

DIVISION 100 GENERAL PROVISIONS

SECTION 101 DEFINITIONS AND TERMS

Titles used in these specifications having a masculine gender, such as “workmen” and the pronouns “he” or “his”, are for the sake of brevity and are intended to refer to persons of either sex.

The titles or headings of the sections and subsections herein are intended for convenience of reference and shall not have any bearing on their interpretation.

When the Contract indicates that work is to be “accepted, acceptable, subject to approval, approved, authorized, condemned, considered necessary, contemplated, deemed necessary, designated, determined, directed, disapproved, established, given, indicated, deemed insufficient, subject to interpretation, interpreted, ordered, permitted, rejected, required, reserved, satisfactory, specified, sufficient, suitable, suspended, unacceptable, or unsatisfactory,” it shall be understood that these expressions are followed by the words “By the Engineer,” or “To the Engineer.”

When the Contract indicates that something “shall” be done, the action is required and is not discretionary.

Wherever the following abbreviations or terms are used in these specifications, plans, or other contract documents, the intent and meaning shall be interpreted as follows:

101.01 Abbreviations.

AAN	American Association of Nurserymen
AAR	Association of American Railroads
AASHTO	American Association of State Highway and Transportation Officials
ACI	American Concrete Institute
AGC	Associated General Contractors of America
AI	Asphalt Institute
AIA	American Institute of Architects
AISC	American Institute of Steel Construction
AIISI	American Iron and Steel Institute
AITC	American Institute of Timber Construction
ANSI	American National Standards Institute, Inc.
ARA	American Railway Association
AREA	American Railway Engineering Association
ARTBA	American Road and Transportation Builders Association
ASCE	American Society of Civil Engineers
ASLA	American Society of Landscape Architects
ASME	American Society of Mechanical Engineers
ASTM	American Society for Testing and Materials
ATSSA	American Traffic Safety Services Association
AWG	American Wire Gauge

AWPA	American Wood Preservers' Association
AWS	American Welding Society
AWWA	American Water Works Association
CCA	Colorado Contractors Association
CDOT	Colorado Department of Transportation
CDPHE	Colorado Department of Public Health and Environment
CFR	Code of Federal Regulations
CP	Colorado Procedure
CP-L	Colorado Procedure - Laboratory
CRS	Colorado Revised Statutes, 1973, as amended
CRSI	Concrete Reinforcing Steel Institute
EIA	Electronic Industries Association
FHWA	Federal Highway Administration
FSS	Federal Specifications and Standards,
IEEE	Institute of Electrical and Electronics Engineers
IES	Illuminating Engineering Society
IMSA	International Municipal Signal Association
IPCEA	Insulated Power Cable Engineers Association
ITE	Institute of Transportation Engineers
MIL	Military Specifications
MUTCD	Manual on Uniform Traffic Control Devices
NCHRP	National Cooperative Highway Research Program
NEC	National Electrical Code
NEMA	National Electrical Manufacturers' Association
NIST	National Institute of Standards and Technology
NSF	National Sanitation Foundation (nSf)
OSHA	Occupational Health and Safety Administration
PCI	Prestressed Concrete Institute
ROW	Right of Way
SWMP	Stormwater Management Plan
SAE	Society of Automotive Engineers
UL	Underwriters Laboratories, Inc.

101.02 Advertisement. A public announcement, inviting proposals for work to be performed or materials to be furnished.

101.03 Affected Area. As related to mined land reclamation, the total disturbed surface of a pit or quarry such as sand, gravel, topsoil, or borrow, that is being mined or will be mined. The area includes, but is not limited to, the excavation area, plant, and stockpile areas, parking and storage areas, and the haul roads.

101.04 Award. The acceptance by the Department of a proposal.

101.05 Basis of Payment. The terms under which “work” is paid, as a designated “Pay Item” in accordance with the quantity measured and the “Pay Unit.”

101.06 Best Management Practices (BMPs) for Stormwater Pollution Prevention. BMPs prevent or reduce the pollutants in stormwater discharges from the construction site.

101.07 Bidder. An individual, firm, corporation, or other legal entity submitting a proposal for the advertised work. A contractor intending to contract with the Department for performance of prescribed work.

101.08 Bridge. A structure, including supports, erected over a depression or an obstruction, such as water, highway, or railroad, and having a track or passageway for carrying traffic or other moving loads and having a length measured along the center of roadway of more than 20 feet between undercopings of abutments or extreme ends of openings for multiple boxes.

Length. The length of a bridge structure is the over-all length measured along the line of survey stationing back to back of backwalls of abutments, if present, otherwise, end to end of the bridge floor; but in no case less than the total clear opening of the structure.

Roadway Width. The clear width measured at right angles to the longitudinal centerline of the bridge between the bottom of curbs or guard timbers or in the case of multiple height of curbs, between the bottoms of the lower risers.

101.09 Calendar Day. Each and every day shown on the calendar, beginning and ending at midnight. When day is used, it shall mean calendar day unless otherwise defined.

101.10 CDOT Resident Engineer. The Resident Engineer is directly responsible for the overall administration of assigned construction projects. Unless the CDOT Project Engineer is a Professional Engineer, the Resident Engineer is CDOT's full time engineer in responsible charge of the project. The Resident Engineer will delegate authority to Project Engineers consistent with their experience and abilities. Only a CDOT Resident Engineer can approve and sign vouchers for interim and final Contractor pay estimates. Only a CDOT Resident Engineer can authorize and sign changes to the Contract if the Project Engineer is a Consultant Employee.

101.11 Certificate of Compliance. A certification, including a signature by a person having legal authority to act for the manufacturer, stating that the product or assembly to be incorporated into the project was fabricated in accordance with and meets the applicable specifications.

101.12 Certified Invoice. Any invoice or billing endorsed by the Contractor, certifying that material, specialty work, subcontract work, rental, lease, services, etc. were acquired for the project and that the invoiced or billed amount represents the actual costs.

101.13 Certified Test Report. A test report from the manufacturer or an independent testing laboratory, including a signature by a person having legal

authority to act for the manufacturer or the independent testing laboratory stating that the test results show that the product or assembly to be incorporated into the project has been sampled and tested and the samples have passed all specified tests.

101.14 Conformity. Compliance with reasonable and customary manufacturing and construction tolerances where working tolerances are not specified. Where working tolerances are specified, conformity means compliance with such working tolerances.

101.15 Construction Drawings. A complete set of plans, reviewed shop drawings, working drawings, and other submittals kept available on the project site at all times by the Contractor.

101.16 Construction Requirements. Specifications covering performance of work required for proper completion and acceptance.

101.17 Contract. The written agreement between the State of Colorado through the Department of Transportation and the Contractor setting forth the obligations of the parties for the performance of the work and the basis of payment.

The Contract includes the invitation for bids, proposal, contract bonds, standard specifications, supplemental specifications, special provisions, general and detailed plans, notice to proceed, contract modification orders, and authorized extensions of time, all of which constitute one instrument.

101.18 Contract Item (Pay Item). A specifically described unit of work for which a price is provided in the Contract.

101.19 Contract Modification Order. A written order issued to the Contractor by the Department covering contingencies, extra work, increases or decreases in contract quantities, and additions or alterations to the plans or specifications, within the scope of the Contract, and establishing the basis of payment and time adjustments for the work affected by the changes. The Contract Modification Order is the only method authorized for changing the Contract. Contract Modification Orders must be approved as established in subsection 105.14.

101.20 Contract Payment Bond. The security executed by the Contractor and Surety or Sureties and furnished to the Department to guarantee payment of all legal debts of the Contractor pertaining to the Construction of the project.

101.21 Contract Performance Bond. The security executed by the Contractor and Surety or Sureties and furnished to the Department to guarantee completion of the work in accordance with the Contract.

101.22 Contract Time. The number of working days or calendar days allowed for completion of the Contract, including authorized time extensions. Where a calendar date of completion is specified, the Contract shall be completed on or before that date.

101.23 Contractor. The individual, firm, or corporation contracting with the State of Colorado through the Department of Transportation for performance of prescribed work.

101.24 Contractor's Engineer. A professional engineer registered in the State of Colorado who is an employee of either the Contractor, a consulting engineer under contract to the Contractor, or a manufacturer or supplier of materials supplied to the project.

101.25 County. The county in which the work is to be done.

101.26 Culvert. Any structure not classified as a bridge which provides an opening under the roadway.

101.27 Day. See subsection 101.09

101.28 Department. State Department of Transportation. A department within the executive branch of the State of Colorado.

101.29 Engineer. The Chief Engineer of the Department acting directly or through an authorized representative, who is responsible for engineering and administrative supervision of the project.

101.30 Equipment. All machinery, tools, and apparatus together with supplies for upkeep and maintenance, necessary for the proper construction and acceptable completion of the work.

101.31 Extra Work. Work not provided for in the Contract as awarded but found by the Engineer to be essential to the satisfactory completion of the Contract within its intended scope.

101.32 Falsework. Falsework is temporary construction used to support structural elements of concrete, steel, masonry, or other materials during their construction or erection until they become self-supporting. Falsework may also be used to provide temporary support to elements of a structure during demolition or reconstruction.

101.33 Force Account Work. Work paid for on the basis of actual costs plus approved additives. See subsection 109.04.

101.34 Formwork. Formwork is the temporary structure or mold used to retain plastic or fluid concrete in its designated shape until it hardens.

101.35 Highway. A general term denoting a public way for purposes of vehicular travel, including the entire area within the right of way.

101.36 Holidays. Holidays recognized by the State of Colorado are:

New Year's Day
 Dr. Martin Luther King, Jr.'s Birthday (observed)
 Washington-Lincoln Day
 Cesar Chavez Day
 Memorial Day
 Independence Day
 Labor Day
 Columbus Day
 Veterans' Day
 Thanksgiving Day
 Christmas Day

When New Year's Day, Cesar Chavez Day, Independence Day, or Christmas Day falls on a Sunday, the following Monday shall be considered a holiday. When one of these days falls on a Saturday, the preceding Friday shall be considered a holiday.

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

101.37 Inspector. The Engineer's authorized representative assigned to make detailed inspections of contract performance.

101.38 Invitation for Bids. All documents, whether attached or incorporated by reference, utilized for soliciting proposals. The advertisement will indicate with reasonable accuracy the quantity and location of the work to be done or the character and quantity of the material to be furnished and the time and place of the opening of proposals.

101.39 Laboratory. The testing laboratory of the Department, or any other testing laboratory designated by the Engineer.

101.40 Materials. All components required for use in the construction of the project.

101.41 Method of Measurement. The manner in which a "Pay Item" is measured to conform with the "Pay Unit."

101.42 Notice to Proceed. Written notice to the Contractor to proceed with the contract work including, when applicable, the date of beginning of contract time.

101.43 Ordinary High Water Mark. The term "ordinary high water mark" means that line on the shore established by the fluctuations of water and indicated by physical characteristics such as clear, natural line impressed on the bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding areas. This is typically the 2 year storm event elevation.

101.44 Original Contract Amount. The sum of the total dollar amounts bid for all the construction pay item quantities. In subsection 626.02 this figure is modified for use in calculating partial payments for mobilization.

101.45 Pavement Structure. The combination of one or more of the following courses placed on a subgrade to support and distribute the traffic load to the roadbed.

- (a) *Subbase.* The layer or layers of specified or selected material placed on a subgrade to support a base course, surface course, or both. Subgrade that has been treated with lime, fly ash, cement kiln dust, or combinations thereof for stabilization will be considered subbase.
- (b) *Base Course.* The layer or layers of specified or selected material placed on a subbase or a subgrade to support a surface course.
- (c) *Surface Course.* One or more layers of a pavement structure designed to accommodate the traffic load, the top layer of which resists skidding, traffic abrasion, and the disintegrating effects of climate. The top layer is sometimes called "Wearing Course."

101.46 Planned Force Account. Items of work, included on the plans, which will be paid for in accordance with subsection 109.04.

101.47 Plans. The drawings, or reproductions, provided by the Department which show the location, character, dimensions, and details of the work to be done.

101.48 Preconstruction Conference. A meeting of CDOT project personnel, Contractor project personnel and other stake holders held prior to the beginning of construction at which topics pertinent to the successful prosecution of the work are discussed.

101.49 Profile Grade. The trace of a vertical plane usually intersecting the top surface of the proposed wearing surface and usually along the longitudinal centerline of the roadbed. Profile grade means either elevation or gradient of such trace according to the context.

101.50 Project. The specific section of the highway on which construction is to be performed as described in the Contract.

101.51 Project Engineer. The Chief Engineer's duly authorized representative who may be a CDOT employee or an employee of a consulting engineer (consultant) under contract to CDOT as defined below:

- (a) *CDOT Project Engineer.* The CDOT employee, assigned by the Resident Engineer, who is the Chief Engineer's duly authorized representative. The CDOT Project Engineer is in direct charge of the work and is responsible for the administration and satisfactory completion of the project under contract.

- (b) *Consultant Project Engineer.* The consultant employee under the responsible charge of the consultant's Professional Engineer who is in direct charge of the work and is responsible for the administration and satisfactory completion of the project. The Consultant Project Engineer's duties are delegated by the CDOT Resident Engineer in accordance with the scope of work in the consultant's contract with CDOT. The Consultant Project Engineer is not authorized to sign or approve Contract Modification Orders.

101.52 Project Special Provisions. See definition for special provisions in subsection 101.72.

101.53 Project Termini. Limits of the Project as shown on the plans.

101.54 Proposal. The offer of a bidder, on the prescribed form, to perform the work at the prices quoted. Also called bid.

101.55 Proposal Form. The documents furnished by the Department on which the offer of a bidder is submitted. Also called bid proposal.

101.56 Proposal Guaranty. The security furnished with a proposal to guarantee that the bidder will enter into the Contract if the proposal is accepted.

101.57 Record Set. A reproduction of a drawing or set of drawings, design calculations, or other record of engineering work required to be performed by the Contractor's engineer, which is signed and sealed by the Contractor's engineer in accordance with the Rules of Procedures of the State Board of Registration for Professional Engineers and Land Surveyors.

101.58 Region Transportation Director. The Department's representative, responsible for construction, maintenance and safety activities, within the geographical jurisdiction established by the Department. The Region Transportation Director is responsible for acting on written appeals made by the Contractor relating to contract claims for additional compensation or extension of contract time.

101.59 Right of Way. A general term denoting land, property, or interest therein, usually in a strip, acquired for or devoted to a highway.

101.60 Road. A general term denoting a public way for purposes of vehicular travel, including the entire area within the right of way.

101.61 Roadbed. The graded portion of a highway within top and side slopes, prepared as a foundation for the pavement structure and shoulders.

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

101.63 Roadside Development. Those items necessary for the preservation of landscape materials and features. The rehabilitation and protection against erosion of all areas disturbed by construction through seeding, sodding, mulching and the placing of other ground covers. Suitable planting and other improvements as may increase the effectiveness and enhance the appearance of the highway.

101.64 Roadway. The portion of a highway within limits of construction.

101.65 Roadway Prism. The portion of the roadway defined as the prism of embankment situated beneath the shoulders and pavement structure and inside the lines projected downward and outward on a one to one slope from the outside edges of the roadway shoulders to their intersection with the base of the embankment.

101.66 Safety Critical Work. Elements of the work that, if performed improperly, could encroach upon and endanger traffic that is following all traffic regulations. Safety critical work may include work elements performed under one or more of the following situations:

- (1) Work that is constructed on, over, or near a traffic route and could become unstable over time if installed improperly.
- (2) Work that requires the use of lifting devices in the vicinity of traffic.

Elements of work considered safety critical for the project will be identified in a project special provision titled *Revision of Section 107 – Performance of Safety Critical Work*.

“Traffic”, as used above, is defined as the vehicles, railroad, pedestrians, aircraft, and watercraft moving along a route. The route may be permanent or temporary, such as a detour.

101.67 Salvable Material. Material that can be saved or salvaged. Unless otherwise specified in the Contract, all salvable material shall become the property of the Contractor.

101.68 Shop Drawings. A general term that includes drawings, diagrams, illustrations, samples, schedules, calculations, and other data which provide details of the construction of the work and details to be used by the Engineer for inspection. Shop drawings shall be prepared by the Contractor, subcontractors, manufacturers, suppliers, or distributors. Shop Drawings are submitted to the Engineer for formal review and return to the Contractor in accordance with subsection 105.02(c). Shop drawings include data which illustrates material, equipment, and items which are incorporated in and become part of the permanent work in accordance with the Contract.

101.69 Shoring. Shoring is temporary construction that is used to support the earth adjacent to excavation or embankment.

101.70 Shoulder. The portion of the roadway contiguous with the traveled way for accommodation of stopped vehicles, for emergency use, and for lateral support of base and surface courses.

101.71 Sidewalk. That portion of the roadway constructed for pedestrian use.

101.72 Special Provisions. Additions and revisions to the standard and supplemental specifications covering conditions specific to an individual project or group of projects. Special provisions fall within one of the two following categories and take precedence as specified in subsection 105.09.

- (a) *Project Special Provisions.* Additions and revisions to the Standard and Supplemental Specifications, specific to the project.
- (b) *Standard Special Provisions.* Additions and revisions to the Standard and Supplemental Specifications, specific to a selected group of projects or which are intended for temporary use.

101.73 Specifications. A general term applied to all directions, provisions and requirements pertaining to performance of the work.

- (a) *Standard Specifications:* The Department’s printed book (including errata) titled *Standard Specifications for Road and Bridge Construction*. The book is divided into three parts namely:
 - (1) General Provisions (Division 100)
 - (2) Construction Details (Divisions 200 thru 600)
 - (3) Material Details (Division 700)
- (b) *Supplemental Specifications:* Additions and revisions to the Standard Specifications that are adopted subsequent to the issuance of the printed book.

The outline for “Work” items in the Construction Details contains the following:

- (1) Description
- (2) Materials
- (3) Construction Requirements
- (4) Method of Measurement
- (5) Basis of Payment

101.74 Specified Completion Date. The date on which the contract work is specified to be completed.

101.75 Standard Special Provisions. See definition for Special Provisions, subsection 101.72.

101.76 State. The State of Colorado acting through its authorized representative.

101.77 State Waters. State Waters means any and all surface and subsurface waters which are contained in or flow in or through this state, but does not include waters in sewage systems, waters in treatment works of disposal systems, waters in

potable water distribution systems, and all water withdrawn for use until use and treatment have been completed.

Examples of State waters include, but are not limited to, perennial streams, intermittent or ephemeral gulches and arroyos, ponds, lakes, reservoirs, irrigation canals or ditches, wetlands, stormwater conveyances (when they discharge to a surface water), and groundwater.

Note that for the purposes of these specifications “surface waters” means all State waters, except groundwater.

101.78 Stormwater Management Plan (SWMP). The Stormwater Management Plan comprises those contract documents containing the requirements necessary to accomplish all the following:

- (1) Protect and identify sensitive environments (state waters, wetlands, habitat, and existing vegetation).
- (2) Minimize the amount of disturbed soil.
- (3) Control and minimize erosion and sedimentation during and after project construction.
- (4) Minimize runoff from offsite areas from flowing across the site.
- (5) Slow down the runoff.
- (6) Reduce pollutants in stormwater runoff.

101.79 Street. A general term denoting a public way for purposes of vehicular travel, including the entire area within the right of way.

101.80 Structures. Bridges, culverts, catch basins, drop inlets, retaining walls, cribbing, manholes, endwalls, buildings, storm drains, service pipes, underdrains, foundation drains, fences, guardrail, signs, end sections, traffic signals, light standards, and other features which may be encountered in the work and not otherwise classified.

101.81 Subcontractor. An individual, firm, corporation, or other legal entity to whom the Contractor sublets part of the Contract.

101.82 Subgrade. The top surface of a roadbed upon which the pavement structure, shoulders, and curbs are constructed. Subgrade that has been treated with lime, fly ash, cement kiln dust, or combinations thereof for stabilization will be considered subbase.

101.83 Substructure. All of the structure below the bearings of simple and continuous spans, skewbacks of arches, and tops of footings of rigid frames, together with the backwalls, wingwalls, and wing protection railings.

101.84 Superintendent. The Contractor’s authorized employee in responsible charge of the work.

- 101.85 Superstructure.** The entire structure except the substructure, as defined in subsection 101.83.
- 101.86 Supplemental Specifications.** See definition for Specifications, subsection 101.73.
- 101.87 Surety.** The corporation, partnership, or individual, other than the Contractor, executing a bond furnished by the Contractor.
- 101.88 Traffic Control Plan (TCP).** The parts of the contract documents for each project that contain the requirements for the maintenance of traffic during construction of the project.
- 101.89 Traveled Way.** The portion of the roadway for the movement of vehicles, exclusive of shoulders and auxiliary lanes.
- 101.90 Value Engineering Change Proposal (VECP).** A change to contract requirements proposed by the Contractor which will accomplish the project's functional requirements at less cost or improve value or service at no increase or at a minor increase in cost.
- 101.91 Wheel Path.** Wheel paths are the two sections of each through-traffic lane that bear the wheel loading. The center of each wheel path is located 3 feet from the center of the lane; each wheel path is 2 feet wide.
- 101.92 Work.** The furnishing of all labor, materials, equipment, and incidentals necessary to successfully complete the project according to all duties and obligations imposed by the Contract.
- 101.93 Working Day.** Any day, exclusive of Saturdays, Sundays and holidays, on which weather and other conditions not under the control of the Contractor will permit construction operations to proceed with the normal working force engaged in performing those items controlling the completion of the work.
- 101.94 Working Drawings.** A general term that includes drawings, diagrams, illustrations, samples, schedules, calculations, and other data which illustrate the construction of the work, material, equipment, methods, and items which are necessary to construct the work in accordance with the plans and specifications. Working drawings shall be prepared by the Contractor, subcontractors, manufacturers, suppliers, or distributors. Working drawings are submitted to the Engineer for information only, and are not formally reviewed and returned to the Contractor.

101.95 Workplace Violence. Workplace violence is conduct in the workplace against employees, employers, or outsiders committed by a person who either has an employment related connection with CDOT, or is a contractor working on a CDOT project. This conduct includes:

- (1) Physical acts against persons or their property, or against CDOT or Contractor property that are perceived to be harmful or threatening.
- (2) Veiled or direct verbal threats, profanity, or vicious statements or gestures that are meant to harm or create a threatening or intimidating work environment.
- (3) Written threats, profanity, vicious cartoons or notes that are meant to create a threatening or intimidating environment
- (4) Any other acts that are perceived to be threatening or intended to injure or convey hostility.

SECTION 102 BIDDING REQUIREMENTS AND CONDITIONS

102.01 Prequalification of Bidders. The bidder shall follow the prequalification and bidding procedures contained in the Rules for Prequalification, Debarment, Bidding, and Work on Colorado Department of Highways' Road, Highway, and Bridge Public Projects, 2 CCR 601-10, ("Rules"), on file with the Colorado Secretary of State. Copies are available upon request in the Contracts and Market Analysis Branch of the Department.

Only prequalified bidders will be allowed to bid on any project. At least ten days prior to opening of proposals, the bidder must file an experience questionnaire and a confidential financial statement on standard forms furnished by the Department.

102.02 Contents of Proposal Forms. Upon request, the Department will furnish the prospective bidder with a proposal form (bid proposal). This form will state the location and description of the contemplated construction and will show the estimate of the various quantities and types of work to be performed or materials to be furnished, and will have a schedule of items for which unit bid prices are invited. The proposal form will state the time in which the project must be completed, the amount of the proposal guaranty, and the date, time and place of the opening of proposals.

All papers bound with or attached to the proposal form are considered a part of the proposal and must not be detached or altered when the proposal is submitted.

The plans, specifications, and other documents designated in the proposal form, will be considered a part of the proposal whether attached or not.

The prospective bidder shall pay the Department the sum stated in the Invitation for Bids for each set of plans.

102.03 Interpretation of Quantities in Proposal Form. Except as otherwise provided in this subsection and the method of measurement for individual items, the quantities appearing in the proposal form are estimates prepared for the comparison of proposals. Payment to the Contractor will be made in accordance with the following procedures:

- (a) *Measurement required.* When the Contract requires measurement of work performed or material furnished, payment will be made for actual quantities measured and accepted.
- (b) *Measurement Not Required.* When the Contract does not require quantities of work performed or materials furnished to be measured, payment will be made for the quantities appearing in the Contract.

The estimated quantities of work to be performed and materials to be furnished may be increased, decreased or omitted.

102.04 Interpretation of Plans and Specifications. Any change to proposal forms, plans, or specifications prior to the opening of proposals will be issued by the Department by certified mail to all holders of proposal forms. Certain individuals are named in the project specifications who have authority to provide information, clarification or interpretation to bidders prior to opening of proposals. Information obtained from persons other than those named individuals is invalid and shall not be used for bidding purposes.

102.05 Examination of Plans, Specifications, Special Provisions, and Site of Work. The bidder is expected to examine the site of the proposed work, the proposal, plans, specifications, supplemental specifications, special provisions, and contract forms, before submitting a proposal. The submission of a proposal will be considered conclusive evidence that the bidder has made this examination and is aware of the conditions to be encountered in performing the work according to the Contract.

Boring logs and other records of subsurface investigations, if they exist, are available for inspection by bidders. These logs and records are made available so that all bidders have access to identical subsurface information that is available to the Department, and is not intended as a substitute for personal investigation, interpretation and judgment of the bidders.

The Department does not warrant the adequacy of boring logs and other records of subsurface investigations, and such information is not considered to be a part of the Contract. When a log of test borings is included in the subsurface investigation record, the data shown in the individual log of each test boring apply only to that particular boring and are not intended to be conclusive as to the character of any material between or around test borings. If bidders use this information in preparing a proposal, it is used at their own risk, and bidders are responsible for all conclusions, deductions, and inferences drawn from such information.

Bidders may conduct subsurface investigations at the project site at bidder's expense; the Department will afford them this opportunity prior to public opening of proposals.

If a bidder discovers an apparent error or omission in the proposal form, estimated quantities, plan, or specifications, the bidder shall immediately notify the Engineer to enable the Department to make any necessary revisions. The Department may consider it to be detrimental to the Department for a bidder to submit an obviously unbalanced unit bid price. See subsection 102.07.

102.06 Preparation of Proposal. The bidder shall submit the proposal (bid) upon the forms furnished by the Department in accordance with the "Rules" referenced in subsection 102.01.

102.07 Irregular Proposals. Proposals (bids) will be considered irregular and may be rejected for any of the following reasons:

- (1) If the proposal is on a form other than that prescribed by the Department, or if the form is altered or any part thereof is detached, or if the form does not contain original signatures.
- (2) If there are unauthorized additions, conditional or alternative proposals, or irregularities of any kind which may tend to make the proposal incomplete, indefinite, or ambiguous.
- (3) If the bidder fails to acknowledge in the proposal the receipt of all revisions current on the date of opening of proposals.
- (4) If the proposal does not contain a unit price for each pay item listed except in the case of authorized alternative pay items, the mathematical products of the respective unit prices and the estimated quantities, and the total amount of the bid obtained by adding such mathematical products.
- (5) If the Department determines that any of the unit bid prices are materially unbalanced to the potential detriment of the Department. There are two types of unbalanced bids: (1) mathematically unbalanced and, (2) materially unbalanced. The mathematically unbalanced bid is a bid containing lump sum or unit pay items which do not reflect reasonable actual costs plus a reasonable proportionate share of the bidder's anticipated profit, overhead costs, and other indirect costs, but not necessarily to the detriment of the Department. These costs should all relate to the performance of the items in question. The materially unbalanced bid is a mathematically unbalanced bid which the Department determines leaves reasonable doubt that award will result in the lowest ultimate cost to the Department, or that award is in the public interest.
- (6) If the Contractor submitting the bid is affiliated with another bidder that has submitted a bid on the same public project.
- (7) If the bidder has been sent a notice of intent to revoke prequalification under Chapter Two of the "Rules."
- (8) If the bidder has been asked in writing to show why it should not be found in default on a Department contract.
- (9) If the bidder has been sent a notice of intent to debar or of suspension under Chapter Three of the "Rules."

The Department reserves the right to reject any or all bids, to waive technicalities or to advertise for new bids, if in the judgment of the Department its best interests will be promoted thereby.

102.08 Combination or Conditional Proposals. If proposal forms are issued for projects in combination and separately, the bidder may submit proposals either on the combination or on separate units of the combination. The Department reserves the right to make awards on combination or separate proposals to the advantage of the Department. Combination proposals will be considered, only when specified.

102.09 Anti-Collusion Affidavit. Every proposal (bid) submitted to the Department shall contain a statement certifying that the bidder has not participated in any collusion or taken any action in restraint of free competitive bidding. This statement shall be in the form of an affidavit provided by the Department and signed by the bidder. The original of the signed anti-collusion affidavit, Form 606, shall be submitted with the proposal. The proposal will be rejected if it does not contain the completed Form 606.

102.10 Material Guaranty. The successful bidder may be required to furnish a complete statement of the origin, composition, and manufacture of materials used in the construction of the work together with samples, which will be tested for conformance with Contract provisions

SECTION 103 AWARD AND EXECUTION OF CONTRACT

103.01 Consideration of Proposals. After the proposals (bids) are opened and read, they will be evaluated and the Contract awarded or rejected in accordance with the “Rules” referenced in subsection 102.01.

The low responsible bidder shall submit a completed CONTRACTORS PERFORMANCE CAPABILITY STATEMENT, Form 605, and a completed ASSIGNMENT OF ANTITRUST CLAIMS, Form 621 to the Award Officer prior to 4:30 P.M. on the fifth calendar day after the bid opening. Failure to submit the Forms 605 and 621 may result in the denial of award to the apparent low responsible bidder and forfeiture of the proposal guaranty.

103.02 Award of Contract. If the Contract is awarded, the award will be made within 30 calendar days after the opening of proposals to the lowest bidder whose proposal complies with all the requirements prescribed. The successful bidder will be notified in writing of the acceptance of the proposal and the award of the Contract.

103.03 Requirement of Contract Bonds. At the time of the execution of the Contract, the successful bidder shall furnish a Contract Payment Bond and a Contract Performance Bond. Each bond shall be in a penal sum equal to the nearest integral one hundred dollars in excess of the sum of the original bid items plus all force account items specified in the project special provisions to be included in the payment and performance bonds. The bonds and the security shall be acceptable to the Department.

103.04 Execution and Approval of Contract. The Contract shall be signed and returned by the successful bidder together with the contract bonds, within 15 days after the date of award. If the signed Contract and bonds are returned by the successful bidder within 15 days after award and, if the Contract is not executed by the Department within 30 days from date of award, the bidder shall have the right to withdraw the proposal without penalty. The Contract will not be considered effective until it has been fully executed by all of the parties to the Contract.

SECTION 104 SCOPE OF WORK

104.01 Intent of Contract. The Contractor shall complete the work described and furnish all labor, materials, equipment, tools, transportation, and supplies required to complete the work in accordance with the Contract. Alterations of plans or the nature of the work will not involve or require work beyond the termini of the original project, until a contract modification order has been executed.

104.02 Differing Site Conditions, Suspensions of Work, and Significant Changes in the Character of Work.

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

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

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

Upon receipt, the Engineer will evaluate the Contractor's request. If the Engineer agrees that the cost, time required, or both for the performance of the Contract has increased as a result of such suspension and the suspension was caused by conditions beyond the control of and not the fault of the Contractor, its suppliers, or subcontractors at any approved tier, and not caused by weather, the Engineer will make an adjustment (excluding profit) and modify the Contract in writing accordingly. The Engineer will notify the

Contractor of the determination whether or not an adjustment of the Contract is warranted. No Contract adjustment will be allowed unless the Contractor has submitted the request for adjustment within the time prescribed.

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

- (c) *Significant Changes in the Character of Work.* The Engineer reserves the right to make, in writing, at any time during the work, such changes in quantities and such alterations in the work as are necessary to satisfactorily complete the project. Such changes in quantities and alterations shall not invalidate the Contract nor release the surety, and the Contractor agrees to perform the work as altered.

If the alterations or changes in quantities significantly change the character of the work under the Contract, whether such alterations or changes are in themselves significant changes to the character of the work, or by affecting other work cause such other work to become significantly different in character, an adjustment, excluding loss of anticipated profit, will be made to the Contract. The basis for the adjustment shall be agreed upon prior to the performance of the work. If a basis cannot be agreed upon, then an adjustment will be made either for or against the Contractor in such amount as the Engineer may determine to be fair and equitable.

If the alterations or changes in quantities do not significantly change the character of the work to be performed under the Contract, the altered work will be paid for as provided elsewhere in the Contract. The term “significant change” shall be construed to apply only to the following circumstances:

- (1) When the character of the work as altered differs materially in kind or nature from that involved or included in the original proposed construction,
or
- (2) When a major item of work is increased in excess of 125 percent or decreased below 75 percent of the original contract quantity. Any allowance for an increase in quantity shall apply only to that portion in excess of 125 percent of original contract item quantity, or in case of a decrease below 75 percent, to the actual amount of work performed. A major item is defined to be any item having an original contract value in excess of 10 percent of the original contract amount.

104.03 Extra Work. The Contractor shall perform unforeseen work, for which there is no price included in the Contract, whenever the extra work is necessary or desirable for contract completion. This work shall be performed in accordance with the Contract and as directed, and will be paid for as provided under subsection 109.04.

104.04 Maintaining Traffic. Unless otherwise provided, the Contractor shall keep the road open to all traffic in accordance with the Traffic Control Plan during the progress of the work. The Contractor shall schedule construction operations so that only one side of the existing roadbed is denied to traffic at any time. The Contractor shall also provide and maintain in a safe condition temporary approaches or crossings and intersections with trails, roads, streets, businesses, parking lots, residences, garages, and farms. The road and the intersections of the access points shall be maintained in a manner that will safely and adequately accommodate traffic.

The Contractor shall not store materials or equipment nor park vehicles on the highway except in designated areas. The Contractor shall not have materials or equipment in the traffic lanes open to traffic at any time unless directed.

Portions of the roadway that are not included in the contract work will be maintained by the Department. Snow removal will be the responsibility of the Department. The Contractor shall be responsible for maintaining all work that is included in the Contract, and maintaining approaches, crossings, intersections, and other features as may be necessary to accommodate traffic without direct compensation, except as provided in the Contract or described in (a) and (b) below.

- (a) *Approved Detours.* The cost of constructing detours and temporary bridges, and the removal of temporary bridges and obliteration of the detour road will be paid for at the appropriate unit bid prices for the items of work involved.

Maintenance requirements, as approved, will be paid for by the appropriate bid item; however, if a bid item does not exist, then payment will be made as provided in subsection 104.03.

- (b) *Maintaining Traffic During Suspension of Work.* During any suspension ordered by the Engineer in accordance with subsection 105.01, the Contractor shall open to traffic the portions of the project as directed. Prior to allowing traffic on the project, the Contractor shall prepare the roadbed so that it will safely and adequately accommodate traffic. During the suspension period, the maintenance of the roadway will be the responsibility of the Department. However, when the suspension is the result of a failure by the Contractor, all costs for maintenance of traffic during the suspension period shall be borne by the Contractor. When the suspension is lifted, the Contractor shall renew any work or replace materials lost or damaged on the project and shall remove, as directed, work or materials used during the suspension. The Contractor shall complete the project as though the prosecution of the work had been continuous and without interference. All additional work caused during the suspensions, for reasons beyond the Contractor's control, will be paid for as provided in subsection 104.02 when contract unit prices exist, or as extra work as provided in subsection 104.03 when no unit price exists.
- (c) *Maintaining Traffic During Free Time.* During the free time period, if provided for in the Contract, the Contractor shall be responsible for maintaining traffic control items as long as construction operations interfere with traffic. When construction operations which interfere with traffic cease,

the Contractor shall notify the Engineer, in writing, and shall adhere to the same procedures as in paragraph (b) above. The Contractor shall notify the Engineer, in writing, when construction operations which interfere with traffic will resume and shall resume responsibility for maintaining traffic.

- (d) *Maintenance Directed by the Engineer.* If the Engineer directs special maintenance for the benefit of the traveling public, that is not included in the Contract, the Contractor will be paid in accordance with subsection 104.02 when contract unit prices exist, or as extra work, in accordance with subsection 104.03, when no contract unit prices exist. The Engineer will determine the work to be classed as special maintenance.

104.05 Rights in and Use of Materials Found on the Work. The Engineer may authorize the Contractor's use of materials found in the excavation for completing pay items other than excavation. Payment will be made for both the excavation of such materials at the corresponding contract unit price, and for the pay item for which the excavated material is used. The Contractor shall replace the removed material with acceptable material at no additional cost to the Department. The Department will not charge the Contractor royalty or additional cost of select material for the removed material. The Contractor shall not excavate or remove any material from within the roadway which is not within the grading limits, as indicated by the slope and grade lines, without written authorization from the Engineer.

Unless otherwise provided, the material from structures designated for removal shall be the Contractor's property and may be used temporarily by the Contractor in the erection of the new structure.

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

104.07 Value Engineering Change Proposals by the Contractor. The Contractor is encouraged to develop and offer proposals for improved construction techniques, alternative materials, and other innovations. Proposals must provide a project comparable to CDOT's original design either at lower cost, improved quality, or both. Proposals that lower the quality of the intended project will be rejected. Bid prices shall not be based on the anticipated approval of a Value Engineering Change Proposal (VECP). Proposals shall be submitted only by the successful bidder after contract award. If a VECP is rejected, the work shall be completed in accordance with the Contract at contract bid prices. Any delay to the project due to a VECP submittal and review shall be considered within the Contractor's control and will be non-excusable with the exception of those delays that are approved as part of the VECP.

Proposals shall be categorized as VECP (Category A) or VECP (Category B).

VECPs (Category A) will be all proposals that involve the design and construction of a structure including but not limited to a bridge, retaining wall, concrete box culvert, or building. A VECP (Category A) will also include any proposal that would result in a change of original bid items that totals over \$250,000. Alternatives investigated and not selected in the project Structural Selection Reports may be presented in a VECP if significant benefits can be demonstrated to the Engineer. In addition, design criteria and constraints listed in the Structural Selection Report cannot be modified or relaxed as part of a VECP unless significant and previously unknown benefits can be proven to the Engineer. Experimental or demonstration-type design concepts, products, structures, or elements that have not been pre-approved by CDOT, in writing, for general use will be considered a VECP (Category A). Category A proposals will also result in a realized and shared cost savings to CDOT. Cost savings generated to the Contract as a result of VECP offered by the Contractor and accepted by CDOT shall be shared between the Contractor and CDOT.

All other VECPs that do not meet the previous requirements will be classified as a VECP (Category B).

