Introduced by: Planning Commission
Introduction Date: April 23, 2019
Public Hearing Date: May 14, 2019
Action: Passed
Vote: 7-0

CITY OF BETHEL, ALASKA

Ordinance 19-08

AN ORDINANCE BY THE BETHEL CITY COUNCIL APPROVING A SUBDIVISION AGREEMENT BETWEEN THE ORUTSARARMIUT NATIVE COUNCIL AND THE CITY OF BETHEL

WHEREAS, Bethel Municipal Code Section 17.04.067 authorizes the City of Bethel to enter into a Subdivision Agreement with a potential developer;

WHEREAS, Subdivision Agreements are beneficial to both the City and the subdivider;

WHEREAS; for a subdivider, a Subdivision Agreement provides assurances that so long as the subdivider follows existing standards and requirements of both the Code and the Agreement, the subdivider will be able to proceed without being subject to change orders by the City and with the assurance of a final plat;

WHEREAS, for the City, a Subdivision Agreement, provides a clear roadmap of the expectations for the subdivider, giving the City time to prepare and focus its resources during the development process;

WHEREAS, the Planning Commission reviewed the proposed Subdivision Agreement on April 11, 2019 along with all supporting documentation;

WHEREAS, after careful deliberation, the Planning Commission voted unanimously in favor of recommending that the City Council approve the Ciullkulek Subdivision Agreement provided that (1)developer not sell any lots until the Final Plat is approved, and (2) the Open Space dedicated to the City must be useable space for the purpose dedicated be added to the Subdivision Agreement; and

WHEREAS, the conditions have been added;

THEREFORE BE IT ORDAINED by the City Council of Bethel, Alaska, as follows:

SECTION 1. Classification. This is a non-codified Ordinance and shall not become part of the Bethel Municipal Code.

SECTION 2. Authorization. Pursuant to Bethel Municipal Code 17.04.067, the City Council approves the terms of the Subdivision Agreement contained within between the City of Bethel and the Orutsaramiut Native Council for the development of the Ciullkulek Subdivision.

SUBDIVISION AGREEMENT

Subdivision: CIULLKULEK SUBDIVISION

The City of Bethel (hereinafter the City) a municipal corporation, and Orutsararmiut Native Council (ONC) (hereinafter Developer) enter into the following agreement this __ _____ day of May, 2019.

ONC owner of Ciullkulek Subdivision, executes this Agreement. It is understood that the person who executes the Agreement does so in the capacity of an authorized member and warrants that he has the authority to execute this Agreement on behalf of the ONC. The parties to this Agreement shall accept notices at the following addresses:

ONC
Orutsararmiut Native Council
Attn:
PO Box 927
Bethel AK 99559-0927

City of Bethel
City of Bethel
Legal Department
PO Box 1388
Bethel AK 99559

The real property which is the subject of this Agreement (hereinafter the Subdivision) is located in the City of Bethel and is described as follows:

A Replat of US Survey 4117, Lot 13,T8N, R71W, Sections 17, 18 containing 17.23 acres more or less in the Bethel Recording District.

Per the Preliminary Plat, having a new description of:

Ciullkulek Subdivision

Creating Block 1, Lots 1-9; Block 2, Lots 1-6; Block 3, Lots 1-17; Block 4, Lots 1-6; and Tract A.

Total area of lots is 11.165 acres. Area of Tract A is 1.567 acres. Total area of public rights of way is 4.498 acres.

** The legal description was taken from the preliminary plat for the Subdivision and may be subject to change after the recording of the final plat. Developer agrees that no change shall be detrimental to the City in enforcing the terms of this Agreement.

Under the terms of an existing ordinance to regulate and ensure the orderly subdivision and development of land in the City of Bethel, Alaska, known as the Bethel Subdivision Ordinance (Chapter 17 of the Bethel Municipal Code (BMC)), it is provided that before the final plat of a subdivision is approved for recordation, all physical improvements required by said ordinance for the land so subdivided shall have been installed therein.

The Developer seeks the City's non-objection to a final plat for the subdivision pursuant to BMC, section 17.04.067. In consideration of the City of Bethel's non objection to a final plat for the subdivision, the Developer agrees to construct and install the improvements described below in accordance with all the terms, covenants and conditions of this Agreement and to the specifications outlined by the City.

