

NON-CODE ORDINANCE

By: Public Works  
Introduced: 08/09/10  
Public Hearing: 08/23/10  
Adopted: 08/23/10

**CITY OF WASILLA  
ORDINANCE SERIAL NO. 10-27**

**AN ORDINANCE OF THE WASILLA CITY COUNCIL ACCEPTING AND APPROPRIATING STATE OF ALASKA LEGISLATIVE GRANTS IN THE AMOUNT OF \$1,476,900 FOR CITY CAPITAL PROJECTS.**

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**Section 1. Classification.** This is a non-code ordinance.

**Section 2. Purpose.** To accept and appropriate State of Alaska Legislative grants in the amount of \$1,476,900 for City Capital Projects.

**Section 3. Appropriation.** The funds are appropriated to the following:

Swanson & Nelson Imp-Reapp	160-4320-432.45-59	\$851,900
Swanson & Nelson Imp-New	160-4320-432.45-60	\$500,000
Lake Lucille Water Quality Imp	110-4520-452.45-51	\$125,000

**Section 4. Source of Funds.**

Swanson & Nelson Imp-Reapp	160-4300-334.30-80	\$851,900
Swanson & Nelson Imp-New	160-4300-334.30-81	\$500,000
Lake Lucille Water Quality Imp	110-4500-334.30-79	\$125,000

**Section 5. Effective date.** This ordinance shall take effect upon adoption by the Wasilla City Council.

ADOPTED by the Wasilla City Council on August 23, 2010.

  
\_\_\_\_\_  
VERNE E. RUPPRIGHT, Mayor

ATTEST:

  
\_\_\_\_\_  
KRISTIE SMITHERS, MMC, City Clerk

[SEAL]

VOTE: Hall, Harris, Katkus, Larson and Woodruff in favor. Seat D Vacant.



**CITY OF WASILLA  
LEGISLATION STAFF REPORT**

**ORDINANCE SERIAL No. 10-27: AN ORDINANCE OF THE WASILLA CITY COUNCIL ACCEPTING AND APPROPRIATING STATE OF ALASKA LEGISLATIVE GRANTS IN THE AMOUNT OF \$1,476,900 FOR CITY CAPITAL PROJECTS .**

**Agenda of:** August 9, 2010  
**Originator:** Public Works Director

**Date:** July 27, 2010

Route to:	Department	Signature/Date
X	Finance Director	<i>[Signature]</i> 7.29.10
X	Interim Deputy Administrator	<i>[Signature]</i>
X	Public Works Director	<i>[Signature]</i> 7/29/10
X	City Clerk	<i>[Signature]</i>

**REVIEWED BY MAYOR VERNE E. RUPRIGHT:** *[Signature]*

**FISCAL IMPACT:**  yes \$1,476,900 or  no Funds Available  yes  no

**Account name/number:**

Swanson & Nelson Ave Imp-Reappropriation	160-4320-432.45-59	851,900
Swanson & Nelson Ave Imp-New Grant	160-4320-432.45-60	500,000
Lake Lucille Water Quality-New Grant	110-4520-452.45-51	125,000

**Attachments:** Grant Descriptions

**SUMMARY STATEMENT:** The State Legislature has made this funding available to the City for FY2011 by the reappropriation of an old grant and the issuance of two new grants. Attached are the grant descriptions for these projects.

**STAFF RECOMMENDATION:** Approve the adoption of Ordinance Serial Number 10-27 that accepts and appropriates State of Alaska Legislative Grants in the amount of \$1,476,900 for City capital projects.



STATE OF ALASKA  
DEPARTMENT OF  
**COMMERCE**  
COMMUNITY AND  
ECONOMIC DEVELOPMENT

Sean Parnell, Governor  
Emil Notti, Commissioner  
Tara Jollie, Director

Division of Community and Regional Affairs  
Grants Section

June 24, 2010

**COPY**

City of Wasilla  
The Honorable Mayor Verne Rupright  
290 East Herning Ave.  
Wasilla, Alaska 99654

**RE: REQUEST FOR INFORMATION NEEDED TO INITIATE YOUR GRANT AGREEMENT**

Dear Mayor Rupright:

The City of Wasilla has been awarded the following FY 2011 Designated Legislative Grants per AS 37.05.315 for the purpose of:


<b>11-DC-366</b>	<b>Lake Lucille Improvements</b>	<b>\$125,000</b>
<b>11-DC-367</b>	<b>Swanson Avenue &amp; Nelson Avenue Improvements</b>	<b>\$500,000</b>

In order for the grant funds to be released, you must enter into a grant agreement with the Department of Commerce, Community & Economic Development for these projects. Please provide the following information at your earliest convenience via mail, fax or email:

1. **Brief project description** that explains how the grant funds will be utilized.
2. **Federal Tax Identification Number**, which is necessary for accounting Purposes.
3. **Contact information** including name, title, telephone/fax numbers and email address (if any) for the person who will be administering this grant.
4. **Signatory Authority Form** designating signatory authority on grant documents and financial reports to the person(s) of your choosing.

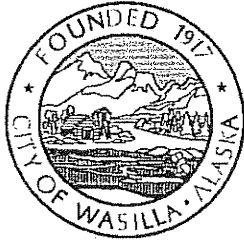
Upon receipt of the above, I will prepare and send the Grant Agreement for signature. If you have any questions, please contact me at (907) 451-2718 and e-mail address is [kimberly.phillips@alaska.gov](mailto:kimberly.phillips@alaska.gov). Congratulations on this grant award! I look forward to working with you to ensure the success of this project.

Sincerely,



Kimberly Phillips  
Grants Administrator

Enclosure  
cc: Archie Giddings



**CITY OF WASILLA**  
Public Works Department  
290 East Herning Avenue, Wasilla, Alaska 99654-7091  
Telephone (907) 373-9010 Fax (907) 373-9011

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July 7, 2010

State of Alaska  
Department of Commerce Community & Economic Development  
Division of Community and Regional Affairs  
211 Cushman Street  
Fairbanks, Alaska 99701-4639

RE: FY-2011 Designated Legislative Grant; 11-DC-366  
*Lake Lucille Improvements*

Kimberly:

As requested, the following information is provided for your review and preparation of an FY-2011 Designated Legislative Grant Agreement:

Project Description: This project is intended to improve the water quality of Lake Lucille. Several techniques will be evaluated with consultation from the Alaska Department of Fish & Game and the Army Corps of Engineers. Some of the techniques include but are not limited to the use of a suction dredge to remove sediment that has accumulated on the bottom of the lake that is blocking natural springs that feed the lake, and the use of a weed removal machine to control excessive plant growth in the lake.

