract Name	Bid Opening Date	Days Bid Open-LO	Advertise Date	# Bids Received	Engineer's Est	Award Amt	Contractor	Item List
Central Region										
02/22/2024	ANC-JOCC-2018-	TSAIA JOCC	02/21/2024	1		1	\$36,000.00	\$44,835.00	CONSOLIDATED	Public Facilities
03/06/2024	ANC-JOCC-2018-	TSAIA JOCC	Competitive			1	\$75,000.00	\$81,419.00	CONSOLIDATED	Public Facilities
03/06/2024	ANC-JOCC-2018-	TSAIA JOCC	Competitive			1	\$175,000.00	\$114,794.00	CONSOLIDATED	Public Facilities
03/06/2024	ANC-JOCC-2018-	TSAIA JOCC	Competitive			1	\$165,000.00	\$147,745.00	CONSOLIDATED	Public Facilities
03/06/2024	ANC-JOCC-2018-	TSAIA JOCC	Competitive			1	\$35,000.00	\$19,062.00	CONSOLIDATED	Public Facilities
03/07/2024	CSAPT00858	ANC WH107	02/07/2024	29	12/13/2023	4	\$750,000.00	\$630,000.00	EARHART ROOFING	Public Facilities
03/14/2024	PF-JOCC-2020-1-	Atwood Control	03/14/2024	0		1	\$233,583.00	\$270,499.36	ROGER HICKEL	Public Facilities
03/14/2024	25C2023065-T1	LCCC Structural	CMGC		02/21/2024	1	\$2,194,400.00	\$2,130,118.00	CORNERSTONE GENERAL	Public Facilities
04/05/2024	25RC053608	Mt. Edgecumbe	03/20/2024	16	02/12/2024	1	\$402,000.00		Bids Rejected	Public Facilities
04/15/2024	Z512210000	Seward Meridian	03/20/2024	26	02/21/2024	4	\$44,152,829.75	\$43,303,169.80	MASS EXCAVATION INC,	Highways
04/15/2024	ANC-JOCC-2018-	TSAIA JOCC	04/12/2024	3		1	\$12,500.00	\$18,193.00	CONSOLIDATED	Public Facilities
04/17/2024	ANC-JOCC-2018-	TSAIA JOCC	04/17/2024	0		1	\$135,000.00	\$52,849.00	CONSOLIDATED	Public Facilities
04/24/2024	CFHWY00395	ELMORE ROAD:	04/12/2024	12	03/22/2024	3	\$10,092,493.00	\$9,874,913.00	COLASKA INC,	Highways
04/29/2024	NPFAC00547	DOT&PF Annex	03/29/2024	31	02/09/2024	4	\$3,744,481.00	\$3,659,000.00	CALISTA CORPORATION	Public Facilities
Central Region								\$60,346,597.16		
Marine										
03/26/2024	SAMHS00380	AMHS	02/15/2024	40	12/28/2023	2	\$19,191,859.00	\$20,465,218.00	EVERETT SHIP REPAIR	AMHS
Marine								\$20,465,218.00		
Northern Region										
04/09/2024	NFHWY00834	Richardson	03/12/2024	28	02/20/2024	3	\$11,865,599.00	\$9,622,769.80	GRANITE CONSTRUCTION	Highways
04/24/2024	NFHWY00838	Chena Ridge Road	02/22/2024	62	01/30/2024	4	\$1,984,510.50	\$2,074,000.35	COLASKA INC,	Highways
04/25/2024	NFHWY00097	Richardson	04/02/2024	23	02/22/2024	3	\$27,627,540.87	\$23,796,618.50	HC CONTRACTORS LLC,	Highways
05/06/2024	NFHWY00588	Elliott Highway	03/14/2024	53	02/22/2024	4	\$12,055,734.20	\$12,588,872.50	COLASKA INC,	Highways
Northern Region								\$48,082,261.15		
Southcoast										
02/14/2024	SDRER00571	Tenakee Springs	02/16/2024	-2		3	\$67,500.00	\$84,970.00	ALASKA COMMERCIAL	Marine Facilities
02/22/2024	SFHWY00058-3	JNU DOUGLAS	11/14/2023	100	10/13/2023	1	\$5,169,326.32	\$7,863,960.00	COLASKA INC, JUNEAU,	Highways
03/05/2024	Z680910000	KTN TONGASS	11/09/2023	117	10/05/2023	1	\$11,115,225.00	\$12,572,266.00	COLASKA INC, JUNEAU,	Highways
03/18/2024	SFHWY00308_A	WRG ZIMOVIA	01/09/2024	69	12/14/2023	5	\$616,462.00	\$605,405.39	HIEX CONSTRUCTION INC,	Highways
Southcoast Region								\$21,126,601.39		
GRAND TOTAL:								\$150,020,677.70		

Regional Construction Contract Award Information				LOA Date Range: 2/13/2025 Through 5/13/2025			Region: All			
Reg & Award Date	Contract ID	Contract Name	Bid Opening Date	Days Bid Open-LO	Advertise Date	# Bids Received	Engineer's Est	Award Amt	Contractor	Item List