Net cost savings on VECPs that are less than \$25,000 can be kept by the Contractor. Net cost savings greater than \$25,000 shall be split equally between the Contractor and CDOT as defined in the Basis of Payment section of this specification.

Both VECP (Category A) and VECP (Category B) will produce savings to CDOT or provide improved project quality without impairing essential functions and characteristics of the facility. Essential functions include but are not limited to: service life, requirements for planned future development, prior commitments to governmental agencies or the public, corridor requirements, economy of operation, ease of maintenance, desired appearance, safety, and impacts to the traveling public or to the environment during and after construction.

The Contractor may submit either a full VECP or a preliminary Conceptual VECP, followed by a full proposal. These proposals are subject to rejection at any time if they do not meet the criteria outlined in this subsection.

(a) *Submittal of Conceptual Proposal.* For a VECP (Category A) that requires a significant amount of design or other development resources, the Contractor may submit an abbreviated Conceptual Proposal for preliminary evaluation. The Engineer will evaluate the information provided. The Contractor will then be advised in writing if any conditions or parameters of the Conceptual Proposal are found to be grounds for rejection. Preliminary review of a conceptual proposal reduces the Contractor's risk of subsequent rejection but does not commit CDOT to eventual approval of the full VECP. The following information shall be submitted for each Conceptual Proposal:

- (1) Statement that the proposal is submitted as a Conceptual VECP
- (2) General description of the difference between the existing Contract and the proposed change, and the advantages and disadvantages of

each, including effects on service life, requirements for planned future development, prior commitments to governmental agencies or the public, corridor requirements, economy of operation, ease of maintenance, desired appearance, safety, and impacts to the traveling public or to the environment during and after construction. The Contractor shall request in writing the necessary information from the Engineer.

- (3) One set of conceptual plans and a description of proposed changes to the Contract specifications
 - (4) Estimate of the anticipated cost savings or increase
 - (5) Statement specifying the following:
 - (i) when a response to the conceptual proposal from the CDOT is required to avoid delays to the existing contract prosecution
 - (ii) the amount of time necessary to develop the full Proposal
 - (iii) the date by which a Contract Modification Order must be executed to obtain maximum benefit from the Proposal
 - (iv) the Proposal's impact on time for completing the Contract
- (b) *Submittal of Full Value Engineering Change Proposal.* The following materials and information shall be submitted for both Category A and Category B VECPs:
- (1) A statement that the proposal is submitted as a VECP:
 - (2) A description of the difference between the existing Contract and the proposed change, and the advantages and disadvantages of each, including effects on service life, requirements for planned future development, prior commitments to governmental agencies or the public, corridor requirements, economy of operation, ease and cost of maintenance, desired appearance, safety, and impacts to the traveling public or to the environment during and after construction. The Contractor shall request in writing the necessary information from the Engineer.
 - (3) A complete set of plans and specifications showing the proposed revisions relative to the original Contract. This portion of the submittal shall include design notes and construction details. The proposed plans and specifications shall be signed and sealed by the Contractor's Engineer.
 - (4) A cost comparison, summarizing all of the items that the proposed VECP replaces, reduces, eliminates, adds, or otherwise changes from the original Contract work, including all impacts to traffic control, detours and all other changes. The cost comparison shall not include cost savings resulting from purportedly decreased inspection or testing requirements, or CDOT overhead. All costs and proposed unit prices shall be documented by the Contractor.

- (5) A statement specifying the date by which a Contract Modification Order must be executed to obtain the maximum cost reduction during the remainder of the Contract and the date when a response from CDOT is required to avoid delays to the prosecution of the Contract.
 - (6) A statement detailing the effect the Proposal will have on the time for completing the Contract.
 - (7) A description of any previous use or testing of the proposed changes and the conditions and results. If the Proposal was previously submitted on another CDOT project, the proposal shall indicate the date, Contract number, and the action taken by CDOT.
 - (8) An estimate of any effects the VECP will have on other costs to CDOT.
 - (9) A statement of life cycle costs, when appropriate. Life cycle costs will not be considered as part of cost savings but shall be calculated for additional support of the Proposal. A discount rate of four percent shall be used for life cycle calculations.
- (c) *Evaluation.* VECP will be evaluated by CDOT in accordance with the CDOT *Construction Manual*.

Additional information needed to evaluate Proposals shall be provided in a timely manner. Untimely submittal of additional information will result in rejection of the Proposal. Where design changes are proposed, the additional information shall include results of field investigations and surveys, design and computations, and changed plan sheets required to develop the design changes.

1. The Engineer will determine if a Proposal qualifies for consideration and evaluation. The Engineer may reject any Proposal that requires excessive time or costs for review, evaluation, or investigation. The Engineer may reject proposals that are not consistent with CDOT's design criteria for the project.
2. VECPs, whether or not approved by CDOT, apply only to the ongoing Contracts referenced in the Proposal and become the property of CDOT. Proposals shall contain no restrictions imposed by the Contractor on their use or disclosure. CDOT has the right to use, duplicate and disclose in whole or in part any data necessary for the utilization of the Proposal. CDOT retains the right to utilize any accepted Proposal or part thereof on other projects without obligation to the Contractor. This provision is subject to rights provided by law with respect to patented materials or processes.
3. If CDOT is already considering revisions to the Contract or has approved changes in the Contract that are subsequently proposed in a VECP, the Engineer will reject the Proposal and may proceed to implement these changes without obligation to the Contractor.

4. The Contractor shall have no claim against CDOT for additional costs or delays resulting from the rejection or untimely acceptance of a VECP. These costs include but are not limited to: development costs, loss of anticipated profits, increased material or labor costs, or untimely response.
5. Proposals will be rejected if equivalent options are already provided in the Contract.
6. Proposals that only reduce or eliminate contract pay items will be rejected.
7. The cost savings and other benefits generated by the Proposal must be sufficient to warrant review and processing, as determined by the Engineer.
8. A proposal changing the type or thickness of the pavement structure will be rejected.
9. No VECP proposal can be used to alter incentive and disincentive rates and maximums on **Cost plus Time bid (A+B)** projects.
10. Right of Way cannot be bought as part of a VECP to eliminate phasing on a project.
11. A VECP changing the design of a structure may be considered by CDOT, if the design meets the following conditions:
 - (1) The design shall not involve detouring of traffic onto local roads or streets to an extent greater than the original plans, unless previously approved by the affected local agencies.
 - (2) The design has the same roadway typical section as the original plans.
 - (3) The design meets or exceeds the benefits of the construction-handling or traffic phasing scheme shown in the original plans.
 - (4) The design meets or exceeds all environmental commitments and permit requirements of the original Contract.
 - (5) The design shall not increase environmental impacts beyond those of the original Contract.
 - (6) The design meets or exceeds the vertical and horizontal clearances and hydraulic requirements shown on the original plans.
 - (7) The design has the same or greater flexibility as the original design to accommodate future widening.
 - (8) The design shall not change the location of the centerline of the substructure elements, without demonstrating substantial benefits over the original plans.
 - (9) The design shall not change the grade or elevation of the final riding surface, without demonstrating substantial benefits over the original plans.

- (10) The design shall match corridor future development plans and architectural, aesthetic and pavement requirements, if applicable.
 - (11) The design shall not adversely impact CDOT's Bridge Inspection, maintenance, or other long-term costs or operations.
 - (12) The design shall meet all CDOT design standards and policies.
 - (13) The design shall include all additional costs and coordination necessary to relocate utilities.
 - (14) Major structure designs provided by the Contractor shall include an independent plan review and design check by a Professional Engineer licensed in the State of Colorado and employed by a firm other than the engineer-of-record. This design review will be performed at the Contractor's expense and shall be included in the Contractor's engineering costs.
 - (15) The Contractor shall provide CDOT with all design calculations, independent design check calculations, a rating package for each bridge prepared in accordance with the current CDOT Bridge Rating Manual, and a record set of quantity calculations for each structure.
12. The Engineer will reject all or any portion of the design or construction work performed under an approved VECP if unsatisfactory results are obtained. The Engineer will direct the removal of such rejected work and require construction to proceed under the original Contract requirements without reimbursement for work performed under the proposal, or for its removal.
- If a structure design VECP meets these and all other requirements, CDOT may, at its sole option, accept or reject the proposal.
- (d) *Basis of Payment.* If the VECP is accepted, a Contract Modification Order will authorize the changes and payment. Reimbursement will be made as follows:
1. The changes will be incorporated into the Contract by changes in quantities of unit bid items, new agreed unit price items, lump sum or any combination, as appropriate, under the Contract. Unless there is a differing site condition as described in subsection 104.02, the Contractor shall not receive additional compensation for quantity overruns, design errors, supplemental surveys, geotechnical investigations, additional items, or other increases in cost that were not foreseen in the accepted VECP unless otherwise approved by the Engineer.
 2. For all VECPs, the incentive payment shall be calculated as follows:

$$(\text{gross cost of deleted work}) - (\text{gross cost of added work}) = (\text{gross savings})$$

$$(\text{gross savings}) - (\text{Contractor's engineering costs}) - (\text{CDOT's engineering costs}) = (\text{net savings})$$

Any net savings less than \$25,000 can be kept by the Contractor.

If the net savings are greater than \$25,000 then the amount over \$25,000 will be shared equally with CDOT and calculated as follows:

(net savings) - \$25,000 = shared savings

Contractor's total incentive = (shared savings) / 2 + \$25,000

The Contractor's engineering costs will be reimbursable only for outside consultant costs that are verified by certified billings. CDOT's engineering costs shall be actual consultant costs billed to CDOT and extraordinary in-house personnel labor costs. These labor costs will be calculated at the fixed amount of \$50.00 per hour per employee. Project personnel assigned to the field office or who work on the project on a regular basis shall not be included in CDOT's portion of the cost.

3. At the completion of the VECP design work, the Contractor shall furnish CDOT any additional documentation such as surveys, geotechnical reports, documentation, or calculations and shop drawings required to complete the work.

At the completion of the project, the Contractor shall furnish CDOT with PE-stamped Record sets, and As-Constructed plans showing the VECP work.

- (e) *Contractor Appeal Process.* Appeals can be made only on VECPs (Category A). The Prime Contractor submitting the VECP may file a one-time appeal to the Region Transportation Director (RTD) on the denial of any VECP (Category A). The Contractor must have a valid reason for the appeal and the decision of the Region Transportation Director will be final.

SECTION 105 CONTROL OF WORK

105.01 Authority of the Engineer. The Engineer will decide all questions regarding the quality and acceptability of materials furnished, work performed, and the rate of progress of the work; all interpretation of the plans and specifications; and the acceptable fulfillment of the Contract.

The Engineer will, in writing, suspend the work, wholly or in part:

- (1) For failure of the Contractor to correct conditions unsafe for the workmen or the general public
- (2) For failure to carry out Contract provisions
- (3) For failure to carry out orders
- (4) For periods of unsuitable weather
- (5) For conditions unsuitable for the prosecution of the work
- (6) For any other condition or reason determined to be in the public interest

105.02 Plans, Shop Drawings, Working Drawings, Other submittals, and Construction Drawings.

- (a) *Plans.* The Contract plans will show lines, grades, typical cross sections of the roadway, location and design of all structures, and summary of items appearing on the proposal. Only general features will be shown for steel and prestressed concrete bridges.
- (b) *Shop drawings, Working Drawings, and Other Submittals - General.* All work shall be performed in accordance with the plans, reviewed shop drawings, working drawings, or other submittals. Specific requirements for the required shop drawings, working drawings, and other submittals for this project are contained in the specifications.

The Contractor shall be responsible for the accuracy of all dimensions and quantities shown on the shop drawings, working drawings, and other submittals. The Contractor shall correlate all information in the Contract, in the submittals, and in all revisions at the project site to insure that there are no conflicts and that the work can be constructed as shown. The Contractor shall be responsible for all information that pertains to the fabrication processes and methods of construction.

Shop drawings, working drawings, and other submittals shall be delivered to the Engineer. The Contractor shall notify the Engineer, in writing, at the time of submittal of shop drawings, working drawings, and other submittals, of any information submitted that deviates from the requirements of the plans and specifications. In addition, specific notation of the deviations or changes from the plans and specifications shall be placed on the shop drawing, working drawing, or other submittal.

The first sheet or page of each set of shop drawings, working drawings, and other submittals shall be stamped “Approved for Construction” and signed by the Contractor. Submittals shall be made in complete packages which will allow the Engineer to properly review them for general compliance with the Contract and to effectively evaluate the proposed methods of construction. The allowed time for review shall not begin until such submittals are complete.

The format of the shop drawings, working drawings, and other submittals shall be as follows:

1. All manually drafted shop drawings and working drawings shall be 34 inches long by 22 inches wide overall. There shall be a 2 inch margin on the left side of the sheet and a ½ inch margin on the other three sides. A blank space, 6 inches long by 3 inches wide, shall be left available near the lower right-hand corner of shop drawings, for the Engineer’s review stamp. Computer drafted 11 inch by 17 inch drawings may be submitted.
2. There shall be a title block in the lower right-hand corner of each sheet. The title block shall show the project number, structure number, the location of the structure, the contents of the sheet, designer/engineer, sheet number, and revision number.
3. Design notes, calculations, lists, reports, descriptions, catalog cuts, and other non-drawing submittals shall be submitted on 8½ inch by 11 inch sheets.
4. Unless otherwise specified, seven sets of shop drawings, and other submittals shall be submitted to the Engineer. One additional set of shop drawings shall be submitted for each railroad company.
5. Unless otherwise specified, two sets of working drawings shall be submitted to the Engineer.
6. The shop drawings, working drawings, other submittals and all revisions shall be signed and sealed for the Contractor, by a professional engineer registered in the state of Colorado when required by the specifications. Submittals without the required signature and seal will not be accepted and will be returned to the Contractor without action.

Table 105-1 which summarizes the minimum required submittals is included at the end of subsection 105.02. Table 105-1 lists submittals in one location for information. The table clarifies the type of submittal and whether the Contractor’s Engineer must sign and seal the submittal. Table 105-1 may not be all inclusive. The Contractor shall provide all submittals required by the Contract, including those not listed in the table.

- (c) *Shop Drawings.* The Contractor shall provide shop drawings to adequately control the work. The Contractor shall submit shop drawings to the Engineer for formal review.

The Engineer will review the shop drawings to evaluate that general conformance with the design concept and that general compliance with the information given in the plans and specifications has been achieved. The review does not extend to accuracy of dimensions, means, methods, techniques, sequences, schemes, procedures of construction, or to safety precautions. The review by the Engineer is not a complete check. Review of the shop drawings does not relieve the Contractor of the responsibility for the correctness of the shop drawings. All work done prior to the Engineer's review of shop drawings shall be at the Contractor's sole risk.

The Engineer may request additional details and require the Contractor to make changes in the shop drawings which are necessary to conform to the provisions and intent of the plans and specifications without additional cost to the Department.

After review, the Engineer will return two sets of shop drawings, for use by the Contractor and the Fabricator or Supplier. Returned shop drawings will be stamped with the Engineer's review stamp to indicate one of the following:

Reviewed, no exception taken	Shop drawings have been reviewed and do not require resubmittal
Reviewed, revise as noted	Shop drawings have been reviewed and the Contractor shall incorporate the comments noted in the shop drawings into the work. The shop drawings do not require resubmittal.
Resubmit, revise as noted	Shop drawings require correction or redrawing and shall be resubmitted for review. If shop drawings are returned for correction or redrawing, corrections shall be made and the shop drawings shall be resubmitted by the Contractor in the same manner as the first submittal. Specific notation shall be made on the shop drawing to indicate the revisions

The time required for the Engineer's review of each submittal will not exceed four weeks after a complete submittal of shop drawings is received by the Engineer. It is the intent of these specifications that no more than two submittals of shop drawings shall be required for any one particular item. If additional submittals are required by actions of the Contractor, resulting delays shall be the responsibility of the Contractor. If additional submittals are required by the Engineer's actions or if shop drawing review is delayed by the Engineer, the Contractor may request an extension of time as provided in subsection 108.08.

All revisions made to the shop drawings after the Engineer's initial review process will require resubmittal.

- (d) *Working Drawings.* The Contractor shall supplement the plans with working drawings to detail the construction or to provide the Engineer with information on the proposed methods of construction.

Unless otherwise specified, the Contractor shall submit two sets of working drawings to the Engineer for information only. These drawings will not be formally reviewed by the Engineer. The Contractor shall submit working drawings to the Engineer ten days before the start of work. Working drawings will not be returned to the Contractor.

- (e) *Other Submittals.* Other submittals shall be prepared and submitted by the Contractor as defined for working drawings. Unless otherwise specified, two copies shall be submitted to the Engineer for information only. The plans or specifications will indicate which submittals require formal review by the Engineer.

One record set of all design work performed by the Contractor's Engineer shall be submitted to the Project Engineer.

- (f) *Construction Drawings.* The Contractor shall keep one set of plans, reviewed shop drawings, working drawings, and other submittals available on the project site at all times. This set shall be defined as the "construction drawings." The Contractor shall note on these construction drawings all changes and deviations from the work shown on the plans, shop drawings, working drawings, and other submittals. The construction drawings shall be kept current as the work progresses and notations shall be made within seven days of the change or deviation.

The first sheet or page of each set of construction drawings shall be stamped "As Constructed" and signed by the Contractor.

Upon completion of the work and prior to final payment, the construction drawings shall be submitted to the Engineer.

- (g) Furnishing the shop drawings, working drawings, construction drawings, and other submittals will not be measured and paid for separately, but shall be included in the work.
- (h) Failure of the Contractor to comply with the requirements for shop drawings, working drawings, other submittals, and construction drawings may be considered unsatisfactory contract progress. Monthly progress payments may be withheld until the requirements are met.
- (i) Except as specifically noted, all time required for review of shop drawings, working drawings, and other submittals shall be included in the work and shall not be the basis for any claim for a time extension or monetary adjustment except as provided for herein.

Table 105-1
SUMMARY OF CONTRACTOR SUBMITTALS

Section No.	Description	Type	Contractor P.E. Seal Required?
504	MSE Walls (Contractor Alternative)	Shop Drawing	Yes
504	MSE Walls (Default Design)	Shop Drawing	No
508	Timber Structures	Shop Drawing	No
509	Steel Structures	Shop Drawing	No
512	Bearing Devices Type II	Shop Drawing	No
512	Bearing Devices Type III	Shop Drawing	Yes
514	Pedestrian and Bikeway Railing	Working Drawing	No
518	Expansion Devices: 0-4"	Working Drawing	No
518	Expansion Devices: 0-6", 9", 12"...	Shop Drawing	Yes
601 & 618	Precast Panel Deck Forms	Working Drawing	No
601	Permanent Steel Bridge Deck Forms	Working Drawing	Yes
601	Falsework	Working Drawing	Yes
602	Reinforcing Steel	Working Drawing	No
606	Bridge Railing	Working Drawing	No
607	Sound Barriers (Alternative)	Shop Drawing	Yes
607	Sound Barriers (Default Design)	Working Drawing	No
613	Light Standards (Low Mast)	Working Drawing	Yes
613	Light Standards (High Mast)	Working Drawing	Yes
614	Overhead Sign Structures	Shop Drawing	Yes*
614	Variable Message Signs (Cabinet and tilting bracket)	Working Drawing	Yes
614	Traffic Signal Pole (Mast Arm)	Shop Drawing	No
614	Traffic Signal Pedestal Pole	Working Drawing	No
614	Traffic Signal Equipment	Working Drawing	No
618	Prestressed Concrete (Pre-tensioned)	Shop Drawing	Yes*
618	Prestressed Concrete (Post-tensioned)	Shop Drawing	Yes*
618	Steel Diaphragms between Prestressed Girders	Working Drawing	No
628	Pre-fabricated Pedestrian Bridges	Shop Drawing	Yes

*A PE seal is required where the Contractor has provided the design for the item, or performed engineering to modify the details shown on the plans. The PE seal is not required where complete details are provided on the plans.

105.03 Conformity to the Contract. All work performed and all materials furnished shall conform to the lines, grades, cross sections, dimensions, and material requirements, including tolerances, shown in the Contract.

All Hot Mix Asphalt (HMA) materials or work will be evaluated for conformity to the Contract in accordance with subsection 105.05 except HMA that is used for patching and temporary pavement.

For those items of work where working tolerances are not specified, the Contractor shall perform the work in a manner consistent with reasonable and customary manufacturing and construction practices.

When the Engineer finds that the materials furnished, the work performed, or the finished product does not conform with the Contract but that reasonably acceptable work has been produced, the Engineer will determine the extent the work will be accepted and remain in place. If accepted the Engineer will (1) document the basis for acceptance by Contract Modification Order which will provide for an appropriate reduction in the Contract price for such work or materials not otherwise provided for in this subsection or (2) notify the Contractor in writing that the Contract unit price will be reduced in accordance with this subsection when P is 25 or less, or (3) in lieu of a price reduction, permit correction or replacement of the finished product provided the correction or replacement does not adversely affect the work.

When the Engineer finds the materials furnished, work performed, or the finished product are not in conformity with the Contract and has resulted in an inferior or unsatisfactory product, the work or materials shall be removed and replaced or otherwise corrected by and at the expense of the Contractor.

If asphalt cement testing demonstrates that asphalt cement was acid modified or alkaline modified, the supplier will be automatically decertified. In addition, all material placed containing the acid modified or alkaline modified asphalt cement shall be removed and replaced with specification material at no cost to the Department.

Materials will be sampled and tested by the Department in accordance with the sampling and testing schedules and procedures contained in the Department's Field Materials Manual. The approximate maximum quantity represented by each sample will be as set forth in the schedules. An additional number of samples in relation to the quantity of material represented may be selected and tested at the Engineer's discretion. The quantity represented by five consecutive random samples will constitute a lot whenever production schedules and material continuity permit. The Engineer may establish a lot consisting of the quantity represented by any number of consecutive random samples from one to seven inclusive when it is necessary to represent short production runs, significant material changes, or other unusual characteristics of the work. Tests that are determined to have sampling or testing errors will not be used.

Materials or work will be evaluated for price reduction only when deviations from specifications occur on any of the several individual tests for the lot. The several individual test values will be averaged and the percent of price reduction for the lot will be determined by applicable formula.

The formula in (a) and (b) below will be used only when the lot is represented by three to seven tests inclusive.

- (a) The formula, $P = (X_n + aR - T_u)F$, will be used if a maximum limit only is specified or; when the average of the several test values is above the mid point of the specification band or above the job-mix formula value.
- (b) The formula, $P = (T_L + aR - X_n)F$, will be used if a minimum limit only is specified or; when the average of the several test values is below the mid point of the specification band or below the job-mix formula value.
- (c) When the lot is represented by fewer than three tests, the materials will be evaluated for price reduction by the following procedure: Lots represented by two tests will be divided into two separate lots represented by one test each, as determined by the Engineer. Each lot which deviates from the specifications will be price reduced by one of the following formulas. When a maximum limit only is specified or the test value is above the maximum specified limit, the formula $P = 0.76(T_o - T_u)F$ will be used. When a minimum limit only is specified or the test value is below the minimum specified limit, the formula $P = 0.76(T_L - T_o)F$ will be used. When a lot is represented by one test only, the materials will be evaluated for price reduction as described in this paragraph.

Where:

P is the percent of reduction in contract price,

X_n is the average of the several test values from samples taken from the lot, with "n" indicating the number of values,

a is a variable factor to be used in "n" changes according to the following: when n is 3, a = 0.45; n is 4, a = 0.38; n is 5, a = 0.33; n is 6, a = 0.30; and n is 7, a = 0.28.

R is the difference between the highest and lowest values in the group of several test results from the lot,

T_u is the upper or maximum tolerance limit permitted by the specifications,

T_L is the lower or minimum tolerance limit permitted by the specifications, and

T_o is the test value of the test which deviates from the specifications,

F is price reduction factor to be applied for each element as shown in the following table:

TABLE OF PRICE REDUCTION FACTORS

Element	Factor "F"
100 percent size sieve	1
12.5 mm (½") sieve and larger	1
150 µm (No. 100) sieve to 9.5 mm (3/8") sieve inclusive (except 100 percent size sieve)	3
75 µm (No. 200) sieve	6
75µm (No. 200) sieve (cover coat material)	25
Liquid Limit	3
Plasticity Index	10
Asphalt penetration	1
Asphalt residue	3
Portland Cement Concrete Pavement Fine Aggregate Sand Equivalent	0.3
Hydrated Lime Gradation	0.3
Toughness, inch-pounds, minimum	0.8
Tenacity, inch-pounds, minimum	0.8
Elastic Recovery, 25 °C, percent minimum	1.25
Ductility, 4 °C (5cm/min) cm, minimum	1.25

If P is less than 3, or a negative quantity, the material will be accepted as being in conformity. In cases where one or more elements show a positive P value, such positive values will be added and the resulting sum will be used to determine whether the material is in conformity. If the total P value is between 3 and 25, the Engineer may require correction or may accept the material at a reduced price. If P is greater than 25, the Engineer may: (1) require complete removal and replacement with specification material at no additional cost to the Department; (2) require corrective action to bring the material into conformity at no additional cost to the Department; or (3) where the finished product is found to be capable of performing the intended purpose and the value of the finished product is not affected, permit the Contractor to leave the material in place with an appropriate price reduction to be based on engineering evaluation but not to be less than that which would have occurred had a reduction been made where P = 25.

If the P for aggregate gradation for Items 206, 304, or the gradation of hydrated lime for item 403 is 3 or greater the reduction will apply to the contract price multiplied by the Multipliers (M) listed in the following table:

Multiplier for Price Reductions for Miscellaneous Items

Item Number-Name	Element	Multiplier (M)
206-Structural Backfill	Gradation	0.60
304-Aggregate Base Course	Gradation	0.60
403-Hot Mix Asphalt*	Hydrated Lime Gradation	0.60

* The P value for hydrated lime shall be applied to the price of the HMA item when asphalt cement is not paid for separately. Lime gradation P values will not be combined with Pay Factors for other elements.

Multiplier for HMA Price Reductions

Where Asphalt Cement is not paid for separately:

Item Number-Name	Element	Multiplier (M)
403-Stone Matrix Asphalt	Gradation, Asphalt Cement Content, or Compaction	0.60
403-Hot Mix Asphalt*	Hydrated Lime Gradation	0.60

* The P value for hydrated lime shall be applied to the price of the HMA item. Lime gradation P values will not be combined with Pay Factors for other elements.

The following equation shows how the Multiplier is used to determine the price reduction.

Price reduction = $(P/100) \cdot \text{Multiplier} \cdot \text{Price per Unit} \cdot \text{Quantity}$.

If no multiplier is listed no adjustment to the computed P is required. This is equivalent to a multiplier of one.

Price reduction for those elements which are not included in the Table of Price Reduction Factors will be determined by the Engineer.

The Contractor will not have the option of accepting a price reduction in lieu of producing specification material. Continued production of non-specification material will not be permitted. Material which is obviously defective may be isolated and rejected without regard to sampling sequence or location within a lot.

105.04 Conformity to the Contract of Superpave Performance Graded Binders. Asphalt binders will be price reduced according to the following if the requirements of subsection 702.01 are not met:

TABLE OF PERFORMANCE GRADED BINDER LIMITS

Property	Specification	Compliance Limit for Price Reduction of 0%	Rejection Limit, Price Reduction = 25%
G* _{sin} (delta) of RTFO Residue	2.20 Min	1.87 Min	< 1.53
Slope (m-value) of the Creep Curve at Low Grade Temperature + 10° C.	0.300 Min	0.295 Min	< 0.266
Stiffness of the PAV Residue at Low Grade Temperature + 10° C, (Mpa)	300 Max	311 Max	>355

The price reduction will be 25 percent at the rejection limit. Between the compliance limit and the rejection limit, the price reduction will be calculated as follows:

$$PR = 25 \cdot \left[\frac{CL - \text{test value}}{CL - RL} \right]$$

Where: PR = Price Reduction
 CL = Compliance Limit
 RL = Rejection Limit

- (a) The price reductions will be cumulative if more than one PG binder property specified in the Table of Performance Graded Binder Limits is out of specification, resulting in P (total). When binder is included in the contract unit price for HMA, the price reduction will be calculated as follows:

$$\text{Amount of Reduction} = [P(\text{total})] \cdot [(1/100)] \cdot (\text{Invoice Price for PG Binder})$$

When the binder is paid for separately, the total price reduction will be calculated as follows:

$$\text{Amount of Reduction} = [P(\text{total})] \cdot [(1/100)] \cdot (\text{Contract Unit Price for PG Binder})$$

- (b) Price reductions based on the “F” factors in the Table of Price Reduction Factors described in subsection 105.03 will be in addition to the PG binder price reductions. Other binder requirements listed in the Table of Performance Graded Binder Limits but not price reduced in subsections 105.03 or 105.04 may be tested, but will not be considered for price reduction calculations. However, the Contractor will not be allowed to continue to produce mix with out of specification PG binder. If two consecutive samples fail to meet all requirements listed in the Table of Performance Graded Binder Limits, the Contractor shall take corrective action before being

allowed to continue production of Hot Mix Asphalt. If proper corrective measures cannot be readily determined, the Engineer will suspend the use of such material until the Engineer can determine from laboratory tests that the Contractor can provide material that is in compliance with the Table of Performance Graded Binder Limits.

- (c) The Contractor will not have the option of accepting a price reduction in lieu of producing specification material. Continued production of non-specification material will not be permitted. Material which is obviously defective may be isolated and rejected without regard to sampling sequence or location within a lot.

105.05 Conformity to the Contract of Hot Mix Asphalt. Conformity to the Contract of all Hot Mix Asphalt, Item 403, except Hot Mix Asphalt (Patching) and temporary pavement will be determined by tests and evaluations of elements that include asphalt content, gradation, in-place density, and joint density in accordance with the following:

All work performed and all materials furnished shall conform to the lines, grades, cross sections, dimensions, and material requirements, including tolerances, shown in the Contract.

When the Engineer finds the materials or work furnished, work performed, or the finished product are not in conformity with the Contract and has resulted in an inferior or unsatisfactory product, the work or material shall be removed and replaced or otherwise corrected at the expense of the Contractor.

Materials will be sampled randomly and tested by the Department in accordance with subsection 106.05 and with the applicable procedures contained in the Department's Field Materials Manual. The approximate maximum quantity represented by each sample will be as set forth in subsection 106.05. Additional samples may be selected and tested as set forth in Section subsection 106.05 at the Engineer's discretion.

A process will consist of either a single test value or a series of values resulting from related tests of an element of the Contractor's work and materials. An element is a material or workmanship property that can be tested and evaluated for quality level by the Department approved sampling, testing, and analytical procedures. All materials produced will be assigned to a process. A change in process is defined as a change that affects the element involved. For any element, with the exception of the joint density element, a process normally will include all produced materials associated with that element prior to a change in the job mix formula (Form 43). For joint density, a new process will be established for each new layer of pavement or for changes in joint construction. Density measurements taken within each compaction test section will be a separate process. The Engineer may separate a process in order to accommodate small quantities or unusual variations.

Evaluation of materials for pay factors (PF) will be done using only the Department's acceptance test results. Each process will have a PF computed in accordance with the requirements of this Section. Test results determined to have sampling or testing errors will not be used.

Except for density measurements taken within a compaction test section, any test result for an element greater than the distance 2 times V (see Table 105-2) outside the tolerance limits will be designated as a separate process and the pay factor will be calculated in accordance with subsection 105.05(a). A pay factor less than zero shall be zero. The calculated PF will be used to determine the Incentive or Disincentive Payment (I/DP) for the process.

In the case of in-place density or joint density, the Contractor will be allowed to core the exact location (or immediately adjacent location for joint density) of a test result more than 2 times V outside the tolerance limit. The core must be taken and furnished to the Engineer within eight hours after notification by the Engineer of the test result. The result of this core will be used in lieu of the previous test result. Cores not taken within eight hours after notification by the Engineer will not be used in lieu of the test result. All costs associated with coring shall be at the Contractor's expense.

- (a) *Representing Small Quantities.* When it is necessary to represent a process by only one or two test results, PF will be the average of PFs resulting from the following:

If the test result is within the tolerance limits then $PF = 1.00$

If the test result is above the maximum specified limit, then
 $PF = 1.00 - [0.25(T_o - T_u)/V]$

If the test result is below the minimum specified limit, then
 $PF = 1.00 - [0.25(T_L - T_o)/V]$

Where: PF = pay factor.

V = V factor from Table 105-2.

T_o = the individual test result.

T_u = upper specification limit.

T_L = lower specification limit.

The calculated PF will be used to determine the I/DP for the process.

- (b) *Determining Quality Level.* Each process with three or more test results will be evaluated for a quality level (QL) in accordance with Colorado Procedure 71.
- (c) *Gradation Element.* Each specified sieve, with the exception of 100 percent passing sieves, will be evaluated for QL separately. The lowest calculated QL for a sieve will be designated as the QL for gradation element for the process.
- (d) *Joint Density Element.* Joint Density will be tested according to subsection 401.17.
- (e) *Process Pay Factor.* Using the calculated QL for the process, compute the PF as follows: The final number of random samples (Pn) in each process will determine the final pay factor. As test values are accumulated for each process, Pn will change accordingly. When the process has been completed, the number of random samples it contains will determine the computation of

PF, based on Table 105-3 and formula (1) below. When Pn is from 3 to 9, or greater than 200, PF will be computed using the formulas designated in Table 105-3. Where Pn is equal to or greater than 10 and less than 201, PF will be computed by Formula (1):

$$PF = \frac{PF_1 + PF_2}{2} + \left[\frac{PF_2 + PF_3}{2} - \frac{PF_1 + PF_2}{2} \right] \cdot \frac{Pn_2 - Pn_x}{Pn_2 - Pn_3}$$

Formula (1)

Where, when referring to Table 105-3:

PF₁ = PF determined at the next lowest Pn formula using process QL

PF₂ = PF determined using the Pn formula shown for the process QL

PF₃ = PF determined at the next highest Pn formula using process QL

Pn₂ = the lowest Pn in the spread of values listed for the process Pn formula

Pn₃ = the lowest Pn in the spread of values listed for the next highest Pn formula

Pn_x = the actual number of test values in the process

When evaluating the item of Furnish Hot Mix Asphalt, the PF for the element of In-Place Density shall be 1.0.

Regardless of QL, the maximum PF in relation to Pn is limited in accordance with Table 105-3.

As test results become available, they will be used to calculate QL and PF numbers for each process. The process I/DPs will then be calculated and accumulated for each element and for the item. The test results and the accumulated calculations will be made available to the Contractor upon request.

Numbers from the calculations will be carried to significant figures and rounded according to AASHTO Standard Recommended Practice R-11, Rounding Method.

- (f) *Evaluation of Work.* When the PF of a process is 0.75 or greater, the finished quantity of work represented by the process will be accepted at the appropriate pay factor. If the PF is less than 0.75, the Engineer may:
- (1) Require complete removal and replacement with specification material at the Contractor's expense; or
 - (2) Where the finished product is found to be capable of performing the intended purpose and the value of the finished product is not affected, permit the Contractor to leave the material in place.

If the material is permitted to remain in place, the PF for the process will not be greater than 0.75. When condition red, as described in subsection 106.05(g), exists for any element, resolution and correction will be in accordance with Section 106. Material which the Engineer determines is defective may be isolated and rejected without regard to sampling sequence or location within a process.

If removal and replacement is required because the joint density PF for a process is below 0.75, the Contractor shall remove and replace the full lane width adjacent to and including at least 6 inches beyond the visible joint line for the entire length of joint representing the process. If the lane removed is adjacent to another joint, that joint shall also be removed to a point 6 inches beyond the visible joint line. When a single joint density core is more than 2V outside the tolerance limits, the removal and replacement limits shall be identified by coring the failing joint at 25 foot intervals until two successive cores are found to be 1V or less below the minimum tolerance limit. If removal and replacement is required, the Contractor shall submit documentation identifying the process to be used to correct the area in question in writing. The process will be approved by the Engineer before commencing the corrective work.

**Table 105-2
“W” AND “V” FACTORS FOR VARIOUS ELEMENTS**

Hot Mix Asphalt		
Element	V Factor	W Factor
2.36 mm (No. 8) mesh and larger sieves	2.80	N/A
600 μm (No. 30) mesh sieve	1.80	N/A
75 μm (No. 200) mesh sieve	0.80	N/A
Gradation	N/A	15
Asphalt Content	0.20	25
In-place Density	1.10	45
Joint Density	1.60	15

Table 105-3
FORMULAS FOR CALCULATING PF BASED ON Pn

Pn	When Pn as shown at left is 3 to 9, or greater than 200, use designated formula below to calculate Pay Factor, PF = ...,when Pn is 10 to 200, use formula (1) above:	Maximum PF
3	$0.31177 + 1.57878 (QL/100) - 0.84862 (QL/100)^2$	1.025
4	$0.27890 + 1.51471 (QL/100) - 0.73553 (QL/100)^2$	1.030
5	$0.25529 + 1.48268 (QL/100) - 0.67759 (QL/100)^2$	1.030
6	$0.19468 + 1.56729 (QL/100) - 0.70239 (QL/100)^2$	1.035
7	$0.16709 + 1.58245 (QL/100) - 0.68705 (QL/100)^2$	1.035
8	$0.16394 + 1.55070 (QL/100) - 0.65270 (QL/100)^2$	1.040
9	$0.11412 + 1.63532 (QL/100) - 0.68786 (QL/100)^2$	1.040
10 to 11	$0.15344 + 1.50104 (QL/100) - 0.58896 (QL/100)^2$	1.045
12 to 14	$0.07278 + 1.64285 (QL/100) - 0.65033 (QL/100)^2$	1.045
15 to 18	$0.07826 + 1.55649 (QL/100) - 0.56616 (QL/100)^2$	1.050
19 to 25	$0.09907 + 1.43088 (QL/100) - 0.45550 (QL/100)^2$	1.050
26 to 37	$0.07373 + 1.41851 (QL/100) - 0.41777 (QL/100)^2$	1.055
38 to 69	$0.10586 + 1.26473 (QL/100) - 0.29660 (QL/100)^2$	1.055
70 to 200	$0.21611 + 0.86111 (QL/100)$	1.060
≥ 201	$0.15221 + 0.92171 (QL/100)$	1.060

(g) *Process I/DP Computation.*

$$I/DP = (PF - 1)(QR)(UP)(W/100)$$

Where: I/DP = Incentive or Disincentive Payment

PF = Pay Factor

QR = Quantity in Tons of HMA Represented by the Process

UP = Unit Bid Price of Asphalt Mix

W = Element factor from Table 105-2

When AC is paid for separately UP shall be:

$$UP = [(Ton_{HMA})(UP_{HMA}) + (Ton_{AC})(UP_{AC})] / Ton_{HMA}$$

Where: Ton_{HMA} = Tons of Asphalt Mix

UP_{HMA} = Unit Bid Price of Asphalt Mix

Ton_{AC} = Tons of Asphalt Cement

UP_{AC} = Unit Bid Price of Asphalt Cement

For the joint density element:

$$UP = UP_{HMA}$$

Where: UP_{HMA} is as defined above

When AC is paid for separately UP shall be:

$$UP = [(B\text{Ton}_{HMA}) (BUP_{HMA}) + (B\text{Ton}_{AC}) (BUP_{AC})] / B\text{Ton}_{HMA}$$

Where:	$B\text{Ton}_{HMA}$	=	Bid Tons of Asphalt Mix
	BUP_{HMA}	=	Unit Bid Price of Asphalt Mix
	$B\text{Ton}_{AC}$	=	Bid Tons of Asphalt Cement
	BUP_{AC}	=	Unit Bid Price of Asphalt Cement

- (h) *Element I/DP.* The I/DP for an element shall be computed by accumulating the process I/DPs for that element.
- (i) *I/DP for a Mix Design.* The I/DP for a mix design shall be computed by accumulating the process I/DPs for the asphalt content, in-place density, and gradation elements for that mix design. The accumulated quantities of materials for each element must be the same at the end of I/DP calculations for a mix design.
- (j) *Project I/DP.* The I/DP for the project shall be computed by accumulating the mix design I/DPs and the joint density I/DPs. The accumulated quantities of materials for each element must be the same at the end of I/DP calculations for the project.