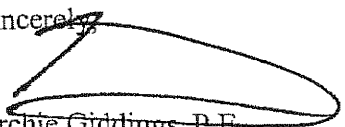
Federal Tax Identification: 92-6010143

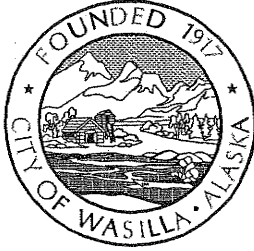
Authorizing Official: Mayor Verne E. Rupright

Contact Information: Archie Giddings, Public Works Director  
Phone 907-373-9018 Fax 907-373-9011  
[agiddings@ci.wasilla.ak.us](mailto:agiddings@ci.wasilla.ak.us)

If you need additional information, please do not hesitate to contact me.

Sincerely,

  
Archie Giddings, P.E.  
Public Works Director



# CITY OF WASILLA

Public Works Department  
290 East Herning Avenue, Wasilla, Alaska 99654-7091  
Telephone (907) 373-9010 Fax (907) 373-9011

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July 7, 2010

State of Alaska  
Department of Commerce Community & Economic Development  
Division of Community and Regional Affairs  
211 Cushman Street  
Fairbanks, Alaska 99701-4639

RE: FY-2011 Designated Legislative Grant; 11-DC-367  
*Swanson Avenue & Nelson Avenue Improvements*

Kimberly:

As requested, the following information is provided for your review and preparation of an FY-2011 Designated Legislative Grant Agreement:

Project Description: This project will rebuild portions of 2 downtown streets that have failing pavement and stormdrain systems. These are Swanson Avenue between Main Street and Crusey Street, and Nelson Avenue from Lucille Street west approximately 2,000 feet.

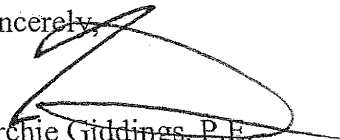
Federal Tax Identification: 92-6010143

Authorizing Official: Mayor Verne E. Rupright

Contact Information: Archie Giddings, Public Works Director  
Phone 907-373-9018 Fax 907-373-9011  
[agiddings@ci.wasilla.ak.us](mailto:agiddings@ci.wasilla.ak.us)

If you need additional information, please do not hesitate to contact me.

Sincerely,

  
Archie Giddings, P.E.  
Public Works Director



STATE OF ALASKA  
DEPARTMENT OF  
**COMMERCE**  
COMMUNITY AND  
ECONOMIC DEVELOPMENT

*Sean Parnell, Governor*  
*Susan Bell, Commissioner*  
*Tara Jollie, Director*

Division of Community and Regional Affairs  
Grants Section

June 12, 2010

City of Wasilla  
The Honorable Mayor Verne Rupright  
290 East Herning Ave.  
Wasilla, Alaska 99654

RE: FY 2011 Designated Legislative Grant Repeal/Reappropriation

Dear Mayor Rupright:

The Governor and Legislature have approved reappropriation of the grant(s) listed below to a new FY-2011 Designated Legislative Grant per AS 37.05.315 (Grants to Municipalities) for the purpose Improvements to Swanson Avenue and Nelson Avenue.

Grant #	Title
06-DC-351	Design of an Extension of East Susitna Avenue
06-DC-538	E. Susitna Avenue Extension

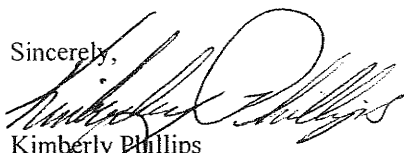
In order for the Department to enter into an agreement for the new project, we must close out the existing grants. Please submit final Financial/Progress Report(s) for the period ending June 30, 2010 for the grant(s) listed above. Please mail the reports to my attention at the address below no later than July 15, 2010. Once these have been received and approved, the existing grant(s) will be officially closed and new grant agreement can be prepared.

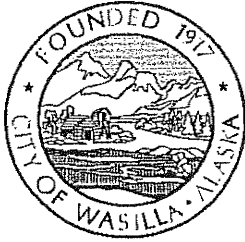
The amount of State funding available for the new FY11 project is approximately \$851,900 (based on the available grant balances as of June 30, 2010).

In preparation for the new project, please provide the following information via mail, fax or email:

1. Project description that explains how the grant funds will be utilized. This should include a scope of work, proposed project timeline, and budget narrative.
2. Name and Title of the highest ranking official authorized to execute the grant agreement and other grant documents.
3. Contact information including name, title, telephone/fax numbers and email address for the person who will be responsible for administering this grant.

If you have any questions, please contact me at (907) 451-2718. I look forward to working with you to ensure the success of this project.

Sincerely,  
  
Kimberly Phillips  
Grants Administrator



**CITY OF WASILLA**  
Public Works Department  
290 East Herning Avenue, Wasilla, Alaska 99654-7091  
Telephone (907) 373-9010 Fax (907) 373-9011

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July 26, 2010

State of Alaska  
Department of Commerce Community & Economic Development  
Division of Community and Regional Affairs  
211 Cushman Street  
Fairbanks, Alaska 99701-4639

RE: FY-2011 Designated Legislative Grant Repeal/Reappropriation;  
06-DC-351 *Design of an Extension of East Susitna Avenue*  
06-DC-538 *E. Susitna Avenue Extension*

Kimberly:

As requested, the following information is provided for your review and preparation of an FY-2011 Designated Legislative Grant Agreement:

***Swanson Avenue & Nelson Avenue Street Improvements***

Project Description: This project will be used to improve two downtown streets that have failing pavement. Swanson Avenue from Main Street to Crusey Street and Nelson Avenue from Lucille Street west approximately 2,000 feet will be repaved. This project will also look at new bike paths and sidewalks, and new storm drain systems as funding permits.

Federal Tax Identification: 92-6010143

Authorizing Official: Mayor Verne E. Rupright

Contact Information: Archie Giddings, Public Works Director  
Phone 907-373-9018 Fax 907-373-9011  
[agiddings@ci.wasilla.ak.us](mailto:agiddings@ci.wasilla.ak.us)

If you need additional information, please do not hesitate to contact me.

