



City of Bethel

P.O. Box 1388

Bethel, Alaska 99559

Phone: 907- 543-2047

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Regular City Council Meeting

Tuesday, May 24, 2016

6:30 P.M.

Council Chambers; Bethel, Alaska



**City Council Meeting Agenda
Regularly Scheduled Meeting
May 24, 2016 – 6:30 pm
City Hall 300 State Highway, Bethel, AK
City of Bethel Council Chambers**

Rick Robb
Mayor
Term Expires 2017
543-1879
rrobb@cityofbethel.net

Byron Maczynski
Vice-Mayor
Term Expires 2016
545-0970
bmaczynski@cityofbethel.net

Leif Albertson
Council Member
Term Expires 2017
543-2819
labertson@cityofbethel.net

Chuck Herman
Council Member
Term Expires 2016
545-5394
cherman@cityofbethel.net

Zach Fansler
Council Member
Term Expires 2016
545-3300
zfansler@cityofbethel.net

Nikki C. Hoffman
Council Member
Term Expires 2017
545-6653
nhoffman@cityofbethel.net

Alisha Welch
Council Member
Term Expires 2017
545-6026
arwelch@cityofbethel.net

Ann Capela
City Manager
543-2047
acapela@cityofbethel.net

Lori Strickler
City Clerk
543-1384
lstrickler@cityofbethel.net

Patty Burley
City Attorney

Mary Sattler
Lobbyist

- I. CALL TO ORDER**
- II. PLEDGE OF ALLEGIANCE**
- III. ROLL CALL**
- IV. PEOPLE TO BE HEARD – Five minutes per person**
- V. APPROVAL OF CONSENT AGENDA AND REGULAR AGENDA**
- VI. APPROVAL OF MEETING MINUTES**
 - a) *5-3-2016 Special Budget Meeting Minutes P2
 - b) *5-4-2016 Special Budget Meeting Minutes P5
 - c) *5-5-2016 Special Budget Meeting Minutes P9
 - d) *5-10-2016 Regular Meeting Minutes P13
 - e) *5-11-2016 Special Budget Meeting Minutes P22
 - f) *5-12-2016 Special Budget Meeting Minutes P26
- VII. REPORTS OF STANDING COMMITTEE**
 - a) Public Safety and Transportation Commission
 - b) Port Commission
 - c) Planning Commission
 - d) Parks, Recreation, Aquatic Health And Safety Center Committee
 - e) Finance Committee
 - f) Energy Committee
 - g) Public Works Committee
 - h) Marijuana Advisory Committee
 - i) Non Standing Committee Reports
- VIII. SPECIAL ORDERS OF BUSINESS**
- IX. UNFINISHED BUSINESS**
 - a) Public Hearing Of Ordinance 16-14: Acquisition Of Easement From Yukon Kuskokwim Health Corporation (City Manager Capela)^{P37}
 - b) Public Hearing Of Budget Ordinance 15-14 (h): Amending The Fiscal Year 2016 Budget For Port Vehicle (City Manager Capela) ^{P57}
 - c) Public Hearing Of Budget Ordinance 15-14 (i): Amending The Fiscal Year 2016 Budget For Accounting Contract Services (City Manager Capela)^{P58}
 - d) AM 16-34: Approving The Social Media Policy For The City Of Bethel (City Manager Capela) ^{P59}

Agenda posted on May 18, 2016, at City Hall, AC Co., Swanson's, and the Post Office.

Lori Stickler, City Clerk

(Items on the agenda noted with an asterisk (*) are considered the consent agenda.

All Resolutions noted with an asterisk (*) will automatically be adopted on the consent agenda unless removed from the consent agenda by Council.

Ordinances introduced with an asterisk (*) on the consent agenda will automatically be introduced and set for **Public Hearing June 14, 2016**)

The Council may, after 12:00am, and only by a unanimous consent vote, recess this meeting until the following day at 6:30pm.



**City Council Meeting Agenda
Regularly Scheduled Meeting
May 24, 2016 – 6:30 pm
City Hall 300 State Highway, Bethel, AK
City of Bethel Council Chambers**

- e) AM 16-35: Approving The Contract Between The City Of Bethel And The University Of Alaska Fairbanks Cooperative Extension, 4-H Program (City Manager Capela) ^{P65}

X. NEW BUSINESS

- a) *Resolution 16-19: Authorizing Administration To Enter Into A Loan Agreement With United State Department Of Agriculture In The Amount Of \$913,000 For Portion Of The Cost Of Acquiring, Constructing, Enlarging, Improving, And/Extending Its Lagoon Facility (City Manager Capela) ^{P70}
- b) *Resolution 16-20: Authorizing Administration To Enter Into A Grant Agreement With United States Department Of Agriculture In The Amount Of \$1,669,368 For Water And Waste System Which Includes Three Sewer Trucks (City Manager Capela) ^{P76}
- c) *Resolution 16-21: Requesting Fiscal Year 2017 Payment In Lieu Of Taxes Funding From The Department Of commerce, Community And Economic Development (City Manager Capela) ^{P88}
- d) *Introduction Of Ordinance 16-15: Amending Bethel Municipal Code 4.16.030 To Reduce Sales Tax from 6% to 5.75% (Mayor Robb) ^{P89}
- e) *Introduction Of Ordinance 16-16: Amending Bethel Municipal Code 3.64.010, Benefits (Mayor Robb) ^{P91}
- f) *Introduction Of Budget Ordinance 16-17: Fiscal Year 2017 Annual Budget (City Manager Capela) ^{P93}
- g) *Introduction Of Ordinance 16-18: Amending Bethel Municipal Code, Marijuana Regulations (Council Member Fansler) ^{P97}
- h) AM 16-37: Directing Administration To Enter Into An Agreement With Alaska Court System And Alaska Permanent Fund Dividend Division For The Transfer Of Unpaid Minor Offense Fines And The Electronic Levy On The PFD Of Non-Payees (City Manager Capela) ^{P113}
- i) AM 16-38: Authorizing Administration To Enter Into A Contract With Pool Operator, For The Operation And Maintenance Of The Yukon Kuskokwim Aquatic Health And Safety Center (City Manager Capela) ^{P114}
- j) AM 16-39: Directing Administration To Being Development Of The Pinky Park Multi-Use Field As Authorized By AM 14-67 (Parks, Recreation, Aquatic Health and Safety Committee) ^{P149}

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Lori Stickler, City Clerk

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The Council may, after 12:00am, and only by a unanimous consent vote, recess this meeting until the following day at 6:30p.



**City Council Meeting Agenda
Regularly Scheduled Meeting
May 24, 2016 – 6:30 pm
City Hall 300 State Highway, Bethel, AK
City of Bethel Council Chambers**

- k) AM 16-40: Directing Administration To Work With Log Cabin Users Until Final Adoption Of Fiscal Year 2017 Budget In The Case Of Facility Closure (Parks, Recreation, Aquatic Health and Safety Committee)^{P177}
- l) AM 16-41: Directing Administration To Prepare An Assessment Of Cost To Repair The Boardwalk Located Near The Moravian Church (Parks, Recreation, Aquatic Health and Safety Committee)^{P178}
- m) AM 16-42: Directing Administration To Negotiate And Enter Into A Contract For Construction Of Port Office (City Manager Capela)^{P179}
- n) Direct Administration To Draft A Letter For Council's Consideration At Their May 26, 2016 Special Budget Meeting To Address The Donlin Gold EIS (Council Member Fansler)

XI. MAYOR'S REPORT

XII. MANAGER'S REPORTS

XIII. CLERK'S REPORT

XIV. COUNCIL MEMBER COMMENTS

XV. EXECUTIVE SESSION

- a) AS 44.62.310 (C) 1: Matters, The Immediate Knowledge Of Which Would Clearly Have An Adverse Effect Upon The Finances Of The Public Entity – Labor Negotiation Contract Between City of Bethel Employees Association, Local 6055, APEA/AFT And City of Bethel (Mayor Robb)
- b) AS 44.62.310 (C) 1: Matters, The Immediate Knowledge Of Which Would Clearly Have An Adverse Effect Upon The Finances Of The Public Entity – Legal Liability For The Transit System (Mayor Robb)
- c) AS 44.62.310 (C) 1: Matters, The Immediate Knowledge Of Which Would Clearly Have An Adverse Effect Upon The Finances Of The Public Entity – Settlement Offer, City Of Bethel vs. Faulkner Walsh et.al. And City Of Bethel vs. Robert And Donna Carpenter (Mayor Robb)

XVI. ADJOURNMENT

Agenda posted on May 18, 2016, at City Hall, AC Co., Swanson's, and the Post Office.

Lori Stickler, City Clerk

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Ordinances introduced with an asterisk (*) on the consent agenda will automatically be introduced and set for **Public Hearing June 14, 2016**)

The Council may, after 12:00am, and only by a unanimous consent vote, recess this meeting until the following day at 6:30p.

Approval of the Meeting Minutes

I. CALL TO ORDER

A Special Meeting of the Bethel City Council was held on May 3, 2016 at 6:30 p.m., in the council chambers, Bethel, Alaska.

Mayor Richard Robb called the meeting to order at 6:30 p.m.

II. PLEDGE OF ALLEGIANCE

III. ROLL CALL

Comprising a quorum of the Council, the following members were present:	
<input checked="" type="checkbox"/> Mayor Rick Robb	<input checked="" type="checkbox"/> Council Member Zach Fansler
<input checked="" type="checkbox"/> Vice-Mayor Byron Maczynski	<input checked="" type="checkbox"/> Council Member Alisha Welch
<input checked="" type="checkbox"/> Council Member Leif Albertson	
<input checked="" type="checkbox"/> Council Member Chuck Herman	
Members Absent:	
<input type="checkbox"/> Council Member Nikki Hoffman	
Also in attendance were the following:	
<input checked="" type="checkbox"/> City Attorney Patty Burley	<input checked="" type="checkbox"/> City Clerk Lori Strickler
<input checked="" type="checkbox"/> City Manager Ann Capela	<input type="checkbox"/> City Clerk Assistant Adriane Welch

IV. PEOPLE TO BE HEARD

No one present to be heard.

V. APPROVAL OF AGENDA

Main Motion: Approve the Agenda.

Moved by:	Herman
Seconded by:	Maczynski
Action:	Motion carries by a vote of 6-0
In favor:	<input checked="" type="checkbox"/> Robb <input checked="" type="checkbox"/> Maczynski <input checked="" type="checkbox"/> Albertson <input checked="" type="checkbox"/> Herman <input checked="" type="checkbox"/> Fansler <input checked="" type="checkbox"/> Welch
Opposed:	0

VI. NEW BUSINESS

Item A – Budget Overview

Main Motion: Alcohol Tax to strike \$500,000 and insert \$300,000.

Moved by:	Fansler
Seconded by:	Welch
Action:	Motion carries by a vote of 6-0
In favor:	<input checked="" type="checkbox"/> Robb <input checked="" type="checkbox"/> Maczynski <input checked="" type="checkbox"/> Albertson <input checked="" type="checkbox"/> Herman <input checked="" type="checkbox"/> Fansler <input checked="" type="checkbox"/> Welch
Opposed:	0

Item B – Public Works General Fund 10

- Public Works Administration 65
- Public Works Streets and Roads
- Public Works Property Maintenance
- Parks & Recreation 71

Item C – Solid Waste: Landfill, Hauled Refuse, Recycling Enterprise Fund 50

- Hauled Refuse 70
- Landfill Operation 71
- Recycling Operations 72

Item D – Water & Sewer Utilities Enterprise Fund 51

- Utility Billing 80
- Hauled Water 81
- Piped Water 82
- Bethel Heights Water Treatment Facility 83
- City Sub Water Treatment Facility 84
- Hauled Sewer 85
- Piped Sewer 86
- Sewer Lagoon 87

VII. ADJOURNMENT

Main Motion: Adjourn.

Moved by: Herman
Seconded by: Fansler
Action: Motion carries by a vote of 6-0
In favor: Robb Maczynski Albertson Herman Fansler Welch
Opposed: 0

Council adjourned at 8:54 p.m.

Richard Robb, Mayor

ATTEST:

Lori Strickler, City Clerk

I. CALL TO ORDER

A Special Meeting of the Bethel City Council was held on May 4, 2016, 2016 at 6:30 p.m., in the council chambers, Bethel, Alaska.

Mayor Richard Robb called the meeting to order at 6:30 p.m.

II. PLEDGE OF ALLEGIANCE

III. ROLL CALL

Comprising a quorum of the Council, the following members were present:	
<input checked="" type="checkbox"/> Mayor Rick Robb	
<input checked="" type="checkbox"/> Vice-Mayor Byron Maczynski	
<input checked="" type="checkbox"/> Council Member Alisha Welch	
<input checked="" type="checkbox"/> Council Member Chuck Herman	
Members Absent:	
<input type="checkbox"/> Council Member Zach Fansler	<input type="checkbox"/> Council Member Leif Albertson
<input type="checkbox"/> Council Member Nikki Hoffman	
Also in attendance were the following:	
<input checked="" type="checkbox"/> City Attorney Patty Burley	<input checked="" type="checkbox"/> City Clerk Lori Strickler
<input checked="" type="checkbox"/> City Manager Ann Capela	

IV. PEOPLE TO BE HEARD

No one present to be heard.

V. APPROVAL OF AGENDA

Main Motion: Approve the Agenda.

Moved by:	Herman
Seconded by:	Maczynski
Action:	Motion carries by a vote of 4-0
In favor:	<input checked="" type="checkbox"/> Robb <input checked="" type="checkbox"/> Maczynski <input checked="" type="checkbox"/> Herman <input checked="" type="checkbox"/> Welch

Opposed: | -0

VI. UNFINISHED BUSINESS

Item A – Public Works General Fund 10

- Public Works Administration 65
- Public Works Streets and Roads
- Public Works Property Maintenance
- Parks & Recreation 71

Item B – Solid Waste: Landfill, Hauled Refuse, Recycling Enterprise Fund 50 (P55-64)

- Hauled Refuse 70
- Landfill Operation 71
- Recycling Operations 72

Item C – Water & Sewer Utilities Enterprise Fund 51

- Utility Billing 80
- Hauled Water 81
- Piped Water 82
- Bethel Heights Water Treatment Facility 83
- City Sub Water Treatment Facility 84
- Hauled Sewer 85 Piped Sewer 86
- Sewer Lagoon 87

Streets and Roads 10-66-602, Gasoline/Diesel/Oil, to strike
Main Motion: \$165,000 and insert \$130,000.

Moved by: | Herman
Seconded by: | Maczynski
Action: | Motion carries by a vote of 4-0
In favor: | Robb Maczynski Herman Welch
Opposed: | 0

Public Works Admin, 10-65, PERS on Behalf of Contributions to
Main Motion: insert \$12,894.

Moved by: | Maczynski
Seconded by: | Herman

Action: | Motion carries by a vote of 4-0
In favor: | Robb Maczynski Herman Welch
Opposed: | 0

Main Motion: Parks and Recreation 10-71-561, Supplies to strike \$12,000 and insert \$5,000.

Moved by: | Herman
Seconded by: | Welch
Action: | Motion carries by a vote of 4-0
In favor: | Robb Maczynski Herman Welch
Opposed: | 0

Main Motion: Recycling Operations 50-72 to strike \$4,879 and move the allocation to Landfill Solid Waste.

Moved by: | Welch
Seconded by: | Herman
Action: | Motion carries by a vote of 4-0
In favor: | Robb Maczynski Herman Welch
Opposed: | 0

Main Motion: Landfill Operations 50-71-602, Gasoline/Diesel/Oil to strike \$35,000 and insert \$30,000.

Moved by: | Welch
Seconded by: | Herman
Action: | Motion carries by a vote of 4-0
In favor: | Robb Maczynski Herman Welch
Opposed: | 0

VII. NEW BUSINESS

Item A – Bethel Transit System Enterprise Fund 56

Item B – Vehicle Maintenance Internal Service Fund 57-50

Item C – Community Service General Fund 10-72

Item D – Administration General Fund 10-51

Item E – City Clerk’s Office General Fund 10-52

Item F – City Attorney’s Office General Fund 10-56

Item G – Finance Department General Fund 10-53

VIII. ADJOURNMENT

Main Motion: Adjournment.

Moved by:	Herman
Seconded by:	Welch
Action:	Motion carries by a vote of 4-0
In favor:	<input checked="" type="checkbox"/> Robb <input checked="" type="checkbox"/> Maczynski <input checked="" type="checkbox"/> Herman <input checked="" type="checkbox"/> Welch
Opposed:	0

Council adjourned at 9:00 p.m.

Richard Robb, Mayor

ATTEST:

Lori Strickler, City Clerk

I. CALL TO ORDER

A Special Meeting of the Bethel City Council was held on May 5, 2016 at 6:30 p.m., in the council chambers, Bethel, Alaska.

Mayor Richard Robb called the meeting to order at 6:30 p.m.

II. PLEDGE OF ALLEGIANCE

III. ROLL CALL

Comprising a quorum of the Council, the following members were present:	
<input checked="" type="checkbox"/> Mayor Rick Robb	<input checked="" type="checkbox"/> Council Member Alisha Welch (arrived at 6:34p)
<input checked="" type="checkbox"/> Vice-Mayor Byron Maczynski	<input checked="" type="checkbox"/> Council Member Chuck Herman (arrived at 6:32p)
<input checked="" type="checkbox"/> Council Member Leif Albertson	<input checked="" type="checkbox"/> Council Member Zach Fansler
<input checked="" type="checkbox"/> Council Member Nikki Hoffman	
Also in attendance were the following:	
<input checked="" type="checkbox"/> City Attorney Patty Burley	<input checked="" type="checkbox"/> City Clerk Lori Strickler
<input checked="" type="checkbox"/> City Manager Ann Capela	<input type="checkbox"/> City Clerk Assistant Adriane Welch

IV. PEOPLE TO BE HEARD

No one present to be heard.

V. APPROVAL OF AGENDA

Main Motion: Approve the Agenda.

Moved by:	Fansler
Seconded by:	Albertson
Action:	Motion carries by a vote of 5-0
In favor:	<input checked="" type="checkbox"/> Robb <input checked="" type="checkbox"/> Albertson <input checked="" type="checkbox"/> Fansler <input checked="" type="checkbox"/> Hoffman
Opposed:	-0

Council Member Herman arrived at 6:32p.

Council Member Welch arrived at 6:34p.

Main Motion: Hauled Water 51-81 Personnel PCN 24103 to strike \$73,351 and insert \$76,415.

Moved by: Fansler
Seconded by: Herman
Action: Motion carries by a vote of 7-0
In favor: Robb Maczynski Albertson Herman Fansler Hoffman Welch
Opposed: 0

Main Motion: Piped Water 51-82-602, Gasoline/Diesel to strike \$25,000 and insert \$20,000.

Moved by: Fansler
Seconded by: Herman
Action: Motion carries by a vote 7-0
In favor: Robb Maczynski Albertson Herman Fansler Hoffman Welch
Opposed: 0

Main Motion: Bethel Heights Water Treatment Facility 51-83-623 to strike \$215,000 and insert \$130,000.

Moved by: Fansler
Seconded by: Herman
Action: Motion carries by a vote of 7-0
In favor: Robb Maczynski Albertson Herman Fansler Hoffman Welch
Opposed: 0

Main Motion: City Sub Water Treatment Plant 51-84-623 to strike \$215,000 and insert \$130,000.

Moved by: Fansler
Seconded by: Herman
Action: Motion carries by a vote of 7-0
In favor: Robb Maczynski Albertson Herman Fansler Hoffman Welch
Opposed: 0

Main Motion: City Sub Water Treatment Plant, 51-84 Personnel Annual Increase, insert \$1,150.

Moved by: Fansler
Seconded by: Herman
Action: Motion carries by a vote of 7-0
In favor: Robb Maczynski Albertson Herman Fansler Hoffman Welch
Opposed: 0

Hauled Sewer 51-85 PCN 24117 to strike \$71,550 and insert \$41,550.

Hauled Sewer 51-85 PCN24119 to strike \$10,550 and insert \$41,550.

Main Motion:

Moved by:	Fansler
Seconded by:	Herman
Action:	Motion carries by a vote of 7-0
In favor:	<input checked="" type="checkbox"/> Robb <input checked="" type="checkbox"/> Maczynski <input checked="" type="checkbox"/> Albertson <input checked="" type="checkbox"/> Herman <input checked="" type="checkbox"/> Fansler <input checked="" type="checkbox"/> Hoffman <input checked="" type="checkbox"/> Welch
Opposed:	0

Piped Sewer 51-86-623, Heating Fuel to strike \$50,000 and insert \$45,000.

Main Motion:

Moved by:	Fansler
Seconded by:	Hoffman
Action:	Motion carries by a vote of 7-0
In favor:	<input checked="" type="checkbox"/> Robb <input checked="" type="checkbox"/> Maczynski <input checked="" type="checkbox"/> Albertson <input checked="" type="checkbox"/> Herman <input checked="" type="checkbox"/> Fansler <input checked="" type="checkbox"/> Hoffman <input checked="" type="checkbox"/> Welch
Opposed:	0

Piped Water 51-82-25101 and 51-86 25101 Utility Maintenance Forman to Strike 35% and insert 30% base salary to include the needed modification to the Annual increase and other.

Main Motion:

Moved by:	Fansler
Seconded by:	Welch
Action:	Motion carries by a vote of 7-0
In favor:	<input checked="" type="checkbox"/> Robb <input checked="" type="checkbox"/> Maczynski <input checked="" type="checkbox"/> Albertson <input checked="" type="checkbox"/> Herman <input checked="" type="checkbox"/> Fansler <input checked="" type="checkbox"/> Hoffman <input checked="" type="checkbox"/> Welch
Opposed:	0

VI. UNFINISHED BUSINESS

Item A – Public Works General Fund 10

Item B – Solid Waste: Landfill, Hauled Refuse, Recycling Enterprise Fund 50

Item C – Water & Sewer Utilities Enterprise Fund 51

Item D – Bethel Transit System Enterprise Fund 56

Item E – Vehicle Maintenance Internal Service Fund 57-50

Item F – Community Services General Fund 10-72

Item G – Administration General Fund 10-51

Item H – City Clerk’s Office General Fund 10-52

Item I – City Attorney’s Office General Fund 10-56

Item J – Finance Department General Fund 10-53

VII. NEW BUSINESS

Item A -Planning Department General Fund 10-54

Item B -Fire Department General Fund 10-60

Item C -Police Department General Fund 10-61

Item D -E-911 Services Fund 41-50

Item E -Land Planning and Development Capital Projects Fund 25-50

Item F -Parks Development Fund 26-50

Item G -Fleet Replacement Fund 58-50

VIII. ADJOURNMENT

Main Motion: Adjourn.

Moved by:	Fansler
Seconded by:	Welch
Action:	Motion carries by a vote of 7-0
In favor:	<input checked="" type="checkbox"/> Robb <input checked="" type="checkbox"/> Maczynski <input checked="" type="checkbox"/> Albertson <input checked="" type="checkbox"/> Herman <input checked="" type="checkbox"/> Fansler <input checked="" type="checkbox"/> Hoffman <input checked="" type="checkbox"/> Welch
Opposed:	0

Council adjourned at 9:02 p.m.

Richard Robb, Mayor

ATTEST:

Lori Strickler, City Clerk

I. CALL TO ORDER

A Regular Meeting of the Bethel City Council was held on May 10, 2016 at 6:30 p.m., in the council chambers, Bethel, Alaska.

Mayor Richard Robb called the meeting to order at 6:30 p.m.

II. PLEDGE OF ALLEGIANCE

III. ROLL CALL

Comprising a quorum of the Council, the following members were present:	
<input checked="" type="checkbox"/> Mayor Rick Robb	<input checked="" type="checkbox"/> Council Member Zach Fansler
<input checked="" type="checkbox"/> Vice-Mayor Byron Maczynski	<input checked="" type="checkbox"/> Council Member Nikki Hoffman
<input checked="" type="checkbox"/> Council Member Chuck Herman	<input checked="" type="checkbox"/> Council Member Alisha Welch
<input checked="" type="checkbox"/> Council Member Leif Albertson	
Also in attendance were the following:	
<input checked="" type="checkbox"/> City Attorney Patty Burley	<input checked="" type="checkbox"/> City Clerk Lori Strickler
<input checked="" type="checkbox"/> City Manager Ann Capela	<input type="checkbox"/> Assistant To City Clerk Adriane Welch

IV. PEOPLE TO BE HEARD

Grant Fairbanks- suggested the Council leave their personal feelings out of the Donlin Gold Mine decisions and action, the Council should be considering the opinions from the community members.

Beverly Hoffman – Provided personal statements and concerns to the Army Corps of Engineers regarding the Donlin Gold Mine; suggested the Council to provide statements as well.

Stated frustration regarding the recent Request for Proposal process for the pool facility operations process.

Additionally stated, she is discouraged by the price gouging at the pool facility and doesn't understand why the City not having a corporate sponsorship to allow their employees to use the facility at a discounted rate.

Stated concerns at the Police Departments consideration of the two week on two week off schedule unless it is a temporary solution.

Dave Trantham-On July 3, 2016 the Alaska Territorial Guard Memorial Park will be closed out. Thanked the City of Bethel for all of their help in the development of this project.

Mary Weiss- There will be an organizational meeting for the 4th of July celebration next week.

V. APPROVAL OF THE CONSENT AND REGULAR AGENDA

Main Motion: Approve the Consent and Regular Agenda.

Moved by: Maczynski

Seconded by: Herman

Action: Motion carries by a vote of 7-0

In favor: Robb Maczynski Albertson Herman Fansler Hoffman Welch

Opposed: -0

VI. APPROVAL OF THE MEETING MINUTES

Item A – Regular City Council Meeting April 26, 2015

Passed on the consent agenda.

VII. REPORTS OF STANDING COMMITTEES

Public Safety and Transportation Commission

Council Representative, Chuck Herman –

A quorum of the body was not established, no meeting was held.

Port Commission

Port Director, Pete Williams –

A meeting has not been held since the last City Council Meeting.

Planning Commission

Council Representative, Nikki Hoffman –

A meeting has not been held since the last City Council Meeting.

Parks and Recreation Committee

Judy Wasierski, Committee Representative –

The Committee will be provided the Council with three action members at their next regular meeting. One on the use of the Log Cabin Facility, the second on the repairing of the boardwalk near the Moravian Church, the third is to begin the construction of the Pinky Park's Multi Use Field.

The Committee is working on the 4th of July Celebration.

Finance Committee

Council Representative, Leif Albertson –

A meeting has not been held since the last City Council Meeting.

Energy Committee

Council Representative, Zach Fansler –

A meeting has not been held since the last City Council Meeting.

Public Works Committee

Council Representative, Byron Maczynski –

A meeting has not been held since the last City Council Meeting.

Marijuana Advisory Committee

Council Representative, Zach Fansler –

Continued to work on the marijuana ordinance which will hopefully be submitted to the Council at the next meeting.

VIII. SPECIAL ORDER OF BUSINESS

Item A – United Pool Presentation

IX. UNFINISHED BUSINESS

Item A – AM 16-19: Directing The City Clerk's Office To Establish An Ordinance And Operating Procedures To Commence By – Mail Elections For The 2017 Election Year.

Main Motion: A motion to adopt was made at the March 8 Regular Meeting.

Moved by: Herman

Seconded by: Hoffman

Action: Does not carry by a vote of 2-5

In favor: Maczynski Herman

Opposed: Fansler Hoffman Albertson Welch Robb

Primary

Amendment: Amend to strike 2017 and insert 2018.

Moved by: Welch

Seconded by: Herman
 Action: Motion does not carry by a vote of 3-4
 In favor: Herman Fansler Hoffman
 Opposed: Robb Maczynski Albertson Welch

Subsidiary

Motion: Postpone indefinitely.

Moved by: Welch
 Seconded by: Hoffman
 Action: Motion does not carry by a vote of 3-4
 In favor: Albertson Hoffman Welch
 Opposed: Herman Robb Maczynski Fansler

X. NEW BUSINESS

Item A – Resolution 16-18: Supporting Yuut Elitnaurviat’s Proposed Building Addition To Accommodate Kuskokwim Learning Academy.
Passed on the consent agenda.

Item B – Introduction Of Ordinance 16-14: Acquisition Of Easement From Yukon Kuskokwim Health Corporation.
Passed on the consent agenda.

Item C – Introduction Of Budget Ordinance 15-14 (h): Amending The Fiscal Year 2016 Budget For Port Vehicle.
Passed on the consent agenda.

Item D – Introduction Of Budget Ordinance 15-14 (i): Amending The Fiscal Year 2016 Budget For Accounting Contract Services. *Connected Action Memorandum 16-36.*
Passed on the consent agenda.

Item E – AM 16-33: Direct City Manager To Sign \$157,000.00 Grant From The Alaska Dept. Of Environmental Conservation, Village Safe Water Program, For Sewage Lagoon Design Services.

Main Motion: Approve AM 16-33.

Moved by: Herman
 Seconded by: Maczynski
 Action: Motion carries by a vote of 7-0
 In favor: Robb Maczynski Albertson Herman Fansler Hoffman Welch
 Opposed: 0

Item F – AM 16-34: Approving The Social Media Policy For The City Of Bethel.

Main Motion: Approve AM 16-34.

Moved by: Herman
Seconded by: Maczynski
Action: Motion carries by a vote of
In favor: Robb Maczynski Albertson Herman Fansler Hoffman Welch
Opposed:

Subsidiary

Motion: Postpone until the first meeting in June.

Moved by: Hoffman
Seconded by: Welch
Action: Motion carries by a vote of 7-0
In favor: Robb Maczynski Albertson Herman Fansler Hoffman Welch
Opposed: 0

Primary

Amendment: Amend to postpone until the next regular meeting.

Moved by: Fansler
Seconded by: Maczynski
Action: Motion carries by a vote of 7-0
In favor: Robb Maczynski Albertson Herman Fansler Hoffman Welch
Opposed: 0

Item G – AM 16-35: Approving The Contract Between The City Of Bethel And The University Of Alaska Fairbanks Cooperative Extension, 4-H Program.

Main Motion: Approve AM 16-35

Moved by: Hoffman
Seconded by: Welch
Action: Postponed

Subsidiary

Motion: Postpone until the budget is passed.

Moved by: Hoffman
Seconded by: Welch
Action: Motion carries by a vote of 7-0
In favor: Robb Maczynski Albertson Fansler Hoffman Welch
Opposed: 0

Primary

Amendment: Amend to postpone until the May 24, Regular Meeting.

Moved by: Herman

Seconded by: Maczynski

Action: Motion carries by a vote of 7-0

In favor: Robb Maczynski Albertson Herman Fansler Hoffman Welch

Opposed: 0

Item H – AM 16-36: Contract Amendment For Carmen Jackson CPA – *Connected Budget Ordinance 15-14 (i).*

Main Motion: Approve AM 16-36.

Moved by: Maczynski

Seconded by: Welch

Action: Motion carries by a vote of 7-0

In favor: Robb Maczynski Albertson Herman Fansler Hoffman Welch

Opposed: 0

Subsidiary

Motion: Suspend the rules to hear from the Finance Director.

Moved by: Hoffman

Seconded by: Welch

Action: Motion carries by a vote of 7-0

In favor: Robb Maczynski Albertson Herman Fansler Hoffman Welch

Opposed: 0

Primary

Amendment: Amend to strike \$20,000 and insert \$35,000.

Moved by: Fansler

Seconded by: Hoffman

Action: Motion carries by a vote of 7-0

In favor: Robb Maczynski Albertson Herman Fansler Hoffman Welch

Opposed: 0

Item I – Personal Leave Request For City Attorney September 8-23 and October 12-28, 2016.

Passed on the consent agenda.

Item J – IM 16-02: Delta Western Fuel Contract Extension.

- XI. MAYOR'S REPORT
- XII. MANAGER'S REPORT
- XIII. CLERK'S REPORT
- XIV. COUNCIL MEMBER COMMENTS

Mayor Richard Robb –
 Congratulated the Bethel Free Style Wrestling Team for their state wins.
 Invited to present an award from American Red Cross to Mike Riley.
 Smelts are running, safe boating.

Vice-Mayor Byron Maczynski –
 No comment.

Council Member Albertson –
 Smelts are running.

Council Member Chuck Herman –
 Thanked the City Clerk for all of the research on the By Mail Election.
 Looking forward to the sewer lagoon progress.

Council Member Zach Fansler –
 Everyone be safe.

Council Member Nikki Hoffman –
 Use personal floatation devises while on the river.

Council Member Alisha Welch –
 Comment.

XV. ADJOURNMENT

Main Motion: Adjourn

Moved by:	Herman
Seconded by:	Hoffman
Action:	Motion carries by a vote of 7-0
In favor:	<input checked="" type="checkbox"/> Robb <input checked="" type="checkbox"/> Maczynski <input checked="" type="checkbox"/> Albertson <input checked="" type="checkbox"/> Herman <input checked="" type="checkbox"/> Fansler <input checked="" type="checkbox"/> Hoffman <input checked="" type="checkbox"/> Welch
Opposed:	–0

Council adjourned at 8:56 p.m.

Richard Robb, Mayor

ATTEST:

Lori Strickler, City Clerk

I. CALL TO ORDER

A Special Meeting of the Bethel City Council was held on May 11, 2016 at 6:30 p.m., in the council chambers, Bethel, Alaska.

Mayor Richard Robb called the meeting to order at 6:47 p.m.

II. PLEDGE OF ALLEGIANCE

III. ROLL CALL

Comprising a quorum of the Council, the following members were present:	
<input checked="" type="checkbox"/> Vice-Mayor Byron Maczynski	
<input checked="" type="checkbox"/> Council Member Zach Fansler	
<input checked="" type="checkbox"/> Council Member Nikki Hoffman	
<input checked="" type="checkbox"/> Council Member Chuck Herman	
Members Absent:	
<input type="checkbox"/> Council Member Leif Albertson	<input type="checkbox"/> Mayor Rick Robb
<input type="checkbox"/> Council Member Alisha Welch	
Also in attendance were the following:	
<input checked="" type="checkbox"/> City Attorney Patty Burley	<input checked="" type="checkbox"/> City Clerk Lori Strickler
<input checked="" type="checkbox"/> City Manager Ann Capela	<input type="checkbox"/> City Clerk Assistant Adriane Welch

IV. PEOPLE TO BE HEARD

Beverly Hoffman- As a representative of the Parks, Recreation, Aquatic Health and Safety Center, stated concerns with the proposed budget for the facility.

V. APPROVAL OF AGENDA

Main Motion: Approve the Agenda.

Moved by:	Herman
Seconded by:	Fansler
Action:	Motion carries by a vote of 4-0

In favor:	<input checked="" type="checkbox"/> Maczynski <input checked="" type="checkbox"/> Herman <input checked="" type="checkbox"/> Fansler <input checked="" type="checkbox"/> Hoffman
Opposed:	0

Primary

Amendment: Move New Business Item G to the first item of business.

Moved by:	Herman
Seconded by:	Hoffman
Action:	Motion carries by a vote of 4-0
In favor:	<input checked="" type="checkbox"/> Maczynski <input checked="" type="checkbox"/> Herman <input checked="" type="checkbox"/> Fansler <input checked="" type="checkbox"/> Hoffman
Opposed:	0

Subsidiary

Motion: Move into Committee of the whole.

Moved by:	Herman
Seconded by:	Fansler
Action:	Motion carries by a vote of 4-0
In favor:	<input checked="" type="checkbox"/> Maczynski <input checked="" type="checkbox"/> Herman <input checked="" type="checkbox"/> Fansler <input checked="" type="checkbox"/> Hoffman
Opposed:	0

Council moved into committee of the whole at 6:56p.

NEW BUSINESS

Item G- YK-Pool Enterprise Fund

Main Motion:	Adjourn
Moved by:	Hoffman
Seconded by:	
Action:	Motion carries due to a lack of a second.
In favor:	
Opposed:	

VI. UNFINISHED BUSINESS

Item A – Public Works General Fund 10-65

Item B – Solid Waste: Landfill, Hauled Refuse, Recycling Enterprise Fund 50

Item C – Water & Sewer Utilities Enterprise Fund 51

Item D – Bethel Transit System Enterprise Fund 56

Item E – Vehicle Maintenance Internal Service Fund 57-50

Item F – Community Services General Fund 10-72

Item G – Administration General Fund 10-51

Item H – City Clerk’s Office General Fund 10-52

Amend City Clerk 10-52-642, Legal Fees to insert \$3,000, 10-52-683 to strike \$3,000 and insert \$500, 684, Donations and Awards

Main Motion: \$500.

Moved by:	Herman
Seconded by:	Fansler
Action:	Motion carries by a vote of 4-0
In favor:	<input checked="" type="checkbox"/> Maczynski <input checked="" type="checkbox"/> Herman <input checked="" type="checkbox"/> Fansler <input checked="" type="checkbox"/> Hoffman
Opposed:	0

Main Motion: Amend 562, supplies to 1,000.

Moved by:	Hoffman
Seconded by:	Fansler
Action:	Motion does not carry by a vote of
In favor:	0
Opposed:	<input checked="" type="checkbox"/> Maczynski <input checked="" type="checkbox"/> Herman <input checked="" type="checkbox"/> Fansler <input checked="" type="checkbox"/> Hoffman

Item I – City Attorney’s Office General Fund 10-56

Item J – Finance Department General Fund 10-53

Item K – Planning Department General Fund 10-54

Item L – Fire Department General Fund 10-60

Item M – Police Department General Fund 10-61

Amend to add a line item under salaries title Field Training and to transfer the \$11,978 from annual increases to Field Training line

Main Motion: item.

Moved by:	Herman
Seconded by:	Fansler
Action:	Motion carries by a vote of 4-0
In favor:	<input checked="" type="checkbox"/> Maczynski <input checked="" type="checkbox"/> Herman <input checked="" type="checkbox"/> Fansler <input checked="" type="checkbox"/> Hoffman
Opposed:	0

Main Motion: Amend 17112 Patrol officer to strike \$48,639 and insert \$47,476.

Moved by: Fansler
Seconded by: Herman
Action: Motion carries by a vote of 4-0
In favor: Maczynski Herman Fansler Hoffman
Opposed: 0

Item N – E-911 Services Fund 41-50

Item O – Land Planning and Development Capitol Projects Fund 25-50

Item P – Parks Development Fund 26-50

Item Q – Fleet Replacement Fund 58-50

VII. NEW BUSINESS

Item A – Information Technology Services General Fund 10-55 (P21-22)

Item B – Municipal Dock Enterprise Fund 52 (P85-91)

Item C – Port Office Fund 47-50 (P48)

Item D – Port Multi-Facility Improvements Fund 49-50 (P49)

Item E – In Kind Transfers 10-73 (P38)

Item F – Leased Properties Enterprise Fund 53 (P92-94)

Item H – Endowment Fund 90-50 (P108)

VIII. ADJOURNMENT

Main Motion: Adjourn.

Moved by: Herman
Seconded by: Hoffman
Action: Motion carries by a vote of 4-0
In favor: Maczynski Herman Fansler Hoffman
Opposed: 0

Council adjourned at 8:56 p.m.

Richard Robb, Mayor

ATTEST:

Lori Strickler, City Clerk

I. CALL TO ORDER

A Special Meeting of the Bethel City Council was held on May 12, 2016 at 6:30 p.m., in the council chambers, Bethel, Alaska.

Mayor Richard Robb called the meeting to order at 6:30 p.m.

II. PLEDGE OF ALLEGIANCE

III. ROLL CALL

Comprising a quorum of the Council, the following members were present:	
<input checked="" type="checkbox"/> Mayor Rick Robb	
<input checked="" type="checkbox"/> Vice-Mayor Byron Maczynski	
<input checked="" type="checkbox"/> Council Member Zach Fansler	
Members Absent:	
<input type="checkbox"/> Council Member Leif Albertson	<input type="checkbox"/> Council Member Nikki Hoffman
<input type="checkbox"/> Council Member Alisha Welch	<input type="checkbox"/> Council Member Chuck Herman
Also in attendance were the following:	
<input type="checkbox"/> City Attorney Patty Burley	<input checked="" type="checkbox"/> City Clerk Lori Strickler
<input checked="" type="checkbox"/> City Manager Ann Capela	<input type="checkbox"/> City Clerk Assistant Adriane Welch

Due to a lack of a quorum, a meeting was not held.

 Richard Robb, Mayor

ATTEST:

 Lori Strickler, City Clerk

Reports of Standing Committees

City of Bethel, Alaska

Public Safety & Transportation Commission

May 3, 2016

Regular Meeting

Bethel, Alaska

I. CALL TO ORDER

A regular meeting of the Public Safety and Transportation Commission was held on May 3, 2016 in the City Hall Council Chambers.

This meeting was called to order at 7:10pm

II. ROLL CALL

Present: Eileen Henrikson *Vice Chair*
Daniel Macynski

Excused Absent: Joan Dewey *Chair*
Chuck Herman *Council Representative*
Naim Shabani
Julene Webber

Ex-Officio Present: Andre Achee *Chief of Police*
Bill Howell *Fire Chief*
Christina Him *Recorder and Transportation Inspector Designee*

A quorum was not established of the Commission.

III. ADJOURNMENT

Meeting adjourned at 7:11pm.

APPROVED THIS _____ DAY OF _____, 2016.

Christina Him, Recorder

Joan Dewey, Chair

City of Bethel, Alaska**Parks, Recreation, Aquatic, Health & Safety Center Committee Minutes**

May 9, 2016

Regular Meeting

Bethel, Alaska

I. CALL TO ORDER

The meeting was called to order by Judy Wasierski at 6:04 pm.

II. ROLL CALL

Comprising a quorum of the Committee, the following were present:

Kathy Hanson, Barbara Mosier, Beverly Hoffman, Brian Lefferts, Rick Robb, Mary Weiss, Kathryn Baldwin

Excused absent(s): Michelle Dewitt

Also in attendance were the following:

Raunicka Ray- Pool Manager

Ann Capela- City Manager

Pauline Boratko- Committee Recorder

Matt Ross- Park and Recreation

III. PEOPLE TO BE HEARD:

Brian Hughes- YK Baptist Church Pastor wants to know where the Log Cabin stands if it's a money issue then he will help out.

Leif Albertson- voiced his concerns about the condition of the football field

Keri Fox- Member of the Quilt Guild uses the Log Cabin for her quilting class

Eileen Hendrickson- Member of the Quilt Guild would like to keep the Log Cabin open.

Patty Burley- Would like to keep the Log Cabin open

Beverly Hoffman- Fire Chief Bill Howell wanted the committee to know that they have funding to purchase a defibrillator.

Norma Wycoff- Member of the Strong Women program has been using the Log Cabin for the past 12 years and would not like to see it close.

Ronda Sargent- Spoke about the 4th of July festivities.

IV. APPROVAL OF AGENDA

MOVED BY:	Rick Robb	Motion to approve agenda.
SECONDED BY:	Kathy Hanson	
VOTE ON MOTION:	Unanimously approved	

V. APPROVAL OF THE MINUTES:

MOVED BY:	Rick Robb	Motion to approve the minutes.
SECONDED BY:	Kathryn Baldwin	
VOTE ON MOTION:	Unanimously approved	

VI. SPECIAL ORDER OF BUSINESS:

Parks, Recreation, Aquatic, Health & Safety Center Committee Minutes

City of Bethel, Alaska
May 9, 2016

IX. DEPARTMENT HEAD REPORT: Parks and Recreation Representative, Matt Ross reports that he is unaware of new staff hiring and he is the only employee for the department. Matt also reports that he has working with Antone Alexie who is an employee from the Building Maintenance Department.

Pool Manager Raunicka Ray reports that his month we had a record number of attendance at the fitness center with 6,812 visits. They started to notice some shifting in the building on the South side of the building. There is cracking in the wall and the door in off center on the south side.

X. UNFINISHED BUSINESS:

A. Trails-Funding, Safety, Updates:

MOVED BY:	Rick Robb	Motion to suspend the rules
SECONDED BY:	Barbara Mosier	
VOTE ON MOTION:	Unanimously approved	

MOVED BY:	Kathy Hanson	Motion for Public Works to be directed by administration to fix the boardwalk by the Moravian Church following assessment and cost feasibility to repair the board walk rather than removed.
SECONDED BY:	Beverly Hoffman	
VOTE ON MOTION:	Motion Passes, 6 to 1	

B. Pool- Pool Operator RFP (Request for Proposal) Review, Operation, and Maintenance: A new committee is being formed to look at RFP proposals.

MOVED BY:	Beverly Hoffman	Motion to make appointments to RFP pool proposal review with members who actually use the facility
SECONDED BY:	Barbara Mosier	
VOTE ON MOTION:	Motion passes 6 to 1	

C. Corporate Discounts- LKSD (Lower Kuskokwim School District) Dependent on LKSD board approval, LKSD would like to review their contract July 1st. AC (Alaska Commercial Company) Manager, Seth Madole is getting a list of employees for a monthly membership.

MOVED BY:	Mary Weiss	Motion to move items F and E from New business to agenda after Old Business, Corporate Discounts
SECONDED BY:	Barbara Mosier	
VOTE ON MOTION:	Unanimously approved	

D. Pool Temp and Marketing Sub Committee Reports- Three signs pointing in the direction of the pool were put up. Brian Lefferts and Beverly Hoffman who are on the budget sub-committee and found that working without actual costs was difficult.

E. Pool Financial Audit Report and Facility Performance Audit Report Update: The audit report is 70% complete.

F. Website Development of Fitness Center: Discussed elements on what the committee would like to see on their website.

G. Long Buildings Report and City follow up to report: no new updates this month

H. 4th of July Planning-The Chamber of Commerce has been approached about running the Parade. An event organizer will be hired on a temporary part-time basis to help organize the events.

I. Dog Park Development: With no funding to fence in the dog park, the development of one is tabled until there is no more input from the community.

- J. Tobacco Tax Allocation- Parks and Recreation distribution: Discussion on getting ordinance and looking at past legal interpretation to help decide on how much money should go to Parks and Recreation.
- K. Physical Facility Subcommittee Development (Mechanical): postponed discussion until next meeting
- L. Status of outstanding recommendations and action memorandums to the City Council: postponed discussion until next meeting

XI. NEW BUSINESS:

- A. David Moore/Architects Alaska recommendations/report: postponed discussion until next meeting.
- B. Listing review of all contacts related to the Pool and Fitness Center: postponed discussion until next meeting.
- C. Fiscal Year 2017 Parks and Recreation proposed budget review: Review and discussion on Fiscal year 2017 which is not yet completed.
- D. Individual to provide report to City Council: Discussion on report to City Council.
- E. Pinky's Park Improvement Project Grants:

MOVED BY:	Mary Weiss	Motion to recommend Council to direct administration to begin this summer construction of multiuse sports fields as delineated in Pinky's Park scope of work.
SECONDED BY:	Barbara Mosier	
VOTE ON MOTION	Unanimously approved	

F. Log Cabin use and update:

MOVED BY:	Mary Weiss	Motion to the City of Bethel administration to work in good faith with the three users of the Log Cabin on a month-month basis until something can be finalized with the Log Cabin.
SECONDED BY:	Kathy Hanson	
VOTE ON MOTION	Unanimously approved	

XI. MEMBER COMMENTS:

- K. Baldwin- I worked on the Click, Pick, and Give, and Lifesavers will be an option in 2017
- B. Hoffman- I'm happy for the committee
- B. Mosier- Glad to see everyone coming.
- J. Wasierski- no comment.
- K. Hanson- no comment.
- M. Weiss- I will be out of town May 20th-27th
- B. Lefferts- no comment.

XII. ADJOURNMENT

MOVED BY:	Beverly Hoffman	Motion to adjourn the meeting at 9:32 pm
SECONDED BY:	Kathy Hanson	
VOTE ON MOTION	Unanimously approved	

APPROVED THIS ___ DAY OF _____, 2016.