☒ Circulation System (Roads). All cul-de-sacs, corners and dead ends to have sufficient turning radius, turnarounds and hammerheads to meet Fire Department requirements for larger apparatus.
☒ Complete Streets – Compliance
☒ Drainage (in conformance with Army Corp and City requirements)
☒ Dedicated dumpster easements with fill (dumpsters provided by City)
☒ Electrical Power Lines and telecommunication lines & Easements (as approved by AVEC, United Utilities and/or GCI)
☒ Graveled and compacted Streets
☒ LED Street Lighting
☒ Property Numbering and Street Names
☒ Recreation and Open Space Dedications. The open space must be usable space within the subdivision.
☒ Street Signs
☒ Water (hauled)
☒ Sewer (hauled)
☒ Zoning
☒ Other: <u>All construction shall be in accordance with the plan set, which, in addition to having to meet all requirements of the BMC, must be reviewed and approved by the City of Bethel Public Works Department and the City's Engineer</u>.
☒ Other: <u>The Developer agrees to use metal pipes instead of polyethylene pipes</u>.
☒ Other: <u>Developer agrees to install sufficient LED lighting at the entrance to the Subdivision to allow for pedestrian safety</u>.
☒ Other: <u>Developer to cooperate with DOT on safety for ingress and egress to the Subdivision</u>.

☒ Other: Developer shall not sell any lots until a Final Plat is approved.
☒ Other: The Open Space dedicated to the City of Bethel must be useable space for the purpose dedicated.

The Developer estimates the cost of the improvements to be Two Million, Three Hundred Eighty Two Thousand Nine Hundred Thirty Two ($2,382,932) Dollars.

The Developer agrees to attach an up to date Work Schedule for timely completion of the Subdivision as Exhibit B prior to issuance of a Site Plan Permit.

Required: additional estimate for Cost of Improvements

Estimate For		Date Attached
Roads :	(Exhibit D)	
Power:	AVEC (Exhibit E)	

Developer acknowledges that although the City requires construction and installation of these items, that the Developer is solely liable for the cost thereof, except that in lieu of actual installation of said physical improvements, the subdivider shall enter into an agreement with bond or other security in an amount equal to the amount of the performance guaranty contained in section 2.2(B).

Installation of said improvements has not been completed and the Developer desires to enter into said Agreement and furnish bond or other security so that the aforesaid plat may be approved for recordation.

ARTICLE I

GENERAL PROVISIONS

1.1 Application of Article.

Unless this Agreement expressly provides otherwise, all provisions of these articles apply to every part of this Agreement.

1.2 Permits, Laws and Taxes

The Developer shall acquire and maintain in good standing all permits, licenses, and other entitlements necessary to its performance under this Agreement. All actions taken by the Developer under this Agreement shall comply with all

applicable statutes, ordinances, rules and regulations. The Developer shall pay all taxes pertaining to its performance under this Agreement.

1.3 Relationship of Parties

Neither by entering into this Agreement, nor by doing any act hereunder, may the Developer or any contractor or subcontractor or other agent of the Developer be deemed an agent, employee or partner of the City, or otherwise than, in the case of the Developer, an independent contractor. The Developer and its contractors and subcontractors shall not represent themselves to be agents, employees or partners of the City, or otherwise associated with the City. The Developer shall notify all of its contractors and subcontractors of the provisions of this section.

1.4 Engineer's Relationship to City

Notwithstanding section 2.6 or any agreement whereby the City reimburses the Developer's engineering costs, an engineer retained by the Developer or the City to perform work under this Agreement shall not be deemed an agent, partner or contractor of the City, or otherwise associated with the City.

1.5 Developer's Responsibility

The Developer shall be solely responsible for the faithful performance of all terms, covenants and conditions of this Agreement notwithstanding the Developer's delegation to another of the actual performance of any term, covenant or condition thereof.

1.6 Allocation of Liability

The Developer shall indemnify (to include paying all costs of defense, including without limitation, actual attorney's fees) and hold the City harmless from any claim, action or demand arising from any act or omission related to this Agreement in whole or in part, of the Developer, its agents, employees or contractors. The liability assumed by the Developer pursuant to this section includes, but is not limited to, claims for labor and materials furnished for the construction of the improvements.

1.7 Disclaimer of Warranty

Notwithstanding this Agreement or any action taken by any person hereunder, neither the City nor any City officer, agent or employee warrants or represents the fitness, suitability, or merchantability of any property, plan, design, material, workmanship, or structure for any purpose.

1.8 Non-Discrimination

A. In performing its obligations under this Agreement, the Developer shall not discriminate against any person on the basis of race, creed, color, national

origin, sex, sexual orientation, gender identification, marital status, age or on any other basis prohibited by law or ordinance.

B. In selling or leasing property or improvements in the subdivisions, the Developer shall not discriminate against any person on the basis of race, creed, color, national origin, sex, sexual orientation, gender identification, marital status, age or on any other basis prohibited by law or ordinance.

1.9 Cost of Documents

All plans, reports, drawings, electronic data and other documents that this Agreement requires the Developer to provide the City shall be furnished at the Developer's expense.