Sincerely,

Archie Giddings, P.E.  
Public Works Director

## Standard Provisions

### Article 1. Definition

"Department" refers to the Department of Commerce, Community and Economic Development with the State of Alaska.

### Article 2. Indemnification

It is understood and agreed that this Grant Agreement is solely for the benefit of the parties to the Grant Agreement and gives no right to any other party. No joint venture or partnership is formed as a result of the Grant Agreement.

The Grantee, its successors and assigns, will protect, save, and hold harmless the Department and the State of Alaska and their authorized agents and employees, from all claims, actions, costs, damages, or expenses of any nature whatsoever by reason of the acts or omissions of the Grantee, its subcontractors, assigns, agents, contractors, licenses, invitees, employees, or any person whomever arising out of or in connection with any acts or activities authorized by this Grant Agreement. The Grantee further agrees to defend the Department and the State of Alaska and their authorized agents and employees in any litigation, including payment of any costs or attorney's fees for any claims or actions commenced thereon arising out of or in connection with acts or activities authorized by this Grant Agreement. This obligation shall not include such claims, costs, damages, or expenses which may be caused by the sole negligence of the Department of the State of Alaska or their authorized agents or employees, provided, that if the claims or damages are caused by or result from the concurrent negligence of (a) the Department and the State of Alaska and their agents or employees, and (b) the Grantee, its agents or employees, this indemnity provision shall be valid and enforceable only to the extent of the negligence of the Grantee, or Grantee's agents or employees.

### Article 3. Legal Authority

The Grantee certifies that it possesses legal authority to accept grant funds under the State of Alaska and to execute the project described in this Grant Agreement by signing the Grant Agreement document. The Grantee's relation to the Department and the State of Alaska shall be at all times as an independent Grantee.

### Article 4. Waivers

No conditions or provisions of this Grant Agreement can be waived unless approved by the Department in writing. The Department's failure to insist upon strict performance of any provision of the Grant Agreement, or to exercise any right based upon a breach thereof, or the acceptance of any performance during such a breach, shall not constitute a waiver of any right under this Grant Agreement.

### Article 5. Access to Records

The Department and duly authorized officials of the State of Alaska shall have full access and the right to examine, excerpt, or transcribe any pertinent documents, papers, records, and books of the Grantee, and of persons or organizations with which the Grantee may contract, involving transactions related to the project and this Grant Agreement.

### Article 6. Reports

The Grantee, at such times and in such forms as the Department may require, shall furnish the Department with such periodic reports as it may request pertaining to the activities undertaken pursuant to this Grant Agreement, including the final close-out report, the costs and obligations incurred in connection therewith, and any other matters covered by this Grant Agreement.

### Article 7. Retention of Records

The Grantee shall retain financial and other records relating to the performance of this Grant Agreement for a period of six years from the date when the final financial status report is submitted to the Department, or until final resolution of any audit findings, claims, or litigation related to the grant.



**Article 8. Assignability**

The Grantee shall not assign any interest in this Grant Agreement and shall not transfer any interest in the same (whether by assignment or novation).

**Article 9. Financial Management and Accounting**

The Grantee shall establish and maintain a financial management and accounting system that conforms to generally accepted accounting principles.

**Article 10. Program Income**

Program income earned during the award period shall be retained by the Grantee and added to the funds committed to the award and used for the purpose and under the conditions applicable to the use of award funds.

**Article 11. Amendments and Modifications**

The Grantee or the Department may request an amendment or modification of this Grant Agreement. However, such amendment or modification shall not take effect until approved, in writing, by the Department and the Grantee.

**Article 12. Recordkeeping**

The Grantee agrees to keep such records as the Department may require. Such records will include information pertaining to grant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays and income. They will also include information pertaining to project performance and efforts to comply with the provisions of the Grant Agreement.

**Article 13. Obligations Regarding Third-Party Relationships**

None of the Work specified in this Grant Agreement shall be contracted by the Grantee without prior approval of the Department. No permission for subcontracting shall create, between the Department or the State of Alaska and the subcontractor, any contract or any relationship.

The Grantee shall remain fully obligated under the provisions of this Grant Agreement notwithstanding its designation of any third party or parties of the undertaking of all or any part of the project described herein. Any subcontractor that is not the Grantee shall be required by the Grantee to comply with all the provisions of this Grant Agreement.

The Grantee shall bind all subcontractors to each and every applicable Grant Agreement provision. Each subcontract for work to be performed with funds granted under this Grant Agreement shall specifically include a provision that the Department and the State of Alaska are not liable for damages or claims from damages arising from any subcontractor's performance or activities under the terms of the subcontracts.

**Article 14. Conflict of Interest**

No officer or employee of the Department; no member, officer, or employee of the Grantee or its designees or agents; no member of the governing body of the jurisdiction in which the project is undertaken or located; and no other official of such locality or localities who exercises any functions or responsibilities with respect to the project during his or her tenure, shall have any personal or pecuniary gain or interest, direct or indirect, in any contract, subcontract, or the proceeds thereof, for work to be performed in connection with the project assisted under this Grant Agreement.

The Grantee shall incorporate, or cause to incorporate, in all such contracts or subcontracts, a provision prohibiting such interest pursuant to the purpose of this provision.

**Article 15. Political Activity**

No portion of the funds provided hereinunder shall be used for any partisan political activity or to further the election or defeat of any candidate for public office or influence the approval or defeat of any ballot issue.

**Article 16. Notices**

The Grantee shall comply with all public notices or notices to individuals required by applicable state and federal laws and shall maintain a record of this compliance.

**Article 17. Prohibition Against Payment of Bonus or Commission**

The assistance provided under this Grant Agreement shall not be used in payment of any bonus or commission for the purpose of obtaining approval or concurrence under this contract provided, however, that reasonable fees of bona fide technical consultant, managerial, or other such services, other than actual solicitation, are not hereby prohibited if otherwise eligible as project costs.

**Article 18. Termination by Mutual Agreement**

This Grant Agreement may be terminated, in whole or in part, prior to the completion of contract project activities when both parties agree that continuation is not feasible or would not produce beneficial results commensurate with the further expenditure of funds. The Department will determine whether an environmental review of the cancellation is required under State and/or Federal law. The parties must agree on the termination conditions, including effective date and the portion to be terminated. The Grantee shall not incur new obligations for the terminated portion after the effective date, and shall cancel as many outstanding obligations as possible. The Department shall make funds available to the Grantee to pay for allowable expenses incurred before the effective date of termination.