DRAFT



**City of Bethel, Alaska
Public Works Committee Agenda**

Wednesday, May 18, 2016 Regular Meeting 6:30PM City Hall Council Chambers

MEMBERS

Joseph Klejka
Committee Chair
Term Expires
12/2017

Jennifer Dobson
Committee V. Chair
Term Expires
12/2017

Byron Maczynski
Council Rep.
Term Expires
10/2016

Scott Guinn
Committee Member
Term Expires
12/2017

Robert Champagne
Committee Member
Term Expires
12/2017

Delbert Egoak
Committee Member
Term Expires
12/2018

Muzaffar Lakhani
Ex-Officio Member

Pauline Boratko
Committee Recorder

- I. CALL TO ORDER:**
- II. ROLL CALL:**
- III. PEOPLE TO BE HEARD: – (5 Minute Limit)**
- IV. APPROVAL OF AGENDA:**
- V. APPROVAL OF MINUTES:**
 - A.** Minutes from the previous regular meeting – March 16, 2016 (there was a meeting).
 - B.** Minutes from the previous regular meeting- April 20, 2016 (no meeting).
- VI. SPECIAL ORDER OF BUSINESS:**
- VII. UNFINISHED BUSINESS:**
 - A.** Institutional Corridor Piped Water Supply Project:
 - B.** Sewer Lagoon, – PER (Preliminary Engineering Report) & ER (Environmental Report) for Truck Dump Site and other options.
 - C.** Hiring and Retention of the Employees:----Scott Guinn.
 - D.** Funding Strategies for Sewer Lagoon:----Byron Maczynski.
- VIII. NEW BUSINESS:**
 - A.** Board Walk behind the Moravian Church
 - B.** Board Walk in the Pinky Park
 - C.** Preventative maintenance logs and schedule for city trucks----
Byron Maczynski
- IX. DIRECTORS REPORT:**
- X. MEMBER COMMENTS:**
- XI. ADJOURNMENT:**

Pauline Boratko, *Committee Recorder*

Special Order of Business

Unfinished Business

Introduced by: City Manager, Ann K. Capela
Date: May 10, 2016
Public Hearing: May 24, 2016
Action:
Vote:

CITY OF BETHEL, ALASKA

Ordinance #16-14

AN ORDINANCE AUTHORIZING THE ACQUISITION OF THREE UTILITY EASEMENTS FROM THE YUKON-KUSKOKWIM HEALTH CORPORATION

- Whereas,** the City of Bethel "City" has a grant from the State of Alaska (designated legislative grant) to provide for water and sewer improvements known as institutional corridor piped water supply and sewer collection project;
- Whereas,** the City has arranged for a multi phase project to supply water and collect sewer through described real property, including alignment of mains and service lines and other utilities through easements and right-of-ways in perpetuity;
- Whereas,** the City needs to acquire various easements across the properties involved in the I.C. water/sewer project;
- Whereas,** the proposed easements are in the public interest because the easements allow the City the land necessary for placement of different utility lines for the I.C. Project;
- Whereas,** in accordance with Section 4.08.020 of Bethel Municipal Code, the City Council hereby authorizes the acquisition of three (3) easements from the Yukon Kuskokwim Health Corporation, as set forth in this ordinance;

Easement #1

- Whereas,** A portion of Lot 10, U.S. SURVEY 4117, according to the official Bureau of Land Management, May 9, 1966, located in the Bethel Recording District, Fourth Judicial District, State of Alaska.

The easement being more particularly described as follows:

Beginning at Corner 1 of U.S. Survey 4117, which is coincident with Corner 2 of U.S. Survey 4000, thence N. 87°09'W, 6.63 chains, thence S.13°59'W.20.43 chains to the true point of beginning, thence S.13°59'W.7.49 chains to Corner 2, which is a point in the center of the Right-of-Way for the Bethel Airport Road and is the Southeast Corner of Lot 10 of U.S. Survey 4117, thence N.76°53'W.3.34 chains to Corner 3, thence N.13°59'E. 7.49 chains to Corner 4, thence S.76°53'E. 3.34 chains to the true point of beginning; EXCEPTING THEREFROM that portion

Introduced by: City Manager, Ann K. Capela
Date: May 10, 2016
Public Hearing: May 24, 2016
Action:
Vote:

conveyed to the State of Alaska, Department of Highways by Quitclaim Deed recorded August 28, 1968 in Book 16 at Page 269.

The Basis of Bearing for this description is a local plane bearing between NGS Station BET C and NGS Station BET B. NGS Station BET B bears S 25°43'20.9"W a distance of 2672.85 feet from NGS Station BET C. NGS Station BET B has Bethel coordinates of 6,266.8084 N, 7,694.8219 E. U.S. Survey Feet. Beginning at the northwest corner of the said portion of Lot 10 as described in said Statutory Warranty Deed, being the True Point of Beginning for this description; thence on the north line thereof S76°42'05"E 220.77 feet to the northeast corner of Lot 10; thence on the east line thereof S13°57'49"W 57.58 feet; thence departing said east line N76°02'11"W 15.00 feet; thence N13°57'49"E 42.40 feet; thence N76°42'05"W 205.77 feet to the west line of said Lot 10; thence on the west line thereof N13°58'57"E 15.00 feet to the True Point of Beginning. Said easement embraces an area of 3,949 square feet, more or less as calculated from said courses and distances.

Easement #2

Whereas, The easement consists of portion of Lot 49, U.S. Survey No. 4117, according to the official Bureau of Land Management survey plat thereof, officially filed March 31, 2004, located in the Bethel Recording District, Fourth Judicial District, State of Alaska.

The easement is more particularly described as follows:

Beginning at the southwest corner of said Lot 49, being the True Point of Beginning for this description; thence on the west line thereof N00°00'17"E 497.07 feet to an angle point on said west line; thence N09°45'57"E 74.93 feet to the northwest corner of said Lot 49; thence on the north line thereof S87°00'03"E 15.11 feet; thence departing said line S09°45'57"W 75.43 feet; thence S00°00'17" W 498.40 feet to a point on the south line of said Lot 49; thence said line N80°08'48"W 15.22 feet to the True Point of Beginning. Said easement embraces an area of 8,594 square feet, more or less as calculated from said courses and distances.

Easement #3

Whereas, The easement consists of a portion of Lot 2, U.S. SURVEY 4000, according to the official Bureau of Land Management Survey Plat thereof, officially filed December 22, 1989, being located in the Bethel Recording District, Fourth Judicial District, State of Alaska.

The easement is more particularly described as follows:

Introduced by: City Manager, Ann K. Capela
Date: May 10, 2016
Public Hearing: May 24, 2016
Action:
Vote:

Beginning at the northeast corner of said Lot 2, being the True Point of Beginning for this description; thence on the east line thereof S24°33'37"E 331.58 feet to the southeast corner of said Lot 2 also being a point on a non-tangent curve concave to the southeast having a radius of 770.20 feet whose center bears S04°15'42"W; thence on the southerly line thereof, southwesterly on said curve 17.02 feet through a central angle of 01°15'58"; thence departing said southerly line N24°33'37"W 308.53 feet; thence S65°23'55"W 449.19 feet; thence N65°19'03"W 19.79 feet to the northerly line of Lot 2; thence on said northerly line N65°23'55"E 477.11 feet to the True Point of Beginning. Said easement embraces an area of 11,747 square feet, more or less as calculated from said courses and distances.

NOW, THEREFORE BE IT ORDAINED, the City, hereby accepts and shall record the three public (3) utility easements from the Yukon Kuskokwim Health Corporation.

SECTION 1. Classification. This ordinance is of a general nature and shall not become a part of the Bethel Municipal Code.

SECTION 2. Authorization. Pursuant to Bethel Municipal Code 04.08.020 Acquisition of Real Property.

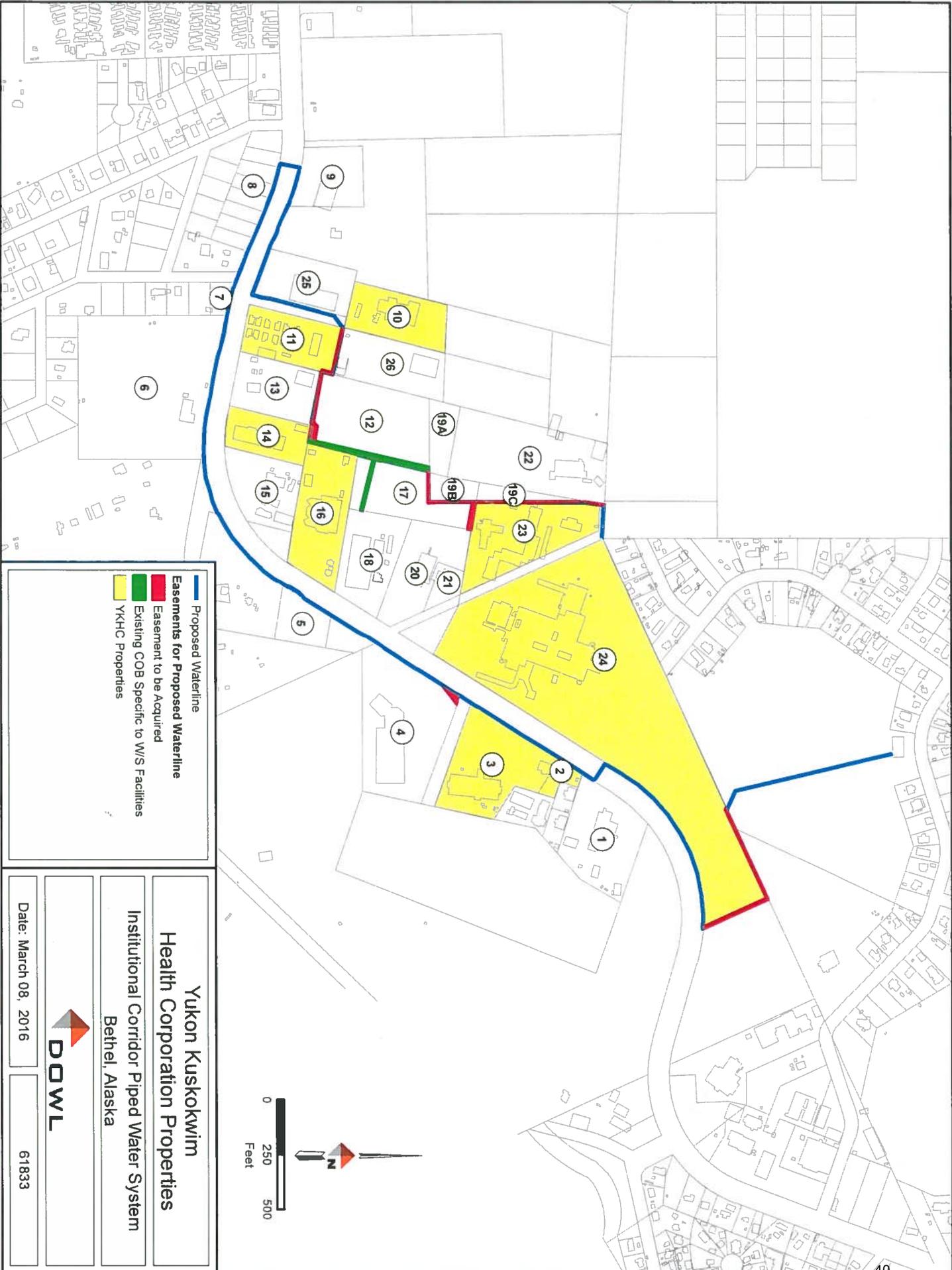
SECTION 3. Effective Date. This Ordinance shall become effective upon the passage by the Bethel City Council.

ENACTED THIS 24th DAY OF MAY 2016, BY A VOTE OF ___ IN FAVOR AND ___ OPPOSED.

Richard Robb, Mayor

ATTEST:

Lori Strickler, City Clerk



- Proposed Waterline
- Easements for Proposed Waterline
- Easement to be Acquired
- Existing COB Specific to W/S Facilities
- YKHC Properties

**Yukon Kuskokwim
Health Corporation Properties**

Institutional Corridor Piped Water System
Bethel, Alaska



Date: March 08, 2016 61833

PUBLIC UTILITY EASEMENT

This Grant of Easement is made this 21st day of April, 2016, by and between **YUKON-KUSKOKWIM HEALTH CORPORATION**, hereinafter called **Grantor**, whose address is P.O. Box 528, Bethel, Alaska 99559, and the **CITY OF BETHEL**, a municipal corporation of the State of Alaska, its successors and assigns, hereinafter called "City" **Grantee**, whose address is P.O. Box 1388, Bethel, Alaska 99559.

The Grantor does hereby grant these easements and rights-of-way in perpetuity, with the right, privilege and authority to the City, its successors and assigns, to construct, install, operate, replace, relocate, maintain and repair above and below ground water lines, sewer lines, waste heat lines, collection and distribution structures, protective structures, and fire hydrants, hereinafter collectively called "Utilities" for the purpose of supplying water and collecting sewage through, across, over and under the following described real property, to wit:

A portion of Lot 10, U.S. SURVEY 4117, according to the official Bureau of Land Management, May 9, 1966, located in the Bethel Recording District, Fourth Judicial District, State of Alaska, said portion being more particularly described as follows:

Beginning at Corner 1 of U.S. Survey 4117, which is coincident with Corner 2 of U.S. Survey 4000, thence N. 87°09'W, 6.63 chains, thence S.13°59'W.20.43 chains to the true point of beginning, thence S.13°59'W.7.49 chains to Corner 2, which is a point in the center of the Right-of-Way for the Bethel Airport Road and is the Southeast Corner of Lot 10 of U.S. Survey 4117, thence N.76°53'W.3.34 chains to Corner 3, thence N.13°59'E. 7.49 chains to Corner 4, thence S.76°53'E. 3.34 chains to the true point of beginning; EXCEPTING THEREFROM that portion conveyed to the State of Alaska, Department of Highways by Quitclaim Deed recorded August 28, 1968 in Book 16 at Page 269.

Said easement is depicted on the Parcel Map attached hereto as Page 5 and more particularly described as follows:

The Basis of Bearing for this description is a local plane bearing between NGS Station BET C and NGS Station BET B. NGS Station BET B bears S 25°43'20.9"W a distance of 2672.85 feet from NGS Station BET C. NGS Station BET B has Bethel coordinates of 6,266.8084 N, 7,694.8219 E. U.S. Survey Feet. Beginning at the northwest corner of the said portion of Lot 10 as described in said Statutory Warranty Deed, being the True Point of Beginning for this description; thence on the north line thereof S76°42'05"E 220.77 feet to the northeast corner of Lot 10; thence on the east line thereof S13°57'49"W 57.58 feet; thence departing said east line N76°02'11"W 15.00 feet; thence N13°57'49"E 42.40 feet; thence N76°42'05"W 205.77 feet to the west line of said Lot 10; thence on the west line thereof N13°58'57"E 15.00 feet to the True Point of Beginning. Said easement embraces an area of 3,949 square feet, more or less as calculated from said courses and distances.

Only such rights in the land described shall be acquired as shall be necessary for the construction, reconstruction, alteration, operation, replacement, relocation, maintenance and repair of Utility Lines and appurtenances, reserving unto the Grantor the right to use said property in any way, and for any purpose consistent with the rights hereby acquired, provided that the City shall have the right without prior initiation of any suit or proceeding at law, at such times as may be necessary, to enter upon said property for the purpose herein described without incurring any legal obligation or liability therefore; and provided that no building or buildings or other permanent structures shall be constructed or permitted to remain within the boundary of said easement without written permission of the City, its successors or assigns.

Grantor agrees to hold City harmless and to indemnify and defend City, its employees, agents, officials, and any other representatives, from and against all claims, demands, suits and costs arising, in whole or in part, from any damages or other claims resulting from Grantor's activities or activities by any person on said property in or on any structures on the easement. Grantor agrees not to interfere with the lateral support for the area covered by the easement, and will not excavate or place fill in the areas covered by the easement.

Grantor grants City free ingress and egress to the easement across Grantor's property. Grantor grants City free use of Grantor's property for construction of the Utilities for only that time period necessary for construction, reconstruction, alteration, operation, replacement, relocation, maintenance and repair.

The grant and obligations in this Grant of Easement shall be covenants running with the land and shall be binding on the Grantor, its successors and assigns forever.

Dated this 21st day of April, 2016.

YUKON-KUSKOKWIM HEALTH CORPORATION

By: *Esai Twitchell Jr.*
Esai Twitchell Jr., Chairman
YKHC Executive Board of Directors

By: *[Signature]*
Daniel Winkelman, President and CEO
Yukon Kuskokwim Health Corporation

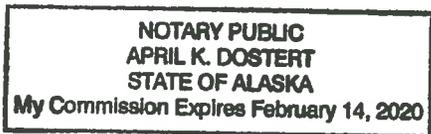
ACKNOWLEDGMENT OF GRANTOR-CORPORATION

STATE OF ALASKA)
) ss:
Fourth Judicial District)

On this 21st day of April, 2016 before me, the undersigned, a Notary Public in and for the State of Alaska, personally appeared **Esai Twitchell, Jr.**, Chairman of Yukon-Kuskokwim Health Corporation Executive Board of Directors, the Grantor, known to me to be the identical person who executed the foregoing instrument and who acknowledged to me that he executed the same as the free and voluntary act of said corporation, with full knowledge of its contents, for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year above written.

[NOTARY SEAL]



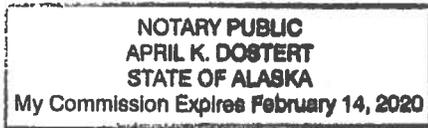
April K. Dostert
Notary Public in and for the State of Alaska
My Commission Expires: 2/14/2020

STATE OF ALASKA)
) ss:
Fourth Judicial District)

On this 21st day of April, 2016 before me, the undersigned, a Notary Public in and for the State of Alaska, personally appeared **Daniel J. Winkelman**, President and CEO of Yukon-Kuskokwim Health Corporation, the Grantor, known to me to be the identical person who executed the foregoing instrument and who acknowledged to me that he executed the same as the free and voluntary act of said corporation, with full knowledge of its contents, for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year above written.

[NOTARY SEAL]



April K. Dostert
Notary Public in and for the State of Alaska
My Commission Expires: 2/14/2020

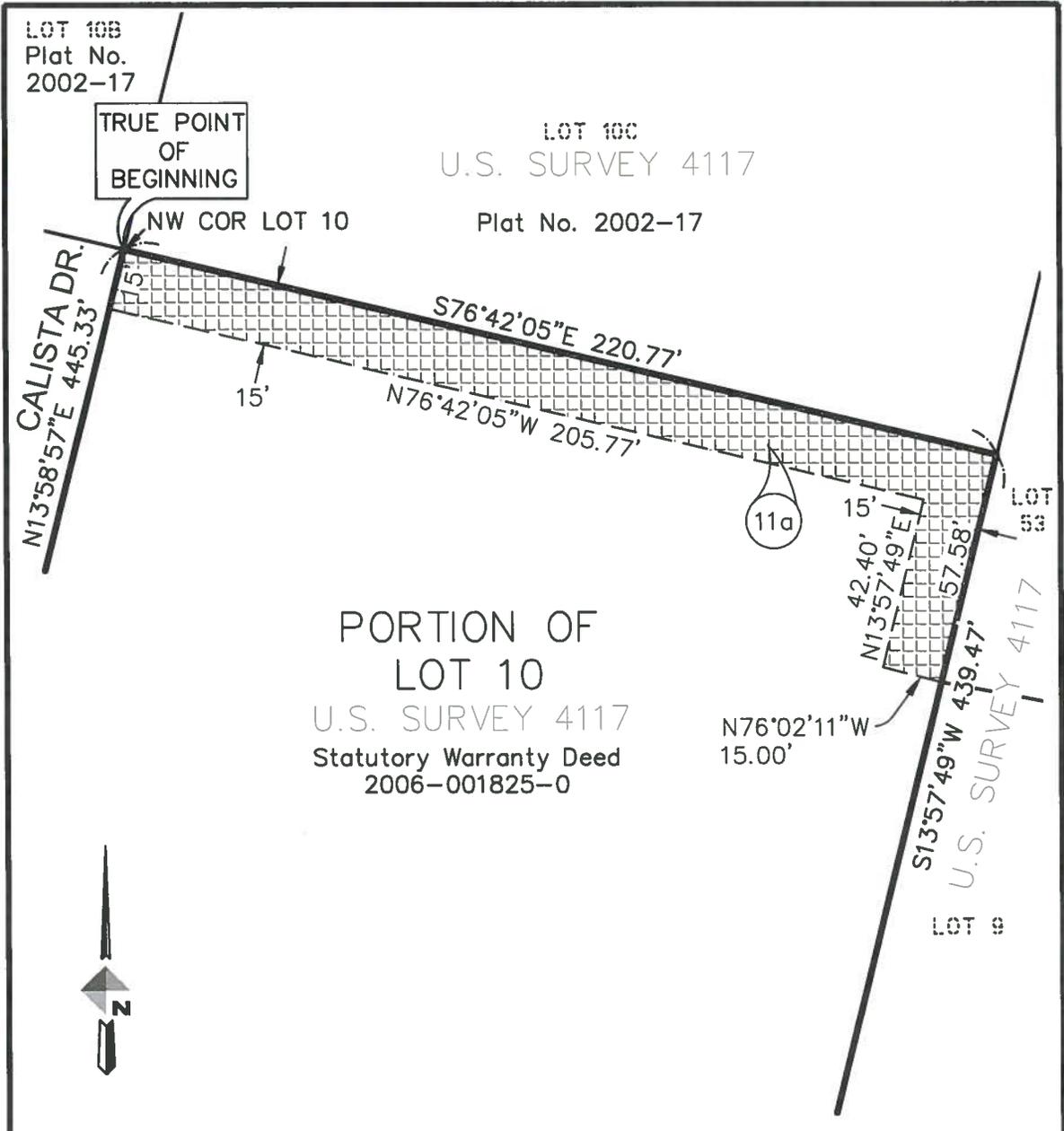
CERTIFICATE OF ACCEPTANCE

THIS IS TO CERTIFY that the City of Bethel, Grantee herein, pursuant to Ordinance 16-___, hereby accepts for public purposes the easement(s) described in this instrument and consents to the recordation thereof:

IN WITNESS WHEREOF, I have hereunto set my hand this _____ day of _____, 2016.

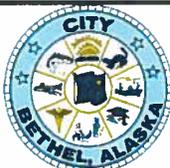
By: _____
Richard Robb, Mayor

After Recording Return to:
City of Bethel
P.O. Box 1388
Bethel, AK 99559



PUBLIC UTILITY EASEMENT (PUE)

EXHIBIT A

CITY OF BETHEL PUBLIC WORKS DEPARTMENT		INSTITUTIONAL CORRIDOR PIPED WATER DELIVERY SYSTEM	
	OWNER'S INITIALS: _____	EXISTING PARCEL AREA: ± 97,839 S.F.	ROW ACQUISITION TYPE: PUE
	PAGE 6 OF 6 DATED _____	SCALE: 1"=40'	DATE: DEC 2015 PARCEL No. 11a

PUBLIC UTILITY EASEMENT

This Grant of Easement is made this 21st day of April, 2016, by and between **YUKON-KUSKOKWIM HEALTH CORPORATION**, hereinafter called **Grantor**, whose address is P.O. Box 528, Bethel, Alaska 99559, and the **CITY OF BETHEL**, a municipal corporation of the State of Alaska, its successors and assigns, hereinafter called "City" **Grantee**, whose address is P.O. Box 1388, Bethel, Alaska 99559.

The Grantor does hereby grant these easements and rights-of-way in perpetuity, with the right, privilege and authority to the City, its successors and assigns, to construct, install, operate, replace, relocate, maintain and repair above and below ground water lines, sewer lines, waste heat lines, collection and distribution structures, protective structures, and fire hydrants, hereinafter collectively called "Utilities" for the purpose of supplying water and collecting sewage through, across, over and under the following described real property, to wit:

Lot 49, U.S. Survey No. 4117, according to the official Bureau of Land Management survey plat thereof, officially filed March 31, 2004, located in the Bethel Recording District, Fourth Judicial District, State of Alaska.

Said easement is depicted on the Parcel Map attached hereto as Page 5 and more particularly described as follows:

Beginning at the southwest corner of said Lot 49, being the True Point of Beginning for this description; thence on the west line thereof N00°00'17"E 497.07 feet to an angle point on said west line; thence N09°45'57"E 74.93 feet to the northwest corner of said Lot 49; thence on the north line thereof S87°00'03"E 15.11 feet; thence departing said line S09°45'57"W 75.43 feet; thence S00°00'17"W 498.40 feet to a point on the south line of said Lot 49; thence said line N80°08'48"W 15.22 feet to the True Point of Beginning. Said easement embraces an area of 8,594 square feet, more or less as calculated from said courses and distances.

Only such rights in the land described shall be acquired as shall be necessary for the construction, reconstruction, alteration, operation, replacement, relocation, maintenance and repair of Utility Lines and appurtenances, reserving unto the Grantor the right to use said property in any way, and for any purpose consistent with the rights hereby acquired, provided that the City shall have the right without prior initiation of any suit or proceeding at law, at such times as may be necessary, to enter upon said property for the purpose herein described without incurring any legal obligation or liability therefore; and provided that no building or buildings or other permanent structures shall be constructed or permitted to remain within the boundary of said easement without written permission of the City, its successors or assigns.

Grantor agrees to hold City harmless and to indemnify and defend City, its employees, agents, officials, and any other representatives, from and against all claims, demands, suits and costs arising, in whole or in part, from any damages or other claims resulting from Grantor's activities or activities by any person on said property in or on any structures on the easement. Grantor agrees not to interfere with the lateral support for the area covered by the easement, and will not excavate or place fill in the areas covered by the easement.

Grantor grants City free ingress and egress to the easement across Grantor's property. Grantor grants City free use of Grantor's property for construction of the Utilities for only that time period necessary for construction, reconstruction, alteration, operation, replacement, relocation, maintenance and repair.

The grant and obligations in this Grant of Easement shall be covenants running with the land and shall be binding on the Grantor, its successors and assigns forever.

Dated this 21st day of April, 2016.

YUKON-KUSKOKWIM HEALTH CORPORATION

By: 
Esai Twitchell Jr., Chairman
YKHC Executive Board of Directors

By: 
Daniel Winkelman, President and CEO
Yukon Kuskokwim Health Corporation

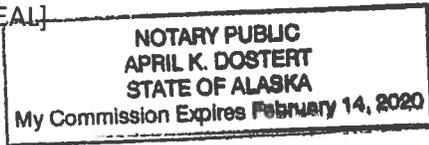
ACKNOWLEDGMENT OF GRANTOR-CORPORATION

STATE OF ALASKA)
) ss:
Fourth Judicial District)

On this 21st day of April, 2016 before me, the undersigned, a Notary Public in and for the State of Alaska, personally appeared **Esai Twitchell, Jr.**, Chairman of Yukon-Kuskokwim Health Corporation Executive Board of Directors, the Grantor, known to me to be the identical person who executed the foregoing instrument and who acknowledged to me that he executed the same as the free and voluntary act of said corporation, with full knowledge of its contents, for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year above written.

[NOTARY SEAL]



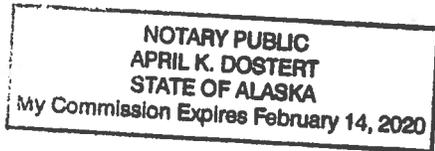
April K. Dostert
Notary Public in and for the State of Alaska
My Commission Expires: 2/14/2020

STATE OF ALASKA)
) ss:
Fourth Judicial District)

On this 21st day of April, 2016 before me, the undersigned, a Notary Public in and for the State of Alaska, personally appeared **Daniel J. Winkelman**, President and CEO of Yukon-Kuskokwim Health Corporation, the Grantor, known to me to be the identical person who executed the foregoing instrument and who acknowledged to me that he executed the same as the free and voluntary act of said corporation, with full knowledge of its contents, for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year above written.

[NOTARY SEAL]



April K. Dostert
Notary Public in and for the State of Alaska
My Commission Expires: 2/14/2020

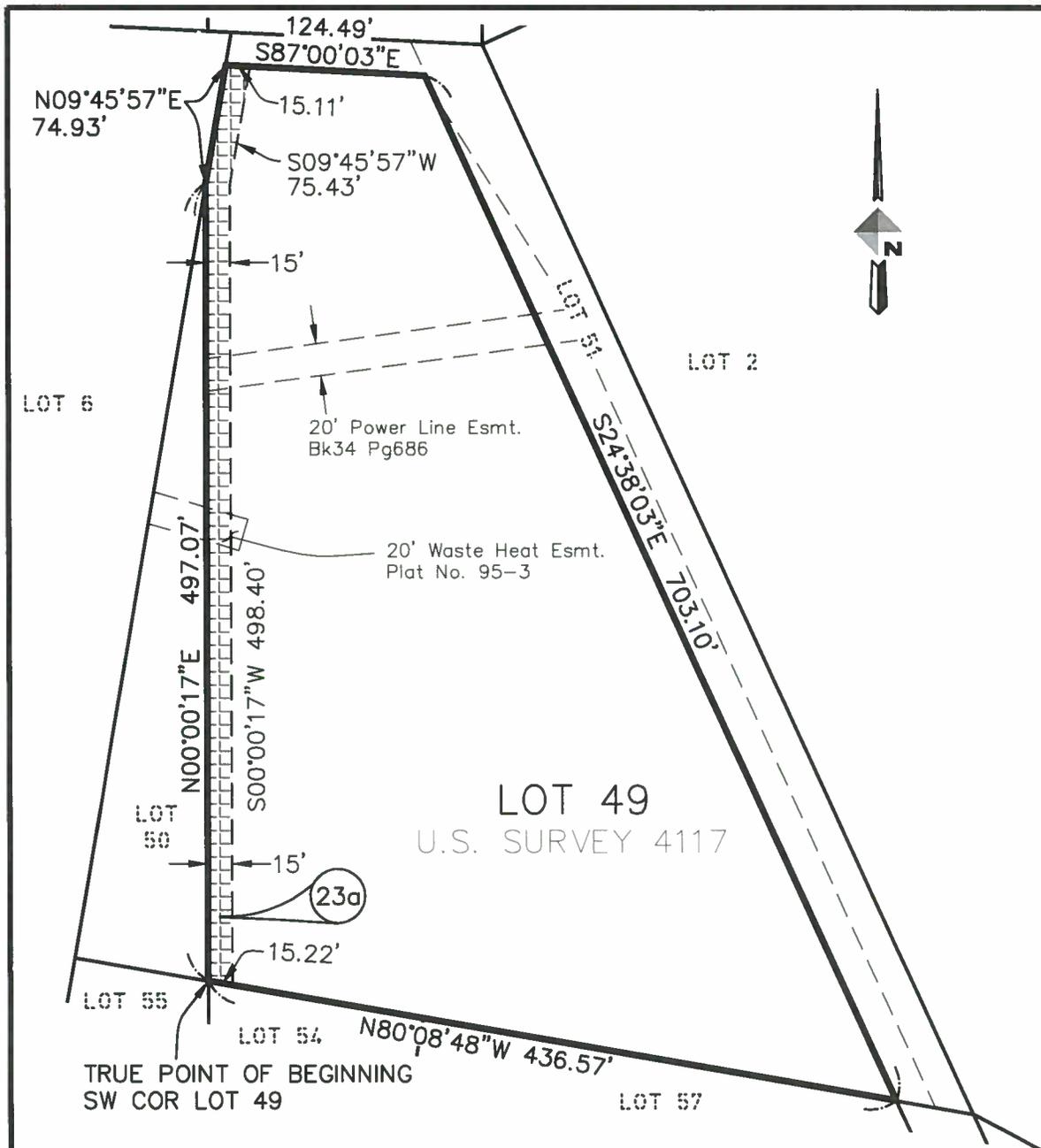
CERTIFICATE OF ACCEPTANCE

THIS IS TO CERTIFY that the City of Bethel, Grantee herein, pursuant to Ordinance 16-___, hereby accepts for public purposes the easement(s) described in this instrument and consents to the recordation thereof:

IN WITNESS WHEREOF, I have hereunto set my hand this _____ day of _____, 2016.

By: _____
Richard Robb, Mayor

After Recording Return to:
City of Bethel
P.O. Box 1388
Bethel, AK 99559



PUBLIC UTILITY EASEMENT (PUE)

EXHIBIT A

CITY OF BETHEL PUBLIC WORKS DEPARTMENT		INSTITUTIONAL CORRIDOR PIPED WATER DELIVERY SYSTEM	
	OWNER'S INITIALS: _____	EXISTING PARCEL AREA: ±165,189 S.F.	ROW ACQUISITION TYPE: PUE
	PAGE <u>5</u> OF <u>5</u> DATED _____		ROW ACQUISITION AREA: ± 8,594 S.F.
		SCALE: 1"=100'	DATE: FEB 2016 PARCEL No. 23a

PUBLIC UTILITY EASEMENT

This Grant of Easement is made this 21st day of April, 2016, by and between **YUKON-KUSKOKWIM HEALTH CORPORATION**, hereinafter called **Grantor**, whose address is P.O. Box 528, Bethel, Alaska 99559, and the **CITY OF BETHEL**, a municipal corporation of the State of Alaska, its successors and assigns, hereinafter called "City" **Grantee**, whose address is P.O. Box 1388, Bethel, Alaska 99559.

The Grantor does hereby grant these easements and rights-of-way in perpetuity, with the right, privilege and authority to the City, its successors and assigns, to construct, install, operate, replace, relocate, maintain and repair above and below ground water lines, sewer lines, waste heat lines, collection and distribution structures, protective structures, and fire hydrants, hereinafter collectively called "Utilities" for the purpose of supplying water and collecting sewage through, across, over and under the following described real property, to wit:

Lot 2, U.S. SURVEY 4000, according to the official Bureau of Land Management Survey Plat thereof, officially filed December 22, 1989, being located in the Bethel Recording District, Fourth Judicial District, State of Alaska.

Said easement is depicted on the Parcel Map attached hereto as Page 5 and more particularly described as follows:

Beginning at the northeast corner of said Lot 2, being the True Point of Beginning for this description; thence on the east line thereof S24°33'37"E 331.58 feet to the southeast corner of said Lot 2 also being a point on a non-tangent curve concave to the southeast having a radius of 770.20 feet whose center bears S04°15'42"W; thence on the southerly line thereof, southwesterly on said curve 17.02 feet through a central angle of 01°15'58"; thence departing said southerly line N24°33'37"W 308.53 feet; thence S65°23'55"W 449.19 feet; thence N65°19'03"W 19.79 feet to the northerly line of Lot 2; thence on said northerly line N65°23'55"E 477.11 feet to the True Point of Beginning. Said easement embraces an area of 11,747 square feet, more or less as calculated from said courses and distances.

Only such rights in the land described shall be acquired as shall be necessary for the construction, reconstruction, alteration, operation, replacement, relocation, maintenance and repair of Utility Lines and appurtenances, reserving unto the Grantor the right to use said property in any way, and for any purpose consistent with the rights hereby acquired, provided that the City shall have the right without prior initiation of any suit or proceeding at law, at such times as may be necessary, to enter upon said property for the purpose herein described without incurring any legal obligation or liability therefore; and provided that no building or buildings or other permanent structures shall be constructed or permitted to remain within the boundary of said easement without written permission of the City, its successors or assigns.

Grantor agrees to hold City harmless and to indemnify and defend City, its employees, agents, officials, and any other representatives, from and against all claims, demands, suits and costs arising, in whole or in part, from any damages or other claims resulting from Grantor's activities or activities by any person on said property in or on any structures on the easement. Grantor agrees not to interfere with the lateral support for the area covered by the easement, and will not excavate or place fill in the areas covered by the easement.

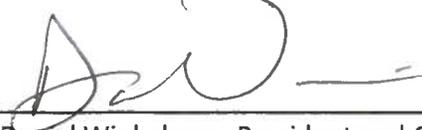
Grantor grants City free ingress and egress to the easement across Grantor's property. Grantor grants City free use of Grantor's property for construction of the Utilities for only that time period necessary for construction, reconstruction, alteration, operation, replacement, relocation, maintenance and repair.

The grant and obligations in this Grant of Easement shall be covenants running with the land and shall be binding on the Grantor, its successors and assigns forever.

Dated this April^{21st} day of April, 2016.

YUKON-KUSKOKWIM HEALTH CORPORATION

By: 
Esai Twitchell Jr., Chairman
YKHC Executive Board of Directors

By: 
Daniel Winkelman, President and CEO
Yukon Kuskokwim Health Corporation

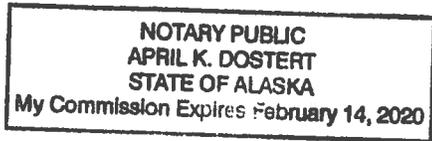
ACKNOWLEDGMENT OF GRANTOR-CORPORATION

STATE OF ALASKA)
) ss:
Fourth Judicial District)

On this 21st day of April, 2016 before me, the undersigned, a Notary Public in and for the State of Alaska, personally appeared **Esai Twitchell, Jr.**, Chairman of Yukon-Kuskokwim Health Corporation Executive Board of Directors, the Grantor, known to me to be the identical person who executed the foregoing instrument and who acknowledged to me that he executed the same as the free and voluntary act of said corporation, with full knowledge of its contents, for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year above written.

[NOTARY SEAL]



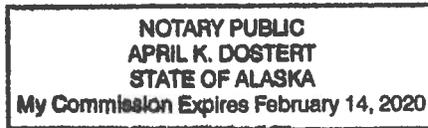
April K. Dostert
Notary Public in and for the State of Alaska
My Commission Expires: 2/14/2020

STATE OF ALASKA)
) ss:
Fourth Judicial District)

On this 21st day of April, 2016 before me, the undersigned, a Notary Public in and for the State of Alaska, personally appeared **Daniel J. Winkelman**, President and CEO of Yukon-Kuskokwim Health Corporation, the Grantor, known to me to be the identical person who executed the foregoing instrument and who acknowledged to me that he executed the same as the free and voluntary act of said corporation, with full knowledge of its contents, for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year above written.

[NOTARY SEAL]



April K. Dostert
Notary Public in and for the State of Alaska
My Commission Expires: 2/14/2020

CERTIFICATE OF ACCEPTANCE

THIS IS TO CERTIFY that the City of Bethel, Grantee herein, pursuant to Ordinance 16-___, hereby accepts for public purposes the easement(s) described in this instrument and consents to the recordation thereof:

IN WITNESS WHEREOF, I have hereunto set my hand this _____ day of _____, 2016.

By: _____
Richard Robb, Mayor

After Recording Return to:
City of Bethel
P.O. Box 1388
Bethel, AK 99559

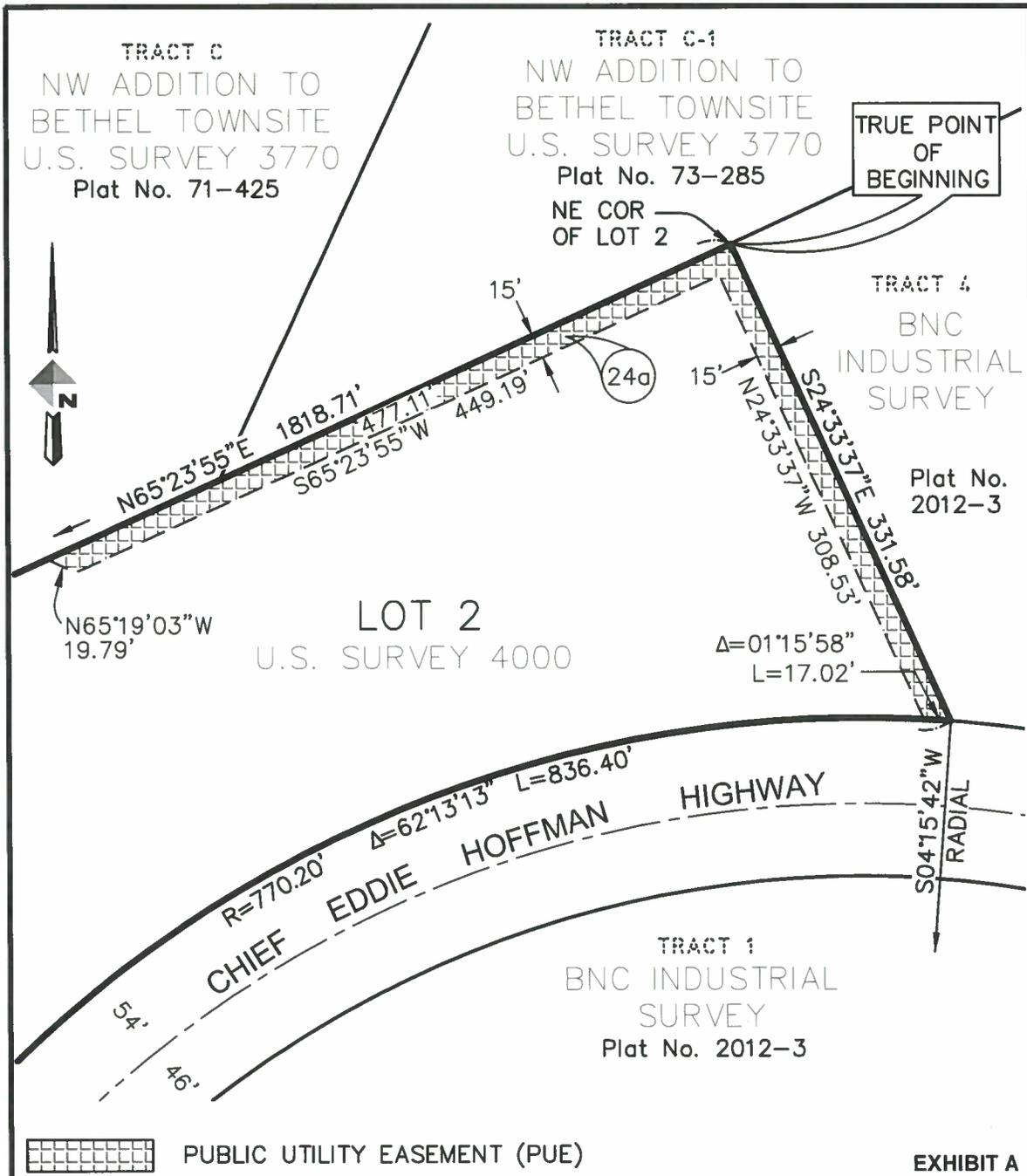


EXHIBIT A

CITY OF BETHEL PUBLIC WORKS DEPARTMENT		INSTITUTIONAL CORRIDOR PIPED WATER DELIVERY SYSTEM	
	OWNER'S INITIALS: _____	EXISTING PARCEL AREA: ±908,747 S.F.	ROW ACQUISITION TYPE: PUE
	PAGE 5 OF 5 DATED _____	SCALE: 1"=100'	DATE: DEC 2015 PARCEL No. 24a

Action:
 Vote:

CITY OF BETHEL, ALASKA

ORDINANCE # 15-14 (h)

An Ordinance of the Bethel City Council Amending the Adopted Annual FY 2016 Budget

Be it Enacted by the Bethel City Council that the FY 2016 Annual Budget be amended as follows:

Section 1. That the following sums of money as may be needed or deemed necessary to provide for increased expenses and liabilities of the City of Bethel are hereby appropriated for the corporate purposes and objects of the City hereinafter specified for Fiscal Year 2016, July 1, 2015 to June 30, 2016.

Fleet Replacement Fund (58)

Budget Modification

Changes to Fleet Replacement

	Increases	
58-50-698	Port Vehicles	25,225
	Total Increases	25,225
	Decreases	
	Total Decreases	0
TOTAL	Net Change to Port	25,225

	TOTAL CHANGE TO Fleet Replacement REVENUES	
58-43-411	Insurance Proceeds	25,225
	Total Increases	25,225
	Total Decreases	-
	Cumulative Change Fleet Replacement	25,225

	TOTAL CHANGE TO Fleet Replacement	
	Change to Fleet Replacement Fund Revenues	25,225
	Change to Fleet Replacement Fund Appropriations	25,225
	Cumulative Increase/Decrease to Fleet Replacement Fund Balance	0

Section 3. Effective Date. This ordinance becomes effective immediately upon adoption.

PASSED AND APPROVED THIS _____ BY A VOTE OF _____ IN FAVOR AND _____ OPPOSED.

ATTEST:

 Richard Robb, Mayor

 Lori Strickler, City Clerk

Action:
 Vote:

CITY OF BETHEL, ALASKA
ORDINANCE # 15-14 (i)

An Ordinance of the Bethel City Council Amending the Adopted Annual FY 2016 Budget

Be it Enacted by the Bethel City Council that the FY 2016 Annual Budget be amended as follows:

Section 1. That the following sums of money as may be needed or deemed necessary to provide for increased expenses and liabilities of the City of Bethel are hereby appropriated for the corporate purposes and objects of the City hereinafter specified for Fiscal Year 2016, July 1, 2015 to June 30, 2016.

-

Budget Modification

Changes to General Fund

Increases		
10-53-649	OTHER PROFESSIONAL SERVICES - FINANCE	65,359
	Total Increases	65,359
Decreases		
10-53-501	SALARIES - FINANCE	(50,000)
10-53-518	PERS - FINANCE	(11,000)
10-53-519	UTILTIY BENEFIT - FINANCE	(4,359)
10-53-511	MEDICARE FICA	(725)
	Total Decreases	(65,359)
TOTAL	Net Change to General Fund Expenditures	(0)

	TOTAL CHANGE TO GENERAL FUND APPROPRIATIONS	
	Total Increases	65,359
	Total Decreases	(65,359)
	Cumulative Change to General Fund	(0)

	TOTAL CHANGE TO GENERAL FUND REVENUES	
	Total Increases	
	Total Decreases	
	Cumulative Change to General Fund REVENUES	0

	TOTAL CHANGE TO GF FUND BALANCE	
	Change to General Fund Revenues	0
	Change to General Fund Appropriations	(0)
	Current Portion	0
	Cumulative Increase/Decrease to GF Fund Balance	0

Section 3. Effective Date. This ordinance becomes effective immediately upon adoption.

PASSED AND APPROVED THIS _____ BY A VOTE OF ____ IN FAVOR AND ____ OPPOSED.

ATTEST:

 Richard Robb, Mayor

City of Bethel Action Memorandum

Action memorandum No.	16-34		
Date action introduced:	May 10, 2016	Introduced by:	City Manager Capela
Date action taken:		Approved	Denied
Confirmed by:			

Approve the Internal Social Media Policy for the City of Bethel.

Route to:	Department/Individual:	Initials:	Remarks:
	City Clerk	LS	

Attachment(s): Internal Social Media Policy

Amount of fiscal impact:		Account information:
None	No fiscal impact	
	Funds are budgeted for.	
	Funds are not budgeted. Budget modification is required.	

The attached Social Media Policy will be the first step in implementing a social media presence for the City departments. The Policy outlines how social media sites will be created and administered within the City. Once the Social Media Policy is approved by the City Council, the Social Media Administrative Committee will be established through the City Manager's appointment. This group will work on creating procedures to correspond with the policy as well as individual social media site standards policies.

The attached policy only applies to internal administration of the social media sites. A separate policy will be created which will apply to the public users of the social media sites which will outline reasons for posts to be hidden, to be removed or for users to be banned from use of the sites.

The attached Policy was provided to each of the Department Heads, the Human Resources Manager as well as the City Attorney for review and suggested modifications. All of the suggestions from the directors have been applied to the policy.

Effective Date:

SOCIAL MEDIA INTERNAL POLICY

POL-XX

See Also: PRO-

Approved by:

I. Purpose

The purpose of this policy is to address the fast-changing landscape of the Internet and the way residents and businesses communicate and obtain information about the City of Bethel online.

The City has an overriding interest and expectation in deciding what is "announced" or "spoken" on behalf of the City on social media sites. This policy establishes internal procedures for the use of social media.

II. General

What is "social media"? "Social media" and "Web 2.0" are terms used interchangeably to refer to activities that integrate technology, social interaction and content creation. This media allows people to generate, organize, share, edit and comment on web content by means of Rich Site Summary (RSS) and other web feeds, blogs, mashups, widgets, wikis, podcasts and photo- and video-sharing, to name a few.

1. All city social media sites maintained by departments must have prior approval by the City Manager after a recommendation is made by the Social Media Administrative Committee (Committee).
2. The City's website (<http://www.cityofbethel.org>) will remain the City's primary and predominant Internet presence.
3. The most appropriate City uses of social media tools fall into two categories:
 - i. Channels for disseminating time-sensitive information as quickly as possible (e.g.: emergency information).
 - ii. Marketing/promotional channels which increase the City's ability to broadcast its message to the widest possible audience.
 - a. Wherever possible, content posted to city social media sites will also be available on the City's website.