1.10 Time of the Essence

Unless otherwise expressly provided herein, time is of the essence of each and every term, covenant and condition of this Agreement.

1.11 Assignment

A. Except insofar as subsection B of this section specifically permits assignments, any assignment by the Developer of its interest in any part of this Agreement or any delegation of duties under this Agreement shall be void, and any attempt by the Developer to assign any part of its interest or delegate any duty under this Agreement shall constitute a default entitling the City to invoke any remedy available to it under Section 1.12 or at law or in equity.

B. The Developer may assign its interest or delegate its duties under this Contract as expressly permitted in writing by the City.

1.12 Default: City's Remedies

A. The City may declare the Developer to be in default:

1. If the Developer is adjudged bankrupt, makes a general assignment for the benefit of creditors, suffers a receiver to be appointed on account of insolvency, takes advantage of any law for the benefit of insolvent debtors;

   Or

2. If the Developer has failed in any measurable way to perform its obligations under this Agreement provided the City gives the Developer notice of the failure to perform and the Developer fails to correct the failure within thirty (30) days of receiving the notice; of if the failure requires more than thirty (30) days to cure, the Developer fails within thirty (30) days of receiving the notice to commence and proceed with diligence to cure the failure.

B. Upon a declaration of default, the City may do any one or more of the following:

1. Terminate the Agreement without liability for any obligation maturing subsequent to the date of termination;
2. Perform any act required of the Developer under this Agreement, including constructing all or any part of the improvements, after giving seven (7) days' notice in writing to the Developer. The Developer shall be liable to the City for any costs thus incurred. The City may deduct any costs thus incurred from any payment then or thereafter due the Developer from the City, whether under this Agreement or otherwise.
3. Exercise its rights under any performance or warranty guaranty securing the Developer's obligations under this Agreement.
4. Pursue any appropriate judicial remedy including, but not limited to, an action for injunction and civil penalties.

1.13 Non-Waiver

The failure of the City at any time to enforce a provision of this Agreement shall in no way constitute a waiver of the provision, nor in any way affect the validity of this Agreement or any part hereof, or the right of the City thereafter to enforce each and every provision hereof.

1.14 Interpretation

A. Each document incorporated by reference herein is an essential part of this Agreement and any requirement, duty or obligation stated in one document is as binding as if in all. All documents shall be construed to operate in a complementary manner and to provide for a complete project.

B. If the terms of any of the documents and amendments thereto comprising this Agreement conflict, the conflict shall be resolved by giving the conflicting documents and amendments thereto the following order of preference:

1. Documents
2. Article II of this Agreement titled "Improvement Construction Standards and Procedure", and Article III of this Agreement "Acceptance of Improvements."
3. Article I of this Agreement "General Provisions."
4. Any other document incorporated herein by reference.

1.15 Effect of Standard Specifications

The standard specifications of the City of Bethel Municipal Code in effect at the time this Agreement is executed are incorporated by reference as minimum construction standards for performance under this Agreement. All performance by Developer shall be done in a good and workmanlike manner with the warranty

that all work and improvements (to include the engineering thereon) are fit for the ordinary purpose for which such work and improvements are used.

1.16 Amendment

The parties may amend this Agreement, only by written agreement, signed by both parties and appended hereto.

1.17 Jurisdiction – Choice of Law

Any civil action arising from this Agreement shall be brought and tried in the Superior Court for the Fourth Judicial District of the State of Alaska at Bethel. The laws of the State of Alaska and the City of Bethel shall govern the rights and duties of the parties under this Agreement.

1.18 Severability

Any provision of this Agreement that may be declared invalid or otherwise unenforceable by a court of competent jurisdiction shall be ineffective to the extent of such invalidity without invalidating the remaining provisions of the Agreement.

1.19 Integration

This instrument and any writings incorporated by reference herein embody the entire agreement of the parties. This Agreement shall supersede all previous communications, representations or agreements, whether oral or written, between the parties hereto concerning the subject matter of this Agreement.

1.20 Responsibility for Claims

In addition to Developer's duties contained in §1.5 above, Developer shall indemnify (to include paying all costs of defense, including without limitation, actual attorney's fees) and save harmless the City, its officers and employees, from all suits, actions, or claims of any character brought because of any injuries or damages received or sustained by any person, persons or property on account of or in consequence of any neglect in safeguarding the work; or through the use of unacceptable materials in constructing the work; or because of any act of omission, neglect or misconduct of said Developer; or from any claims or amounts arising or recovered under the "Worker's Compensation Act," or any other law, order, or decree; and in the event of suit or suits, action or actions, claim or claims for injuries or damages, Developer's surety shall be held until the aforesaid shall have been settled and suitable evidence to that effect furnished to the City.