105.06 Conformity to the Contract of Portland Cement Concrete Pavement.

Conformity to the Contract of all Portland Cement Concrete Pavement, Item 412, will be determined in accordance with the following:

When the Engineer finds that the materials furnished, the work performed, or the finished product does not conform with the Contract, or the Pay Factor (PF) for an element's process is less than 0.75 but that reasonably acceptable work has been produced, the Engineer will determine the extent of the work that will be accepted and remain in place. The Engineer will use a Contract Modification Order to document the justification for allowing the work to remain in place and the price adjustment that will be applied.

When the Engineer finds the materials furnished, work performed, or the finished product is not in conformity with the Contract, or the PF for an element's process is less than 0.75 and has resulted in an inferior or unsatisfactory product, the work or material shall be removed and replaced or otherwise corrected by and at the expense of the Contractor. When the PF for any process is 0.75 or greater, the finished quantity of work represented by the process will be accepted at the calculated pay factor.

Materials will be sampled and tested by the Contractor and the Department in accordance with subsection 106.06 and with procedures contained in the Department's Field Materials Manual. The approximate quantity represented by each sample will be as set forth in subsection 106.06, Tables 106-2 and 106-3. Additional samples may be selected and tested at the Engineer's discretion.

- (a) Incentive and Disincentive Payments (I/DP) will be made based on a statistical analysis that yields Pay Factors (PF) and Quality Levels (QL). **The PF and QL will be made based on test results for the elements of compressive strength and pavement thickness (compressive strength criteria) or the elements of flexural strength and pavement thickness (flexural strength criteria).** The Contractor shall choose whether compressive strength or flexural strength criteria will be used and indicate the choice in writing to the Engineer when the initial proposed mix design is submitted to the Engineer. Once the selection of acceptance criteria is made, they shall remain the acceptance criteria for all processes for the duration of the project.

Incentive or Disincentive payment will not be made for thickness of concrete pavement furnished by the Contractor and placed by others.

If the Contractor chooses compressive strength criteria then the QL will be calculated for the elements of compressive strength and pavement thickness on a process basis. If the Contractor chooses flexural strength criteria, then the QL will be calculated for the elements of flexural strength and pavement thickness on a process basis. A separate process will be established for an element when a change in the process affects that element. A process will consist of the test results from a series of random samples. Test results determined to have sampling or testing errors will not be used. All materials produced will be assigned to a process. A change in process is defined as a change that affects the element involved. Changes in mix design, material source, design pavement thickness, or the method being utilized to place the pavement are considered changes in process. The following is provided to clarify changes in processes for each element:

1. Construction of mainline pavement, including the shoulders if placed with the mainline, is a single process, providing there are no changes in process as described above.
 2. Construction of ramps, acceleration and deceleration lanes, shoulders placed separately, and areas requiring hand work are considered separate processes.
 3. A change in the mix design is a process change for the compressive strength element or the flexural strength element, but is not a process change for the pavement thickness element.
- (b) When it is necessary to represent material by one or two tests, each individual test shall have a PF computed in accordance with the following:

If the value of the test is at or above the lower tolerance limit, then PF = 1.000. If the value of the test is below the lower tolerance limit, then:

$$PF = 1.00 - [0.25(T_L - T_0)/V]$$

where: PF = pay factor.

V = V factor from Tables 105-4 or 105-5.

T₀ = the individual test value.

T_L = lower tolerance limit.

(c) The following procedures will be used to compute Incentive and Disincentive Payments (I/DP), quality levels (QL), and pay factors (PF) for processes represented by three or more tests:

1. Quality Level (QL) will be calculated according to CP-71.
2. Compute the PF for the process. When the process has been completed, the number of tests (Pn) it includes shall determine the formula to be used to compute the final pay factor in accordance with the following:

A. For compressive strength and pavement thickness:

When $3 \leq Pn \leq 5$

If $QL \geq 85$, then $PF = 1.00 + (QL - 85)0.001333$

If $QL < 85$, then $PF = 1.00 + (QL - 85)0.005208$

When $6 \leq Pn \leq 9$

If $QL \geq 90$, then $PF = 1.00 + (QL - 90)0.002000$

If $QL < 90$, then $PF = 1.00 + (QL - 90)0.005682$

When $10 \leq Pn \leq 25$

If $QL \geq 93$, then $PF = 1.00 + (QL - 93)0.002857$

If $QL < 93$, then $PF = 1.00 + (QL - 93)0.006098$

When $Pn \geq 26$

If $QL \geq 95$, then $PF = 1.00 + (QL - 95)0.004000$

If $QL < 95$, then $PF = 1.00 + (QL - 95)0.006757$

B. For flexural strength:

When $3 \leq Pn \leq 5$

If $QL \geq 85$, then $PF = 1.00 + (QL - 85)0.002000$

If $QL < 85$, then $PF = 1.00 + (QL - 85)0.005208$

When $6 \leq Pn \leq 9$

If $QL \geq 90$, then $PF = 1.00 + (QL - 90)0.003000$

If $QL < 90$, then $PF = 1.00 + (QL - 90)0.005682$

When $10 \leq Pn \leq 25$

If $QL \geq 93$, then $PF = 1.00 + (QL - 93)0.004286$

If $QL < 93$, then $PF = 1.00 + (QL - 93)0.006098$

When $Pn \geq 26$

If $QL \geq 95$, then $PF = 1.00 + (QL - 95)0.006000$

If $QL < 95$, then $PF = 1.00 + (QL - 95)0.006757$

3. Compute the I/DP for the process:

$$I/DP = (PF-1)(QR)(UP)$$

where: QR = Quantity Represented by the process.

UP = Unit Price bid for the Item.

The total I/DP for an element shall be computed by accumulating the individual I/DP for each process of that element.

- (d) As acceptance test results become available, they will be used to calculate accumulated QL and Incentive and Disincentive Payments (I/DP) for each element and for the item. The Contractor's test results and the accumulated calculations shall be made available to the Engineer upon request. The Engineer's test results and the calculations will be made available to the Contractor as early as reasonably practical. Numbers from the calculations shall be carried to significant figures and rounded according to AASHTO Standard Recommended Practice R-11, Rounding Method.

I/DP will be made to the Contractor in accordance with subsection 412.24(a). During production, interim I/DP will be computed for information only. The Pn will change as production continues and test results accumulate. The Pn at the time an I/DP is computed shall determine the formula to be used.

- (e) The Contractor will not have the option of accepting a price reduction or disincentive in lieu of producing specification material. Continued production of non-specification material will not be permitted. Material which is obviously defective may be isolated and rejected without regard to sampling sequence or location within a process.

Table 105-4

“V” FACTORS AND INCENTIVE PAYMENTS COMPRESSIVE STRENGTH CRITERIA

Element	V factor	Maximum Incentive Payment	Lower Tolerance Limit, T_L
Compressive Strength	400 psi	2.00 percent	4,200 psi
Pavement Thickness	0.4 inch	2.00 percent	Plan Thickness -0.4 inch

Table 105-5

“V” FACTORS AND INCENTIVE PAYMENTS FLEXURAL STRENGTH CRITERIA

Element	V factor	Maximum Incentive Payment	Lower Tolerance Limit, T_L
Flexural Strength	50 psi	3.00%	570 psi
Pavement Thickness	0.4 inch	2.00%	Plan Thickness -0.4”

- (f) *Sand Equivalence.* If the Contractor chooses compressive strength criteria then the sand equivalence (SE) as determined by CP 37 will be considered acceptable when the running average of three consecutive tests is greater than 80 percent and no individual test result is less than 75 percent. When the running average of three consecutive SE tests falls below 80 percent or an individual SE test result falls below 75 percent, paving operations shall be suspended. The Contractor shall submit a written plan to correct the low SE test results to the Engineer for approval. The Contractor shall not continue paving operations until the Engineer approves the plan in writing and three SE test results from random samples in the stockpile are above 80 percent.

105.07 Conformity to Roadway Smoothness Criteria of HMA. Roadway smoothness testing and corrective work shall be performed as described below. The pavement smoothness category shall be HRI Category II unless shown **otherwise** on the plans.

- (a) *Smoothness Quality Control Testing.*

1. The Contractor shall perform Smoothness Quality Control (SQC) testing. The test results shall be submitted to the Engineer within 48 hours of completion. SQC test results shall show the Half Car Roughness Index (HRI) or Percent Improvement (%I) for each 0.10 mile or 0.05 mile section respectively. When the Contract specifies HRI, the test results shall show the results for localized roughness.

All traffic control costs associated with SQC testing will be paid for in accordance with Section 630.

When the Contract specifies HRI Category I, SQC results shall be in the form of HRI. SQC shall be performed on the first 2,000 tons for the final layer.

When the Contract specifies HRI Category II, SQC results shall be in the form of HRI. SQC shall be performed on the first 2,000 tons for both the final layer and the next lower pavement layer and at the completion of the next lower pavement layer.

When the Contract specifies HRI Percent Improvement, SQC results shall be in the form of HRI and HRI Percent Improvement. SQC shall be performed on the first 2,000 tons for the final layer.

SQC testing shall be performed using the Contractor's inertial profiler, pursuant to the methods described in subsection 105.07(b) and in accordance with the manufacturer's recommendations. The Contractor's Profiler shall be certified according to CP 78. A list of certified profilers is located **on the CDOT web page**.

Production shall be suspended if SQC testing indicates that corrective work is required in accordance with subsection 105.07 (c). If the SQC data becomes available after production has started for the day, suspension will begin at the end of that production day. Production will

remain suspended until the problem is identified and corrected. Each time production is suspended, corrective actions shall be proposed in writing by the Contractor. Production will not be allowed to resume until the proposed corrective actions have been accepted by the Project Engineer in writing.

When production resumes, the Contractor shall profile the first 2,000 tons of HMA. The conditions above for suspension of work will apply.

2. The finished transverse and longitudinal surface elevation of the pavement shall be measured using a 10 foot straightedge. Areas to be measured will be directed by the Engineer. The Contractor shall furnish an approved 10 foot straightedge, depth gauge and operator to aid the Engineer in testing the pavement surface. Areas showing high spots of more than 3/16 inch in 10 feet shall be marked and diamond ground until the high spot does not exceed 3/16 inch in 10 feet.
- (b) *Initial Smoothness Acceptance Testing.* The Contractor shall perform Smoothness Acceptance Testing (SA) which will be used for acceptance and calculation of incentive and disincentive adjustments.

All traffic control costs associated with SA testing will be paid for in accordance with Section 630.

1. Longitudinal Pavement Surface Smoothness Acceptance. Pavement surfaces shall be tested and accepted for longitudinal smoothness as described herein.
 - A. Testing Procedure (General). The longitudinal surface smoothness of the final pavement surface shall be tested by the Contractor in accordance with CP 74 and using the Contractor's high-speed profiler (HSP). The Contractor's Profiler shall be certified according to CP 78. A list of certified profilers is located [on the CDOT web page](#).

The HSP instrumentation shall be verified in accordance with CP 74 prior to measurements. The Contractor shall lay out a distance calibration site. The distance calibration site shall be located no more than ten miles from the Project limits. The distance calibration site shall be 1056 feet long and shall be on a relatively flat, straight section of pavement as approved by the Engineer. The site shall have a speed limit equal to the Project's highest speed limit that allows for the HSP to operate uninterrupted. The limits of the site shall be clearly marked and the distance shall be measured to an accuracy of +/- 3 inches. The Contractor shall provide in writing the site location to the Engineer. The cost of the distance calibration site will not be measured and paid for separately, but shall be included in the work.

The entire length of each through lane, climbing lane and passing lane including bridge approaches, bridge decks and intersections from the beginning to the end of the project shall be profiled. Shoulders [with](#)

a width less than 12 feet and medians will not be profiled and will not be subject to incentive/disincentive adjustments. Shoulders with a width of 12 feet or greater, ramps, tapers, turn slots, acceleration lanes and deceleration lanes will be profiled, but will not be subject to incentive/disincentive adjustments. Shoulders with a width of 12 feet or more, ramps, tapers, turn slots, acceleration lanes and deceleration lanes will be evaluated for localized roughness corrective work. The profile of the entire length of a lane shall be taken at one time. However, the Engineer may divide the project into sections to accommodate Project phasing.

A sufficient distance shall be deleted from the profile to allow the profiler to obtain the testing speed plus a 300 foot distance to stop and start when required. Incentive/disincentive adjustments will not be made for this area. The final surface of these areas shall be tested in accordance with subsection 105.07(a) 2.

Shoulders less than 12 feet in width and medians constructed as part of this project shall be measured in accordance with subsection 105.07(a) 2.

When the Contract Specifies HRI, the following applies:

- (1) The profile shall include transverse joints when pavement is placed by the project on both sides of the joint. When pavement is placed on only one side of the joint, the profile shall start 5 feet outside the project paving limits. The profile of the section of pavement 5 feet outside the paving limits to 25 feet inside paving limits will not be subjected to incentive or disincentive adjustments, but will be evaluated for localized roughness.
- (2) The profile of the area 25 feet each side of every railroad crossing, cattle guard, bus pad, manhole, gutter pan and intersection (where there is a planned breakpoint in the profile grade line in the direction of testing) shall be deleted from the profile before the HRI is determined. Incentive/disincentive adjustments will not be made for these areas. Areas deleted from the profile shall be tested in accordance with subsection 105.07(a) 2.
- (3) When both new pavement and a new bridge or new bridge pavement are being constructed in a project, the profile of the area 25 feet each side of the bridge deck shall be deleted from the profile before the HRI is determined. Incentive/disincentive adjustments will not be made for this area. Areas deleted from the profile shall be tested in accordance with subsection 105.07(a) 2. The bridge deck will be evaluated for localized roughness. Corrective work required in these areas will not be measured and paid for separately, but shall be included in the

work. For all other projects, the profile of the area 25 feet each side of the bridge deck shall be deleted from the profile before the HRI is determined. Incentive/disincentive adjustments will not be made for this area. If the Engineer determines that corrective work is required in this area, payment will be made in accordance with subsection 109.04.

- (4) The Contractor shall notify the Engineer in writing at least five working days in advance of his intention to perform SA testing. The Contractor shall profile the Project within 14 days after the completion of paving operations. The Engineer will witness the SA profiling and take immediate possession of the SA data.
- (5) The Contractor shall not perform any corrective work that will affect the pavement smoothness for ten working days after completion of the SA testing or as approved by the Engineer. This time is to allow for the Department to analyze the data and perform smoothness verification testing.

When the Contract specifies HRI Percent Improvement, the Contractor shall comply with the following:

- (1) The Contractor shall notify the Engineer in writing of his intention to perform SA testing on the existing pavement. This notification shall be at least five working days in advance of any work that will affect the smoothness of the lanes. This includes but is not limited to the following work; manhole adjustment, valve box adjustments, curb and gutter repair, milling, planing or patching.
- (2) The Contractor shall perform the SA testing on the existing pavement prior to any work that will affect the smoothness of the lanes. The Engineer will witness the SA profiling and take immediate possession of the SA data.
- (3) The Contractor shall not perform any work that will affect the initial smoothness of the lanes for ten working days after completion of the SA testing on the existing pavement or as approved by the Engineer. This time is to allow for the Department to analyze the data and perform smoothness verification testing.
- (4) When the Contractor performs work on the existing pavement prior to the initial SA testing on the existing pavement, the affected sections will not be subject to incentive adjustments, but will be subject to disincentive adjustments and corrective work.
- (5) The Contractor shall notify the Engineer in writing at least five working days in advance of his intention to perform SA testing. The Contractor shall profile the Project within 14 days after the

completion of paving operations. Manholes and valve boxes shall be raised prior to SA testing. The Engineer will witness the SA profiling and take immediate possession of the SA data.

- (6) The Contractor shall not perform any corrective work that will affect the final pavement smoothness for ten working days after completion of the SA testing or as approved by the Engineer. This time is to allow for the Department to analyze the data and perform smoothness verification testing.
 - (7) The profile shall include an additional 25 feet of pavement outside the project paving limits.
- B. Smoothness Testing Procedures. The Contractor shall mark the profiling limits and excluded areas. When the Contract specifies HRI Percent Improvement, the markings shall be placed in a location that will not be disturbed, so that the section start and stop locations will be identical for the initial and final pavement surface. The Engineer will verify that the Contractor's marks are located properly. The Contractor shall use traffic cones with reflective tape or reflective tape on the pavement at the beginning and end of each lane for triggering the start and stop locations on the profiler and at any other location, where portions of the profile are being deleted. These locations shall be marked with temporary paint so that the Department's profiler uses the same locations for smoothness verification testing.

The Contractor shall clear the lanes to be tested of all debris before profiling.

The Contractor shall submit a Method for Handling Traffic (MHT) to the Engineer for approval at least five days in advance of SA testing. The MHT shall detail the methods for traffic control that will allow for continuous non-stop profiling of each lane to be profiled at a minimum speed of 15 mph. The Contractor shall provide the traffic control in accordance with the approved MHT.

Each lane shall be profiled three times at a constant speed (+/- 5 mph) with a minimum speed of 15 mph and a maximum speed of 70 mph. Shoulders with a width of 12 feet or more, ramps, tapers, turn slots, acceleration lanes and deceleration lanes shall be profiled once. The profile shall be taken in the intended direction of travel. The left and right wheel paths shall be profiled simultaneously. The collected profiles shall be turned over immediately to the Engineer and will be analyzed using CP 74.

- (1) When the Contract specifies HRI, the Department will determine a HRI for each 0.1 mile section or fraction thereof of completed pavement. The HRI consists of the average of the left and right wheel path's profile passed through the International Roughness Index (IRI) filter.

The Contractor's SA test results will be available within ten working days of the completion of SA testing. The Engineer will give the Contractor a report that will include the lane profiled, the HRI in 0.10 mile increments and a summary of areas requiring corrective work. The Engineer may determine that it is necessary for the Contractor to re-profile a lane.

Areas requiring corrective work will be determined according to subsection 105.07(c) 1. The third run of each lane will be used for the determination of Localized Roughness.

Sections less than 0.01 miles in length shall not be subject to corrective work as specified by Table 105-6. Sections less than 0.01 miles in length shall be included in the Localized Roughness determination.

- (2) When the Contract specifies HRI Percent Improvement, the Department will determine an HRI for each 0.05 mile section or fraction thereof of pavement. The HRI consists of the average of the left and right wheel path's profile passed through the IRI filter.

The Contractor's SA test results will be available within ten working days of the completion of SA testing. The Engineer will give the Contractor a report that will include the lane profiled, the HRI in 0.05 mile increments, percent improvement in 0.05 mile increments and areas requiring corrective work. The Engineer may determine that it is necessary for the Contractor to re-profile a lane.

Areas requiring corrective work will be determined in accordance with subsection 105.07(c) 2.

- C. When the Contract specifies HRI, acceptance and incentive/disincentive adjustments for pavement smoothness will be made on a square yard basis in accordance with the following:

Incentive and Disincentive adjustments will be based on the HRI for each 0.1 mile section or fraction thereof. Incentive/Disincentive adjustments for Pavement Smoothness will be made in accordance with Table 105-6. Sections less than 0.01 miles in length will not be subject to disincentive adjustments.

Table 105-6
HMA PAVEMENT SMOOTHNESS (INCHES/MILE)
HALF-CAR ROUGHNESS INDEX

Pavement Smoothness Category	Incentive Adjustment (\$/sq yd)	No Incentive or Disincentive	Disincentive Adjustment (\$/sq yd)	Corrective Work Required
I	When HRI \leq 40.0 I = \$1.28	When HRI \geq 63.0 and \leq 72.0 I = \$0.00	When HRI > 72.0 and < 90.0 I = 5.12 - 0.07111 x HRI	When HRI > 90.0
	When HRI > 40.0 and < 63.0 I = 3.51 - 0.05565 x HRI		When HRI \geq 90.0 I = - \$1.28	
II	When HRI \leq 35.0 I = \$1.28	When HRI \geq 58.0 and \leq 67.0 I = \$0.00	When HRI > 67.0 and < 85.0 I = 4.76 - 0.07111 x HRI	When HRI > 85.0
	When HRI > 35.0 and < 58.0 I = 3.23 - 0.05565 x HRI		When HRI \geq 85.0 I = - \$1.28	

- D. When the Contract specifies HRI Percent Improvement (%I), acceptance and incentive/disincentive adjustments for pavement smoothness will be made on a square yard basis in accordance with the following:

The Engineer will produce a report of the original surface that will include the lane profiled and the HRI in 0.05 mile increments.

Incentive and disincentive adjustments will be based on the %I of the HRI for each 0.05 mile section or fraction thereof on the final paved surface compared to the HRI for each 0.05 mile section or fraction thereof on the original surface. Sections less than 0.01 miles in length will not be subject to disincentive adjustments.

The %I will be calculated as follows:

$$\%I = (HRI_{OS} - HRI_{FS}) \times 100 / HRI_{OS}$$

Where: HRI_{OS} = HRI of Original Surface
 HRI_{FS} = HRI of Final Surface

Incentive/disincentive adjustments for Pavement Smoothness will be made in accordance with Table 105-7 or 105-8.

When the Contract specifies Rural Construction Percent Improvement, the Contractor may request in writing to the Engineer that the pavement

smoothness category be changed to HRI Category I. The request shall be made prior to the Smoothness Acceptance testing of final paving surface. If approved by the Engineer all requirements for HRI Category I shall apply and the smoothness category shall not be changed back to Rural Construction Percent Improvement.

Table 105-7
HMA PAVEMENT SMOOTHNESS
RURAL CONSTRUCTION
PERCENT IMPROVEMENT (%I)
HALF-CAR ROUGHNESS INDEX

Incentive Adjustment (\$/sq yd)	No Incentive or Disincentive	Disincentive Adjustment (\$/sq yd) ¹	Corrective Work Required¹
When %I > 60.0 I = \$0.32	When %I > 40.0 and < 45.0 I = \$0.00	When %I ≥ 25.0 and ≤ 40.0 I = (32 x %I – 1280)/1500	When %I < 20.0
When %I ≥ 45.0 and ≤ 60.0 I = (32 x %I - 1440)/1500		When %I < 25.0 I = -\$0.32	
1 Disincentives will not be assessed and corrective work will not be required for a 0.05 mile section if the HRI is equal to or less than 80.0 in/mi			

Table 105-8
HMA PAVEMENT SMOOTHNESS
URBAN CONSTRUCTION
PERCENT IMPROVEMENT (%I)
HALF CAR ROUGHNESS INDEX

Incentive Adjustment (\$/sq yd)	No Incentive or Disincentive	Disincentive Adjustment (\$/sq yd) ¹	Corrective Work Required¹
When %I > 50.0 I = \$0.32	When %I > -5.0 and < 5.0 I = \$0.00	When %I ≥ -20.0 and ≤ -5.0 I = (32 x %I + 160)/1500	When %I < -25.0
When %I ≥ 5.0 and ≤ 50.0 I = (32 x %I - 160)/4500		When %I < -20.0 I = -\$0.32	
1 Disincentives will not be assessed and corrective work will not be required for a 0.05 mile section if the HRI is equal to or less than 80.0 in/mi			

(c) *Corrective Work.*

The Department will analyze the SA testing for acceptance and indicate areas requiring corrective work in accordance with subsection 105.07(b). Corrective work shall be proposed in writing by the Contractor. Corrective work shall not be performed until approved in writing by the Engineer. The Contractor shall not perform any corrective work on the final layer until after the Engineer returns the results of the Initial Smoothness Acceptance testing and after the Department's Smoothness Verification testing, if performed. The Contractor shall perform corrective work in the areas indicated by the SA testing.

Corrective work on lower layers shall be at the Contractor's discretion.

The Contractor shall profile the roadway to verify that the required corrective work has been completed.

If the Contractor elects to perform corrective work prior to the completion of initial SA testing, the entire 0.05 or 0.10 mile section, or fraction thereof, will not be eligible for incentive adjustment, but will be **subject to disincentive adjustments**. The Engineer will not modify the limits of the 0.05 or 0.10 mile sections to group corrective work areas in an effort to reduce the number of sections impacted by this decision.

The Contractor may elect to perform additional corrective work to reduce or eliminate the disincentive adjustment for each 0.1 mile section or fraction thereof after the initial SA testing and the Department's verification testing.

The Contractor may elect to perform additional corrective work to reduce or eliminate the disincentive adjustment for each 0.1 mile section or fraction thereof after the initial SA testing and the Department's verification testing.

1. Half-Car Roughness Index Corrective Work:

- A. The criteria for determining if a 0.1 mile section or fraction thereof requires corrective work is specified in Table 105-6. In addition to determining if a 0.1 mile section or fraction thereof requires corrective work, the profiles shall be analyzed for areas of Localized Roughness.
- B. Localized Roughness. The profiles shall be analyzed to determine where areas of localized roughness occur. The profile shall be summarized using the continuous HRI reporting system using an averaging length of 25 feet. The FHWA's ProVal (Version 2.7 or later) software will be used to generate the continuous HRI report. ProVal can be downloaded at <http://www.roadprofile.com>.

Areas shall be considered deficient, and require corrective work where the continuous HRI report exceeds the values in Table 105-9. Areas of localized roughness less than 25 feet in distance that contain a valve box shall be tested in accordance with subsection 105.07 (a) 2. for corrective work.

Table 105-9
CONTINUOUS HRI USING 25 FOOT
AVERAGING FOR LOCALIZED ROUGHNESS
CORRECTIVE WORK ON HMA PAVEMENTS

HRI SMOOTHNESS CATEGORY	HRI In/mile
I	135.0
II	125.0

2. Half Car Roughness Index Percent Improvement Corrective Work. The criteria for determining if corrective work is required for a 0.05 mile section or fraction thereof is specified in Table 105-7 or 105-8.

When the corrective work is complete, the Contractor shall re-profile the corrective work area and determine a HRI Percent Improvement for each 0.05 mile section or fraction thereof. Additional corrective work in accordance with this specification will be required if the HRI Percent Improvement for a 0.05 mile section or fraction thereof doesn't meet the specified range shown in Table 105-7 or 105-8.

If corrective work is required, the Contractor shall submit a written corrective work proposal to the Engineer, which shall include the methods and procedures that will be used. The Contractor shall not commence corrective work until the methods and procedures have been approved in writing by the Engineer.

The Engineer's approval shall not relieve the Contractor of the responsibility of producing work in conformity with the Contract.

3. Corrective Methods. Corrective work shall consist of diamond grinding, an approved overlay, or removal and replacement.

Corrective work shall be performed using one of the following conditions:

- (1) Diamond Grinding. Grinding shall not reduce planned pavement thickness by more than 0.3 inches. When grinding is complete the entire ground area of the final pavement surface shall be covered in accordance with Section 407 with a Tack Coat of CSS-1h. The tack coat shall be placed at 0.1 gallons per square yard of diluted emulsion; the emulsion shall be diluted with water at the rate of 50 percent water and 50 percent emulsion. Cores shall be taken to verify that minimum pavement thicknesses have been maintained. A minimum of one core shall be taken for every 100 cumulative lane-feet or fraction thereof per lane of diamond grinding, as directed by the Engineer. Coring shall be at the Contractor's expense.

- (2) **Overlay.** The overlay shall cover the full width of the pavement including shoulders. The area overlaid shall begin and end with a transverse butt joint, which shall be constructed with a transverse saw cut and asphalt removal. All material shall be approved hot asphalt mixtures that meet all contract requirements. The overlay shall be placed so that the finished surface conforms to grade and smoothness requirements. The overlay area shall be compacted to the specified density. The overlay thickness shall be equivalent to that of the final layer in accordance with the Contract. Sections overlaid shall be at least 0.20 miles in length.
- (3) **Removal and Replacement.** The pavement requiring corrective work shall be removed, full width of the lane and the full thickness of the layer in accordance with subsection 202.09.

The removal area shall begin and end with a transverse butt joint, which shall be constructed with a transverse saw cut perpendicular to centerline. Replacement material shall be placed in sufficient quantity so the finished surface conforms to grade and smoothness requirements. Sections removed and replaced shall be at least 0.20 miles in length.

- (d) *Final Smoothness Acceptance Testing.* After the Contractor has completed the required corrective work and any additional corrective work, the Contractor shall retest the pavement in accordance with subsection 105.07(b). If the Contractor requests to do additional corrective work to reduce disincentive after Final SA Testing, the Contractor shall perform an additional Final SA Testing for the project. A charge of \$500 will be assessed to the Contractor for each additional Final SA Testing. Time count will be charged pursuant to contract requirements during the time period required for all Final SA Testing. Delays associated with additional Final SA Testing will be considered non-excusable and non-compensable.

The Contractor shall notify the Engineer pursuant to 105.07(b) to schedule the final SA testing.

Final acceptance and incentive/disincentive adjustments for pavement smoothness will be made on a square yard basis in accordance with the following:

Incentive adjustments will be based on the HRI for each 0.1 mile section or fraction thereof from the Contractor's initial SA testing. Those sections which earned incentives or full payment based on the initial SA testing will not be re-evaluated for incentive after final SA testing.

The disincentive adjustment will be based on the HRI or percent improvement for each 0.05 or 0.1 mile section or fraction thereof from the Contractor's Initial SA testing or the Contractor's Final SA testing, whichever is less. Those sections which had disincentive levels indicated by the initial SA, will be re-evaluated for disincentive. The Contractor may eliminate all

disincentives on those 0.05 or 0.1 mile sections; however, no incentives may be earned in these areas, regardless of the final smoothness.

- (e) *Department Smoothness Verification Testing (SV).* The Department may elect to perform smoothness verification (SV) testing using the Department's inertial profiler, with the methods described in subsection 105.07(b). The Engineer will notify the Contractor of the Department's intention to perform SV testing. All traffic control costs associated with Department SV testing will be paid for by the Department in accordance with Section 630.

The Contractor's SA test results will be compared to the Department's SV test results. The Contractor's SA test results will be considered acceptable and will be used for incentive/disincentive adjustments if the following criteria are met:

- (1) The difference in HRI for a 1/10 or 1/20 mile section is less than 6.1 inches/mile for a minimum of 90 percent of the 1/10 or 1/20 mile sections for each lane.
- (2) The difference in average HRI for each lane is less than 6.1 inches/mile.
- (3) The difference in the length of each lane is less than 0.2 percent

When the Contractor's SA test results are not considered acceptable, the Department's SV test results will be used for incentive/disincentive adjustments and the Contractor's profiler certification will be evaluated pursuant to CP 78. The Department will have 30 days to complete this evaluation.

The Contractor will be assessed a charge of \$1,000 for SV testing when the Contractor's SA test results are not considered acceptable.

- (f) *HMA Recycling Treatments and Thin Lift smoothness Criteria.* When the final riding surface is constructed of either (1) an HMA recycling treatment, or (2) a single layer of HMA less than 1.5 inches thick without an intermediate treatment beneath it, acceptance shall be determined as follows:

An HRI for each 0.1 mile section shall be determined on the original pavement surface prior to beginning the work.

An HRI for each 0.1 mile section shall be determined on the pavement surface after the work is complete.

When a 0.1 mile section has a final HRI greater than 80.0 in/mile and the final HRI is greater than the HRI prior to performing the work, that 0.1 mile section shall be corrected by a method approved in writing by the Engineer. Corrective work shall be such that the resulting final HRI is equal to or less than the initial HRI or 80.0 in/mile, whichever is greater. All costs associated with corrective work shall be at the Contractor's expense, including but not limited to traffic control, additional hot mix asphalt, grinding and milling.

The pavement smoothness for HMA Recycling Treatments and Thin Lifts that will be overlaid with a final riding surface will not be evaluated by the Department for acceptance.

105.08 Conformity to Roadway Smoothness Criteria of Portland Cement Concrete Pavement. Roadway smoothness testing and corrective work shall be performed as described below. The pavement smoothness category shall be HRI Category II unless shown otherwise on the plans.

(a) *Smoothness Quality Control Testing.*

1. The Contractor shall perform Smoothness Quality Control (SQC) testing. A profile shall be taken for each day's paving within 24 hours after the concrete has achieved sufficient strength. The Contractor shall not perform the SQC testing until after the concrete has attained a compressive strength of 1,000 psi if a light weight profiler is used or 2,000 psi if a high speed profiler is used. The test results shall be submitted to the Engineer within 48 hours of completion. SQC test results shall show the Half Car Roughness Index (HRI) for each 0.10 mile section and the results for localized roughness

All traffic control costs associated with SQC testing will be paid for in accordance with Section 630.

SQC testing shall be performed using the Contractor's inertial profiler, pursuant to the methods described in subsection 105.08(b) and in accordance with the manufacturer's recommendations. The Contractor's Profiler shall be certified according to CP 78. A list of certified profilers is located [on the CDOT web site](#).

Production shall be suspended if SQC testing indicates that corrective work is required in accordance with subsection 105.08 (c). If the SQC data becomes available after production has started for the day, suspension will begin at the end of that production day. Production will remain suspended until the problem is identified and corrected. Each time production is suspended, corrective actions shall be proposed in writing by the Contractor. Production will not be allowed to resume until the proposed corrective actions have been accepted by the Project Engineer in writing.

When production resumes, the Contractor shall profile the first half mile of paving. The conditions above for suspension of work will apply.

2. The finished transverse and longitudinal surface elevation of the pavement shall be measured using a 10 foot straightedge. Areas to be measured shall be as directed by the Engineer. The Contractor shall furnish an approved 10 foot straightedge and depth gauge and provide an operator to aid the Engineer in testing the finished pavement surface. Areas showing high spots of more than 3/16 inch in 10 feet shall be marked and diamond ground until the high spot does not exceed 3/16 inch in 10 feet. When longitudinal tining is required on concrete pavement, the pavement shall be grooved to restore the longitudinal texture (tining) as shown [on the plans and specifications](#).

- (b) *Initial Smoothness Acceptance (SA) Testing.* The Department's smoothness testing results will be used for acceptance and calculation of incentive and disincentive adjustments.

All traffic control costs associated with SA testing will be paid for by the Department in accordance with Section 630.

1. Longitudinal Pavement Surface Smoothness Acceptance. Pavement surfaces shall be tested and accepted for longitudinal smoothness as described herein.
 - A. Testing Procedure (General). The longitudinal surface smoothness of the pavement surface shall be tested and evaluated by the Department in accordance with CP 74 using the Department's high-speed profiler (HSP).

The HSP instrumentation will be verified in accordance with CP 74 prior to measurements. The Contractor shall lay out a distance calibration site. The distance calibration site shall be located no more than ten miles from the Project limits. The distance calibration site shall be 1056 feet long and shall be on a relatively flat, straight section of pavement as approved by the Engineer. The site shall have a speed limit equal to the Project's highest speed limit that allows for the HSP to operate uninterrupted. The limits of the site shall be clearly marked and the distance shall be measured to an accuracy of +/- 3 inches. The Contractor shall provide in writing the site location to the Engineer. The cost of the distance calibration site will not be measured and paid for separately, but shall be included in the work.

The Contractor shall notify the Engineer in writing at least 10 working days in advance to schedule SA testing. The Engineer will not schedule pavement smoothness testing if the Contractor has not submitted SQC results.

The Contractor shall notify the Department at least 48 hours prior to the scheduled SA testing date when the smoothness testing needs to be cancelled for any reason. The Contractor shall be charged \$500 for failure to meet this requirement and rescheduling is required. The Engineer may waive the \$500 charge if re-scheduling is a result of weather or at the convenience of the Department.

The entire length of each through lane, climbing lane and passing lane including bridge approaches, bridge decks and intersections from the beginning to the end of the project shall be profiled. Shoulders less than 12 feet in width and medians will not be profiled and will not be subject to incentive/disincentive adjustments. Shoulders with a width of 12 feet or more, ramps, tapers, turn slots, acceleration lanes and deceleration lanes will be profiled, but will not be subject to incentive/disincentive adjustments. Shoulders with a width of 12 feet or more, ramps, tapers, turn slots, acceleration lanes and deceleration lanes will be evaluated for

localized roughness corrective work. The profile of the entire length of a lane shall be taken at one time. However, the Engineer may divide the project into sections to accommodate Project phasing.

A sufficient distance shall be deleted from the profile to allow the profiler to obtain the testing speed plus a 300 foot distance to stop and start when required. Incentive/disincentive adjustments will not be made for this area. The surface of these areas shall be tested in accordance with subsection 105.08(a) 2.

Shoulders less than 12 foot in width and medians constructed as part of this project shall be measured in accordance with subsection 105.08(a) 2.

The profile shall include transverse joints when pavement is placed by the project on both sides of the joint. When pavement is placed on only one side of the joint, the profile shall start 5 feet outside the project paving limits.

The profile of the area 25 feet each side of every manhole, railroad crossing, cattle guard, gutter pan and intersection (where there is a planned breakpoint in the profile grade line in the direction of testing) shall be deleted from the profile before the HRI is determined. Incentive/disincentive adjustments will not be made for these areas. Areas deleted from the profile shall be tested in accordance with subsection 105.08(a) 2.