Effective Date:

SOCIAL MEDIA INTERNAL POLICY

POL-XX

See Also: PRO-

Approved by:

- b. Wherever possible, content posted to city social media sites should contain links directing users back to the City's official website for in-depth information, forms, documents or online services necessary to conduct business with the City.
4. As is the case for the City's website, department directors or their designee will be responsible for the content and upkeep (including maintenance and monitoring) of any social media sites their department may create.
5. All city social media sites shall comply with all appropriate city policies and standards and shall mirror the City's look and feel or "branding standards."
 - a. Individuals should be honest, straightforward and respectful while being mindful of the need to maintain confidentiality and privacy when appropriate. Administrative site users should be sure that efforts to be honest don't result in sharing non-public information.
 - b. If mistakes are made on the site, the poster/author should correct it as soon as they are aware of the error. Corrections should be upfront and as timely as possible. If the individual is correcting a blog entry, the author may choose to modify an earlier post, but make it clear the posting has been corrected.
 - c. All correspondence related to a City's Social Media site/page from the administrator must be done through the respective Social Media page. Liking other sites or responding through a third party site is not permitted.
 - d. Employees who are contacted by the media through Social Media should direct the media representative to the appropriate City personnel.
 - e. Content or comments posted to a Social Media site by a City employee shall be fact based and City of Bethel business related. No personal opinions may be expressed on behalf of the City by any employee on any Social Media site whether City or personal.
6. City endorsed social media sites are subject to the Alaska Public Records Act.
 - a. Any content maintained in a social media format that is related to City business, including a list of subscribers and posted communication (with certain exceptions), is a public record.

Effective Date:

SOCIAL MEDIA INTERNAL POLICY

POL-XX

See Also: PRO-

Approved by:

b. The department maintaining the site is responsible for responding completely and accurately to any public records request made on, through or for social media.

c. Content related to City business shall be maintained in an accessible format and so that it can be produced in response to a request.

d. Wherever possible, such sites shall clearly indicate that any articles and any other content posted or submitted for posting are subject to public disclosure.

e. Public users shall be notified that public disclosure requests must be directed to the assigned departmental employee.

7. Alaska Law and the City's records retention schedules apply to social media formats and social media content. Unless otherwise addressed in a specific social media standards document, the department maintaining a site shall preserve records required to be maintained pursuant to relevant records retention schedules for the required retention period on a City server in a format that preserves the integrity of the original record and is easily accessible.

8. Public users and visitors to social media sites shall be notified that the intended purpose of the site is to serve as a mechanism for communication between the City and members of the public. The City's social media site articles, posts and comments containing any of the following forms of content shall not be allowed and shall be removed as soon as possible:

a. Comments not related to the particular post being commented;

b. Comments in support of or opposition to political campaigns or ballot measures;

c. Profane language or content;

d. Content that promotes, fosters, or perpetuates discrimination on the basis of race, creed, color, age, religion, gender, gender identity, marital status, status with regard to public assistance, national origin, physical or mental disability, sex, sexual orientation, political affiliation, status as a veteran or any other status protected status;

Effective Date:

SOCIAL MEDIA INTERNAL POLICY

POL-XX

See Also: PRO-

Approved by:

- e. Sexual content or links to sexual content;
- f. Solicitations of commerce;
- g. Conduct or encouragement of illegal activity;
- h. Information that may compromise the safety or security of the public or public systems; or
- i. Content that violates a legal ownership interest of any other party.

9. The City reserves the right to restrict or remove any content that is deemed in violation of this social media policy or any applicable law.

10. Public users shall be informed that the City disclaims any and all responsibility and liability for any materials that are posted by visitors to the site and which others may find inappropriate for posting. Users shall also be informed the City reserves the right, without liability, to remove any material, link, posting or information which it deems inappropriate for the site.

11. These guidelines must be displayed to public users or made available by hyperlink. Any content removed based on these guidelines must be retained, including the time, date and identity of the poster when available (see the City's Twitter, Facebook and Video Posting standards), in accordance with the City's policy on the retention of such information.

12. The City will use the same social media tools as consistently as possible.

13. If, at any time the Committee feels a department's Social Media site is not being monitored in accordance with this policy and the City's standard, the Committee may make a recommendation to the City Manager to require the site be removed from public view or erased completely.

III. Administration of City of Bethel Social Media Sites.

1. The IT Department will maintain a list of all City of Bethel social media sites, including login and password information. Assigned department directors will inform IT of any changes to existing Social Media sites.

Effective Date:

SOCIAL MEDIA INTERNAL POLICY

POL-XX

See Also: PRO-

Approved by:

2. IT will ensure the City is able to immediately edit or remove content from social media sites.

IV. Policies and Guidelines Required.

For each social media tool approved for use by the City, the following documentation will be developed and adopted:

1. Operational and use guidelines;
2. Standards and processes for managing accounts on social media sites;
3. City and department branding standards;
4. Enterprise-wide design standards;
5. Standards for the administration of social media sites; and
6. Social Media Standards.

V. Use by Elected/Appointed Officials.

Members of the Bethel City Council, Committees and Commissions must not engage in an exchange or discussion of matters that reasonably may come before them for official action. The use of such an electronic means of posting one's comments and the inherent availability of other participants or contributors to act as liaisons would create an environment that could easily become a forum to discuss official issues which should more appropriately be conducted at a publicly noticed meeting in compliance with the Open Meetings Act. It is incumbent upon the City Council, and the committee and commission members to avoid any action that could be construed as an attempt to evade the requirements of the law.

City of Bethel Action Memorandum

Action memorandum No.			
Date action introduced:		Introduced by:	
Date action taken:		Approved	Denied
Confirmed by:			

Route to:	Department/Individual:	Initials:	Remarks:

Attachment(s):

Amount of fiscal impact:	Account information:
No fiscal impact	
Funds are budgeted for.	
Funds are not budgeted. Budget modification is required.	

**THE UNIVERSITY OF ALASKA FAIRBANKS
SCHOOL OF NATURAL RESOURCES & EXTENSION
AND CITY OF BETHEL 4-H AGREEMENT**

This agreement is made between the City of Bethel, hereinafter referred to as the “City” and the University of Alaska Fairbanks, School of Natural Resources and Extension, hereinafter referred to as “UAF”. This Memorandum of Agreement is effective July 1, 2016 through June 30, 2017 unless terminated by the City or UAF in accordance with the terms of the Agreement

Whereas, the University and the City have determined that it is in the public interest to provide and operate a 4-H program in Bethel;

The parties do mutually agree as follows:

Article I

The UAF shall:

- A. Manage and provide a UAF Cooperative Extension 4-H Program to accommodate and include:
 - 1. Access for youth;
 - 2. Trained personnel;
- B. Provide all personnel to manage the program.
- C. Provide 4-H programs to meet the needs of the community as possible with existing 4-H staff and volunteers.

The City shall:

- A. Grant the sum of One Hundred Twelve Thousand (\$112,000) Dollars to UAF for operation of the 4-H Program as UAF deems most appropriate;
- B. The above sum is to be paid by the City in two (2) equal payments of Fifty-Six Thousand (\$56,000) Dollars, one on or about August 15, 2016 and the other on or about January 15, 2017.

Article II

It is further mutually agreed that:

- A. This agreement pertains to programming only.
- B. Equipment, furnishings, and holdings shall remain the property of the respective owner/purchaser;
- C. All programming at the Teen Center will be exclusively conducted by UAF and their staff. The City of Bethel has no authority, control or oversight of any of the programs or activities at the Teen Center and takes no responsibility whatsoever for any of UAF’s activities or personnel.

- D. UAF shall indemnify, hold harmless, and defend the City from and against any claim of or liability for negligent acts, errors or omissions of UAF under this Agreement subject. UAF shall not be required to indemnify the City for a claim of, or liability for, the independent negligence of the City. If there is a claim of, or liability for, the joint negligent error or omission of UAF and the independent negligence of the city, the indemnification and hold harmless obligation shall be apportioned on a comparative fault basis. "City" and "UAF," as used within this article, include the employees, agents, representatives and contractors who are directly responsible, respectively, to each.
- E. To the extent that the UAF is required to indemnify the CITY, the obligation to indemnify is effective only to the extent permitted by law. The obligation to indemnify is further conditioned on the availability of a valid existing appropriation to cover the obligation. The parties to this agreement recognize and agree that the UAF has no current appropriation available to it to indemnify under the provisions of this agreement and that the enactment of an appropriation in the future to finance a payment under these provisions remains in the sole discretion of the legislature and the legislature's failure to make the appropriation creates no further obligation or liability of the UAF.
- F. This Agreement is subject to renegotiation and amendment annually upon a six (6) month written notice.

The signatories of this Agreement warrant that they have the authority and are authorized to sign this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective July 1, 2016.

City of Bethel

University of Alaska Fairbanks

Ann K. Capela
City Manager


Rosemary Madnick
Executive Director,
UAF Office of Grants and Contracts

Digitally signed by Rosemary Madnick
DN: cn=Rosemary Madnick, o=University of
Alaska Fairbanks, ou=Office of Grants and
Contracts Administration (OGCA),
email=rmadnick@alaska.edu, c=US
Date: 2016.05.02 16:46:27 -08'00'
Adobe Reader version: 11.0.15

Date: _____

Date: 05/02/16

Fred Schlutt
Vice Provost of Extension and Outreach

Date: _____

**THE UNIVERSITY OF ALASKA FAIRBANKS
SCHOOL OF NATURAL RESOURCES & EXTENSION
AND CITY OF BETHEL 4-H AGREEMENT**

This agreement is made between the City of Bethel, hereinafter referred to as the "City" and the University of Alaska Fairbanks, School of Natural Resources and Extension, hereinafter referred to as "UAF". This Memorandum of Agreement is effective July 1, 2015 through June 30, 2016 unless terminated by the City or UAF in accordance with the terms of the Agreement.

Whereas, the University and the City have determined that it is in the public interest to provide and operate a 4-H program in Bethel;

The parties do mutually agree as follows:

Article I

The UAF shall:

- A. Manage and provide a UAF Cooperative Extension 4-H Program to accommodate and include:
 1. Access for youth;
 2. Trained personnel;
- B. Provide all personnel to manage the program.
- C. Provide 4-H programs to meet the needs of the community as possible with existing 4-H staff and volunteers.

The City shall:

- A. Grant the sum of One Hundred Twelve Thousand (\$112,000) Dollars to UAF for operation of the 4-H Program as UAF deems most appropriate;
- B. The above sum is to be paid by the City in two (2) equal payments of Fifty-Six Thousand (\$56,000) Dollars, one on or about August 15, 2015 and the other on or about January 15, 2016.

Article II

It is further mutually agreed that:

- A. This agreement pertains to programming only.
- B. Equipment, furnishings, and holdings shall remain the property of the respective owner/purchaser
- C. All programming at the Teen Center will be exclusively conducted by UAF and their staff. The City of Bethel has no authority, control or oversight of any of the programs or activities at the Teen Center and takes no responsibility whatsoever for any of UAF's activities or personnel.
- D. UAF shall indemnify, hold harmless, and defend the City from and against any claim of or liability for negligent acts, errors or omissions of UAF under this Agreement subject.

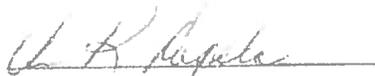
UAF shall not be required to indemnify the City for a claim of, or liability for, the independent negligence of the City. If there is a claim of, or liability for, the joint negligent error or omission of UAF and the independent negligence of the City, the indemnification and hold harmless obligation shall be apportioned on a comparative fault basis. "City" and "UAF," as used within this article, include the employees, agents, representatives and contractors who are directly responsible, respectively, to each.

- E. To the extent that the UAF is required to indemnify the CITY, the obligation to indemnify is effective only to the extent permitted by law. The obligation to indemnify is further conditioned on the availability of a valid existing appropriation to cover the obligation. The parties to this agreement recognize and agree that the UAF has no current appropriation available to it to indemnify under the provisions of this agreement and that the enactment of an appropriation in the future to finance a payment under these provisions remains in the sole discretion of the legislature and the legislature's failure to make the appropriation creates no further obligation or liability of the UAF.
- F. This Agreement is subject to renegotiation and amendment annually upon a six (6) month written notice.

The signatories of this Agreement warrant that they have the authority and are authorized to sign this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective July 1, 2015.

City of Bethel



Ann K. Capela
City Manager

Date: 12 01 15

University of Alaska Fairbanks



Digitally signed by Rosemary Madnick
DN: cn=Rosemary Madnick, o=University of Alaska
Fairbanks, ou=Office of Grants and Contracts
Administration, email=rmadnick@alaska.edu, c=US
Date: 2015.12.09 08:38:03 -0900
Adobe Reader version: 11.0.13

Rosemary Madnick
Executive Director,
UAF Office of Grants and Contracts

Date: 12/7/15

Fred Schlutt
Vice Provost of Extension and Outreach



Date: 12/8/15

New Business

Introduced by: City Manager Capela
Date: May 24, 2016
Action:
Vote:

CITY OF BETHEL, ALASKA

Resolution #16-19

A RESOLUTION BY THE BETHEL CITY COUNCIL AUTHORIZING AND PROVIDING FOR THE INCURRENCE OF INDEBTEDNESS (LOAN) FOR THE PURPOSES OF PROVIDING A PORTION OF THE COST OF ACQUIRING, CONSTRUCTION, ENLARGING, IMPROVING, AND/OR EXTENDING ITS WASTE WATER SEWER LAGOON FACILITY TO SERVE AN AREA LAWFULLY WITHIN ITS JURISDICTION TO SERVE.

WHEREAS, it is necessary for the City of Bethel to raise a portion of the cost of such undertaking by issuance of its promissory note in the principal amount (loan) of nine hundred thirteen thousand dollars (\$913,000);

WHEREAS, the City of Bethel (City) intends to obtain assistance from the United State Department of Agriculture (USDA), acting under the provisions of the Consolidated Farm and Rural Development Act) 7 U.S.C. 1921 et seq.) in the planning, financing, and supervision of such undertaking and the purchasing of promissory notes lawfully issued, in the event that no other acceptable purchaser for such promissory note is found by the City;

WHEREAS, requirements for this loan include:

1. To have prepared on its behalf and to adopt an ordinance or resolution for the promissory note containing such items and in such forms as are required by State statutes and as are agreeable and acceptable to USDA.
2. To refinance the unpaid balance, in whole or in part, of its promissory note upon the request of USDA if at any time it shall appear to USDA that the City is able to refinance its promissory note by obtaining a loan for such purposes from responsible cooperative or private sources at reasonable rates and terms for loans for similar purposes and periods of time as required by section 333(c) of said Consolidated Farm and Rural Development Act (7 U.S.C. 1983(c)).
3. To provide for, execute, and comply with Form RD 400-4, "Assurance Agreement," and Form RD 400-1, "Equal Opportunity Agreement," including an "Equal Opportunity Clause," which clause is to be incorporated in, or attached as a rider to, each construction contract and subcontract involving in excess of \$10,000. This would require the City to track and make available it's compliance with Title 6 of the Civil Rights Act of 1964.
4. To indemnify USDA for any payments made or losses suffered by USDA on behalf of the City. Such indemnification shall be payable from the same

Introduced by: City Manager Capela
Date: May 24, 2016
Action:
Vote:

source of funds pledged to pay the promissory note or any other legally permissible source.

5. That upon default in the payments of any principal and accrued interest on the promissory note or in the performance of any covenant or agreement contained herein or in the instruments incident to making or insuring the loan, USDA at its option may (a) declare the entire principal amount then outstanding and accrued interest immediately due and payable, (b) for the account of the City (payable from the source of funds pledged to pay the promissory note or any other legally permissible source), incur and pay reasonable expenses for repair, maintenance, and operation of the facility and such other reasonable expenses as may be necessary to cure the cause of default, and/or (c) take possession of the facility, repair, maintain, and operate or rent it. Default under the provisions of this resolution or any instrument incident to the making or insuring of the loan may be construed by USDA to constitute default under any other instrument held by USDA and executed or assumed by the City, and default under any such instrument may be construed by USDA to constitute default hereunder.

6. Not to sell, transfer, lease, or otherwise encumber the facility or any portion thereof, or interest therein, or permit others to do so, without the prior written consent of USDA.

7. Not to defease the promissory note, or to borrow money, enter into any contractor agreement, or otherwise incur any liabilities for any purpose in connection with the facility (exclusive of normal maintenance) without the prior written consent of USDA if such undertaking would involve the source of funds pledged to pay the promissory note.

8. To place the proceeds of the promissory note on deposit in an account and in a manner approved by the USDA. Funds may be deposited in institutions insured by the State or Federal Government or invested in readily marketable securities backed by the full faith and credit of the United States. Any income from these accounts will be considered as revenues of the system.

9. To comply with all applicable State and Federal laws and regulations and to continually operate and maintain the facility in good condition.

10. To provide for the receipt of adequate revenues to meet the requirements of debt service, operation and maintenance, and the establishment of adequate reserves. Revenue accumulated over and above that needed to pay operating and maintenance, debt service and reserves may only be retained or used to make prepayments on the loan. Revenue cannot be used to pay any expenses which are not directly incurred for the facility financed by USDA. No free service or use of the facility will be permitted.

Introduced by: City Manager Capela
Date: May 24, 2016
Action:
Vote:

11. To acquire and maintain such insurance and fidelity bond coverage as may be required by USDA.

12. To establish and maintain such books and records relating to the operation of the facility and its financial affairs and to provide for required audit thereof as required by USDA, to provide USDA a copy of each such audit without its request, and to forward to USDA such additional information and reports as it may from time to time require.

13. To provide USDA at all reasonable times access to all books and records relating to the facility and access to the property of the system so that USDA may ascertain that the Association is complying with the provisions hereof and of the instruments incident to the making or insuring of the loan.

14. That if USDA requires that a reserve account be established, disbursements from that account(s) may be used when necessary for payments due on the promissory note if sufficient funds are not otherwise available and prior approval of USDA is obtained. Also, with the prior written approval of USDA, funds may be withdrawn and used for such things as emergency maintenance, extensions to facilities and replacement of short lived assets.

15. To provide adequate service to all persons within the service area who can feasibly and legally be served and to obtain USDA's concurrence prior to refusing new or adequate services to such persons. Upon failure to provide services which are feasible and legal, such person shall have a direct right of action against the City or public body.

16. To comply with the measures identified in USDA's environmental impact analysis for this facility for the purpose of avoiding or reducing the adverse environmental impacts of the facility's construction or operation.

17. To accept a grant in an amount not to exceed \$1,669,358 under the terms offered by USDA, that the City Manager, and City Council are hereby authorized and empowered to take all action necessary or appropriate in the execution of all written instruments as may be required in regard to or as evidence of such grant; and to operate the facility under the terms offered in said grant agreement(s);

WHEREAS, the grant/loan project funding will be used for construction of a jetty at the existing sewage lagoon and the purchase of three wastewater haul trucks;

WHEREAS, the project estimated expenditures are:

Administration	\$10,000
Construction	\$2,443,962
Contingency	\$244,396

Introduced by: City Manager Capela
Date: May 24, 2016
Action:
Vote:

Engineering Fees	\$270,000
Equipment (three sewer haul trucks)	\$750,000
Interest-Interim	\$10,000
Legal Fees	\$10,000
Total	\$3,738,358

WHEREAS, the project funding sources are (in the order of required use):

City of Bethel Contribution	\$206,000
Indian Health Service (1 sewer truck)	\$250,000
State of Alaska Legislative Appropriation	\$700,000
USDA Loan	\$913,000
USDA Grant	\$1,669,358
Total	\$3,738,358

WHEREAS, the loan will be scheduled for repayment over a period of 40 years, equal to \$2,895 amortized monthly installments, the loan will be secured by a Revenue instrument (promissory note) with first lien position in the amount of \$913,000;

WHEREAS, all projects associated with the grant/loan program are required to be completed and all funds disbursed within five years of obligation unless a written waiver is approved for an extension;

WHEREAS, reserves must be properly budgeted to maintain the financial viability and sustainability of the operation to fund unanticipated emergency maintenance and repairs, and assist with debt service should the need arise, the debt service reserve must establish a fund equal to at least one annual loan installment that accumulates at the rate of 10% of one annual payment year for ten years or until the balance is equal to one annual loan payment, prior written concurrence from USDA must be obtained before funds may be withdrawn from this account during the life of the loan;

WHEREAS, in addition to the debt service reserve fund, the City must establish a short-lived assets reserve fund of \$365,650 annually for the life of the loan to pay for repairs, and/or replacement of majority system assets-current assets can be used to establish and maintain reserves to include but not limited to operation and maintenance, customer deposits, deferred interest during the construction period, and an asset management program;

WHEREAS, environmental requirements include but are not limited to- construction activities must be limited to waking hours to reduce noise impacts (10 hours);

Introduced by: City Manager Capela
Date: May 24, 2016
Action:
Vote:

contractor to prepare a Storm Water Pollution Prevention Plan; fugitive dust from construction activities must be reduced during construction by use of water or other dust control measures; emissions from vehicles and equipment must be maintained below applicable state and local emission control plans; movement of construction material and machinery must be scheduled for non-peak or non-critical times; in the event historical artifacts are discovered, all work must be stopped immediately and appropriate agencies contacted; Best Management Practices must be utilized during construction to minimize or avoid potential impacts to water quality or resources; all waste material generated during construction will be disposed of in the landfill or the waste will be backhauled to an approved facility; proper sedimentation and erosion control construction techniques will be used;

WHEREAS, the City is required to execute a legal services agreement with the City Attorney, if applicable, for any legal work needed in connection with this project which shall include a hourly rate for the work, with a "not to exceed" amount for the services, this agreement must be submitted to USDA prior to advertising for bids;

WHEREAS, property rights evidence must be submitted to USDA prior to the advertising of the bids;

WHEREAS, a sound business plan must be adopted and followed to include policies, procedures and/or ordinances outlining the conditions of service to include mandatory connection, effective collection for accounts not paid in full with specified number of days after the date of billing, this should include appropriate late fees, timeframes for disconnection of service and reconnection fees, these policies must be reviewed and approved by USDA prior to advertising for bids;

WHEREAS, the City must maintain the annual 3% increase for the sewer rates at least through the 2018 rate increase;

WHEREAS, the City will have to establish a Vulnerability Assessment/Emergency Response Plan and a certification of this VA/ERP must be provided before advertising for bids;

WHEREAS, the attorney must certify that the executed contract documents, including performance and payment, if required are adequate and that the person executing these documents have been properly authorized;

Introduced by: City Manager Capela
Date: May 24, 2016
Action:
Vote:

WHEREAS, unless exempted, the City must have a full-time inspection service that is required to attend the pre-construction conference, the resume of the resident inspector must be submitted to USDA for review and concurrence prior to the pre-construction conference;

WHEREAS, USDA will perform an inspection of the facility and the records management system every three years for the life of the loan;

WHEREAS, audit requirements to include quarterly reports to USDA, annual audit reports (end of each fiscal year), and annual budget and projected cash flow (thirty days prior to beginning of each fiscal year) are to be submitted;

NOW, THEREFORE, BE IT RESOLVED THAT the City of Bethel, City Council finds the provisions of all instruments incident to the making or the insuring of the loan, unless otherwise specifically provided by the terms of such instrument, shall be binding upon the City as long as the promissory note are held or insured by USDA or assignee. The provisions of section 6 through 17 hereof may be provided for in more specific detail in the promissory resolution; to the extent that the provisions contained in such resolution should be found to be inconsistent with the provisions hereof, these provisions shall be constructed as controlling between the City and USDA or assignee.

PASSED AND APPROVED THIS 24 DAY OF MAY 2016, BY A _ VOTE IN FAVOR AND A _ VOTE IN OPPOSITION.

Richard Robb, Mayor

ATTEST:

Lori Strickler, City Clerk

CITY OF BETHEL, ALASKA

Resolution #16-20

A RESOLUTION BY THE BETHEL CITY COUNCIL AUTHORIZING WATER AND WASTE SYSTEM GRANT AGREEMENT WITH THE UNITED STATES DEPARTMENT OF AGRICULTURE RURAL UTILITIES SERVICES FOR TWO WASTEWATER SEWER HAULT TRUCKS AND CONSTRUCTION OF A JETTY AT THE SEWAGE LAGOON

WHEREAS, the City of Bethel has determined to undertake a project of acquisition, construction, enlargement, or capital improvements of a waste system to serve the area under its jurisdiction at an estimated cost of \$3,738,358 and has authorized the undertaking of such project;

WHEREAS, the City is able to finance not more than \$2,069,000 of the development costs through revenues, charges, taxes or assessments, or funds otherwise available to the City resulting in a reasonable user charge and therefore commits \$2,069,000 for such project development costs;

WHEREAS, USDA agrees to grant the City a sum not to exceed \$1,669,358 or 44.65 percent of the project development costs, whichever is the lesser, subject to the terms and conditions established by USDA, provided however that the proportionate share of any grant funds actually advanced and not need for grant purposes shall be returned immediately to USDA;

WHEREAS, the grant/loan project funding will be used for construction of a jetty at the existing sewage lagoon and the purchase of three wastewater haul trucks;

WHEREAS, the project estimated expenditures are:

Administration	\$10,000
Construction	\$2,443,962
Contingency	\$244,396
Engineering Fees	\$270,000
Equipment (three sewer haul trucks)	\$750,000
Interest-Interim	\$10,000
Legal Fees	\$10,000
Total	\$3,738,358

WHEREAS, the project funding sources are (in the order of required use):

City of Bethel, Alaska

Resolution #16-20

1 of 4

Introduced by: City Manager Capela
Date: May 24, 2016
Action:
Vote:

City of Bethel Contribution	\$206,000
Indian Health Service (1 sewer truck)	\$250,000
State of Alaska Legislative Appropriation	\$700,000
USDA Loan	\$913,000
USDA Grant	\$1,669,358
Total	\$3,738,358

WHEREAS, the loan will be scheduled for repayment over a period of 40 years, equal to \$2,895 amortized monthly installments, the loan will be secured by a Revenue instrument (promissory note) with first lien position in the amount of \$913,000;

WHEREAS, all projects associated with the grant/loan program are required to be completed and all funds disbursed within five years of obligation unless a written waiver is approved for an extension, any funds remaining shall be returned to the grantor immediately upon the end of the five year term;

WHEREAS, grant funds are to be deposited in an interest-bearing account in accordance with 2 CFR Part 200 and interest in excess of \$500 per year remitted to the USDA;

WHEREAS, all projects associated with the grant/loan program are required to be completed and all funds disbursed within five years of obligation unless a written waiver is approved for an extension;

WHEREAS, reserves must be properly budgeted to maintain the financial viability and sustainability of the operation to fund unanticipated emergency maintenance and repairs, and assist with debt service should the need arise, the debt service reserve must establish a fund equal to at least one annual loan installment that accumulates at the rate of 10% of one annual payment year for ten years or until the balance is equal to one annual loan payment, prior written concurrence from USDA must be obtained before funds may be withdrawn from this account during the life of the loan;

WHEREAS, in addition to the debt service reserve fund, the City must establish a short-lived assets reserve fund of \$365,650 annually for the life of the loan to pay for repairs, and/or replacement of majority system assets-current assets can be used to establish and maintain reserves to include but not limited to operation and maintenance, customer deposits, deferred interest during the construction period, and an asset management program;

Introduced by: City Manager Capela
Date: May 24, 2016
Action:
Vote:

WHEREAS, environmental requirements include but are not limited to- construction activities must be limited to waking hours to reduce noise impacts (10 hours); contractor to prepare a Storm Water Pollution Prevention Plan; fugitive dust from construction activities must be reduced during construction by use of water or other dust control measures; emissions from vehicles and equipment must be maintained below applicable state and local emission control plans; movement of construction material and machinery must be scheduled for non-peak or non-critical times; in the event historical artifacts are discovered, all work must be stopped immediately and appropriate agencies contacted; Best Management Practices must be utilized during construction to minimize or avoid potential impacts to water quality or resources; all waste material generated during construction will be disposed of in the landfill or the waste will be backhauled to an approved facility; proper sedimentation and erosion control construction techniques will be used;

WHEREAS, the City is required to execute a legal services agreement with the City Attorney and bond council, if applicable, for any legal work needed in connection with this project which shall include a hourly rate for the work, with a "not to exceed" amount for the services, this agreement must be submitted to USDA prior to advertising for bids;

WHEREAS, property rights evidence must be submitted to USDA prior to the advertising of the bids;

WHEREAS, all property purchased under this grant with a value exceeding \$5,000 must have proper inventory controls, disposal procedures, loss prevention procedures, and proper maintenance schedules;

WHEREAS, a sound business plan must be adopted and followed to include policies, procedures and/or ordinances outlining the conditions of service to include mandatory connection, effective collection for accounts not paid in full with specified number of days after the date of billing, this should include appropriate late fees, timeframes for disconnection of service and reconnection fees, these policies must be reviewed and approved by USDA prior to advertising for bids;

WHEREAS, the services of the system available within its capacity shall be made available to all persons in the service area without discrimination as to race, color, religion, sex, national origin, age, marital status, or physical or mental handicap;

Introduced by: City Manager Capela
Date: May 24, 2016
Action:
Vote:

WHEREAS, the City must maintain the annual 3% increase for the sewer rates at least through the 2018 rate increase;

WHEREAS, the City will have to establish a Vulnerability Assessment/Emergency Response Plan and a certification of this VA/ERP must be provided before advertising for bids;

WHEREAS, the attorney must certify that the executed contract documents, including performance and payment, if required are adequate and that the person executing these documents have been properly authorized;

WHEREAS, unless exempted, the City must have a full-time inspection service that is required to attend the pre-construction conference, the resume of the resident inspector must be submitted to USDA for review and concurrence prior to the pre-construction conference;

WHEREAS, USDA will perform an inspection of the facility and the records management system every three years for the life of the loan;

WHEREAS, audit requirements to include quarterly reports to USDA, annual audit reports (end of each fiscal year), and annual budget and projected cash flow (thirty days prior to beginning of each fiscal year) are to be submitted;

WHEREAS, upon any default under its representations or agreements, the City, at the option and demand of USDA, will repay forthwith the original principal amount of the grant with the interest at the rate of 5 per centum per annum from the date of the default;

NOW, THEREFORE, BE IT RESOLVED THAT the City of Bethel, City Council, authorizes the Water and Waste System Grant Agreement with the United State Department of Agriculture, Rural Utilities Services.

PASSED AND APPROVED THIS 24 DAY OF MAY 2016, BY A _ VOTE IN FAVOR AND A _ VOTE IN OPPOSITION.

Richard Robb, Mayor

ATTEST:

Lori Strickler, City Clerk

Water and Waste System Grant Agreement

United States Department of Agriculture

Rural Utilities Service

THIS AGREEMENT dated _____, between

a public corporation organized and operating under

(Authorizing Statute)

herein called "Grantee," and the United States of America acting through the Rural Utilities Service, Department of Agriculture, herein called "Grantor," WITNESSETH:

WHEREAS

Grantee has determined to undertake a project of acquisition, construction, enlargement, or capital improvement of a (water) (waste) system to serve the area under its jurisdiction at an estimated cost of \$ _____ and has duly authorized the undertaking of such project.

Grantee is able to finance not more than \$ _____ of the development costs through revenues, charges, taxes or assessments, or funds otherwise available to Grantee resulting in a reasonable user charge.

Said sum of \$ _____ has been committed to and by Grantee for such project development costs.

Grantor has agreed to grant the Grantee a sum not to exceed \$ _____ or _____ percent of said project development costs, whichever is the lesser, subject to the terms and conditions established by the Grantor. Provided, however, that the proportionate share of any grant funds actually advanced and not needed for grant purposes shall be returned immediately to the Grantor. The Grantor may terminate the grant in whole, or in part, at any time before the date of completion, whenever it is determined that the Grantee has failed to comply with the Conditions of the grant.

As a condition of this grant agreement, the Grantee assures and certifies that it is in compliance with and will comply in the course of the agreement with all applicable laws, regulations, Executive orders and other generally applicable requirements, including those set out in 7 CFR 3015.205(b), which hereby are incorporated into this agreement by reference, and such other statutory provisions as are specifically set forth herein.

NOW, THEREFORE, In consideration of said grant by Grantor to Grantee, to be made pursuant to Section 306(a) of The Consolidated Farm and Rural Development Act for the purpose only of defraying a part not to exceed _____ percent of the project development costs, as defined by applicable Rural Utilities Service instructions.

Grantee Agrees That Grantee Will:

A. Cause said project to be constructed within the total sums available to it, including said grant, in accordance with the project plans and specifications and any modifications thereof prepared by Grantee and approved by Grantor.

B. Permit periodic inspection of the construction by a representative of Grantor during construction.

C. Manage, operate and maintain the system, including this project if less than the whole of said system, continuously in an efficient and economical manner.

D. Make the services of said system available within its capacity to all persons in Grantee's service area without discrimination as to race, color, religion, sex, national origin, age, marital status, or physical or mental handicap (possess capacity to enter into legal contract for services) at reasonable charges, including assessments, taxes, or fees in accordance with a schedule of such charges, whether for one or more classes of service, adopted by resolution dated _____, as may be modified from time to time by Grantee. The initial rate schedule must be approved by Grantor. Thereafter, Grantee may make such modifications to the rate system as long as the rate schedule remains reasonable and nondiscriminatory.

E. Adjust its operating costs and service charges from time to time to provide for adequate operation and maintenance, emergency repair reserves, obsolescence reserves, debt service and debt service reserves.

F. Expand its system from time to time to meet reasonably anticipated growth or service requirements in the area within its jurisdiction.

G. Provide Grantor with such periodic reports as it may require and permit periodic inspection of its operations by a representative of the Grantor.

H. To execute any agreements required by Grantor which Grantee is legally authorized to execute. If any such agreement has been executed by Grantee as a result of a loan being made to Grantee by Grantor contemporaneously with the making of this grant, another agreement of the same type need not be executed in connection with this grant.

I. Upon any default under its representations or agreements set forth in this instrument, Grantee, at the option and demand of Grantor, will repay to Grantor forthwith the original principal amount of the grant stated herein above with the interest at the rate of 5 percentum per annum from the date of the default. Default by the Grantee will constitute termination of the grant thereby causing cancellation of Federal assistance under the grant. The provisions of this Grant Agreement may be enforced by Grantor, at its option and without regard to prior waivers by it previous defaults of Grantee, by judicial proceedings to require specific performance of the terms of this Grant Agreement or by such other proceedings in law or equity, in either Federal or State courts, as may be deemed necessary by Grantor to assure compliance with the provisions of this Grant Agreement and the laws and regulations under which this grant is made.

J. Return immediately to Grantor, as required by the regulations of Grantor, any grant funds actually advanced and not needed by Grantee for approved purposes.

K. Use the real property including land, land improvements, structures, and appurtenances thereto, for authorized purposes of the grant as long as needed.

1. Title to real property shall vest in the recipient subject to the condition that the Grantee shall use the real property for the authorized purpose of the original grant as long as needed.

2. The Grantee shall obtain approval by the Grantor agency for the use of the real property in other projects when the Grantee determines that the property is no longer needed for the original grant purposes. Use in other projects shall be limited to those under other Federal grant programs or programs that have purposes consistent with those authorized for support by the Grantor.

3. When the real property is no longer needed as provided in 1 and 2 above, the Grantee shall request disposition instructions from the Grantor agency or its successor Federal agency. The Grantor agency shall observe the following rules in the disposition instructions:

(a) The Grantee may be permitted to retain title after it compensates the Federal Government in an amount computed by applying the Federal percentage of participation in the cost of the original project to the fair market value of the property.

(b) The Grantee may be directed to sell the property under guidelines provided by the Grantor agency. When the Grantee is authorized or required to sell the property, proper sales procedures shall be established that provide for competition to the extent practicable and result in the highest possible return.

[Revision 1, 04/17/1998]

(c) The Grantee may be directed to transfer title to the property to the Federal Government provided that in such cases the Grantee shall be entitled to compensation computed by applying the Grantee's percentage of participation in the cost of the program or project to the current fair market value of the property.

This Grant Agreement covers the following described real property (use continuation sheets as necessary).

L. Abide by the following conditions pertaining to equipment which is furnished by the Grantor or acquired wholly or in part with grant funds. Equipment means tangible, non-expendable, personal property having a useful life of more than one year and an acquisition cost of \$5,000 or more per unit. A grantee may use its own definition of equipment provided that such definition would at least include all equipment defined above.

[Revision 1, 04/17/1998]

1. Use of equipment.

(a) The Grantee shall use the equipment in the project for which it was acquired as long as needed. When no longer needed for the original project, the Grantee shall use the equipment in connection with its other Federally sponsored activities, if any, in the following order of priority:

1) Activities sponsored by the Grantor.

(2) Activities sponsored by other Federal agencies.

(b) During the time that equipment is held for use on the property for which it was acquired, the Grantee shall make it available for use on other projects if such other use will not interfere with the work on the project for which the equipment was originally acquired. First preference for such other use shall be given to Grantor sponsored projects. Second preference will be given to other Federally sponsored projects.

2. Disposition of equipment. When the Grantee no longer needs the equipment as provided in paragraph (a) above, the equipment may be used for other activities in accordance with the following standards:

(a) Equipment with a current per unit fair market value of less than \$5,000. The Grantee may use the equipment for other activities without reimbursement to the Federal Government or sell the equipment and retain the proceeds.

(b) Equipment with a current per unit fair market value of \$5,000 or more. The Grantee may retain the equipment for other uses provided that compensation is made to the original Grantor agency or its successor. The amount of compensation shall be computed by applying the percentage of Federal participation in the cost of the original project or program to the current fair market value or proceeds from sale of the equipment. If the Grantee has no need for the equipment and the equipment has further use value, the Grantee shall request disposition instructions from the original Grantor agency.

The Grantor agency shall determine whether the equipment can be used to meet the agency's requirements. If no requirement exists within that agency, the availability of the equipment shall be reported, in accordance with the guidelines of the Federal Property Management Regulations (FPMR), to the General Services Administration by the Grantor agency to determine whether a requirement for the equipment exists in other Federal agencies. The Grantor agency shall issue instructions to the Grantee no later than 120 days after the Grantee requests and the following procedures shall govern:

(1) If so instructed or if disposition instructions are not issued within 120 calendar days after the Grantee's request, the Grantee shall sell the equipment and reimburse the Grantor agency an amount computed by applying to the sales proceeds the percentage of Federal participation in the cost of the original project or program. However, the Grantee shall be permitted to deduct and retain from the Federal share ten percent of the proceeds for Grantee's selling and handling expenses.

(2) If the Grantee is instructed to ship the equipment elsewhere the Grantee shall be reimbursed by the benefiting Federal agency with an amount which is computed by applying the percentage of the Grantee participation in the cost of the original grant project or program to the current fair market value of the equipment, plus any reasonable shipping or interim storage costs incurred.

(3) If the Grantee is instructed to otherwise dispose of the equipment, the Grantee shall be reimbursed by the Grantor agency for such costs incurred in its disposition.

3. The Grantee's property management standards for equipment shall also include:

(a) Records which accurately provide for: a description of the equipment; manufacturer's serial number or other identification number; acquisition date and cost; source of the equipment; percentage (at the end of budget year) of Federal participation in the cost of the project for which the equipment was acquired; location, use and condition of the equipment and the date the information was reported; and ultimate disposition data including sales price or the method used to determine current fair market value if the Grantee reimburses the Grantor for its share.

(b) A physical inventory of equipment shall be taken and the results reconciled with the equipment records at least once every two years to verify the existence, current utilization, and continued need for the equipment.

(c) A control system shall be in effect to insure adequate safeguards to prevent loss, damage, or theft of the equipment. Any loss, damage, or theft of equipment shall be investigated and fully documented.

(d) Adequate maintenance procedures shall be implemented to keep the equipment in good condition.

(e) Proper sales procedures shall be established for unneeded equipment which would provide for competition to the extent practicable and result in the highest possible return.

This Grant Agreement covers the following described equipment(use continuation sheets as necessary).

M. Provide Financial Management Systems which will include:

1. Accurate, current, and complete disclosure of the financial results of each grant. Financial reporting will be on an accrual basis.

2. Records which identify adequately the source and application of funds for grant-supported activities. Those records shall contain information pertaining to grant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays, and income.

3. Effective control over and accountability for all funds, property and other assets. Grantees shall adequately safeguard all such assets and shall assure that they are used solely for authorized purposes.

4. Accounting records supported by source documentation.

N. Retain financial records, supporting documents, statistical records, and all other records pertinent to the grant for a period of at least three years after grant closing except that the records shall be retained beyond the three-year period if audit findings have not been resolved. Microfilm or photo copies or similar methods may be substituted in lieu of original records. The Grantor and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the Grantee's government which are pertinent to the specific grant program for the purpose of making audits, examinations, excerpts and transcripts.

O. Provide information as requested by the Grantor to determine the need for and complete any necessary Environmental Impact Statements.

P. Provide an audit report prepared in accordance with Grantor regulations to allow the Grantor to determine that funds have been used in compliance with the proposal, any applicable laws and regulations and this Agreement.

Q. Agree to account for and to return to Grantor interest earned on grant funds pending their disbursement for program purposes when the Grantee is a unit of local government. States and agencies or instrumentality's of states shall not be held accountable for interest earned on grant funds pending their disbursement.

R. Not encumber, transfer or dispose of the property or any part thereof, furnished by the Grantor or acquired wholly or in part with Grantor funds without the written consent of the Grantor except as provided in item K above.

S. To include in all contracts for construction or repair a provision for compliance with the Copeland "Anti-Kick Back" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR, Part 3). The Grantee shall report all suspected or reported violations to the Grantor.

T. To include in all contracts in excess of \$100,000 a provision that the contractor agrees to comply with all the requirements of the Clean Air Act (42 U.S.C. §7414) and Section 308 of the Water Pollution Control Act (33 U.S.C. §1318) relating to inspection, monitoring, entry, reports, and information, as well as all other requirements specified in Section 114 of the Clean Air Act and Section 308 of the Water Pollution Control Act and all regulations and guidelines issued thereunder after the award of the contract. In so doing the Contractor further agrees:

[Revision 1, 11/20/1997]

1. As a condition for the award of contract, to notify the Owner of the receipt of any communication from the Environmental Protection Agency (EPA) indicating that a facility to be utilized in the performance of the contract is under consideration to be listed on the EPA list of Violating Facilities. Prompt notification is required prior to contract award.

2. To certify that any facility to be utilized in the performance of any nonexempt contractor subcontract is not listed on the EPA list of Violating Facilities pursuant to 40 CFR Part 32 as of the date of contract award.

[Revision 1, 11/20/1997]

3. To include or cause to be included the above criteria and the requirements in every nonexempt subcontract and that the Contractor will take such action as the Government may direct as a means of enforcing such provisions.

As used in these paragraphs the term "facility" means any building, plan, installation, structure, mine, vessel or other floating craft, location, or site of operations, owned, leased, or supervised by a Grantee, cooperator, contractor, or subcontractor, to be utilized in the performance of a grant, agreement, contract, subgrant, or subcontract. Where a location or site of operation contains or includes more than one building, plant, installation, or structure, the entire location shall be deemed to be a facility except where the Director, Office of Federal Activities, Environmental Protection Agency, determines that independent facilities are co-located in one geographical area.

Grantor Agrees That It:

A. Will make available to Grantee for the purpose of this Agreement not to exceed \$_____ which it will advance to Grantee to meet not to exceed _____ percent of the project development costs of the project in accordance with the actual needs of Grantee as determined by Grantor.

B. Will assist Grantee, within available appropriations, with such technical assistance as Grantor deems appropriate in planning the project and coordinating the plan with local official comprehensive plans for sewer and water and with any State or area plans for the area in which the project is located.

C. At its sole discretion and at any time may give any consent, deferment, subordination, release, satisfaction, or termination of any or all of Grantee's grant obligations, with or without valuable consideration, upon such terms and conditions as Grantor may determine to be (1) advisable to further the purpose of the grant or to protect Grantor's financial interest therein and (2) consistent with both the statutory purposes of the grant and the limitations of the statutory authority under which it is made.

Termination of This Agreement

This Agreement may be terminated for cause in the event of default on the part of the Grantee as provided in paragraph I above or for convenience of the Grantor and Grantee prior to the date of completion of the grant purpose. Termination for convenience will occur when both the Grantee and Grantor agree that the continuation of the project will not produce beneficial results commensurate with the further expenditure of funds.

In witness whereof Grantee on the date first above written has caused these presence to be executed by its duly authorized

attested and its corporate seal affixed by its duly authorized

Attest:

By _____

(Title) _____

By _____

(Title) _____

UNITED STATES OF AMERICA

RURAL UTILITIES SERVICE

By _____
(Title)

Introduced by: City Manager Capela
Date: May 24, 2016
Action:
Vote:

CITY OF BETHEL

Resolution # 16-21

A RESOLUTION REQUESTING FY 17 PAYMENT IN LIEU OF TAXES FUNDING FROM THE DEPARTMENT OF COMMERCE, COMMUNITY AND ECONOMIC DEVELOPMENT

WHEREAS, 3 AAC 152.100 requires the governing body of a city to adopt a resolution requesting funding from the Payment in Lieu of Taxes Program for cities in the unorganized borough and to submit the resolution to the Department of Commerce, Community and Economic Development;

WHEREAS, the city has conducted a regular election during the preceding state fiscal year and has report the results of the election to the commissioner;

WHEREAS, regular meeting of the governing body are held in the city and a record of the proceedings is maintained;

WHEREAS, ordinances adopted by the city have been codified in accordance with AS 29.25.050;

NOW, THEREFORE, BE IT RESOLVED: that the Bethel City Council by this resolution hereby requests distribution from the FY 17 Payment in Lieu of Taxes Program by the Department of Commerce, Community, and Economic Development on the date required by law.

**ENACTED THIS 24th DAY OF MAY 2016 BY A VOTE OF _ IN FAVOR AND _
OPPOSED.**

Richard Robb, Mayor

ATTEST:

Lori Strickler, City Clerk

Introduced by: Mayor Robb
Date: May 24, 2016
Public Hearing: June 14, 2016
Action:
Vote:

CITY OF BETHEL, ALASKA

Ordinance #16-15

AN ORDINANCE AMENDING BETHEL MUNICIPAL CODE 4.16.030, IMPOSITION-RATE REDUCING SALES TAX FROM 6% TO 5.75%

Whereas, Bethel City Council Raised Water and Sewer Rates effective January 1, 2015;

Whereas, the intent of the raised rates is to insure the water and sewer enterprise fund is self sufficient;

Whereas, the water and sewer enterprise fund historically lost approximately \$400-\$600 thousand dollars each year, and required a transfer from the general fund;

Whereas, this raise in water and sewer rates, although necessary, causes a financial hardship on the people of Bethel;

Whereas, the large transfer from the general fund should no longer be necessary;

Whereas, the general fund had an operational surplus in FY 11, FY 12, FY 13 and FY 14, and is anticipated to have one from FY 15 and FY 16;

Whereas, the unreserved fund balance from the general fund is now at \$4.9 million;

Whereas the Solid Waste Disposal enterprise fund consistently generates a profit and has a fund balance;

Whereas, the Municipal Dock Enterprise fund consistently generates a profit, and has a fund balance;

Whereas, the City has new revenue in the form of Alcohol Sales Tax, which is expected to be anticipated at \$300,000 for FY 17;

Whereas, we are now in a position for a slight reduction in sales tax;

SECTION 1. Classification. This ordinance is of permanent nature and shall become a part of the Bethel Municipal Code.

SECTION 2. Amendment. Bethel Municipal Code 4.16.030 is amended to read, new language is underlined, old language is stricken.

Introduced by: Mayor Robb
Date: May 24, 2016
Public Hearing: June 14, 2016
Action:
Vote:

4.16.030 Imposition – Rate.

A. There is levied and shall be collected a sales tax on all sales transactions in the city unless specifically exempted under this chapter. The tax is six (6) percent Five and three quarters (5.75) percent of the selling price.