Central Region										
02/28/2025	CFHWY00129-A	TAKOTNA RIVER BRIDGE	01/31/2025	28	12/11/2024	5	\$36,128,428.25	\$33,974,532.50	BRICE INCORPORATED,	Highways
03/05/2025	SPFAC00540	Juneau Second St & Gold St	11/13/2024	112	10/23/2024	1	\$1,242,196.00	\$1,435,771.00	DAWSON CONSTRUCTION LLC,	Public Facilities
03/06/2025	CFHWY01083	Parks Highway Phase I - Culvert	02/12/2025	22	01/15/2025	8	\$9,620,989.00	\$7,303,209.00	ASRC EARTHWORKS LLC,	Highways
03/12/2025	CSAPT01277	ANC Gates B5 and B7	Design Build		12/06/2024	2	\$4,150,000.00	\$3,140,000.00	ROGER HICKEL CONTRACTING	Public Facilities
03/14/2025	CFAPT01192	ANC RON 12-14 Rehabilitation	02/26/2025	16	02/05/2025	4	\$3,017,845.00	\$2,044,493.30	GRANITE CONSTRUCTION	Aviation
04/04/2025	SPC25252-005	Seal Coat Driveway at 6351	12/13/2024	112		1	\$8,267.84	\$7,500.00	COLASKA INC, ANCHORAGE, AK	Small
04/08/2025	CFAPT00882	LHD Aircraft & Lakeshore	03/21/2025	18	02/27/2025	6	\$2,841,557.00	\$2,073,368.00	COLASKA INC, ANCHORAGE, AK	Aviation
04/15/2025	SPC25252-008	ANC Manhole ES8 Emergency	04/10/2025	5		2	\$30,000.00	\$32,500.00	GRANITE CONSTRUCTION	Small
04/18/2025	SPC25252-009	Seward Hwy MP 14 Railroad	04/14/2025	4		2	\$49,250.00	\$31,800.00	SHAMAN TRAFFIC CONTROL LLC,	Small
04/22/2025	CSAPT01267	ANC Runway 7R Concrete Joint	03/26/2025	27	03/05/2025	5	\$954,326.00	\$608,789.25	BRICK & BIRCH HOMES LLC,	Aviation
04/29/2025	SPC25252-007	Fairbanks Regional Office	04/23/2025	6		1	\$73,261.00	\$97,630.00	Rady Concrete Construction LLC,	Small
05/07/2025	CSAPT00931	ANC Access Gate & Headbolt	04/02/2025	35	03/10/2025	3	\$1,091,775.00	\$1,389,965.00	Spernak & Son LLC, Anchorage, AK	Aviation
05/09/2025	CFAPT01002	ANC Taxilane E and M	04/18/2025	21	03/28/2025	4	\$42,270,758.50	\$35,908,509.00	COLASKA INC, ANCHORAGE, AK	Aviation
05/10/2025	ANC-JOCC-2024-	TSAIA JOCC 2024 B & C	Competitive			1	\$523,100.00	\$289,932.00	CONSOLIDATED CONTRACTING-	Public Facilities
05/13/2025	CFAPT01136	ANC West Perimeter Road	04/25/2025	18	04/03/2025	6	\$1,440,130.00	\$1,116,005.00	COLASKA INC, ANCHORAGE, AK	Aviation
Central Region								\$89,454,004.05		
Northern Region										
04/08/2025	NFHWY00630	Ruby Slough Road	03/11/2025	28	02/18/2025	7	\$7,549,442.00	\$5,944,564.79	Qayaq Construction LLC, Anchorage,	Highways
04/10/2025	NFHWY00903	Parks Highway MP 319-322	CMGC			2	\$51,113,225.20	\$53,501,447.00	GRANITE CONSTRUCTION	Highways
04/25/2025	NFHWY00835	Fairbanks Bike Lane Striping	03/18/2025	38	02/25/2025	2	\$417,779.20	\$459,939.00	COLASKA INC, FAIRBANKS, AK	Highways
05/08/2025	MO-SM25-PR01	Eielson Farm Road Surface	04/15/2025	23	03/25/2025	2	\$96,590.00	\$93,779.00	COLASKA INC, FAIRBANKS, AK	Highways
Northern Region								\$59,999,729.79		
Southcoast										
03/04/2025	Z686060000	HNS HWY	11/21/2024	103	09/23/2024	2	\$49,418,165.50	\$54,466,763.50	COLASKA INC, JUNEAU, AK	Highways
03/06/2025	25253-006	Haines Ferry Terminal Electrical	03/03/2025	3		2	\$48,960.00	\$48,960.00	NORTHERN POWERLINE	Small
03/07/2025	SFHWY00186_A	HSIP KTN STEDMAN &	11/19/2024	108	10/16/2024	1	\$635,109.60	\$1,094,742.00	COLASKA INC, JUNEAU, AK	Highways
04/16/2025	SFHWY00544	IFA PRINCE OF WALES	04/17/2025	-1	02/21/2025	0	\$5,196,709.00		Bids Rejected	IFA
Southcoast Region								\$55,610,465.50		
GRAND TOTAL:								\$205,064,199.34		