When both new pavement and a new bridge or new bridge pavement are being constructed on the project, the profile of the area 25 feet each side of the bridge deck shall be deleted from the profile before the HRI is determined. Incentive/disincentive adjustments will not be made for this area. Areas deleted from the profile shall be tested in accordance with subsection 105.08(a) 2. The bridge deck will be evaluated for localized roughness. Corrective work required in these areas will not be measured and paid for separately, but shall be included in the work. For all other projects, the profile of the area 25 feet each side of the bridge deck shall be deleted from the profile before the HRI is determined. Incentive/disincentive adjustments will not be made for this area. If the Engineer determines that corrective work is required in this area, payment will be made in accordance with subsection 109.04.

- B. Smoothness Testing Procedures. The Contractor shall submit a Method for Handling Traffic (MHT) to the Engineer for approval at least 10 working days prior to the smoothness test or longer as determined by the Engineer. The MHT shall detail the methods for traffic control that shall allow for continuous non-stop profiling of each lane to be profiled at a minimum speed of 15 mph. The Contractor shall provide the traffic control in accordance with the approved MHT.

The Contractor shall mark the profiling limits and excluded areas. The Engineer will verify that the Contractor's marks are located properly. The Department will use traffic cones with reflective tape or reflective tape on the pavement at the beginning and end of each lane for triggering the start and stop locations on the profiler and at any other location, where portions of the profile are being deleted. The Contractor shall provide sufficient traffic control for the Department to safely place the traffic cones or reflective tape.

The Contractor shall clear the lanes to be tested of all debris before profiling.

Each lane will be profiled three times at a constant speed (+/- 5 mph) with a minimum speed of 15 mph and a maximum speed of 70 mph. Shoulders with a width of 12 feet or more, ramps, tapers, turn slots, acceleration lanes and deceleration lanes will be profiled once. The profile will be taken in the intended direction of travel. The left and right wheel paths will be profiled simultaneously. The collected profiles will be analyzed using CP 74.

The Department will determine a HRI for each 0.1 mile section or fraction thereof of completed pavement. The HRI consists of the average of the left and right wheel path's profile passed through the International Roughness Index (IRI) filter.

The Department's SA test results will be available within five working days of the completion of testing. The Engineer will give the Contractor a report that will include the HRI in 0.10 mile increments and a summary of areas requiring corrective work. The Engineer may determine that it is necessary to re-profile a lane.

Areas requiring corrective work will be determined according to subsection 105.08(c). The third run of each lane will be used for the determination of Localized Roughness.

Sections less than 0.01 miles in length shall not be subject to corrective work as specified by Table 105-6. Sections less than 0.01 miles in length shall be included in the Localized Roughness determination.

- C. Acceptance and incentive/disincentive adjustments for pavement smoothness will be made on a square yard basis in accordance with the following:

Incentive and Disincentive adjustments will be based on the HRI for each 0.1 mile section or fraction thereof.

Incentive/Disincentive adjustments for Pavement Smoothness will be made in accordance with Table 105-6. Sections less than 0.01 miles in length will not be subject to disincentive adjustments. The profile of the section of pavement 5 feet outside the paving limits to 25 feet

inside paving limits will not be subjected to incentive or disincentive adjustments, but will be evaluated for localized roughness.

Disincentive adjustments for Pavement Smoothness for each 0.1 mile section or fraction thereof will be one half of the values listed in Table 105-10 for projects awarded prior to January 1, 2014.

**Table 105-10
PCCP PAVEMENT SMOOTHNESS (INCHES/MILE)
HALF-CAR ROUGHNESS INDEX**

Pavement Smoothness Category	Incentive Adjustment (\$/sq yd)	No Incentive or Disincentive	Disincentive Adjustment (\$/sq yd)	Corrective Work Required
I	When HRI \leq 40.0 I = \$1.40	When HRI \geq 63.0 and \leq 72.0 I = \$0.00	When HRI $>$ 72.0 and $<$ 90.0 I = 5.59 - 0.0776 HRI	When HRI $>$ 90.0
	When HRI $>$ 40.0 and $<$ 63.0 I = 3.84 - 0.061 HRI		When HRI \geq 90.0 I = - \$ 1.40	
II	When HRI \leq 35.0 I = \$ 1.40	When HRI \geq 58.0 and \leq 67.0 I = \$0.00	When HRI $>$ 67.0 and $<$ 85.0 I = 5.20 - 0.0776 HRI	When HRI $>$ 85.0
	When HRI $>$ 35.0 and $<$ 58.0 I = 3.53 - 0.061 HRI		When HRI \geq 85.0 I = - \$ 1.40	

- (c) *Corrective Work.* The Department will analyze the initial SA testing for acceptance and indicate areas requiring corrective work in accordance with subsection 105.08(b). Corrective work shall be proposed in writing by the Contractor. Corrective work shall not be performed until approved in writing by the Engineer. The Contractor shall not perform any corrective work on the pavement until after the Engineer returns the results of the initial SA testing. The Contractor shall perform corrective work in the areas indicated by the SA testing.

The Contractor shall profile the roadway to verify that the required corrective work has been completed.

If the Contractor elects to perform corrective work prior to the completion of initial SA testing, the entire 0.10 mile section or fraction thereof will not be eligible for incentive adjustment but will be **subject to disincentive**

adjustment. The Engineer will not modify the limits of the 0.10 mile sections to group corrective work areas in an effort to reduce the number of sections impacted by this decision.

The Contractor may elect to perform additional corrective work to reduce or eliminate the disincentive adjustment for each 0.1 mile section or fraction thereof after the Departments initial SA testing.

The criteria for determining if a 0.1 mile section or fraction thereof requires corrective work is specified in Table 105-10. In addition to determining if a 0.1 mile section or fraction thereof requires corrective work, the profiles shall be analyzed for areas of Localized Roughness.

Localized Roughness. The profiles shall be analyzed to determine where areas of Localized Roughness occur. The profile shall be summarized using the continuous HRI reporting system using an averaging length of 25 feet. The FHWA's ProVal (Version 2.7 or later) software shall be used to generate the continuous HRI report. ProVal can be downloaded at <http://www.roadprofile.com>.

Areas shall be considered deficient, and require corrective work where the continuous HRI report exceed the values in Table 105-11. Areas of localized roughness less than 25 feet in distance that contain a valve box shall be tested in accordance with subsection 105.08 (a) 2. for corrective work.

Table 105-11
CONTINUOUS HRI USING 25 FOOT
AVERAGING FOR LOCALIZED ROUGHNESS
CORRECTIVE WORK ON PCCP PAVEMENTS

HRI SMOOTHNESS CATEGORY	HRI In/mile
I	135.0
II	125.0

Corrective work on concrete pavements shall consist of diamond grinding.

When any grinding on concrete pavement occurs where a core for determining pavement thickness has been previously taken, another core shall be taken after the grinding has been completed and shall replace the original core in the calculation of pavement thickness incentive and disincentive. Joint sealant that has been damaged by grinding on concrete pavement shall be repaired or replaced at the Contractor's expense in accordance with Standard Plan M-412-1 and subsection 412.18. Cores shall be taken to verify that minimum pavement thicknesses have been maintained. A minimum of one core shall be taken every 100 cumulative feet or fraction thereof per lane of diamond grinding, as directed by the Engineer. Coring

shall be at the Contractor's expense. When longitudinal tining is required on concrete pavement, the pavement shall be grooved to restore the longitudinal texture (tining) as shown in the plans and specifications.

- (d) *Final Smoothness Acceptance Testing.* After the Contractor has completed the required corrective work and any additional corrective work, the Department will retest the pavement in accordance with subsection 105.08(b). If the Contractor requests to do additional corrective work to reduce disincentive after Final SA Testing, the Department will perform additional Final SA Testing for the project. A charge of \$500 will be assessed to the Contractor for each additional trip to the project required to perform additional Final SA Testing. Time count will be charged pursuant to contract requirements during the time period required for all Final SA Testing. Delays associated with additional Final SA Testing will be considered non-excusable and non-compensable.

The Contractor shall notify the Engineer pursuant to 105.08(b) to schedule the final SA testing.

Final acceptance and incentive/disincentive adjustments for pavement smoothness will be made on a square yard basis in accordance with the following:

Incentive adjustments will be based on the HRI for each 0.1 mile section or fraction thereof from the Department's initial SA testing. Those sections which earned incentives or full payment based on the initial SA testing will not be re-evaluated for incentive after final SA testing.

The disincentive adjustment will be based on the HRI for each 0.1 mile section or fraction thereof from the Department's Initial SA testing or the Department's Final SA testing, whichever is less. Those sections which had disincentive levels indicated by the initial SA, will be re-evaluated for disincentive. The Contractor may eliminate disincentives on those 0.1 mile sections; however, no incentives may be earned in these areas, regardless of the final smoothness.

105.09 Coordination of Plans, Specifications, Supplemental Specifications, and Special Provisions. These specifications, the supplemental specifications, the plans, special provisions, and all supplementary documents are essential parts of the Contract, and a requirement occurring in one is as binding as though occurring in all. They are intended to be complementary and to describe and provide for a complete work.

In case of discrepancy the order of precedence is as follows:

- (a) Special Provisions
1. Project Special Provisions
 2. Standard Special Provisions

- (b) Plans
 - 1. Detailed Plans
 - 2. Standard Plans
 Calculated dimensions will govern over scaled dimensions.
- (c) Supplemental Specifications
- (d) Standard Specifications

The Contractor shall not take advantage of any apparent error or omission in the Contract. If the Contractor discovers an error or omission, the Engineer shall immediately be notified. The Engineer will make corrections and interpretations as necessary to fulfill the intent of the Contract.

105.10 Cooperation by Contractor. The Contractor will be supplied with a minimum of six sets of contract documents.

The Contractor shall give the work the constant attention necessary to facilitate progress and shall cooperate with the Engineer, inspectors, and other contractors.

The Contractor shall have on the project, at all times that work is being performed, a competent superintendent capable of reading and understanding the contract documents and experienced in the type of work being performed. The superintendent will receive instructions from the Engineer and shall be authorized to act for the Contractor on the project and to execute orders or directions of the Engineer without delay. The superintendent shall promptly supply, irrespective of the amount of work sublet, materials, equipment, tools, labor, and incidentals to complete the Contract.

105.11 Cooperation with Utilities. The Department will notify all utility companies, pipe line owners, or other parties affected, and have all necessary adjustments of the public or private utility fixtures, pipe lines, and other appurtenances within or adjacent to the limits of construction made as soon as practicable.

Water lines, gas lines, wire lines, service connections, meter and valve boxes, light standards, cableways, signals, and all other utility facilities within the limits of the proposed construction are to be relocated or adjusted at the owner's expense unless otherwise provided in the Contract. The Contractor shall cooperate with the utility owners in their removal and relocation operations, so that progress is expedited, duplication of work is minimized and service interruptions are avoided.

The Contract will indicate those utility items which are to be relocated or adjusted by the utility owner or which are to be relocated or adjusted by the Contractor. The Contractor shall consider in the bid proposal all of the permanent and temporary utility facilities in their present or relocated positions as shown in the Contract and as revealed by site investigation. Utility delays due to changes which are the responsibility of the Contractor will be considered nonexcusable delays. The Contractor and the Engineer shall meet with the utility owners as often as necessary to coordinate and schedule relocations or adjustments. Additional compensation will not be allowed for foreseeable coordination, inconvenience, or damage sustained due to interference from the utility facilities or the removal or

relocation operations as indicated in the Contract. Delays shall be dealt with in accordance with subsection 108.08.

If utility facilities or appurtenances are found that are neither identified in the Contract, nor revealed by site investigation, the Engineer will determine whether adjustment or relocation of the utility is necessary. The Engineer will make arrangements with either the utility owner or the Contractor to accomplish necessary adjustments or relocations when not otherwise provided for in the Contract. Extra work will be considered for payment in accordance with subsection 104.03. Consideration for delays shall be in accordance with subsection 108.08(d).

Where the Contractor's operations are adjacent to properties of railroad, telegraph, telephone, power, or other utility companies, to which damage might result in considerable expense, loss, or inconvenience, work shall not commence until arrangements for the protection of the utilities have been made.

If water or utility services are interrupted, the Contractor shall promptly notify the owner and shall cooperate in the restoration of service. Repair work shall be continuous until the service is restored. Work shall not be undertaken around fire hydrants until provisions for continued service have been approved by the local fire authority.

105.12 Cooperation Between Contractors. The Department reserves the right to contract for and perform other or additional work on or near the work covered by the Contract.

When separate contracts are let within the limits of any one project, each Contractor shall conduct the work without interfering or hindering the progress or completion of the work being performed by other Contractors. Contractors working on the same project shall cooperate with each other as directed.

Each Contractor involved shall assume all liability, financial or otherwise, in connection with the Contract and shall protect and save harmless the Department from any and all damages or claims that may arise because of inconvenience, delay, or loss because of the presence and operations of Contractors working within the limits of the same or adjacent project.

105.13 Construction Stakes, Lines and Grades. Construction work shall not be performed until adequate lines and grades have been established by the Department or by the Contractor.

- (a) *Contractor Surveying.* When the bid schedule contains pay item 625, Construction Surveying, the Department will provide control points and bench marks as described in the Contract. The Contractor shall furnish and set construction stakes establishing lines and grades in accordance with the provisions of Section 625. The Engineer may order extra surveying which will be paid for at the established rate of \$100 per hour.
- (b) *Department Surveying.* When the bid schedule does not contain pay item 625, Construction Surveying, the Engineer will furnish one set of

construction stakes and marks establishing lines and grades as described below for proper prosecution of the work.

Roadway staking will include stakes for; fence, centerline, slopes, grades (bluetops), curb and gutter, sidewalk, and median barrier. Grade stakes for finished subgrade will not be set until the grade established by the slope stakes is constructed to within 0.3 foot of the finished subgrade elevation.

Minor structures and retaining wall staking will be limited to stakes establishing line and grade by using offset line and grade stakes.

Major structures staking and references will be limited to centerlines (or work lines or control lines) as shown on the plans, appropriate offset lines and grades; and elevations set for footings, piers, pier caps, abutments, bottom of deck grades and finish deck screed grades.

It will be the responsibility of the Contractor to use these references and marks and establish any additional control and layout necessary for the proper prosecution of the work in its final location. The Contractor shall be responsible for the accuracy of all the vertical and horizontal control it transfers and establishes. The Contractor shall, when required, provide access to abutments, piers or other locations, and shall furnish working platforms that meet applicable safety requirements so the Engineer's duties can be performed.

The Contractor shall be held responsible for the preservation of all stakes and marks, and if any are destroyed, disturbed or removed by the Contractor, subcontractors, or suppliers, the cost of replacing them will be charged against the Contractor and will be deducted from the payment for the work at the rate of \$100 per hour.

It is the responsibility of the Contractor to perform all required layout work which shall include, but will not be limited to the following:

- (1) Piling locations and cut off elevation.
- (2) Girder seats on piers and abutments.
- (3) Bolt locations and patterns.
- (4) Construction sign locations.
- (5) Guardrail.

The Engineer reserves the right to inspect all staking and work in place to insure conformance with the Contract. A minimum of two working days will be required as advance notice to the Engineer to provide project control staking.

105.14 Authority and Duties of the Project Engineer. The Project Engineer has immediate charge of the administration and engineering details of each construction project. The Project Engineer has the authority to exercise all duties and responsibilities of the Engineer contained in the Contract, except those specifically retained by the Chief Engineer. The CDOT Project Engineer and the CDOT Resident Engineer are the only representatives of the Chief

Engineer authorized to sign Contract Modification Orders. The Project Engineer is responsible for initial decisions relating to Contractor claims for additional compensation or extension of contract time filed pursuant to subsection 105.22.

105.15 Duties of the Inspector. Inspectors employed by the Department are authorized to inspect all work done and materials furnished. This inspection may extend to all or any part of the work and to the preparation, fabrication or manufacture of the materials to be used. The inspector is not authorized to alter or waive the provisions of the Contract. The inspector is not authorized to issue instructions contrary to the provisions of the Contract or to act as foreman for the Contractor.

105.16 Inspection and Testing of Work. All materials and each part or detail of the work shall be subject to inspection by the Engineer. The Engineer shall be allowed access to all parts of the work and shall be furnished with information and assistance by the Contractor as required to make a complete and detailed inspection.

Before final acceptance of the work, the Contractor shall remove or uncover such portions of the finished work, as directed. After examination, by the Engineer, the Contractor shall restore the work to the standard required by the Contract. If the work thus exposed or examined proves acceptable, the uncovering, removing, or restoring the work will be paid for as extra work. If the work exposed or examined proves unacceptable, the uncovering, removing, or restoring the work shall be at the Contractor's expense.

Any work done or materials used without inspection by an authorized Department representative may be ordered uncovered, removed, or restored at the Contractor's expense.

When any unit of government or political subdivision, utility, or railroad corporation is to pay a portion of the cost of the work covered by a highway Contract, its respective representatives shall have the right to inspect the work. This inspection shall not make any unit of government or political subdivision, utility, or railroad corporation a party to the Contract, and shall not interfere with the rights of either party.

All inspections and all tests conducted by the Department are for the convenience and benefit of the Department. These inspections and tests do not constitute acceptance of the materials or work tested or inspected, and the Department may reject or accept any work or materials at any time prior to the inspection pursuant to subsection 105.21(b) whether or not previous inspections or tests were conducted by the Engineer or authorized representative.

105.17 Removal of Unacceptable Work and Unauthorized Work. Unacceptable work is work that does not conform to the requirements of the Contract.

Unacceptable work, resulting from any cause, found to exist prior to the final acceptance of the work, shall be removed and replaced in an acceptable manner at the Contractor's expense. The fact that the Engineer or an inspector may have overlooked the unacceptable work shall not constitute an acceptance of any part of the work.

Unauthorized work is work that was done without adequate lines and grades having been established by the Engineer or by the Contractor, work done contrary to the instructions of the Engineer, work done beyond the lines shown on the plans, or extra work done without the Engineer's authorization. Unauthorized work will not be paid for under the provisions of the Contract, and may be ordered removed or replaced at the Contractor's expense.

If the Contractor fails to comply with any order of the Engineer made under the provisions of this subsection, the Engineer will have authority to cause unacceptable work to be remedied or removed and replaced, and unauthorized work to be removed. The Engineer will deduct the costs from any monies due or to become due the Contractor.

105.18 Load Restrictions. The Contractor shall comply with all legal load restrictions in the hauling of equipment or materials on public roads beyond the limits of the project. A special permit will not relieve the Contractor of liability for damage resulting from the moving of equipment or material.

The operation of equipment or hauling loads which cause damage to structures, the roadway or any other construction will not be permitted. Hauling of materials over the base course or surface course under construction shall be limited by the Contractor to methods and equipment that will prevent damage to the pavement structure. Loads will not be permitted on a concrete pavement or structure before the expiration of the curing period. The Contractor shall be responsible for the repair of all damage and related expense resulting from hauling equipment and construction operations.

If a vehicle's gross weight exceeds the legal limit, and the material transported by the vehicle is delivered to the project, the material and the scale ticket (certificate of correct weight) will not be accepted.

If a scale ticket from an overweight vehicle is inadvertently accepted and the material incorporated into the project, the Engineer will adjust the price for the overweight load as follows:

- (1) The pay item quantity represented by the amount of material in excess of the legal weight will not be paid for.
- (2) A price reduction will be assessed for the overweight portion of the load based on the following schedule.

Overweight (Pounds)	Price Reduction (Dollars)
0 - 3000	20
3001 - 4000	40
4001 - 5,000	82
5,001 - 6,000	130
6,001 - 7,000	226
7,001 - 8,000	376

Overweight cont. (Pounds)	Price Reduction cont. (Dollars)
8,001 - 9,000	582
9,001 - 10,000	842
Over 10,000	\$870 plus \$164 for each 1,000 lbs over 10,000 lbs

105.19 Maintenance During Construction. The Contractor shall maintain all work that is included in the Contract during construction and until final written acceptance, except as otherwise specified in subsection 107.17. This maintenance shall constitute continuous and effective work prosecuted with adequate equipment and forces so the roadway or structures are kept in satisfactory condition at all times.

In the case of a Contract involving the placement of material on or utilization of, a previously constructed subgrade, pavement structure or structure, the Contractor shall maintain the previously constructed work during all construction operations.

All cost of maintaining the contract work during construction and before final written acceptance will not be paid for separately, but shall be included in the work, except as otherwise specified in subsection 107.17.

105.20 Failure to Maintain Roadway or Structure. If the Contractor fails to comply with the provisions of subsection 105.19, the Engineer will immediately notify the Contractor of such noncompliance. Except in the case of traffic signal maintenance, the Contractor shall respond and remedy unsatisfactory maintenance within 24 hours after receipt of such notice. If the Contractor fails to remedy unsatisfactory maintenance in the allotted time, the Engineer may immediately proceed to maintain the project, and the entire cost of this maintenance will be deducted from the monies due or to become due to the Contractor on the Contract.

In the case of traffic signal maintenance, the Contractor shall respond and remedy unsatisfactory maintenance within one hour of receipt of notice on urban highways, and within four hours of receipt of notice on rural highways.

Traffic signal maintenance shall include all approved traffic control items and work that are required to maintain traffic through the affected area while the traffic signal is being repaired or replaced. If the Department performs traffic signal maintenance, the Department shall be held harmless for all subsequent occurrences of maintenance to the signals that the Department maintained.

105.21 Acceptance.

- (a) *Partial Acceptance.* If, during the prosecution of the project, the Contractor satisfactorily completes a unit or portion of the project, such as a structure, an interchange, or a section of road or pavement that can be used advantageously for traffic, the Engineer may make final inspection of that unit. If the Engineer finds that the unit has been satisfactorily completed in compliance with the Contract, the Contractor may be relieved of further responsibility for that unit except as otherwise provided in subsection 107.16. Partial acceptance shall not void or alter any of the terms of the Contract.
- (b) *Final Acceptance.* Upon notice from the Contractor of presumptive completion of the entire project, the Engineer will make an inspection. If the work provided for by the Contract has been satisfactorily completed, that inspection shall constitute the final inspection and the Engineer will notify the Contractor in writing of final acceptance indicating the date on which the project was inspected and accepted.

If the inspection discloses any unsatisfactory work, the Engineer will give the Contractor a written list of the work needing correction. Upon correction of the work, another inspection will be made. If the work has been satisfactorily completed, the Engineer will notify the Contractor in writing of the date of final inspection and acceptance. Final acceptance under this subsection does not waive any legal rights contained in subsection 107.21.

105.22 Dispute Resolution. Subsections 105.22, 105.23, and 105.24 detail the process through which the parties (CDOT and the Contractor) agree to resolve any issue that may result in a dispute. The intent of the process is to resolve issues early, efficiently, and as close to the project level as possible. Figure 105-1 in the [standard special provisions](#) outlines the process. Specified time frames may be extended by mutual agreement of the Engineer and the Contractor.

A dispute is a disagreement concerning contract price, time, interpretation of the Contract, or all three between the parties at the project level regarding or relating to the Contract. Disputes include, but are not limited to, any disagreement resulting from a delay, a change order, another written order, or an oral order from the Project Engineer, including any direction, instruction, interpretation, or determination by the Project Engineer, interpretations of the Contract provisions, plans, or specifications or the existence of alleged differing site conditions.

The term “merit” refers to the right of a party to recover on a claim or dispute, irrespective of quantum, based on the substance, elements, and grounds of that claim or dispute. The term “quantum” refers to the quantity or amount of compensation or time deserved when a claim or dispute is found to have merit.

Disputes from subcontractors, materials suppliers, or any other entity not party to the Contract shall be submitted through the Contractor. Review of a pass-through dispute does not create privity of Contract between CDOT and the subcontractor.

When an issue arises on the project that cannot be resolved between the parties, either party may consider it a dispute and initiate the dispute resolution process as described in subsection 105.22(b).

If CDOT does not respond within the specified timelines, the Contractor may advance the dispute to the next level.

When the Project Engineer is a Consultant Project Engineer, actions, decisions, and determinations specified herein as made by the Project Engineer shall be made by the Resident Engineer.

A claim will not be accepted by CDOT until all remedies for dispute resolution provided for in subsections 105.22 and 105.23 have been exhausted. If CDOT contends that the Contractor has failed to follow the provisions of subsection 105.22 or 105.23, CDOT will notify the Contractor in writing and provide the Contractor with ten days in which to cure the alleged failure. After the CDOT notice, unless the Engineer grants an exception in writing, failure to comply with the requirements set forth in subsections 105.22, 105.23 and 105.24, shall bar the Contractor from any further administrative, equitable, or legal remedy.

- (a) *Document Retention.* The Contractor shall keep full and complete records of the costs and additional time incurred for each dispute for a period of at least three years after the date of final payment or until the dispute is resolved, whichever is more. The Contractor, subcontractors, and lower tier subcontractors shall provide adequate facilities, acceptable to the Engineer, for an audit during normal business hours. The Contractor shall permit the Engineer or Department auditor to examine and copy those records and all other records required by the Engineer to determine the facts or contentions involved in the dispute. CDOT and CDOT's attorneys and consultants will affirmatively act to protect the records and information from disclosure beyond those persons having a need to know the information for the purpose of making a decision regarding the claim, or for law enforcement purposes. The Contractor shall identify and segregate any documents or information that the Contractor considers particularly sensitive, such as confidential or proprietary information.
- (b) *Initial Dispute Resolution Process.* To initiate the dispute resolution process the Contractor shall provide a written notice of dispute to the Project Engineer upon the failure of the Parties to resolve the issue through negotiation. Disputes will not be considered unless the Contractor has first complied with specified issue resolution processes such as those specified in subsections 104.02, 106.05, 108.08(a), and 108.08(d).

The Contractor shall supplement the written notice of dispute within 15 days with a written Request for Equitable Adjustment (REA) providing the following:

- (1) The date of the dispute
- (2) The nature of the circumstances which caused the dispute
- (3) The Contract provisions and any other basis supporting the Contractor's position
- (4) The estimated dollar cost, if any, of the dispute with supporting documentation
- (5) An analysis of the progress schedule showing the schedule change or disruption if the Contractor is asserting a schedule change or disruption.

The Contractor shall submit as much of the above information as is reasonably available with the REA and then supplement the REA as additional information becomes available.

- (c) *Project Engineer Review.* Within 15 days after receipt of the REA, the Project Engineer will meet with the Contractor to discuss the merits of the dispute. Within seven days after this meeting, the Project Engineer will issue a written decision on the merits of the dispute.

The Project Engineer will either deny the merits of the dispute or notify the Contractor that the dispute has merit. This determination will include a summary of the relevant facts, Contract provisions supporting the determination, and an evaluation of all scheduling issues that may be involved.

If the dispute is determined to have merit, the Contractor and the Project Engineer will determine the adjustment in payment, schedule, or both within 30 days. When a satisfactory adjustment is determined, it shall be implemented in accordance with subsections 106.05, 108.08, 109.04, 109.05 or 109.10 and the dispute is resolved.

If the Contractor accepts the Project Engineer's denial of the merits of the dispute, the dispute is resolved and no further action will be taken. If the Contractor does not respond in seven days, it will be assumed he has accepted the denial. If the Contractor rejects the Project Engineer's denial of the merits of the dispute or a satisfactory adjustment of payment or schedule cannot be agreed upon within 30 days, the Contractor may further pursue resolution of the dispute by providing written notice to the Resident Engineer within seven days, according to subsection 105.22(d).

- (d) *Resident Engineer Review.* Within seven days after receipt of the Contractor's written notice to the Resident Engineer of unsatisfactory resolution of the dispute, the Project Engineer and Resident Engineer will meet with the Contractor to discuss the dispute. Meetings shall continue weekly for a period of up to 30 days and shall include a Contractor's representative with decision authority above the project level.

If these meetings result in resolution of the dispute, the resolution will be implemented in accordance with subsections 108.08, 109.04, 109.05, or 109.10 and the dispute is resolved.

If these meetings do not result in a resolution or the participants mutually agree that they have reached an impasse, the dispute shall be presented to the Dispute Review Board in accordance with subsection 105.23.

105.23 Dispute Review Board. A Dispute Review Board (DRB) is an independent third party that will provide specialized expertise in technical areas and administration of construction contracts. The DRB will assist in and facilitate the timely and equitable resolution of disputes between CDOT and the Contractor in an effort to avoid animosity and construction delays, and to resolve disputes as close to the project level as possible. The DRB shall be established and operate as provided herein and shall serve as an independent and impartial board.

There are two types of DRBs: the "On Demand DRB" and the "Standing DRB". The DRB shall be an "On Demand DRB" unless a "Standing DRB" is specified in the Contract. An On Demand DRB shall be established only when the Project Engineer initiates a DRB review in accordance with subsection 105.23(a). A Standing DRB, when specified in the Contract, shall be established at the beginning of the project.

- (a) *Initiation of Dispute Review Board Review.* When a dispute has not been resolved in accordance with subsection 105.22, the Project Engineer will initiate the DRB review process within 5 days after the period described in subsection 105.22(d).

- (b) *Formation of Dispute Review Board.* DRBs will be established in accordance with the following procedures:
1. CDOT, in conjunction with the Colorado Contractors Association, will maintain a non-exclusive statewide list of suggested DRB candidates experienced in construction processes and the interpretation of contract documents and the resolution of construction disputes. The Board members shall be experienced in highway and transportation projects. When a DRB is formed, the parties shall execute the agreement set forth in subsection 105.23(1). Either party may add candidates to the list at any time.
 2. If the dispute has a value of \$250,000 or less, the On Demand DRB shall have one member. The Contractor and CDOT shall select the DRB member and execute the agreement within 30 days of initiating the DRB process. If the parties do not agree on the DRB member, each shall select five candidates. Each party shall numerically rank their list using a scale of one to five with one being their first choice and five being their last choice. If common candidates are listed, but the parties cannot agree, that common candidate with the lowest combined numerical ranking shall be selected. If there is no common candidate, the lists shall be combined and each party shall eliminate three candidates from the list. Each party shall then numerically rank the remaining candidates, with No. 1 being the first choice. The candidate with the lowest combined numerical ranking shall be the DRB member.
 3. If the dispute has a value over \$250,000, the On Demand DRB shall have three members. The Contractor and CDOT shall each select a member and those two members shall select a third member to act as the chairperson and execute the agreement within 45 days of initiating the DRB process.
 4. The Standing DRB shall always have three members. The Contractor and CDOT shall each select a member and those two members shall select a third member to act as the chairperson, unless otherwise agreed to by the parties. The Contractor and CDOT shall submit their proposed Standing DRB members at the Preconstruction Conference.
 5. DRB members shall not have been involved in the administration of the project under consideration. DRB candidates shall disclose to the parties the following relationships:
 - (1) Prior employment with either party
 - (2) Prior or current financial interests or ties to either party
 - (3) Prior or current professional relationships with either party
 - (4) Anything else that might bring into question the impartiality or independence of the DRB member

If either party objects to the selection of a potential DRB member based on the disclosures of the potential member, that potential member shall not be placed on the Board.

6. There shall be no ex parte communications with the DRB at any time.
 7. The service of a Board member may be terminated only by written agreement of both parties.
 8. If a Board member resigns, is unable to serve, or is terminated, a new Board member shall be selected within four weeks in the same manner as the Board member who was removed was originally selected.
- (c) *Additional Responsibilities of the Standing Disputes Review Board*
1. General. Within 120 days after the establishment of the Board, the Board shall meet at a mutually agreeable location to:
 - (1) Obtain copies of the Contract documents and Contractor's schedules for each of the Board members.
 - (2) Agree on the location of future meetings, which shall be reasonably close to the project site.
 - (3) Establish an address and telephone number for each Board member for the purposes of Board business.
 2. Regular meetings. Regular meetings of the Board shall be held approximately every 120 to 180 days throughout the life of the Contract, except that this schedule may be modified to suit developments on the job as the work progresses. Regular meetings shall be attended by representatives of the Contractor and the Department.
 3. The Board shall establish an agenda for each meeting which will cover all items that the Board considers necessary to keep it abreast of the project such as construction status, schedule, potential problems and solutions, status of past claims and disputes, and potential claims and disputes. Copies of each agenda shall be submitted to the Contractor and the Department at least seven days before the meeting date. Oral or written presentations or both shall be made by the Contractor and the Department as necessary to give the Board all the data the Board requires to perform its functions. The Board will prepare minutes of each meeting, circulate them to all participants for comments and approval, and issue revised minutes before the next meeting. As a part of each regular meeting, a field inspection trip of all active segments of the work at the project site may be made by the Board, the Contractor, and the Department.
- (d) *Arranging a Dispute Review Board Hearing.* When the Project Engineer initiates the DRB review process, the Project Engineer will:
1. Arrange a hearing between CDOT, the Contractor, and the DRB (date, time, and location) and notify the Contractor at least 15 days before the hearing. Unless otherwise agreed to by both parties the DRB hearing will be held within 30 days after the DRB agreement is signed.

2. Ensure DRB members have copies of all documents previously prepared by the Contractor and CDOT pertaining to the dispute, the DRB request, the Contract documents, and the special provisions at least two weeks before the hearing.

(e) *Pre-Hearing Submittal:* At least ten days prior to the hearing, CDOT and the Contractor shall each prepare and circulate to the DRB and the other party a pre-hearing position paper containing the following:

1. A joint statement of the dispute, and the scope of the desired decision. The joint statement shall summarize in a few sentences the nature of the dispute. If the parties are unable to agree on the wording of the joint statement, each party's position paper shall contain both statements, and identify the party authoring each statement.
2. The basis and justification for the party's position, with reference to contract language and other supporting documents for each element of the dispute. To minimize duplication and repetitiveness, the parties may identify a common set of documents that will be referred to by both parties and submit them in a separate package.
3. When the scope of the hearing includes quantum, the requesting party's position paper shall include full cost details, calculated in accordance with methods set forth in subsection 105.24(b).
4. A list of proposed attendees at the hearing. In the event of any disagreement, the DRB shall make the final determination as to who attends the hearing.
5. A list of any intended experts including their qualifications and a summary of what their presentation will include.

The number of copies, distribution requirements, and time for submittal shall be established by the DRB and communicated to the parties by the Chairperson.

(f) *Dispute Review Board Hearing.* The DRB shall preside over a hearing. The chairperson shall control the hearing and conduct it as follows:

1. An employee of CDOT presents a brief description of the project and the status of construction on the project.
2. The party that requested the DRB presents the dispute in detail as supported by previously submitted information and documentation.
3. The other party presents its position in detail.
4. Employees of each party are responsible for leading presentations at the DRB hearing.
5. Attorneys shall not participate in the hearing unless the DRB specifically addresses an issue to them or unless agreed to by both parties. Attorneys representing the parties are permitted to attend the hearing, provided their presence has been noted in the pre-hearing submittal.

6. Either party may use experts. A party intending to offer an outside expert's analysis at the hearing shall disclose such intention in the pre-hearing position paper. The expert's name and a general statement of the area of the dispute that will be covered by his presentation shall be included in the disclosure. The other party may present an outside expert to address or respond to those issues that may be raised by the disclosing party's outside expert.
 7. If both parties approve, the DRB may retain an outside expert. The DRB chairperson shall include the cost of the outside expert in the DRB's regular invoice. CDOT and the Contractor shall equally bear the cost of the services of the outside expert employed by the DRB.
 8. Upon completion of their presentations and rebuttals, both parties and the DRB will be provided the opportunity to exchange questions and answers. All questions shall be directed to the chairperson first. Attendees may respond only when board members request a response.
 9. The DRB shall hear only those disputes identified in the written request for the DRB and the information contained in the pre-hearing submittals. The board shall not hear or address other disputes. If either party attempts to discuss a dispute other than those to be heard by the DRB or attempts to submit new information, the chairperson shall inform such party that the board shall not hear the issue and shall not accept any additional information.
 10. If either party fails to timely deliver a position paper, the DRB may reschedule the hearing one time. On the final date and time established for the hearing, the DRB shall proceed with the hearing using the information that has been submitted.
 11. If a party fails to appear at the hearing, the DRB shall proceed as if all parties were in attendance.
- (g) *Dispute Review Board Recommendation.* The DRB shall issue a Recommendation in accordance with the following procedures:
1. The DRB shall not make a recommendation on the dispute at the meeting. Prior to the closure of the hearing, the DRB members and the Contractor and CDOT together will discuss the time needed for analysis and review of the dispute and the issuance of the DRB's recommendation. The maximum time shall be 30 days unless otherwise agreed to by both parties.
 2. After the meeting has been closed, the DRB shall prepare a written Recommendation signed by each member of the DRB. In the case of a three member DRB, where one member dissents that member shall prepare a written dissent and sign it.
 3. The chairperson shall transmit the signed Recommendation and any supporting documents to both parties.

- (h) *Clarification and Reconsideration of Recommendation.* Either party may request clarification or reconsideration of a decision within ten days following receipt of the Recommendation. Within ten days after receiving the request, the DRB shall provide written clarification or reconsideration to both parties unless otherwise agreed to by both parties.

Requests for clarification or reconsideration shall be submitted in writing simultaneously to the DRB and to the other party.

The Board shall not accept requests for reconsideration that amount to a renewal of a prior argument or additional argument based on facts available at the time of the hearing.

Only one request for clarification or reconsideration per dispute from each party will be allowed.

- (i) *Acceptance or Rejection of Recommendation.* CDOT and the Contractor shall submit their written acceptance or rejection of the Recommendation, in whole or in part, concurrently to the other party and to the DRB within 14 days after receipt of the Recommendation or following receipt of responses to requests for clarification or reconsideration.

If the parties accept the Recommendation or a discreet part thereof, it will be implemented in accordance with subsections 108.08, 109.04, 109.05, or 109.10 and the dispute is resolved.

If either party rejects the Recommendation in whole or in part, it shall give written explanation to the other party within 14 days after receiving the Recommendation. When the Recommendation is rejected in whole or in part by either party, the other party may either abandon the dispute or pursue a formal claim in accordance with subsection 105.24.

- (j) *Admissibility of Recommendation.* Recommendations of a DRB issued in accordance with subsection 105.23 are admissible in subsequent proceedings but shall be prefaced with the following paragraph:

This Recommendation may be taken under consideration with the understanding that:

1. The DRB Recommendation was a proceeding based on presentations by the parties.
2. No fact or expert witnesses presented sworn testimony or were subject to cross-examination.
3. The parties to the DRB were not provided with the right to any discovery, such as production of documents or depositions.
4. There is no record of the DRB hearing other than the Recommendation.