B. The tax to be added to the sale price shall be twelve (12) percent for alcohol and transient lodging.

C. The tax to be added to the sale price shall be fifteen (15) percent for marijuana retail sales.

SECTION 3. Effective Date. This Ordinance shall become effective July 1, 2016l.

ENACTED THIS 14th DAY OF JUNE 2016, BY A VOTE OF ___ IN FAVOR AND ___ OPPOSED.

Richard Robb, Mayor

ATTEST:

Lori Strickler, City Clerk

CITY OF BETHEL, ALASKA

Ordinance #16-16

AN ORDINANCE BY THE BETHEL CITY COUNCIL AMENDING BETHEL MUNICIPAL CODE 3.64.010, BENEFITS

WHEREAS, Bethel City Employees receive a utility benefit as described in 3.64.010 at \$75.00 per month, this is the default payment for non-union employees;

WHEREAS, the amount in the Collective Bargaining agreement, negotiated between administration and the union, and approved by the Bethel City Council, is \$115 per month for union members;

WHEREAS, Bethel City Council Raised Water and Sewer Rates effective January 1, 2015;

WHEREAS, the Utility Benefit is a benefit that helps attract and retain employees;

WHEREAS, the amount paid by non-union employees has not been raised in many years;

WHEREAS, in considering raises in rates to the people of Bethel, and to the Union employees, it is only fair to raise the rates on non-union employees;

NOW, THEREFORE BE IT ENACTED by the Bethel City Council:

SECTION 1. Classification. This is a Codified Ordinance and shall become part of the Bethel Municipal Code.

SECTION 2. Amendment.

Section 3.64.010 of the Bethel Municipal Code is amended (new language is underlined and old language is stricken)

B. Other Benefits

1. a. Utility Benefit. Full-time ~~and part-time~~ employees shall receive water, sewer, and garbage services from the city for a fee of ~~seventy five dollars (\$75)~~ one hundred fifteen dollars (\$115.00) per month; provided, however, that employees subject to written employment agreements may have different benefits specified. Water and sewer services shall be provided on the established delivery schedule, up to a maximum of twice a week. The maximum amount of water that shall be provided is one thousand five hundred (1,500) gallons per week. Seasonal employees, and employees who reside

Introduced by: Mayor Robb
Introduction Date: May 24, 2016
Public Hearing:
Action:
Vote:

in multifamily dwellings with shared water and sewer tanks, shall not be eligible for this benefit.

b. Suspension. All employees must complete an application to receive the utility benefits. It must then be approved by the city manager. Any employee who fails to notify the utility service department to disconnect services within one (1) week after they change residences may be denied the utility benefit in the future.

c. Deposit. Employees are not required to pay the established deposit for utility services. When the employee no longer works for the city, the employee shall not receive the benefits provided for in this section.

Section 3. Effective Date

This Ordinance shall become effective July 1, 2016.

ENACTED THIS 14 DAY OF JUNE BY A VOTE OF _ IN FAVOR AND _ OPPOSED.

ATTEST:

Richard Robb, Mayor

Lori Strickler, City Clerk

Introduced by: Manager Ann K. Capela
 Introduction Date: May 24, 2016
 Public Hearing: May 26, 2016
 Public Hearing: June 1, 2016
 June 2, 2016
 June 14, 2016

Action:
 Vote:

CITY OF BETHEL, ALASKA
ORDINANCE # 16-17

**AN ORDINANCE ESTABLISHING A CITY OF BETHEL BUDGET FOR FISCAL YEAR 2017
 BEGINNING JULY 1, 2016**

Be it Ordained by the City Council of Bethel as follows:

Section 1. That Ordinance 16-17, a non-code ordinance, establishes a City of Bethel Annual Budget for fiscal year 2017.

Section 2. There is hereby appropriated out of the revenues of the City of Bethel, for the fiscal year beginning July 1, 2016, the sum of \$27,673,954, which sum is deem by Council to be necessary to defray all expenditures of the City during said budget year to be divided and appropriated in accordance with the attached budget proposal as follows:

General Fund - Operating

City Administration	\$609,318
City Clerk & Council	219,740
Finance Department	1,160,938
Planning Department	297,085
Information Technology Services	616,477
City Attorney	256,370
Fire Department	1,146,258
Police Department	3,032,161
Public Works-Administration	162,781
Streets & Roads	1,334,143
Property Maintenance	788,957
Parks & Recreation	356,301
Community Services	188,220
In-Kind & Transfers	98,892
Indirect Cost Recovery	(631,956)
TOTAL GENERAL FUND - OPERATING	\$9,635,685

General Fund - Projects

City Administration	\$0
City Clerk & Council	0
Finance Department	0
Planning Department	0
Information Technology Services	0
City Attorney's Office	0
Fire Department	0
Police Department	0
Public Works-Administration	0
Streets & Roads	552,000
Property Maintenance	0

Parks & Recreation	0
Community Services	5,000
In-kind & Transfers	0
TOTAL GENERAL FUND - PROJECTS	\$557,000
General Fund - Capital Expenditures	
City Administration	\$0
City Clerk & Council	0
Finance Department	0
Planning Department	0
Information Technology Services	10,000
City Attorney's Office	0
Fire Department	25,000
Police Department	50,000
Public Works-Administration	0
Streets & Roads	0
Property Maintenance	0
Parks & Recreation	0
Community Services	0
In-kind & Transfers	0
TOTAL GENERAL FUND - CAPITAL EXP.	\$85,000
General Fund - Transfers	
Transfers To - YKRH Aquatic Center	\$562,500
Transfers To - Capital Projects	\$23,827
TOTAL GENERAL FUND - Transfers	\$586,327
TOTAL GENERAL FUND	\$10,864,012
Special Revenue Funds	
E-911 Services	388,531
TOTAL SPECIAL REVENUE FUNDS	\$388,531
Capital Project Funds	
Land Planning and Development	\$45,000
Park Development Fund	112,852
Port Office Fund	950,000
Port Multi-Facility Improvements Fund	80,000
Fleet Replacement Fund	350,000
TOTAL CAPITAL PROJECT FUNDS	\$1,537,852
Enterprise Fund-YK Regional Health & Aquatic Center	
Swimming Pool	\$1,552,450
TOTAL ENTERPRISE FUND-YK Regional Pool	\$1,552,450
Enterprise Fund-Solid Waste	
Hauled Refuse	\$359,399

Landfill Operations	376,819
Transfers Out	50,000
TOTAL ENTERPRISE FUND-SOLID WASTE	\$786,218
Enterprise Fund-Water & Sewer	
Utility Billing	\$219,745
Hauled Water	1,681,059
Hauled Sewer	1,635,396
Piped Water	458,493
Piped Sewer	729,667
Water Treatment - BH	687,457
Water Treatment - CS	600,056
Sewer Lagoon	126,202
Indirect Cost Recovery	(31,989)
Transfers Out	188,000
TOTAL ENTERPRISE FUND-WATER & SEWER	\$6,294,086
Enterprise Fund-Port	
Municipal Dock-Operating	\$549,749
Municipal Dock-Small Boat Harbor	\$167,034
Projects	96,000
Capital Outlay	350,000
Transfers Out	482,000
TOTAL ENTERPRISE FUND - PORT	\$1,644,783
Enterprise Fund-Leased Properties	
Court Complex	\$667,286
Other Leased Properties	2,450
TOTAL ENTERPRISE FUND-LEASED PROPERTIES	\$669,736
Enterprise Fund-Bethel Public Transit System	
Transit System	\$412,725
Capital Outlay	54,000
TOTAL ENTERPRISE FUND-TRANSIT SYSTEM	\$466,725
Internal Svc Fund-Employee Group Health Benefits	
Employee Group Health Benefits	\$2,277,071
TOTAL INTERNAL SVC FUND-EMP GROUP HEALTH	\$2,277,071
Internal Svc Fund-Vehicle & Equipment Maint.	
Vehicle & Equipment Maintenance	\$1,180,590
Capital Outlay	0
TOTAL INTERNAL SVC FUND-VEHICLE & EQUIP	\$1,180,590
Endowment Fund	
Transfers Out	\$11,900
TOTAL ENDOWMENT FUND	\$11,900

Section 3. That the FY2017 budget is adopted for a period of one (1) year, that being from July 1, 2016 to June 30, 2017.

ENACTED THIS _____ DAY OF JUNE 2016, BY A VOTE OF

ATTEST:

Richard Robb, Mayor

Lori Strickler, City Clerk

1
2
3 *CITY OF BETHEL, ALASKA*
4

5 **Ordinance #16-18**
6

7 **AN ORDINANCE BY THE BETHEL CITY COUNCIL, ADDING MARIJUANA**
8 **REGULATION TO THE BETHEL MUNICIPAL CODE**
9

10 **5.10.010 Definitions.**

11 (A) "board" means the Alcoholic Beverage Control Board established by AS 04.06;

12 (B) "consumer" means a person 21 years of age or older who purchases marijuana or
13 marijuana products for personal use by persons 21 years of age or older, but not for
14 resale to others;

15 (C) "consumption" means the act of ingesting, inhaling, or otherwise introducing
16 marijuana into the human body;

17 (D) "Intoxicated Person" means a person whose physical or mental conduct is
18 substantially impaired as a result of the introduction of an alcoholic beverage and/or
19 marijuana into the person's body and who exhibits those plain and easily observed or
20 discovered outward manifestations of behavior commonly known to be produced by the
21 overconsumption of alcoholic beverages and/or marijuana.

22 (E) "Licensed Premises" means any or all designated portions of a building or structure,
23 rooms or enclosures in the building or structure, or real estate leased, used, controlled,
24 or operated by a licensee in the conduct of business for which the licensee is licensed
25 by the Board and the City at the specific address for which the license is issued.

26 (F) "local government" means both home rule and general law municipalities, including
27 boroughs and cities of all classes and unified municipalities;

28 (G) "local regulatory authority" means the office or entity designated to process
29 marijuana establishment applications by a local government;

30 (H) "marijuana" means all parts of the plant of the genus cannabis whether growing or
31 not, the seeds thereof, the resin extracted from any part of the plant, and every
32 compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds,
33 or its resin, including marijuana concentrate; "marijuana" does not include fiber
34 produced from the stalks, oil, or cake made from the seeds of the plant, sterilized seed

35 of the plant which is incapable of germination, or the weight of any other ingredient
36 combined with marijuana to prepare topical or oral administrations, food, drink, or other
37 products;

38 (I) "marijuana accessories" means any equipment, products, or materials of any kind
39 which are used, intended for use, or designed for use in planting, propagating,
40 cultivating, growing, harvesting, composting, manufacturing, compounding, converting,
41 producing, processing, preparing, testing, analyzing, packaging, repackaging, storing,
42 vaporizing, or containing marijuana, or for ingesting, inhaling, or otherwise introducing
43 marijuana into the human body;

44 (J) "marijuana cultivation facility" means an entity registered to cultivate, prepare, and
45 package marijuana and to sell marijuana to retail marijuana stores, to marijuana
46 product manufacturing facilities, and to other marijuana cultivation facilities, but not to
47 consumers;

48 (K) "marijuana establishment" means a marijuana cultivation facility, a marijuana
49 testing facility, a marijuana product manufacturing facility, or a retail marijuana store;

50 (L) "Marijuana License" means any of the licenses or permits described in AS ????

51 (M) "marijuana product manufacturing facility" means an entity registered to purchase
52 marijuana; manufacture, prepare, and package marijuana products; and sell marijuana
53 and marijuana products to other marijuana product manufacturing facilities and to retail
54 marijuana stores, but not to consumers;

55 (N) "marijuana products" means concentrated marijuana products and marijuana
56 products that are comprised of marijuana and other ingredients and are intended for
57 use or consumption, such as, but not limited to, edible products, ointments, and
58 tinctures;

59 (O) "marijuana testing facility" means an entity registered to analyze and certify the
60 safety and potency of marijuana;

61 (P) "Person" means an individual, partnership, cooperative, association, joint venture,
62 corporation, estate trust, business, receiver, or any entity, group or combination acting
63 as a unit.

64 (Q) "retail marijuana store" means an entity registered to purchase marijuana from
65 marijuana cultivation facilities, to purchase marijuana and marijuana products from
66 marijuana product manufacturing facilities, and to sell marijuana and marijuana
67 products to consumers;

68 (R) "unreasonably impracticable" means that the measures necessary to comply with
69 the regulations require such a high investment of risk, money, time, or any other
70 resource or asset that the operation of a marijuana establishment is not worthy of being
71 carried out in practice by a reasonably prudent businessperson.

72 **5.10.020 Operations Plan**

73 Each retail marijuana cultivation facilities, retail marijuana product manufacturing facilities,
74 and retail marijuana testing facilities shall submit to the City:

- 76 A. A plan that specifies all means to be used for extracting, heating, washing, or
77 otherwise changing the form of the marijuana plant or for testing any marijuana or
78 marijuana product, including a verification that such plan is in compliance with all
79 applicable federal, state, and local laws and regulations governing ventilation and
80 safety measures for each such process;
- 81
- 82 B. A description of all toxic, flammable, or other materials regulated by a federal,
83 state, or local government that will be used, kept, or created at the facility, the
84 quantities and location of such materials, and the manner in which such materials
85 will be stored; and
- 86
- 87 C. A description of the processes used to extract or distill marijuana derivatives from
88 their source and the processes used to incorporate marijuana derivatives into all
89 retail marijuana products produced, including a verification that such processes are
90 in compliance with all applicable federal, state, or local laws or regulations.
- 91
- 92 D. A plan for ventilation of a retail marijuana establishment that describes the ventilation
93 systems that will be used to prevent any odor of marijuana off the premises of the
94 establishment must be submitted to the City. For retail marijuana cultivation facilities,
95 such plan shall also include all ventilation systems used to control the environment for
96 the plants and describe how such systems operate with the systems preventing any
97 odor leaving the premises.
- 98

99 **5.10.030 Procedure for Administrative Review of License Applications.**

- 100 A. Upon receipt of notice from the Board of an application for the issuance,
101 renewal, transfer of location or transfer to another person of a marijuana license
102 for a license location in the City, the clerk shall as soon as practicable distribute
103 copies of the notice to the city manager, the city council and the city attorney.
- 104 B. The city manager shall immediately refer the application for review as follows:
 - 105 1. To the planning director or their designee to determine if the applicant has
106 complied with the conditional use provision of the Bethel Municipal Code;
 - 107 2. To the finance director or their designee to determine whether the licensee or
108 license transferee is delinquent in paying to the City any tax, assessment,
109 business license fee, or fee or charge for utility service for the business
110 and/or affiliate (as defined in 3 AAC 304.990) that operates or will operate,
111 under the marijuana license.
 - 112 3. To the police and fire chiefs to determine whether, in their opinion there have
113 been excessive calls for service, excessive numbers of convictions or arrests
114 for unlawful activity at the license location, police or ambulance reports,
115 reports of unlawful activity at the license location, or police, fire or ambulance
116 dispatches to the license location.

- 117 C. The fire chief, police chief, planning director and finance director shall forward
118 written statements to the city manager within fourteen (14) calendar days after
119 the application was referred by the city manager.
- 120 D. The city manager shall provide a written report to the city council, with a copy to
121 the applicant, listing any objections to the Board's issuance of the application.
122 The city manager's report is due within twenty (20) days after the date of receipt
123 of notice from the city clerk.
- 124 E. An applicant who believes the city manager's report contains factual errors shall
125 file a written protest outlining, with specific, the sections of the report believed to
126 be factually incorrect. Such protest must be filed to the city manager not later
127 than ten (10) calendar days after issuance of the city manager report.
- 128 F. The city manager shall investigate the applicant's protest and shall issue a
129 written decision no later than ten (10) business days after receipt of the protest.
- 130 G. The city clerk shall place the matter of the application upon the city council
131 agenda not less than thirty (30) and not more than forty (40) calendar days
132 after the date of receipt from the Board;

133 **5.10.040 City Council Review of License.**

134 The city council shall determine whether to protest, recommend with conditions, or stay
135 silent on the issuance, renewal or transfer of a marijuana license application and shall
136 consider the following factors it believes are pertinent. Such factors shall include, but
137 not be limited to:

- 138 1. City records indicating whether the applicant and/or transferor is in violation
139 of the city sales tax ordinances or regulations, has failed to comply with any
140 of the filing, reporting or payment provisions of the city ordinances or
141 regulations, or has any unpaid balance due on tax accounts for which the
142 applicant and/or transferor is liable;
- 143 2. The character and public interests of the surrounding neighborhood;
- 144 3. Actual law enforcement problems with supporting data;
- 145 4. The concentration of other licenses of the same and other types in the area;
- 146 5. The adequacy of parking facilities;
- 147 6. The safety of ingress to and egress from the premises;
- 148 7. Compliance with state and local fire, health and safety codes;
- 149 8. The degree of control the licensee has or proposes to have over the conduct
150 of the licensed business. In determining the applicant's demonstrated ability
151 to maintain order and prevent unlawful conduct, the city council may consider
152 police reports, the appearance of a readily identifiable pattern or practice of
153 recurring violent acts or unlawful conduct on the licensed premises.
154 testimony presented before the council, written comments, or other evidence
155 deemed to be reliable and relevant to the purpose of this subsection;

156 9. Whether the applicant can demonstrate prospective or continued compliance
157 with operations procedures for licensed premises set forth in BMC section
158 5.08.110.

159 10. The proximity to a school, licensed day care, alcohol/ drug inpatient or
160 outpatient treatment center;

161 11. Any history of convictions of the applicants and affiliates of the applicants
162 for:

163 (a) Any violation of AS Title 04;

164 12. Any other factor the city council determines is relevant to a particular
165 application.

166

167 **5.10.50 Council Action on Marijuana License Applications.**

168 A. If a city council member wishes to protest the application, a resolution shall be
169 prepared and introduced at the next regularly scheduled council meeting or
170 earlier if necessary to meet the requirements of 3 AAC 306.060.

171 B. At least seven (7) calendar days prior to the council meeting, the city clerk shall
172 provide the applicant with:

173 1. A copy of the proposed resolution; and

174 2. Notice of the date and time when council will consider the resolution
175 (BMC?); and

176 3. Notice the applicant will have an opportunity, pursuant to (BMC?) to
177 appear before the council to defend the application.

178 C. A protest by the council under this section cannot be based in whole or in part
179 on police reports or other written materials available to the City but which were
180 not provided to the affected applicant before the public hearing on that protest.

181 D. At the conclusion of the public hearing, and any deliberation of the council, the
182 council may choose to:

183 1. Pass the resolution protesting to the Board the issuance, transfer or
184 renewal of the liquor license application; or

185 2. Recommend the license be approved with conditions; or

186 3. Take no action on the application.

187 **5.10.060 Recordkeeping required of all sellers.**

188

189 A. Premises licensed under (BMC?) shall keep and preserve suitable records of all sales
190 made by the seller and such other books or accounts as may be necessary to
191 determine the amount of tax which it is obliged to collect, including records of the
192 gross daily sales, together with invoices of purchases and sales, bills of lading, bills
193 of sale or other pertinent records and documents as will substantiate and prove the
194 accuracy of a tax return.

195 B. "Suitable records of all sales made" as used in subsection A of this section shall
196 mean at a minimum a daily "Z" or "Z-total" report or equivalent, (A "Z" or "Z-total"
197 report is the report generated by the cash register at the end of each business day,

- 198 which calculates, at least, the totals for each department key, total sales and total
199 receipts – although some cash registers have more detailed “Z” or “Z-total” reports).
200 Whatever records are kept must reflect the total daily purchases of taxable items. If
201 no taxable sales are made on a business day, the records kept shall so reflect “zero”
202 sales on that day. Records must also be kept to substantiate any claimed
203 deductions or exclusions authorized by law. Records may be written, stored on data
204 processing equipment, or may be in any form that the City may readily examine.
- 205 C. All sellers within the City who sell marijuana must have a cash register and must
206 record each retail sale on a cash register that provides, at a minimum, a daily “Z” or
207 “Z-total” report, or equivalent.
 - 208 D. Records shall be kept in a systematic manner conforming to accepted accounting
209 methods and procedures. Such records include:
 - 210 1. The books of accounts ordinarily maintained by a prudent business person.
211 Records and accounting information stored on computers must be provided to
212 the City in a readable form when requested by the City.
 - 213 2. Documents of original entry such as original source documents, pre-numbered
214 sequential source documents, pre-numbered sequential receipts, cash register
215 tapes, sales journals, invoices, job orders, contracts, or other documents of
216 original entry that support the entries in the books of accounts;
 - 217 3. All schedules or working papers used to prepare gross and taxable sales results,
218 including receipts or invoices showing exempt sales.
 - 219 E. Records must show:
 - 220 1. Gross receipts and amounts due from all taxable and exempt sales; and
 - 221 2. The total purchase price of all goods and other property purchased for sale,
222 resale, consumption, or lease.
 - 223 F. Every seller shall preserve suitable records of sales for a period of three (3) years
224 from the date of the return reporting such sales, and shall preserve for a period of
225 three (3) years all invoices of goods and merchandise purchased for resale, and all
226 such other books, invoices and records as may be necessary to accurately determine
227 the amount of taxes which the seller was obliged to collect under this chapter.
 - 228 G. The City finance department may examine and audit any relevant books, papers,
229 records, returns or memoranda of any seller, may require the attendance of any
230 seller, or any officer or employee of a seller, at a meeting with the finance director
231 or his or her designee, and may require production of all relevant business records,
232 in order to determine whether the seller has complied with this chapter.

233
234

5.10.070 License Restrictions

- 235 **A.** The City of Bethel adopts 3ACC.010 A and B, which states the Board will not issue a
236 marijuana establishment license if the licensed premises will be located within 500 feet of a
237 school ground, a recreation or youth center, a building in which religious services are
238 regularly conducted, or a correctional facility. The distance specified in this subsection must
239 be measured by the shortest pedestrian route from the public entrance of the building in
240 which the licensed premises would be located to the outer boundaries of the school ground,
241 the outer boundaries of the recreation or youth center, the main public entrance of the
242 building in which religious services are regularly conducted, or the main public entrance of
243 the correctional facility. This section does not prohibit the renewal of an existing marijuana

City of Bethel, Alaska

Ordinance # 16-18

6 of 16

244 establishment license or the transfer of an existing marijuana establishment license to
245 another person if the licensed premises were in use before the school ground, recreation or
246 youth center, the building in which religious services are regularly conducted, or the
247 correctional facility began use of a site within 500 feet. If an existing marijuana
248 establishment license for premises located within 500 feet of a school ground, a recreation
249 or youth center, a building in which religious services are regularly conducted, or a
250 correctional facility is revoked or expires, the board will not issue another marijuana
251 establishment license for the same premises unless the school ground, the recreation or
252 youth center, the building in which religious services are regularly conducted, or the
253 correctional facility no longer occupies the site within 500 feet.

254 B. The board will not issue a marijuana establishment license if the licensed premises will
255 be located in a liquor license premises.

256
257 **5.10.080 Conditional use permit required.**

258 Unless exempt, all marijuana establishments including but not limited to cultivation,
259 manufacturing, testing, dispensing, and retail are permitted only by a Conditional Use
260 Permit.

261 **5.10.090 Licensee Responsible for Employees' Actions on Premises.**

262 A. A licensee may neither knowingly allow agents or employees to violate this
263 chapter or (AS Title 04?) or regulations adopted thereunder, or to recklessly or
264 with criminal or civil negligence fail to act in accordance with the duties
265 prescribed under (AS 04.21.030?) with the result that an agent or employee of
266 the licensee violates a law, regulation or ordinance.

267 The licensee shall be responsible for all acts or omissions of the licensee's employees on
268 the licensed premises. The licensee may be cited and prosecuted for all acts or
269 omissions of employees which are committed on the licensed premises and which are in
270 violation of this chapter; provided, however, that the prosecution of the licensee shall
271 not prohibit the prosecution of the employee for acts o omissions committed by the
272 employee in violation of any provision of this chapter.

273
274 **5.10.100 Hours and Days of Operation.**

275 A. Premises licensed for the sales, service and consumption of marijuana shall be
276 closed between the hours of 9:00 p.m. and 11:00 a.m., seven days per week.

277 B. A person may not sell, offer for sale, give, furnish, deliver or consume marijuana
278 on premises licensed under (Code?) during the hours of closure set forth in this section.

279 C. A licensee, an agent, or employee may not permit a person to consume
280 marijuana on the licensed premises between the hours of closure set forth in this
281 section.

282 **5.10.110 Obligation to Enforce Restrictions within Licensed Premises.**

283 A licensee, their agent or employee may not permit the consumption of marijuana by
284 any person within the licensed premises unless it is permitted by the license.

285 **5.10.120 Marijuana Handler Permit**

286 A. Pursuant to 3 AAC 306.700 A and D, a marijuana establishment and each licensee,
287 employee, or agent of the marijuana establishment who sells, cultivates, manufactures,
288 tests, or transports marijuana or a marijuana product, or who checks the identification of a
289 consumer or visitor, must obtain a marijuana handler permit from the board before being
290 licensed or beginning employment at a marijuana establishment.

291 B. A licensee, employee, or agent of a marijuana establishment shall keep the marijuana
292 handler permit card in that person's immediate possession or a valid copy on file on the
293 premises at times when on the licensed premises of the marijuana establishment.

294 C. Pursuant to 3 AAC 306.530. a marijuana product manufacturing facility, including a
295 marijuana concentrate manufacturing facility, shall ensure that each licensee,
296 employee, or agent who is required or permitted to be physically present on the
297 licensed premises at any time:

298 (1) obtains a marijuana handler permit as provided in 3 AAC 306.700 before being
299 present or employed at the marijuana product manufacturing facility's licensed
300 premises; and

301 (2) has the marijuana handler permit card in the person's immediate possession, or a
302 valid copy on file on the premises, at all times while on the marijuana product
303 manufacturing facility's licensed premises.
304

305 **5.10.130 Operation of Licensed Premises.**

306 A. Except as otherwise provided in this section, the operations procedures set forth
307 in subsection B of this section shall apply to all persons seeking the issuance,
308 renewal or transfer of any license issued by the Board by virtue of (AS ?) and
309 other applicable provisions of law allowing the sale or service of marijuana.
310 (Subsection ?) of this section shall not apply to persons seeking the issuance,
311 transfer or renewal of licenses issued under (AS ?) which do not authorize the
312 sale or service of marijuana for consumption on the premises licensed.

313 B. Persons seeking the issuance, transfer or renewal of licenses issued by the Board
314 under (AS Title?) and other applicable provisions of law shall comply with the
315 following operations procedures:

316 1. *Public Transportation.* Licensees shall make available to their patrons access
317 to means of public transportation ~~to~~ or permit patrons to make arrangements
318 for transportation off the premises.

319 2. *Notice of Penalties.* Operators shall place, at conspicuous locations within
320 licensed premises, a clear and legible sign describing applicable penalties for
321 driving under the influence, and for service or sale of marijuana to minors or
322 intoxicated persons.

323 3. *Compliance Determination.* In order to determine whether applicants seeking
324 the issuance, renewal or transfer of marijuana licenses have complied with
325 the provisions of this chapter, applicants shall, at the request of the City,
326 submit to the city manager (or their designee) an marijuana licensee
327 compliance form. Upon request, operators shall also provide the city manager
328 with certificates from all current employees demonstrating that those
329 employees have successfully completed a marijuana awareness training
330 program such as the program for techniques in marijuana management as
331 approved by the Board.

332 4. *In the event the City of Bethel adopts code for allowing for the impoundment and/or*
333 *forfeiture of vehicles seized pursuant to an arrest for or charge driving under the*
334 *influence or refusal to submit to chemical tests, such signs must be posted.* Upon
335 adoption of a municipal code allowing for the forfeiture, operators shall display at
336 conspicuous places in licensed premises two (2) signs warning that vehicles are
337 seized in cases of driving under the influence or refusal to submit to chemical tests.
338 One of these warning signs shall be at least eleven (11”) inches by fourteen (14”)
339 inches in size, and must read, in lettering at least one-half (1/2”) inch high and in
340 contrasting colors or black and white, "DRIVE UNDER THE INFLUENCE—LOSE
341 YOUR CAR." The sign described in the preceding sentence must carry a logo or
342 illustration approved by the chief of police or their designee which shows an
343 automobile being towed. The second warning sign shall be at least eleven (11”)
344 inches by fourteen (14”) inches and must read, in letters at least one-quarter (1/4”)
345 inch high and in contrasting colors or black and white, "WARNING: IF YOU DRIVE
346 UNDER THE INFLUENCE OR LET ANYONE DRIVE YOUR VEHICLE UNDER
347 THE INFLUENCE, YOU WILL LOSE YOUR VEHICLE. The police SEIZE cars
348 and trucks driven by intoxicated drivers. A vehicle will be IMPOUNDED for 30 days
349 for the driver's first DUI offense. A vehicle will be FORFEITED if the driver has
350 been convicted of DUI in the past ten (10) years."

351 5. *Warning signs required other:*

352 C. *Mandatory identification check in the retail sale of marijuana:* Licensee or
353 licensee's employee or agent shall require any purchaser (and anyone
354 accompanying the purchaser) of marijuana to produce a current government-
355 issued identification with birth date and photograph for identification check prior
356 to any on-premises sale. The purpose of the identification check is to verify age
357 and eligibility to purchase marijuana. Failure to conduct the mandatory
358 identification check required by this section is a violation of code and the licensee
359 or licensee's employee or agent failing to conduct the mandatory identification
360 check shall be subject to the civil penalty provisions of this chapter. For purposes
361 of mandatory identification check required by this section:

362 1. "*Current government-issued*" means a state, federal or foreign government
363 picture identification in force and effect for a specified period stated within
364 the identification, when presented prior to expiration of the period stated. A
365 state government identification with birth date and photograph issued by any
366 state of the United States is included within the meaning of "current

367 government-issued" if the period of validity is specified and the identification
368 is presented prior to expiration of the period stated.

369 2. The subsequent invalidation of the identification as a bona fide government-
370 issued identification does not invalidate the compliance.

371 3. An ongoing pattern of non-compliance with the mandatory identification
372 check required by this code may result in review of the conditions of use or
373 may result in the revocation of a special use permit previously approved by
374 the city council. Action by the city council on licensee's special use permit
375 under this section shall be in addition to any criminal or civil penalty
376 applicable to the individual making the sale without performing the
377 mandatory identification check.

378 D. *Security Personnel.*

379 Each premises licensed for consumption, shall employ at least one (1) person
380 who shall be on duty during open business hours. This person shall not be the
381 budtender on duty, and shall be on duty for the express purpose of maintaining
382 order within the establishment and assuring compliance, by the clientele, with
383 the provisions of this chapter.

384 E. *Video surveillance.*

385 1. Pursuant to 3 AAC 306.720., a marijuana establishment shall install and maintain a video
386 surveillance and camera recording system as provided in this section. The video system must cover
387 (a) each restricted access area and each entrance to a restricted access area within the licensed
388 premises;

389 (b) each entrance to the exterior of the licensed premises; and

390 (c) each point-of-sale area.

391 2. At a marijuana establishment, a required video camera must be placed in a way that produces a
392 clear view adequate to identify any individual inside the licensed premises, or within 20 feet of each
393 entrance to the licensed premises. Both the interior and the exterior of each entrance to the facility
394 must be recorded by a video camera.

395 3. Any area where marijuana is grown, cured, or manufactured, or where marijuana
396 waste is destroyed, must have a camera placement in the room facing the primary entry door, and in
397 adequate fixed positions, at a height that will provide a clear, unobstructed view of the regular
398 activity without a sight blockage from lighting hoods, fixtures, or other equipment, in order to allow
399 for the clear and certain identification of any person and activity in the area at all times.

400 4. Surveillance recording equipment and video surveillance records must be housed in a locked and
401 secure area or in a lock box, cabinet, closet or other secure area that is accessible only to a marijuana
402 establishment licensee or authorized employee, and to law enforcement personnel including a peace
403 officer or an agent of the board. A marijuana establishment may use an offsite monitoring service and
404 offsite storage of video surveillance records if security requirements at the offsite facility are at least
405 as strict as onsite security requirements as described in this section.

406 5. Each surveillance recording must be preserved for a minimum of 40 days, in a format that can be
407 easily accessed for viewing. All recorded images must clearly and accurately display the time and
408 date, and must be archived in a format that does not permit alteration of the recorded image, so that
409 the images can readily be authenticated. After 40 days, a marijuana establishment may erase video
410 recordings, unless the licensee knows or should know of any pending criminal, civil, or
411 administrative investigation for which the video recording may contain relevant information.
412

413 F. Premises to be cleared Upon Closing. Upon closing, licensees shall clear the
414 marijuana establishment of all persons, other than necessary employees, within fifteen
415 (15) minutes after the closing hours.

416 G. *Age Limit Signs to be exhibited.* All licensees shall cause to remain displayed upon
417 the premises and in the entrance to the premises of their establishments a conspicuous
418 sign in a prominent place visible from outside the establishment, which shall in
419 substance state: "No person under the age of 21 years permitted. Any such person will
420 be prosecuted to the full extent of the law."

421

422 **5.10.140 Sale to Intoxicated Persons.**

- 423 A. A licensee, his agent or employee may not knowingly or negligently:
- 424 1. Sell, give or barter marijuana to an intoxicated person;
 - 425 2. Allow another person to sell, give or barter marijuana to an intoxicated
426 person within the licensed premises;
 - 427 3. Allow an intoxicated person to enter and remain within the licensed
428 premises or to consume marijuana within the licensed premises; or
 - 429 4. Permit an intoxicated person to sell or serve marijuana.

430

431 **5.10.150 Eviction of Patrons.**

432 The licensee and employees of the licensee are expressly permitted to evict any person
433 suspected of being under the age of twenty-one (21) or intoxicated and failure of such
434 person to leave after oral request is unlawful and an offense on the part of that person.

435

436 **5.10.160 Open Container.**

- 437 A. It shall be unlawful to consume, an open container of marijuana on the public
438 streets, sidewalks, alleys, parks, or other public places throughout the city. Open
439 container of consumable marijuana may be carried in a vehicle in a locked truck or
440 other secured location inaccessible to the driver and passengers within the vehicle
- 441 B. Open containers are permitted on private residential property, with the consent of
442 the owner or legal occupant of the property. (*see 17.38.020*)

443 **5.10.170 Transportation of Marijuana.**

444 A. Pursuant to 3 AAC 306.310(a)(5), a licensed, retail marijuana store may only sell
445 marijuana or marijuana product to a consumer who is physically present on the licensed
446 premises.

447 B. The transportation of marijuana by common carrier or commercial carrier within the
448 City of Bethel to a residential home or non-licensed marijuana facility is strictly
449 prohibited.

450 **5.10.180 Inspection of premises.**

451

- 452 A. Pursuant to 3 AAC 306.725, a marijuana establishment or an applicant for a
453 marijuana establishment license under this section shall, upon request, make the
454 licensed premises or the proposed licensed premises, including any place for
455 storage, available for inspection by the City, an employee or agent of the City, or an
456 officer charged with the enforcement of this chapter.
- 457 1. Inspection under this section includes inspection of the premises, facilities,
458 qualifications of personnel, methods of operation, business and financial
459 records, marijuana inventory tracking system, policies, and purposes of any
460 marijuana establishment and of any applicant for a marijuana establishment
461 license.
 - 462 2. The cost for inspections shall be borne by the applicant or licensed
463 establishment.
- 464 B. The premises of licensees authorized to sell or distribute marijuana shall be easily
465 accessible for inspection by police officers during all regular hours of the transaction of
466 business upon the premises, and at any other time with reasonable notice by the officer.
467
- 468 C. The police department may inspect any premises with a marijuana license for compliance
469 with conditions on the license. Upon discovering a violation of such conditions, the
470 police department shall submit a written report of the violation to the city clerk for review
471 by the city council and provide a copy thereof to the licensee.
- 472 D. If at any time there appears to be a readily identifiable pattern or practice of
473 recurring violent acts or unlawful conduct in a licensed premise, the City may send
474 notice of possible protest to the licensee that he or she must submit and implement a
475 plan for remedial action or be in jeopardy that a protest will be filed to any renewal,
476 transfer of location or transfer of ownership sought by the licensee.
- 477 E. Upon receiving a report of conditions violation, the city council may:
- 478 1. Revoke the premise's conditional use permit;
 - 479 2. Protest the issuance, renewal, transfer, relocation or continued operation of
480 the license;
 - 481 3. Recommend imposition of conditions on the state marijuana license pursuant
482 to AS 04.11.480(c); or
 - 483 4. Notify the Board that a licensee has violated conditions and request that an
484 accusation pursuant to AS 04.11.370 be brought against the licensee.
485
- 486 F. Prior to taking any of the actions listed in subsection c) of this section, the City
487 shall give the permittee or licensee notice and an opportunity to be heard on the
488 accusation(s) at a publicly noticed council meeting.
489

490 **5.10.190 Access for Enforcement.**

- 491 A. The public entrance of licensed marijuana establishments shall be open and
492 unlocked before and after the closing hour of such establishment if there are any
493 patrons in the establishment.
- 494 B. Licensees of licensed marijuana establishments, their employees and all patrons
495 in such establishments shall permit and aid the entry of any law enforcement

496 officer during all hours of operation and at any other time when there are two or
497 more persons in such licensed marijuana establishment.

498 C. Lack of knowledge, lack of intent and absence from the premises shall not be
499 defenses to any action brought under this section against any such employee in
500 charge of such establishment or such licensee.

501 D. Licensees shall provide the Police Chief with their current hours of operation. Any
502 changes to the hours of operation shall be communicated, in writing, to the
503 Police Chief, at least three (3) business days prior to the change being
504 implemented.

505

506 **5.10.200 Limitation on Type and Number of Marijuana Facilities**

507 The City of Bethel will cap operations at the following maximums as established by the
508 most recent Bethel population census:

509 A. One cultivation operation per every 1,500 people.

510 B. One manufacturing facility per every 1,500 people.

511 C. One retail shop per every 1,500 people.

512 D. One consumable establishment per every 3,000 people.

513

514 **5.10.210 Advertising**

515 A. A retail marijuana establishment shall not advertize the sale of marijuana or
516 marijuana products electronically. This includes but is not limited to the internet,
517 Facebook, Twitter, other social media platforms, and/or mobile devices. These
518 limitations do not include the print media, television, or radio advertising.

519 B. Outdoor Advertising Generally Prohibited. Except as otherwise provided in the State rule,
520 AAC 306.360, it shall be unlawful for any Retail Marijuana Establishment to engage in Advertising
521 that is visible to members of the public from any street, sidewalk, park or other public place,
522 including Advertising utilizing any of the following media: any billboard or other outdoor general
523 Advertising device; any sign mounted on a vehicle, any hand-held or other portable sign; or any
524 handbill, leaflet or flier directly handed to any person in a public place, left upon a motor vehicle,
525 or posted upon any public or private property without the consent of the property owner.

526

527 **5.10.220 Water Supply for Grow Operations**

528 The license for any cultivation or manufacturing facility shall bear the burden for
529 providing all water needed. The City will not provide water through piped water nor will
530 not be responsible for hauled water. Licensees may haul their water or provide it
531 through other means. Under no circumstances will the City be held liable for lack of
532 water availability.

533

534 **5.10.230 Marijuana Offenses.**

- 535 A. Violation of any section of this chapter shall be an infraction.
 536 B. The Bethel Police Department shall have the authority to write and serve
 537 citations for violations of the provisions of any portion of this chapter.

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544 **5.10.240 Penalties.**

545

Offense	BMC Section	Mandatory Court Appearance	Penalty Amount
Premises Open during non-permissible hours	5.10.090 A & B	No	1 st Offense: \$150 2 nd Offense: \$300 3 rd & subsequent offenses: \$700
Premises Open during on non-permissible days	5.10.090 A & B	No	1 st Offense: \$500 2 nd Offense: \$700 3 rd & subsequent offenses: \$1,000
Selling, Offering for Sale, Giving, Furnishing, Delivering or Consuming marijuana on Premises during hours of Closure	5.10.090C	No	\$300
Allowing person to consume marijuana on premises during hours of closure	5.10.090C	No	\$300
Allowing consumption on premises in violation of license	5.10.100	No	\$500
Selling or dispensing marijuana prior to successful completion of a marijuana handler permit training program	5.10.110A	Yes	\$1,000
Allowing employee to sell or dispense marijuana prior to their successful completion of a marijuana handler permit training program	5.10.110A	Yes	\$1,000
Failure to show proof of successful completion of a marijuana handler permit training program	5.10.110B	Correctable	\$300

Failure to provide access to means of public transportation to patrons or to arrange for transportation off premises	5.10.120B1	No	<u>\$500</u>
Failure to properly post signs describing penalties for driving under the influence, sale or service to minors, or intoxicated persons	5.10.120B2	No	\$250
Failure to submit a marijuana compliance form upon request	5.10.120B3	No	\$300
Failure to check identification of purchaser	5.10.120C	Yes	1 st Offense: \$500 2 nd Offense: \$700 3 rd & subsequent offenses: \$1,000
Acceptance of non-conforming identification for purchase of marijuana	5.10.120C	Yes	1 st Offense: \$150 2 nd Offense: \$300 3 rd & subsequent offenses: \$700
Failure to install or maintain security equipment	5.10.120E	Yes	1 st Offense: \$500 2 nd Offense: \$700 3 rd & subsequent offenses: \$1,000
Interior camera not positioned to capture sales transactions	5.10.120E	Yes	1 st Offense: \$500 2 nd Offense: \$700 3 rd & subsequent offenses: \$1,000
Failure to clear premises after closing	5.10.120F	No	1 st Offense: \$150 2 nd Offense: \$300 3 rd & subsequent offenses: \$700
Failing to post age limit signs	5.10.120G	No	\$300
Sale of marijuana improperly obtained	5.10.120	Yes	\$700
Sale of marijuana to an intoxicated person	5.10.130	Yes	1 st Offense: \$500 2 nd Offense: \$700 3 rd & subsequent offenses: \$1,000
Providing marijuana to an intoxicated person	5.10.130A1&2	Yes	1 st Offense: \$500 2 nd Offense: \$700 3 rd & subsequent offenses: \$1,000

Allowing an intoxicated person to enter and remain within licensed premises	5.10.130A3	Yes	1 st Offense: \$150 2 nd Offense: \$300 3 rd & subsequent offenses: \$700
Permitting intoxicated person to consume marijuana within a licensed premise	5.10.130A3	Yes	1 st Offense: \$500 2 nd Offense: \$700 3 rd & subsequent offenses: \$1,000
Permitting an intoxicated person to sell or serve an marijuana	5.10.130A4	Yes	1 st Offense: \$500 2 nd Offense: \$700 3 rd & subsequent offenses: \$1,000
Carrying, transporting or possessing an open container in public	5.10.150	No	1 st Offense: \$150 2 nd Offense: \$300 3 rd & subsequent offenses: \$700
Transportation of marijuana by common carrier for resale	5.10.160	Yes	1 st Offense: \$500 2 nd Offense: \$700 3 rd & subsequent offenses: \$1,000
Transportation of marijuana by commercial carrier for resale	5.10.160	Yes	1 st Offense: \$500 2 nd Offense: \$700 3 rd & subsequent offenses: \$1,000
Failure to make premises easily accessible for inspection by police officers	5.10.180	Yes	\$700
Failing to maintain premises unlocked while patrons are on premises	5.10.180A	Yes	\$1,000
Failure to permit or aid the entry of law enforcement during hours of operation	5.10.180B	Yes	\$700
Failure to permit or aid the entry of law enforcement any time there are two (2) or more persons on the premises	5.10.180B	Yes	\$700
Violation of electronic advertising	5.10.200		

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City of Bethel Action Memorandum

Action memorandum No.	16-37		
Date action introduced:	5-24-16	Introduced by:	City Manager Capela
Date action taken:		<input type="checkbox"/> Approved	<input type="checkbox"/> Denied
Confirmed by:			

Directing City Manager to enter into Agreement with the Alaska Court System and Alaska Permanent Fund Dividend Division (PFD) for the transfer of unpaid minor offense fines and the electronic levy on the PFD of non-payees

Route to:	Department/Individual:	Initials:	Remarks:
<input checked="" type="checkbox"/>	Hansel Mathlaw, Finance Director		
<input checked="" type="checkbox"/>	Patty Burley, City Attorney	<i>PB</i>	
<input type="checkbox"/>			
<input type="checkbox"/>			
<input type="checkbox"/>			

Attachment(s):

Amount of fiscal impact:		Account information:
xx	No fiscal impact	
	Funds are budgeted for.	
	Funds are not budgeted. Budget modification is required.	

Background:

Each year numerous minor offense citations issued by the City of Bethel go unpaid. The Alaska Court System does a poor job of communicating which citations are not paid and collection on unpaid citations is difficult because of the high cost required to file in small claims court. This Agreement would mandate the Alaska Court System to report the status of citations to the City of Bethel monthly and would allow the City to garnish the amount of the unpaid citations from a defendant's PFD. Garnishment will not be automatic. Prior to garnishment, the defendant would have had opportunity to properly contest the ticket and would have been given a notice by the court. By the time garnishment becomes appropriate, significant opportunities were provided for a person to challenge the ticket and to make payment arrangements.

City of Bethel Action Memorandum

Action memorandum No.	16-38		
Date action introduced:	May 24, 2016	Introduced by:	City Manager Capela
Date action taken:		Approved	Denied
Confirmed by:			

Authorizing administration to negotiate and enter into a contract with pool operator for the operation and maintenance of the Yukon Kuskokwim Aquatic Health and Safety Center

Route to:	Department/Individual:	Initials:	Remarks:
	Finance Director		
	City Attorney		
	City Manager		

Attachment(s): Draft contract (generic) and summary of evaluation scores (red folder)

Amount of fiscal impact:		Account information:
\$140,000	Funds are budgeted.	40-50-649

Background:

The current operation contract for the Facility expires on June 30, 2016. The City of Bethel hired Project Development to write and manage a request for proposal. Four proposals were ultimately received. All four proposals were scored by a committee comprised of community volunteers. Unfortunately, due a series of errors and absolutely no deliberate wrongdoing on anyone's part, all of the proposals were required to be rejected.

The request for proposals was reopened with all four original proposers resubmitting. Due to time constraints, the second scoring team consisted solely of City employees. After scoring the proposals, an incumbent was chosen and notified of the City's desire to enter into a contract for operations. The other proposers were notified, in writing, that their proposers were not the highest ranking and the City would likely not be choosing their proposal and entering into contract negotiations with them.

Due to the very shortened time frame for protests (5 business days), the final day for the City to receive a protest is May 23, 2015 at 5 pm AST. As a result, the City's Procurement Code, which mirrors Alaska Statute 36.30.230, the information contained in the proposals is not subject to public disclosure until the protest period has ended.

A draft contract has been forwarded to the highest scoring proposer (a blank copy is inserted herein) and a copy of the score summaries will be provided on the council meeting date.