**Article 19. Termination for Cause**

If the Grantee fails to comply with the terms of this Grant Agreement, or fails to use the grant for only those purposes set forth herein, the Department may take the following actions:

- A. Suspension – After notice in writing by certified mail to the Grantee, suspend the grant and withhold any further payment or prohibit the Grantee from incurring additional obligations of grant funds, pending corrective action by the Grantee or a decision to terminate. Response must be received within fifteen (15) days of receipt of the written notice.
- B. Termination – Terminate the grant in whole or in part, at any time before the final grant payment is made. The Department shall promptly notify the Grantee in writing of its determination to terminate, the reason for such termination, and the effective date of the termination. Payments made to the Grantee or recoveries by the Department shall be in accordance with the legal rights and liabilities of the parties.

**Article 20. Withdrawal of Funds**

In the event funding from the state, federal, or other sources is withdrawn, reduced, or limited in any way after the effective date of this Grant Agreement and prior to normal completion, the Department may terminate the agreement, reduce funding, or re-negotiate subject to those new funding limitations and conditions. A termination under this article shall be implemented under the same conditions as a termination under Article 19 of this Attachment.

**Article 21. Recovery of Funds**

In the event of a default or violation of the terms of the Grant Agreement by the Grantee, the Department may institute actions to recover all or part of the project funds paid to the Grantee. Repayment by the Grantee of grant funds under this recovery provision shall occur within thirty (30) days of demand.

All remedies conferred on the Department by this agreement or any other instrument or agreement are cumulative, not exclusive, and may be exercised concurrently or consecutively at the Department's option.

**Article 22. Disputes**

Except as otherwise provided in this agreement, any dispute concerning a question of fact arising under this agreement that is not disposed of by mutual agreement shall be decided by the Department, which shall reduce its decision to writing and mail, or otherwise furnish a copy thereof, to the Grantee. The decision of the Department shall be final and conclusive.

This "Disputes" clause does not preclude the consideration of questions of law in connection with the decision provided for in the preceding paragraph provided that nothing in the Grant Agreement shall be construed as making final the decisions of any administrative official, representative, or board on a question of law.

**Article 23. Jurisdiction**

This Grant Agreement shall be governed by the laws and statutes of the State of Alaska. The venue of any suit hereunder may be in the Superior Court for the First Judicial District, Juneau, Alaska.

**Article 24. Ownership of Project/Capital Facilities**

The Department makes no claim to any capital facilities or real property improved or constructed with funds under this Grant Agreement and, by this grant of funds, does not and will not acquire any ownership interest or title to such property of the Grantee. The Grantee shall assume all liabilities arising from the ownership and operation of the project and agrees to hold the Department and the State of Alaska harmless from any and all causes of action arising from the ownership and operation of the project.

**Article 25. Site Control**

If the grant project involves the occupancy and use of real property, the Grantee assures that it has the legal right to occupy and use such real property for the purposes of the grant, and further that there is legal access to such property.

**Article 26. Insurance**

The Grantee is responsible for obtaining any necessary liability insurance. In addition, the Grantee shall provide and maintain Workers' Compensation Insurance as required by AS 23.30 for all employees engaged in work under this Grant Agreement. The Grantee shall require any contractor to provide and maintain Workers' Compensation Insurance for its employees as required by AS 23.30. The Grantee shall require any contractor hired to work on the project be licensed, bonded and insured for at least the amount of the project and if appropriate provide and maintain Professional Liability Insurance.

**Article 27. Subcontracts for Engineering Services**

In the event that the Grantee subcontracts for engineering services, the Grantee will require that the engineering firm certify that it is authorized to do business in the State of Alaska. In the event that the engineering firm is also the project administrator, the Grantee shall require that the bond or insurance shall be for not less than the amount of the entire project.

**Article 28. Governing law**

This Grant Agreement is governed by the laws of the State of Alaska. The Grantee shall perform all aspects of this project in compliance with the appropriate laws and regulations. It is the responsibility of the Grantee to ensure that all permits required for the construction and operation of this project by the Federal, State, or Local governments have been obtained.

**Article 29. Budget Flexibility**

Notwithstanding the provisions of Article 11, Attachment C, the Grantee may revise the project budget in Attachment A without a formal amendment to this agreement. Such revisions are limited within each line item to a maximum of ten percent (10%) of the line item or \$10,000, whichever is less, over the entire term of this agreement. Such budget revisions shall be limited to changes to existing budget line items. Budget revisions may not be used to increase any budget item for project administrative expenses. Changes to the budget beyond the limits authorized by this provision may only be made by a formal amendment to this agreement.

**Article 30. Equal Employment Opportunity (EEO)**

The Grantee may not discriminate against any employee or applicant for employment because of race, religion, color, national origin, age, physical handicap, sex, marital status, changes in marital status, pregnancy or parenthood. The Grantee shall post in a conspicuous place, available to employees and applicants for employment, a notice setting out the provisions of this paragraph.

The Grantee shall state, in all solicitations or advertisements for employees to work on state funded projects, that it is an equal opportunity employer (EEO) and that all qualified applicants will receive consideration for employment without regard to race, religion, color, national origin, age, physical handicap, sex, marital status, changes in marital status, pregnancy or parenthood.

The Grantee shall include the provisions of this EEO article in every contract relating to this Grant Agreement and shall require the inclusion of these provisions in every agreement entered into by any of its contractors, so that those provisions will be binding upon each contractor or subcontractor.

**Article 31. Public Purposes**

The Grantee agrees that the project to which this Grant Agreement relates shall be dedicated to public purposes for its useful life. The benefits of the project shall be made available without regard to race, religion, color, national origin, age, physical handicap, sex, marital status, changes in marital status, pregnancy or parenthood.

If the Grantee is a non-municipal entity and if monies appropriated under this grant constitute the sole or principal funding source for the acquisition of equipment or facilities, the Grantee agrees that in the event a municipal corporation is formed which possesses the power and jurisdiction to provide for such equipment or facilities, the Grantee shall offer, without compensation, to transfer ownership of such equipment or facilities to the municipal corporation.

If the Grantee is a non-profit corporation that dissolves, the assets and liabilities from the grant project are to be distributed according to statutory law, AS 10.20.290-10.20.452.