(k) *Cost and Payments.*

1. General Administrative Costs. The Contractor and the Department shall equally share the entire cost of the following to support the Board's operation:
 - (1) Copies of Contract and other relevant documentation
 - (2) Meeting space and facilities
 - (3) Secretarial Services
 - (4) Telephone
 - (5) Mail
 - (6) Reproduction
 - (7) Filing
2. The Department and the Contractor shall bear the costs and expenses of the DRB equally. Each DRB board member shall be compensated at an agreed rate of \$1,200 per day if time spent on-site per meeting is greater than four hours. Each DRB board member shall be compensated at an agreed rate of \$800 per day if time spent on-site per meeting is less than or equal to four hours. The time spent traveling to and from each meeting shall be reimbursed at \$50 per hour if the travel distance is more than 50 miles. The agreed daily and travel time rates shall be considered full compensation for on-site time, travel expenses, transportation, lodging, time for travel of more than 50 miles and incidentals for each day, or portion thereof that the DRB member is at an authorized DRB meeting. No additional compensation will be made for time spent by DRB members in review and research activities outside the official DRB meetings unless that time, (such as time spent evaluating and preparing recommendations on specific issues presented to the DRB), has been specifically agreed to in advance by the Department and Contractor. Time away from the project that has been specifically agreed to in advance by the parties will be compensated at an agreed rate of \$125 per hour. The agreed amount of \$125 per hour shall include all incidentals. Members serving on more than one DRB, regardless of the number of meetings per day, shall not be paid more than the all inclusive rate per day or rate per hour for an individual project.
3. Payments to Board Members and General Administrative Costs. Each Board member shall submit an invoice to the Contractor for fees and applicable expenses incurred each month following a month in which the Board members participated in Board functions. Such invoices shall be in the format established by the Contractor and the Department. The Contractor shall submit to the Department copies of all invoices. No markups by the Contractor will be allowed on any DRB costs. The Department will split the cost by authorizing 50 percent payment on the next progress payment. The Contractor shall make all payments in full to Board members within seven calendar days after receiving payment from the Department for this work.

(I) *Dispute Review Board Three Party Agreement.*

DISPUTE REVIEW BOARD
THREE PARTY AGREEMENT
COLORADO PROJECT NO.

THIS THREE PARTY AGREEMENT, made this ____ day of _____,
by and between: the Colorado Department of Transportation, hereinafter
called the “Department”; and

_____,
hereinafter called the “Contractor”; and

_____,
_____,
_____, and

hereinafter called the “Dispute Review Board” or “Board”.

WHEREAS, the Department is now engaged in the construction of the
_____ [Project Name] _____
and

WHEREAS, the Contract provides for the establishment of a Board in
accordance with subsections 105.22 and 105.23 of the Standard Specifications;
NOW, THEREFORE, it is hereby agreed:

ARTICLE I
DESCRIPTION OF WORK AND SERVICES

The Department and the Contractor shall form a Board in accordance with
this agreement and the provisions of subsection 105.23.

ARTICLE II
COMMITMENT ON PART OF THE PARTIES HERETO

The parties hereto shall faithfully fulfill the requirements of subsection
105.23 and the requirements of this agreement.

ARTICLE III
COMPENSATION

The parties shall share equally in the cost of the Board, including general
administrative costs (meeting space and facilities, secretarial services,
telephone, mail, reproduction, filing) and the member’s individual fees.
Reimbursement of the Contractor’s share of the Board expenses for any
reason is prohibited.

The Contractor shall make all payments in full to Board members. The
Contractor will submit to the Department an itemized statement for all such

payments, and the Department will split the cost by including 50 percent payment on the next progress payment. The Contractor and the Department will agree to accept invoiced costs prior to payment by the Contractor.

Board members shall keep all fee records pertaining to this agreement available for inspection by representatives of the Department and the Contractor for a period of three years after the termination of the Board members' services.

Payment to each Board member shall be at the fee rates established in subsection 105.23 and agreed to by each Board member, the Contractor, and the Department. In addition, reimbursement will be made for applicable expenses.

Each Board member shall submit an invoice to the Contractor for fees incurred each month following a month in which the members participated in Board functions. Such invoices shall be in the format established by the Contractor and the Department.

Payments shall be made to each Board member within 60 days after the Contractor and Department have received all the applicable billing data and verified the data submitted by that member. The Contractor shall make payment to the Board member within seven calendar days of receipt of payment from the Department.

ARTICLE IV ASSIGNMENT

Board members shall not assign any of the work to be performed by them under this agreement. Board members shall disclose any conflicts of interest including but not limited to any dealings with the either party in the previous five years other than serving as a Board member under other contracts.

ARTICLE V COMMENCEMENT AND TERMINATION OF SERVICES

The commencement of the services of the Board shall be in accordance with subsection 105.23 of the specifications and shall continue until all assigned disputes under the Contract which may require the Board's services have been heard and a Recommendation has been issued by the Board as specified in subsection 105.23. If a Board member is unable to fulfill his responsibilities for reasons specified in subsection 105.23(b)7, he shall be replaced as provided therein, and the Board shall fulfill its responsibilities as though there had been no change.

ARTICLE VI LEGAL RELATIONS

The parties hereto mutually agree that each Board member in performance of his duties on the Board is acting as an independent contractor and not as an employee of either the Department or the Contractor. Board members

will guard their independence and avoid any communication about the substance of the dispute without both parties being present.

The Board members are absolved of any personal liability arising from the Recommendations of the Board.

IN WITNESS HEREOF, the parties hereto have caused this agreement to be executed the day and year first written above.

BOARD MEMBER: _____.

BY: _____

BOARD MEMBER: _____.

BY: _____

BOARD MEMBER: _____.

BY: _____

CONTRACTOR: _____.

BY: _____

TITLE: _____

COLORADO DEPARTMENT OF TRANSPORTATION

BY: _____

TITLE: CHIEF ENGINEER

105.24 Claims for Unresolved Disputes. The Contractor may file a claim only if the disputes resolution process described in subsections 105.22 and 105.23 has been exhausted without resolution of the dispute. Other methods of nonbinding dispute resolution, exclusive of arbitration and litigation, can be used if agreed to by both parties.

This subsection applies to any unresolved dispute or set of disputes between CDOT and the Contractor with an aggregate value of more than \$15,000. Unresolved disputes with an aggregate value of more than \$15,000 from subcontractors, materials suppliers or any other entity not a party to the Contract shall be submitted through the Contractor in accordance with this subsection as a pass-through claim. Review of a pass-through claim does not create privity of Contract between CDOT and any other entity.

Subsections 105.22, 105.23 and 105.24 provide both contractual alternative dispute resolution processes and constitute remedy-granting provisions pursuant to Colorado Revised Statutes which must be exhausted in their entirety.

Merit-binding arbitration or litigation proceedings must commence within 180-calendar days of the Chief Engineer's decision, absent written agreement otherwise by both parties.

The venue for all unresolved disputes with an aggregate value \$15,000 or less shall be the County Court for the City and County of Denver.

Non-binding Forms of alternative dispute resolution such as Mediation are available upon mutual agreement of the parties for all claims submitted in accordance with this subsection.

The cost of the non-binding ADR process shall be shared equally by both parties with each party bearing its own preparation costs. The type of nonbinding ADR process shall be agreed upon by the parties and shall be conducted within the State of Colorado at a mutually acceptable location. Participation in a nonbinding ADR process does not in any way waive the requirement that merit-binding arbitration or litigation proceedings must commence within 180-calendar days of the Chief Engineer's decision, absent written agreement otherwise by both parties.

- (a) *Notice of Intent to File a Claim.* Within 30 days after rejection of the Dispute Resolution Board's Recommendation issued in accordance with subsection 105.23, the Contractor shall provide the Region Transportation Director with a written notice of intent to file a claim. The Contractor shall also send a copy of this notice to the Resident Engineer. For the purpose of this subsection Region Transportation Director shall mean the Region Transportation Director or the Region Transportation Director's designated representative. CDOT will acknowledge in writing receipt of Notice of Intent within 7 days.
- (b) *Claim Package Submission.* Within 60 days after submitting the notice of intent to file a claim, the Contractor shall submit five copies of a complete claim package representing the final position the Contractor wishes to have considered. All claims shall be in writing and in sufficient detail to enable the RTD to ascertain the basis and amount of claim. The claim package shall include all documents supporting the claim, regardless of whether such documents were provided previously to CDOT.

If requested by the Contractor the 60 day period may be extended by the RTD in writing prior to final acceptance. As a minimum, the following information shall accompany each claim.

1. A claim certification containing the following language, as appropriate:

A. For a direct claim by the Contractor:

CONTRACTOR'S CLAIM CERTIFICATION

Under penalty of law for perjury or falsification, the undersigned, (name) _____, (title) _____, of (company) _____, hereby certifies that the claim of

\$ _____ for extra compensation and ___ Days additional time, made herein for work on this contract is true to the best of my knowledge and belief and supported under the Contract between the parties.

This claim package contains all available documents that support the claims made herein and I understand that no additional information, other than for clarification and data supporting previously submitted documentation, may be presented by me.

Dated _____ /s/ _____

Subscribed and sworn before me this ___ day of _____.

NOTARY PUBLIC

My Commission Expires: _____

B. For a pass-through claim:

PASS-THROUGH CLAIM CERTIFICATION

Under penalty of law for perjury or falsification, the undersigned, (name) _____, (title) _____, of (company) _____, hereby certifies that the claim of

\$ _____ for extra compensation and ___ Days additional time, made herein for work on this Project is true to the best of my knowledge and belief and supported under the contract between the parties.

This claim package contains all available documents that support the claims made herein and I understand that no additional information, other than for clarification and data supporting previously submitted documentation, may be presented by me.

Dated _____ /s/ _____

Subscribed and sworn before me this ___ day of _____.

NOTARY PUBLIC

My Commission Expires: _____

Dated _____ /s/ _____

The Contractor certifies that the claim being passed through to CDOT is passed through in good faith and is accurate and complete to the best of my knowledge and belief.

Dated _____ /s/ _____

Subscribed and sworn before me this ___ day of _____.

NOTARY PUBLIC

My Commission Expires: _____

2. A detailed factual statement of the claim for additional compensation, time, or both, providing all necessary dates, locations, and items of work affected by the claim. The Contractor's detailed factual statement shall expressly describe the basis of the claim and factual evidence supporting the claim. This requirement is not satisfied by simply incorporating into the claim package other documents that describe the basis of the claim and supporting factual evidence.
3. The date on which facts were discovered which gave rise to the claim.
4. The name, title, and activity of all known CDOT, Consultant, and other individuals who may be knowledgeable about facts giving rise to such claim.
5. The name, title, and activity of all known Contractor, subcontractor, supplier and other individuals who may be knowledgeable about facts giving rise to such claim.
6. The specific provisions of the Contract, which support the claim and a statement of the reasons why such provisions support the claim.
7. If the claim relates to a decision of the Project Engineer, which the Contract leaves to the Project Engineer's discretion, the Contractor shall set out in detail all facts supporting its position relating to the decision of the Project Engineer.
8. The identification of any documents and the substance of all oral communications that support the claim.
9. Copies of all known documents that support the claim.
10. The Dispute Review Board Recommendation.
11. If an extension of contract time is sought, the documents required by subsection 108.08(d).
12. If additional compensation is sought, the exact amount sought and a breakdown of that amount into the following categories:
 - A. These categories represent the only costs that are recoverable by the Contractor. All other costs or categories of costs are not recoverable:
 - (1) Actual wages and benefits, including FICA, paid for additional labor
 - (2) Costs for additional bond, insurance and tax
 - (3) Increased costs for materials
 - (4) Equipment costs calculated in accordance with subsection 109.04(c) for Contractor owned equipment and based on certified invoice costs for rented equipment

- (5) Costs of extended job site overhead
 - (6) Salaried employees assigned to the project
 - (7) Claims from subcontractors and suppliers at any level (the same level of detail as specified herein is required for all such claims)
 - (8) An additional 16 percent will be added to the total of items (1) through (7) as compensation for items for which no specific allowance is provided, including profit and home office overhead.
 - (9) Interest shall be paid in accordance with CRS 5-12-102 beginning from the date of the Notice of Intent to File Claim
- B. In adjustment for the costs as allowed above, the Department will have no liability for the following items of damages or expense:
- (1) Profit in excess of that provided in 12.A.(8) above
 - (2) Loss of Profit
 - (3) Additional cost of labor inefficiencies in excess of that provided in A. above
 - (4) Home office overhead in excess of that provided in A. above
 - (5) Consequential damages, including but not limited to loss of bonding capacity, loss of bidding opportunities, and insolvency
 - (6) Indirect costs or expenses of any nature in excess of that provided in A. above
 - (7) Attorneys fees, claim preparation fees, and expert fees
- (c) *Audit.* An audit may be performed by the Department for any claim, and is mandatory for all claims with amounts greater than \$250,000. All audits will be complete within 60 days of receipt of the complete claim package, provided the Contractor allows the auditors reasonable and timely access to the Contractor's books and records. For all claims with amounts greater than \$250,000 the Contractor shall submit a copy of certified claim package directly to the CDOT Audit Unit at the following address:

Division of Audit
4201 E. Arkansas Ave
Denver, Co. 80222

- (d) *Region Transportation Director Decision.* When the Contractor properly files a claim, the RTD will review the claim and render a written decision to the Contractor to either affirm or deny the claim, in whole or in part, in accordance with the following procedure.

The RTD may consolidate all related claims on a project and issue one decision, provided that consolidation does not extend the time period within which the RTD is to render a decision. Consolidation of unrelated claims will not be made.

The RTD will render a written decision to the Contractor within 60 days after the receipt of the claim package or receipt of the audit whichever is later. In rendering the decision, the RTD: (1) will review the information in the Contractor's claim; (2) will conduct a hearing if requested by either party; and (3) may consider any other information available in rendering a decision.

The RTD will assemble and maintain a claim record comprised of all information physically submitted by the Contractor in support of the claim and all other discoverable information considered by the RTD in reaching a decision. Once the RTD assembles the claim record, the submission and consideration of additional information, other than for clarification and data supporting previously submitted documentation, at any subsequent level of review by anyone, will not be permitted.

The RTD will provide a copy of the claim record and the written decision to the Contractor describing the information considered by the RTD in reaching a decision and the basis for that decision. If the RTD fails to render a written decision within the 60 day period, or within any extended time period as agreed to by both parties, the Contractor shall either: (1) accept this as a denial of the claim, or (2) appeal the claim to the Chief Engineer, as described in this subsection.

If the Contractor accepts the RTD decision, the provisions of the decision shall be implemented in accordance with subsections 108.08, 109.04, 109.05, or 109.10 and the claim is resolved.

If the Contractor disagrees with the RTD decision, the Contractor shall either: (1) accept the RTD decision as final, or (2) file a written appeal to the Chief Engineer within 30 days from the receipt of the RTD decision. The Contractor hereby agrees that if a written appeal is not properly filed, the RTD decision is final.

- (e) *Chief Engineer Decision.* When a claim is appealed, the RTD will provide the claim record to the Chief Engineer. Within 15 days of the appeal either party may submit a written request for a hearing with the Chief Engineer or duly authorized Headquarters delegates. The Chief Engineer or a duly authorized Headquarters delegate will review the claim and render a decision to affirm, overrule, or modify the RTD decision in accordance with the following.

The Contractor's written appeal to the Chief Engineer will be made a part of the claim record.

The Chief Engineer will render a written decision within 60 days after receiving the written appeal. The Chief Engineer will not consider any information that was not previously made a part of the claim record, other than clarification and data supporting previously submitted documentation.

The Contractor shall have 30 days to accept or reject the Chief Engineer's decision. The Contractor shall notify the Chief Engineer of its acceptance or rejection in writing.

If the Contractor accepts the Chief Engineer's decision, the provisions of the decision will be implemented in accordance with subsections 108.08, 109.04, 109.05, or 109.10 and the claim is resolved.

If the Contractor disagrees with the Chief Engineer's decision, the Contractor shall either (1) pursue an alternative dispute resolution process in accordance with this specification or (2) initiate litigation or merit binding arbitration in accordance with subsection 105.24(f).

If the Chief Engineer does not issue a decision as required, the Contractor may immediately initiate either litigation or merit binding arbitration in accordance with subsection 105.24(f).

For the convenience of the parties to the Contract it is mutually agreed by the parties that any merit binding arbitration or De Novo litigation shall be brought within 180-calendar days from the date of the Chief Engineer's decision. The parties understand and agree that the Contractor's failure to bring suit within the time period provided, shall be a complete bar to any such claims or causes of action.

- (f) *De Novo Litigation or Merit Binding Arbitration.* If the Contractor disagrees with the Chief Engineer's decision, the Contractor may initiate de novo litigation or merit binding arbitration to finally resolve the claim that the Contractor submitted to CDOT, depending on which option was selected by the Contractor on Form 1378 which shall be submitted at the preconstruction conference. Such litigation or arbitration shall be strictly limited to those claims that were previously submitted and decided in the contractual dispute and claims processes outlined herein. This does not preclude the joining in one litigation or arbitration of multiple claims from the same project provided that each claim has gone through the dispute and claim process specified in subsections 105.22 through 105.24. The parties may agree, in writing, at any time, to pursue some other form of alternative dispute resolution.

Any offer made by the Contractor or the Department at any stage of the claims process, as set forth in this subsection, shall be deemed an offer of settlement pursuant to Colorado Rule of Evidence 408 and therefore inadmissible in any litigation or arbitration.

If the Contractor selected litigation, then de novo litigation shall proceed in accordance with the Colorado Rules of Civil Procedure and the proper venue is the Colorado State District Court in and for the City and County of Denver, unless both parties agree to the use of arbitration.

If the Contractor selected merit binding arbitration, or if both parties subsequently agreed to merit binding arbitration, arbitration shall be governed by the modified version of AAA's Construction Industry Arbitration Rules which appear in a standard special provision included in the Contract.

SECTION 106 CONTROL OF MATERIAL

106.01 Source of Supply and Quality Requirements. All materials used shall meet all quality requirements of the Contract. The Contractor shall comply with the requirements of the special notice to contractors contained in the Department's Field Materials Manual, including notifying the Engineer of the proposed sources of materials at least two weeks prior to delivery.

When alternative materials are permitted for an item in the Contract, the Contractor shall state at the preconstruction conference the material that will be furnished for that item.

Reference in the Contract to a particular product, or to the product of a specific manufacturer, followed by the phrase "or approved equal" is intended only to establish a standard of quality, durability and design, and shall not be construed as limiting competition. Products of other manufacturers will be acceptable provided such products are equal to that specified.

106.02 Material Sources. Where practicable, borrow pits, gravel pits, and quarry sites shall be located so that they will not be visible from the highway.

- (a) *Available Source.* When the Contract shows a location that may be used by the Contractor as a source of sand, gravel, or borrow material, the location will be known as an available source. The Department will have an agreement with the property owner which allows removal of material under certain conditions and for a stated price.

Conditions of this agreement which concern use of this material on the project and pit construction and reclamation requirements for the available source will be included in the Contract.

The Contract will indicate whether the Department has or has not obtained the necessary County or City Zoning Clearance and the required permit from Colorado Mined Land Reclamation Division needed to explore and remove materials from the available source. If the Department did not obtain the necessary clearances or permits, the Contractor shall obtain them. Any delays to the project or additional expenses that are incurred while these clearances or permits are being obtained shall be the responsibility of the Contractor. The Contractor shall ensure that the requirements of the permits do not conflict with the pit construction and reclamation requirements shown in the Contract for the available source.

The Department will investigate and obtain samples from the various available sources. These samples are not intended to indicate the full extent and composition of an entire deposit. These samples will be tested by the Department and may be combined with various materials such as mineral fillers and additives for further testing, especially for testing aggregate

sources to obtain a satisfactory design mix. The Contract will show the location of the test holes where samples were obtained, test results, and amounts and kinds of any added materials utilized in the testing to obtain a satisfactory product. If the Contractor uses an available source, all material shall meet contract specifications. The Department will not be responsible for the material as produced by the Contractor.

All costs of producing specification material shall be borne by the Contractor.

- (b) *Contractor Source.* Sources of sand, gravel, or borrow other than available sources will be known as contractor sources. The material from a contractor source must be approved by the Engineer prior to incorporation of the material into the project. The Contractor shall produce material which meets contract specifications throughout construction of the project.

The Contractor shall obtain all permits and agreements necessary to explore and remove material from a contractor source. The Contractor shall also be responsible for any costs or delays associated with obtaining these permits and agreements.

For each source of imported embankment or topsoil the Contractor shall provide the following certification. The Contractor shall assure and certify that unacceptable levels of hazardous waste and substances; including but not limited to those defined in the Code of Federal Regulations, 40 CFR Part 261 Subparts C and D, and the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), Section 101(14) as amended; are not incorporated into the project as a result of importing embankment or topsoil materials. The Contractor shall submit such certification to the Engineer, signed and stamped (or sealed) by either a certified industrial hygienist (CIH), certified hazardous materials manager (CHMM), registered professional engineer (PE), Certified Safety Professional (CSP), or Registered Environmental Manager (REM) for each contractor source outside of the project limits.

If contractor source material for embankment or topsoil, originating outside of the project limits, is placed on the project and is at anytime found to be contaminated with unacceptable levels of hazardous waste or substances, the Contractor shall remove the contaminated material from the Department's right of way, dispose of it in accordance with applicable laws and regulations, and make necessary restoration.

The cost of complying with these requirements, including sampling, testing, and corrective action by the Contractor, shall be included in the work.

106.03 Samples, Tests, Cited Specifications. All materials or the finished product in which the materials are used, will be inspected and tested by the Engineer, or by others if specified in the Contract. The Engineer will furnish copies of test results that indicate out of specification material, to the Contractor, promptly as the test results become available. Acceptance will be based on the applicable requirements of Section 105. Any work in which untested and uninspected materials are used shall be performed at the Contractor's risk and may be considered as unacceptable and unauthorized work.

Unless otherwise designated, when AASHTO, ASTM, or other specifications, standards, or policies are cited, the reference shall be to the latest edition as revised or updated by approved supplements or interim editions published and issued prior to the date of advertisement for bids.

Sampling and testing will be done in accordance with the Department's minimum sampling, testing, and inspection schedule; the special notice to contractors; and the Colorado procedures; all contained in the Department's Field Materials Manual.

Where the method of test is not cited, the applicable procedure shall be in accordance with the Standard AASHTO Method which was current on the date of advertisement for bids.

Samples will be taken by the Department except that the Contractor shall take samples of Portland Cement Concrete in accordance with CP 61; asphalt cement, in accordance with AASHTO T 40; hot mix asphalt in accordance with CP 41; and a composite of aggregates for hot asphalt mixtures in accordance with CP 30. The Engineer will determine the sampling locations, and the samples shall be taken in the presence of the Engineer. The Contractor may retain a split of each sample.

All materials being used are subject to inspection and testing at any time prior to or during incorporation into the work. Tests will be made by and at the expense of the Department.

106.04 Qualification of Testing Personnel and Laboratories. Personnel performing tests used in mix design or the acceptance, rejection, or price adjustment decision, and the laboratories in which those tests are performed, shall be qualified in accordance with Colorado Procedure 10.

106.05 Sampling and Testing of Hot Mix Asphalt. All HMA, Item 403, except HMA (Patching) and temporary pavement shall be tested in accordance with the following program of process control testing and acceptance testing:

- (a) *Process Control Testing.* The Contractor shall be responsible for process control testing on all elements listed in Table 106-1. Process control testing shall be performed at the expense of the Contractor. The Contractor shall develop a quality control plan (QCP) in accordance with the following:

1. **Quality Control Plan.** For each element listed in Table 106-1, the QCP must provide adequate details to ensure that the Contractor will perform process control. The Contractor shall submit the QCP to the Engineer at the preconstruction conference. The Contractor shall not start any work on the project until the Engineer has approved the QCP in writing.
 - A. **Frequency of Tests or Measurements.** The QCP shall indicate a random sampling frequency, which shall not be less than that shown in Table 106-1. The process control tests shall be independent of acceptance tests.
 - B. **Worksheets, Forms, and Charts.** The Contractor shall submit examples of worksheets, test result forms, and test results charts in accordance with CP 12 as part of the QCP.
 - C. **Test Result Chart.** Each process control test result, the appropriate tonnage and the tolerance limits shall be plotted. For in place density tests, only results after final compaction shall be shown. The chart shall be posted daily at a location convenient for viewing by the Engineer.
 - D. **Quality Level Chart.** The Quality Level (QL) for each element used to calculate incentive or disincentive in Table 106-1 and each required sieve size shall be plotted. The QL will be calculated in accordance with the procedure in CP 71 for Determining Quality Level (QL). The QL will be calculated on tests 1 through 3, then tests 1 through 4, then tests 1 through 5, then thereafter the last five consecutive test results. The tonnage of material represented by the last test result shall correspond to the QL. For in place density tests, only results after final compaction shall be shown. The chart shall be posted daily at a location convenient for viewing by the Engineer.
2. **Elements Not Conforming to Process Control.** The QL of each discrete group of five test results, beginning with the first group of five test results, shall be a standard for evaluating material not conforming to process control. When the group QL is below 65, the process shall be considered as not conforming to the QCP. In this case, the Contractor shall take immediate action to bring the process back into control. Except where the cause of the problem is readily apparent and corrected without delay, production shall be suspended until the source of the problem is determined and corrected. A written explanation of actions taken to correct control problems shall accompany the test data and be submitted to the Engineer on the day the actions are taken.
3. **Point of Sampling.** The material for process control testing shall be sampled by the Contractor using approved procedures. Acceptable procedures are Colorado Procedures, AASHTO and ASTM. The order of precedence is Colorado Procedures, AASHTO procedures and then ASTM procedures. The location where material samples will be taken shall be indicated in the QCP.

4. Testing Standards. The QCP shall indicate which testing standards will be followed. Acceptable standards are Colorado Procedures, AASHTO and ASTM. The order of precedence is Colorado Procedures, AASHTO procedures and then ASTM procedures.
5. Testing Supervisor Qualifications. The person responsible for the process control sampling and testing shall be identified in the QCP and be qualified according to the requirements of CP 10
6. Technician Qualifications. Technicians taking samples and performing tests must be qualified according to the requirements of CP 10.
7. Testing Equipment. All of the testing equipment used to conduct process control testing shall conform to the standards specified in the test procedures and be in good working order. Nuclear testing devices used for process control testing of in-place density do not have to be calibrated on the Department's calibration blocks.
8. Reporting and Record Keeping. The Contractor shall report the results of the process control tests to the Engineer in writing at least once per day. The Contractor shall assemble a Quality Control (QC) notebook and update it daily. This notebook shall contain all worksheets, test results forms, test results charts and quality level charts for each of the elements listed in Table 106-1. The Contractor shall submit the QC notebook to the Engineer for review once a month on the date agreed to at the Pre-Paving Conference. The QC notebook will be returned to the Contractor within one working day after submittal. The Engineer will notify the Contractor in writing of any deficiencies in the QC notebook, including the failure to submit the notebook on time or an absence of the required reports. Upon the second failure to submit the complete QC notebook on time or with an absence of the required reports, the Engineer will notify the Contractor, and the pay estimate will be withheld until the Contractor submits, in writing, a report detailing the cause for the failure to submit the complete QC notebook on time or the cause for the absence of required reports. The report shall include how the Contractor plans to resolve the failures. Additional failures to submit the QC notebook on time or absent the required reports will result in a delay of the pay estimate until the Contractor has identified and resolved the failure along with revising and resubmitting his QCP to address these issues. Once the Engineer has reviewed and approved the revised QCP the estimate may be paid. Upon submittal of the QC notebook for the semi-final estimate, the QC notebook shall become the property of the Department. The Contractor shall make provisions such that the Engineer can inspect process control work in progress, including QC notebook, sampling, testing, plants, and the Contractor's testing facilities at any time.

- (b) *Acceptance Testing.* Acceptance testing is the responsibility of the Department and shall not be addressed in the QCP. The Department will determine the locations where samples or measurements are to be taken. The maximum quantity of material represented by each test result and the minimum number of test results will be in accordance with Table 106-1. The location or time of sampling will be based on a stratified random procedure as described in CP 75. Acceptance sampling and testing procedures will be in accordance with the Schedule for Minimum Materials Sampling, Testing and Inspection in the Department's Field Materials Manual. Samples for project acceptance testing shall be taken by the Contractor in accordance with the designated method. The samples shall be taken in the presence of the Engineer. Where appropriate, the Contractor shall reduce each sample to the size designated by the Engineer. The Contractor may retain a split of each sample which cannot be included as part of the QCP.

If the Contractor elects to question the Hot Mix Asphalt (HMA) acceptance test results, the steps outlined in CP 17 shall be followed. The results from the CP 17 resolution process shall be binding on both the Department and the Contractor. Requests for CP 17 process for all elements except density shall be submitted in writing to the Engineer within five working days from the date the Contractor receives acceptance test data from the Engineer. The specific element questioned shall be identified in writing. All requests for the CP 17 process for the density element shall be submitted in writing to the Engineer within 24 hours of receiving test data from the Engineer.

The Contractor shall choose either the CDOT Materials and Geotechnical Branch or a consultant laboratory not associated with the project to perform the third party testing. The Contractor shall document his choice in writing at the Pre-Paving Conference. If a consultant laboratory is chosen, the CDOT Materials and Geotechnical Branch will determine the consultant that will be used from a pre-established list and ensure there is no conflict of interest.

If third party testing is required, the responsibility for the testing expenses shall be assigned in accordance with CP 17. The costs for testing are shown in CP 17, Table 17-2.

All materials being used are subject to inspection and testing at any time prior to, during, or after incorporation into work. Acceptance tests will be made by and at the expense of the Department, except when otherwise provided.

- (c) *Check Testing Program (CTP).* Prior to, or in conjunction with, placing the first 500 tons of asphalt pavement, under the direction of the Engineer, a CTP will be conducted between acceptance testing and process control testing programs. The CTP will consist of testing for asphalt content, theoretical maximum specific gravity, HMA 4.75 mm (#4) sieve, HMA 2.36 mm (#8) sieve, HMA 0.075 mm (#200) sieve, in-place density, and joint density in accordance with CP 13. If the Contractor intends to test to determine air voids and VMA,

check testing for these tests is recommended. The CTP will be continued until the acceptance and process control tests are within the acceptable limits shown in Table 13-1 of CP 13. For joint density, the initial check test will be a comparison of the seven cores tested by CDOT and the seven cores tested by the Contractor. These are the cores from the compaction test section used for nuclear gauge calibration and test section payment.

During production, a split sample check will be conducted at the frequency shown in Table 106-1. Except for joint density, the split samples will be from an acceptance sample obtained in accordance with subsection 106.05(b). The acceptance test result will be compared to the process control test result obtained by the Contractor using the acceptable limits shown in Table 13-1 of CP 13. For joint density, the comparison sample for testing by the Contractor will be obtained by taking a second core adjacent to the joint density acceptance core. The acceptance test result will be compared to the process control test result obtained by the Contractor using the acceptable limits as shown in Table 13-1 of CP 13 and following the check testing procedure given in CP 13.

If production has been suspended and then resumed, the Engineer may order a CTP between process control and acceptance testing persons to assure the test results are within the acceptable limits shown in Table 13-1 of CP 13. Check test results shall not be included in process control testing. The Region Materials Engineer shall be called upon to resolve differences if a CTP shows unresolved differences beyond the values shown in Table 13-1 of CP 13.

- (d) *Stability Verification Testing.* After the mix design has been approved and production commences, the Department will perform a minimum of three stability verification tests to verify that the field produced HMA conforms to the approved mix design:

The test frequency shall be one per day unless otherwise directed by the Engineer.

The test results will be evaluated and the Contractor shall make adjustments if required in accordance with the following:

1. The minimum value for stability will be the minimum specified in Table 403-1 of the specifications. There will be no tolerance limit.
2. Quality Level. Calculate a QL for stability.

If the QL for stability is less than 65, then production shall be halted and the Contractor shall submit a written proposal for a mix design revision to the Engineer. The Engineer shall give written approval to the proposed mix design revision before production continues.

After a new or revised mix design is approved, three additional stability tests will be performed on asphalt produced with the new or revised mix design. The test frequency shall be one per day unless altered by the Engineer.

If the stability QL is less than 65, then production shall be halted until a new mix design has been completed and approved using plant produced material or the Contractor shall submit a written proposal for a mix design revision to the Engineer. The Engineer shall give written approval to the proposed mix design revision before production continues.

3. **New or Revised Mix Design.** Whenever a new or revised mix design is used and production resumes, three additional stability field verification tests shall be performed and the test results evaluated in accordance with the above requirements. The test frequency shall be one per day unless altered by the Engineer.
 4. **Field Verification Process Complete.** When the field verification process described above is complete and production continues, the sample frequency will revert back to 1 per 10,000 tons.
- (e) *Mix Verification Testing.* After the mix design has been approved and production commences, the Department will perform a minimum of three volumetric verification tests for each of the following elements to verify that the field produced HMA conforms to the approved mix design:

- (1) Air Voids
- (2) Voids in Mineral Aggregate (VMA)
- (3) Asphalt Content (AC)

The test frequency shall be one per day unless otherwise directed by the Engineer.

The test results will be evaluated and the Contractor shall make adjustments if required in accordance with the following:

1. **Target Values.** The target value for VMA will be the average of the first three volumetric field test results on project produced HMA or the target value specified in Table 403-1 and Table 403-2 of the specifications, whichever is higher. The target value for VMA will be set no lower than 0.5 percent below the VMA target on Form 43 prior to production. The target values for the test element of air voids and AC shall be the mix design air voids and mix design AC as shown on Form 43.
2. **Tolerance Limits.** The tolerance limits for each test element shall be:

AC	± 0.3 percent
Air Voids	± 1.2 percent
VMA	± 1.2 percent
3. **Quality Levels.** Calculate an individual QL for each of the elements using the volumetric field verification test results.
4. **Total Quality Level.** Add the three individual QLs and divide by three to determine the Total Quality Level (TQL).

- A. If TQL is 90 or greater, then no change is required and production can continue.
- B. If TQL is 65 or greater and less than 90 and the QL for the test element of air voids is 70 or greater, then no change is required and production can continue.
- C. If TQL is 65 or greater and less than 90 and the QL for the test element of air voids is less than 70 or the TQL is less than 65, then production shall be halted and the Contractor shall submit a written proposal for a mix design revision to the Engineer. Production shall not resume until the Engineer has approved a revised mix design.

After a new or revised mix design is approved, three additional volumetric field verification tests will be performed on asphalt produced with the new or revised mix design. The test frequency shall be one per day unless altered by the Engineer.

- (1) If TQL is 90 or greater, then no change is required and production can continue.
- (2) If TQL is 65 or greater and less than 90 and the QL for the test element of air voids is 70 or greater, then no change is required and production can continue.
- (3) If TQL is 65 or greater and less than 90 and the QL for the test element of air voids is less than 70 or the TQL is less than 65, then production shall be halted until a new mix design has been completed in accordance with CP 52 or CP 54, a new Form 43 issued, and the Contractor demonstrates capability of producing a mixture meeting the verification requirements in accordance with (i) or (ii) below:
 - (i) The Contractor shall produce material that shall not be placed on CDOT projects. A minimum of 48 hours notice is required, along with the approval of the Engineer, prior to placement. Three samples will be tested for volumetric properties. If the TQL is equal or greater than 65 and the QL for the element of air voids is equal or greater than 70, full production may resume or;
 - (ii) The Contractor may construct a 500 ton test strip on the project. Three samples in the last 200 tons will be tested for volumetric properties. After construction of the test section, production shall be halted until the testing is complete and element QLs and a new TQL are calculated. If the TQL is equal or greater than 65 and the QL for the element of air voids is equal or greater than 70, full production may resume. If the TQL is less than 65 or the QL for the elements of air voids or VMA is less than 70,

the material shall be removed and replaced at the Contractor's expense. The time count will continue, and any delay to the project will be considered to have been caused by the Contractor and will not be compensable. The costs associated with mix designs shall be solely at the Contractor's expense.

If the Contractor fails to verify the new mix design in accordance with (i) or (ii), then production shall be halted until a new mix design has been completed in accordance with CP 52 or CP 54, a new Form 43 issued, and the Contractor demonstrates capability of producing a mixture meeting the verification requirements in accordance with (i) or (ii).

5. **New or Revised Mix Design.** Whenever a new or revised mix design is used and production resumes, three additional volumetric field verification tests shall be performed and the test results evaluated in accordance with the above requirements. The test frequency shall be one per day unless altered by the Engineer.
6. **Field Verification Process Complete.** When the field verification process described above is complete and production continues, the sample frequency will revert back to a minimum of 1 per 10,000 tons. The Engineer has the discretion to conduct additional verification tests at any time.

(f) *Testing Schedule.* Process control and project acceptance testing frequency shall be in accordance with Table 106-1.

(g) *Reference Conditions.* Three reference conditions can exist determined by the Moving Quality Level (MQL). The MQL will be calculated in accordance with the procedure in CP 71 for Determining Quality Level (QL). The MQL will be calculated using only acceptance tests. The MQL will be calculated on tests 1 through 3, then tests 1 through 4, then tests 1 through 5, then thereafter on the last five consecutive test results. The MQL will not be used to determine pay factors. The three reference conditions and actions that will be taken are described as follows:

1. Condition green will exist for an element when an MQL of 90 or greater is reached, or maintained, and the past five consecutive test results are within the specification limits.
2. Condition yellow will exist for all elements at the beginning of production or when a new process is established because of changes in materials or the job-mix formula, following an extended suspension of work, or when the MQL is less than 90 and equal to or greater than 65. Once an element is at condition green, if the MQL falls below 90 or a test result falls outside the specification limits, the condition will revert to yellow or red as appropriate.

3. Condition red will exist for any element when the MQL is less than 65. The Contractor shall be notified immediately in writing and the process control sampling and testing frequency increased to a minimum rate of 1 per 250 tons for that element. The process control sampling and testing frequency shall remain at 1 per 250 tons until the process control QL reaches or exceeds 78. If the QL for the next five process control tests is below 65, production will be suspended.

If gradation is the element with MQL less than 65, the Department will test one randomly selected sample in the first 1250 tons produced in condition red. If this test result is outside the tolerance limits, production will be suspended. (This test result will not be included as an acceptance test.)

After condition red exists, a new MQL will be started. Acceptance testing will stay at the frequency shown in Table 106-1. After three acceptance tests, if the MQL is less than 65, production will be suspended.

Production will remain suspended until the source of the problem is identified and corrected. Each time production is suspended, corrective actions shall be proposed in writing by the Contractor and approved in writing by the Engineer before production may resume.

Upon resuming production, the process control sampling and testing frequency for the elements causing the condition red shall remain at 1 per 250 tons. If the QL for the next five process control tests is below 65, production will be suspended again. If gradation is the element with MQL less than 65, the Department will test one randomly selected sample in the first 1250 tons produced in condition red. If this test result is outside the tolerance limits, production will be suspended.