YUKON KUSKOKWIM REGIONAL AQUATIC HEALTH & SAFETY CENTER

CITY OF BETHEL, ALASKA

OPERATIONS AND MAINTENANCE AGREEMENT

Covering the period between July 1, 2016 through June 30, 2018



Table of Contents

1. Scope of Operator Services
 - a. Incorporation of Operator's Proposal and City's Request for Proposals
2. Assignment and Transfer of Interest
 - a. Condition of Facility
 - b. Facility Withdrawal
 - c. Effect of Withdrawal
 - d. Personal Property
 - e. Utilities
3. Compensation: Payment Schedule & Fees
 - a. Cost Plus Fixed Fee/Lump Sum Agreement
 - b. Fee
 - c. Annual Bonus Incentive
 - d. Compensation for Personal Property
 - e. Invoicing
 - f. Late Payment
 - g. Disputed Invoices
 - h. Fee Adjustments
4. Term of Agreement/Renewal
5. City's Responsibilities and Obligations
6. Duty to Notify
7. Required Plans
 - a. Operations Plan
 - b. Personnel Policy and Procedure Manual
 - c. Annual Operating Budget
 - d. Marketing
 - e. Maintenance
 - f. Concessions
 - g. Transition Plan
 - h. Amendment and Modification
 - i. Summary Table
8. Personnel
 - a. [no title]
 - b. Non-Discrimination
 - c. Personnel Approval
 - d. Employer
 - e. Reporting
 - f. Certification
 - g. Identification
 - h. Authority
 - i. Drug, Alcohol and Tobacco Prohibition
 - j. Minimum Staffing
 - i. Lifeguards
 - ii. Instructors
 - iii. Gatekeepers/Concessions
 - iv. Maintenance/Housekeeping

9. Facility Closure
 - a. Emergency Closing
 - b. Breakdown and Repair of Facility
 - c. Annual Maintenance
10. Private Use of Facility
11. Additional Facilities
12. Repairs/Maintenance
13. Signage and Posting of Rules
14. Damages Due to Vandalism, Weather and Acts of God
15. Chemical and Maintenance Supplies
16. Safety Equipment
17. Indemnification and Insurance
 - a. Indemnification
 - b. Right to Defend Actions
 - c. Indemnified Party not to Compromise
 - d. [no subtitle]
 - e. Required Insurance
 - i. Worker's Compensation
 - ii. Commercial General Liability
 - iii. Automobile Liability
 - iv. Umbrella Coverage
 - f. Certificate of Insurance
18. Bonding (Fidelity Bonds)
19. Accounting Records and Reports
 - a. Accounting System
 - b. Monthly Reports
 - c. Annual Financial Report
 - d. Inventory
 - e. Accounting Records
 - f. Sales Tax Records
 - g. Audit by City
 - h. Dispute
20. Notices
 - a. Safety
 - b. Injury
21. Suspension/Termination
 - A. Suspension
 - B. Cancellation for Un-Appropriated Funds
 - C. Events of Default
 - i. Cancellation for Non-Payment
 - ii. Cancellation by Mutual Agreement
 - iii. City's Event of Default
 - iv. Operator Event of Default
 - v. Consequences in the Event of Default
 - vi. Sole Grounds for Termination
 - vii. Damages/Payment in the Event of Termination

22. Dispute Resolution
23. Confidentiality and Security
24. Conflicts
25. Subcontractors
26. General Provisions
 - a. Entire Agreement
 - b. Amendments
 - c. Governing Law
 - d. Legal, Regulatory and Policy Compliance
 - e. Hazardous Materials
 - f. Severability
 - g. Captions/Headings
 - h. Waiver
 - i. Successors
 - j. Good Faith
 - k. Right of Entry
 - l. Further Assurances
27. Representation and Warranties
28. Exhibits

Exhibit A – Assigned Land, Real Property Improvements and Equipment

Exhibit B – Minimum Safety Equipment Required

Exhibit C – Preliminary Operations Plan & Budget

Exhibit D – Operator’s Proposal

Exhibit E – City’s Request for Proposal

**Yukon Kuskokwim Regional Aquatic Health & Safety Center
Operations, Management and Maintenance Agreement**

This Swimming Pool Facility Management and Maintenance Agreement (hereinafter “Agreement”) is made and entered into on this _____ day of May 2016, (the Effective Date) by and between the **CITY OF BETHEL**, a municipal corporation (hereinafter “City”) and _____ (hereinafter “Operator”).

PURPOSE OF AGREEMENT

Operator is in the business of managing, operating and maintaining community swimming pools and recreational facilities.

City is a municipal corporation that owns and operates a community swimming pool and recreational facility with related fixtures, amenities and equipment for its residents, members and guests (collectively, “Visitors”) and is seeking to retain Operator to assume the supervision, control, maintenance and operation of the Yukon Kuskokwim Regional Health and Safety Center (hereinafter the “Facility”) under the terms of this Agreement.

In consideration of the mutual covenants set forth below, the parties agree as follows:

1. SCOPE OF OPERATOR SERVICES

Operator shall operate and maintain the Facility as a public facility commencing on July 1, 2016. Operator and City shall determine the dates and hours that the Facility shall be open to the public (per Operation Plan described more fully below in section 7 – Required Plans). Operator’s professional services shall include, at a minimum, the services described in this Agreement (the “Services”). The parties may mutually agree to amend or modify the Services during the Term of this Agreement or any Extended Period to include additional Services or exclude unnecessary Services by doing so in writing.

Operator is an independent contractor under this Agreement. Services provided by Operator pursuant to this Agreement shall be subject to the supervision of the Operator. In providing such services, neither Operator nor Operator’s agents shall act as officers, employees or agents of the City. No partnership, joint venture or other joint relationship is created hereby. City does not extend to Operator or Operator’s agents any authority of any kind to bind City in any respect whatsoever.

Operator shall perform Operator’s duties, obligations and services under this Agreement in a skillful and professional manner. The quality of Operator’s performance and interim and final product(s) provided to or on behalf of the City shall be comparable to the best local and national standards. Operator shall permit representatives of City to inspect, review or observe the services under this Agreement at any reasonable time.

- a. Incorporation of Operator’s Proposal and City’s Request for Proposal

In addition to Operator's obligations set out in this Agreement, Operator shall perform those services set out in Operator's Proposal submitted and attached hereto as Exhibit D. Questions as to the intent of Operator's proposal, shall be answered in context to the City's Request for Proposals dated May 6, 2016, attached hereto as Exhibit E.

2. ASSIGNMENT OF FACILITY

The City hereby assigns the Facility to the Operator for the purposes of this Agreement. The Facility is further described as set forth in the attached Exhibit A (Assigned Land, Real Property Improvements and Equipment). The City and the Operator shall, from time to time, amend Exhibit A to reflect changes in the Facilities assigned to the Operator, including, without limitation, amending Exhibit A to reflect the addition of real property improvements completed in accordance with the terms and conditions of this Agreement and to reflect withdrawal of facilities as set forth below.

- a. Condition of Facility: The Operator warrants that prior to entering into this Agreement; it has inspected the Facility, is thoroughly acquainted with its condition, and accepts the Facility "as is". Upon termination of this Agreement, the City and Operator will inspect the Facility and all property listed under Exhibit A. All property shall be accounted for and in good and operating condition, less reasonable wear and tear. The City shall give written notice of any defects in the condition of any of the equipment or property. Operator will be responsible for repairs to or replacement of any damaged property.
- b. Facility Withdrawal: The City may withdraw all or portions of the Facility assignments at any time during the term of this Agreement if:
 - i. The withdrawal is necessary for the purpose of protecting the public safety or to protect, conserve and preserve the Facility;
 - ii. The operations utilizing the assigned Facility have been terminated or suspended by the City; or
 - iii. Land or real property improvements assigned to the Operator are no longer necessary for the operation;
 - iv. The withdrawal is necessary for use by the City or other reasonable need of the City.
- c. Effect of Withdrawal: Any permanent withdrawal of assigned Facilities which the City or the Operator considers to be essential for the Operator to provide the services required by this Agreement will be treated as a termination pursuant to Section 21 of this Agreement. The Operator will be compensated pursuant to Section 3 for the value of any allowable incurred costs up to the date of the withdrawal. No other compensation is due the Operator in these circumstances.
- d. Personal Property: The City will provide certain items of personal property, including without limitation, removable equipment, furniture and goods, for the Operator's use in the performance of this Agreement. The City hereby assigns personal property listed in Exhibit A – Assigned Land, Real Property Improvements and Equipment.

Personal Property Provided by the Operator. The Operator shall provide all personal property, including without limitation, removable equipment, furniture and goods, necessary for its operations under this Agreement, unless such personal property is provided by the City as set forth above.

- e. Utilities: The City will provide the following utilities at no cost to the Operator for use in connection with the operations required or authorized hereunder:
- ✓ Electricity
 - ✓ Water
 - ✓ Sewer
 - ✓ Fuel Oil
 - ✓ Internet and Voice Over Internet Protocol (VOIP) Telephone
 - ✓ Solid Waste Disposal
 - ✓ Emergency Communication Lines for Security and Fire

The following utilities are not provided by the City and are to be procured, managed and paid for by the Operator in accordance with the budget:

- ✓ Cable (if desired by Operator and submitted in the approved budget)

3. COMPENSATION: PAYMENT SCHEDULE AND FEES

- a. Cost Plus Fixed Fee Type Agreement: This is a Cost Plus Fixed Fee type contract. This Agreement provides for the reimbursement of allowable incurred costs to the extent prescribed in this Agreement. The approved annual budget establishes the maximum total cost for the purpose of obligating funds and establishing a ceiling that the Operator may not exceed (except at their own risk) without the approval of the City. Allowable incurred costs are those costs directly attributable to operations and maintenance of the Facility. For the purposes of this Agreement, allowable incurred costs are those defined in the approved annual budget, are reasonable and prudent, and conform to generally accepted accounting practices.

Operator is expected to handle all revenue, including sales tax, generated from Operation of the Facility. Operator is to submit that revenue to the City monthly along with the monthly budget reports. Such revenue will be a projection in each Budget and the budget shall be amended annually to reflect the previous year's revenue. ***Revenue derived from Operation of the Pool is the property of the City and not compensation to the Operator.***

- b. Fixed Fee: The Fixed Fee is [REDACTED] Dollars per year and shall be pro-rated monthly. The Fee includes profit and indirect costs that are not directly attributable to the operations and maintenance of the Facility, are generally considered to be overhead and are generally provided off-site. The Fee includes, but is not limited to, proportionate share of home office expenses, management oversight and travel, accounting and clerical personnel, human resources management, payroll processing, invoicing and required reporting.
- c. Annual Bonus Incentive: The City desires to incentivize the Operator to help the City reach its goal of making the Facility self-sustaining. If Operator decreases the net

negative (as compared to the actual expenses for 2015 and 2016) by a combination of increased revenues and decreased expenses (including utilities) Operator shall be compensated twenty (20%) percent of the reduction. The Operator shall have no rights under the Agreement to make any claim arising out of this "incentive payment" provision except as is expressly set forth in this Article. [This paragraph is subject to City Council approval]

- d. Compensation for Personal Property: No compensation is due to the Operator from the City or a successor operator for the Operator's personal property used in operations under this Agreement. However, the City or a successor operator may purchase such personal property from the Operator subject to mutually agreed upon terms. Personal property not removed from the Facility by the Operator in accordance with the terms of this Agreement shall be considered abandoned property subject to disposition by the City, at full cost and expense of the Operator, in accordance with applicable laws. Any cost or expense incurred by the City as a result of such disposition may be offset from any amounts owed to the Operator by the City to the extent consistent with Applicable Laws.
- e. Invoicing: The Operator shall invoice their Fee each month in advance. For example, the fixed fee for July shall be billed in June. City shall have thirty (30) days from receipt of the invoice to submit payment to Operator.

Operator shall also bill the City monthly for incurred costs for operating the pool. Copies of all receipts and other invoices for which reimbursement is requested shall be included with the Operator's invoice. Such costs shall be in accordance with the approved budget. The City shall have thirty (30) days from receipt of the invoice to submit payment to Operator.

- f. Late Payment: Payments not submitted in a timely manner (within 30 days of receipt) shall incur a five (5%) penalty. If for any reason not the fault of the Operator, the Operator does not receive payment from the City within thirty-five (35) days after the time such payment is due, then the Operator shall assess a five (5%) percent finance charge to the invoice. If payment is not received within 30 days, the operator has the right to send written notice to the city, alerting them of a fourteen (14) day remedy period. If payment is not received after that fourteen (14) day remedy period, the Operator shall have the right, at its option, and within its sole discretion, to interrupt its personnel and supplies from Owner's pool facilities without any further or additional notice to Owner.
- g. Disputed Invoices: In the event of a dispute regarding an invoice or part of an invoice, the City shall provide the Operator written notice of the dispute within ten (10) business days of receipt of the invoice. Operator and City agree to work cooperatively to resolve the matter. Should the parties be unable to resolve the dispute within thirty (30) calendar days after written notice, the parties agree to follow the dispute process laid out in this Agreement.

- h. Fee Adjustment: In the event this Agreement expires and the service is continued, there will be a five (5%) increase in the service amount agreed to above until a new Agreement can be made.

It is agreed to by both parties that this Agreement total can be adjusted either upward or downward if both parties decide on a change, which would affect the totals (i.e., pool hours or number of staff, etc.) A supplement will be executed so that proper billing can be made. No supplement may be made to this Agreement which will lower the minimum standards established in the Agreement. Both parties must sign the amendment or supplement before the respective terms will be binding.

4. TERM OF AGREEMENT/RENEWAL

- a. This Agreement shall commence at midnight on the 1st day of July, 2016 and terminate on the 30th day of June, 2018 (the “Term”).
- b. Renewal: Operator shall have the option to extend/renew this Agreement up to two (2) consecutive times (each for an additional two years) as follows:
 - i. Operator shall provide City with written notice of its intent to renew the Agreement at least one hundred eighty (180) calendar days prior to the Agreement Expiration. Renewal notices shall state the following:
 - A. The applicable rates for the new contract term; and, if applicable,
 - B. Any significant changes requested to the existing Agreement;
 - C. Any proposed changes to the scope of services to be performed under the Agreement; and
 - D. Any proposed changes to the Deliverables under this Agreement: Operations Plan, Maintenance Plan; Policies and Procedures Manual; Concessions Plan; Advertising Plan; and Transition Plan.
 - ii. Upon receipt of a Notice to Extend/Renew the Agreement, the City shall:
 - A. Ensure that Operator continues to be eligible to contract with the City [i.e., maintains a valid City of Bethel business license, a valid State of Alaska business license and is not delinquent on any sales taxes or other fees with the City]; and
 - B. Verify that Operator’s certificates of insurance are up to date.
 - iii. If City determines renewal is in the City’s best interest, City shall then ensure that Operator remains eligible; any increased rates are acceptable; and any proposed contract changes are acceptable. In such situation, City shall give notice to Operator within ninety (90) calendar days of receipt of Notice of Request to Renew/Extend Contract of its intent to renew. At that time, City shall:
 - A. Notify Operator of City’s desire to renew/extend;
 - B. Notify Operator of any significant changes requested to the existing Agreement; and
 - C. Notify Operator of any changes requested to the Deliverables under this Agreement.
 - iv. Upon mutual agreement by the parties to proposed changes in the Agreement and/or Deliverables, a contract extension shall be prepared and executed by both parties.

- v. If the parties are unable to agree on requested changes to the agreement and/or deliverables, the City may issue a new Request for Proposals.

5. CITY'S RESPONSIBILITIES AND OBLIGATIONS

Cooperation: In order for Operator to provide the level and quality of Services under this Agreement as expected by City, Operator will expect the unconditional and full cooperation of City. City therefore agrees to:

- a. Make available to Operator access to the City's Facility as necessary to provide Services;
- b. Respond to all reasonable requests of Operator to facilitate performance of the Services;
- c. Provide good faith cooperation reasonably necessary for Operator to perform the Services;
- d. Provide and maintain a telephone that has restrictions on long distance, 900 and 976 calls. Such telephones are intended for business use only and lifeguards may use them for necessary 911 calls and to page supervisors and managers. Operator will be responsible for payment on all long distance phone bills if phone line is not restricted as stated. For safety reasons, pool will be closed if phone is not operable.
- e. Agrees to support Operator in the enforcement of all Facility rules and regulations. Enforcement may include temporary or permanent expulsion from the Facility of any person who fails to comply with any safety rule or regulation.
- f. Provide Operator with three (3) sets of keys to all doors and gates.

6. DUTY TO NOTIFY:

Without prejudice to the other obligations in this Agreement:

- a. Operator shall, as soon as practicable after it becomes aware of the same, inform the City of any circumstances which affect, or will affect, its ability to perform the requirements under this Agreement; and
- b. City shall, as soon as reasonably practicable after it becomes aware of the same, inform Operator of any circumstances which affect, or will affect, its ability to operate the Facilities.

7. REQUIRED PLANS

Operator will provide a facility manager, lifeguards and other personnel as reasonably required to operate the Pool in accordance with the Pool schedules, hours of operation, and staffing requirements as shown in Exhibit "C" (Current Operating Plan, Budget and Maintenance Plans). Except for routine and emergency maintenance as required, City agrees to not open the Facility to the public at any time unless authorized by Operator in advance in writing.

Upon the signing of this Agreement, Operator shall be expected to operate the Facility as per the current Plans [set out in Exhibit C]. These Plan set out the dates, times, hours and other essential operating parameters for the Facility. Operator will have Policies and Procedures in place for managing its personnel and that those policies and procedures will be utilized for personnel management at the Facility. Thereafter Operator shall amend and update each plan in accordance with the process and timeline set out in subsection (i) below.

- a. Operations Plan: Operator shall submit a proposed Operations Plan to the City which shall include, at a minimum:

- i. Proposed Facility schedules;
 - ii. Proposed rates;
 - iii. Proposed hours of operation
 - iv. Proposed program offerings;
 - v. Proposed staffing;
 - vi. Draft checklists for Natatorium/Pool Maintenance (daily, weekly, monthly, quarterly, annually);
 - vii. Draft Cleaning and Maintenance Checklists (daily, weekly, monthly, quarterly, annually);
 - viii. A draft marketing plan outlining the big picture goals for how Operator intends to market the Facility;
 - ix. Risk Management plan including life safety, an emergency action plan, emergency closures, notifications, etc.; and
 - x. An initial broad-picture Concessions Plan outlining how Operator intends to increase revenues at the Concession stand and how Operator will track the success of products offered for sale (food, t-shirts, swimsuits, souvenirs, etc.). The plan shall recommend concession hours, promotions, and menus that have the potential to increase traffic and revenue at the concession stand. Additionally, the plan must address, at a minimum, training personnel in concessions and gate keeping, customer satisfaction, proper food handling, and food handler certifications.
- b. Personnel Policy and Procedure Manual: The Operator shall utilize its own personnel policy and procedure manual (hereinafter “Manual”) for all Operator personnel. A copy of the Manual shall be provided to the City upon the signing of this Agreement. Operator shall review its Manual by November 1st of each year to ensure it fully complies with all State and local laws. Any deficiencies shall be addressed and corrected by Operator and a revised Personnel Policy and Procedure Manual shall be prepared. Operator shall provided City with a copy of any updates or changes to Operator’s Personnel Policy and Procedure Manual.
- c. Budget: Operator shall submit a proposed operating Budget to the City for review. The initial proposed budget shall encompass the timeframe from October 1, 2016 to June 30, 2017. Thereafter, Operator shall submit a proposed budget annually no later than April 1st of each year. City shall review the proposed budget, discuss any requested modifications with Operator and present the proposed operating budget to the City Council for review and approval during the annual budget process each year. Other than the initial operating budget, annual budgets should encompass the timeframe from July 1 to June 30.

Because the Facility is a public facility, Operator and Operator’s staff must observe a strict impartiality as to rates and services charged to all visitors in all circumstances. Complimentary and reduced rates may only be provided under circumstances which are customary in the course of business of the character conducted under this Agreement. The City reserves the right to review and modify the Operator’s complimentary or reduced rate policies and practices as part of its budget approval.

- d. Marketing Plan: Operator shall provide a quarterly marketing plan to City outlining how Operator will market the Facility during that quarter and providing copies of proposed brochures, schedules, fliers, promotional materials, etc. Operator shall also provide an update on marketing during Operator's monthly report to the City Council.
- e. Maintenance Plan: The Maintenance Plan shall include, but is not limited to addressing how Operator will provide continued maintenance of the Facility and the equipment located within the Facility. Examples of areas to be addressed include:
- ✓ Maintenance, incorporating the manufacturers recommended procedure to comply with and maintain warranties of new equipment;
 - ✓ Upkeep and maintenance of building equipment, including fitness equipment, pumps, valves, regulators, etc.,
 - ✓ Upkeep and maintenance of sanitation and hygiene throughout Facility;
 - ✓ Training of personnel on maintaining proper Facility cleanliness;
 - ✓ Checklists and schedules for daily, weekly, monthly, quarterly and annual cleaning;
 - ✓ Recommended cleaning and maintenance supply list;
- f. Concession Plan: Operator shall review the Concession Plan quarterly and make amendments as necessary. Updates on concession sales shall be provided to the City Council monthly along with the regular monthly report to council.
- g. Transition Plan: The Transition Plan shall address a plan of action for training the City to manage the Facility on its own with a projected timeline and steps on how the City could achieve self-management of the Facility. The Transition Plan shall also provide for the orderly transfer of responsibilities, technical information, manuals and plans, maintenance logs, inventory and locally trained staff to a new operator should the City decide not to manage the Facility itself. The Transition Plan shall identify, with specificity, which records are to be retained by Operator.
- h. Amendment or Modification: Schedules, hours of operation, or staffing requirements may be amended or modified. Any amendment or modification to the hours of operation will be in writing, signed by both parties and attached as an addendum to this Agreement and incorporated into this Agreement with full affect. The parties agree that any amendment or modification will be in accordance with the fees and budget set out in this Agreement.
- i. Summary of Plan Deadlines: Operator shall provide draft Plans per the deadlines outlined below. City shall review the drafts and provide any feedback to Operator. Thereafter, Operator shall complete and submit the final plan to City.

Description	Draft Deadline	City Response Deadline	Final Plan Due
Operation Plan (year 1) (2016 to June 30, 2017)	October 1, 2016	October 31, 2016	December 30, 2016
Operation Plan (year 2)	April 1, 2017	April 30, 2017	June 30, 2017

July 1, 2017 to June 30, 2018			
Policy & Procedure Manual * Same dates annually thereafter	November 1, 2016	December 1, 2016	December 15, 2016
Operating Budget (year 1) (2016 – June 30, 2017)	October 1, 2016	October 31, 2016	December 30, 2016
Operating Budget (year 2) July 1, 2017 to June 30, 2018	March 1, 2017	March 30, 2017	June 30, 2017
Quarterly Marketing Plan			
1 st Qtr (Jan – Mar)	Dec 1	Dec 15	Dec 30
2 nd Qtr (Apr – Jun)	Mar 1	Mar 15	Mar 30
3 rd Qtr (Jul – Sep)	Jun 1	Jun 15	Jun 30
4 th Qtr (Oct – Dec)	Sep 1	Sep 15	Sep 30
Maintenance Plan	9/15/16	10/15/16	11/1/16
Transition Plan	10/1/16	10/30/16	11/15/16

8. PERSONNEL:

- a. Operator shall employ only personnel who have been properly trained, certified (if appropriate for the position at issue), and screened by Operator in accordance with Operator’s personnel policy rules.
- b. Non-Discrimination: In carrying out this Agreement, Operator shall not discriminate against any employee or applicant for employment because of race, national origin, color, age, creed, religion, sex, sexual orientation, gender identity, political affiliation, marital status, ancestry, disability, or status as a disabled veteran. Operator’s Personnel Policies and Procedures Manuals shall clearly reflect a non-discrimination policy.
- c. Personnel Approval: All personnel will be pre-screened, hired, trained, disciplined (if appropriate), and terminated (when appropriate) by Operator in accordance with Operator’s personnel policies and procedures manual.
- d. Employer. All personnel who will work at the Facility under the terms of this Agreement shall be employees of Operator, and not employees of City. Operator will pay the following for Operator’s employees:
 - i. Wages;
 - ii. Income tax withholdings;
 - iii. Social security withholdings;
 - iv. Medicare withholdings;
 - v. State unemployment insurance;
 - vi. Workmen’s Compensation insurance;
 - vii. Any other State of Alaska or federal requirements.
- e. Reporting: Operator shall be solely responsible for complying with all State of Alaska and Federal employment reporting requirements such as, but not limited to, OSHA injury reporting, worker’s compensation reporting, child labor reporting, etc.

- f. Certification: All lifeguards employed by Operator shall have, at a minimum, current American Red Cross Lifeguarding, CPR for the Professional Rescuer, and First Aid Certificates, or equivalent Lifeguard Training Certificates as required by the State of Alaska.

At all times during the term of this Agreement, Operator shall have at least two (2) employees with current certification as a Certified Pool Operator (CPO). At least one (1) of the CPO's shall serve in a management capacity.

- g. Identification: Lifeguards and all other personnel will wear identification at all times. Such identification shall be in the form of a swimsuit or t-shirt displaying Operator's name and/or logo as well as identification badges.
- h. Authority: To create a safe and enjoyable experience, Lifeguards and management staff shall have the authority to discipline all individuals, including expulsion, who use the Facility and will do so within the Lifeguards or management staff's best judgment and sole discretion and will be consistent with all published and posted rules of the Facility and minimum safety standards. City agrees to support Lifeguard or management staff in enforcing the Facility rules and regulations to provide a safe environment.
- i. Drug, Alcohol and Tobacco Free Workplace: The Operator shall maintain, to the greatest extent possible, a drug, alcohol and tobacco free environment within and outside the Facility. The Operator shall publish a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance, marijuana or alcohol, is prohibited in the Facility, and specifying actions that will be taken against the employee's for violating the prohibition. In addition, Operator shall establish a drug, alcohol, marijuana and tobacco-free awareness program to inform employees about the danger of drug, alcohol and tobacco abuse in the workplace and the Facility and Operator's policy of maintaining a drug, alcohol and tobacco-free environment both in the workplace and in the Facility. The Operator shall take appropriate personnel action, up to and including termination, for any employee that is found to be in violation of any of these prohibitions.
- j. Minimum Staffing/Services:
 - i. Lifeguards: Operator will provide a sufficient number of qualified lifeguards to maintain adequate safety standards at the Facility and to comply with all Alaska rules and regulations. The lifeguards shall be responsible for maintaining orderly and safe conditions in and around the pool.
 - ii. Instructors: Operator shall provide qualified instructor's to regularly provide swim lessons, exercise lessons and instruction for proper use of Facility equipment. The goal of providing lessons shall be to generate revenue and attendance at the Facility.
 - iii. Gatekeepers/Concession Workers: Under this Agreement, Operator will provide a sufficient number of gatekeepers/concession workers to be on duty at all times during open hours.
 - iv. Maintenance/Housekeeping: Operator will provide a sufficient number of employees to ensure the Facility remains reasonably clean at all times. Sufficient personnel must

be on duty at all times to ensure regular inspections of the restrooms and locker rooms. Locker rooms are to be checked at a minimum once every 15 minutes in order to ensure the water is not left running, the area is reasonably clean, and theft is reasonably deterred.

9. FACILITY CLOSURE

- a. In case of emergency, Operator may close the Facility temporarily. An emergency may include, but is not limited to, any failure or threatened failure of Facility equipment or other unforeseen causes outside Operator's control. Such action will be documented in writing to City. City will be notified immediately by phone and fax of such closure. Further, Operator will publicly post the closing for such action at the location, will advise the local radio station as soon as practicable and will take all reasonable steps to inform the general public of the closure. No refunds will be given for temporary closings without the authorization of the City Council.
- b. The date on which the Facility is closed for any reason under this section will be the Facility Closing Date. The Facility may be closed by Operator for the following:
 - 1) Emergency Closing: Operator reserves the right to close the Facility if, in Operator's personnel's reasonable belief, there is a threat to the safety or welfare of visitors which may result from (without limitation): hazardous weather advisories, or contamination. Operator personnel will reasonably attempt to contact City's Representative if it is necessary to close the Facility early.
 - 2) Breakdown and Repair of Facility: In Operator's best judgment, Operator reserves the right to close the Facility due to a breakdown of the Facility including, without limitation, the Facility:
 - i. Is significantly inoperable for whatever reason;
 - ii. Requires repairs that must be performed during Facility hours of operation; or
 - iii. Requires repairs necessitating the pool being drained of water.
 - 3) Annual Maintenance Closure: Operator and City agree to schedule an annual closure of the Facility for necessary cleaning and other repairs. It is anticipated the closure will be no longer than two (2) weeks in duration and will be done in sections so as to minimize disruption to users of the Facility (for example, the pool area will be closed while the work-out rooms are open). Based on previous usage data, such annual closure will be scheduled for the summer months whenever possible. This schedule may be amended however, as more reliable user data is collected.
- c. In the event of a Facility Closing, the parties agree that there shall not be any cause for the amendment or modification of this Agreement and Operator will not refund any amounts of compensation paid by City because of a Facility Closing, except as allowed in Section d below.
- d. Should a time lapse of more than seven (7) days from the Facility Closing Date be necessary to perform repairs and/or restore the Facility to normal operations, beginning on the tenth (10th) day, Operator shall refund to Client ½ percent (0.5%) per day of the

total Agreement compensation. If the Facility is not opened for normal operation within ten (10) days after the Facility Closing Date the City may cancel this Agreement by giving seven (7) days advance written notice to Operator.

10. PRIVATE USE OF FACILITY

The Facility is a municipal facility required to be made available to all members of the public. For this reason, the Facility may not be closed to the public for the sole purpose of accommodating the private use of the Facility.

Operator may make the Facility available for private use only after regular Facility hours. Private parties will be booked by the Operator and staffed by lifeguards and other necessary personnel provided by the Operator. The Operator will strictly enforce the Facility rules at these private events and if for any reason the persons attending do not adhere to the Facility rules, the Facility may be closed.

11. ADDITIONAL FACILITIES

City acknowledges that neither the parking lot nor the Wind Turbine used to provide additional power to the Facility are under the direct supervision of Operator's personnel and shall be beyond the parties' intended scope of services to be provided by Operator.

In no event shall Operator be liable to any party for any loss or claim arising from any injury or other event or occurrence which takes place in any area not directly assigned to Operator under this Agreement.

12. REPAIRS/MAINTENANCE

- a. Operator shall be solely responsible for maintenance, preventative maintenance, repairs and housekeeping of the Facility to the satisfaction of the City and in accordance with the approved Maintenance Plan. Operator maintenance includes, but is not limited to all surfaces, systems and furniture, fixtures and equipment. This includes pool systems, data and information technology systems, fitness and exercise equipment, concession equipment, HVAC systems, electrical systems and fire and life safety systems.
- b. Operator shall at all times during the term of this Agreement provide and maintain adequate safety equipment as outlined in Exhibit "B".
- c. Maintenance Records and Logs. The Operator shall maintain maintenance records and logs. At a minimum, these records shall include:
 - i. Demonstrated compliance with current Alaska Department of Environmental Conservation (ADEC) regulations, including, but not limited to, the recording of the following information for each day that the Facility is open to the public:
 - ✓ The hours of operation;
 - ✓ The length of time that the pumps and filters are in operation, and the rate of pressure, vacuum, and rate of flow readings;
 - ✓ The date that each filter is backwashed or cleaned;
 - ✓ The frequency and results of alkalinity and hardness tests;

- ✓ The frequency and results of pH and disinfectant tests (pH and disinfectant tests must be made two [2] or more times, and depending upon chlorine or bromine demand);
 - ✓ The amount of water and chemicals added to maintain water quality;
 - ✓ Equipment failure;
 - ✓ Any gross water contamination, for example, vomiting, feces, etc.; or
 - ✓ Repair while the pool is in operation
- ii. The Operator shall submit duplicate records on a monthly basis to ADEC which the Facility is in operation.
 - iii. Check-lists four routine maintenance, preventative maintenance and janitorial duties (daily, weekly, monthly, quarterly, bi-annual and annual).
 - iv. Equipment logs for each piece of major equipment with the maintenance schedule, maintenance contracts, record of work or repairs conducted, manufacturer guidelines and specifications.
 - v. Confined space entry equipment (as specified by manufacturer).
 - vi. All logs and records must be maintained for a minimum of three (3) years.
 - d. City shall be responsible for causing the completion of all major structural repairs. Operator shall be solely responsible for reporting any repair needs to the City as soon as they are identified. The City will provide snow plowing of the parking lot and will maintain the Wind Turbine. The City does not intend to provide any other maintenance.
 - e. Operator will supply all necessary personnel and chemicals to provide the services required by this Agreement that all materials, services and repairs shall comply with the annual approved budget and shall be charged to the City. It is also understood that equipment breakdowns cannot always be foreseen. Operator will do everything reasonable to maintain the Facility in good repair. Any extra usage of chemicals or labor as a result of repair will be billed to City. Operator assumes no liability or responsibility for water quality or facility maintenance due to breakdowns of City's Facility (unless caused by Operator), during periods of repair, or other unforeseen reasons causing damage to the Facility, and Operator shall not be responsible or liable to City for a facility closing due to a breakdown or repair unless that breakdown or repair was caused by Operator or Operator's failure to reasonably act. Operator will maintain Water Quality by balancing all readings of chemicals to a proper and safe level for swimmers within a reasonable time once repairs have been completed. Should additional services or chemicals be needed to restore the Facility to like new condition, the cost of these services and chemicals will be charged to the City. Operator may close the Facility under this Section during which time Section 9 (Facility Closing) of this Agreement shall apply.
 - f. Operator shall have authority to replace, repair or obtain the services of third parties to replace or repair Facility equipment for all repairs that are equal to or less than two thousand (\$2000.00) dollars without the prior approval of City. Such items will be billed separately to City. City must provide written approval for any repair expected to cost more than two thousand (\$2,000.00) dollars, except when repairs are immediately required to prevent further damage to the Facility or when Operator reasonably believes there is an immediate need or emergency situation, or Operator is unable to reasonably contact City's Representative.
 - g. Any repairs required as the result of Operator's negligence shall be done at Operator's sole expense, and shall not be subject to reimbursement.

13. SIGNAGE AND POSTING OF RULES

Operator shall prominently display a sign at the Facility in a conspicuous place stating Operator's name, address and phone number and designating Operator personnel as being responsible for the safety and welfare of users, the quality of the Facility and performance of Operator personnel.

14. DAMAGES DUE TO VANDALISM, WEATHER AND ACTS OF GOD

- a. Operator shall not be responsible for any vandalism or mischief, inclement weather or Acts of God which cause damage to the Facility or related facilities, and Operator shall not be responsible for any additional expenses to restore Facility to working order as a result thereof. Operator shall report any incidents of vandalism or mischief, or damages caused by inclement weather or Acts of God to City's Representative prior to undertaking any repairs.
- b. In the event of vandalism or mischief, inclement weather, or Acts of God, Operator personnel will take steps reasonably necessary to prevent additional damage to the Facility, but assumes no duty or responsibility for any failure to prevent damage and shall not be held responsible for any damages other than that caused due to the negligence of Operator and its employees.

15. CHEMICAL AND MAINTENANCE SUPPLIES

- a. Operator will provide Facility chemicals including, but no limited to, **chlorine tablets, liquid chlorine, muriatic acid, stabilizers, calcium chloride, soda ash, soda bicarbonate**, and other chemicals needed for normal Facility operation and to maintain Water Quality in a safe and sanitary manner.
- b. Operator will provide miscellaneous cleaning and operating supplies including **Facility test equipment and reagents, restroom cleaning materials, toilet paper, paper towels, light bulbs, trash bags, Facility tile cleaner, hand soap, sponges, etc.**
- c. Operator shall order sufficient quantities of all chemical and maintenance supplies during the summer barge season to have a full-year of stock on hand by the close of barge transportation (late summer). Chemical and maintenance supplies shall include all critical spare parts needed for proper operation of the Facility.

16. VISITOR SAFETY EQUIPMENT

Based upon the recommendations and training programs of the American Red Cross, the City mandates the equipment identified and set out in Exhibit B (Minimum Safety Equipment) of this Agreement be present at the Facility at all times. This equipment is the property of the Facility.

Operator will inventory and inspect this equipment prior to the Facility transfer, will notify and inform City of any shortfalls and necessary purchases and repairs of same and will ensure the proper supplies are ordered, on hand, and, if feasible, will have order any recommended spares.

17. INDEMNIFICATION AND INSURANCE

a. Indemnification

- 1) The Operator agrees to indemnify, defend, and hold harmless City against all claims, demands, suits, judgments, court costs, attorney's fees, attachments, and other legal action for loss of life, injury, or damage to any person or property growing out of, in connection with, or operation and maintenance of the Facility.
- 2) City agrees to indemnify, defend, and hold harmless Operator against all claims, demands, suits, judgments, attorney's fees, court costs, attachments, and any other legal action for loss, damage, or injury to any person or property occurring as a result of or growing out of or by reason of any negligent act or omission of any intentional act or omission of City, its agents or employees, while engaged upon or in connection with operating, maintaining or in any way dealing with the Facility.
- 3) Operator shall be responsible for any third party claim for any injury, injury to or loss or damage to property of any person (including reasonable legal fees) arising out of operation of the Facility.
- 4) This Agreement does not create a third party benefit to the public or any member of the public, nor does it authorize any person or entity not a party to this Agreement to maintain a suit based on this Agreement or any term or provision of the Agreement, whether for personal injuries, property damage, or any other claim or cause of action.

b. **Right to Defend Actions:** The indemnifying Party shall have the right, but not the duty, to assume the defense of any third party claim indemnified. Any Party shall, as soon as practicable after receiving notice of any claim brought against it, deliver to the other indemnifying Party full particulars thereof and shall render all reasonable assistance requested by such Party in the defense of such claim.

c. **Indemnified Party not to Compromise:** Where any Party has an obligation to indemnify the other Party, such other Party shall not compromise or in any way settle any claim, lawsuit, action or cause of action without the express written consent of the other Party who has the obligation of indemnifying. Where such consent is not obtained prior to such compromise in settlement, the Party who had the obligation of indemnifying shall be released and discharged from all obligations.

d. Any payment payable by the indemnifying Party to the indemnified Party pursuant to this Section 17 shall be paid within forty-five (45) days from the date on which a claim for such payment accrues to the indemnified Party under this Agreement.

e. **Required Insurance -** Operator shall maintain the following noted insurance during the duration of the Agreement as evidenced by the filing of insurance binders annually (no later than June 1 of each year) and naming the City of Bethel as additional insureds:

- i. **Workers' Compensation:** As required by AS 23.30.045, for all employees of the Operator engaged in work under this Agreement. The Operator shall be

responsible for Workers' Compensation Insurance for any sub-Contractor who performs work under this Agreement. The Operator shall submit copies of all sub-Contractor's workmens' compensation insurance. The coverage shall include:

- 1) Waiver of subrogation against the City;
 - 2) Employer's Liability Protection at \$500,000 each accident/each employee and \$500,000 policy limit;
 - 3) "Other States" endorsement if the Operator directly utilizes labor outside of the State of Alaska;
- ii. **Commercial General Liability:** On an occurrence policy form covering all operations with combined single limits not less than:
- 1) \$1,000,000 Each Occurrence;
 - 2) \$1,000,000 Personal Injury;
 - 3) \$2,000,000 General Aggregate; and
 - 4) \$2,000,000 Products-Completed Operations Aggregate.
- iii. **Automobile Liability:** Covering all vehicles used in Agreement work, with combined single limits not less than \$1,000,000 each occurrence.
- iv. **Umbrella Coverage:** Not less than \$5,000,000 umbrella or excess liability. Umbrella or excess policy shall include products liability, completed operations coverage and may be subject to \$5,000,000 aggregate limits. Further, the umbrella or excess policy shall contain a clause stating that it takes effect (drops down) in the event the primary limits are impaired or exhausted.
- v. The City shall be named as an additional insured on policies required by paragraphs 17.a.i thru iv above. All of the above insurance coverages shall be considered to be primary and non-contributory to any other insurance carried by the City of Bethel whether through self-insurance or otherwise.

In any Agreement or agreement with sub-Contractors performing work, the Operator shall require that all indemnities and waivers of subrogation it obtains, and any stipulation to be named as an additional insured it obtains, shall also be extended to waive rights of subrogation against the City of Bethel and to add the City of Bethel as an additional named indemnity and as an additional insured.

- f. **Certificate of Insurance** - The Operator shall furnish evidence of insurance to the City before June 1 annually. The evidence shall be issued to the City and shall be either a certificate of insurance or the policy declaration page with all required endorsements attached and must:
- i. Denote the type, amount, and class of operations covered;
 - ii. Show the effective (and retroactive) dates of the policy;
 - iii. Show the expiration date of the policy;
 - iv. Include all required endorsements;

- v. Be executed by the carrier's representative; and
- vi. If a certificate of insurance, include the following statement:
“This is to certify that the policies described herein comply with all aspects of the insurance requirements of the Yukon Kuskokwim Regional Aquatic Health and Safety Center. The insurance carrier agrees that it shall notify the City, in writing, at least thirty (30) days before cancellation of any coverage or reduction in any limits of liability.”

The City’s acceptance of deficient evidence of insurance does not constitute a waiver of Agreement requirements.

Failure to maintain the specified insurance or to provide substitute insurance if an insurance carrier becomes insolvent, is placed in receivership, declares bankruptcy, or cancels a policy may be grounds for withholding Agreement payments until substitute insurance is obtained, and may, in the City's discretion, be sufficient grounds for declaring the Operator in default.

18. BONDING (Fidelity Bonds):

Fidelity Bonds – For the duration of this Agreement, Operator shall show evidence of, and maintain in force the following:

- a. An employee’s blanket fidelity bond which provides coverage for Honesty and Loss from fraudulent or dishonest acts by employees.
- b. Computer fraud fidelity bond, which provides coverage for the fraudulent transfer by computer causing wrongful abstraction of money, securities or other property.
- c. The two items above (i) and (ii) may be separate or combined into one form of bond in an amount not less than Two Hundred Fifty-Thousand (\$250,000) Dollars.

19. ACCOUNTING RECORDS AND REPORTS

- a. **Accounting System** - The Operator shall maintain an accounting system with an easy to understand account classification system under which its accounting can be readily identified. Such accounting system shall be capable of providing the information required by this Agreement, including but not limited to, revenues collected, repair and maintenance expenses, operating expenses, etc. The Operator's system of accounts classification shall be directly related to the Operator’s annual budget, monthly and annual financial reports and invoicing.
- b. **Monthly Reports** - The Operator shall submit a monthly financial report to the City. The report shall be in narrative and numerical accounting format and include copies of all invoices supporting claimed expenses.
 - i. The narrative report shall clearly state if the overall operations, both revenue and expenses, are over or under budget for the month and the year, identify specifically what cost areas are over budget or revenue areas are under budget, provide an explanation as to any deviation and explain what corrective actions are required, if any.
 - ii. The numerical accounting report shall provide actual costs and revenues versus budgeted amounts for each category of accounts classification, reported for the specific month and cumulative for the year. Deviations from the operations plan,

- annual budget, or maintenance plan require advance written approval from the City Manager. The monthly report shall provide a record of all such approvals provided by the City the previous month.
- iii. The monthly report shall be certified as true and correct by an officer of the Operator and submitted with the monthly invoice.
 - iv. In addition to the monthly financial reports, the Operator shall provide a monthly statistical and narrative report on the usage of the Facility. The report shall be in a form and format as approved by the City. The report shall be submitted monthly with the invoices and annually with the other annual reports.
 - v. **Miscellaneous Reports and Data:** From time to time the City may require the Operator to submit other reports and data regarding its performance under the Agreement or otherwise, including, but not limited to, operational information. This may include presentations to the City Council and discussing such things as programs, and local hire and training.
- c. **Annual Financial Report** - The Operator shall submit an annual financial report in the same form and format as the monthly reports. The narrative report shall summarize any significant cost and revenue deviations from the annual budget. The annual report shall be certified as true and correct by an officer of the Operator and submitted with the final invoice for that budget year.
 - d. **Inventory** - The Operator shall perform an annual inventory of the real property as set forth in Exhibit A – Assigned Land, Real Property Improvements and Equipment. The inventory report shall be certified as true and correct by an officer of the Operator and submitted either before or along with the final invoice for that budget year.
 - e. **Accounting Records** - For all expenditures made for the operations and maintenance of the Facility, the Operator shall maintain and make available, on reasonable notice, for inspection and examination, at all reasonable times, all records relating to this Agreement and of transactions performed pursuant to this Agreement for a minimum of five (5) years from the date of the record. If the City has reasonable cause to believe that any information on the monthly or annual financial report is not accurate, the City may audit the books and/or estimate the figures based on any information available.
 - i. The City shall notify the Operator in writing that the City has estimated the amount of sales and revenue, stating the estimated amount. The City shall serve the notice on the Operator by delivering the notice to the Operator as per the notice section of this Agreement.
 - ii. The City's estimate shall become a final determination unless:
 - 1) The Operator, within thirty (30) days after service of notice of the estimate, files a formal appeal to the City Manager; or
 - 2) The Operator files a complete and accurate financial statement indicating the figures in question and explaining them to the satisfaction of the City.
 - 3) In either event above, Operator consents to an independent audit and agrees to cooperate fully with the audit process.

- 4) The City may request, and the Operator must furnish, any additional information deemed necessary for a correct evaluation of the finances of the Facility.
- f. **Sales Tax Records** –Operator shall familiarize themselves with, at a minimum, that portion of the Bethel Municipal Code (hereinafter “Code”) which deals with Sales Tax. Operator shall collect the appropriate sales taxes for each sale and rental at the facility (currently 6%). The taxes shall be in addition to the sales and rental costs. Operator shall file a City of Bethel tax return form and shall remit the appropriate taxes as per the Code and any subsequent amendments thereto.
 - g. **Audit by City:** The City reserves the right to conduct an annual audit by an external expert and/or industry professional at any time for any reason. Operator agrees to cooperate by providing, upon reasonable notice, and at no additional cost, such books, papers, statements, memoranda, records, accounts and other written material as may be set out in the request by the finance director or City Manager. In the case of an audit, the City shall be responsible for selecting and scheduling the audit. The audit may include, but is not limited to:
 - i. Agreement Compliance
 - ii. Review of Financial Records
 - iii. Staff Skills Assessment
 - iv. Staff Selection and Training Procedures
 - v. Policies and Procedures Review
 - vi. Site Inspection
 - vii. Code Compliance and Record Keeping Practices
 - viii. Adherence to Aquatic Safety Standards
 - ix. Facility and Equipment Maintenance

In the event deficiencies are identified in the audit, the Operator will be required to make corrections in a timely manner, to be determined at the time of the findings, based on severity of the hazard, violation or other factors.

If the independent audit discovers more than five hundred (\$500) dollars in errors resulting from Operator’s failure to accurately report revenues, expenses and/or sales and taxes due thereupon, the Operator shall bear responsibility for the full cost of the audit. Otherwise the cost of the audit will be borne solely by the City.

- h. **Dispute:** If any dispute arises between the Parties, all records relating to matters involved in such Dispute shall be preserved until the resolution of such Dispute. Certified copies of such records as are required to be maintained by this Agreement shall be made available at the requesting Party’s cost and expense.

20. NOTICES

- a. **Safety:** It is the Operator’s duty and responsibility to notify the City of any problems or areas of concern pertaining to safety of the Facility and its patrons.

- b. Injury: Operator shall notify the City of any injuries requiring medical attention or any significant incidences (such as potential drowning) as soon as practicable but in no case no more than forty-eight (48) hours after the incident has occurred.

All notices required or permitted under this Agreement shall be in writing [in English] and shall be sent to:

OPERATOR:

CITY:	City of Bethel Attn City Manager PO Box 1388 Bethel AK 99559-1388	with copy to	City of Bethel Attn City Attorney's Office PO Box 1388 Bethel AK 99559-1388
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Each party's designated representative for day-to-day operations and in case of emergencies shall be:

OPERATOR:

CITY: Ann K. Capela, City Manager, (907) 543-1373 or (907) 545-0143

Either party may notify the other Party of a change to its name, relevant addressee, address or facsimile number, provided that such notification shall only be effective on the date specified in the notification as the date on which the change is to take place or, if no date is specified or the date specified is less than fifteen (15) business days after the date on which notice is given, the date falling thirty (30) business days after notice of any such change has been given.