**Article 32. Operation and Maintenance**

Throughout the life of the project, the Grantee shall be responsible for the operation and maintenance of any facility, equipment, or other items acquired under this grant.

**Article 33. Assurance**

The Grantee shall spend monies awarded under this grant only for the purposes specified in this Grant Agreement.

**Article 34. Current Prevailing Rates of Wage**

Certain grant projects are constrained by the provisions of AS 36. PUBLIC CONTRACTS. To the extent that such provisions apply to the project which is the subject of this Grant Agreement, the Grantee shall pay the current prevailing rates of wage to employees as required by AS 36.05.010. The Grantee also shall require any contractor to pay the current prevailing rates of wage as required by AS 36.05.010.

**Article 35. Severability**

If any provision under this Grant Agreement or its application to any person or circumstance is held invalid by any court of rightful jurisdiction, this invalidity does not affect other provisions of the contract agreement which can be given effect without the invalid provision.

**Article 36. Performance**

The Department's failure to insist upon the strict performance of any provision of the Grant Agreement or to exercise any right based upon breach thereof or the acceptance of any performance during such breach, shall not constitute a waiver of any rights under this Grant Agreement.

**Article 37. Sovereign Immunity**

If the Grantee is an entity which possesses sovereign immunity, it is a requirement of this grant that the Grantee irrevocably waive its sovereign immunity with respect to state enforcement of this Grant Agreement. The waiver of sovereign immunity, effected by resolution of the entity's governing body, is herein incorporated into this Grant Agreement.

**Article 38. Audit Requirements**

The Grantee shall comply with the audit requirements established by 02 AAC 45.010, set forth in Appendix A of this Grant Agreement.

**Article 39. Close-Out**

The Department will advise the Grantee to initiate close-out procedures when the Department determines, in consultation with the Grantee, that there are no impediments to close-out and that the following criteria have been met or soon will be met:

- A. All costs to be paid with grant funds have been incurred with the exception of close-out costs and any unsettled third-party claims against the Grantee. Costs are incurred when goods and services are received or contract work is performed.
- B. The last required performance report has been submitted. The Grantee's failure to submit a report will not preclude the Department from effecting close-out if it is deemed to be in the State's interest. Any excess grant amount that may be in the Grantee's possession shall be returned by the Grantee in the event of the Grantee's failure to finish or update the report.
- C. Other responsibilities of the Grantee under this Grant Agreement and any close-out agreement and applicable laws and regulations appear to have been carried out satisfactorily or there is no further State interest in keeping the grant open for the purpose of securing performance.

**Article 40. Americans with Disabilities Act**

The Americans with Disabilities Act (ADA) prohibits discrimination against persons with disabilities. Title I of the ADA prohibits discrimination against persons with disabilities in employment and provides that a reasonable accommodation be provided for applicants and employees. Title II of the Act prohibits public agencies from discriminating against individuals with disabilities in the provision of services, programs, or activities. Reasonable accommodation must be made to ensure or allow access to all services, programs, or activities. This section of the Act includes physical access to public facilities and requires that public entities must, if necessary, make modifications to their facilities to remove physical barriers to ensure access by persons with disabilities. All new construction must also be accessible to persons with disabilities. A public entity's subgrantees or contractors must also comply with the ADA provisions. Grantees are responsible for assuring their compliance with the ADA.

# Appendix A

## Audit Regulations

### CHAPTER 45. GRANT ADMINISTRATION

#### 2 AAC 45.010. AUDIT REQUIREMENTS

- (a) A state agency that enters into a financial assistance agreement to provide financial assistance to an entity shall, in coordination with any other state agencies providing financial assistance to that entity, require that entity to submit to the department an audit of the recipient entity if that entity is subject to an audit under this section. The audit must be conducted and submitted as described in this section. In order to ensure compliance with this subsection, a state agency must include the audit requirements of this section must be contained in any financial assistance agreement subject to this subsection.
- (b) An entity that expends financial assistance with a cumulative total of \$500,000 or more during the entity's fiscal year shall submit an audit report for the audit period to the department, by
- (1) the earlier of
    - (a) 30 days after the entity receives its audit report for the audit period; or
    - (b) nine months after the end of the audit period; or
  - (2) a later date than the date calculated under (1) of this subsection, if
    - (a) the state agency that provides the financial assistance agrees to the change of date; and
    - (b) the agreement under (a) of this paragraph is made in
      - (i) writing; and
      - (ii) advance of the date calculated under (1) of this subsection.
- (c) An audit required by this section must be conducted by an independent auditor, according to the following audit standards effective at the time of review for the audit period:
- (1) *Government Auditing Standards, July 2007 Revision* adopted by the comptroller general of the United States, and adopted by reference;
  - (2) Generally accepted auditing standards, as accepted by the American Institute of Certified Public Accountants in the *Codification of Statements on Auditing Standards* in effect as of January 1, 2008 for the type of entity being audited, adopted by reference;
  - (3) *State of Alaska Audit Guide and Compliance Supplement for State Single Audits*, May 2008 revision, prepared by the department, adopted by reference.
- (d) An audit required under this section must report on the following: (1) The system of internal controls of the entity and the auditor's identification of significant deficiencies and material weaknesses of the entity, using the applicable standards set out in (c) of this section; (2) the entity's compliance with applicable state statutes and regulations and applicable financial assistance agreements affecting the expenditure of the financial assistance; the report must identify findings and known questioned costs that exceed \$5,000 in the aggregate for all transactions of expenditures tested for the financial assistance being audited; (3) the entity's financial statements; (4) the schedule of state financial assistance; and (5) the schedule of findings and questioned costs.
- (e) As part of an audit report required under this section, a recipient must provide (1) written comments on any (A) findings; (B) known questioned costs; (c) significant deficiencies, including material weaknesses; and (D) recommendations contained in the audit report; (2) the entity's plan for corrective action, if any findings are identified or any recommendations are made in the audit report; (3) the status of the entity's implementation of any plans for corrective actions related to (A) the audit reports required under this section for the fiscal year before the audit period; and (B) unresolved findings of audit reports required by this section for audit periods before those specified in (A) of this paragraph; and (4) a written explanation of the reasons why corrective action will not be taken if the entity does not intend to take corrective action on the findings and recommendations in any audit report required by this section.
- (f) An audit report required under this section need not evaluate the effectiveness of a program funded by state financial assistance. However, a program evaluation or financial monitoring may be conducted by the state agency or requested of the entity by the state agency that entered into the financial assistance agreement.