Table 106-1
SCHEDULE FOR MINIMUM SAMPLING AND
TESTING FOR HMA

Element	Process Control	Acceptance^{1,2}	Check (CTP)
Asphalt Content	1/500 tons	1/1000 tons	1/10,000 tons
Gradation	1/Day	1/2000 tons	1/20,000 tons
Theoretical Maximum Specific Gravity	1/1000 tons, minimum 1/Day	1/1000 tons, minimum 1/Day	1/10,000 tons
In-place Density	1/500 tons	1/500 tons	1/5000 tons
Joint Density	1 core/2500 linear feet of joint	1 core/5000 linear feet of joint	1 core/50,000 linear feet of joint
Aggregate Percent Moisture ³	1/2000 tons, minimum 1/Day	1/2000 tons	Not applicable
Percent Lime ^{3,4}	1/Day	Not applicable	Not applicable

Notes for Table 106-1 are on following page.

Notes for Table 106-1:

¹The minimum number of acceptance tests will be: 5 asphalt content, 3 gradation, 10 in-place density and 5 joint density for all projects.

²When unscheduled job mix formula changes are made (Form 43) acceptance of the elements, except for in-place density, will be based on the actual number of samples that have been selected up to that time, even if the number is below the minimum listed in the schedule. At the Engineer's discretion, additional random in-place density tests may be taken in order to meet scheduled minimums, provided the applicable pavement layer is available for testing under safe conditions. Beginning with the new job mix formula, the quantity it will represent shall be estimated. A revised schedule of acceptance tests will be based on that estimate.

³Not to be used for incentive or disincentive pay. Test according to CP 60B and report results from Form 106 or Form 565 on Form 6

⁴ Verified per Contractor's QC Plan

106.06 Sampling and Testing of Portland Cement Concrete Paving. All Portland Cement Concrete Pavement, Item 412, shall be tested in accordance with the following quality control and acceptance testing procedures:

- (a) *Quality Control Testing.* The Contractor shall be responsible for quality control testing of all elements listed in Table 106-2 or 106-3. Quality control testing shall be performed at the expense of the Contractor. If the Contractor chooses flexural strength criteria, then the Quality Control testing for flexural strength shall be performed at the expense of the Contractor. The Contractor shall develop a quality control plan (QCP) in accordance with the following:
1. Quality Control Plan. For each element listed in Tables 106-2 or 106-3, the QCP must provide adequate details to ensure that the Contractor will perform quality control. The Contractor shall submit the QCP to the Engineer at the preconstruction conference. The Contractor shall not start any work on the project until the Engineer has approved the QCP in writing.
 - A. Frequency of Tests or Measurements. The QCP shall indicate a random sampling frequency, which shall be equal to or more frequent than that shown in Table 106-2 or 106-3. The quality control tests shall be independent of acceptance tests.
 - B. Test Result Chart. Each quality control test result, the appropriate area, volume, and the tolerance limits shall be plotted. The chart shall be posted daily at a location convenient for viewing by the Engineer.
 - C. Quality Level Chart. The QL for each element in Table 106-2 or 106-3 shall be plotted. The QL shall be calculated in accordance with the procedure in CP 71 for Determining Quality Level. The QL shall be calculated on tests 1 through 3, then tests 1 through 4, then tests 1 through 5, then thereafter the last five consecutive test

results. The area of material represented by the last test result shall correspond to the QL.

- D. F-test and t-test Charts. If the Contractor chooses flexural strength criteria, then the results of F-test and t-test analysis between the Department's verification tests of flexural strength and the Contractor's quality control tests of flexural strength shall be shown on charts. The F-test and t-test shall be calculated in accordance with standard statistical procedures using all verification tests and quality control tests completed to date. When a verification test is completed, the F-test and t-test calculations shall be redone. The area of material represented by the last test result shall correspond to the F-test and t-test. A warning value of 5 percent and an alert value of 1 percent shall be shown on each chart. The chart shall be posted daily at a location convenient for viewing by the Engineer.
2. Point of Sampling. The material for quality control testing shall be sampled by the Contractor using CP 61. The location where material samples will be taken shall be indicated in the QCP.
 3. Testing Standards. The QCP shall indicate which testing standards will be followed. Acceptable standards are Colorado Procedures, AASHTO and ASTM. The order of precedence is Colorado Procedures, AASHTO procedures and then ASTM procedures.

The compressive strength test for quality control will be the average strength of two test cylinders cast in plastic molds from a single sample of concrete, cured under standard laboratory conditions, and tested three to seven days after molding.

4. Testing Supervisor Qualifications. The person in charge of and responsible for the quality control testing shall be identified in the QCP. This person shall be present on the project and possess one or more of the following qualifications:
 - A. Registration as a Professional Engineer in the State of Colorado.
 - B. Registration as an Engineer in Training in the State of Colorado with two years of paving experience.
 - C. A Bachelor of Science in Civil Engineering or Civil Engineering Technology with three years of paving experience.
 - D. National Institute for Certification in Engineering (NICET) certification at level III or higher in the subfields of Transportation Engineering Technology, Highway Materials, or Construction Materials Testing Engineering Technology, Concrete and four years of paving experience.
5. Technician Qualifications. Technicians performing tests shall meet the requirements of Colorado Procedure 10.

6. Testing Equipment. All of the testing equipment used to conduct quality control testing shall conform to the standards specified in the test procedures and be in good working order. If the Contractor chooses flexural strength criteria, then the Contractor shall provide the following equipment and supplies which will not be paid for separately but shall be included in the work:
 - A. A separate, temperature controlled facility of at least 300 square feet usable space. This facility shall be used exclusively for the molding, storage and testing of concrete test specimens as required. This facility shall be provided in addition to other facilities required in Section 620. The storage facility shall have sufficient water storage capacity for curing all required test specimens. The storage facility shall provide separate storage tanks for each type of required testing. Each storage tank shall have a continuously recording thermometer and sufficient blank charts for the project. Temperatures of each storage tank shall be recorded for the duration of the project.
 - B. A machine for testing flexural strength of concrete specimens. The machine shall be used only for flexural strength tests. The machine shall be model number FX-250 manufactured by Forney with a DR2001 digital monitor or an approved equal. Both the Contractor and the Engineer will use this machine for testing concrete specimens. The machine shall meet the requirements of AASHTO T 97 and T 22 and the following: The machine and the flexural strength assembly shall be of a rigid construction. The applied vertical load shall be uniformly distributed to the third points and uniformly across the width of the beam (transverse distribution). Uniform distribution of the load is defined as less than a 3 percent variation in the load between each of the nine strain gages placed in the middle third section of the tension face for loads from 1,000 to 10,000 pounds. One firm that can evaluate and assess the ability of the machine to distribute the load evenly is Construction Technology Laboratories, Skokie Illinois (847)965-7500 (Paul Okamoto). Other firms may be capable of evaluating and assessing the load distribution of the machine. The Engineer must approve the firm prior to assessing the machine. The machine shall be ready for use and certified two days before paving begins. After the machine has been certified and accepted by the Engineer it shall not be moved until all portland cement concrete paving and flexural strength acceptance tests have been completed.
 - C. Beam molds for molding all test specimens required. This shall include all testing described in subsection 106.06.
7. Reporting and Record Keeping. The Contractor shall report the results of the tests to the Engineer in writing at least once per day.

The Contractor shall assemble a Quality Control (QC) notebook and update it daily. This notebook shall contain all worksheets, test results

forms, test results charts and quality level charts for each of the elements listed in Table 106-2 or 106-3. The Contractor shall submit examples of worksheets, test result forms and test results charts in accordance with CP 12B as part of the Contractor's Quality Control Plan (QCP). The Contractor shall submit the QC notebook to the Engineer for review once a month on the date agreed to at the Pre-Construction Conference.

The QC notebook will be returned to the Contractor with a list of recognized deficiencies within two working days after submittal. Deficiencies may include, but are not limited to, the failure to submit the notebook on time or an absence of the required reports. For any month in which deficiencies are identified, the QC notebook will be submitted for review two weeks after the QC notebook is returned. Upon the second recognized deficiency the Engineer will notify the Contractor, and the pay estimate shall be withheld until the Contractor submits, in writing, a report detailing the cause for the recognized deficiency. The report shall include how the Contractor plans to resolve the deficiencies. Additional recognized deficiencies will result in a delay of the pay estimate until the Contractor has identified and resolved the deficiency along with revising and resubmitting his QCP to address these issues. Once the Engineer has reviewed and approved the revised QCP the estimate may be paid. Upon submittal of the QC notebook for the semi-final estimate, the QC notebook shall become the property of the Department. The Contractor shall make provisions such that the Engineer can inspect quality control work in progress, including QC notebook, sampling, testing, plants, and the Contractor's testing facilities at any time.

- (b) *Acceptance Testing.* Acceptance testing frequencies shall be in accordance with Table 106-2 or Table 106-3. Except for flexural strength, acceptance tests will be conducted by and at the expense of the Department. Acceptance sampling and testing procedures will be in accordance with the Department's Field Materials Manual with the following exceptions and inclusions:

A split sample from an acceptance test shall not be used for a quality control test. The Engineer will designate the location where samples are to be taken. Samples shall be taken by the Contractor in accordance with CP 61. The Engineer will be present during the sampling and take possession of all acceptance samples. Samples transported in different containers will be combined and mixed before molding specimens. All materials are subject to inspection and testing at all times.

Pavement thickness acceptance will be determined by cores.

The compressive strength test for acceptance will be the average compressive strength of three test cylinders cast in plastic molds from a single sample of concrete and cured under standard laboratory conditions prior to testing. If the compressive strength of any one specimen differs from the average by more than 10 percent, that specimen will be deleted and the average strength will be determined using the remaining two specimens. Each set of three cylinders will be tested at 28 days after molding.

Acceptance tests for flexural strength shall be the Contractor's quality control tests. The flexural strength tests shall be the average flexural strength of four test beams. The test beams shall be prepared according to AASHTO T 23 with the following additional requirements: Specimens shall be consolidated by internal vibration without the vibrator being inserted in the center six inches of the specimen's long dimension. The flexural strength of each specimen shall be measured according to AASHTO T 97 with the following additional requirements: If the flexural strength of only one specimen differs from the average by more than 10 percent, that specimen shall be deleted and the average strength shall be determined using the remaining three specimens. If the flexural strength of more than one specimen differs from the average by more than 10 percent, the test value shall be the average of all four specimens. Each set of four beams shall be tested at 28 days after molding. Leather shims shall be used in each test.

- (c) *Verification Testing.* Verification testing will be used only when the Contractor chooses flexural strength criteria and is the responsibility of the Department. The Department will determine the locations where samples or measurements are to be taken. The maximum quantity of material represented by each test result and the minimum number of test results shall be in accordance with Table 106-2. The location of sampling shall be based on a stratified random procedure.

Verification sampling and testing procedures will be in accordance with Sections 105, 106, 412, the Schedule for Minimum Materials Sampling, Testing and Inspection in the Department's Field Materials Manual, and CP 13. Samples for verification and acceptance testing shall be taken by the Contractor in accordance with CP 61 in the presence of the Engineer.

An analysis of test results will be performed after all test results are known using the t-test and F-test statistical methods with an alpha value set at 0.05. If either the above t-test and F-test analysis shows a significant difference, then the following items shall be checked: comparison of beam fracture locations and types, computations and flexural testing machine outputs, curing tank temperature charts, slump and air contents, plant batch tickets for major changes, review of sampling, molding, testing procedures, along with IAT check tests and any other investigations that may clarify the significant differences. If after a review of the data no reasons can be determined for the significant difference, the Department's test data shall be used for determining Quality Levels and Incentive or Disincentive according to the methods in this Section.

- (d) *Check Testing.* The Contractor and the Engineer shall conduct a check testing program (CTP) prior to the placement of any concrete pavement. The check testing program will include a conference directed by the Region Materials Engineer of the Contractor's testers and the Department's testers concerning methods, procedures and equipment for compressive or flexural strength testing. Check testing shall be completed before any portland cement concrete pavement is placed. A set of three cylinders or four beams

will be molded by both the Contractor and the Department's project testers from a split sample. The specimens will be sampled, molded and cured for seven days and tested for compressive or flexural strength according to the procedures of Section 106. The Department's Independent Assurance Tester will also mold, cure and test a set of three cylinders or four beams, but the Independent Assurance Test results will not be entered in the check testing analysis. If the results of the check tests do not meet the following criteria, then the check testing will be repeated until the following criteria are met:

- (1) The average of the Contractor's test results and the average of the Department's test results shall be within 10 percent of the average of all test results.
- (2) Each specimen test result shall be within 15 percent of the average of all test results.

When the compressive strength criteria is chosen, a check test must also be conducted on the sand equivalent test. A set of 5 sand equivalents will be run by both the Contractor's and the Department's project tester, from a split sample. The average of the absolute differences between tests taken by the quality control personnel and the acceptance testing personnel will be compared to the acceptable limits shown in Table 13-1 of CP 13. The CTP will be continued until the acceptance and quality control test results are within the permissible ranges shown in Table 13-1 of CP 13.

During production, split samples of randomly selected acceptance tests will be compared to the permissible ranges shown in Table 13-1 of CP 13. The minimum frequency will be as shown in Table 106-3.

If production has been suspended and then resumed, the Engineer may order a CTP between tests taken by quality control and acceptance testing persons to assure the test results are within the permissible ranges shown in Table 13-1 of CP 13. Check test results shall not be included in quality control testing. The Region Materials Engineer shall be called upon to resolve differences if a CTP shows unresolved differences beyond the ranges shown in Table 13-1 of CP 13.

- (e) *Independent Assurance Testing.* Independent Assurance Tests (IAT) for flexural strength will be performed at a frequency of 1 per 50,000 sq. yds. The sample for the IAT will be a split sample of the Contractor's quality control test. The Department's representative performing verification tests shall also use a split sample of the Contractor's quality control test and participate in the IAT. The IAT for flexural strength will be the average flexural strength of four test beams prepared according to the requirements of Section 106 and cured for seven days.
- (f) *Testing Schedule.* All samples used to determine Incentive or Disincentive payment by quality level formulas in accordance with Section 105, will be selected by a stratified random process.

Table 106-2
TESTING SCHEDULE - ITEM 412
PORTLAND CEMENT CONCRETE
PAVEMENT, FLEXURAL STRENGTH CRITERIA

Element	Minimum Testing Frequency Contractor's Quality Control
Aggregate Gradation and Sand Equivalent	For the first five days, minimum of 1/day, then 1/10,000 sq. yds. After 5 days, 1/40,000 sq. yds.
Slump	First three loads each day, then as needed for control.
Water Cement Ratio	First three loads each day, then 1/500 cu. yds.
Air Content and Yield	Minimum of 1/day, then 1/2,500 sq. yds.
Flexural Strength	Minimum of 1/day, then 1/2,500 sq. yds.
Compressive Strength	1/10,000 sq. yds.
Pavement Thickness	In accordance with subsection 412.21.
Pull Test Joints	Minimum of six transverse and six longitudinal joint locations for the 1 st 2500 linear feet, then three transverse and three longitudinal joints thereafter
Load Transfer Dowel Bar Placement	Minimum of six transverse joint locations in each 2500 linear feet.
Tining Depth	1 per 528 linear feet in each lane and shoulder wider than 8 feet.

Table 106-3
TESTING SCHEDULE - ITEM 412
PORTLAND CEMENT CONCRETE
PAVEMENT, COMPRESSIVE STRENGTH CRITERIA

Element	Minimum Testing Frequency Contractor's Quality Control
Aggregate Gradation and Fractured Faces	Minimum of 1/day, then 1/10,000 sq. yds.
Slump	First three loads each day, then as needed for control.
Compressive Strength, Air Content, Yield, and Sand Equivalent	Minimum of 1/day, then 1/2,500 sq. yds.
Pavement Thickness	In accordance with subsection 412.21.
Pull Test Joints	Minimum of six transverse and six longitudinal joint locations for the 1 st 2500 linear feet, then three transverse and three longitudinal joints thereafter
Load Transfer Dowel Bar Placement	Minimum of six transverse joint locations in each 2500 linear feet.
Tining Depth	1 per 528 linear feet in each lane and shoulder wider than 8 feet.
Water Cement Ratio	First three loads each day, then 1/500 cu. yds.

106.07 Material Inspection at Plant. If the Engineer inspects the materials at the source, the following conditions shall be met:

- (1) The Engineer shall have the cooperation and assistance of the Contractor and the materials producer.
- (2) The Engineer shall have full entry to all parts of the plant necessary for the manufacture or production of the materials being furnished.
- (3) Adequate safety measures shall be provided and maintained.

The Department reserves the right to retest all materials which have been previously tested or inspected. The retesting may be prior to or after incorporation of the materials into the work. Those materials inspected and tested after delivery on the project or after incorporation into the work, that do not meet the requirements of the Contract will be rejected, or accepted with an adjustment in price in accordance with the requirements of subsection 105.03.

106.08 Storage of Materials. Materials shall be stored to assure the preservation of their quality and fitness for the work. Stored materials, even though conditionally approved before storage, will be subject to inspection and testing prior to incorporation into the work. Stored materials shall be located to facilitate prompt inspection. With prior approval portions of the right of way may be used for storage of materials and equipment, and for the Contractor's plant. Any additional space required shall be provided at the Contractor's expense. Stored materials will be paid for in accordance with subsection 109.07. Private property shall not be used for storage purposes without written permission of the owner or lessee. If requested, copies of such written permission shall be furnished to the Engineer. All storage sites shall be restored to their original condition at the Contractor's expense.

106.09 Handling Materials. All materials shall be handled so their quality and fitness for the work is preserved. Aggregates shall be transported to the work in vehicles constructed to prevent loss or segregation of materials.

106.10 Department Furnished Materials. Material furnished by the Department will be made available to the Contractor at the points specified in the Contract.

The cost of handling and placing materials after they are made available to the Contractor shall be included in the contract price for the item.

The Contractor will be held responsible for all material received until it is incorporated into the work and accepted.

Demurrage charges resulting from the Contractor's failure to accept the material at the designated time and point of delivery will be deducted from monies due the Contractor.

106.11 Buy America Requirements. All manufacturing processes, including the application of a coating, for all steel and iron products permanently incorporated in the work shall have occurred in the United States of America. All manufacturing processes are defined as "processes required to change the raw ore or scrap metal

into the finished, in-place steel or iron product". This requirement will not prevent a minimal use of foreign steel or iron provided the total project delivered cost of all such steel and iron which includes the cost of delivering the steel and iron to the project, does not exceed one-tenth of one percent of the total contract cost or \$2,500, whichever is greater. If there is any foreign steel or iron permanently incorporated into the project the Contractor shall provide documentation of the project delivered cost of that foreign steel or iron.

The Contractor shall maintain on file certifications that every process, including the application of a coating, performed on steel or iron products either has or has not been carried out in the United States of America. This certification applies to every iron or steel product that requires pre-inspection, pretesting, certified test results, or a certificate of compliance. The Contractor shall obtain such a certification from each supplier, distributor, fabricator, and manufacturer that has handled each steel or iron product. These certifications shall create a chain of custody trail that includes every supplier, distributor, fabricator, and manufacturer that handles the steel or iron product. The lack of these certifications will be justification for rejection of the steel or iron product.

The State, FHWA, and their representatives shall be allowed access to this documentation upon request. Prior to the permanent incorporation into the project of steel or iron products the Contractor shall certify in writing that the documentation is on file and the steel or iron products are in compliance with this requirement.

106.12 Certificates of Compliance. The Contract will designate products and assemblies that can be incorporated in the work, if accompanied by Certificates of Compliance. Each certificate shall include:

- (1) The Department's project number
- (2) Manufacturer's name
- (3) Address of manufacturing facility
- (4) Laboratory name & address
- (5) Name of product or assembly
- (6) Complete description of the material
- (7) Model, catalog, stock no. (if applicable)
- (8) Lot, heat, or batch number identifying the material delivered
- (9) Date(s) of the laboratory testing
- (10) Listing of all applicable specifications required by the Department for this particular product or assembly. Certificates shall reference the actual tests conducted on samples taken from the same lot, heat, or batch, and shall include a statement that the product or assembly to be incorporated into the project was fabricated in accordance with and meets the applicable specifications.

- (11) The following certification, signed by a person having legal authority to act for the Contractor:

I hereby certify under penalty of perjury that the material listed in this Certificate of Compliance represents _____ (quantity and units) of pay item _____ (pay item number and Description) that will be installed on project number _____.

Contractor

Date

The original Certificate of Compliance shall include the Contractor's original signature as directed above, and the original signature (including corporate title), under penalty of perjury, of a person having legal authority to act for the manufacturer. It shall state that the product or assembly to be incorporated into the project has been sampled and tested, and the samples have passed all specified tests. One copy or facsimile of the fully signed Certificate of Compliance shall be furnished to the Engineer prior to installation of material. The original shall be provided to the Engineer before payment for the represented item will be made. Failure to comply may result in delays to the project or rejection of the materials.

Each product or assembly delivered to the project must contain the lot, heat, or batch number identical to that on the accompanying Certificate of Compliance.

Products or assemblies furnished on the basis of Certificates of Compliance may be sampled and tested by the Department and if determined not to meet the applicable specifications will be rejected or accepted according to subsection 105.03.

106.13 Certified Test Report. The Contract will designate products and assemblies that can be incorporated in the work if accompanied by Certified Test Reports. Each report shall include:

- (1) The Department's project number
- (2) Manufacturer's name
- (3) Address of manufacturing facility
- (4) Laboratory name & address
- (5) Name of product or assembly
- (6) Complete description of the material
- (7) Model, catalog, stock no. (if applicable)
- (8) Lot, heat, or batch number identifying the material delivered
- (9) Date(s) of the laboratory testing
- (10) All test results are required to verify that the material furnished conforms to all applicable Department specifications. Test results shall be from tests conducted on samples taken from the same lot, heat, or batch.

SECTION 107

LEGAL RELATIONS AND RESPONSIBILITY TO PUBLIC

107.01 Laws to be Observed. The Contractor shall keep fully informed and comply with all Federal, State and local laws, ordinances, and regulations and all orders and decrees of bodies or tribunals having any jurisdiction or authority, which may affect those engaged or employed on the work, or affect the conduct of the work. The Contractor shall protect and indemnify the Department and its representatives against any claim or liability arising from or based on the violation of any such law, ordinance, regulation, order or decree, whether by the Contractor, the subcontractors, suppliers of materials or services, or their employees.

107.02 Permits, Licenses, and Taxes. The Contractor shall procure all permits and licenses, pay all charges, fees, and taxes, and give all notices necessary and incidental to the due and lawful prosecution of the Contract.

Prior to beginning work the Contractor shall furnish the Engineer a written list of all permits required for the proper completion of the Contract. The list shall clearly identify the type of permit or permits that must be obtained before work on any particular phase or phases of work can be started. Copies of the fully executed permits shall be furnished to the Engineer upon request.

107.03 Patented Devices, Materials, and Processes. If the Contractor employs any design, device, material, or process covered by letters of patent or copyright, the Contractor shall provide for their use by suitable legal agreement with the patentee or owner. The Contractor and the Surety shall indemnify and save harmless the Department, any affected third party, or political sub-division from any and all claims for infringement resulting from the use of any patented design, device, material or process, or any trademark or copyright, and shall indemnify the Department for any costs, expenses, and damages which they may be obliged to pay by reason of any infringement, during the prosecution or after the completion of the Contract.

107.04 Restoration of Surfaces Opened by Permit. An individual, firm, or corporation may be issued a permit to construct or reconstruct a utility service. The Contractor shall allow permit holders to perform permitted work. The Contractor shall make necessary repairs resulting from this work, as directed. The repairs will be paid for as extra work in accordance with subsection 109.04.

The repairs will be subject to the same requirements as the original work performed.

107.05 Federal Aid Provisions. When the United States Government participates in the cost of a project, the Federal laws and the rules and regulations made pursuant to such laws must be observed by the Contractor, and the work shall be subject to the inspection of the appropriate Federal agency.

Such inspection shall not make the United States Government a party to the Contract and shall not interfere with the rights of the parties to the Contract.

107.06. Safety, Health, and Sanitation Provisions.

- (a) *Project Safety Management Plan.* Prior to the start of construction, the Contractor's Project Safety Manager shall prepare a written Project Safety Management Plan (Plan) which shall be specific to the project. The Plan shall include:
- (1) Designation of a Project Safety Manager and an alternate, including names and contact information, and competent persons for each construction activity as described below.
 - (2) A list of all significant and/or high-risk construction activities and safety considerations as described below, and a hazard assessment for each.
 - (3) Direction as to whether engineering, administrative, personal protection measures, training, or a combination thereof, shall be implemented to address the hazards identified in (2) above.
 - (4) Provisions for field safety meetings. The Contractor shall conduct field safety meetings (also known as Toolbox or Tailgate meetings) at the frequency specified in the Plan, which shall be at least once per week. The Contractor shall encourage participation by all persons working at the project site. Participants at these meetings shall discuss specific construction activities for that work period, results from safety inspections, required personal protective equipment, and all other necessary safety precautions.
 - (5) Provisions for project safety meetings. In the event of a safety stand-down, the Contractor shall conduct a project safety meeting to discuss the circumstances leading to the stand-down, and the measures that shall be taken to prevent a recurrence. The Contractor shall notify the Engineer of the time, date, and location of these meetings, shall require participation by all persons (including Department personnel and consultants) working at the project site, and shall track attendance through sign-up lists.
 - (6) At the Contractor's option, portions of the Plan may be prepared by the subcontractors that will be performing that subcontracted work. The Contractor shall remain responsible for the overall project Plan, and for incorporating portions prepared by subcontractors. Portions of the plan prepared by subcontractors shall be as stringent as the Contractor's overall Plan.
 - (7) Procedures for assuring compliance by subcontractors, suppliers, and authorized visitors to the project. In addition, the Plan shall specify the measures that will be taken to discourage unauthorized personnel from entering the site.
 - (8) Procedures to be followed in cases where workers are suspected of drug or alcohol impairment.

- (9) Provisions for project safety inspections. The Project Safety Manager shall conduct regular project safety inspections at the frequency specified in the Plan, at least once per month. The Contractor shall notify the Engineer in advance of these inspections. Documentation of the inspections shall include the date of the inspection, the participants, the findings, and the corrective measures taken to address the findings. Within one week after these inspections, the Contractor shall provide a copy of the documentation to the Engineer and shall maintain a copy on the project site.
- (10) Procedures to be followed to correct violations of the Plan by any personnel.
- (11) The notification, investigation, and implementation procedures that the Contractor shall follow in the case of a safety stand down.
- (12) The Contractor's certification shall be as follows:

By authorized signature below, (Contractor name), hereinafter referred to as 'the Contractor', hereby certifies that this Project Safety Management Plan (Plan) complies with and meets applicable Federal, State, and local laws, rules, regulations and guidelines governing safety, health and sanitation, including but not limited to the Occupational Safety and Health Act, 29 CFR 1910, 29 CFR 1926, 23 CFR 634, Mine Safety and Health Administration (MSHA), Title 30 CFR, the "Colorado Work Zone Best Practices Safety Guide", CFR 49, national consensus standards, and the Drug-Free Workplace Act (Public Law 100-690 Title V, subtitle D, 41 USC 701 et seq.), and subsection 107.06 of the Standard Specifications. All operations and work practices of the Contractor shall comply with this Plan. The Contractor requires that all subcontractors, suppliers, Department personnel, and consultants comply with this Plan.

 (Signature of Contractor's Project Safety Manager or alternate)

 Title

 Date

Prior to the start of construction, the Contractor shall submit the Plan to the Engineer for the project records, and shall provide updates to the Plan as necessary, and as work conditions or personnel change. The Contractor shall review the Plan for sufficiency and accuracy at least once per twelve months of contract time. The Engineer will review the Plan for general compliance with subsection 107.06 and notify the Contractor in writing that the plan has been received and addresses items 1 thru 12 above. An up-to-date copy of the Plan shall be on the project site in the Contractor's possession at all times.

- (b) *Contractor Responsibilities.* The Contractor shall ensure compliance with applicable Federal, State, and local laws, rules, regulations, and guidelines governing safety, health and sanitation, including but not limited to the Plan, the Occupational Safety and Health Act, 29 CFR 1910, 29 CFR 1926, 23 CFR 634, Mine Safety and Health Administration (MSHA), Title 30 CFR, the “Colorado Work Zone Best Practices Safety Guide”, CFR 49, national consensus standards, and the Drug-Free Workplace Act (Public Law 100-690 Title V, subtitle D, 41 USC 701 et seq.). The Contractor shall provide all safeguards, safety devices, and protective equipment, and shall take all other actions necessary to protect the life, safety, and health of persons working at or visiting the project site, and of the public and property in connection with the performance of the work covered by the Contract. In the case of conflicting requirements, the more stringent of the requirements shall apply. The Contractor shall require that all operations and work practices by Contractor, subcontractor, supplier, and Department personnel and consultants comply with the provisions of the Plan. The Contractor shall respond in writing to all safety issues raised by the Engineer.
- (c) *Project Safety Manager.* Prior to the start of construction, the Contractor shall designate a Project Safety Manager and an alternate, who shall be responsible for the coordination of safety activities, and preparation, certification, and implementation of the Plan.
- (d) *Competent Persons.* Prior to the start of construction, the Contractor shall designate at least one competent person for each of the construction activities being completed. A competent person is an individual who, by way of training, experience, or combination thereof, is knowledgeable of applicable standards, is capable of identifying existing and predictable workplace hazards relating to a specific construction activity, is designated by the employer, and has authority to take prompt, appropriate actions. Construction activities and safety considerations that must be addressed by the Plan and by designation of a competent person shall include, but are not limited to (if applicable to the project):
- (1) rotomilling and paving operations
 - (2) concrete paving
 - (3) concrete placement
 - (4) lead abatement
 - (5) hearing protection
 - (6) respiratory protection
 - (7) rigging
 - (8) assured grounding
 - (9) scaffolding
 - (10) fall protection
 - (11) use of cranes
 - (12) trenching and excavating

- (13) steel erection
- (14) underground construction (including caissons and cofferdams)
- (15) demolition
- (16) blasting and the use of explosives
- (17) stairways and ladders
- (18) asbestos
- (19) confined space

The appropriate competent persons shall be present on the project site at all times during the specific construction activities that require those competent persons.

- (e) *Project Safety & Health Requirements.* All personnel on the project site shall wear the following personal protective equipment (PPE) at all times when in the Highway Right of Way, except when in their vehicles:
 - (1) Head protection and high visibility apparel, reflectorized for night use conforming to ANSI/ISEA 107 – 2004, and appropriate, sturdy footwear, all of which shall comply with the latest appropriate national consensus standards.
 - (2) All other PPE that is stipulated by the Plan. All PPE shall comply with the latest appropriate national consensus standards.
- (f) *Safety Stand-Down.* The Engineer may immediately suspend all or part of any work in the case of an accident (including property damage), or catastrophe (three or more persons hospitalized in a single incident), or other situation presenting an imminent danger to life or health, such as a near miss, violation of the Plan, or presence of a hazardous situation. In the case of a worksite fatality directly related to the Contractor's or any subcontractor's work operations, the safety stand-down shall be mandatory. In the case of a traffic fatality unrelated to a work-zone incident in the opinion of the Engineer, the safety stand-down will not be mandatory. During any mandatory safety stand-down due to a fatality, all work on the project shall cease, except that work deemed immediately necessary by the Engineer to make the project safe. The Contractor will be allowed to resume operations only after providing written documentation, certified by the Project Safety Manager or alternate, regarding the corrective actions taken to prevent recurrence.
- (g) *Regulatory Enforcement Actions.* The Contractor shall provide written notifications of all Regulatory agency actions relating to safety to the Engineer.
- (h) *Failure to Comply.* Failure to comply with the requirements of subsection 107.06 shall be grounds for withholding of progress payments, project suspension, or both.
- (i) *Costs.* All costs associated with the preparation and implementation of the Plan and compliance with all safety, health, and sanitation provisions and requirements will not be measured and paid for separately, but shall be included in the work.

107.07 Public Convenience and Safety. The Contractor shall conduct the work to minimize obstruction to traffic. The safety and convenience of the general public and the residents along the highway and the protection of persons and property shall be provided for by the Contractor as specified under subsection 104.04.

107.08 Railroad-Highway Provisions. If the Contract requires materials to be hauled across railroad tracks, the Department will make arrangements with the railroad company for any new crossings required or for the use of any existing crossings. The Contractor shall make arrangements for the use of crossings not provided in the Contract.

Work performed by the Contractor on the railroad right of way shall be performed to avoid interference with the movement of trains or traffic on the railroad tracks. The Contractor shall use care and precaution in order to avoid accidents, damage, or unnecessary delay or interference with the railroad company's trains or property.

107.09 Construction Over and Adjacent to Navigable Waters. Work on navigable waters shall be conducted to avoid interference with free navigation of the waterways and so the existing navigable depths will not be impaired except as allowed by permit issued by the U.S. Coast Guard or the U.S. Army Corps of Engineers, as applicable.

107.10 Barricades and Signs. The Contractor shall provide, erect, and maintain barricades, suitable and sufficient lights, pavement markings, signs, and other traffic control devices, and shall protect the work and safety of the public in accordance with the Contract. Highways closed to traffic shall be protected by barricades, and obstructions shall be illuminated during hours of darkness. Signs shall be provided to control and direct traffic.

The Contractor shall erect signs at locations where operations may interfere with the use of the road by traffic, and at all intermediate points where the new work crosses or coincides with an existing road, bikepath, or sidewalk. Signs shall be constructed, erected, and maintained in accordance with the Contract.

Barricades, warning signs, lights, temporary signals, and other protective devices shall conform with the latest revision of the "Manual on Uniform Traffic Control Devices for Streets and Highways" published by the FHWA and adopted by the Department, the latest revision of the Colorado Supplement thereto, and the required traffic control plan.

107.11 Use of Explosives. When explosives are utilized in the prosecution of the work, the Contractor shall not endanger life, property, or new work. The Contractor shall be responsible for all damage resulting from the use of explosives.

The Contractor's explosives shall be stored in a secure manner in compliance with laws and ordinances, and storage places shall be clearly marked. When electric blasting caps are used, stored or moved in the vicinity of the work, warning signs prohibiting the use of radio transmitters and mobile telephones shall be posted on all roads within 350 feet of the blasting operation.

The Contractor shall notify property owners and public utility companies having structures in the proximity of the work of the intention to use explosives. Notice shall be given sufficiently in advance to enable them to protect their property.

In advance of doing any blasting work involving the use of electric blasting caps within 200 feet of any railroad's track or structures, the Contractor shall notify the proper authority of the railroad company as to the location, date, time and approximate duration of such blasting operations.

At the conclusion of each day of blasting, all spent surface blasting components shall be removed. At the conclusion of blasting and excavation work, the Contractor shall properly dispose of all spent blasting components. At the completion of final grading, the Contractor shall inspect the project and remove all exposed blasting components.

107.12 Protection and Restoration of Property and Landscape. The Contractor shall preserve private and public property and protect it from damage. Land monuments and property marks shall not be disturbed or moved until their location has been witnessed or referenced in accordance with Section 629 and their removal approved.

The Contractor shall be responsible for the damage or injury to property resulting from:

- (1) the Contractor's neglect, misconduct, or omission in the manner or method of execution or non-execution of the work, or
- (2) the Contractor's defective work or the use of unacceptable materials.

The Contractor's responsibility shall not be released until the work has been completed in compliance with the Contract. The Contractor shall restore damaged or injured property, at the Contractor's expense, to a condition similar or equal to that existing before the damage or injury occurred, by repairing, rebuilding, or restoring the property.

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

107.13 Forest Protection. The Contractor shall comply with all regulations of the State Department of Natural Resources, the National Forest Supervisor, or other authority having jurisdiction, governing the protection of forests, and shall observe all sanitary laws and regulations with respect to the performance of work within or adjacent to state or National Forests. The Contractor shall keep the areas in an orderly condition, dispose of all refuse, obtain permits for the construction and maintenance of all construction camps, stores, warehouses, residences, latrines, cesspools, septic tanks, and other structures in accordance with the regulations and instructions issued by the Forest Supervisor.

The Contractor shall take all reasonable precaution to prevent forest fires, and shall make every possible effort to notify a forest official at the earliest possible moment of the location and extent of any fire seen by them. The Contractor, subcontractors,

and their employees shall prevent and suppress forest fires and provide assistance in this effort as directed by forest officials.

107.14 Interruption of Irrigation Water Flow. The Contractor shall arrange the work to avoid interference with the flow of irrigation water. If it is impractical to install the structure during the time the ditches are not flowing, the Contractor shall make arrangements with the ditch owners regarding temporary interruption of flow or temporary diversion of water. This will require construction of new ditches with appurtenant structures before old ditches or canals are altered. The Contractor shall provide any temporary ditches, canals or structures necessary for the uninterrupted flow of irrigation water. Temporary construction and removal shall be at the expense of the Contractor.

107.15 Responsibility for Damage Claims, Insurance Types and Coverage Limits. The Contractor shall indemnify and save harmless the Department, its officers, and employees, from suits, actions, or claims of any type or character brought because of any and all injuries or damage received or sustained by any person, persons, or property on account of the operations of the Contractor; or failure to comply with the provisions of the Contract; or on account of or in consequence of neglect of the Contractor in safeguarding the work; or through use of unacceptable materials in constructing the work; or because of any act or omission, neglect, or misconduct of the Contractor; or because of any claims or amounts recovered from any infringements of patent, trademark, or copyright, unless the design, device, material or process involved is specifically required by the Contract; or from any claims or amounts arising or recovered under the Worker's Compensation Act, or other law, ordinance, order, or decree. The Department may retain as much of any moneys due the Contractor under any Contract as may be determined by the Department to be in the public interest.

- (a) The Contractor shall obtain, and maintain at all times during the term of this Contract, insurance in the following kinds and amounts:
1. Workers' Compensation Insurance as required by state statute, and Employer's Liability Insurance covering all of Contractor's employees acting within the course and scope of their employment.
 2. Commercial General Liability Insurance written on ISO occurrence form CG 00 01 10/93 or equivalent, covering premises operations, fire damage, independent Contractors, products and completed operations, blanket contractual liability, personal injury, and advertising liability with minimum limits as follows:
 - (1) \$1,000,000 each occurrence;
 - (2) \$2,000,000 general aggregate;
 - (3) \$2,000,000 products and completed operations aggregate; and
 - (4) \$50,000 any one fire.
 - (5) Completed Operations coverage shall be provided for a minimum period of one year following final acceptance of work.

If any aggregate limit is reduced below \$1,000,000 because of claims made or paid, the Contractor shall immediately obtain additional insurance to restore the full aggregate limit and furnish to CDOT a certificate or other document satisfactory to CDOT showing compliance with this provision.