21. SUSPENSION/TERMINATION

- A. Suspension. In the reasonable event of danger to life or significant damage to property, the City may temporarily suspend operations under this Agreement in whole or in part. As soon as practicable, the City will give notice to the Operator and will determine a re-open plan.
- B. Cancellation for Un-Appropriated Funds: The City reserves the right, in its best interest as determined by the City, to cancel this Agreement for unappropriated funds or unavailability of funds by giving written notice to the Operator at least one hundred twenty (120) days prior to the Effective date of such cancellation. The obligation of the City for payment to Operator is limited to the availability of funds appropriated in a current fiscal period, and continuation of the Agreement into a subsequent fiscal period is subject to appropriation of funds, unless otherwise provided by law.
- C. Events of Default:
 - i. **Cancellation for Non-Payment**: If for any reason payment in full of any charge is not received within thirty-five (35) days from the due date, the Operator may cancel this document and terminate all services by giving a fourteen (14) day written notice

- to terminate at the end of such fourteen (14) day period without further liability whatsoever.
- ii. **Cancelation by Mutual Agreement:** Operator and City may cancel this Agreement at any time by mutual written agreement. Each party shall be required to continue full performance under the terms of this Agreement until the effective cancelation date.
- iii. **City's Event of Default:** Each of the events described below shall constitute a City Event of Default:
- 1) A material breach by City of any obligation under this Agreement, which (where capable of remedy) has not been remedied within fourteen (14) days following notice from Operator stating that such breach has occurred, identifying the breach and demanding it to be remedied, provided that if City has diligently and as quickly as possible commenced the remedial action necessary but is unable to complete it within fourteen (14) days, it shall be allowed such further period of up to thirty (30) days or as may be reasonably necessary to complete the remedial action;
 - 2) City has made material misrepresentation in the representations and warranties set out in this Agreement and has not disclosed any material fact which renders any such representation or warranty materially misleading;
 - 3) The reorganization, merger, consolidation, amalgamation, dissolution or reconstruction of City, except to the extent that it does not affect the ability of the resulting entity to perform its obligations under this Agreement;
 - 4) Except for the purposes permitted under subsection 3, the occurrence of any of the following events (other than as a direct result of Operator Event of Default):
 - Passing of a resolution or initiation of any proceeding for the bankruptcy, insolvency, winding up, liquidation of or other similar proceedings relating to the Facility;
 - The appointment of a trustee, liquidator, custodian or a similar person, which appointment has not been set aside or stayed within sixty (60) days of such appointment; or
 - The making by a court having jurisdiction of an order winding up or otherwise confirming the bankruptcy or insolvency of the Facility, which order has not been set aside or stayed within sixty (60) days; and
 - 5) City ceasing to hold a license, permit or consent, as a result of breach by City of the terms and conditions of such license, permit or consent, making it unlawful for City to operate.
- iv. **Operator Event of Default:** Each of the events described below shall constitute an Operator Default:
- 1) A material breach by Operator of any obligation under this Agreement, which (where capable of remedy) has not been remedied within fourteen (14) days following notice from City stating that such breach has occurred, identifying the breach and demanding it to be remedied, provided that if Operator has diligently and as quickly as possible commenced the remedial action necessary but is unable to complete it within fourteen (14) days, it shall be allowed such further period of

up to thirty (30) days or as may be reasonably necessary to complete the remedial action;

- 2) Operator has made material misrepresentation in the representations and warranties set out in this Agreement and has not disclosed any material fact which renders any such representation or warranty materially misleading;
 - 3) The reorganization, merger, consolidation, amalgamation, dissolution or reconstruction of Operator, except to the extent that it does not affect the ability of the resulting entity to perform its obligations under this Agreement;
 - 4) Except for the purposes permitted under subsection 3), the occurrence of any of the following events (other than as a direct result of City Event of Default):
 - Passing of a resolution or initiation of any proceeding for the bankruptcy, insolvency, winding up, liquidation of or other similar proceedings relating to Operator;
 - The appointment of a trustee, liquidator, custodian or a similar person, which appointment has not been set aside or stayed within sixty (60) days of such appointment; or
 - The making by a court having jurisdiction of an order winding up or otherwise confirming the bankruptcy or insolvency of Operator, which order has not been set aside or stayed within sixty (60) days; and
 - 5) Operator ceasing to hold a license, permit or consent, as a result of breach by Operator of the terms and conditions of such license, permit or consent, making it unlawful for City to operate.
- v. **Consequences in the Event of Default:** In the case of Operator Event of Default, City may terminate this Agreement and in the case of a City Event of Default, Operator may terminate this Agreement, in either case by giving a notice (“Termination Notice”) to the other whereupon this Agreement shall terminate upon the date specified in such Termination Notice or such later date as the Parties may have agreed.
- vi. **Sole Grounds for Termination:** The provisions of this Paragraph 21 shall be the sole and exclusive grounds on which the Parties may terminate this Agreement.
- vii. **Damages/Payment in the Event of Termination:** In the event of termination of this Agreement for breach, the total compensation due to the Operator for such termination shall be calculated based on the work completed, less loss to the City for costs incurred due to the necessity for the procurement of a replacement Operator. No other compensation of any nature shall be due to Operator, including, but not limited to, compensation for losses based on lost income, profit, or the necessity to make expenditures as a result of this termination.

Upon termination of this Agreement for any reason or upon its expiration, and except as otherwise provided in this section the Operator shall, at the Operator’s sole expense, promptly vacate the premises, remove all of the Operator’s personal property, repair any damages occasioned by installation or removal of such property, and ensure the Facility is in at least as good condition as it was at the beginning of the term of this Agreement, reasonable wear and tear

excepted. The removal of such personal property must occur within thirty (30) days after the termination of this Agreement. Operator shall also comply with all applicable requirements of the transition plan. *All documents, manuals, logs and other records prepared by Operator during the operation of the Facility are the sole property of the City and must be turned over to the City at the termination or expiration of this Agreement.*

22. DISPUTE RESOLUTION

The parties agree to work cooperatively to resolve all issues.

- 1) Should an issue arise, the party believing itself to be aggrieved shall provide written notice to the other party within ten (10) days of the alleged grievance.
- 2) Upon receipt of the grievance, the parties will schedule a teleconference to attempt to resolve the issue. The teleconference shall occur within fourteen (14) days of the grievance occurring.
- 3) If the parties are unable to resolve the matter during the teleconference, they shall schedule a face-to-face meeting. Said meeting shall be attended by those persons from City and Operator empowered to resolve the matter. The meeting shall occur within thirty (30) days from the date the grievance occurred unless otherwise extended by mutual consent of the parties. Such consent shall not be unreasonably withheld.
- 4) Should the face-to-face meeting fail to resolve the matter; the parties agree to submit the matter to mediation in Anchorage. The matter will be referred to a professional mediation service who shall submit a list of five (5) qualified mediators. The party filing the grievance shall have the right to strike one name, and then the other party shall have the right to strike one name, and so forth until one remains to mediate the dispute.
- 5) If Mediation fails to resolve the matter, either party is free to request Arbitration or file in court as they deem appropriate. The City and Operator both agree that the appropriate venue for any legal dispute shall be the State of Alaska, Fourth Judicial District at Bethel.

23. CONFIDENTIALITY AND SECURITY

Each party shall take all proper steps to keep confidential any trade secrets or confidential information learned about the other Party or its customers during the course of this Agreement.

Each party shall protect the keys and other secure property of the other party and shall take appropriate and reasonable steps to ensure security is maintained. In the event of a breach of security, the Party whose security is breached shall notify the other party as soon as practicable.

24. CONFLICTS:

Neither Operator nor any of Operator's employees shall have or hold any continuing or frequently recurring employment or contractual relationship that is substantially antagonistic or incompatible with Operator's loyal and conscientious exercise of judgment and care related to Operator's performance under this Agreement.

Operator further agrees that none of Operator's officers or employees shall, during the term of this Agreement, serve as an expert witness against City in any legal or administrative proceeding in which he, she or Operator is not a party, unless compelled by court process. Further, Operator agrees that such persons shall not give sworn testimony or issue a report in

writing, as an expression of his or her expert opinion, which is adverse or prejudicial to the interests of the City in connection with any such pending or threatened legal or administrative proceeding unless compelled by court process. The limitations of this section shall not preclude Operator or any persons in any way from representing themselves, including giving expert testimony in support thereof, in any action or in any administrative or legal proceeding.

In the event Operator is permitted pursuant to this Agreement to utilize subcontractors to perform any services required by this Agreement, Operator agrees to require such subcontractors, by written contract, to comply with the provisions of this section to the same extent as Operator.

25. SUBCONTRACTORS:

Sub concession or other third party agreements, including management agreements for the provision of services required and or authorized under this Agreement are generally not permitted. Specialty maintenance contracts for specialty systems are permissible with advance written notice and written consent by the City.

Operator's use of subcontractors in connection with this Agreement shall be subject to City's prior written approval, which approval may be revoked at any time. In the event Operator engages any subcontractor in the performance of this Agreement, Operator shall ensure that all of Operator's subcontractors perform in accordance with the terms and conditions of this Agreement. Operator shall be fully responsible for all of Operator's subcontractors' performance, and liable for any of the Operator's subcontractors' non-performance and all of subcontractor's acts and omissions. Operator shall defend, at Operator's expense (counsel being subject to City's approval or disapproval) and indemnify and hold City and City's officers, employees and agents harmless from and against any claim, lawsuit third party action, fine, penalty, settlement or judgment, including any award of attorneys fees and any award of costs, by or in favor of any of Operator's subcontractors for payment for work performed for City by any of such subcontractors, and from and against any claim, lawsuit, third party action, fine, penalty, settlement or judgment, including any award of attorney fees and any award of costs, occasioned by or arising out of any act or omission by any of Operator's subcontractors or by any of Operator's subcontractors officers, agents or employees.

26. GENERAL PROVISIONS:

- a. Amendments: This Agreement may only be amended or varied by the written agreement of both Parties.
- b. Assignment and Performance: Neither this Agreement nor any right or interest herein shall be assigned, transferred or encumbered without the written consent of the other party.
- c. Captions/Headings: The captions or headings of this Agreement are for convenience or reference only, and in no way define, describe, extend or limit the scope or intent of this Agreement or the meaning or intent of any provision hereof.
- d. Entire Agreement: This Agreement constitutes the entire agreement between the parties and supersedes all other prior agreements, relationships or negotiations, written or oral. Any rights or liabilities arising by reason of any prior written or oral representations,

whether or not at the date of this Agreement, are canceled to the extent they have any bearing on this Agreement.

- e. Further Assurance: Each Party agrees to execute and deliver all such further instruments and do and perform all such further acts and things as shall be necessary for the carrying out of the provisions of this Agreement.
- f. Good Faith: The Parties undertake to act in good faith in relation to the performance and implementation of this Agreement and to take such other reasonable measures as may be necessary for the realization of its objectives.
- g. Governing Law: This Agreement shall be deemed to have been entered into in Bethel, Alaska. All questions regarding the validity, interpretation or performance of any of its terms or of any rights or obligations of the parties to this Agreement shall be governed by Alaska law, and any action brought by either party to enforce any of the terms of this Agreement shall be filed in the Bethel Superior Court. If any claim, at law or otherwise, is made by either party to this Agreement, the prevailing party shall be entitled to its costs and reasonable attorneys fees.
- h. Joint Drafting: The Parties expressly agree that both had opportunity to negotiate its terms and to obtain the assistance of counsel in reviewing its terms prior to execution. Therefore, this Agreement shall be construed neither against nor in favor of either Party, but shall be construed in a neutral manner.
- i. Hazardous Materials: Operator will be working with pool chemicals which are considered hazardous materials. Operator is required to follow all Alaska Department of Environmental Conservation (DEC) rules and regulations regarding the proper storage, use and disposal of the Facility chemicals. Any spills will be reported immediately to the City and DEC and clean-up will be undertaken as per 18 AAC 75.300, et al. If a spill or hazardous condition is caused by or materially contributed to by Operator and/or their use of the Facility, Operator shall be solely responsible for the safe clean-up and disposal of the hazardous material(s).
- j. Legal, Regulatory And Policy Compliance: This Agreement, operations thereunder by the Operator and the administration of it by the City shall be subject to all applicable state, federal and local laws, especially, but not limited to, 18 AAC 30.500-590 (Regulations for Public Swimming Pools and Spas). Operator agrees to comply with all applicable laws in fulfilling its obligations under this Agreement at its sole cost and expense.
- k. Materiality: City and Operator agree that each requirement, duty and obligation set forth here was bargained forth at arm's length and is agreed to by the parties in exchange for *quid pro quo*, that each is substantial and important to the formation of this Agreement and that each is, therefore, a material term hereof.
- l. Public Release: All information required to be submitted to the City by the Operator pursuant to this Agreement is subject to public release by the City.
- m. Relationship of Parties: This Agreement does not create an association, joint venture, or partnership between the Parties. Neither Party has any right, power or authority to enter into any agreement or undertaking for, or to act on behalf of, or to act as an agent or representative of, or to otherwise bind, the other.
- n. Right of Entry: The City shall have the right at any time to enter upon or into the Facility assigned to the Operator under this Agreement for any purpose it may deem necessary for the administration of this Agreement.

- o. Rights and Remedies: The Parties' rights, liabilities, responsibilities and remedies with respect to this Agreement, whether in contract, tort, negligence or otherwise, shall be exclusively those expressly set forth in this Agreement.
- p. Severability: If a court of competent jurisdiction invalidates or finds any one or more of the provisions of this Agreement are unenforceable it shall in no way affect any of the other provisions thereof, which shall remain in full force and effect.
- q. Successors: This Agreement binds and ensures to the benefit of the Parties and their respective successors and permitted assigns.
- r. Taxes: Any and all taxes or assessments of any nature that may be lawfully imposed by the State or the City upon the business, including sales taxes, shall be collected and paid promptly by the Operator.
- s. Third Parties: This Agreement does not grant rights or benefits of any nature to any third party.
- t. Waiver: The failure of either party to insist, enforce or require strict performance of any provision in the Agreement or to act in respect to the defaults of the other Party, and no acceptance of payment or performance during the continuance of any such default precludes any right, relief or remedy available to the non-defaulting Party, and may not be relied on by the other Party as a consent to those defaults.

27. REPRESENTATION AND WARRANTIES

- a. Operator represents and warrants to City that:
 - i. It has the full legal ability and authority to enter into and carry out its obligations under this Agreement and this Agreement constitutes a valid, legally binding and enforceable obligation of Operator and does not conflict with the terms of any other agreement by which it may be bound;
 - ii. All approvals necessary to allow Operator to enter into this Agreement and to carry out the obligations contemplated herein have been given or received and shall remain in full force and effect;
 - iii. There are no applicable constitutional provisions, laws, regulations, decrees or rules of Competent Authorities of Alaska in force on the date of execution of this Agreement, which restrict or prohibit the ability of Operator to enter into and perform the terms of this Agreement. Operator is not entitled to immunity from legal process or jurisdiction on grounds of sovereignty or otherwise; and
 - iv. This Agreement does not conflict with any provisions of any law, including any regulation of the State of Alaska as in effect on the date of execution of this Agreement.
- b. City represents and warrants to Operator that:
 - i. It is a validly existing municipal corporation under the laws of the State of Alaska;
 - ii. It has the full legal ability and authority to enter into and carry out its obligations under this Agreement and this Agreement constitutes a valid, legally binding and enforceable obligation of City and does not conflict with the terms of any agreement by which it may be bound; and
 - iii. There are no provisions of any organizational document of City which restrict or prohibit the ability of City to enter into and perform the terms of this Agreement.

28. EXHIBITS

Exhibit A – Assigned Land, Real Property Improvements and Equipment

Exhibit B – Minimum Safety Equipment Required

Exhibit C – Preliminary Operations Plan & Budget

Exhibit D – Health Fitness Corporation’s Proposal

Exhibit E – City of Bethel’s Request for Proposal

Exhibit A
Assigned Land, Real Property Improvements and Equipment

[SEE ATTACHED DOCUMENTS]

Exhibit B
Minimum Safety Equipment Required

Rescue Tube (Minimum one per lifeguard)
Backboard with appropriate securing material (3 straps/head immobilizer)
Ring Buoy and Line
Shepherds Crook
Fiberglass Reach Pole
First Aid Kit meeting OSHA standards (minimum of one per lifeguard station & 2 at gate)
Blood-borne pathogens kit
Hip pack with face mask and gloves per lifeguard
Safety goggles
Rubber gloves
Fire Extinguisher
Oxygen tank and bag-valve mask system
Gas Mask for handling chemicals
Bio-hazard kit

**Exhibit C
Preliminary Operations Plan and Budget**

[SEE ATTACHED]

**Exhibit D
Operator's Proposal**

SEE ATTACHED

**Exhibit E
City of Bethel Request for Proposal for
Operation and Maintenance of the Yukon
Kuskokwim Aquatic Health & Safety Center**

SEE ATTACHED

City of Bethel Action Memorandum

Action memorandum No.	16-39		
Date action introduced:	May 24, 2016	Introduced by:	Parks, Rec, Aquatic Health Committee
Date action taken:		Approved	Denied
Confirmed by:			

Direct Administration to follow though with the direction provided in AM 14-67, to accept and approve the land and water conservation fund grant in the amount of \$125,000 and to begin construction of the new multiuse field, drive way, and parking lot this summer.

Route to:	Department/Individual:	Initials:	Remarks:
	City Manager		Documents provided to, but no comments submitted in time for packet deadline.
	Planning Director		Documents provided to, but no comments submitted in time for packet deadline.
	Public Works Director		Documents provided to, but no comments submitted in time for packet deadline.

Attachment(s):

Amount of fiscal impact:		Account information:
	No fiscal impact	
	Funds are budgeted.	
Estimated in-kind contribution \$143,656.	Funds are not budgeted. Budget modification is required.	
\$125,000	Grant funding.	

On October 28, 2014 through AM-14-67 the Bethel City Council approved the acceptance of the Land and Conservation Fund Grant. The acceptance of this grant would allow for the construction of a multiuse sports field, parking lot, and driveway with in-kind contributions estimated at \$143,656.

This project should be phased out through the grant period to eliminate unneeded burden on the city resources.

The development of the multiuse field would improve recreational experiences for the many users of Pinky's Park. There are constant scheduling conflicts with the one public field, Pinky's Park ball diamond, prohibiting necessary and sought after public recreation in our

City of Bethel Action Memorandum

Action memorandum No.	16-39		
Date action introduced:	May 24, 2016	Introduced by:	Parks, Rec, Aquatic Health Committee
Date action taken:		Approved	Denied
Confirmed by:			

community. The development of this field would provide needed open space for softball, t-ball, soccer, football, ultimate Frisbee and other family and community recreation.

It is in our interest to take advantage of this grant opportunity now. With State and Federal funding becoming more and more difficult to obtain, the in-kind contribution requirement for the City is well worth the long term payout for our continued need of community recreation.

City of Bethel Action Memorandum

Action memorandum No.	#14-67		
Date action introduced:	October 28, 2014	Introduced by:	Acting City Manager Williams
Date action taken:	October 28, 2014	X Approved	Denied
Confirmed by:	LS		

SUBJECT/ACTION:

Accept and approve the Land and Water Conservation Fund grant award from the State of Alaska in the amount of \$125,000 less State administrative expenses, and direct the Acting City Manager to sign the Grant Agreement to fund the Pinky's Park Improvements Project.

Route to Department/Individual	Initials	Remarks
Administration/Peter Williams		The City Attorney reviewed the Land and Water Conservation Fund grant agreement and drafted a memo detailing her concerns. The State of Alaska, Division of Parks and Outdoor Recreation Grants Administrator, Jean Ayers, responded to the memo in an email. The memo and email are attached.

Attachment(s):

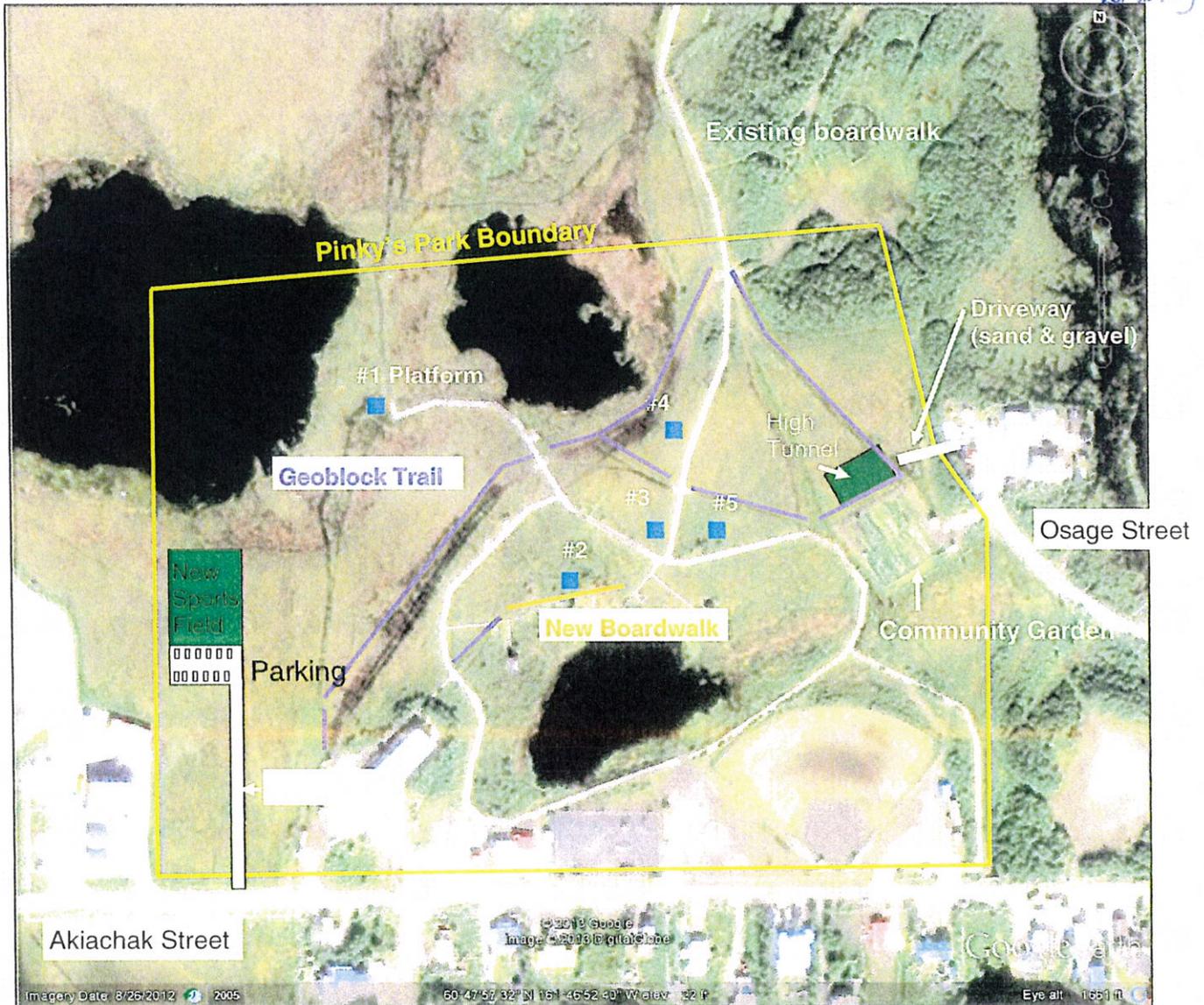
1. Letter from Jean Ayers, Grants Administrator, congratulating the City on its grant award and providing administrative direction to the City.
2. Land and Water Conservation Fund Grant Agreement with the State of Alaska for Pinky's Park Improvements (LWCF Grant #02-00411).
3. Recommendation to City Council from Parks and Recreation Committee supporting the City's preparation and submission of LWCF grant (dated 12/4/12).
4. City of Bethel Resolution #13-02: Prepare and Submit 2013 Land and Water Conservation Fund Grant Application to Fund Pinky's Park Improvements (1/22/13).
5. City of Bethel Resolution #13-03: Designation of Five Acres of Land to Pinky's Park for Outdoor Recreation (1/22/13).
6. Memo to Bethel City Council from City Attorney Patty Burley after review of LWCF Grant Agreement.
7. Email from State of Alaska Grants Administrator Jean Ayers, in response to Patty Burley Memo.

Amount of fiscal impact	Description	Account information
\$0 cash outlay by City \$19,922 YKHC grant \$143,656 in-kind by City \$12,343 in-kind Bethel volunteers	Grant funding supports the purchase of one high tunnel for community garden, welding services for tunnel, boardwalk and platform construction materials, geoweb/geoblock for trails, geoweb, hydroseed materials, soccer goals, and bleachers for multiuse sports field, and shipping costs.	A new Casselle account number to be assigned to the grant, per standard operating procedure.

900-TRUCK LOAD
OF SAND

Map Showing Elements of Pinky's Park Improvement Project Bethel, Alaska

\$125,000
DNR (STATE
Dept.
D.R.R.)



The 26-acre Pinky's Park, shown inside the yellow border on the map above, is located east of City Subdivision in the center of the community of Bethel. The white lines in the park are the existing wooden boardwalk sections. Blue boxes #1, #3, #4, and #5 represent the 10' by 10' wooden platforms that will be constructed as attachments to the boardwalk. Only #2 platform will be a larger 20' by 20' platform. The brown lines are the new wooden boardwalk sections that will be built to connect existing boardwalk sections. The neon green rectangle is the new multiuse sports field, which will be set up with permanent soccer posts. A gravel driveway will be built so the vehicles can drive to the field. A small parking lot will be made where the field meets the driveway. A new sand pad will be constructed adjacent to the existing community garden so that the high tunnel can be erected on the pad and become part of the community garden.

City of Bethel Action Memorandum

Action memorandum No.	#14-67		
Date action introduced:	October 28, 2014	Introduced by:	Acting City Manager Williams
Date action taken:	October 28, 2014	X Approved	Denial Denied
Confirmed by:			

Summary statement

The City of Bethel was awarded a Land and Water Conservation Fund grant from the State of Alaska, Department of Natural Resources, Division of Parks and Outdoor Recreation. The City was awarded \$125,000, the maximum amount allowed this year. The grant is a dollar for dollar match, so the City had to provide at least \$125,000 worth of match, which it did.

The City pledged \$143,656 in in-kind services, most of which is the use of City dump trucks hauling sand to develop the multiuse sports field, parking lot, and driveway, and to develop the sand pad for the high tunnel at the community garden. The City also pledged the use of Parks and Recreation Department employees.

Community volunteer labor will come mostly from Tundra Center workers overseen by Parks and Recreation Department supervisors, and local community gardeners. For grant purposes, in-kind volunteer labor was valued at \$26.50/hr., a rate established by a professional volunteer organization.

The Pinky's Park Improvement Project includes the following items:

1. Multiuse Sports Field - Construction of multiuse sports field measuring 250 ft. by 150 ft. between ONC multipurpose building and Yuut Elitnaurviat building, parking lot, and driveway.
2. Boardwalk and Platforms – Construction of missing boardwalk section to connect two existing boardwalk sections and five boardwalk platforms along the existing boardwalk. The platforms will support the future installation of exercise/stretching stations.
3. High Tunnel – Construction of new sand pad connected to existing community garden and purchase and installation of one 72 ft. long high tunnel for community gardeners to grow in the ground, under plastic.
4. Trails – Purchase geoweb and geoblock-type materials to construct 4 ft. wide trails throughout the park for people to run, walk, and bike.



THE STATE
of **ALASKA**
GOVERNOR SLAN PARNELL

Department of Natural Resources

Division of Parks and Outdoor Recreation

550 West 7th Avenue, Suite 1380
Anchorage, Alaska 99501-3561
Main: 907.269.8700
Fax: 907.269.8907

September 25, 2013

Peter Williams, City Manager
City of Bethel
P.O. Box 1388
300 State Highway
Bethel, AK 99559

Re: LWCF Grant Agreement # 02-00411
Pinky's Park Improvement

Congratulations, Mr. Williams!

Enclosed are two (2) originals of the State-Local Grant Agreement for the above-referenced Land and Water Conservation Fund (LWCF) project. Please sign and return both originals to my office. An executed agreement will be returned for your records.

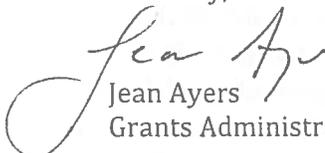
This grant agreement contains two exhibits. Exhibit A, the *Project Summary*, delineates the scope, purpose, and estimated budget described in the city's grant application and approved by the State of Alaska and the National Park Service: the LWCF grantor.

Exhibit B, *General Provisions*, describe a number of grantee assurances and requirements. Please note Part II - Continuing Assurances, item F, regards conversions of LWCF-assisted properties to other than public outdoor recreation purposes. To attain this assurance, the State of Alaska will require the City of Bethel to attach appropriate language to the recorded deed of this LWCF-assisted property prior to project close-out.

As this is a 50-50 matching grant, the city will first bear all costs of the project, then submit interim progress reports and itemized billings to request reimbursement. Our office will transmit billing forms and examples to the city with the fully executed grant agreement.

If you have any questions on this agreement or the LWCF program in general, please contact me at jean.ayers@alaska.gov or (907) 269-8694.

Sincerely,


Jean Ayers
Grants Administrator

CC: John Sargeant

Enclosures

- Grant Agreement (2)
- Exhibits A and B

Land and Water Conservation Fund Grant Agreement with State of Alaska

Pinky's Park Improvements LWCF Grant # 02-00411

THIS AGREEMENT, made and entered into September 23, 2014, by and between the **State of Alaska** by and through the State Liaison Officer for purposes of the Land and Water Conservation Fund Act of 1965, hereinafter called "**State**" and the **Municipality of Anchorage**, hereinafter called "Recipient;"

WITNESSETH:

WHEREAS, Recipient proposes to undertake the following outdoor recreation project during the period from October 1, 2014 until December 31, 2017:

Pinky's Park Improvements, hereinafter called the "project" and, to that end, Recipient proposes to perform the work as set out in the project proposal and summarized in "Exhibit A" and

WHEREAS, federal matching funds for acquisition and development of public outdoor recreation areas are available under the Land and Water Conservation Fund Act of 1965, Public Law 88-578 (78, Stat. 897) (1964), as administered by the National Park Service, U.S. Department of the Interior; and

WHEREAS, it is the intent of the parties that the Recipient perform the work set out in Exhibit A and any amendments thereto in accordance with the Land and Water Conservation Fund Act of 1965, any other applicable federal and state statutes, and the requirements of the National Park Service, and that the State apply to the National Park Service for funds with which to reimburse Recipient for not more than 50% of its cost in performing such work;

NOW, THEREFORE, the premises being in general as stated in the foregoing, it is agreed by and between the parties hereto as follows:

1. Recipient shall perform the work of the project in accordance with Exhibit A.
2. The estimated total cost of the project is \$250,000. The non-federal share of the total cost is \$125,000 of which -0- will be provided by the State of Alaska, Division of Parks and Outdoor Recreation. Recipient shall, in the first instance, pay all costs of the project.
3. To receive reimbursement, Recipient shall submit an itemized statement of the actual cost of the project on an interim basis and complete the project in accordance with the terms of this agreement. State shall apply to the National Park Service for one-half the estimated total cost of the project or one-half the actual total cost of the project, whichever is lesser, and, upon receipt thereof from the National Park Service, shall pay such amount to the Recipient, less administrative costs. Administrative costs may fluctuate over the course of the grant project, but will not exceed 10% of the total project cost. It is further understood that Recipient shall be solely responsible for any excess of the actual total cost over the estimated total cost and State shall not be obligated to apply to the National Park Service for, or to pay to Recipient, any amount in excess of one-half such estimated total cost.

4. **The Recipient warrants that it has sufficient financial resources to develop, operate and maintain the facility for public outdoor recreation,** that the Recipient will manage and operate the facility **in perpetuity for public outdoor recreation purposes;** and that the Recipient will not sell, assign, or in any other manner whatsoever dispose or transfer (convert) any interest in the facility or control over the facility except after prior written consent of the State of Alaska Division of Parks and Outdoor Recreation and the National Park Service. For purposes of this section, "facility" shall mean all real and personal property acquired directly or indirectly under this agreement.
5. Unless previously indicated in paragraph 2 of this agreement, it is understood by the parties that no funds of State are, under this agreement, committed to pay any costs of the project, and that obligations imposed upon the State to apply for federal funds as well as the right of the Recipient to receive any reimbursement for any costs of the project shall extend only to those portions of the project, including the estimated costs thereof, approved by the National Park Service. Furthermore, if Recipient fails to perform any of the project work, and such failure, because of commitments made by State to the National Park Service, forces State to perform any work necessary to bring the project to a useful stage of completion (as determined by the State and the National Park Service), Recipient shall reimburse State for all State's costs to perform necessary completion work, less any federal funds received by State for such work.
6. Recipient hereby agrees at all times to comply with the Land and Water Conservation Fund Project Agreement General Provisions, attached here, marked as "Exhibit B" and by this reference made a part hereof.
7. The provisions of the main body of this agreement and Exhibit B shall prevail, in case of conflict, over the provisions of Exhibit A.
8. This agreement shall be executed by authorized representative of Recipient.

Recipient: City of Bethel	State of Alaska: Dept of Natural Resources
Signature: _____	Signature: _____
Print or Type Name and Title: _____ _____	Jamie Walker, Alternate State Liaison Officer Land and Water Conservation Fund
	Date: September 23, 2014

**Land and Water Conservation Fund
Grant Agreement**

Exhibit A: Project Summary

Pinky's Park Improvements, LWCF Grant # 02-00411

Grant Scope and Purpose: The City of Bethel will improve and add new elements to Pinky's Park. New elements include a multi-purpose sports field, high tunnel, access driveways, parking areas, boardwalk, and geoweb or geoblock trail. Benches, bleachers and other seating and exercise platforms may be among the additional or upgraded amenities.

Estimated Budget

Items		Estimated Costs
Materials/Equipment/Shipping: Geoweb, bleachers, goals posts, platforms, high tunnel, boardwalk, etc.		93,100
Installation and Construction		101,763
Site Work		38,564
	Subtotal	233,427
	State Indirect Cost 7.1%	<u>16,573</u>
	Total Project Costs	250,000
	National Park Service / Federal Share Grant 50%	125,000

The State Indirect Cost Rate may vary throughout the course of the grant. The rate that is in effect at the time of each billing is included in project scope and budget as an allowable cost.

Land and Water Conservation Fund

Exhibit B: General Provisions

Part I - Definitions

- A. The term "NPS" or "Service" as used herein means the National Park Service, United States Department of the Interior.
- B. The term "Director" as used herein means the Director of the National Park Service, or any representative lawfully delegated the authority to act for such Director.
- C. The term "Manual" as used herein means the Land and Water Conservation Fund State Assistance Program Manual.
- D. The term "project" as used herein means a Land and Water Conservation Fund grant which is subject to the project agreement and/or its subsequent amendments.
- E. The term "State" as used herein means the State or Territory which is a party to the project agreement, and, where applicable, the political subdivision or public agency to which funds are to be transferred pursuant to this agreement. Wherever a term, condition, obligation, or requirement refers to the State, such term, condition, obligation, or requirement shall also apply to the recipient political subdivision or public agency, except where it is clear from the nature of the term, condition, obligation, or requirement that it is to apply solely to the State. For purposes of these provisions, the terms "State," "grantee," and "recipient" are deemed synonymous.
- F. The term "Secretary" as used herein means the Secretary of the Interior, or any representative lawfully delegated the authority to act for such Secretary.

Part II - Continuing Assurances

The parties to the project agreement specifically recognize that the Land and Water Conservation Fund project creates an obligation to maintain the property described in the project agreement and supporting application documentation consistent with the Land and Water Conservation Fund Act and the following requirements.

Further, it is the acknowledged intent of the parties hereto that recipients of assistance will use monies granted hereunder for the purposes of this program, and that assistance granted from the Fund will result in a net increase, commensurate at least with the Federal cost-share, in a participant's outdoor recreation.

It is intended by both parties hereto that assistance from the Fund will be added to, rather than replace or be substituted for, State and local outdoor recreation funds.

- A. The State agrees, as recipient of this assistance, that it will meet the following specific requirements and that it will further impose these requirements, and the terms of the project agreement, upon any political subdivision or public agency to which funds are transferred pursuant to the project agreement. The State also agrees that it shall be responsible for compliance with the terms of the project agreement by such a political subdivision or public agency and that failure by such political subdivision or public agency to so comply shall be deemed a failure by the State to comply with the terms of this agreement.
- B. The State agrees that the property described in the project agreement and the signed and dated project boundary map made part of that agreement is being acquired or developed with Land and Water Conservation Fund assistance, or is integral to such acquisition or development, and that, without the approval of the Secretary, it shall not be converted to other than public outdoor recreation use but shall be maintained in public outdoor recreation in perpetuity or for the term of the lease in the case of leased property. The Secretary shall approve such conversion only if it is found to be in accord with the then existing comprehensive statewide outdoor recreation plan and only upon such conditions deemed necessary to assure the substitution of other recreation properties of at least equal fair market value and of reasonably equivalent usefulness and location pursuant to Title 36 Part 59.3 of the *Code of Federal Regulations*. This replacement land becomes subject to Section 6(f)(3) protection. The approval of a conversion shall be at the sole discretion of the Secretary, or his designee.

Prior to the completion of this project, the State and the Director may mutually alter the area described in the project agreement and the signed and dated project boundary map to provide the most satisfactory public outdoor recreation unit, except that acquired parcels are afforded Section 6(f)(3) protection as Fund reimbursement is provided.

In the event the NPS provides Land and Water Conservation Fund assistance for the acquisition and/or development of property with full knowledge that the project is subject to reversionary rights and outstanding interests, conversion of said property to other than public outdoor recreation uses as a result of such right or interest being exercised will occur. In receipt of this approval, the State agrees to notify the Service of the potential conversion as soon as possible and to seek approval of replacement property in accord with the conditions set forth in these provisions and program regulations. The provisions of this paragraph are also applicable to: leased properties acquired and/or developed with Fund assistance where such lease is terminated prior to its full term due to the existence of provisions in such lease known and agreed to by the Service; and properties subject to other outstanding rights and interests that may result in a conversion when known and agreed to by the Service.

- C. The State agrees that the benefit to be derived by the United States from the full compliance by the State with the terms of this agreement is the preservation, protection, and the net increase in the quality of public outdoor recreation facilities and resources which are available to the people of the State and of the United States, and such benefit exceeds to an immeasurable and unascertainable extent the amount of money furnished by the United States by way of assistance under the terms of this agreement. The State agrees that payment by the State to the United States of an amount equal to the amount of assistance extended under this agreement by the United States would be inadequate compensation to the United States for any breach by the State of this agreement.

The State further agrees, therefore, that the appropriate remedy in the event of a breach by the State of this agreement shall be the specific performance of this agreement or the submission and approval of a conversion-of-use request as described in Section II.B above.

- D. The State agrees to comply with the policies and procedures set forth in Manual. Provisions of said Manual are incorporated into and made a part of the project agreement.
- E. The State agrees that the property and facilities described in the project agreement shall be operated and maintained as prescribed by Manual requirements and published post-completion compliance regulations (Title 36 Part 59 of the *Code of Federal Regulations*).
- F. The State agrees that a permanent record shall be kept in the participant's public property records and available for public inspection to the effect that the property described in the scope of the project agreement, and the signed and dated project boundary map made part of that agreement, has been acquired or developed with Land and Water Conservation Fund assistance and that it cannot be converted to other than public outdoor recreation use without the written approval of the Secretary of the Interior.
- G. Nondiscrimination
1. By signing the LWCF agreement, the State certifies that it will comply with all Federal laws relating to nondiscrimination as outlined in the Civil Rights Assurance appearing at Part III-I herein.
 2. The State shall not discriminate against any person on the basis of residence, except to the extent that reasonable differences in admission or other fees may be maintained on the basis of residence as set forth in the Manual.

Part III - Project Assurances

A. Applicable Federal Circulars

The State shall comply with applicable regulations, policies, guidelines and requirements as they relate to the application, acceptance and use of Federal funds for this federally assisted project, including:

- OMB Circular A-102, Uniform Administrative Requirements for Grants and Cooperative Agreements

with State and Local Governments;

- 43 CFR Part 12, Administrative and Audit Requirements and Cost Principles for Assistance Programs, Department of the Interior;

- A-87, Cost Principles for State, Local, and Indian Tribal Governments; and

- A-133, Audits of States, Local Governments, and Non-Profit Organizations.

B. Project Application

1. The Application for Federal Assistance bearing the same project number as the agreement and associated documents is by this reference made a part of the agreement.
2. The State possesses legal authority to apply for the grant, and to finance and construct the proposed facilities. A resolution, motion or similar action has been duly adopted or passed authorizing the filing of the application, including all understandings and assurances contained herein, and directing and authorizing the person identified as the official representative of the State to act in connection with the application and to provide such additional information as may be required.
3. The State has the capability to finance the non-Federal share of the costs for the project. Sufficient funds will be available to assure effective operation and maintenance of the facilities acquired or developed by the project.

C. Project Execution

1. The project period shall begin with the date of approval of the project agreement or the effective date of a waiver of retroactivity and shall terminate at the end of the stated or amended project period unless the project is completed or terminated sooner in which event the project shall end on the date of completion or termination.
2. The State shall transfer to the project sponsor identified in the Application for Federal Assistance or the Description and Notification Form all funds granted hereunder except those reimbursed to the State to cover eligible administrative expenses.
3. The State will cause work on the project to be commenced within a reasonable time after receipt of notification that funds have been approved and assure that the project will be prosecuted to completion with reasonable diligence.
4. The State will require the facility to be designed to comply with the Architectural Barriers Act of 1968 (Public Law 90-480) and DOI Section 504 Regulations (43 CFR Part 17). The State will be responsible for conducting inspections to insure compliance with these specifications by the contractor.
5. The State shall secure completion of the work in accordance with approved construction plans and specifications, and shall secure compliance with all applicable Federal, State, and local laws and regulations.
6. In the event the project covered by the project agreement, cannot be completed in accordance with the plans and specifications for the project; the State shall bring the project to a point of recreational usefulness agreed upon by the State and the Director or his designee.
7. The State will provide for and maintain competent and adequate architectural/engineering supervision and inspection at the construction site to insure that the completed work conforms with the approved plans and specifications; that it will furnish progress reports and such other information as the NPS may require.
8. The State will comply with the terms of Title II and Title III, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646), 94 Stat. 1894 (1970), and the applicable regulations and procedures implementing such Act for all real property acquisitions and where applicable shall assure that the Act has been complied with for property to be developed with assistance under the project agreement.

9. The State will comply with the provisions of: Executive Order 11988, relating to evaluation of flood hazards; Executive Order 11288, relating to the prevention, control, and abatement of water pollution, and Executive Order 11990 relating to the protection of wetlands.
10. The State will comply with the flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973, Public Law 93-234, 87 Stat. 975, approved December 31, 1976. Section 102(a) requires the purchase of flood insurance in communities where such insurance is available, as a condition for the receipt of any Federal financial assistance for construction or acquisition purposes, for use in any area that has been identified as an area having special flood hazards by the Flood Insurance Administration of the Federal Emergency Management Agency. The phrase "Federal financial assistance" includes any form of loan, grant, guaranty, insurance payment, rebate, subsidy, disaster assistance loan or grant, or any other form of direct or indirect Federal assistance.
11. The State will assist the NPS in its compliance with Section 106 of the National Historic Preservation Act of 1966 as amended (16 U.S.C. 470), Executive Order 11593, and the Archaeological and Historic Preservation Act of 1966 (16 U.S.C. 469a-1 et seq.) by (a) consulting with the State Historic Preservation Officer on the conduct of investigations, as necessary, to identify properties listed in or eligible for inclusion in the National Register of Historic Places that are subject to effects (see CFR Part 800.8) by the activity, and notifying the Federal grantor agency of the existence of any such properties, and by (b) complying with all requirements established by the Federal grantor agency to avoid or mitigate adverse effects upon such properties.
12. The State will comply with "Minority Business Enterprises" and "Women's Business Enterprises" pursuant to Executive Orders 11625 and 12138 as follows:
 - (1) Place minority and women business firms on bidder's mailing lists.
 - (2) Solicit these firms whenever they are potential sources of supplies, equipment, construction, or services.
 - (3) Where feasible, divide total requirements into smaller needs, and set delivery schedules that will encourage participation by these firms.
 - (4) The Department of the Interior is committed to the objectives of this policy and encourages all recipients of its grants and cooperative agreements to take affirmative steps to ensure such fairness.

The National Park Service Regional Offices will work closely with the States to ensure full compliance and that grant recipients take affirmative action in placing a fair share of purchases with minority business firms.

13. The State will comply with the intergovernmental review requirements of Executive Order 12372.

D. Construction Contracted for by the State Shall Meet the Following Requirements:

1. Contracts for construction shall comply with the provisions of 43 CFR Part 12 (Administrative and Audit Requirements and Cost Principles for Assistance Programs, Department of the Interior).
2. No grant or contract may be awarded by any grantee, subgrantee or contractor of any grantee or subgrantee to any party which has been debarred or suspended under Executive Order 12549. By signing the LWCF agreement, the State certifies that it will comply with debarment and suspension provisions appearing at Part III-J herein.

E. Retention and Custodial Requirements for Records

1. Financial records, supporting documents, statistical records, and all other records pertinent to this grant shall be retained in accordance with 43 CFR Part 12 for a period of three years; except the records shall be retained beyond the three-year period if audit findings have not been resolved.

2. The retention period starts from the date of the final expenditure report for the project.
3. State and local governments are authorized to substitute copies in lieu of original records.
4. The Secretary of the Interior and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the State and local governments and their subgrantees which are pertinent to a specific project for the purpose of making audit, examination, excerpts and transcripts.

F. Project Termination

1. The Director may temporarily suspend Federal assistance under the project pending corrective action by the State or pending a decision to terminate the grant by the Service.
2. The State may unilaterally terminate the project at any time prior to the first payment on the project. After the initial payment, the project may be terminated, modified, or amended by the State only by mutual agreement.
3. The Director may terminate the project in whole, or in part, at any time before the date of completion, whenever it is determined that the grantee has failed to comply with the conditions of the grant. The Director will promptly notify the State in writing of the determination and the reasons for the termination, together with the effective date. Payments made to States or recoveries by the Service under projects terminated for cause shall be in accord with the legal rights and liabilities of the parties.
4. The Director or State may terminate grants in whole, or in part at any time before the date of completion, when both parties agree that the continuation of the project would not produce beneficial results commensurate with the further expenditure of funds. The two parties shall agree upon the termination conditions, including the effective date and, in the case of partial termination, 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 NPS may allow full credit to the State for the Federal share of the noncancelable obligations, properly incurred by the grantee prior to termination.
5. Termination either for cause or for convenience requires that the project in question be brought to a state of recreational usefulness agreed upon by the State and the Director or that all funds provided by the National Park Service be returned.

G. Lobbying with Appropriated Funds

The State must certify, for the award of grants exceeding \$100,000 in Federal assistance, that no Federally appropriated funds have been paid or will be paid, by or on behalf of the State, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding, extension, continuation, renewal, amendment, or modification of this grant. In compliance with Section 1352, title 31, U.S. Code, the State certifies, as follows:

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, and officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement,

the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

H. Provision of a Drug-Free Workplace

In compliance with the Drug-Free Workplace Act of 1988 (43 CFR Part 12, Subpart D), the State certifies, as follows:

The grantee certifies that it will or continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of a grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency in writing, within ten calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted;

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

The State must include with its application for assistance a specification of the site(s) for the performance of work to be done in connection with the grant.

I. Civil Rights Assurance

The State certifies that, as a condition to receiving any Federal assistance from the Department of the Interior, it will comply with all Federal laws relating to nondiscrimination. These laws include, but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d-1), which prohibits discrimination on the basis of race, color, or national origin; (b) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), which prohibits discrimination on the basis of handicap; (c) the Age Discrimination Act of 1975, as amended (42 U.S.C. 6101 et. seq.), which prohibits discrimination on the basis of age; and applicable regulatory requirements to the end that no person in the United States shall, on the grounds of race, color, national origin, handicap or age, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity conducted by the applicant. THE APPLICANT HEREBY GIVES ASSURANCE THAT it will immediately take any measures necessary to effectuate this agreement.

THIS ASSURANCE shall apply to all aspects of the applicant's operations including those parts that have not received or benefited from Federal financial assistance.

If any real property or structure thereon is provided or improved with the aid of Federal financial assistance extended to the Applicant by the Department, this assurance shall obligate the Applicant, or in the case of any transfer of such property, any transferee, for the period during which it retains ownership or possession of the property. In all other cases, this assurance shall obligate the Applicant for the period during which the Federal financial assistance is extended to it by the Department.

THIS ASSURANCE is given in consideration of and for the purpose of obtaining any and all Federal grants, loans, contracts, property, discounts or other Federal financial assistance extended after the date hereof to the Applicant by the Department, including installment payments after such date on account of applications for Federal financial assistance which were approved before such date.

The Applicant recognizes and agrees that such Federal financial assistance will be extended in reliance on the representations and agreements made in this assurance, and that the United State shall have the right to seek judicial enforcement of this assurance. This assurance is binding on the Applicant, its successors, transferees, assignees, and subrecipients and the person whose signature appears on the grant agreement and who is authorized to sign on behalf of the Applicant.