- (g) An audit required by this section must cover the entire operations of the entity.
- (h) An entity shall provide the department with sufficient copies of each audit report to allow submission of a copy to each state agency providing financial assistance to the entity. The department will determine if auditing standards have been met and will forward a copy of the audit to the appropriate state agencies. The department will coordinate the assignment of the resolution to one state agency, if the exceptions concern more than one state agency. The applicable state agency providing financial assistance to the entity must meet its responsibilities under other law for ensuring compliance with the audit report.
- (i) Unless additional audit requirements are imposed by state or federal law, a state agency that provides financial assistance to an entity shall accept the audit required by this section in satisfaction of any other audit requirement. If additional audit work is necessary to meet the needs of a state agency, the audit work must be based on audits required by this section. Nothing in this subsection authorizes a state agency to seek payment from the entity for the additional audit work.
- (j) A third party that receives financial assistance through an entity, in an amount described in this section, is subject to the applicable requirements of this section. An entity that disburses \$500,000 or more in state financial assistance to a third party shall ensure that the third party complies with the requirements of this section. That entity shall also ensure that appropriate corrective action is taken within six months after a third party's noncompliance with an applicable state statute or regulation, or financial assistance agreement, is disclosed.
- (k) Repealed 7/1/98.
- (l) For purposes of this section, if an entity has not identified its fiscal year, that entity's fiscal year is July 1 through June 30.
- (m) Financial assistance in the following form is not included when calculating whether an entity meets the threshold monetary requirement under (b) of this section:
  - (1) community revenue sharing money provided under AS 29.60.850 - 29.60.879;
  - (2) Repealed 3/31/2008.
  - (3) aviation fuel tax money provided under AS 43.40.010;
  - (4) electric and telephone cooperative gross revenue tax refunds provided under AS 10.25.570;
  - (5) alcoholic beverage license fee refunds provided under AS 04.11.610;
  - (6) fisheries tax refunds provided under AS 29.60.450, AS 43.75.130, and AS 43.77.060;
  - (7) PERS/TRS relief funding under money appropriated to pay employer unfunded liability attributable to the entity under AS 14.25 and AS 39.35.
- (n) Financial assistance in a form listed in (m) of this section is not exempt from compliance testing if the entity meets the threshold monetary requirement under (b) of this section.
- (o) Repealed 7/1/98.

(Eff. 8/1/85, Register 95; am 6/29/90, Register 114; am 7/1/98, Register 146; am 3/31/2008, Register 185; am 8/1/2008, Register 187)

Authority: AS 37.05.020 AS 37.05.190

## **2 AAC 45.060. EXTERNAL QUALITY REVIEW OF AUDIT ORGANIZATION**

Repealed.

(Eff. 7/1/98, Register 146; repealed 3/31/2008, Register 185)

## **2 AAC 45.070. APPLICABILITY**

- (a) The amended version of this chapter, effective August 1, 2008, applies to an audit for an audit period that begins or continues after August 1, 2008.
- (b) An entity may agree to be subject to the provisions of the amended version of this chapter, effective August 1, 2008, for an audit period beginning on or after July 1, 2007 and ending on or before July 31, 2008, by voluntarily submitting
  - (1) an audit that complies with those provisions; or

(2) a statement that an audit is not required under provisions of 2 AAC 45.010(b).

(Eff. 7/1/98, Register 146; am 3/31/2008, Register 185; am 8/1/2008, Register 187)

Authority: AS 37.05.020 AS 37.05.190

## 2 AAC 45.080. EXEMPTIONS FROM FINANCIAL ASSISTANCE

(a) For purposes of this chapter, "financial assistance" does not include the following: (1) public assistance provided under AS 47; (2) goods or services purchased for the direct administration or operation of state government; (3) moneys advanced to an entity under one or more state loan programs; (4) power cost equalization payments made to an electric cooperative on behalf of its customers; (5) scholarships, loans, or other tuition aid provided to students, but paid to an education institution on their behalf.

(b) In addition to the exemptions set out in (a) of this section, for a third party, "financial assistance" does not include goods purchased from the third party for direct administration or operation of the entity that received financial assistance.

(Eff. 7/1/98, Register 146)

Authority: AS 37.05.020 AS 37.05.190

## 2 AAC 45.090. DEFINITIONS

For purposes of this chapter, unless the context otherwise requires,

- (1) "audit period" means the entity's fiscal year in which the entity expended financial assistance;
- (2) "entity" does not include (A) the University of Alaska or any other state agency; (B) a for-profit entity; and (c) a non United States based entity;
- (3) "financial assistance" means state grants, contracts, provider agreements, cooperative agreements, and all forms of state financial assistance to an entity; "financial assistance" includes all forms of state financial assistance provided through an entity to a third party;
- (4) "known questioned costs" means those questioned costs specifically identified by the auditor in the audit conducted under this chapter;
- (5) Repealed 3/31/2008;
- (6) "department" means the Department of Administration;
- (7) "significant deficiencies" has the meaning given in Section 5.11 a. of the Government Auditing Standards adopted by reference in 2 AAC 45.010(c).

(Eff. 7/1/98, Register 146; am 3/31/2008, Register 185)

Authority: AS 37.05.020 AS 37.05.190



## Appendix B

### Audit Compliance Supplement Grants to Municipalities

#### 1. Program Objectives

Authorized and administered under AS 37.05.315 - .325, grants to municipalities are made at the discretion of the Legislature. The grants are designated for use on various capital projects and activities.

#### 2. Program Procedures

Once the authorizing legislation becomes effective, a grant agreement specifying the purpose, terms, and conditions of the grant is executed with the municipality.

#### 3. Compliance Requirements and Suggested Audit Procedures

##### A. Types of Services Allowed and Unallowed

**Compliance Requirement** Grant funds can be expended for a variety of purposes as provided for in the authorizing legislation and as specified in the grant agreement.

**Suggested Audit Procedure** Review the grant agreement and related records to determine if the funds were expended in accordance with the terms of the agreement.

**Compliance Requirement** The facilities and services provided by the grant must be available for use of the general public.

**Suggested Audit Procedure** Determine whether the facilities and services provided by the grant are available for the use of the general public.

##### B. Eligibility

The auditor is not expected to make tests for recipient eligibility.