3. Automobile Liability Insurance covering any auto (including owned, hired, and non-owned autos) with a minimum limit as follows: \$1,000,000 each accident combined single limit.
4. Professional liability insurance with minimum limits of liability of not less than \$1,000,000 Each Claim and \$1,000,000 Annual Aggregate for both the Contractor or any subcontractors when:
 - (1) Contract items 625, 629, or both are included in the Contract
 - (2) Plans, specifications, and submittals are required to be signed and sealed by the Contractor's Professional Engineer, including but not limited to:
 - (i) Shop drawings and working drawings as described in subsection 105.02
 - (ii) Mix Designs
 - (iii) Contractor performed design work as required by the plans and specifications
 - (iv) Change Orders
 - (v) Approved Value Engineering Change Proposals
 - (3) The Contractor and any included subcontractor shall renew and maintain Professional Liability Insurance as outlined above for a minimum of one year following final acceptance of work.
5. Umbrella or Excess Liability Insurance with minimum limits of \$1,000,000. This policy shall become primary (drop down) in the event the primary Liability Policy limits are impaired or exhausted. The Policy shall be written on an Occurrence form and shall be following form of the primary. The following form Excess Liability shall include CDOT as an additional insured.
 - (b) CDOT shall be named as additional insured on the Commercial General Liability and Automobile Liability Insurance policies. Completed operations additional insured coverage shall be on endorsements CG 2010 11/85, CG 2037, or equivalent. Coverage required of the Contract will be primary over any insurance or self-insurance program carried by the State of Colorado.
 - (c) The Insurance shall include provisions preventing cancellation or non-renewal without at least 30 days prior notice to CDOT by certified mail.
 - (d) The Contractor shall require all insurance policies in any way related to the Contract and secured and maintained by the Contractor to include clauses

stating that each carrier will waive all rights of recovery, under subrogation or otherwise, against CDOT, its agencies, institutions, organizations, officers, agents, employees and volunteers.

- (e) All policies evidencing the insurance coverages required hereunder shall be issued by insurance companies satisfactory to CDOT.
- (f) The Contractor shall provide certificates showing insurance coverage required by this contract to CDOT prior to execution of the contract. No later than 15 days prior to the expiration date of any such coverage, the Contractor shall deliver CDOT certificates of insurance evidencing renewals thereof. At any time during the term of this Contract, CDOT may request in writing, and the Contractor shall thereupon within ten days supply to CDOT, evidence satisfactory to CDOT of compliance with the provisions of this section.
- (g) Notwithstanding subsection 107.15(a), if the Contractor is a “public entity” within the meaning of the Colorado Governmental Immunity Act CRS 24-10-101, et seq., as amended (“Act”), the Contractor shall at all times during the term of this Contract maintain only such liability insurance, by commercial policy or self-insurance, as is necessary to meet its liabilities under the Act. Upon request by CDOT, the Contractor shall show proof of such insurance satisfactory to CDOT. Public entity Contractors are not required to name CDOT as an Additional Insured.
- (h) When the Contractor requires a subcontractor to obtain insurance coverage, the types and minimum limits of this coverage may be different than those required, as stated above, for the Contractor, except for the Commercial General Liability Additional Insured endorsement and those that qualify as needing Professional Liability Insurance.

107.16 Opening Sections of Project to Traffic. Opening certain sections of the work for traffic use shall not constitute acceptance of the work, or provide a waiver of any provision of the Contract.

The Contract will designate the sections to be opened and specify the method of compensation for signing and traffic control. The Contractor shall maintain the roadway in a condition equal to or better than the condition of the roadway when it was initially opened to traffic. Where applicable, the Contract may specify the time or date on which certain portions of the work shall be completed to provide for the accommodation of traffic.

The Engineer may order certain portions of the work opened for traffic, other than specified in the Contract. If the Engineer has not ordered the roadway opened because of unnecessary delay by the Contractor, and if no damage occurs other than that which can be attributed to traffic, the Contractor will be relieved of all responsibility for maintenance of traffic control devices and damage due to traffic. Any expense resulting from opening such sections shall be borne by the Department or the Contractor will be compensated for the added expense in accordance with subsection 109.04. If the opening causes changed working

conditions, or delays the completion of other items of work on the project, compensation for the added expense and recommendations for additional time will be set forth by a Contract Modification Order.

If the Contractor is dilatory in completing the work, the Engineer may order all or a portion of the project to be opened to traffic. In such event, the Contractor will not be relieved of the liability and responsibility during the period the work is so opened prior to final acceptance. The Contractor shall conduct the remainder of the construction operations to cause the least obstruction to or interference with traffic. Damage attributed to traffic shall be paid for at the Contractor's expense.

Damages not attributable to traffic which might occur on sections opened to traffic shall be repaired at the Contractor's expense. The removal of slides that are not caused by the Contractor's operations shall be done by the Contractor on a basis agreed to prior to the slide removal.

107.17 Contractor's Responsibility for Work. The Contractor shall be responsible for and protect the contract work against injury or damage from all causes whether arising from the execution or nonexecution of the work, including but not limited to action of the elements, traffic, fire, theft, vandalism, or third party negligence, until final written acceptance of the project by the Engineer. The Contractor shall rebuild, repair, restore, or replace all contract work that is injured or damaged prior to final written acceptance at no cost to the Department.

The Engineer may, in writing, relieve the Contractor of expenses for damage to certain portions of the contract work caused by traffic or the action of the elements. The following conditions must be met before the Engineer will consider any relief:

- (1) All work on the portion of contract work being considered must be complete under terms of the Contract except for seeding, mulching, landscape items, final clean-up, and bridge painting or structural coating.
- (2) Traffic shall be in its final configuration and location.

Portions of contract work that may be considered are described below:

- (1) A minimum of 0.5 mile of roadway, or a minimum of 0.5 mile of one direction of a divided highway.
- (2) A complete bridge. This includes all approach roadway safety features that protect traffic from such items as: bridge railing and median barrier ends, piers, and abutments.
- (3) A complete intersection traffic signal system.
- (4) A complete highway lighting system.

Loss, injury, or damage to the contract work due to unforeseeable causes beyond the control of the Contractor, including but not limited to acts of God, such as earthquake, flood, tornado, high winds, or other cataclysmic phenomenon of nature, or acts of the public enemy or of governmental authorities, shall be restored by the Contractor under the provisions of subsection 104.02 or 104.03, as applicable.

During periods that work is suspended, the Contractor shall be responsible for the work under the Contract and shall prevent damage to the project, provide for drainage, and shall erect necessary temporary structures, signs, or other facilities required to maintain the project. During the suspension period, the Contractor shall maintain in a growing condition all newly established plantings, seedings, and soddings furnished under the Contract, and shall protect new tree growth and other vegetative growth against injury.

107.18 (unused)

107.19 Furnishing Right of Way. The Department will be responsible for the securing of all necessary rights of way in advance of construction. Any exceptions will be indicated in the Contract.

107.20 Personal Liability of Public Employees. The Engineer or authorized representatives are acting solely as agents and representatives of the Department when carrying out and exercising the power or authority granted to them under the Contract. There shall not be any liability on them either personally or as employees of the Department.

107.21 No Waiver of Legal Rights. Upon completion of the Contract, the Department will make final inspection and notify the Contractor of acceptance. Final acceptance shall not preclude the Department from correcting any measurement, estimate, or certificate made before or after completion of the Contract, nor from recovering from the Contractor or surety or both, overpayments sustained because the Contractor failed to fulfill the obligations under the Contract. A waiver on the part of the Department of any breach of any part of the Contract shall not be held to be a waiver of any other or subsequent breach.

The Contractor without prejudice to the terms of the Contract, shall be liable to the Department, for latent defects, fraud, or such gross mistakes as may amount to fraud, or as regards the Department's rights under any warranty or guaranty.

107.22 Third Party Beneficiary. It is specifically agreed between the parties executing this Contract that it is not intended by any of the provisions of any part of the Contract to create in the public or any member thereof a third party beneficiary hereunder, or to authorize any one not a party to this Contract to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of this Contract. The duties, obligations and responsibilities of the parties to this Contract with respect to third parties shall remain as imposed by law.

107.23 Archaeological and Paleontological Discoveries. When the Contractor's operations, including materials pits and quarries, encounter plant or animal fossils, remains of prehistoric or historic structures, prehistoric or historic artifacts (bottle dumps, charcoal from subsurface hearths, old pottery, potsherds, stone tools, arrowheads, etc.), the Contractor's affected operations shall immediately cease. The Contractor shall immediately notify the Engineer, or other appropriate agency

for contractor source pits or quarries, of the discovery of these materials. When ordered to proceed, the Contractor shall conduct affected operations as directed. Additional work, except that in contractor source materials pits or quarries under subsection 106.02(b), will be paid for by the Department as provided in subsection 104.02 when contract unit prices exist, or as extra work as provided in subsection 104.03 when no unit prices exist. Delays to the Contractor, not associated with work in contractor sources, because of the materials encountered may be cause for extension of contract time in accordance with subsection 108.08. If fossils, prehistoric or historic structures, or prehistoric or historic artifacts are encountered in a contractor source materials pit or quarry, all costs and time delays shall be the responsibility of the Contractor.

107.24 Air Quality Control. The Contractor shall comply with the “Colorado Air Quality Control Act,” Title 25, Article 7, CRS and regulations promulgated thereunder.

107.25 Water Quality Control. The project work shall be performed using practices that minimize water pollution during construction. All the practices listed in (b) below shall be followed to minimize the pollution of any state waters, including wetlands.

(a) *Definitions.*

1. *Pollutant.* Dredged spoil, dirt, slurry, solid waste, incinerator residue, sewage, sewage sludge, garbage, trash, chemical waste, biological nutrient, biological material, radioactive material, heat, wrecked or discarded equipment, rock, sand, or any industrial, municipal, or agricultural waste. [25-8-103 (15), CRS]
2. *Pollution.* Man-made, man-induced, or natural alteration of the physical, chemical, biological, and radiological integrity of water. [25-8-103 (16), CRS]
3. *State Waters.* **State Waters means any and all surface and subsurface waters which are contained in or flow in or through this state, but does not include waters in sewage systems, waters in treatment works of disposal systems, waters in potable water distribution systems, and all water withdrawn for use until use and treatment have been completed.**

(b) *Construction Requirements.*

1. **The Contractor shall comply with the “Colorado Water Quality Control Act” (Title 25, Article 8, CRS), the “Protection of Fishing Streams” (Title 33, Article 5, CRS), the “Clean Water Act” (33 USC 1344), regulations promulgated, certifications or permits issued, and to the requirements listed below. In the event of conflicts between these requirements and water quality control laws, rules, or regulations of other Federal, or State agencies, the more restrictive laws, rules, or regulations shall apply.**

2. If the Contractor determines construction of the project will result in a change to the permitted activities, the Contractor shall detail the changes in a written report to the Engineer. Within five days after receipt of the report, the Engineer, after coordination with Region Environmental, will approve or reject in writing the request for change, or detail a course of action including revision of existing permits or obtaining new permits.
3. If construction activities result in noncompliance of any permitted activity, the project will be suspended and the permitting agency notified. The project will remain suspended until the Engineer receives written approval by the permitting agency.
4. The Contractor may be legally required to obtain permits associated with specific activities within, or off the Right of Way, such as borrow pits, concrete or asphalt plant sites, waste disposal sites, or other facilities. It is the Contractor's responsibility to obtain these permits. The Contractor shall consult with the Engineer, and contact the Colorado Department of Public Health and Environment (CDPHE) or other appropriate federal, state, or local agency to determine the need for any permit.
5. The Contractor shall conduct the work in a manner that minimizes pollution of any adjacent waters, including wetlands. Erosion control work shall be performed in accordance with Section 208, this subsection, and all other applicable parts of the Contract.
6. Prior to the environmental preconstruction conference the Erosion Control Supervisor (ECS), identified in subsection 208.03(c), shall identify and describe all potential pollutant sources, including materials and activities, and evaluate them for the potential to contribute pollutants to stormwater discharges associated with construction activities. The list of potential pollutants shall be continuously updated during construction. Each of the following shall be evaluated for the potential for contributing pollutants to stormwater discharges and identified in the SWMP, if found to have such potential:
 - (1) All exposed and stored soils
 - (2) Vehicle tracking of sediments
 - (3) Management of contaminated soils
 - (4) Vehicle and equipment maintenance and fueling
 - (5) Outdoor storage activities (building materials, fertilizers, chemicals, etc.)
 - (6) Significant dust or particle generating processes
 - (7) Routine maintenance involving fertilizers, pesticides, detergents, fuels, solvents, oils, etc.
 - (8) On site waste management practices (waste piles, dumpsters, etc.)

- (9) Dedicated asphalt and concrete batch plants
- (10) Concrete truck and equipment washing, including the concrete truck chute and associated fixtures and equipment
- (11) Concrete placement and finishing tool cleaning
- (12) Non-industrial waste sources that may be significant, such as worker trash and portable toilets
- (13) Loading and unloading operations
- (14) Other areas or procedures where spills could occur

The ECS shall record the location of potential pollutants on the site map. Descriptions of the potential pollutants shall be added to the SWMP notebook.

At or prior to the environmental preconstruction conference the Contractor shall submit a Spill Prevention, Control, and Countermeasure Plan (SPCC) for any petroleum products, chemicals, solvents, or other hazardous materials in use, or in storage, at the work site. See subsection 208.06(c) for SPCC plan requirements. Work shall not be started until the plan has been submitted to and approved by the Engineer.

- 7. The Contractor shall obtain a Construction Dewatering (CDW) permit from CDPHE anytime groundwater, including groundwater that is commingled with stormwater or surface water, is encountered during construction activities and the groundwater or commingled water needs to be discharged to surface water.
- 8. Water from dewatering operations shall not be directly discharged into any state waters, unless allowed by a permit. Water from dewatering shall not be discharged into a ditch unless:
 - (1) Written permission is obtained from the owner of the ditch.
 - (2) It is covered in the approved CDW permit that allows the discharge.
 - (3) A copy of this approval is submitted to the Engineer.

A copy of the CDW Permit shall be submitted to the Engineer prior to dewatering operations commencing.

If the site is covered by a Colorado Discharge Permit System Stormwater Construction Permit (CDPS-SCP) and the following conditions are met, a separate CDW permit will not be required for discharge to the ground.

- (1) The source is identified in the Stormwater Management Plan (SWMP) as updated by the ECS.
- (2) The SWMP describes and locates the practices implemented at the site to control stormwater pollution from the dewatering of groundwater or stormwater.

- (3) The SWMP describes and locates the practices to be used that will ensure that no groundwater from construction dewatering is discharged from the project boundary as surface runoff or to surface waters or storm sewers.
- (4) Groundwater and groundwater combined with stormwater does not contain pollutants in concentrations exceeding the State groundwater standards in Regulations 5 CCR 1002-41 and 42.

If surface water or seeps are diverted around a construction area and no pollutants are introduced during the diversion, a CDW Permit is not required. If the diverted water enters the construction area and contacts pollutant sources (e.g. disturbed soil, concrete washout, etc.), the Contractor shall obtain a CDW permit for the discharge of this water to surface water or to the ground.

Construction Dewatering may be discharged to the ground on projects that are not covered by a CDPS-SCP if the conditions of the CDPHE's low risk guidance document for Discharges of Uncontaminated Groundwater to Land are met. The conditions of this guidance are:

- (1) The source of the discharge is solely uncontaminated groundwater or uncontaminated groundwater combined with stormwater and does not contain pollutants in concentrations that exceed water quality standards for groundwater referenced above.
- (2) Discharges from vaults or similar structures shall not be contaminated. Potential sources of contamination include process materials used, stored, or conveyed in the structures, or introduced surface water runoff from outside environments that may contain oil, grease, and corrosives.
- (3) The groundwater discharge does not leave the project boundary limits where construction is occurring.
- (4) Land application is conducted at a rate and location that does not allow for any runoff into state waters or other drainage conveyance systems, including but not limited to streets, curb and gutter, inlets, borrow ditches, open channels, etc.
- (5) Land application is conducted at a rate that does not allow for any ponding of the groundwater on the surface, unless the ponding is a result of implementing BMPs that are designed to reduce velocity flow. If the BMPs used result in ponding, the land application shall be done in an area with a constructed containment, such as an excavation or berm area with no outfall. The constructed containment shall prevent the discharge of the ponding water offsite as runoff.
- (6) A visible sheen is not evident in the discharge.

- (7) BMPs are implemented to prevent any sediment deposited during land application from being transported by stormwater runoff to surface waters or other conveyances.

All BMPs used shall be selected, installed, implemented, and maintained according to good engineering, hydrologic and pollution control practices. The selected BMPs shall provide control for all potential pollutant sources associated with the discharge of uncontaminated groundwater to land.

The discharge shall be routed in such a way that it will not cause erosion to land surface. Energy dissipation devices designed to protect downstream areas from erosion by reducing the velocity of flow (such as hose attachments, sediment and erosion controls) shall be used when necessary to prevent erosion.

Discharged water shall be drained slowly so that it soaks into the ground without running outside the project boundary or causing flooding issues.

The discharge shall be routed in such a way that it will not contact petroleum products or waste.

9. At least 15 days prior to commencing dredging or fill operations in a watercourse, the Contractor shall provide written notification to owners or operators of domestic or public water supply intakes or diversion facilities, if these facilities are within 20 miles downstream from the dredging or fill operations. Notification shall also be given to Owners or operators of other intakes or diversions that are located within five miles downstream from the site of the project. Identities of downstream owners and operators can be obtained from Colorado Division of Water Resources, Office of the State Engineer.
10. Temporary fill into wetlands or streams will not be allowed, except as specified in the Contract and permits. If such work is allowed, upon completion of the work all temporary fills shall be removed in their entirety and disposed of in an upland location outside of flood plains unless otherwise specified in the Contract.
11. Construction operations in waters of the United States as defined in 33 CFR Part 328.3, including wetlands, shall be restricted to areas and activities authorized by the U.S. Army Corps of Engineers as shown in the Contract. Forging waters will be allowed only as authorized by the U.S. Army Corps of Engineers 404 Permit.
12. Wetland areas outside of the permitted limits of disturbance shall not be used for storage, parking, waste disposal, access, borrow material, or any other construction support activity.
13. Pollutant by-products of highway construction, such as concrete, asphalt, solids, sludges, pollutants removed in the course of treatment

of wastewater, excavation or excess fill material, and material from sediment traps shall be handled, stockpiled, and disposed of in a manner that prevents entry into state waters, including wetlands.

Removal of concrete waste and washout water from mixer trucks, concrete finishing tools, concrete saw and all concrete material removed in the course of construction operations or cleaning shall be performed in a manner that prevents waste material from entering state waters. A minimum of ten days prior to the start of the construction activity, the Contractor shall submit in writing a method for containing pollutant byproducts to the Engineer for approval.

14. The use of chemicals such as soil stabilizers, dust palliatives, herbicides, growth inhibitors, fertilizers, deicing salts, etc., shall be in accordance with the manufacturer's recommended application rates, frequency, and instructions. These chemicals shall not be used, stored, or stockpiled within 50 horizontal feet of any state waters except when otherwise specified in the Contract.
15. Salvable material, excess excavated material, and fill material shall not be stored or stockpiled within 50 horizontal feet of any state waters except when constrained by the ROW or when the work takes place within roadside ditches. In both cases the excavated material shall be protected by BMPs approved by the Engineer.
16. Construction equipment, fuels, lubricants, and other petroleum distillates shall not be stored or stockpiled within 50 horizontal feet of any state waters. Equipment fueling and servicing shall occur only within approved designated areas.
17. All materials stored on-site shall be stored in a neat, orderly manner, in their original containers, with the original manufacturer's label. Materials shall not be stored in a location where they may be carried into a state water at any time.
18. Spill prevention and containment measures conforming to subsection 208.06 shall be used at storage, and equipment fueling and servicing areas to prevent the pollution of any state waters, including wetlands. All spills shall be cleaned up immediately after discovery, or contained until appropriate cleanup methods can be employed.

Manufacturer's recommended methods for spill cleanup shall be followed, along with proper disposal methods.

19. The Contractor shall prevent construction activities from causing grass or brush fires.
20. The construction activities shall not impair Indian tribal rights, including, but not limited to, water rights, and treaty fishing and hunting rights.

21. The Contractor shall certify in writing to the Engineer that construction equipment has been cleaned prior to initial site arrival. Vehicles shall be free of soil and debris.
22. During construction vehicle cleaning shall not occur on site unless in an approved area where wash water can be properly contained.
23. At the end of each day the Contractor shall collect all trash and dispose of it in appropriate containers.
24. Construction waste that is considered a pollutant or contaminant shall be collected and disposed of in appropriate containers. This material may be stockpiled on the project when it is contained or protected by an appropriate BMP.

(c) *Measurement and Payment.*

1. All the work listed in (b) above, including but not limited to dewatering, erosion control for dewatering, and disposal of water resulting from dewatering operations, including all costs for CDPHE concurrences and permits, will not be measured and paid for separately, but shall be included in the work.
2. The Contractor shall be liable for any penalty (including monetary fines) applied to the Department caused by the Contractor's noncompliance with any water quality permit or certification. Monetary fines shall be deducted from any money due to the Contractor. If the monetary fine is in excess of all the money due to the Contractor, then the Contractor shall pay to the Department the amount of such excess.
3. The Contractor will not receive additional compensation, or time extensions, for any disruption of work or loss of time caused by any actions brought against the Contractor for failure to comply with water quality controls.
4. If a spill occurs as a direct result of the Contractor's actions or negligence, the clean-up of such spill shall be performed by the Contractor at the Contractor's expense.
5. Areas exposed to erosion by fire resulting from the Contractor's operations shall be stabilized in accordance with Section 208 by the Contractor and at the Contractor's expense.

SECTION 108 PROSECUTION AND PROGRESS

108.01 Subletting of Contract. The Contractor shall not sublet, sell, transfer, assign, or dispose of the Contract or Contracts, or any portion thereof without written permission of the Engineer. Prior to beginning any work by subcontractor, the Contractor shall request permission from the Engineer by submitting a completed Sublet Permit Application, CDOT Form No. 205. The subcontract work shall not begin until the Contractor has received the Engineer's written permission. The Contractor shall make all project related written subcontracts available to the Engineer for viewing, upon request and at a location convenient to the Engineer.

The Contractor will be permitted to sublet a portion of the Contract, however, the Contractor's organization shall perform work amounting to 30 percent or more of the original total cost of bid items. Any items designated in the contract as "specialty items" may be performed by subcontract. The cost of "specialty items" so performed by subcontract may be deducted from the original total cost of bid items before computing the amount of work required to be performed by the Contractor's own organization.

The calculation of the percentage of subcontracted work shall be based on the prime contract unit prices rather than subcontract unit prices. Proportional value for a subcontracted partial contract item will be verified by the Engineer. For the purpose of calculating the value of subcontracted work, the cost of procuring materials and manufactured products can be included in either the prime contract or subcontract. However, when a firm both sells material to a prime contractor and performs the work of incorporating the materials into the project, these two phases shall be considered in combination and as constituting a single subcontract.

Subcontracts or transfer of Contract shall not release the Contractor of liability under the Contract and bonds.

108.02 Notice to Proceed. The Contractor shall not commence work prior to the issuance of a Notice to Proceed. The "Notice to Proceed" will stipulate the date on which contract time commences. When the Contractor proceeds with work prior to that date, contract time will commence on the date work actually begins. The Contractor shall commence work under the Contract on or prior to the fifth day following Contract execution or the twentieth day following the date of award, whichever comes later, or in accordance with the selected start date allowed in the special provisions.

108.03 Schedule. The Contractor shall plan, schedule, and report the progress of the work to ensure timely completion of the work as called for in the Contract. The Contractor shall prepare a Project Schedule that shall be used for coordination, for evaluation of progress, and for the evaluation of changes to the Contract. The Schedule shall show the logical progression of all activities required to complete the Contract work, including those of subcontractors, Contractor's engineers and

surveyors, and suppliers. Seasonal and weather constraints, utility coordination, railroad restrictions, right of way restrictions, traffic constraints, environmental constraints, other project interfaces, expected job learning curves, and other constraints shall be considered when preparing the Project Schedule. Days scheduled as no work days shall be indicated. A CPM schedule is required unless the Commencement and Completion of work special provision allows a bar chart schedule. The Schedule shall show all work completed within the contract time.

The Contractor shall submit two copies of all required schedule information as described below. All schedules, diagrams, and reports shall include a title, project number, date of preparation, and the name of the Contractor. For CPM schedules, all required schedules and reports shall also be submitted electronically on compact disk or USB flash drive.

The progress schedule shall show the logical progression of all activities required to complete the Contract work, including subcontracted work, delivery dates for critical material, submittal and review periods, milestone requirements, and no work periods. Where the project has specific phases, each phase shall be described separately for each applicable required activity.

(a) *Methods Statement.* A Methods Statement shall be prepared for the controlling activities in the CPM or the salient features listed in the Commencement and Completion of Work special provision, whichever applies. It shall include any additional activity or feature that the Contractor considers a controlling factor for timely completion. The Methods Statement shall be a detailed narrative describing each activity or feature and all work necessary to complete it. The Methods Statement shall be submitted with the Contractor's schedule. The following format is required.

- (1) *Feature:* name of the feature;
- (2) *Responsibility:* Contractor, subcontractor, supplier, utility, etc. responsible for the feature;
- (3) *Procedures:* procedures to be used to complete the work. The procedure to be used shall include general information regarding methods such as forming, excavation, pouring, heating and curing, backfill and embankment, trenching, protecting the work, etc. When separate or different procedures are to be employed by the Contractor due to seasonal or project phasing requirements, such differing procedures shall be described in the procedure statement;
- (4) *Production Rates:* the planned quantity of work per day for each feature;
- (5) *Labor Force:* the labor force planned to do the work;
- (6) *Equipment:* the number, types, and capacities of equipment planned to do the work;
- (7) *Work Times:* the planned time for the work to include:

- (i) number of work days per week
- (ii) number of shifts per day
- (iii) number of hours per shift

At the Engineer's request, the Contractor shall update the Methods Statement, or any part thereof, and submit it with the next monthly schedule update.

- (b) *Bar Chart* When a Bar Chart is used, it shall be time scaled and shall show the following:
- (1) The salient features, as listed in the Commencement and Completion of Work special provision.
 - (2) Any feature not listed in the Commencement and Completion of Work special provision that the Contractor considers a controlling factor for timely completion.
 - (3) The number of days required to complete each feature and its relationship in time to other features.
 - (4) Sufficient space for each feature to permit two additional plots parallel to the original time span plot.
 - (5) The anticipated delivery dates for equipment or materials in any feature that could affect timely completion of the project.
 - (6) Critical completion dates for any activity within any feature that could affect timely completion of the project.
 - (7) Connecting lines between features that show the intended progression of activities.

The Schedule shall be updated as of the cutoff date for the monthly progress pay estimate and submitted to the Engineer before the payment of the progress pay estimate is approved. The Contractor shall provide a copy of the original bar chart showing, for each feature, the days actually worked and the anticipated days required to complete it.

- (c) *Critical Path Method.* CPM is a scheduling method which shows the interdependencies between work activities. The critical path is that path through the schedule which, if delayed, will cause a delay to project completion.

The Contractor shall use either Microsoft Project or Primavera Scheduling software to develop and manage the Critical Path Method Schedule. The Contractor shall notify the Project Engineer in writing, when submitting the first schedule which software, will be used. This choice cannot be changed after the first schedule submittal. When the Contractor uses Primavera-scheduling software, the Engineer may request an additional electronic copy of all required schedules and reports converted to the Microsoft Project format on floppy disk or compact disk, for information only. This additional information shall be submitted with all schedule submittals and updates.

The Contractor shall perform all work required to ensure that the Microsoft schedule accurately reflects the planned schedule and progress.

The progress schedule shall include as a minimum the salient features of this project as listed in the Commencement and Completion of Work special provision. The progress schedule shall include all activities for all work on the project, including subcontracted work, delivery dates for critical material, submittal and review periods, milestone requirements and no work periods. Where the project has specific phases, each phase shall be described separately for each applicable salient feature.

Construction activity duration shall not exceed 15 calendar days unless approved by the Engineer. Series of activities that have aggregate durations of five calendar days or less may be grouped in a single activity. For example, “form, reinforce, and pour pier” could be defined as a single activity rather than three.

Time Scaled Logic Diagram: This diagram shall show the logical progression of all activities required to complete the work defined in the Contract. Activity information shall include activity ID, description, duration, early start and finish dates, late start and finish dates, total float, and responsibility.

- (1) Initial Schedule. The Initial Schedule shall include all necessary detail for procurement, construction and submittal activities required during the first 90 days of contract time. In addition, the Initial Schedule shall include a very basic group of activities that describes the time period after the 90th day of contract time and through the completion of the project. Only salient features and other significant activities will be required for the period after the first 90 days of contract time. The 15-calendar day activity duration limit will not apply to the portion of the Initial Schedule beyond the first 90 days of contract time. This submittal shall include a Time Scaled Logic Diagram.
- (2) Project Schedule. The Project Schedule submittal shall consist of a Time Scaled Logic Diagram Schedule Report. It shall be prepared in full and submitted to the Engineer within 45 calendar days after the Engineer’s acceptance of the Initial Schedule. The Engineer’s review of the Project Schedule will not exceed seven calendar days. Revisions required as a result of the Engineer’s review shall be submitted within 7 calendar days. Work shall not continue beyond 90 calendar days after the start of Contract Time until the Project Schedule is accepted in writing, unless otherwise approved by the Engineer.

The Project Schedule shall cover the time from the Date of Notice to Proceed to the predicted completion date.

The Schedule Report shall tabulate for each activity the activity ID, description, duration, earliest start and finish date, latest start and finish date, total float time, predecessor and successor activities, and responsibility.

- (3) **Schedule Updates.** The Contractor shall update the Initial Schedule or the Project Schedule monthly to reflect actual construction progress of all work activities on the project. Updates shall show the previous month's progress and a projection for all remaining work activities on the project.

Schedules shall be updated as of the cutoff date for the monthly progress pay estimate and submitted to the Engineer before the payment of the progress pay estimate is approved.

Each of the diagrams, charts, and reports shall comply with the requirements for the Project Schedule above, except that they shall also include the actual completion dates and percentages of completion for the appropriate activities.

A Job Progress Narrative Report shall be submitted with all updates. It shall detail the description of job progress, problem areas, current and anticipated delaying factors and their anticipated effects, impacts to job milestones or project completion, any corrective action proposed or taken, and any minor revisions to the Schedule.

Revision of the Schedule may be required, as determined by the Engineer, for: a major revision in the schedule logic or methods of construction; the addition, deletion, or revision of activities required by contract modification; delays in milestones or the completion of the project; or for prosecution of work that revises the phasing or staging which is represented on the plans or on the progress schedule.

If it is determined that a revision to the Schedule is required, it shall be provided to the Engineer for review within 15 calendar days of written notification. The Engineer's review of the revised schedule will not exceed one week. Revisions required as a result of the Engineer's review shall be submitted within one week. When accepted by the Engineer in writing, the revised schedule shall become the Project Schedule.

The Contractor shall participate in the Engineer's review and evaluation of the submittals. Meetings will be held to review progress and planning when requested by the Engineer or Contractor.

The Contractor shall prosecute the work according to the Schedule. The Contractor shall ensure that its subcontractors, suppliers, and engineers, at any tier, also prosecute the work according to the Schedule. The Department shall be entitled to rely on the Contractor's Schedule for planning and coordination.

Acceptance of the Contractor's Schedule by the Engineer is not to be construed as relieving the Contractor of obligation to complete the contract work within the contract time allowed for the portion of the work or the entire Contract, or granting, rejecting or in any other way acting on the Contractor's request for extension of contract time, or claims for additional compensation.

All costs relating to the preparation, submittal, and acceptance of the Schedule, reports and revisions, and all requirements of this subsection will not be paid for separately, but shall be included in the work.

Failure of the Contractor to comply with the requirements of this subsection shall be grounds for a determination by the Engineer that no further progress payments are to be made until the Contractor is in full compliance.

108.04 Payment Schedule. The Contractor shall prepare a payment schedule which shall show the dollar amount of work the Contractor expects to complete by the progress estimate date each month for the duration of construction. The schedule shall cover the period from the commencement of work to the expected completion date as shown on the Contractor's progress schedule. The payment schedule may be prepared using standard spreadsheet software such as MS Excel and submitted in electronic format.

- (a) *Initial Payment Schedule.* The Contractor shall submit the initial payment schedule at the preconstruction conference. The payment schedule shall show the total dollar amount of work expected to be completed by each month's progress estimate date.

The amounts shown shall include planned force account work and expected incentive payments.

- (b) *Payment Schedule Updates.* Once each month the Contractor shall submit a payment schedule update to the Engineer. The schedule update shall be in the same two part format as the initial schedule and shall be submitted to the Engineer by the first day of each month. In each payment schedule update, estimated monthly dollar amounts shall be revised to match actual progress payments made to the Contractor to date. Each payment schedule update shall show corrected dollar amounts of work to be completed each month through the expected completion date as shown on the Contractor's progress schedule.
- (c) *Failure to Submit Payment Schedule.* If the Contractor fails to submit the initial payment schedule or a payment schedule update by the required date, the Engineer will withhold further progress payments until such time as the Contractor has submitted a current payment schedule

108.05 Limitation of Operations. The Contractor shall conduct the work in a manner and sequence to assure the least interference with traffic. The Contractor shall not open up work to the prejudice or detriment of work already started. The Engineer may require the Contractor to finish a section of work before starting any additional sections if the opening of a section is essential to public convenience.

108.06 Character of Workers; Methods and Equipment. The Contractor shall employ resources for completing work to full completion in the manner and time required by the Contract.

All workers shall have skill and experience to perform the work assigned to them.

Any person employed by the Contractor or by any subcontractor who does not perform the work in a proper and skillful manner shall, at the written request of the Engineer, be removed by the Contractor or subcontractor and shall not be employed on the project without the approval of the Engineer.

Should the Contractor fail to remove this person or persons or fail to furnish skilled and experienced personnel for the proper prosecution of the work, the Engineer may suspend the work by written notice until compliance is achieved.

All equipment used on the project shall be of size and mechanical condition to meet requirements of the work and to produce a satisfactory quality of work. Equipment used shall not cause injury to the roadway, adjacent property, or other highways.

When the methods and equipment to be used are not prescribed in the Contract, the Contractor shall use any methods or equipment that will accomplish the contract work in conformity with the contract requirements.

When the methods and equipment to be used are specified in the Contract, other methods and equipment shall not be used in the performance of the work unless the Contractor receives written authorization from the Engineer.

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

108.07 Workplace Violence. If a representative or employee of the Contractor, or a subcontractor, commits an act of workplace violence on the project, he shall be sanctioned as provided by the Contractor's employment policies and, where appropriate, shall be reported to law enforcement authorities. At the request of either the Contractor or the Engineer, the Engineer and the Contractor shall meet to discuss appropriate actions to be taken against the representative or employee. Appropriate action may include removing the representative or employee from the project. If removal is warranted and the Contractor fails to remove the representative or employee, the Engineer may suspend the work by written notice until compliance is achieved.

108.08 Determination and Extension of Contract Time. The contract time is stated in the Commencement and Completion of Work special provision. The contract time will be used to determine the Contract Completion Date.

The Contractor shall not carry on construction operations on Saturdays, Sundays or holidays unless previously arranged and approved. The Contractor shall not perform work on any day of a three or four day holiday weekend when the holiday is New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving

Day, or Christmas Day. The Contractor shall only make emergency repairs, and provide proper protection of the work and traveling public on these days.

- (a) *Time Count Contract.* When the contract time is on a working day or calendar day basis, the Engineer will furnish the Contractor a weekly statement showing the number of days assessed for the preceding week and the number of days remaining for completion of the Contract. If the Contractor is in disagreement with the current weekly statement, the Contractor shall submit a request for review of the current weekly statement. Such request shall be made within 30 calendar days of the receipt of the statement and shall detail the reasons the statement is believed to be incorrect.

When final acceptance has been made by the Engineer as prescribed in subsection 105.21, the daily time charges will cease on working day and calendar day projects.

1. *Working Day Contract.* When the work is on a working day basis, one whole day of contract time will be assessed for each working day on which the work can be effectively prosecuted during six hours or more of the day. One-half day will be assessed for each working day on which the work can be effectively prosecuted for at least two hours but less than six hours of the day. Contract time will not be assessed when the work can be effectively prosecuted for less than two hours. Saturdays, Sundays, and holidays will be assessed as working days when the Contractor utilizes such days for prosecuting the work.
 2. *Calendar Day Contract.* When the work is on a calendar day basis, one calendar day of contract time will be assessed for each calendar day from the date that Contract time starts including Saturdays, Sundays, and holidays. Less than full time charges may be made on those days when conditions, which are beyond the control of and unknown to the Contractor, make it impossible to prosecute the work on items controlling the completion of the work with full, normal efficiency. Less than full time charges may be allowed for inclement weather only when the Engineer directs the Contractor not to work for the safety of the traveling public. When less than full time charges are to be assessed, the following procedures will be followed: One whole day of contract time will be assessed for each calendar day on which the work is prosecuted during six hours or more of the Contractor's daily working schedule; one-half day will be assessed for each calendar day on which the work is prosecuted for at least two hours but less than six hours of the day; contract time will not be assessed when the work is prosecuted for less than two hours.
- (b) *Completion Date Contract.* When the Contract specifies a completion date, all work under the Contract shall be completed on or before that date. No extension of the completion date will be allowed for inclement weather, foreseeable causes, or conditions under the control of the Contractor.

If all work under the Contract is not completed on or before the specified completion date, contract time will be assessed for each additional calendar day in accordance with subsection 108.8 (a) 2.

- (c) *Delay*. Delay is defined as any event, action or factor that extends the time for the performance of the work.
1. *Excusable Delay*: A delay that was beyond the Contractor's control and not caused by the Contractor's fault or negligence, and for which a contract time extension may be granted.
 - A. *Compensable Delay*: An excusable delay caused by the Department for which the Contractor may be entitled to additional monetary compensation. Monetary compensation for such delays will be made in accordance with subsection 109.10.
 - B. *Noncompensable Delay*: An excusable delay for which the Contractor may be entitled to an extension of contract time but no additional monetary compensation. Contract time allowed for the performance of the work may be extended for delays caused by acts of God, acts of the public enemy, fires, floods, area wide strikes, freight embargoes, unusually severe weather, or delays not caused by the Contractor's fault or negligence.
 2. *Nonexcusable Delay*: A delay that was reasonably foreseeable or within the control of the Contractor for which no monetary compensation or contract time extension will be granted.