J. Debarment and Suspension

Certification Regarding Debarment, Suspension, and Other Responsibility Matters - Primary Covered Transactions

(1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission or embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statement, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

(2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

The State further agrees that it will include the clause "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions" appearing below in any agreement entered into with lower tier participants in the implementation of this grant. Department of Interior Form 1954 (DI-1954) may be used for this purpose.

Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion - Lower Tier Covered Transactions

(1) The prospective lower tier participant certifies, by submission of this application that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this application.



City of Bethel

Committees and Commissions

Recommendation to City Council

Committees and Commissions that wish to make a recommendation to City Council should turn this form in to the City Clerk or to the City Council representative on the committee or commission.

Committee/Commission: Parks & Recreation	Chairman: Barbara Mosier
Date Submitted: 12/4/12	Council Rep: Mary Sattler

Issue:

The City of Bethel has an opportunity to apply for a Land and Water Conservation Fund grant. Grant proposals are due February 1, 2013.

The City could use this grant to fund improvements in Pinky's Park, a 21-acre area designated by the City for outdoor recreation use only. The Park status is officially recorded with the Alaska Department of Natural Resources, Division of Parks and Outdoor Recreation.

Incorporate more land into Pinky's Park that will be available for recreational use or to leave in its natural state.

Recommendation:

The Parks & Recreation Acting Director and Grant Manager work together to prepare and submit a Land and Water Conservation Fund grant application by the February 1, 2013 deadline. The application will include the City's designation of more land to become a permanent part of Pinky's Park. Upgrades to the park being considered for inclusion in the application are: skatepark cover, multi-sport field, entertainment amphitheater sound shell, and baseball field improvements. Other upgrade ideas will be sought from from the baseball field volunteers and City Planning Commission members.

Received by: 
 Date: _____

Introduced by: Lee Foley, City Manager
Date: January 22, 2013
Action: Passed
Vote: 6-0

CITY OF BETHEL, ALASKA

Resolution # 13-02

PREPARE AND SUBMIT 2013 LAND AND WATER CONSERVATION FUND GRANT APPLICATION TO FUND PINKY'S PARK IMPROVEMENTS

WHEREAS, the Land and Water Conservation Fund is a federal grant program administered by the National Park Service through the State of Alaska, Division of Parks and Outdoor Recreation;

WHEREAS, the grant provides 50% matching funds for outdoor recreation projects;

WHEREAS, Pinky's Park is a 21-acre land area in Bethel developed by LWCF funding and designated for outdoor recreation use in perpetuity;

WHEREAS, the LWCF program requires a preliminary application by February 1, 2013 and, if approved, a final application with extensive supporting documentation must be submitted for final approval;

WHEREAS, due to limited funding, the grant portion of Alaska LWCF projects must be \$50,000 to \$125,000 in scope;

WHEREAS, the City of Bethel proposes to use \$125,000 in grant funds to pay for the following improvements in Pinky's Park: construction of wooden boardwalk and decks, application of geoblock trails over tundra, construction of gravel road and multiuse sports field, and construction of sand pad and high tunnel to be part of the community garden;

WHEREAS, the City of Bethel assisted the Yukon Kuskokwim Health Corporation, Diabetes Prevention and Control Program prepare and submit a First National Agriculture Initiative grant application in December 2012 to request \$37,500 to pay for the entire high tunnel garden project except for \$18,938;

WHEREAS, the City intends to use \$18,938 of its \$125,000 LWCF grant amount to complete the high tunnel garden project;

WHEREAS, as part of the 2013 LWCF grant application, the City commits the use of its heavy equipment, personnel, and approximately 67 truckloads of sand to construct a sand pad for the high tunnel (50 ft. by 95 ft.) west of the community garden;

Introduced by: Lee Foley, City Manager
Date: January 22, 2013
Action: Passed
Vote: 6-0

WHEREAS, as part of the 2013 LWCF grant application, the City commits the use of its heavy equipment, personnel, and approximately 900 truckloads of sand to construct a sand pad for a multiuse sports field (360 ft. by 225 ft.) and gravel road leading to it;

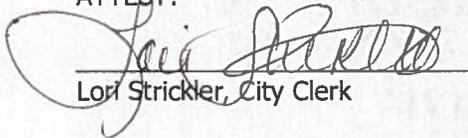
WHEREAS, the project will also require some Parks and Recreation seasonal staff time and community volunteer time;

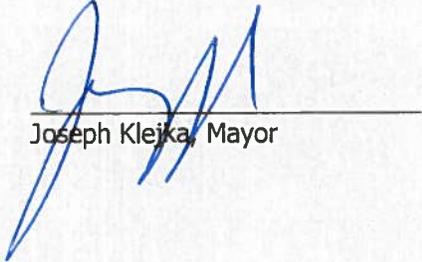
WHEREAS, the City of Bethel commits to maintaining improvements made to Pinky's Park with funding from the 2013 LWCF grant;

NOW, THEREFORE, BE IT RESOLVED that the Bethel City Council supports and approves the City's preparation and submission of a 2013 Land and Water Conservation Fund Grant application to fund Pinky's Park improvements;

ENACTED THIS 22ND DAY OF JANUARY 2013 BY A VOTE OF 6 IN FAVOR AND 0 OPPOSED.

ATTEST:


Lori Strickler, City Clerk


Joseph Klejka, Mayor

Introduced by: Lee Foley, City Manager
Date: January 22, 2013
Action: Passed
Vote: 6-0

CITY OF BETHEL, ALASKA

Resolution # 13-03

DESIGNATION OF FIVE ACRES OF LAND TO PINKY'S PARK FOR OUTDOOR RECREATION

WHEREAS, the Land and Water Conservation Fund is a federal grant program administered by the National Park Service through the State of Alaska, Division of Parks and Outdoor Recreation;

WHEREAS, the grant provides 50% matching funds for outdoor recreation projects;

WHEREAS, property acquired or developed with LWCF funding must be retained and used solely for outdoor recreation purposes in perpetuity;

WHEREAS, Pinky's Park is a 21-acre land area in Bethel developed by LWCF funding and designated for outdoor recreation use in perpetuity;

WHEREAS, the City of Bethel has an opportunity to add five acres of City land to Pinky's Park and use it as match in its grant application due February 1, 2013;

WHEREAS, Affiliated Appraisers of Alaska revealed in December 2012 that the average value per acre for three land sales that occurred in Bethel in 2002 was \$31,070;

WHEREAS, using a value of \$31,070 per acre gives the five acres adjacent to Pinky's Park a value of \$155,550;

WHEREAS, the five-acres of land to be added to Pinky's Park is the land west of the Pinky's Park boundary to the eastern boundary of Yuut Elitnaurviat and north of the ONC multipurpose building;

WHEREAS, the City Planner and Acting Parks and Recreation Director support the addition of the five acres of land to Pinky's Park for the following reasons: land can be better used for Fourth of July activities, vendors, and crowd disbursement; land would be used to construct a gravel road to a multiuse athletic field for soccer, field hockey, and other sports; land is adjacent to Pinky's Park; land is close to an existing parking lot;

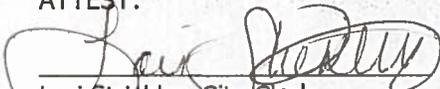
NOW, THEREFORE, BE IT RESOLVED that the Bethel City Council supports and approves the designation of five acres of additional land to become a part of Pinky's Park and used solely for outdoor recreation in perpetuity;

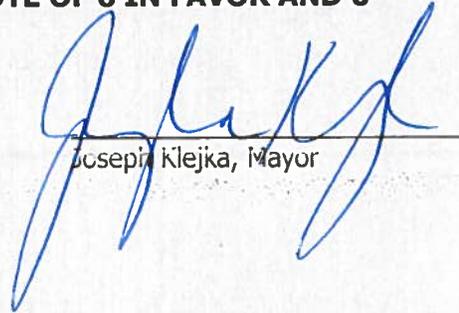
Introduced by: Lee Foley, City Manager
Date: January 22, 2013
Action: Passed
Vote: 6-0

BE IT FURTHER RESOLVED, that the Bethel City Council approves the use of the newly designated five acres of land as match for its FY 2013 LWCF grant application;

ENACTED THIS 22ND DAY OF JANUARY 2013 BY A VOTE OF 6 IN FAVOR AND 0 OPPOSED.

ATTEST:


Lori Strickler, City Clerk


Joseph Klejka, Mayor

Introduced by: Lee Foley, City Manager
Date: April 23, 2013
Action: Passed
Vote: 4-0

CITY OF BETHEL, ALASKA

Resolution # 13-09

A RESOLUTION AFFIRMING THE CITY'S LEGAL AUTHORITY TO DEVELOP PARKS AND RECREATION FACILITIES AND AUTHORIZING THE CITY'S 2013 LAND AND WATER CONSERVATION FUND APPLICATION

WHEREAS, on January 22, 2013, the Bethel City Council approved two resolutions:

- 1. Resolution 13- 02: Prepare and Submit 2013 Land and Water Conservation Fund Grant Application to Fund Pinky's Park Improvements , and*
- 2. Resolution 13-03: Designation of Five Acres of Land to Pinky's Park for Outdoor Recreation;*

WHEREAS, the City of Bethel proposes to use \$125,000 in grant funds to pay for the following improvements in Pinky's Park: construction of wooden boardwalk and decks, application of geoblock trails over tundra, construction of gravel road and multiuse sports field, and construction of sand pad and high tunnel to be part of the community garden;

WHEREAS, the Bethel City Council is aware of the plan to complete the Pinky's Park Outdoor Recreation Improvements Project and approves the project as funded by the Land and Water Conservation Fund (LWCF) grant;

WHEREAS, under the provisions of the Land and Water Conservation Fund, federal funding assistance has been authorized and made available to finance up to 50% of the cost of public outdoor recreational facilities for local governmental entities;

NOW, THEREFORE, BE IT RESOLVED, that the Bethel City Council agrees to the following:

1. The City Manager is authorized to formally apply to the LWCF program for funding assistance,
2. Any funding received from the LWCF grant will be used to complete the Pinky's Park Outdoor Recreation Improvements Project in Bethel, Alaska,
3. The *City's* share for the project will be derived from the use of previously approved grants and in-kind contributions of labor, equipment, and services,
4. Any property acquired with financial aid through the LWCF program will be placed in use as a public outdoor recreation facility and be retained in such use in perpetuity unless as otherwise provided and agreed to by the Council, the State of Alaska Division of Parks and Outdoor Recreation, and the National Park Service,

Introduced by: Lee Foley, City Manager
Date: April 23, 2013
Action: Passed
Vote: 4-0

5. This resolution will become part of a formal application to the State of Alaska, Division of Parks and Outdoor Recreation, which administers the LWCF grant program.

ENACTED THIS 23rd DAY OF APRIL 2013 BY A VOTE OF 4 IN FAVOR AND 1 OPPOSED.

Joseph A Klejka, Mayor

ATTEST:

Lori Strickler, City Clerk

Memo

To: City Council
CC: City Manager, Ronda Sargent, John Sargent
From: Patty Burley
Date: 10/3/2014
Re: Pinky's Park Improvement Grant

I was asked to review the State-Local Grant Agreement for the Pinky's Park Improvements. Having done so, there are some areas of concern. My only recommendation is that City Council should be the ones to make the final decision on whether or not to sign this and only if they have complete knowledge of what this Agreement entails.

Agreement:

1. First paragraph indicates this Agreement is with the Municipality of Anchorage. This needs to be stricken and the City of Bethel inserted instead.
2. Makes clear that the State is not giving any money towards this Agreement but is merely a pass-through agency forwarding reimbursements from the Federal Government.
3. The City must spend all \$250,000 in order to get \$125,000 back (less the State's up to 10% administrative costs). So, the maximum amount the City will get back is: \$112,500.
4. Any monies expended over \$250,000 will be the sole responsibility of the City of Bethel.
5. Anything the grant money touches forever becomes public land. The City cannot sell this land, change its use or do anything with this land without the express written permission of the National Park Service.
6. If the City is unable to complete any portion of the described work, the State of Alaska will do so and the City will be responsible for the costs.

Recommendations:

1. Identify clearly where the City has the \$250,000 to advance for this project and how it will be accounted for from the start of the project until the final reimbursement check.
2. Detailed budget, with supporting documentation, of all of the costs of this project showing it can be done at the price set out.

Exhibit A: Project Summary: States the City's responsibilities (what the City must complete):

- a. Multi-Purpose sports field;
- b. High tunnel;
- c. Access driveways;
- d. Parking Areas;
- e. Boardwalk
- f. Geoweb;
- g. Geoblock Trail
- h. Possible: benches, bleachers & other seating & exercise platforms

Exhibit B: General Provisions:

1. Imposes a continuing obligation on the City to maintain all of the above (a-g & h if done) forever. The City cannot just build it and call it good; they are required to keep it all maintained and usable.
2. a-g above must improve the park and add value to recreation not take away from anything already existing;
3. *Refers to a boundary map which was not included in the documents or in the council packet – where is this boundary map?*
4. Again reiterates that all the land touched by these projects must remain public outdoor recreation forever and ever and ever – no exception.
5. Failure to fulfill any part of a-g means the State will come in and complete it and will bill the City for it. There is no recourse; the City must complete all of the above. Running out of money or other resources is not an acceptable excuse or reason for not completing the projects.
6. City has assured the State it has all the money needed to complete all of the projects outlined ***[NEED TO MAKE SURE THIS IS TRUE]***
7. Requires the City to provide and maintain competent and adequate architectural and/or engineering supervision and inspection during any construction for this project.
8. Any RFP's used to fulfill the City's requirements require compliance with the "Minority Business Enterprise" and "Women's Business Enterprise" Acts. This means that businesses falling into these categories must be placed on a bidder mailing list; they must be solicited for supplies, equipment, construction or services and jobs must be broken up whenever possible to allow more of those enterprises to be able to bid.
9. The City **MUST** institute the State/Federal Drug-Free Workplace Program (we currently do not have the same program) and it must be implemented for EVERY employee who touches this grant (from finance, to parks/rec, public works, administration, etc.)
10. A permanent record must be kept and available for public inspection, with the project boundary map, regarding this project and all the land it affected.

Misc Requirements:

The cover letter makes it clear that the City will have to re-deed the Pinky's Park property: A new deed for Pinky's Park that states the land is classified as outdoor recreational in perpetuity and cannot be designated as anything else without the written consent of the National Park Service.

Questions:

1. Are any of the affected areas in a flood zone? If so, the City must carry flood insurance
2. Are any of the affected areas on wetlands?

NOTICE: This communication is confidential, is intended only for the named recipient(s) above and may contain information that is privileged, attorney work product or otherwise protected by applicable law. If you are not the intended recipient or believe that you may have received this communication in error, please notify the sender and delete this e-mail. Unintended recipients of this e-mail should not print, copy, retransmit, disseminate or otherwise use the information.

**CITY OF
BETHEL**

John Sargent <jsargent@cityofbethel.net>

LWCF Grant Agreement Provisions

1 message

Ayers, Jean M (DNR) <jean.ayers@alaska.gov>
To: "John Sargent (jsargent@cityofbethel.net)" <jsargent@cityofbethel.net>

Wed, Oct 22, 2014 at 11:59 AM

Hello John,

Thank you for sharing with me the concerns brought forth by the city attorney regarding the Land and Water Conservation Fund (LWCF) grant agreement. Please see responses below.

1. The attached grant agreement has been corrected to show "City of Bethel" as recipient.
2. The State of Alaska administers this federally funded program. Reimbursements may be made to the recipient as often as quarterly. Grant money is not advanced.
3. The city must document costs in order to receive reimbursements. They may submit requests for reimbursement as often as quarterly. Eligible costs to document include in-kind and volunteer labor, donated materials, and other cash or non-cash contributions invested in the project. Standard documentation may include timesheets for volunteer or in-kind labor; tracking and valuation of donated materials; invoices, purchase orders, receipts, copies of checks, or ledger print-outs (such as QuickBooks) for cash purchases, etc. I have forms the city may use to document such, or they may submit their own tracking forms. If the city documents \$250,000 in total eligible project costs over the course of the grant, they will receive reimbursement of 50% of that amount minus the State indirect cost rate. Currently, the State indirect cost rate is 7.1%. If that holds throughout the course of the grant project, the city may receive in reimbursement \$108,427.
4. Expenditures over \$250,000 are the sole responsibility of the city. However, a grant may be amended, if LWCF funds are available, to assist with additional costs.
5. Pinky's Park has received 2 prior LWCF grants; therefore, the land within the park boundary is already dedicated to public outdoor recreation and subject to provisions of the LWCF Act of 1965. In 1979, the city used LWCF grant # 02-00249 for \$200,000 to develop features such as a ball field, playground, multi-use hard court, picnic area, trails, restroom and parking. In 2005, the city used LWCF grant # 02-00385 to install a skate park and community garden and upgrade other features. The intent of the LWCF Act is to maintain in perpetuity public places for outdoor recreation. However, the Act does contain provisions for the "conversion" of public outdoor recreation properties to uses other than recreation. Conversion is a process which would involve coordination with the city, the state and the National Park Service, the ultimate funding agency. It is a deliberate process which allows for real world solutions, as necessary.
6. If the city is unable to complete the described work, the State of Alaska will consult with the city to determine a reasonable solution. We will not complete the work for the city. In most cases, it would entail amending the grant scope of work to ensure a "viable recreation unit" and reduce the grant amount to cover work which the city had successfully completed.
7. The grant scope of work lists several elements the city expects to develop within Pinky's Park (sports field, high tunnel, etc). However, if specific elements change or cannot be completed, the State of Alaska will not complete them or bill the city for them. Again, the grant scope of work and budgets may be amended to include or exclude elements, as necessary. The intent is to create a safe, inviting public outdoor recreation area; the size or inclusion of a sports field, seating benches, trails, or other individual elements is entirely up to the city.

I trust this information will help clarify matters. If you have other questions, please let me know.

Jean Ayers
Grants Administrator, State of Alaska: DNR

City of Bethel Action Memorandum

Action memorandum No.	16-40		
Date action introduced:	May 24, 2016	Introduced by:	Parks, Rec, Aquatic Health Committee
Date action taken:		Approved	Denied
Confirmed by:			

Direct Administration to work in good faith with long term user groups renting the Log Cabin facility who face expiring lease agreements with the City and to allow for month-to-month rental agreements until the Fiscal Year 2017 budget has been approved.

Route to:	Department/Individual:	Initials:	Remarks:
	City Manager		Signatures and Comments not recieved in time of packet deadline
	Public Works Director		Signatures and Comments not recieved in time of packet deadline
	Finance Director		Signatures and Comments not recieved in time of packet deadline

Attachment(s):

Amount of fiscal impact:		Account information:
<input checked="" type="checkbox"/>	No fiscal impact	
<input type="checkbox"/>	Funds are budgeted.	
<input type="checkbox"/>	Funds are not budgeted. Budget modification is required.	
<input type="checkbox"/>	Grant funding.	

There are three primary long term rental agreements with the Log Cabin users. With the recent discussions, and the potential closing (mothballing) of the Log Cabin facility, the City needs to ensure fair and equitable treatment of all users until such time a decision is made on the continued operation of the building.

One agreement is set to expire in May. This user should be allowed to continue on a month to month use until a budget decision is made.

The other two agreements expire in June and September. These users should be provided with adequate notice and time if any changes to the use of the facility are made.

City of Bethel Action Memorandum

Action memorandum No.	16-41		
Date action introduced:	May 24, 2016	Introduced by:	Parks, Recreation, Aquatic Committee
Date action taken:		Approved	Denied
Confirmed by:			

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Route to:	Department/Individual:	Initials:	Remarks:
	5 [fk? S` SYW		Initials and comments not recieved in time for packet deadline.
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	BgT] [UI ad] e6 [dMfad		Initials and comments not recieved in time for packet deadline.

Attachment(s):

Amount of fiscal impact:		Account information:
X	No fiscal impact	
	Funds are budgeted.	
	Funds are not budgeted. Budget modification is required.	
	Grant funding.	

On April 11, 2016, the Alaska Moravian Church provided a letter to the Public Works Director requesting removal of the boardwalk located near the Moravian Church property.

When this issue was considered by the Planning Committee, they determined that the destruction of the boardwalk was not in the best interest of the community, it is used as a traditional route.

When the Parks, Recreation, Aquatic, Health and Safety Committee considered this issue, they determined it is in the best interest of the community to keep the boardwalks within the trail system instead of deconstructing the boardwalks so that pedestrians are not futher limited in their walking paths.

City of Bethel Action Memorandum

Action memorandum No.	16-42		
Date action introduced:	May 24, 2016	Introduced by:	City Manager Capela
Date action taken:		Approved	Denied
Confirmed by:			

Authorizing administration to negotiate and enter into a contract with a design build contractor for the design and construction of the new port office.

Route to:	Department/Individual:	Initials:	Remarks:
	Finance Director		Initials not recieved by packet deadline
	City Attorney	PB	Drafted the AM
	City Manager		Initials not recieved by packet deadline
	Port Director	PW	Approved

Attachment(s): Draft design-build port contract; score summaries (red folder)

Amount of fiscal impact:		Account information:
\$722,704	Funds are not budgeted. Allocation in the FY 2017 Budget Required	47-50-690

Background:

While a new port office was always planned for this year, the unexpected devastating fire has made the construction of a new port office even more critical. Earlier this year, the city hired Pro Dev to write and administer a request for proposal. As a result of Pro Dev's work, six (6) proposals were received by the City. All six proposals were then scored by a committee comprised of city employees.

After scoring the proposals, an incumbent was chosen and notified of the City's desire to enter into a contract for operations. The other proposers were notified, in writing, that their proposers were not the highest ranking and the City would likely not be choosing their proposal and entering into contract negotiations with them.

Due to the very shortened time frame for protests (5 business days), the final day for the City to receive a protest is May 24, 2015 at 5 pm AST. As a result, the City's Procurement Code, which mirrors Alaska Statute 36.30.230, the information contained in the proposals is not subject to public disclosure until the protest period has ended.

A draft contract has been forwarded to the highest scoring proposer (a blank copy is inserted herein) and a copy of the score summaries will be provided on the council meeting date.

ConsensusDocs® 415
STANDARD DESIGN-BUILD AGREEMENT AND GENERAL CONDITIONS
BETWEEN OWNER AND DESIGN-BUILDER
(Lump Sum Price)

TABLE OF ARTICLES

1. AGREEMENT
2. GENERAL PROVISIONS
3. DESIGN-BUILDER'S RESPONSIBILITIES
4. OWNER'S RESPONSIBILITIES
5. SUBCONTRACTS
6. CONTRACT TIME
7. CONTRACT PRICE
8. CHANGES IN THE WORK
9. PAYMENT
10. INDEMNITY, INSURANCE, AND BONDS
11. SUSPENSION, NOTICE TO CURE, AND TERMINATION
12. DISPUTE MITIGATION OR RESOLUTION
13. MISCELLANEOUS
14. CONTRACT DOCUMENTS

ARTICLE 1 AGREEMENT

Job Number: []

This Agreement is made this [] Day of [] in the year [], by and between the

OWNER: []

and the

DESIGN-BUILDER: []

Contractor Licensing No., []

Design Professional Licensing No. in the State of the Project: []

for services in connection with the following:

PROJECT: []

Notice to the Parties shall be given at the above addresses.

ARTICLE 2 GENERAL PROVISIONS

2.1. **TEAM RELATIONSHIP** The Parties each agree to proceed with the Project on the basis of trust, good faith, and fair dealing. The Design-Builder agrees to furnish or procure, as permitted by Law, the architectural and engineering services set forth below and the construction and administration of the Work.



2.1.1. The Design-Builder represents that it is an independent contractor and that it is familiar with the type of work it is undertaking.

2.1.2. Neither the Design-Builder nor any of its agents or employees shall act on behalf of or in the name of the Owner unless authorized in writing by the Owner's Representative.

2.1.3. ETHICS The Parties shall perform their obligations with integrity, ensuring at a minimum that each: (a) avoids conflicts of interest or promptly discloses any to the other Party, and (b) warrants that it has not and shall not pay nor receive any contingent fees or gratuities to or from the other Party, including its agents, officers and employees, Subcontractors, or others for whom they may be liable, to secure preferential treatment.

2.2. DESIGN PROFESSIONAL Architectural and engineering services shall be procured from licensed, independent design professionals retained by the Design-Builder or furnished by licensed employees of the Design-Builder, as permitted by the Law. The person or entity providing architectural and engineering services shall be referred to as the Design Professional.

2.2.1. STANDARD OF CARE The Design Professional shall furnish and provide the architectural and engineering services necessary to design the Project in accordance with the Owner's requirements, as outlined in the Owner's Program and other relevant data defining the Project. The architectural and engineering services shall be performed in accordance with the standard of professional skill and care required for a Project of similar size, scope, and complexity, during the time in which the Services are provided. The Design Professional for the Project is [_____].

2.2.2.

2.3. DEFINITIONS

2.3.1. "Agreement" means this ConsensusDocs 415 Standard Design-Build Agreement and General Conditions Between Owner and Design-Builder (Lump Sum Price), as modified, amendments, exhibits, addenda, and attachments made part of this Agreement upon its execution.

EXHIBIT A: Request for proposals dated April 1, 2016, including attachments A through F.

EXHIBIT B: Design Build proposal dated _____

2.3.2. "Business Day" means all Days, except weekends and official federal or state holidays where the Project is located.

2.3.3. A "Change Order" is a written order signed by the Owner and the Design-Builder after execution of this Agreement, indicating changes in the scope of the Work or Contract Time, including substitutions proposed by the Design-Builder and accepted by the Owner.

2.3.4. The "Contract Documents" consist of those documents identified in section 14.1.

2.3.5. The "Contract Time" is the period between the Date of Commencement and Final Completion.

2.3.6. "Day" means calendar day.

2.3.7. "Date of Commencement" is the date of the Agreement.

2.3.8. "Defective Work" is any portion of the Work not in conformance to the requirements of the Contract Documents.



2.3.9. "Final Completion" occurs on the date when the Design-Builder's obligations under this Agreement are complete and accepted by the Owner and final payment becomes due and payable.

2.3.10. "Laws" means federal, state, and local laws, ordinances, codes, rules, and regulations applicable to the Work with which the Design-Builder must comply that are enacted as of the Agreement date.

2.3.11. A "Material Supplier" is a person or entity retained by the Design-Builder to provide material and equipment for the Work.

2.3.12. "Others" means other contractors and all persons at the Worksite who are not employed by the Design-Builder, its Subcontractors, or Material Suppliers.

2.3.13. "Overhead" shall mean (a) payroll costs and other compensation of Design-Builder's employees in the Design-Builder's principal and branch offices; (b) general and administrative expenses of the Design-Builder's principal and branch offices including charges against the Design-Builder for delinquent payments; and (c) the Design-Builder's capital expenses, including interest on capital used for the Work.

2.3.14. The "Owner" is the person or entity identified in ARTICLE 1, and includes the Owner's representative.

2.3.15. The "Owner's Program" is a description of the Owner's objectives, budgetary and time criteria, space requirements and relationships, flexibility and expandability requirements, special equipment and systems, and site requirements.

2.3.16. The "Parties" are collectively the Owner and Design-Builder.

2.3.17. The "Project," as identified in ARTICLE 1, is the building, facility, or other improvements for which the Design-Builder is to perform the Work under this Agreement. It may also include improvements to be undertaken by the Owner or Others.

2.3.18. A "Subcontractor" is a person or entity retained by the Design-Builder as an independent contractor to provide the labor, materials, equipment, or services necessary to complete a specific portion of the Work. The term Subcontractor does not include the Design Professional or any separate contractor employed by the Owner or any separate contractor's subcontractors. All subcontractors are to be properly licensed to do business in the State of Alaska.

2.3.19. "Substantial Completion" of the Work, or of a designated portion, occurs on the date when construction is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Project, or a designated portion, for the use for which it is intended, without unscheduled disruption. The issuance of a certificate of occupancy is not a prerequisite for Substantial Completion if the certificate of occupancy cannot be obtained due to factors beyond the Design-Builder's control. This date shall be confirmed by a certificate of Substantial Completion signed by the Owner and Design-Builder. The certificate shall state the respective responsibilities of the Owner and Design-Builder for security, maintenance, heat, utilities, damage to the Work, and insurance. The certificate shall also list the items to be completed or corrected, and establish the time for their completion and correction within the timeframe, if any, established in subsection 6.2.3 for the Date of Final Completion.

2.3.20. Not used.

2.3.21. "Terrorism" means a violent act, or an act that is dangerous to human life, property, or infrastructure, that is committed by an individual or individuals and that appears to be part of an effort to coerce a civilian population or to influence the policy or affect the conduct of any



government by coercion. Terrorism includes, but is not limited to, any act certified by the United States Secretary of Treasury as an act of terrorism pursuant to the Terrorism Risk Insurance Act, as amended.

2.3.22. The "Work" is the design services procured in accordance with section 3.1, the construction services provided in accordance with section 3.2, additional services in accordance with section 3.10, and other services which are necessary to complete the Project in accordance with and reasonably inferable from the Contract Documents.

2.3.23. "Worksite" means the geographical area of the Project location mentioned in ARTICLE 1 where the Work is to be performed.

ARTICLE 3 DESIGN-BUILDER'S RESPONSIBILITIES

The Design-Builder shall be responsible for procuring or furnishing the design and for the construction of the Work consistent with the Request for Proposals. The Design-Builder shall exercise reasonable skill and judgment in the performance of the Work.

3.1. DESIGN SERVICES Pursuant to a mutually agreeable schedule, the Design-Builder shall submit for the Owner's written approval, 95% Development Documents, based on the Contract Documents in existence at the time of the execution of this Agreement or any further development of Contract Documents that have been approved in writing by the Owner.

3.1.1. The 95% Development Documents shall further define the Project, including drawings and outline specifications fixing and describing the Project size and character as to site utilization, and other appropriate elements incorporating the structural, architectural, mechanical, and electrical systems. When the Design-Builder submits the 95% Documents, the Design-Builder shall identify in writing all material changes and deviations that have taken place from the Contract Documents in existence at the time of the execution of this Agreement. Any changes in the Work contained in the 95% Documents approved by the Owner shall result in a Change Order pursuant to ARTICLE 8 adjusting the Contract Price or the Date of Substantial Completion or the Date of Final Completion.

3.1.2. The Construction Documents shall set forth in detail the requirements for construction of the Work, and shall be based upon codes, laws, or regulations enacted at the time of their preparation. When the Design-Builder submits the Construction Documents, the Design-Builder shall identify in writing all material changes and deviations that have taken place from the 95% Documents or the Contract Documents in existence at the time of the execution of this Agreement. Construction shall be in accordance with the approved Construction Documents. One set of these documents shall be furnished to the Owner before commencing construction.

3.1.3. OWNERSHIP OF DOCUMENTS

3.1.3.1. OWNERSHIP OF TANGIBLE DOCUMENTS The Owner shall receive ownership of the property rights, except for copyrights, of all documents, drawings, specifications, electronic data, and information (hereinafter "Documents") prepared, provided or procured by the Design-Builder, its Design Professional, Subcontractors, or consultants and distributed to the Owner for this Project, upon the making of final payment to the Design-Builder or in the event of termination under ARTICLE 11, upon payment for all sums due to Design-Builder pursuant to ARTICLE 11.

3.1.3.2. COPYRIGHT The Parties agree that Owner shall not obtain ownership of the copyright of all Documents.



I.

3.1.3.3. **USE OF DOCUMENTS IN EVENT OF TERMINATION** In the event of a termination of this Agreement pursuant to ARTICLE 11, the Owner shall have the right to use, to reproduce, and to make derivative works of the Documents to complete the Project, regardless of whether there has been a transfer of copyright under subsection 3.1.3.1, provided payment has been made pursuant to subsection 3.1.3.1

3.1.3.4. **OWNER'S USE OF DOCUMENTS AFTER COMPLETION OF PROJECT** After completion of the Project, the Owner may reuse, reproduce, or make derivative works from the Documents solely for the purposes of maintaining, renovating, remodeling, or expanding the Project at the Worksite. The Owner's use of the Documents without the Design-Builder's involvement or on other projects is at the Owner's sole risk, except for the Design-Builder's indemnification obligations, and the Owner shall indemnify and hold harmless the Design-Builder, its Design Professional, Subcontractors, and consultants, and the agents, officers, directors, and employees of each of them, from and against any and all claims, damages, losses, costs, and expenses, including reasonable attorneys' fees and costs, arising out of or resulting from any such prohibited use.

3.1.3.5. **DESIGN-BUILDER'S USE OF DOCUMENTS** Where the Design-Builder has transferred its copyright interest in the Documents under subsection 3.1.3.1, the Design-Builder may reuse Documents prepared by it pursuant to this Agreement.

3.1.3.6. The Design-Builder shall obtain from its Design Professional, Subcontractors, and consultants rights and rights of use that correspond to the rights given by the Design-Builder to the Owner in this Agreement, and the Design-Builder shall provide evidence that such rights have been secured.

3.2. CONSTRUCTION SERVICES

3.2.1. Construction will commence upon the issuance by the Owner of a written notice to proceed.

3.2.2. In order to complete the Work, the Design-Builder shall provide all necessary construction supervision, inspection, construction equipment, construction labor, materials, tools, and subcontracted items.

3.2.3. **COMPLIANCE WITH LAWS** The Design-Builder shall give all notices and comply with all Laws at its own costs. The Design-Builder shall be liable to the Owner for all loss, cost, and expense attributable to any acts or omissions by the Design-Builder, its employees, subcontractors, and agents resulting from the failure to comply with Laws, including fines, penalties, or corrective measures. However, liability under this subsection shall not apply if notice to Owner was given, and advance approval by appropriate authorities, including the Owner, is received.

3.2.4. The Design-Builder shall maintain the Schedule of Work. This schedule shall indicate the dates for the start and completion of the various stages of the construction, including the dates when information and approvals are required from the Owner. It shall be revised as required by the conditions of the Work and as approved by the Owner in writing. Such permits shall be maintained in good order, provided for inspection to the Owner upon request and delivered to the Owner at completion of construction.

3.2.5. The Design-Builder shall obtain and pay for the building permits necessary for the construction of the Project.



3.2.6. The Design-Builder shall keep such full and detailed accounts as may be necessary for proper financial management under this Agreement. The Owner shall be afforded access to all the Design-Builder's records, books, correspondence, instructions, drawings, receipts, vouchers, memoranda, and similar data relating to Change Order work performed on the basis of actual cost. The Design-Builder shall preserve all such records for a period of three years after the final payment or longer where required by law.

3.2.7. Not used.

3.2.8. The Design-Builder shall regularly remove debris and waste materials at the Worksite resulting from the Work. Prior to discontinuing Work in an area, the Design-Builder shall clean the area and remove all rubbish and its construction equipment, tools, machinery, waste, and surplus materials.

3.2.9. The Design-Builder shall prepare and submit to the Owner:

updated electronic data in both CAD and adobe pdf formats

that generally document how the various elements of the Work including changes were actually constructed or installed, or as defined by the Parties by attachment to this Agreement.

3.3. SCHEDULE OF THE WORK The Design-Builder shall prepare and submit a Schedule of Work for the Owner's acceptance and written approval as to milestone dates. This schedule shall indicate the commencement and completion dates of the various stages of the Work, including the dates when information and approvals are required from the Owner. The Schedule shall be revised as required by the conditions of the Work.

3.4. SAFETY OF PERSONS AND PROPERTY

3.4.1. SAFETY PRECAUTIONS AND PROGRAMS The Design-Builder shall have overall responsibility for safety precautions and programs in the performance of the Work. However, such obligation does not relieve Subcontractors of their responsibility for the safety of persons or property in the performance of their work, nor for compliance with the provisions of Laws.

3.4.2. The Design-Builder shall seek to avoid injury, loss, or damage to persons or property by taking reasonable steps to protect:

3.4.2.1. its employees and other persons at the Worksite;

3.4.2.2. materials, supplies, and equipment stored at the Worksite for use in performance of the Work; and

3.4.2.3. the Project and all property located at the Worksite and adjacent to work areas, whether or not said property or structures are part of the Project or involved in the Work.

3.4.3. DESIGN-BUILDER'S SAFETY REPRESENTATIVE The Design-Builder shall designate an individual at the Worksite in the employ of the Design-Builder who shall act as the Design-Builder's designated safety representative with a duty to prevent accidents. Unless otherwise identified by the Design-Builder in writing to the Owner, the designated safety representative shall be the Design-Builder's project superintendent. The Design-Builder will report immediately in writing all accidents and injuries occurring at the Worksite to the Owner. When the Design-Builder is required to file an accident report with a public authority, the Design-Builder shall furnish a copy of the report to the Owner.



3.4.4. The Design-Builder shall provide the Owner with copies of all notices required of the Design-Builder by Law. The Design-Builder's safety program shall comply with the requirements of governmental and quasi-governmental authorities having jurisdiction over the Work.

3.4.5. Damage or loss not insured under property insurance which may arise from the performance of the Work, to the extent of the negligence attributed to such acts or omissions of the Design-Builder, or anyone for whose acts the Design-Builder may be liable, shall be promptly remedied by the Design-Builder. Damage or loss attributable to the acts or omissions of the Owner or Others and not to the Design-Builder shall be promptly remedied by the Owner.

3.4.6. Not used.

3.5. EMERGENCIES In any emergency affecting the safety of persons or property, the Design-Builder shall act in a reasonable manner to prevent threatened damage, injury, or loss. Any change in the Contract Price, the Date of Substantial Completion, or the Date of Final Completion, and if appropriate the compensation for Design Phase services, on account of emergency work shall be determined as a Change Order.

3.6. HAZARDOUS MATERIAL

3.6.1. A Hazardous Material is any substance or material identified now or in the future as hazardous under any Laws, or any other substance or material which may be considered hazardous or otherwise subject to statutory or regulatory requirements governing handling, disposal, or clean-up. The Design-Builder shall not be obligated to commence or continue Work until all Hazardous Material discovered at the Worksite has been removed, rendered, or determined to be harmless by the Owner as certified by an independent testing laboratory and approved by the appropriate government agency.

3.6.2. If after commencing the Work, Hazardous Material is discovered at the Project, the Design-Builder shall be entitled to immediately stop Work in the affected area. The Design-Builder shall report the condition to the Owner and, if required, the government agency with jurisdiction.

3.6.3. The Design-Builder shall not be required to perform any Work relating to or in the area of Hazardous Material without written mutual agreement.

3.6.4. The Owner shall be responsible for retaining an independent testing laboratory to determine the nature of the material encountered and whether it is a Hazardous Material requiring corrective measures or remedial action. Such measures shall be the sole responsibility of the Owner, and shall be performed in a manner minimizing any adverse effect upon the Work of the Design-Builder. The Design-Builder shall resume Work in the area affected by any Hazardous Material only upon written agreement between the Parties after the Hazardous Material has been removed or rendered harmless and only after approval, if necessary, of the governmental agency or agencies with jurisdiction.

3.6.5. If the Design-Builder incurs additional costs or is delayed due to the presence or remediation of Hazardous Material, the Design-Builder shall be entitled to an equitable adjustment in the Contract Price or the date of Substantial Completion.

3.6.6. To the extent not caused by the negligent acts or omissions of the Design-Builder, its Subcontractors, and the agents, officers, directors, and employees of each of them, the Owner shall indemnify and hold harmless the Design-Builder, its Subcontractors, and the agents, officers, directors, and employees of each of them, from and against all claims, damages, losses, costs, and expenses, including but not limited to reasonable attorneys' fees, costs, and expenses incurred in connection with any dispute resolution process, to the extent permitted pursuant to



section 0, arising out of or relating to the performance of the Work in any area affected by Hazardous Material.

3.6.7. Material Safety Data Sheets (MSDS) as required by law and pertaining to materials or substances used or consumed in the performance of the Work, whether obtained by the Design-Builder, Subcontractors, the Owner or Others, shall be maintained at the Project by the Design-Builder and made available to the Owner and Subcontractors.

3.6.8. During the Design-Builder's performance of the Work, the Design-Builder shall be responsible for the proper handling of all materials brought to the Worksite by the Design-Builder. Upon the issuance of the Certificate of Substantial Completion, the Owner shall be responsible under this section for materials and substances brought to the site by the Design-Builder if such materials or substances are required by the Contract Documents.

3.6.9. Section 3.6 shall survive the completion of the Work under this Agreement or any termination of this Agreement.

3.7. WARRANTY

3.7.1. The Design-Builder warrants that all materials and equipment furnished under this Agreement will be new unless otherwise specified, of good quality, in conformance with the Contract Documents, and free from defective workmanship and materials. Warranties shall commence on the date of Substantial Completion of the Work.

3.7.2. To the extent products, equipment, systems, or materials incorporated in the Work are specified and purchased by the Owner, they shall be covered exclusively by the warranty of the manufacturer. There are no warranties which extend beyond the description on the face thereof. To the extent products, equipment, systems, or materials incorporated in the Work are specified by the Owner but purchased by the Design-Builder and are inconsistent with selection criteria that otherwise would have been followed by the Design-Builder, the Design-Builder shall assist the Owner in pursuing warranty claims. ALL OTHER WARRANTIES EXPRESSED OR IMPLIED INCLUDING THE WARRANTY OF MERCHANTABILITY AND THE WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE ARE EXPRESSLY DISCLAIMED.

3.7.3. The Design-Builder shall secure required certificates of inspection, testing, or approval and deliver them to the Owner.

3.7.4. The Design-Builder shall collect all written warranties and equipment manuals and deliver them to the Owner in a format directed by the Owner.

3.7.5. With the assistance of the Owner's maintenance personnel, the Design-Builder shall direct the checkout of utilities and start-up operations, and adjusting and balancing of systems and equipment for readiness.

3.8. CORRECTION OF WORK WITHIN ONE YEAR

3.8.1. If, prior to Substantial Completion and within one year after the date of Substantial Completion of the Work or for such longer periods of time as may be set forth with respect to specific warranties required by the Contract Documents, any Defective Work is found, the Owner shall promptly notify the Design-Builder in writing. Unless the Owner provides written acceptance of the condition, the Design-Builder shall promptly correct the Defective Work at its own cost and time and bear the expense of additional services required for correction of any Defective Work for which it is responsible. If within the one-year correction period the Owner discovers and does not promptly notify the Design-Builder or give the Design-Builder an opportunity to test or correct Defective Work as reasonably requested by the Design-Builder, the Owner waives the Design-



Builder's obligation to correct that Defective Work as well as the Owner's right to claim a breach of the warranty with respect to that Defective Work.

3.8.2. With respect to any portion of Work first performed after Substantial Completion, the one-year correction period shall be extended by the period of time between Substantial Completion and the actual performance of the later Work. Correction periods shall not be extended by corrective work performed by the Design-Builder.

3.8.3. If the Design-Builder fails to correct Defective Work or provide a plan of action approved by the owner within 30 days or less, depending on the urgency of the correction after receipt of written notice from the Owner prior to final payment, the Owner may correct it in accordance with the Owner's right to carry out the Work. In such case, an appropriate Change Order shall be issued deducting the cost of correcting such deficiencies from payments then or thereafter due the Design-Builder. If payments then or thereafter due Design-Builder are not sufficient to cover such amounts, the Design-Builder shall pay the difference to the Owner.

3.8.4. The Design-Builder's obligations and liability, if any, with respect to any Defective Work discovered after the one-year correction period shall be determined by the Law. If, after the one-year correction period but before the applicable limitation period has expired, the Owner discovers any Work which the Owner considers Defective Work, the Owner shall, seek recovery. If the Design-Builder elects to correct the Work, it shall provide written notice of such intent within fourteen (14) Days of its receipt of notice from the Owner and shall complete the correction of Work within a mutually agreed timeframe. If the Design-Builder does not elect to correct the Work, the Owner may have the Work corrected by itself or Others, and, if the Owner intends to seek recovery of those costs from the Design-Builder, the Owner shall promptly provide the Design-Builder with an accounting of the correction costs it incurs.

3.8.5. If the Design-Builder's correction or removal of Defective Work causes damage to or destroys other completed or partially completed Work or existing buildings, the Design-Builder shall be responsible for the cost of correcting the destroyed or damaged property.

3.8.6. The one-year period for correction of Defective Work does not constitute a limitation period with respect to the enforcement of the Design-Builder's other obligations under the Contract Documents.

3.8.7. Prior to final payment, at the Owner's option and with the Design-Builder's agreement, the Owner may in writing accept Defective Work rather than require its removal and correction. In such case the Contract Price shall be equitably adjusted for any diminution in the value of the Project caused by such Defective Work.

3.9. CONFIDENTIALITY The Design-Builder shall treat as confidential and not disclose to third persons, except Subcontractors, and the Design Professional as is necessary for the performance of the Work, or use for its own benefit any of the Owner's developments, confidential information, know-how, discoveries, production methods, and the like that may be disclosed to the Design-Builder or which the Design-Builder may acquire in connection with the Work. The Owner shall treat as confidential information all of the Design-Builder's estimating systems and historical and parameter cost data that may be disclosed to the Owner in connection with the performance of this Agreement. The Owner and the Design-Builder shall each specify those items to be treated as confidential and shall mark them as "Confidential."

3.10. ADDITIONAL SERVICES The Design-Builder shall provide or procure the following Additional services upon the request of the Owner. A written agreement between the Owner and Design-Builder shall define the extent of such Additional services. Such Additional services shall be considered a Change in the Work, unless they are specifically included in sections 3.1 or 3.2.

3.10.1. Not Used;



- 3.10.2. consultations, negotiations, and documentation supporting the procurement of Project financing;
- 3.10.3. surveys, site evaluations, legal descriptions, and aerial photographs;
- 3.10.4. appraisals of existing equipment, existing properties, new equipment, and developed properties;
- 3.10.5. soils, subsurface, and environmental studies, reports, and investigations required for submission to governmental authorities or others having jurisdiction over the Project;
- 3.10.6. Not used ;
- 3.10.7. investigation or making measured drawings of existing conditions or the verification of Owner-provided drawings and information;
- 3.10.8. artistic renderings, models, and mockups of the Project or any part of the Project or the Work;
- 3.10.9. inventories of existing furniture, fixtures, furnishings, and equipment which might be under consideration for incorporation into the Work;
- 3.10.10. Not used;
- 3.10.11. making revisions to design documents after they have been approved by the Owner when revisions are due to causes beyond the control of the Design-Builder. Causes beyond the control of the Design-Builder do not include acts or omissions on the part of Subcontractors, or the Design Professional;
- 3.10.12. Not used;
- 3.10.13. estimates, proposals, appraisals, consultations, negotiations, and services in connection with the repair or replacement of an insured loss, provided such repair or replacement did not result from the negligence of the Design-Builder;
- 3.10.14. the premium portion of overtime work ordered by the Owner including productivity impact costs, other than that required by the Design-Builder to maintain the Schedule of Work;
- 3.10.15. Not used;
- 3.10.16. Not used;
- 3.10.17. Not used;
- 3.10.18. services requested by the Owner or required by the Work which are not specified in the Contract Documents and which are not normally part of generally accepted design and construction practice;
- 3.10.19. serving or preparing to serve as an expert witness in connection with any proceeding, legal or otherwise, regarding the Project;
- 3.10.20. document reproduction exceeding the limits provided for in this Agreement;
- 3.10.21. providing services relating to Hazardous Material discovered at the Worksite; and
- 3.10.22. other services as agreed to by the Parties and identified in an attached exhibit.



3.11. DESIGN-BUILDER'S REPRESENTATIVE The Design-Builder shall designate a person who shall be the Design-Builder's authorized representative. The Design-Builder's Representative is [REDACTED].

ARTICLE 4 OWNER'S RESPONSIBILITIES

4.1. INFORMATION AND SERVICES PROVIDED BY OWNER

The Owner's responsibilities under this article shall be provided with reasonable detail and in a timely manner.

4.2. Not used.

4.3. WORKSITE INFORMATION To the extent the Owner has obtained, or is required elsewhere in the Contract Documents to obtain, the following Worksite information, the Owner shall provide at the Owner's expense and with reasonable promptness:

4.3.1. information describing the physical characteristics of the site. Worksite descriptions shall include existing buildings and other construction and all other pertinent site conditions.