##### C. Matching, Level of Effort and/or Earmarking Requirements

**Compliance Requirement** The appropriation or allocation lapses and the municipality must return to the state all grant funds received for construction of a public facility if substantial, ongoing work on the project has not begun within five years of the effective date of the appropriation or allocation.

**Suggested Audit Procedure** Examine financial records, reports, and supporting documentation to determine if substantial, ongoing work on the project has begun within five years of the effective date of the appropriation or allocation. Expenditures alone should not be a determining factor; site visits, photographic documentation, and/or interviews with contractors may be required if ongoing work is in question.

##### D. Reporting Requirements

**Compliance Requirement** The grant agreement will specify the reporting requirements to which the grantee must adhere.

**Suggested Audit Procedures** Examine reports and supporting documentation and verify completeness, accuracy and timeliness of submission. Verify that required approvals were obtained and that expenditures and matching contributions were within award performance period.

##### E. Special Tests and Provisions

**Compliance Requirement** The grant agreement will identify any other compliance requirements to which the recipient is to adhere.

**Suggested Audit Procedures** Review the grant agreement, identify any other applicable compliance provisions, including the "standard provisions," and verify that the requirements were met.

## Appendix B2 Insurance

### Article 1. Insurance

Without limiting contractor's indemnification, it is agreed that the contractor shall purchase at its own expense and maintain in force at all times during the performance of services under this agreement the following policies of insurance. Where specific limits are shown, it is understood that they shall be the minimum acceptable limits. If the contractor's policy contains higher limits, the State shall be entitled to coverage to the extent of such higher limits. Certificates of Insurance must be furnished to the Contracting Officer prior to beginning work and must provide for a thirty (30) day prior notice of cancellation, non-renewal or material change. Failure to furnish satisfactory evidence of insurance or lapse of the policy is a material breach and grounds for termination of the contractor's services.

- 1.1 Workers' Compensation Insurance:** The contractor shall provide and maintain, for all employees of the contractor engaged in work under this contract, Workers' Compensation Insurance as required by AS 23.30.045. The contractor shall be responsible for Workers' Compensation Insurance for any subcontractor who directly or indirectly provides services under this contract. This coverage must include statutory coverage for states in which employees are engaging in work and employer's liability protection is not less than \$100,000.00 per occurrence. Where applicable, coverage for all federal acts (i.e. USL & H and Jones Acts) must also be included.
- 1.2 Comprehensive (Commercial) General Liability Insurance:** With coverage limits not less than \$300,000.00 combined single limit per occurrence and annual aggregates where generally applicable and shall include premises-operations, independent contractors, products/completed operations, broad form property damage, blanket contractual and personal injury endorsements.
- 1.3 Comprehensive Automobile Liability Insurance:** Covering all owned, hired, and non-owned vehicles with coverage limits not less than \$100,000.00 per person/\$300,000.00 per occurrence bodily injury and \$50,000.00 property damage.
- 1.4 Professional Liability Insurance:** Covering all errors, omissions or negligent acts of the contractor, subcontractor or anyone directly or indirectly employed by them, made in the performance of this contract which result in financial loss to the State. Limits required are per the following schedule:

Contract Amount	Minimum Required Limits
Under \$100,000	\$100,000 per occurrence/annual aggregate
\$100,000 - \$499,999	\$250,000 per occurrence/annual aggregate
\$500,000 - \$999,999	\$500,000 per occurrence/annual aggregate
\$1,000,000 or over	Negotiable - Refer to Risk Management

## Appendix C State Laws and Regulations

### **Municipality Public Facility Operations and Maintenance—AS 37.05.315(c)**

In accepting a grant under AS 37.05.315 for construction of a public facility, a municipality covenants with the State that it will operate and maintain the facility for the practical life of the facility and that the municipality will not look to the State to operate or maintain the facility or pay for its operation or maintenance. This requirement does not apply to a grant for repair or improvement of an existing facility operated or maintained by the State at the time the grant is accepted if the repair or improvement for which the grant is made will not substantially increase the operating or maintenance costs to the State.

### **Restriction on Use—AS 37.05.321**

A grant or earnings from a grant under AS 37.05.315 - 37.05.317 may not be used for the purpose of influencing legislative action. In this section "influencing legislative action" means promoting, advocating, supporting, modifying, opposing, or delaying or seeking to do the same with respect to any legislative action but does not include the provision or use of information, statistics, studies, or analyses in written or oral form or format. A grant or earnings from a grant made under AS 37.05.315 - 37.05.317 may not be used for purposes of travel in connection with influencing legislative action unless pursuant to a specific request from a legislator or legislative committee.

### **Hiring Preferences—AS 36.10**

This chapter of the Alaska Statutes applies to grants for public works projects and requires compliance with the hiring preferences under AS 36.10.150 – 36.10.175 for employment generated by the grant.

### **Historic Preservation Act—AS 41.35**

This chapter of the Alaska Statutes applies to public construction of any nature undertaken by the State, or by a governmental agency of the State, or by a private person under contract with or licensed by the State or a governmental agency of the State. The Department of Natural Resources must be notified if the construction is planned for an archaeological site. The department may stop the construction to determine the extent of the historic, prehistoric, or archaeological values.

### **Fire Protection—AS 18.70**

This chapter of the Alaska Statutes requires the Department of Public Safety (the State Fire Marshal) to adopt regulations (currently in the form of Uniform Fire Code, as amended) establishing minimum standards for:

1. Fire detection and suppression equipment;
2. Fire and life safety criteria in commercial, industrial, business, institutional, or other public buildings used for residential purposes containing four or more dwelling units;
3. Any activity in which combustible or explosive materials are stored or handled in commercial quantities;
4. Conditions or activities carried on outside a building described in (2) or (3) likely to cause injury to persons or property.

### **Environmental Conservation—AS 46.03**

This chapter of the Alaska Statutes applies to municipalities and could subject them to enforcement actions instituted by the Alaska Department of Environmental Conservation for air, land and water nuisances, and water and air pollution in a municipality of 1,000 or more, and may establish a local air pollution control program.

This chapter of the Alaska Statutes establishes a planning program for the use, management, restoration, and enhancement of the overall quality of the coastal environment. The law provides for the creation of coastal resource districts and the establishment, review, and approval of district management plans. If a district management plan is not implemented, enforced, or complied with, enforcement action may follow.