Delays in delivery of materials or fabrication scheduling resulting from late ordering, financial considerations, or other causes that could have been foreseen or prevented will be considered nonexcusable delays. However, delays caused by fuel shortage or delay in delivery of materials to the Contractor due to some unusual market condition caused by industry-wide strike, national disaster, area-wide shortage, or other reasons beyond the control of the Contractor which prevent procurement of materials or fuel within the allowable contract time limits will be considered excusable delays.

- (d) *Extension of Contract Time*. The Contractor's claim that insufficient contract time was specified is not a valid reason for an extension of contract time.

If the Contractor finds it impossible for reasons beyond the Contractor's control to complete the work within the contract time, as specified or extended, a written request for extension of contract time shall be submitted to the Engineer in two parts. The first part shall be a written notice submitted within seven days of the occurrence of a delay to the prosecution of the work. The notice shall contain a description of the activity which is delayed and information with appropriate documentation concerning the nature and cause of the delay.

The second part shall be a formal request by the Contractor for an extension of contract time which shall be submitted within 30 days of the initial notice. This part of the request shall be accompanied by evidence supporting the request. Such evidence shall demonstrate the following:

- (1) The cause for the delay is allowable for consideration of a contract time extension under the terms of the Contract.
- (2) The cause for the delay is allowable for consideration of monetary compensation under the terms of the Contract (to be submitted only if the Contractor is seeking monetary compensation for the delay).
- (3) The delay has or will make it impossible for the Contractor to complete the work by the specified completion dates without taking steps to accelerate the work.
- (4) A schedule revision as defined in subsection 108.03 shall accompany the request. The Schedule as revised shall clearly indicate that the activity or activities delayed were critical or have become critical due to the delay. For the purpose of these specifications, an activity shall be considered critical if all previously available float time has been used, and this delay will directly delay the Contract Completion Date. Float time is the length of time that an activity can be delayed without affecting the Contract Completion Date.

The Engineer's determination as to the extension of contract time to be allowed will be based on the current Schedule in effect at the time of the alleged delay, the supporting evidence submitted by the Contractor and any other relevant information available to the Engineer. The impact of the delay shall be reflected in the Schedule by adding activities or extending the duration of the affected activities, and, if appropriate, adjusting the Contract Completion Date. Delays in activities which, according to the current Schedule, do not affect the final Contract Completion Date will not be the basis for a change in the Contract Completion Date. If the Engineer grants an extension of the contract time, the Contract Completion Date as extended shall be in effect as though it were the contract time originally specified in the Contract.

108.09 Failure to Complete Work on Time. A daily charge will be made against the Contractor for each calendar day, including free time, that any work remains uncompleted after the elapse of contract time. This daily charge will be deducted from any money due the Contractor. This deduction will not be considered a penalty, but as liquidated damages.

The schedule of liquidated damages set forth below is an amount, agreed to by the Contractor and the Department, as reasonably representing additional construction engineering costs incurred by the Department if the Contractor fails to complete performance within the contract time.

The schedule of liquidated damages will be:

Original Contract Amount (\$)		Liquidated Damages per Calendar Day (\$)
From More Than	To And Including	
0	150,000	500
150,000	250,000	600
250,000	500,000	800
500,000	1,000,000	1,400
1,000,000	2,000,000	2,000
2,000,000	4,000,000	3,300
4,000,000	10,000,000	3,900
10,000,000	_____	3,900 plus 300 Per Each Additional 1,000,000 Contract Amount or Part Thereof Over 10,000,000

Due account shall be taken of any adjustment of the contract time for completion of the work granted under the provisions of subsection 108.07.

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

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

108.10 Default of Contract.

- (a) The Engineer may send a written notice of intent to find the Contractor in default to the Contractor and the Surety by certified mail for any of the reasons listed below. The notice will describe the conditions causing the impending default, advise them of the actions required for remedy, and state that if the conditions have not been corrected within ten days of receipt of the notice, CDOT will find the Contractor in default.

The Department may send a written notice of intent under this part (a) if the Contractor:

- (1) Fails to begin the Contract work within the time specified to begin work, or
- (2) Fails to perform the Contract work with sufficient resources to assure its timely completion, or
- (3) Discontinues the Contract work, or
- (4) Fails to resume discontinued Contract work, or
- (5) Becomes insolvent, is declared bankrupt, commits an act of bankruptcy or insolvency, allows a final judgment to remain unsatisfied for a period of ten calendar days, makes an assignment for the benefit of creditors, or

- (6) Fails to comply with the Contract regarding minimum wage payments, DBE requirements, or EEO requirements, or
- (7) Is a party to fraud.

If the Contractor fails to correct the conditions identified in the notice of intent to find the Contractor in default within ten calendar days of receipt, the Department may serve the Contractor with an immediate notice of default and take prosecution of the work from the Contractor. Copies of the default notice will also be sent, by certified mail, to the Contractor and the Surety.

- (b) The Engineer may send a written notice of intent to find the Contractor in default to the Contractor and the Surety by certified mail for the reason listed below. The notice will include a stop work order which will require the Contractor to cease work on the Contract Items that are unacceptable. The notice will describe the conditions causing the impending default, advise the Contractor of the actions required for remedy and state that if the conditions have not been corrected within ten days of receipt of the notice, CDOT will find the Contractor in default.

The Department may send a written notice of intent under this part (b) if the Contractor fails to perform the work to Contract requirements or neglects or refuses to correct or remove and replace rejected materials or unacceptable work.

The Contractor shall not resume work on the unacceptable Contract Items until the following conditions have been met:

- (1) The Contractor shall submit a written proposal to the Engineer outlining the procedures which will be followed by the Contractor to correct the unacceptable conditions, and;
- (2) The Engineer and the Contractor shall meet to discuss the written proposal, and;
- (3) The Engineer will issue written permission for the Contractor to commence work.

If the Contractor fails to meet these three conditions within ten calendar days of receipt of the notice of intent to find the Contractor in default, or if at any time after the Contractor resumes work, the work does not meet Contract requirements or the Contractor again neglects or refuses to correct or remove and replace rejected materials or unacceptable work, the Department may serve the Contractor with an immediate notice of default and take prosecution of the work from the Contractor. Copies of the default notice will also be sent, by certified mail, to the Contractor and the Surety.

- (c) In the case of default under either subsection 108.10(a) or 108.10(b):
 - (1) The Department will revoke the Contractor's Prequalification. If the Department chooses to rebid the remaining Contract work on this project, the Contractor will not be allowed to submit a bid for this work.

- (2) The Department may appropriate or use materials at the project site and contract with others to complete the remaining Contract work.
 - (3) The Department will determine the methods used for completion of the Contract.
 - (4) Resulting costs and charges incurred by the Department will be deducted from payments owed the Contractor. If such costs exceed the payment owed the Contractor, the Contractor and Surety shall reimburse the Department for these costs. These costs and charges may include but are not limited to: cost of Contract completion, including designing, advertising, bidding and awarding the remaining work and liquidated damages or disincentives.
- (d) If the notice of default is determined to be in error, the rights and obligations of the parties shall be the same as if the Contract had been terminated in accordance with Subsection 108.10. Damages for improper notice of default may be awarded accordingly.

108.11 Termination of Contract.

- (a) *Termination Notice.* The Department may terminate work under the Contract in whole or in part if the Engineer determines that termination is in the Department's best interest. Contract termination will be initiated by the Engineer's written Contract Termination Notice to the Contractor. The notice will specify the effective date.
- (b) *Canceled Commitments.* The Contractor, after receiving the Contract Termination Notice, shall cancel any outstanding commitments for procurement of materials, supplies, equipment, and miscellaneous items. In addition, the Contractor shall use reasonable effort to cancel or divert any outstanding subcontract commitments to the extent they relate to any work terminated. With respect to such canceled commitments the Contractor shall:
 - (1) Settle all outstanding liabilities and all claims arising out of these canceled commitments. Such settlements will be approved by the Engineer and shall be final; and
 - (2) Assign to the Department all of the rights, title and interest of the Contractor under the terminated orders and subcontracts, as directed. The Department will then have the right to settle or pay any or all claims arising out of the termination of these commitments.
- (c) *Termination Claim.* The Contractor shall submit the termination claim to the Engineer within 90 days after the termination notice effective date. During the 90 day period, the Contractor may make a written request for a time extension in preparing the claim. Any time extension must be approved by the Engineer. If the Contractor fails to submit the termination claim within the time allowed, the Engineer may determine the amount due the Contractor by reason of the termination.

- (d) *Payment.* Subject to subsection 108.11(c) above, the Contractor and Engineer may agree upon the whole or any part of the amount to be paid to the Contractor because of the termination. The amount may include reasonable cancellation charges incurred by the Contractor. The amount may also include any reasonable loss upon outstanding commitments for subcontracts which the Contractor is unable to cancel, provided the Contractor has made reasonable effort to divert the commitments to other activities. The amount agreed upon shall be embodied in a Contract Modification Order and the Contractor shall be paid that amount.

Payments claimed and agreed to pursuant to termination shall be based on the Contract unit prices. Payment for partially completed lump sum items may be made in the proportion that the partially completed work is to the total lump sum item. Where work performed is of a nature that it is impossible to separate the costs of uncompleted work from completed units, the Contractor will be paid the actual cost incurred for the necessary preparatory work and other work accomplished.

The Department may from time to time, under terms and conditions it may prescribe, make partial payments against costs incurred by the Contractor in connection with the contract termination. The total of such payments shall not exceed the amount, as determined by the Engineer, the Contractor will be entitled to hereunder.

- (e) *Disposition of Work and Inventory.* The Contractor shall transfer title and deliver to the Department, as directed, such items which, if the Contract had been completed, would have been furnished to the Department including:
- (1) Completed and partially completed work; and
 - (2) Materials or equipment produced or in process or acquired in connection with the performance of the work terminated by the notice.

Other than the above, any termination inventory resulting from the contract termination may, with written approval of the Engineer, be sold or acquired by the Contractor under the conditions prescribed by and at prices approved by the Engineer. The proceeds of any such disposition shall be applied to reduce any payments to the Contractor under the Contract, or shall otherwise be credited to the cost of work covered by the Contract, or paid in a manner as directed. Until final disposition, the Contractor shall protect and preserve all the material related to the Contract which is in the Contractor's possession and in which the Department has or may acquire an interest.

- (f) *Cost Records.* The Contractor agrees to make cost records available to the extent necessary to determine the validity and amount of each item claimed.
- (g) *Contractual Responsibilities.* Termination of a Contract or portion thereof shall not relieve the Contractor of contractual responsibilities for the work completed, nor shall it relieve the Surety of its obligation for and concerning any just claim arising out of the work performed.

SECTION 109 MEASUREMENT AND PAYMENT

109.01 Measurement of Quantities. All work completed under the Contract will be measured by the Engineer according to United States standard measure (English units).

A station when used as a definition or term of measurement will be 100 linear feet.

The method of measurement and computations to be used in determination of quantities of material furnished and of work performed under the Contract will be those methods generally recognized as conforming to good engineering practice.

Unless otherwise specified, longitudinal measurements for area computations will be made horizontally, and deductions will not be made for individual structures having an area of 9 square feet or less. Unless otherwise specified, transverse measurements for area computations will be the neat dimensions shown on the plans or as ordered in writing by the Engineer.

Structures will be measured according to neat lines shown on the plans or as altered to fit field conditions.

Items which are measured by linear foot, such as pipe culverts, guardrail, underdrains, etc., will be measured parallel to the base or foundation upon which the structures are placed, unless otherwise shown on the plans.

In computing volumes of excavation and embankment, the average end area method or the method incorporated into the Department's computer earthwork program will be used.

The term "gage," when used in connection with the measurement of plates, will mean the U.S. Standard Gage.

When the term "gage" refers to the measurement of wire, it will mean the wire gage specified in ASTM A510.

The term "ton" will mean the short ton consisting of 2000 pounds avoirdupois.

Materials measured or proportioned by weight shall be weighed on accurate scales. Scales shall be accurate within the allowable tolerances as prescribed by State law. The scales shall be sealed by the Measurement Standards Section of the Colorado Department of Agriculture at least once each year, each time the scales are relocated, and as often as the Engineer may deem necessary. Scales shall be furnished by the Contractor or the Contractor may utilize commercial scales.

Scales shall be operated according to the Colorado Department of Agriculture's regulations. Weighers, scales, scale tickets, scale house, and verification of the scales' accuracy will not be measured and paid for separately, but shall be included in the work.

The Contractor may use either certified hopper scales or certified platform scales.

When platform scales are used to weigh vehicles carrying material paid for by weight, each vehicle shall be weighed by a certified weigher. Hopper scales used to directly measure material paid for by weight shall be operated by certified weighers and provide an accurate net weight.

The operator of each vehicle carrying material measured and paid for by weight shall obtain a scale ticket (certificate of correct weight) from the certified weigher and deliver the ticket to the Engineer at the point of delivery of the material.

The scale ticket shall include the following information:

- (1) Project Number.
- (2) Date.
- (3) Ticket Number.
- (4) Haul Unit Number.
- (5) Gross Weight.
- (6) Tare Weight.
- (7) Net Weight.
- (8) Material Type.
- (9) Certified Weigher's Name.

Vehicles used to haul material being paid for by weight shall bear a plainly legible identification mark. Each of these vehicles shall be weighed empty daily at times directed by the Engineer. The Contractor shall furnish to the Engineer, in writing, a list of identification marks, number of axles, and the distance between extreme axles of each delivery vehicle to be used on the project. This information shall be furnished prior to time of delivery of the material and at any subsequent time the Contractor changes vehicles, combination vehicles, or axle length relationships.

Weighers using hopper scales solely for batching materials not measured and paid for by weight need not be certified.

The Engineer will randomly verify the accuracy of the certified weigher on every project where the weights are manually entered on the scale ticket. This verification will consist of at least one comparison check on the project. Additional verification checks may be required as determined by the Engineer. The Engineer will randomly select a loaded truck after the truck has been issued a scale ticket by the certified weigher. The loaded truck will then be reweighed, in the presence of the Engineer, on the same scale and the weight compared with the weight on the scale ticket. Reweighed loads shall be within the tolerance of 200 pounds plus or minus.

The Engineer will also verify the accuracy of computerized scales. Computerized scales are scales that automatically print weights on the scale ticket. This verification will consist of at least one comparison check when the project requires more than 2500 tons of material to be weighed. This comparison check shall be made by

reweighing a loaded vehicle. The Contractor shall either provide a second certified scale or select a second certified scale in the vicinity to be used for the comparison check. Comparison checks shall be performed using the following procedures:

- (1) Hopper Scale. A loaded truck will be randomly selected by the Engineer. The loaded truck shall be weighed on a certified platform scale to record the gross weight. The truck shall be unloaded and weighed again on the same scale to record the tare weight. The tare weight shall be subtracted from the gross weight and compared against the net weight recorded on the scale ticket.
- (2) Platform Scales. A loaded truck will be randomly selected by the Engineer. The loaded truck shall be reweighed on a second certified scale and the gross weight shall be compared against the gross weight on the first scale ticket.

Should a comparison check reveal a weight difference of more than one percent, a second comparison check shall be performed immediately. If the weight differences of both comparison checks exceed the one percent limit, the Contractor shall immediately stop weighing and the scale shall be recertified and resealed at the Contractor's expense. The necessary adjustments as indicated by the recertification will be made to all scale tickets issued since the last certification or on the entire project, whichever occurred later, unless the Contractor demonstrates to the satisfaction of the Engineer that the defect in the scale was present for a lesser period of time.

If it is necessary to recertify a scale, and more than 2500 tons of material remain to be weighed, another scale comparison check shall be made.

All comparison checks shall be made at the Contractor's expense.

Materials to be measured by volume in the hauling vehicle shall be hauled in approved vehicles and measured therein at the point of delivery. Vehicles for this purpose may be of any size or type, provided the body is shaped so the actual contents may be readily and accurately determined. All vehicles shall be loaded to their water level capacity and all loads shall be leveled when the vehicles arrive at the point of delivery.

Water used in the work will be measured by the M Gallon or 1000 U.S. Gallons. The weight of inherent moisture in the material will not be deducted. Water added for the Contractor's convenience will not be paid for.

Water may be measured either by volume or weight. Water meters shall be accurate within a range of 63 percent. When water is metered, the Contractor shall use an approved metering device and shall furnish the Engineer a certificate showing that the meter has been accurately calibrated within the time allowed in the following schedule:

2 inch	4 years
4 inch to 6 inch	2 years
8 inch to 10 inch	1 year

Water meters shall be calibrated when the Engineer determines there is reason to believe the meters are not accurate within the allowable tolerance. If water meter accuracy is found acceptable, the cost involved in checking the water meter shall be at the Department's expense. If the water meter accuracy is found unsatisfactory, the cost involved in checking the water meter shall be at the Contractor's expense.

For those materials specified to be measured by the cubic yard, an acceptable method of computing volumes of excavation is to determine a weight to volume factor and convert weight to volumes by means of the factor. The weight to volume factor shall be determined by Colorado Procedures 22 or 80 as described in the Department's Field Materials Manual. The number of tests used to determine the material weight to volume factor will be determined by the Engineer. The locations where the tests are taken shall be at those locations specified in the "Method of Measurement" for the particular bid item; i.e., Unclassified Excavation - in its original position: Embankment Material - in its final compacted position, etc.

Asphalt materials will be measured by the gallon or ton. Volumes will be measured at 60 °F or will be corrected to the volume at 60 °F using ASTM D 1250 for asphalts or ASTM D 633 for tars. Net certified scale weight or weight based on certified volumes in the case of rail shipments will be used as a basis of measurement, subject to correction when asphalt material has been lost from the car or the distributor, wasted, or otherwise not incorporated in the work. When asphalt materials are shipped by truck or transport, net certified weight or volume subject to correction for loss or foaming will be used for computing quantities.

Cement will be measured by the ton.

Timber will be measured by the number of thousand feet board measure or MFBM actually incorporated in the structure. Measurement will be based on nominal commercial widths and thicknesses.

The term "lump sum" when used as an item of payment will mean complete payment for the work described in the Contract.

When a complete structure or structural unit (in effect, "lump sum" work) is specified as the unit of measurement, the unit will include all necessary fittings and accessories.

Rental of equipment will be measured in hours of actual working time and necessary traveling time of the equipment within the limits of the project. If special equipment has been ordered by the Engineer in connection with force account work, travel time and transportation to the project will be measured. If equipment has been ordered held on the job on a standby basis by the Engineer, and is not otherwise utilized by the Contractor, standby rental rates for the equipment will be paid at the rates specified in subsection 109.04.

When standard manufactured items are specified such as fence, wire, plates, rolled shapes, pipe conduit, etc., and these items are identified by gage, unit weight, section dimensions, etc., the identification will be considered to be nominal weight or dimensions. Unless more stringently controlled by tolerances in cited specifications, manufacturing tolerances established by the industries involved will be accepted.

109.02 Scope of Payment. The Contractor shall receive and accept compensation provided for in the Contract as full payment for furnishing all materials and for performing all work under the Contract in a complete and acceptable manner and for all risk, loss, damage, or expense of whatever character arising out of the nature of the work or the prosecution thereof, subject to the provisions of subsection 107.21.

Work or materials for which there are pay items and which are to be paid for separately will be included in the appropriate pay item in the Summary of Approximate Quantities on the plans. Work or materials that are essential to the project but for which there are no pay items, will not be measured and paid for separately but shall be included in the project.

Payment for any pay item listed in the Summary of Approximate Quantities on the plans, having additional items shown within parentheses, shall be full compensation for all work necessary to complete the item as designated.

109.03 Compensation for Altered Quantities. When the accepted quantities of work vary from the quantities in the Contract the Contractor shall accept as payment in full, payment at the original contract unit prices for the accepted quantities of work done. Allowance will not be made except as provided in subsections 104.02 and 108.11, for any increased expense, loss of expected reimbursement, or loss of anticipated profits suffered or claimed by the Contractor resulting either directly from such alterations or indirectly from unbalanced allocation of overhead expense among the contract items or from any other cause.

If any such alteration directly causes the loss of any work or materials already furnished by the Contractor under the terms of the original Contract, reimbursement for such work or of salvaging such materials will be at actual cost. Any such materials may, at the option of the Department, be purchased at the actual cost to the Contractor, as evidenced by certified invoices.

109.04 Compensation for Changes and Force Account Work. Differing site conditions, changes, and extra work performed under Section 104 will be paid for as stipulated in the order authorizing the work. Compensation will be at unit prices or lump sum, or the Department may require the Contractor to do the work on a force account basis to be compensated in the following manner:

- (a) *Labor.* For all labor and foremen in direct charge of the specific operations, the Contractor will receive the actual rate of wage normally paid for each and every hour that the labor and foremen are actually engaged in the work, as documented by certified payrolls.

The Contractor will receive the actual costs paid to, or in behalf of, workers by reason of subsistence and travel allowances, health and welfare benefits, pension fund benefits, or other benefits, when the amounts are required by a collective bargaining agreement or other employment contract or generally applicable to the classes of labor employed on the work.

An amount equal to 67 percent of the actual wages and fringe benefits paid directly to the employees will also be paid to the Contractor. This 67 percent will not be applied to subsistence, travel allowance, or to fringe benefits paid to a third party or a trustee.

- (b) *Materials.* For materials accepted by the Engineer and incorporated in the work, the Contractor shall receive the actual cost of such materials, including transportation charges paid (exclusive of equipment rentals as hereinafter set forth), to which 15 percent will be added.
- (c) *Owned or Leased Equipment.* For the use of any machinery or equipment, approved by the Engineer, which is owned or leased directly by the Contractor or subcontractors, or by entities that are divisions, affiliates, subsidiaries or in any other way related to the Contractor or subcontractors or their parent companies, the Contractor will be paid in the manner hereinafter specified. Rental rates will be from the current edition of the Rental Rate Blue Book of Rental Rates for Construction Equipment and will be used as follows:

1. Determination of the rental rate to be used will be as follows:

Hourly rate: $RR = (ADJ\ BB/176)(RF) + EOC$

Standby rate: $SR = (ADJ\ BB/176)(RF)(0.5)$

Where: RR = Hourly rental rate

SR = Standby rate

ADJ BB = Blue Book Monthly Rate adjusted for year of manufacture

RF = Regional Factor of 1.06

EOC = Estimated Hourly Operating Costs from Blue Book

2. The number of hours to be paid for will be the number of hours that the equipment is actually used on a specific force account activity.
3. Overtime shall be compensated at the same rate indicated in subsection 109.04(c)1. above.
4. The EOC will be used for each hour that the equipment is in operation on the force account work. Such costs do not apply to idle time regardless of the cause.
5. Idle time for equipment will not be paid for, except where the equipment has been held on the Project site on a standby basis at the direction of the Engineer. Such payment will be made at the standby rate established in subsection 109.04(c)1. above. The Engineer must approve the payment of standby rates for equipment before the costs are incurred. Payment for standby time will not be made on any day the equipment operates for eight or more hours. For equipment accumulating less than eight hours operating time on any normal work day standby payment will be limited to only that number of hours that, when added to the operating time for

that day, equals eight hours. Additionally, payment for standby time will not be made in any consecutive 30 day period that the equipment operates for 176 or more hours. For equipment accumulating less than 176 hours operating time in any consecutive 30 day period, standby payment will be limited to only that number of hours that, when added to the operating time for that consecutive 30 day period, equals 176 hours. Standby payment will not be made in any case on days not normally a work day.

6. The rates established above include the cost of fuel, oil, lubrication, supplies, incidental tools valued at less than \$500, necessary attachments, repairs, overhaul and maintenance of any kind, depreciation, storage, overhead, profit, insurance, all costs (including labor and equipment) of moving equipment onto and away from the site, and all incidentals, except as allowed in subsection 109.04(c)8.
7. The rental rate for small tools shall be \$2.00 per hour. Small tools are defined as any tool which would be valued between \$500 and \$2,000 if purchased new.
8. Transportation charges for each piece of equipment to and from the site of the work will be paid provided:
 - (1) The equipment is obtained from the nearest source,
 - (2) Charges are restricted to those units of equipment not already available or required on the Project, and
 - (3) The equipment is used solely for the force account work.
9. Fast use expendable parts not included in the Rental Rate Blue Book will be paid at certified invoice cost plus 10%. Such parts not totally expended on the force account work will be prorated based on actual use.
10. Payable time periods will not include:
 - (1) Time elapsed while equipment is broken down;
 - (2) Time spent in repairing equipment; or
 - (3) Time elapsed after the equipment is no longer needed.

If a piece of equipment that is not in the Blue Book is needed, rates shall be agreed to in writing before the equipment is used.

- (d) *Rental Equipment.* Use of rental equipment not owned or leased by the Contractor or subcontractors will be paid for by certified invoice cost. The EOC will also be paid if not included in the rental rate. The use of and rates for rental equipment shall be approved by the Engineer prior to use. Proration of rental rates to an hourly rate for equipment not used solely for the force account shall be based on 176 hours per month, 40 hours per week or 8 hours per day as applicable. The cost of moving the rental equipment onto and away from the job will also be paid when the equipment is used solely for the force account work. An amount equal to ten percent of the total

due to the Contractor for rental equipment cost will be added to compensate the Contractor for related overhead costs.

- (e) *Administrative Compensation.* Administrative compensation will be paid to the Contractor for work performed on a force account basis by a subcontractor, utility, railroad, waste disposal company, or specialty firm. The compensation will be a percentage of the value of the force account work performed in accordance with the following:

To \$1,000.....	10%
Over \$1,000 to \$10,000.....	\$100 plus 5% of excess over \$1,000
Over \$10,000.....	\$550 plus 3% of excess over \$10,000

The percentages will be calculated after certified invoices are furnished by the Contractor. Compensation for administrative loading expenses will be applied to each individual billing for each force account, not to exceed one administrative loading per billing nor one billing per force account per month.

- (f) *Records.* The Contractor's representative and the Engineer shall, on a daily basis, agree in writing on the quantities of labor, equipment and materials used for work completed on a force account basis.
- (g) *Statements.* Payment will not be made for work performed on a force account basis until the Contractor has furnished the Engineer with triplicate itemized statements of the cost of the force account work, detailed as follows:
- (1) Labor classification, hours, rate, and extension for each labor class or pay rate within a class.
 - (2) Equipment type, hours, rate and extension for each unit of equipment.
 - (3) Quantities of materials, prices, extensions and transportation charges.
 - (4) Administrative compensation when applicable.

Statements shall be accompanied and supported by certified invoices for all materials and rental equipment including transportation charges. If materials used on the force account work are not specifically purchased for the work, but are taken from the Contractor's stock, the Contractor shall furnish a written statement certifying that the materials were taken from stock, that the quantity claimed was actually used, and that the price and transportation claimed represent the actual cost to the Contractor.

- (h) *Alternative Method of Documenting Force Account Work.* The following method of documenting the amount of force account work done may be used in lieu of the method described in subsections 109.04(f) and (g) above, when agreed to by both the Engineer and the Contractor.

The Engineer will keep a daily record of the labor, equipment and material used on approved force account work. The Contractor's representative shall review and initial the record each day to ensure that the record is accurate and complete, and that the costs were actually incurred.

The Contractor shall furnish certified copies of invoices for the cost of all materials used including transportation charges. If materials used on force account work are not specifically purchased for the work, but are taken from the Contractor's stock, the Contractor shall furnish a written statement certifying that the quantity claimed was actually used, and that the price and transportation charges claimed represent the actual cost to the Contractor.

The Engineer will calculate the cost of the force account work each month and include payment on the monthly progress estimate.

- (i) The additional percentages stated in (a) through (h) above constitute full compensation for all items of expense not specifically designated, including general superintendence, use of incidental tools, field and office overhead and profit. The total payment made as provided above shall constitute full compensation for such work.

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

109.06 Partial Payments. Partial payments will be made once each month as the work progresses, when the Contractor is performing satisfactorily under the Contract. Payments will be based upon progress estimates prepared by the Engineer, of the value of work performed, materials placed in accordance with the Contract, and the value of the materials on hand in accordance with subsection 109.07. The amount of the progress estimate paid to the Contractor will be subject to the following:

- (a) *Standard Amount Retained.* The Department will make a deduction from the progress estimate in the amount considered necessary to protect the interests of the State, pursuant to Section 24-91-103, CRS. The amount to be retained will be 3 percent of the value of the completed work, exclusive of mobilization and payments for materials on hand, to a maximum of 1 ½ percent of the original contract amount. No further amount will be retained if the Contractor makes satisfactory progress in the contract work. The amount retained will be in effect until such time as final payment is made, with the following exception which requires the Contractor's written request and consent of the Surety: Upon completion and acceptance of the project, after the project quantities are finalized, and the Contractor has submitted the necessary forms, the Engineer may make reduction in the amount retained.

The Contractor shall request release of retainage on work that has been partially accepted in accordance with subsection 105.21(a). The Contractor shall provide a certified invoice to the Engineer stating the percentage of the original contract amount constituted by the partially accepted work. The calculated percentage will be multiplied by the maximum retainage amount allowed to determine the retainage to be released.

- (b) *Securities in Lieu of Standard Amount Retained.* When the original contract amount exceeds \$80,000, the Contractor may withdraw all or any portion of the standard amount retained if acceptable securities are assigned to the Department, and deposited as set forth in Section 24-91-105, CRS and the implementing regulations. The securities shall at all times have a market value at least equal in value to the sums withdrawn. If at any time the Department determines that the market value of the securities has fallen below the sums withdrawn, the Contractor, shall deposit additional acceptable securities in an amount sufficient to reestablish a total deposit of securities equal in value to the sums withdrawn. This security substitution shall not apply if a part of the contract price is paid from federal, or other sources, and the federal or other source has requirements which are inconsistent with this subsection.
- (c) *Subcontractor and Supplier Claims.* In addition to a standard amount retained, the Department will withhold funds for all claims against the Contractor filed by subcontractors and suppliers, pursuant to Sections 38-26-107 and 24-91-103, CRS.
- (d) *No Payment.* A partial payment will not be made when the total value of the work done since the last estimate amounts to less than \$500.
- (e) *Prompt Payment.* The Contractor shall pay subcontractors and suppliers for all work which has been satisfactorily completed within seven calendar days after receiving payment for that work from the Department. For the purpose of this section only, work shall be considered satisfactorily complete when the Department has made payment for the work.

The Contractor shall include in all subcontracts a provision that this requirement for prompt payment to subcontractors and suppliers must be included in all subcontracts at every tier.

The Contractor shall ensure that all subcontractors and suppliers at every tier are promptly paid.

If the Contractor fails to comply with this provision the Engineer will not authorize further progress estimates until the required payments have been made and the Contractor agrees to make payments as specified.

- (f) *Retainage by the Contractor.* The Contractor may withhold retainage of each progress estimate on work performed by subcontractors. If during the prosecution of the project, a subcontractor satisfactorily completes all work described on CDOT Form No. 205, as amended by changes directed by the Engineer, the following procedure will apply:
1. The subcontractor may make a written request to the Contractor for the release of the subcontractor's retainage.
 2. Within ten working days of the request, the Contractor shall determine if all work described on Form 205 has been satisfactorily completed and shall inform the subcontractor in writing of the Contractor's determination.

3. If the Contractor determines that the subcontractor has not achieved satisfactory completion of all work described on Form 205, the Contractor shall provide the subcontractor with written notice, stating specifically why the subcontract work is not satisfactorily completed and what has to be done to achieve completion. A copy of this written notice shall be provided to the Engineer.
4. If the Contractor determines that the subcontractor has achieved satisfactory completion of all work described on Form 205, the Contractor shall release the subcontractor's retainage within seven calendar days.
5. In determining whether satisfactory completion has been achieved, the Contractor may require the subcontractor to provide documentation such as certifications and releases, showing that all laborers, lower-tiered subcontractors, suppliers of material and equipment, and others involved in the subcontractor's work have been paid in full. The Contractor may also require any documentation from the subcontractor that is required by the subcontract or by the Contract between the Contractor and the Department or by law such as affidavits of wages paid, material acceptance certifications and releases from applicable governmental agencies to the extent that they relate to the subcontractor's work.
6. Within 14 calendar days after receiving the Contractor's request, the Engineer will make inspection of all work described on Form 205. The Engineer will measure and furnish the final quantities to the Contractor of the items completed by the subcontractor. Agreement on these final quantities by the Contractor will not constitute the acceptance of the work described on Form 205 by the Engineer.
7. If the subcontractor performs only a portion of an item of work, the Contractor shall release retainage in accordance with the procedures stated above and when the subcontractor has completed all of the work included in the subcontract, however, final measurement of quantities will not be made until the item of work and all of the work on the associated Form 205 has been completed.
8. If additional quantities of a particular item of work are required at a later date after final measurement has been made, the Contractor shall perform this work in accordance with Contract requirements and at unit bid prices.

For this subsection only, satisfactory completion of all work described on CDOT Form No. 205 is when all tasks called for in the subcontract as amended by changes directed by the Engineer have been accomplished and documented as required by the Department.

The requirements stated above do not apply to retainage withheld by the Department from monies earned by the Contractor. The Department will continue to process the release of that retainage based upon the completion date of the project as defined in the Commencement and Completion of Work special provision.

9. If during the prosecution of the project a portion of the work is partially accepted in accordance with subsection 105.21(a), the Contractor shall release all subcontractors' retainage on the portion of the partially accepted work performed by subcontractors. Prior to the Department releasing the Contractor's retainage on work that has been partially accepted in accordance with subsection 105.21(a), the Contractor shall submit to the Engineer a certified statement for each subcontractor that has participated in the partially accepted work. The statement shall certify that the subcontractor has been paid in full for its portion of the partially accepted work including release of the subcontractor's retainage. The statement shall include the signature of a legally responsible official for the Contractor, and the signature of a legally responsible official for the subcontractor.
10. The Contractor shall be solely responsible for all additional costs involved in paying retainage to the subcontractors prior to total project completion.
- (g) *Good Cause Exception.* If the Contractor has "good cause" to delay or withhold a subcontractor's progress payment, the Contractor shall notify the Department and the subcontractor in writing within seven calendar days after receiving payment from the Department. The notification shall specify the amount being withheld and provide adequate justification for withholding the payment. The notice shall also clearly state what conditions the subcontractor must meet to receive payment. "Good cause" shall include but not be limited to the failure of the subcontractor to make timely submission of required paperwork

109.07 Payment for Material on Hand (Stockpiled Material). Payments may be made to the Contractor for materials to be incorporated into the work as evidenced by invoices or cost analyses of material produced on the project subject to the following:

- (1) The material has been fabricated or processed and is ready for installation into the project and conforms to the requirements of the Contract. The Contractor shall provide the Engineer with a monthly accounting of all materials stockpiled on the project for which stockpiled payment is being requested and certification of compliance that the materials conform to the requirements of the Contract. This monthly accounting shall include the specific location of materials, the amounts of materials stockpiled, the amounts of materials incorporated into the work, and the net amounts of materials for which stockpile material payment is being requested.

Payment for stockpiled structural steel (unfabricated milled plate) may be made subject to the following additional conditions:

- (i) The plan quantity of structural steel shall exceed one million pounds.
- (ii) The structural steel shall have been delivered to the Contractor's fabrication plant.
- (iii) The material conforms to the requirements of the Contract.
- (iv) Payment shall not exceed 60 percent of the certified invoice cost of the structural steel.

- (2) The material is stored on the project, on State owned property, or at an acceptable secured location within the State of Colorado. In the latter case, the Contractor shall provide a document signed by the owner and lessee of the property establishing that the Department has a vested interest in, and the right of access to and possession of the material. The material shall be clearly identified for the CDOT project.

If the material is structural steel (either completely fabricated or unfabricated milled plate), it is stored on the project, stored on State owned property, or identified and stored separately from all other lots of similar material in acceptable storage places. In the latter case, the Contractor shall provide a document signed by the owner and lessee of the property establishing that the Department has vested interest in, and the right of access to and possession of the structural steel. When the structural steel is stockpiled outside the State of Colorado, the Contractor shall reimburse the Department for all costs incurred to verify the quantity of the material, conformance to contract requirements, and proper storage.

- (3) The Contractor provides the Engineer with a written cost analysis which confirms that the balance of funds in the corresponding items is sufficient to complete the installation. Partial payments will not exceed 85 percent of the contract unit price for the item or 100 percent of the certified invoice cost of the stockpiled material, whichever is less.
- (4) The Contractor shall provide the Engineer with a certified invoice.

Payment for stockpiled materials will not relieve the Contractor of responsibility for loss or damage to the material. Payment for living plant materials, perishable materials, or materials which will not become an integral part of the finished project will not be made under this subsection.

109.08 Reserved

109.09 Acceptance and Final Payment. When the project has been accepted as provided in subsection 105.21, the Engineer will prepare the final estimate of the quantities of the various classes of work performed. After approval of the final estimate by the Contractor, payment of the entire sum found to be due after deducting all previous payments and all amounts to be retained or deducted under the provisions of the Contract will be made.

All prior estimates and payments, except for those made in accordance with subsection 109.06(f)6. will be subject to correction in the final estimate and payment.

109.10 Compensation for Compensable Delays. If the Engineer determines that a delay is compensable in accordance with either subsection 105.22, 105.23, 105.24, or 108.08, monetary compensation will be determined in accordance with this subsection.

- (a) These categories represent the only costs that are recoverable by the Contractor. All other costs or categories of costs are not recoverable:
- (1) Actual wages and benefits, including FICA, paid for additional non-salaried labor;
 - (2) Costs for additional bond, insurance and tax;
 - (3) Increased costs for materials;
 - (4) Equipment costs calculated in accordance with subsection 109.04(c) for Contractor owned equipment and based on invoice costs for rented equipment;
 - (5) Costs of extended job site overhead;
 - (6) Salaried employees assigned to the project;
 - (7) Claims from subcontractors and suppliers at any level (the same level of detail as specified herein is required for all such claims);
 - (8) An additional 16 percent will be added to the total of items (1) through (7) as compensation for items for which no specific allowance is provided, including profit and home office overhead.
- (b) In adjustment for costs as allowed above, the Department will have no liability for the following items of damages or expense:
- (1) Profit in excess of that provided in (a) above;
 - (2) Loss of profit;
 - (3) Additional cost of labor inefficiencies in excess of that provided in (a) above;
 - (4) Home office overhead in excess of that provided in (a) above;
 - (5) Consequential damages, including but not limited to loss of bonding capacity, loss of bidding opportunities, and insolvency;
 - (6) Indirect costs or expenses of any nature in excess of that provided in (a) above;
 - (7) Attorneys fees, claim preparation fees, and expert fees.

All costs claimed must be documented and accompanied by a claim certification form obtained from the Department.