4.3.2. tests, inspections, and other reports dealing with environmental matters, Hazardous Material, and other existing conditions, including structural, mechanical, and chemical tests, required by the Contract Documents or by Law; and

4.3.3. any other information or services requested in writing by the Design-Builder which are required for Design-Builder's performance of the Work and under the Owner's control.

4.4. MECHANICS AND CONSTRUCTION LIEN INFORMATION Within seven (7) Days after receiving the Design-Builder's written request, the Owner shall provide the Design-Builder with the information necessary to give notice of or enforce mechanics lien rights and, where applicable, stop notices. This information shall include the Owner's interest in the real property on which the Project is located and the record legal title.

4.5. RESPONSIBILITIES DURING DESIGN

4.5.1. The Owner shall review and approve further development of the drawings and specifications as set forth in ARTICLE 3.

4.6. RESPONSIBILITIES DURING CONSTRUCTION

4.6.1. The Owner shall review the Schedule of Work, timely approve milestone dates set forth, and timely respond to its obligations.

4.6.2. If the Owner becomes aware of any error, omission, or failure to meet the requirements of the Contract Documents or any fault or defect in the Work, the Owner shall give prompt written notice to the Design-Builder. The failure of the Owner to give such notice shall not relieve the Design-Builder of its obligations to fulfill the requirements of the Contract Documents.

4.6.3. The Owner shall have no contractual obligations to Subcontractors, suppliers, or the Design Professional.

4.6.4. The Owner shall provide insurance for the Project as provided in ARTICLE 10.

4.7. OWNER'S REPRESENTATIVE The Owner's representative is [REDACTED]. The representative:



- 4.7.1. shall be fully acquainted with the Project;
- 4.7.2. agrees to furnish the information and services required of the Owner pursuant to section 4.3 so as not to delay the Design-Builder's Work; and
- 4.7.3. shall have authority to bind the Owner in all matters requiring the Owner's approval, authorization, or written notice. If the Owner changes its representative or the representative's authority as listed above, the Owner shall notify the Design-Builder in writing in advance.

4.8. **TAX EXEMPTION** If in accordance with the Owner's direction the Design-Builder claims an exemption for taxes, the Owner shall indemnify and hold the Design-Builder harmless from all liability, penalty, interest, fine, tax assessment, attorneys' fees, or other expense or cost incurred by the Design-Builder as a result of any action taken by the Design-Builder in accordance with the Owner's direction.

4.9. **ELECTRONIC DOCUMENTS** When the Owner and Design-Builder exchange documents and data in electronic or digital form, prior to any such exchange, the Owner and Design-Builder shall agree on a protocol governing all exchanges which, at a minimum, shall specify: (a) the definition of documents and data to be accepted in electronic or digital form or to be transmitted electronically or digitally; (b) management and coordination responsibilities; (c) necessary equipment, software, and services; (d) acceptable formats, transmission methods, and verification procedures; (e) methods for maintaining version control; (f) privacy and security requirements; and (g) storage and retrieval requirements. The Parties shall each bear their own costs for the requirements identified in the protocol. In the absence of a written protocol, use of documents and data in electronic or digital form shall be at the sole risk of the recipient.

ARTICLE 5 SUBCONTRACTS

Work not performed by the Design-Builder with its own forces shall be performed by Subcontractors or the Design Professional.

5.1. **RETAINING SUBCONTRACTORS** The Design-Builder shall not retain any Subcontractor to whom the Owner has a reasonable and timely objection, provided that the Owner agrees to increase the Contract Price for any additional costs incurred by the Design-Builder as a result of such objection. The Owner may propose subcontractors to be considered by the Design-Builder. The Design-Builder shall not be required to retain any subcontractor to whom the Design-Builder has a reasonable objection.

5.2. **MANAGEMENT OF SUBCONTRACTORS** The Design-Builder shall be responsible for the management of the Subcontractors in the performance of their work.

5.3. CONTINGENT ASSIGNMENT OF SUBCONTRACT AGREEMENTS

5.3.1. If this Agreement is terminated, each subcontract agreement shall be assigned by the Design-Builder to the Owner, subject to the prior rights of any surety, provided that:

5.3.1.1. this Agreement is terminated by the Owner pursuant to sections 11.2 or 11.3; and

5.3.1.2. the Owner accepts such assignment, after termination by notifying the Subcontractor and Design-Builder in writing, and assumes all rights and obligations of the Design-Builder pursuant to each subcontract agreement.



5.3.2. If the Owner accepts such an assignment, and the Work has been suspended for more than thirty (30) consecutive Days, following termination, if appropriate, the Subcontractor's compensation shall be equitably adjusted as a result of the suspension.

5.4. BINDING OF SUBCONTRACTORS AND MATERIAL SUPPLIERS The Design-Builder agrees to bind every Subcontractor and Material Supplier to all the provisions of this Agreement and the Contract Documents as they apply to the Subcontractors' and Material Suppliers' portions of the Work.

ARTICLE 6 CONTRACT TIME

6.1. DATE OF COMMENCEMENT The Date of Commencement is the Agreement date in ARTICLE 1 unless otherwise set forth below. The Work shall proceed in general accordance with the Schedule of Work as such schedule may be amended from time to time, subject, however, to other provisions of this Agreement.

6.2. SUBSTANTIAL COMPLETION/FINAL COMPLETION

6.2.1. Substantial Completion of the Work shall be achieved by [____]. Unless otherwise specified, subject to adjustments as provided for in the Contract Documents.

6.2.2. Time is of the essence for this Agreement and Contract Documents.

6.2.3. The Date of Final Completion of the Work is or within fifteen (15) Days after the Date of Substantial Completion, subject to adjustments as provided for in the Contract Documents.

6.2.4. Unless instructed by the Owner in writing, the Design-Builder shall not knowingly commence the Work before the effective date of insurance that is required to be provided by the Design-Builder and the Owner.

6.3. DELAYS AND EXTENSIONS OF TIME

6.3.1. If the Design-Builder is delayed at any time in the commencement or progress of the Work by any cause beyond the control of the Design-Builder, the Design-Builder shall be entitled to an equitable extension of the Date of Substantial Completion or the Date of Final Completion. Examples of causes beyond the control of the Design-Builder include, but are not limited to, the following: (a) acts or omissions of the Owner or Others; (b) changes in the Work or the sequencing of the Work ordered by the Owner, or arising from decisions of the Owner that impact the time of performance of the Work; (c) encountering Hazardous Materials, or concealed or unknown conditions; (d) delay authorized by the Owner pending dispute resolution or suspension by the Owner under Section 12.1; (e) transportation delays not reasonably foreseeable; (f) labor disputes not involving the Design-Builder; (g) general labor disputes impacting the Project but not specifically related to the Worksite; (h) fire; (i) Terrorism; (j) epidemics; (k) adverse governmental actions, (l) unavoidable accidents or circumstances; (m) adverse weather conditions not reasonably anticipated. The Design-Builder shall process any requests for equitable extensions of the Date of Substantial Completion or the Date of Final Completion in accordance with the provisions of ARTICLE 8.

6.3.2. In addition, if the Design-Builder incurs additional costs as a result of a delay that is caused by acts or omissions of the Owner or Others, changes in the Work or the sequencing of the Work ordered by the Owner, or arising from decisions of the Owner that impact the time of performance of the Work, encountering Hazardous Materials unanticipated by the Design-Builder or concealed or unknown conditions, delay authorized by the Owner pending dispute resolution, and



suspension by the Owner under section 11.1, the Design-Builder shall be entitled to an equitable adjustment in the Contract Price subject to section 0.

6.3.3. In the event delays to the project are encountered for any reason, the Parties agree to undertake reasonable steps to mitigate the effect of such delays.

6.4. LIQUIDATED DAMAGES

6.4.1. Not Used.

ARTICLE 7 CONTRACT PRICE

The Contract Price is [] dollars (\$[]) subject to adjustment in accordance with the provisions of ARTICLE 8.

ARTICLE 8 CHANGES IN THE WORK

Changes in the Work which are within the general scope of this Agreement may be accomplished without invalidating this Agreement by Change Order, Interim Directed Change, or a minor change in the Work, subject to the limitations stated in the Contract Documents.

8.1. CHANGE ORDERS

8.1.1. The Design-Builder may request or the Owner, without invalidating this Agreement, may order changes in the Work within the general scope of the Contract Documents consisting of adjustment to the Contract Price or the Date of Substantial Completion or the Date of Final Completion. All such changes in the Work shall be authorized by applicable Change Order, and processed in accordance with this article. Each adjustment in the Contract Price resulting from a Change Order shall clearly separate the amount attributable to Design services.

8.1.2. The Owner and the Design-Builder shall negotiate an appropriate adjustment to Contract Price or the Date of Substantial Completion or the Date of Final Completion in good faith and conclude negotiations as expeditiously as possible. Acceptance of the Change Order and any adjustment in the Contract Price or the Date of Substantial Completion or the Date of Final Completion shall not be unreasonably withheld.

8.1.3. NO OBLIGATION TO PERFORM The Design-Builder shall not be obligated to perform changes in the Work until a Change Order has been executed or a written Interim Directed Change has been issued.

8.2. INTERIM DIRECTED CHANGE

8.2.1. The Owner may issue a written Interim Directed Change directing a change in the Work prior to reaching agreement with the Design-Builder on the adjustment, if any, in the Contract Price or the Date of Substantial Completion or the Date of Final Completion, and if appropriate, the compensation for Design services.

8.2.2. The Owner and the Design-Builder shall negotiate expeditiously and in good faith for appropriate adjustments, as applicable, to the Contract Price or the Date of Substantial Completion or the Date of Final Completion, and if appropriate the compensation for Design services, arising out of Interim Directed Changes. As the changed work is completed, the Design Builder shall submit its costs for such work with its Application for Payment beginning with the



next Application for Payment within thirty (30) Days of the issuance of the Interim Directed Change. Pending final determination of cost to the Owner, amounts not in dispute may be included in Applications for Payment and shall be paid by Owner.

8.2.3. If the Owner and the Design-Builder agree upon the adjustments in the Contract Price or the Date of Substantial Completion or the Date of Final Completion, and if appropriate, the compensation for Design services, for a change in the Work directed by an Interim Directed Change, such agreement shall be the subject of an appropriate Change Order. The Change Order shall include all outstanding Interim Directed Changes issued since the last Change Order.

8.3. MINOR CHANGES IN THE WORK

8.3.1. The Design-Builder may make minor changes in the design and construction of the Project consistent with the intent of the Contract Documents which do not involve an adjustment in the Contract Price or the Date of Substantial Completion or the Date of Final Completion; and do not materially and adversely affect the design of the Project, the quality of any of the materials or equipment specified in the Contract Documents, the performance of any materials, equipment, or systems specified in the Contract Documents, or the quality of workmanship required by the Contract Documents.

8.3.2. The Design-Builder shall promptly inform the Owner in writing of any such changes and shall record such changes on the Design-Build Documents maintained by the Design-Builder.

8.4. DETERMINATION OF COST

8.4.1. An increase or decrease in the Contract Price resulting from a change in the Work shall be determined by one or more of the following methods:

8.4.1.1. unit prices set forth in this Agreement or as subsequently agreed;

8.4.1.2. a mutually accepted, itemized lump sum; or

8.4.1.3. if an increase or decrease cannot be agreed to as set forth in subsection 8.4.1.1 or 8.4.1.2 and the Owner issues a written order for the Design-Builder to proceed with the change, the adjustment in the Contract Price shall be determined by the reasonable expense incurred and savings realized in the performance of the Work resulting from the change. If there is a net increase in the Contract Price, a reasonable adjustment shall be made in the Design-Builder's overhead and profit. In the case of a net decrease in cost, the amount of decrease in the Contract Price will not include a reduction in overhead and profit. The Design-Builder shall maintain a documented, itemized accounting evidencing the expenses and savings.

8.4.2. If unit prices are indicated in the Contract Documents or are subsequently agreed to by the Parties, but the character or quantity of such unit items as originally contemplated is so different in a proposed Change Order that the original unit prices will cause substantial inequity to the Owner or the Design-Builder, such unit prices shall be equitably adjusted.

8.4.3. If the Owner and the Design-Builder disagree as to whether work required by the Owner is within the scope of the Work, the Design-Builder shall furnish the Owner with an estimate of the costs to perform the disputed work in accordance with the Owner's interpretations. The Design-Builder shall proceed with the work. The Design-Builder may request payment for Work completed under such a directive in Article 9 Payment. In such event, both Parties reserve their rights as to whether the work was within the scope of the Work. The Design-Builder's receipt of



payment for the disputed work does not prejudice its right to receive full payment for the disputed work should it be determined that the disputed work is not within the scope of the Work.

8.5. CONCEALED OR UNKNOWN SITE CONDITIONS If the conditions encountered at the Worksite are (a) subsurface or other physical conditions materially different from those indicated in the Contract Documents, or (b) unusual and unknown physical conditions materially different from conditions ordinarily encountered and generally recognized as inherent in Work provided for in the Contract Documents, the Design-Builder shall stop affected Work after the condition is first observed and give prompt written notice of the condition to the Owner and the Design Professional. The Design-Builder shall not be required to perform any Work relating to the unknown condition without the written mutual agreement of the Parties. Any change in the Contract Price or the Contract Time as a result of the unknown condition shall be determined as provided in this article.

8.6. CLAIMS FOR ADDITIONAL COST OR TIME For any claim for an increase in the Contract Price or an extension in the Date of Substantial Completion or the Date of Final Completion, the Design-Builder shall give the Owner written notice of the claim within twenty-one (21) Days after the occurrence giving rise to the claim or within twenty-one (21) Days after the Design-Builder first recognizes the condition giving rise to the claim, whichever is later. Except in an emergency, notice shall be given before proceeding with the Work. Claims for design and estimating costs incurred in connection with possible changes requested by the Owner, but which do not proceed, shall be made within twenty-one (21) Days after the decision is made not to proceed. Thereafter, the Design-Builder shall submit written documentation of its claim, including appropriate supporting documentation, within twenty-one (21) Days after giving notice, unless the Parties mutually agree upon a longer period of time. The Owner shall respond in writing denying or approving the Design-Builder's claim no later than fourteen (14) Days after receipt of the Design-Builder's documentation of claim. Owner's failure to so respond shall be deemed a denial of the Design-Builder's claim. Any change in Contract Price or the Date of Substantial Completion or the Date of Final Completion resulting from such claim shall be authorized by Change Order.

8.7. CHANGES IN LAW In the event any changes in laws or regulations affecting the performance of the Work, including taxes, were not reasonably anticipated and then enacted after the date of this Agreement, the Contract Price and the Date of Substantial Completion or the Date of Final Completion, and if appropriate the compensation for Design services, shall be equitably adjusted by Change Order.

8.8. INCIDENTAL CHANGES The Owner may direct the Design-Builder to perform incidental changes in the Work upon concurrence with the Design-Builder that such changes do not involve adjustments in the Cost of the Work or Contract Time. Incidental changes shall be consistent with the scope and intent of the Contract Documents. The Owner shall initiate an incidental change in the Work by issuing a written order to the Design-Builder. Such written notice shall be carried out promptly and is binding on the Parties.

ARTICLE 9 PAYMENT

9.1. PROGRESS PAYMENT

9.1.1. Prior to submitting the first application for payment, the Design-Builder shall provide a Schedule of Values satisfactory to the Owner, consisting of a breakdown of the Contract Price, with a separate line item for Design services.

9.1.2. On or before the last Day of each month after the Work has commenced, the Design-Builder shall submit to the Owner an application for payment in accordance with the Schedule of Values based upon the Work completed and materials suitably stored on the Worksite or at other locations approved by the Owner. Approval of payment applications for such stored materials shall be conditioned upon submission by the Design-Builder of bills of sale and applicable



insurance or such other procedures satisfactory to the Owner to establish the Owner's title to such materials, or otherwise to protect the Owner's interest including transportation to the site.

9.1.3. Within seven (7) Days after receipt of each monthly application for payment, the Owner shall give written notice to the Design-Builder of the Owner's acceptance or rejection, in whole or in part, of such application for payment. Within thirty (30) Days after accepting such Application, the Owner shall pay directly to the Design-Builder the appropriate amount for which application for payment is made, less amounts previously paid by the Owner. If such application is rejected in whole or in part, the Owner shall indicate the reasons for its rejection. If the Owner and the Design-Builder cannot agree on a revised amount, then, within thirty (30) Days after its initial rejection in part of such application, the Owner shall pay directly to the Design-Builder the appropriate amount for those items not rejected by the Owner for which application for payment is made, less amounts previously paid by the Owner. Those items rejected by the Owner shall be due and payable when the reasons for the rejection have been removed or resolved.

9.1.4. If the Owner fails to pay the Design-Builder at the time payment of any amount becomes due, then the Design-Builder may, at any time thereafter, upon serving written notice that the Work will be stopped within fifteen (15) Days after receipt of the notice by the Owner, and after such fifteen (15) Day period, stop the Work until payment of the amount owing has been received.

9.1.5. Payments due but unpaid pursuant to subsection 9.1.3, less any amount retained pursuant to section 9.1 or 9.3, may bear interest from the date payment is due at the prime rate prevailing at the place of the Project.

9.1.6. The Design-Builder warrants and guarantees that title to all Work, materials, and equipment covered by an application for payment, whether incorporated in the Project or not, will pass to the Owner upon receipt of such payment by the Design-Builder free and clear of all liens, claims, security interests, or encumbrances, hereinafter referred to as "liens."

9.1.7. The Owner's progress payment, occupancy, or use of the Project, whether in whole or in part, shall not be deemed an acceptance of any Work not conforming to the requirements of the Contract Documents.

9.1.8. Upon Substantial Completion of the Work, the Owner shall pay the Design-Builder the unpaid balance of the Contract Price, less a sum equal to one hundred fifty percent (150%) of the Design-Builder's estimated cost of completing any unfinished items as agreed to between the Owner and Design-Builder as to extent and time for completion. The Owner thereafter shall pay the Design-Builder monthly the amount retained for unfinished items as each item is completed.

9.1.9. **STORED MATERIALS AND EQUIPMENT** Unless otherwise provided in the contract documents, applications for payment may include materials and equipment not yet incorporated into the Work but delivered to and suitably stored onsite or offsite, including applicable insurance, storage and costs incurred transporting the materials to an offsite storage facility. Approval of payment applications for stored materials and equipment stored offsite shall be conditioned on submission by the Design-Builder of bills of sale and proof of required insurance, or such other procedures satisfactory to the Owner to establish the proper valuation of the stored materials and equipment, the Owner's title to such materials and equipment, and to otherwise protect the Owner's interests therein, including transportation to the site.

9.2. RETAINAGE Not Used.



9.3. ADJUSTMENT OF DESIGN-BUILDER'S APPLICATION FOR PAYMENT The Owner may adjust or reject an application for payment or nullify a previously approved application for payment, in whole or in part, as may reasonably be necessary to protect the Owner from loss or damage based upon the following, to the extent that the Design-Builder is responsible under this Agreement:

9.3.1. the Design-Builder's repeated failure to perform the Work as required by the Contract Documents;

9.3.2. except as accepted by the insurer providing Builders Risk or other property insurance covering the project, loss or damage arising out of or relating to this Agreement and caused by the Design-Builder to the Owner, or Others to whom the Owner may be liable;

9.3.3. the Design-Builder's failure to pay the Design Professional or Subcontractors for labor, materials, equipment, or supplies properly furnished in connection with the Work, provided that the Owner is making payments to the Design-Builder in accordance with the terms of this Agreement;

9.3.4. Defective Work not corrected in a timely fashion;

9.3.5. reasonable evidence of delay in performance of the Work such that the Work will not be completed by the Date of Substantial Completion or the Date of Final Completion, and that the unpaid balance of the Contract Price is not sufficient to offset any direct damages that may be sustained by the Owner as a result of the anticipated delay caused by the Design-Builder;

9.3.6. reasonable evidence demonstrating that the unpaid balance of the Contract Price is insufficient to fund the cost to complete the Work;

9.3.7. uninsured third-party claims involving the Contractor or reasonable evidence demonstrating that third-party claims are likely to be filed unless and until the Contractor furnishes the Owner with adequate security in the form of a surety bond, letter of credit, or other collateral or commitment which are sufficient to discharge such claims if established; and

9.3.8. uninsured third-party claims involving the Design-Builder or reasonable evidence demonstrating that third-party claims are likely to be filed unless and until the Design-Builder furnishes the Owner with adequate security in the form of a surety bond, letter of credit, or other collateral or commitment sufficient to discharge such claims if established.

No later than seven (7) Days after receipt of an application for payment, the Owner shall give written notice to the Design-Builder, at the time of disapproving or nullifying all or part of an application for payment, stating its specific reasons for such disapproval or nullification, and the remedial actions to be taken by the Design-Builder in order to receive payment. When the above reasons for disapproving or nullifying an application for payment are removed, payment will be promptly made for the amount previously withheld.

9.4. OWNER OCCUPANCY OR USE OF COMPLETED OR PARTIALLY COMPLETED WORK

9.4.1. Portions of the Work that are completed or partially completed may be used or occupied by the Owner when (a) the portion of the Work is designated in a Certificate of Substantial Completion, (b) appropriate insurer(s) or sureties consent to the occupancy or use, and (c) appropriate public authorities authorize the occupancy or use. Such partial occupancy or use shall constitute Substantial Completion of that portion of the Work. The Design-Builder shall not unreasonably withhold consent to partial occupancy or use. The Owner shall not unreasonably



refuse to accept partial occupancy or use, provided such partial occupancy or use is of value to the Owner.

9.5. FINAL PAYMENT

9.5.1. Final payment, consisting of the unpaid balance of the Contract Price, shall be due and payable when the Work is fully completed. Before issuance of final payment, the Owner may request satisfactory evidence that all payrolls, materials bills, and other indebtedness connected with the Work have been paid or otherwise satisfied.

9.5.2. In making final payment the Owner waives all claims except for:

9.5.2.1. outstanding liens;

9.5.2.2. improper workmanship or defective materials appearing within one year after the date of Substantial Completion;

9.5.2.3. Work not in conformance with the Contract Documents; and

9.5.2.4. terms of any special warranties required by the Contract Documents.

9.5.3. In accepting final payment, the Design-Builder waives all claims except those previously made in writing and which remain unsettled.

ARTICLE 10 INDEMNITY, INSURANCE, AND BONDS

10.1. INDEMNITY

10.1.1. To the fullest extent permitted by law, the Design-Builder shall indemnify and hold harmless the Owner, Owner's officers, directors, members, consultants, agents, and employees (the Indemnitees) and the Owner's Representative from all claims for bodily injury and property damage, other than to the Work itself and other property required to be insured under section 10.2, including reasonable attorneys' fees, costs, and expenses that may arise from the performance of the Work

Indemnity by Design Engineer: The Design-Builder shall indemnify, hold harmless, and defend the City of Bethel from and against any claim of, or liability for negligent acts, errors or omissions of the Design-Builder under this Agreement. The Design-Builder shall not be required to indemnify the City of Bethel for a claim of, or liability for, the independent negligence of the City of Bethel. If there is a claim of, or liability for, the joint negligent error or omission of the Design-Builder and the independent negligence of the City of Bethel, the indemnification and hold harmless obligation shall be apportioned on a comparative fault basis. " Design-Builder " and " City of Bethel ", as used within this article, include the employees, agents and other contractors who are directly responsible, respectively, to each. The term "Independent Negligence" is negligence other than in the City of Bethel 's selection, administration, monitoring, or controlling of the Design-Builder and in approving or accepting the Design-Builder s Work.

The Design-Builder shall exercise that degree of skill, care and judgment commensurate with the professional standards for the services of a similar nature. When such standards are in dispute, they shall be established by a panel of three qualified, impartial professionals objectively selected and appointed by the Dispute Resolution Board.



10.1.2. The Design-Builder shall correct, through re-performance at its expense, any services which are deficient or defective because of the Design-Builder's failure to perform said services in accordance with professional standards, provided the City of Bethel has notified the Design-Builder in writing within a reasonable time, not to exceed 60 days, of the discovery of any such deficiency during the performance of the services and within 12 months of the date of final payment under this Agreement.

10.2. DESIGN-BUILDER'S LIABILITY INSURANCE

10.2.1. Prior to commencing the Work and as a condition for payment, the Design-Builder shall provide evidence of insurance with an insurance carrier or carriers satisfactory to the City covering injury to persons and property suffered by the City of Bethel or by a third party as a result of operations under this contract by the Design-Builder or by any subcontractor. The Contractor's insurance shall provide protection against injuries to all employees of the Design-Builder and the employees of any subcontractor engaged in work under this Contract. All insurance policies shall be issued by insurers that (i) are permitted to transact the business of insurance in the State of Alaska under AS 21 and (ii) have a financial rating acceptable to the City. The Design-Builder shall notify the Project Manager, in writing, at least 30 days before cancellation of any coverage or reduction in any limits of liability.

Where specific limits and coverages are shown, it is understood that they shall be the minimum acceptable. The requirements of this subsection shall not limit the Design-Builder's indemnity responsibility under Subsection 10.1. Additional insurance requirements specific to this contract are contained in the Special Provisions, when applicable.

Contractor shall maintain the following policies of insurance with the specified minimum coverages and limits in force at all times during the performance of the Contract: the Design-Builder shall procure and maintain in force Workers' Compensation Insurance, Employers' Liability Insurance, Business Automobile Liability Insurance, and Commercial General Liability Insurance (CGL). The CGL policy shall include coverage for liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury, contractual liability, and broad form property damage. The Design-Builder shall maintain completed operations liability insurance for one year after Substantial Completion, or as required by the Contract Documents, whichever is longer. The Design-Builder's Employers' Liability, Business Automobile Liability, and CGL policies shall be written with at least the following limits of liability:

10.2.1.1. Workers' Compensation: as required by AS 23.30.045, for all employees of the Contractor engaged in work under this Contract. The Contractor shall be responsible for Workers' Compensation Insurance for any subcontractor who performs work under this Contract. The contractor shall submit copies of all subcontractor's workmens' compensation insurance. The coverage shall include:

- (a) Waiver of subrogation against the City
- (b) Employer's Liability Protection at \$500,000 each accident/each employee and \$500,000 policy limit;
- (c) Other States" endorsement if the Contractor directly utilizes labor outside of the State of Alaska;
- (d) United States Longshore and Harbor Workers' Act Endorsement, whenever the work involves activity over or about navigable water; and
- (e) Maritime Employer's Liability (Jones Act) Endorsement with a minimum limit of \$1,000,000, whenever the work involves activity from or on a vessel on navigable water



10.1.1.1. Business Automobile Liability covering all vehicles used in Contract work, with combined single limits not less than \$1,000,000 each occurrence.

10.1.1.2. Commercial General Liability Insurance

- (a) Per occurrence \$1,000,000
- (b) General aggregate \$1,000,000
- (c) Products/completed operations aggregate \$1,000,000
- (d) Personal and advertising injury limit \$1,000,000

10.1.2. The City shall be named as an additional insured on policies above. All of the above insurance coverages shall be considered to be primary and non-contributory to any other insurance carried by the City of Bethel, whether through self-insurance or otherwise..

10.1.3. In any contract or agreement with subcontractors performing work, the Contractor shall require that all indemnities and waivers of subrogation it obtains, and any stipulation to be named as an additional insured it obtains, shall also be extended to waive rights of subrogation against the City of Bethel and to add the City of Bethel as an additional named indemnitee and as an additional insured..

10.1.4. The chosen bidder shall furnish evidence of insurance to the City before award of the Contract. The evidence shall be issued to the City and shall be either a certificate of insurance or the policy declaration page with all required endorsements attached and must:

- (a) Denote the type, amount, and class of operations covered;
- (b) Show the effective (and retroactive) dates of the policy;
- (c) Show the expiration date of the policy
- (d) Include all required endorsements
- (e) Be executed by the carrier's representative.

10.1.5. The City's acceptance of deficient evidence of insurance does not constitute a waiver of Contract requirements. Failure to maintain the specified insurance or to provide substitute insurance if an insurance carrier becomes insolvent, is placed in receivership, declares bankruptcy, or cancels a policy may be grounds for withholding Contract payments until substitute insurance is obtained, and may, in the Department's discretion, be sufficient grounds for declaring the Contractor in default.

10.2. PROPERTY INSURANCE/BUILDERS RISK

10.2.1. Before commencing the Work, the Design-Builder shall obtain and maintain Builder's Risk Policy upon the entire Project for the full cost of replacement at the time of loss. This insurance shall also name the Owner as named insureds. This insurance shall be written as a Builder's Risk Policy or equivalent form to cover all risks of physical loss except those specifically excluded by the policy, and shall insure at least against the perils of fire, lightning, explosion, windstorm, hail, smoke, aircraft (except aircraft, including helicopter, operated by or on behalf of Design-Builder) and vehicles, riot and civil commotion, theft, vandalism, malicious mischief, debris removal, flood, earthquake, earth movement, water damage, wind damage, testing if applicable, collapse however caused, and damage resulting from defective design, workmanship, or material, and material or equipment stored offsite, onsite, or in transit. The Design-Builder shall be solely responsible for any deductible amounts or coinsurance penalties. This policy shall provide for a waiver of subrogation in favor of the Owner. This insurance shall remain in effect until final payment has been made or until no person or entity other than the Owner has an insurable interest in the property to be covered by this insurance, whichever is sooner. Partial occupancy or



use of the Work shall not commence until the Owner has secured the consent of the insurance company or companies providing the coverage required in this subsection. Before commencing the Work, the Design-Builder shall provide a copy of the property policy or policies obtained in compliance with this subsection.

10.2.2. Not Used.

10.2.3. Owner and Design-Builder waive all rights against each other and their respective employees, agents, contractors, subcontractors, and subsubcontractors and the Design Professional for damages caused by risks covered by the property insurance except such rights as they may have to the proceeds of the insurance and such rights as the Owner may have for the failure of the Owner to obtain and maintain property insurance in compliance with subsection 10.2.1.

10.2.4. To the extent of the limits of Design-Builder's Commercial General Liability Insurance specified in subsection 10.2.1, whichever is more, the Design-Builder shall indemnify and hold harmless the Owner against any and all liability, claims, demands, damages, losses, and expenses, including attorneys' fees, in connection with or arising out of any damage or alleged damage to any of the Owner's existing adjacent property that may arise from the performance of the Work, to the extent of the negligent acts or omissions of the Design-Builder, Subcontractor, or anyone employed directly or indirectly by any of them or by anyone for whose acts any of them may be liable.

10.2.5. RISK OF LOSS Except to the extent a loss is covered by applicable insurance, risk of loss or damage to the Work shall be upon the Design-Builder until the Date of Substantial Completion, unless otherwise agreed to by the Parties.

10.3. Not Used

10.4. Not Used

10.5. ROYALTIES, PATENTS, AND COPYRIGHTS The Design-Builder shall pay all royalties and license fees which may be due on the inclusion of any patented or copyrighted materials, methods, or systems selected by the Design-Builder and incorporated in the Work. The Design-Builder shall indemnify and hold the Owner harmless from all suits or claims for infringement of any patent rights or copyrights arising out of such selection. The Owner agrees to indemnify and hold the Design-Builder harmless from any suits or claims of infringement of any patent rights or copyrights arising out of any patented or copyrighted materials, methods, or systems specified by the Owner.

10.6. PROFESSIONAL LIABILITY INSURANCE The Design-Builder shall obtain, either itself or through the Design Professional, professional liability insurance for claims arising from the negligent performance of professional services under this Agreement, which shall be:

Practice Policy

written for not less than \$1,000,000 per claim and in the aggregate. The Professional Liability Insurance shall include prior acts coverage sufficient to cover all services rendered by the Design Professional. This coverage shall be continued in effect for 2 year(s) after the Date of Substantial Completion.

10.7. BONDING



10.7.1. Performance and Payment Bonds are required of the Design-Builder. Such bonds shall be issued by a surety licensed in the state in which the Project is located and must be acceptable to the Owner. The Owner's acceptance shall not be withheld without reasonable cause.

10.7.2. Such Performance Bond shall be issued in the penal sum equal to one hundred percent (100%) of the contract amount, including design and construction.

Such Performance Bond shall cover the cost to complete the Work, but shall not cover any damages of the type specified to be covered by the insurance pursuant to sections 10.2 and 10.2, whether or not such insurance is provided or in an amount sufficient to cover such damages.

10.7.3. The penal sum of the Payment Bond shall equal the penal sum of the Performance Bond. The Design-Builder's payment bond for the Project, if any, shall be made available by the Owner or the Design-Builder upon the Subcontractor's written request.

10.7.4. Any increase in the Contract Price that exceeds ten percent (10%) in the aggregate shall require a rider to the Bonds increasing penal sums accordingly. Up to such ten percent (10%) amount, the penal sum of the bond shall remain equal to one hundred percent (100%) of the Contract Price or as otherwise provided in subsection 10.7.2. The Design-Builder shall endeavor to keep its surety advised of changes within the scope of the initial Agreement potentially impacting the Contract Price or the Dates of Substantial Completion or Final Completion, though the Design-Builder shall require that its surety waives any requirement to be notified of any alteration or extension of time. A copy of the Design-Builder's Payment Bond for the Project, if any, shall be furnished by the Owner or Design-Builder upon the Subcontractor's written request.

ARTICLE 11 SUSPENSION, NOTICE TO CURE, AND TERMINATION

11.1. SUSPENSION BY THE OWNER FOR CONVENIENCE

11.1.1. The Owner may order the Design-Builder in writing to suspend, delay, or interrupt all or any part of the Work without cause for such period of time as the Owner may determine to be appropriate for its convenience.

11.1.2. Adjustments caused by suspension, delay, or interruption shall be made for increases in the Contract Price or the Date of Substantial Completion or the Date of Final Completion. No adjustment shall be made if the Design-Builder is or otherwise would have been responsible for the suspension, delay, or interruption of the Work, or if another provision of this Agreement is applied to render an equitable adjustment.

11.2. OWNER'S RIGHT TO PERFORM DESIGN-BUILDER'S OBLIGATIONS AND TERMINATION BY THE OWNER FOR CAUSE

11.2.1. If the Design-Builder persistently fails to supply enough qualified workers, proper materials, or equipment to maintain the approved Schedule of the Work, or fails to make prompt payment to its workers, Subcontractors, or Material Suppliers, disregards Laws or orders of any public authority having jurisdiction, or is otherwise guilty of a material breach of a provision of this Agreement, the Design-Builder may be deemed in default.

If the Design-Builder fails within seven (7) Days after receipt of written notice to commence and continue satisfactory correction of such default, then the Owner shall give the Design-Builder a second notice to correct the default within a three (3) Day period.



11.2.2. If the Design-Builder fails to promptly commence and continue satisfactory correction of the default following receipt of such second notice, the Owner without prejudice to any other rights or remedies may: (a) take possession of the Worksite; (b) complete the Work utilizing any reasonable means; (c) withhold payment due to the Design-Builder; and (d) as the Owner deems necessary, supply workers and materials, equipment, and other facilities for the satisfactory correction of the default, and charge the Design-Builder the costs and expenses, including reasonable Overhead, profit, and attorneys' fees.

11.2.3. In the event of an emergency affecting the safety of persons or property, the Owner may immediately commence and continue satisfactory correction of a default without first giving written notice to the Design-Builder, but shall give prompt written notice of such action to the Design-Builder following commencing the action.

11.2.4. If the Design-Builder files a petition under the bankruptcy code, this Agreement shall terminate if the Design-Builder or the Design-Builder's trustee rejects the Agreement or, if there has been a default, the Design-Builder is unable to give adequate assurance that the Design-Builder will perform as required by this Agreement or otherwise is unable to comply with the requirements for assuming this Agreement under the applicable provisions of the Bankruptcy Code.

11.2.5. In the event the Owner exercises its rights under subsections 11.2.1 or 11.2.2, upon the request of the Design-Builder the Owner shall provide a detailed accounting of the cost incurred by the Owner.

11.2.6. If the Owner terminates this Agreement for default, and it is later determined that the Design-Builder was not in default, or that the default was excusable under the terms of the Contract Documents, then, in such event, the termination shall be deemed a termination for convenience, and the rights of the Parties shall be as set forth in section 11.3.

11.3. TERMINATION BY OWNER FOR CONVENIENCE If the Owner terminates this Agreement other than as set forth in section 11.2, the Owner shall pay the Design-Builder for all Work executed and for all proven loss, cost, or expense in connection with the Work, plus all demobilization costs.

11.3.1. If the Owner terminates this Agreement before commencing construction, the Design-Builder shall be paid the unpaid balance of the Design-Builder's design costs as set forth in the Schedule of Values

11.3.2. If the Owner terminates this Agreement after commencing construction, the Design-Builder shall be paid the unpaid balance of the Design-Builder's design costs as set forth in the Schedule of Values, the Construction services provided to date

11.3.3. The Owner shall also pay to the Design-Builder fair compensation, either by purchase or rental at the election of the Owner, for all equipment retained. The Owner shall assume and become liable for obligations, commitments, and unsettled claims that the Design-Builder has previously undertaken or incurred in good faith in connection with the Work or as a result of the termination of this Agreement. As a condition of receiving the payments provided under this article, the Design-Builder shall cooperate with the Owner by taking all steps necessary to accomplish the legal assignment of the Design-Builder's rights and benefits to the Owner, including the execution and delivery of required papers.

11.4. TERMINATION BY THE DESIGN-BUILDER



11.4.1. Upon seven (7) Days' written notice to the Owner, the Design-Builder may terminate this Agreement for any of the following reasons:

11.4.1.1. if the Work has been stopped for a thirty (30) Day period (a) under court order or order of other governmental authorities having jurisdiction, or (b) as a result of the declaration of a national emergency or other governmental act emergency during which, through no act or fault of the Design-Builder, materials are not available;

11.4.1.2. if the Work is suspended by the Owner for thirty (30) Days; or

11.4.1.3. if the Owner fails to furnish reasonable evidence that sufficient funds are available and committed for the entire cost of the Project in accordance with section 4.2 of this Agreement.

11.4.2. If the Owner has for thirty (30) Days failed to pay the Design-Builder pursuant to subsection 9.1.3, the Design-Builder may give written notice of its intent to terminate this Agreement. If the Design-Builder does not receive payment within seven (7) Days of giving written notice to the Owner, then upon seven (7) Days' additional written notice to the Owner, the Design-Builder may terminate this Agreement.

11.4.3. Upon termination by the Design-Builder in accordance with subsection 11.4.1, the Design-Builder shall be entitled to recover from the Owner payment for all Work executed and for all proven loss, cost, or expense in connection with the Work, plus all demobilization costs and reasonable damages. In addition, the Design-Builder shall be paid an amount calculated as set forth either in subsection 11.3.1 or 11.3.2, depending on when the termination occurs, and subsection 11.3.3.

ARTICLE 12 DISPUTE MITIGATION OR RESOLUTION

12.1. WORK CONTINUANCE AND PAYMENT Unless otherwise agreed in writing, the Design-Builder shall continue the Work and maintain the approved schedules during any dispute mitigation or resolution proceedings. If the Design-Builder continues to perform, the Owner shall continue to make payments in accordance with the Agreement.

12.2. DIRECT DISCUSSIONS If the Parties cannot reach resolution on a matter relating to or arising out of this Agreement, the Parties shall endeavor to reach resolution through good faith direct discussions between the Parties' representatives, who shall possess the necessary authority to resolve such matter and who will record the date of first discussions. If the Parties' representatives are not able to resolve such matter within five (5) Business Days of the date of first discussion, the Parties' representatives shall immediately inform senior executives of the Parties in writing that resolution was not affected. Upon receipt of such notice, the senior executives of the Parties shall meet within five (5) Business Days to endeavor to reach resolution. If the dispute remains unresolved after fifteen (15) Days from the date of first discussion, the Parties shall submit such matter to the dispute mitigation and dispute resolution procedures selected herein.

12.3. MITIGATION If the Parties select one of the dispute mitigation procedures provided below, disputes remaining unresolved after direct discussions shall be directed to the selected mitigation procedure. The dispute mitigation procedure shall result in a nonbinding finding on the matter, which may be introduced as evidence at a subsequent binding adjudication of the matter, as designated in section 12.5. The Parties agree that the dispute mitigation procedure shall be:

Dispute Review Board



12.3.1. MITIGATION PROCEDURES The Dispute Review Board (“Neutral/Board”) shall be mutually selected and appointed by the Parties and shall execute a retainer agreement with the Parties establishing the scope of the Board’s responsibilities. The costs and expenses of the Board shall be shared equally by the Parties. The Board shall be available to either Party, upon request, throughout the course of the Project. The Board is to issue nonbinding findings within five (5) Business Days of referral of the matter to the Board, unless good cause is shown.

12.3.2. If the matter remains unresolved following the issuance of the nonbinding finding by the mitigation procedure or if the Neutral/Board fails to issue nonbinding findings within five (5) Business Days of the referral, the Parties shall submit the matter to the binding dispute resolution procedure designated in section 12.5.

12.4. MEDIATION If direct discussions pursuant to section 12.2 do not result in resolution of the matter and no dispute mitigation procedure is selected under section 12.3, the Parties shall endeavor to resolve the matter by mediation through the current Construction Industry Mediation Rules of the American Arbitration Association (AAA), or the Parties may mutually agree to select another set of mediation rules. The administration of the mediation shall be as mutually agreed by the Parties. The mediation shall be convened within thirty (30) Business Days of the matter first being discussed and shall conclude within forty-five (45) Business Days of the matter first being discussed. Either Party may terminate the mediation at any time after the first session by written notice to the non-terminating Party and mediator. The costs of the mediation shall be shared equally by the Parties.

12.5. BINDING DISPUTE RESOLUTION If the matter is unresolved after submission of the matter to a mitigation procedure or to mediation, the Parties shall submit the matter to the binding dispute resolution procedure selected below:

Litigation in either the state or federal court having jurisdiction of the matter in the location of the Project.

12.5.1. COSTS The costs of any binding dispute resolution procedures and reasonable attorneys’ fees shall be borne by the non-prevailing Party, as determined by the adjudicator of the dispute.

12.5.2. VENUE The venue of any binding dispute resolution procedure shall be the location of the Project, unless the Parties agree on a mutually convenient location.

12.5.3. Neither Party may commence arbitration if the claim or cause of action would be barred by the applicable statute of limitations had the claim or cause of action been filed in a state or federal court. Receipt of a demand for arbitration by the person or entity administering the arbitration shall constitute the commencement of legal proceedings for the purposes of determining whether a claim or cause of action is barred by the applicable statute of limitations. If, however, a state or federal court exercising jurisdiction over a timely filed claim or cause of action orders that the claim or cause of action be submitted to arbitration, the arbitration proceeding shall be deemed commenced as of the date the court action was filed, provided that the Party asserting the claim or cause of action files its demand for arbitration with the person or entity administering the arbitration within thirty (30) Days after the entry of such order.

12.5.4. An award entered in an arbitration proceeding pursuant to this Agreement shall be final and binding upon the Parties, and judgment may be entered upon an award in any court having jurisdiction.

12.6. MULTIPARTY PROCEEDING The Parties agree that all Parties necessary to resolve a matter shall be Parties to the same dispute resolution procedure. Appropriate provisions shall be included in all other



contracts relating to the Work to provide for the joinder or consolidation of such dispute resolution proceedings.

12.7. LIEN RIGHTS Nothing in this article shall limit any rights or remedies not expressly waived by the Design-Builder that the Design-Builder may have under lien laws.

ARTICLE 13 MISCELLANEOUS

13.1. EXTENT OF AGREEMENT Except as expressly provided, this Agreement is solely for the benefit of the Parties, represents the entire and integrated agreement between the Parties, and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement and each and every provision is for the exclusive benefit of the Owner and Design-Builder and not for the benefit of any third party.

13.2. ASSIGNMENT Neither the Owner nor the Design-Builder shall assign its interest in this Agreement without the written consent of the other except as to the assignment of proceeds. The terms and conditions of this Agreement shall be binding upon both Parties, their partners, successors, assigns, and legal representatives. Neither Party to this Agreement shall assign the Agreement as a whole without written consent of the other except that the Owner may assign the Agreement to a wholly owned subsidiary of the Owner when the Owner has fully indemnified the Design-Builder or to an institutional lender providing construction financing for the Project as long as the assignment is no less favorable to the Design-Builder than this Agreement. In the event of such assignment, the Design-Builder shall execute all consents reasonably required. In such event, the wholly-owned subsidiary or lender shall assume the Owner's rights and obligations under the Contract Documents. If either Party attempts to make such an assignment, that Party shall nevertheless remain legally responsible for all obligations under the Agreement, unless otherwise agreed by the other Party.

13.3. GOVERNING LAW This Agreement shall be governed by the laws of the State of Alaska.

13.4. SEVERABILITY The partial or complete invalidity of any one or more provisions of this Agreement shall not affect the validity or continuing force and effect of any other provision.

13.5. NO WAIVER OF PERFORMANCE The failure of either Party to insist, in any one or more instances, on the performance of any of the terms, covenants, or conditions of this Agreement, or to exercise any of its rights, shall not be construed as a waiver or relinquishment of such term, covenant, condition, or right with respect to further performance.

13.6. TITLES AND GROUPINGS The title given to the articles and sections are for ease of reference only and shall not be relied upon or cited for any other purpose.

13.7. JOINT DRAFTING The Parties expressly agree that both had opportunity to negotiate its terms and to obtain the assistance of counsel in reviewing its terms prior to execution. Therefore, this Agreement shall be construed neither against nor in favor of either Party, but shall be construed in a neutral manner.

13.8. RIGHTS AND REMEDIES The Parties' rights, liabilities, responsibilities, and remedies with respect to this Agreement, whether in contract, tort, negligence, or otherwise, shall be exclusively those expressly set forth in this Agreement.

ARTICLE 14 CONTRACT DOCUMENTS

14.1. CONTRACT DOCUMENTS The Contract Documents are as follows:

- (a) This Agreement;



(b)

14.2. ORDER OF PRECEDENCE In case of any inconsistency, conflict, or ambiguity among the Contract Documents, the documents shall govern in the following order: (a) Change Orders and written amendments to this Agreement, including Amendment 1; (b) this Agreement; (c) design documents approved by the Owner pursuant to subsection 2.3.15 and section 3.1.3 in order of the most recently approved; (d) information furnished by the Owner pursuant to section 4.1 or designated as a contract document in section 14.1; (e) other documents listed in this Agreement. Except as otherwise provided, among categories of documents having the same order of precedence, the term or provision that includes the latest date shall control. Information identified in one Contract Document and not identified in another shall not be considered a conflict or inconsistency.

OWNER:

BY: _____ NAME: _____ TITLE: _____

DESIGN-BUILDER:

BY: _____ NAME: _____ TITLE: _____

END OF DOCUMENT.

DRAFT



Mayor's Report

City Manager's Report

City Clerk's Report



City of Bethel, Alaska

City Clerk's Office

Council Meetings and Events

May 11, 2016 Special City Council Meeting

May 12, 2016 Special City Council Meeting

May 24, 2016 Regular City Council Meeting

Research/Document Preparation

- USDA Loan Resolution (had to review all loan documents to establish Resolution). City Attorney reviewed and approved document prior to submission, City Manager has not.
- USDA Grant Resolution (had to review grant documents to establish Resolution. City Attorney reviewed and approved document prior to submission, City Manager has not.
- Assisted the Parks, Recreation-Pool Committee on three Action Memorandums.
- Continued working on the procedure and task outline for Public Request.
- Reviewed and participated in the RFP Process for Pool Operators.
- Worked with DOT on the outlining of the procedures to tie into the City's sewer lines. A meeting will be held with them on May 25.
- Began reviewing the Marijuana Procedures/Amendments to Code.
- Discussed with a member of the community the City's intent (and procedures for) vacation of property. This community member is interested in buying/leasing a few City properties.
- The City Clerk attended and received certification for Reasonable Suspicion Determination from the Department of Transportation.

Joint Task Force Meeting

The Council will meet with ONC on May 25, 6:30p at in the ONC Council Chambers. The agenda for this meeting will be finalized on May 19.

Out of the Office

The City Clerk will be out of the office May 30, through June 10. The Office will have shortened hours during the City Clerk's absence.