**Permits and Environmental Procedures Coordination—AS 46.35**

This chapter of the Alaska Statutes establishes the Department of Environmental Conservation as the central state agency for processing environmental permits issued by State agencies. The law requires a master application form and specifies the following permits including others designated by the commissioner to which this law applies:

- Access Roads Permit—AS 41.21.020, 11 AAC 12.020
- Air Emissions Permit—AS 46.14.140, 18 AAC 50.030
- Anadromous Fish Protection Permit—AS 16.05.870, 5 AAC 95.010
- Authorization for Tidelands Transportation—AS 38.05.035, 11 AAC 51.015
- Brine or Other Salt Water Waste Disposal Permit—AS 31.05.030, 20 AAC 22.252
- Burning Permit during Fire Season—AS 41.15.060, 11 AAC 95.410
- Coal Development Permit—AS 27.21.030, 11 AAC 85.110
- Critical Habitat Area Permit—AS 16.20.510, 05 AAC 95.420
- Dam Construction Permit—AS 46.17.040, 11 AAC 93.171
- Driveway Permit—AS 19.05.040, 17 AAC 10.020
- Encroachment Permit—AS 19.25.200, 17 AAC 10.012
- Limited Personal Use Permit—AS 38.05.820, 11 AAC 62.010
- Miscellaneous State Land Use Permit—AS 38.05.035, 11 AAC 96.010
- Mineral and Geothermal Prospecting Permits—AS 38.05.181, 11 AAC 82.100
- Open Burning Permit—AS 46.03.020, 18 AAC 50.065
- Permit for Use of Timber or Materials—AS 38.05.110, 11 AAC 71.025
- Permit to Appropriate Water—AS 46.15.040, 11 AAC 93.120
- Pesticides Permit—AS 46.03.320, 18 AAC 90.300
- Preferred Use Permit—AS 46.15.150, 11 AAC 93.240
- Right-of-Way and Easement Permits—AS 38.05.850, 11 AAC 58.740
- Solid Waste Disposal—AS 46.03.100, 18 AAC 60.200
- Special Land Use Permit—AS 38.05.035, 11 AAC 58.210
- Special Material Use Permit—AS 38.05.115, 11 AAC 71.025
- State Game Refuge Land Permit—AS 16.20.050 - 16.20.060
- State Park Incompatible Use Permit—AS 41.21.020, 11 AAC 18.010
- Surface Oiling Permit—AS 46.03.740, 18 AAC 75.700
- Surface Use Permit—AS 38.05.255, 11 AAC 86.600
- Tide and Submerged Lands Prospecting Permit—AS 38.05.250, 11 AAC 62.700
- Tidelands Permit—AS 38.05.035, 11 AAC 62.720
- Tidelands Right-of-Way or Easement Permit—AS 38.05.820, 11 AAC 62.720
- Utility Permit—AS 19.25.010, 17 AAC 15.011
- Waste Water Disposal Permit—AS 46.03.100, 18 AAC 72.010
- Water Well Permit—AS 31.05.030, 11 AAC 93.140

**Appendix D**  
**Special Requirements and Assurances**  
**for Federally Funded Projects**

Federal grant requirements are not applicable to the Designated Legislative Capital Grant program.

## Appendix E Site Control

### 1. Site Control

The Grantee must provide evidence of site control for a project that involves any use of land, including but not limited to, construction, renovation, utility projects, fuel storage, roads and trails.

As a minimum requirement, the Grantee should obtain a "sufficient interest" that allows the Grantee the right to use and occupy the site for the expected useful life of the building, structure or other improvement. Generally, the interest obtained should be for at least 20 years. A sufficient interest depends upon the nature of the project and the land status of the site. Site control options are identified in Section 2.

For a project planned on land that is controlled by a public agency, the Grantee must obtain whatever authorization for use that is required by the public agency.

### 2. Site Control Options

Below are some examples of documents that may be used to satisfy site control requirements for various community facilities/projects. The terms and conditions contained in each document must be examined to determine adequacy for a specific project.

	Deed	Lease	Easement	Use Permit	License
Community Hall	✓	✓			
Clinic	✓	✓			
Fire Station	✓	✓			
Bulk Fuel Storage	✓	✓			
Dump	✓	✓			
Shop/Storage Building	✓	✓			
Cemetery	✓	✓			
Dock	✓	✓			
Campground	✓	✓			
Generator Building	✓	✓			
Multi-purpose building	✓	✓			
Laundromat	✓	✓			
Water well/Septic	✓	✓		✓	
Village Relocation	✓	✓	✓	✓	
Agriculture Project	✓	✓			
Sewage Lagoon	✓	✓			
Communication Site	✓	✓			
Road (.25')			✓	✓	
Trail (.25")			✓	✓	
Boardwalk			✓	✓	✓
Powerline			✓	✓	✓
Water/Sewer Line			✓	✓	✓
Pipeline			✓	✓	✓

## Appendix F State Fire Marshal Review

### The Plan Review Process

Construction, repair, remodel, addition, or change of occupancy of any building/structure, or installation or change of fuel tanks must be approved by the State Fire Marshal's Office before ANY work is started.

Residential housing that is three-plex or smaller is exempt from this requirement.

Exception: The following jurisdictions have accepted a deferral for total code enforcement and plans should be submitted directly to the city: Anchorage, Juneau, Fairbanks, Kenai, Seward, Kodiak, Sitka, and Soldotna

Plans and specifications regarding the location of the building or structure on the property, area, height, number of stories, occupancy, type of construction, interior finish, exit facilities, electrical systems, mechanical systems, fuel storage tanks and their appurtenances, automatic fire-extinguishing systems, and fire alarm systems must be submitted by the owner or owner's representative to the State Fire Marshal for examination and approval. This review does not address structural considerations or accessibility requirements. Mechanical and electrical review is limited to that which is necessary to confirm compliance with fire and life safety requirements.

A copy of the plan review approval certificate must be posted as required in 13 AAC 55.100(b). It is prohibited to occupy a building for which plans have not been examined and approved.

If any work for which a plan review and approval is required has been started without first obtaining plan review and approval, an additional special processing plan review fee of \$100 is charged for the first violation. The special processing plan review fee for a subsequent violation by the same person is an additional charge equal to the amount of the standard plan review fee for the project.

Authority: AS 18.70.080

Alaska Administrative Code: 13 AAC 50.027