1.21 No Contract Rights in Third Parties

It is specifically agreed between the parties executing this Agreement that it is not intended by any of the provisions of any part of the Agreement to create in the public or any member thereof a third-party beneficiary hereunder or to authorize

anyone not a party to this Agreement to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of this Agreement.

1.22 Definitions

Unless this Agreement expressly provides otherwise, the following definitions shall apply herein:

A. "Acceptance" – by the City means a determination that an improvement meets municipal or state standards, and does not refer to accepting a dedication of the improvement by the Developer.

B. "City" – for the purposes of administering this Agreement, means the City Manager or his designee.

C. "Improvements" – means all work the Developer is required to perform under this Agreement.

D. "Municipal Improvements" – means improvements to be dedicated to and accepted by the City or to the public, or improvements operated and controlled by the City.

1.23 Developer's Duties Run with the Land; Memorandum of Agreement

The duties of the Developer run with the land for the benefit of the City. Upon executing this Agreement, the parties shall execute and the City may record the Memorandum of Subdivision Agreement.

1.25 Waiver of Sovereign Immunity.

By execution of this Subdivision Agreement, the Orutsararmiut Native Council (ONC) irrevocably waives any sovereign immunity which it may possess, and consents to suit against itself or its officials, under the laws of the State of Alaska, in the courts of the State of Alaska as to all causes of action by the authority arising out of on in connection with this Subdivision Agreement. ONC, as an entity that possesses sovereign immunity, shall provide the City with a resolution by ONC's governing Board waiving sovereign immunity, and such resolution shall be incorporated into this Subdivision Agreement as Exhibit F.

ARTICLE II

IMPROVEMENT CONSTRUCTION STANDARDS AND PROCEDURE

2.1 Recording of Final Plat.

The City will not render its non-objection to the Final Plat for the subdivision until the Developer has submitted and the City has approved the performance guaranty required by Section 2.2 and the Developer has complied fully with Sections 2.8 through 2.18.

2.2 Performance Guaranty

A. The Developer shall guaranty for the sole benefit of the City that the Developer will perform its obligations under this Agreement. The guaranty shall be in the form of a Performance Bond as specified by Section 2.3.

B. Amount of Guaranty:

1. The guaranty shall be in an amount equal to the estimated cost of all improvements, which shall be computed as follows. The Developer shall submit for the City's approval a cost estimate for each improvement required by this Agreement. The Cost Estimate shall be completed as outlined in Section 2.8 Cost Estimate. The estimated cost of all improvements shall be the sum of the approved estimated cost of constructing each improvement, plus an overrun allowance upon that sum as follows:

Total Estimated Cost of Constructing Improvements	Overrun Allowance
$0 to $500,000	20%
$500,001 to $1,000,000	15%
$1,000,001 +	10%

2. If the City finds that increases in construction costs between the time the City approves the estimated improvement costs under 1 of this subsection and the time the improvements are completed, have rendered the approved estimated improvement costs unreasonably low; or if said costs are unreasonably low for other substantial cause, the City may require the Developer to increase the performance guaranty to an amount equal to an approved estimated cost of all improvements based upon current construction costs.

C. If the Developer is not in default under this Agreement, the City may allow a reduction in the amount of the performance guaranty, or the amount secured thereby, not exceeding the difference between the estimated cost of all improvements and the current estimated cost of the work remaining to be performed under this Agreement; provided, however, that amount of the performance guaranty, or the amount secured thereby, always shall be greater than or equal to the amount of the warranty guaranty required by Section 3.11.

D. As soon as one of the following occurs, the City shall release any performance guaranty that has not been used or encumbered under Section 1.12:

1. The final acceptance of all improvements and the posting of a warranty guaranty as provided in Section 3.11; or
2. The expiration of the warranty period as provided in Section 3.10.

2.3 Bonds

The Developer may provide a performance bond and a labor and material bond from a company qualified by law to act as a surety in the State of Alaska. The bond shall be in a form approved by the City. The bond shall name the City as the sole oblige and the Developer as the principal. The surety must be rated by A.M. Best as an A or B surety.

2.4 Escrow

The Developer may deposit cash in an escrow with a bank qualified by law to do business in the State of Alaska. The disbursement of the escrowed funds shall be governed by an escrow agreement in a form approved by the City.

2.5 Prerequisites to Construction

The Developer shall not obtain permits for the construction of improvements or commence the construction of improvements until the requirements of Section 2.3 through 2.13 have been met and the City has delivered to the Developer the Notice to Proceed.

2.6 Engineer

A. The Developer shall retain an engineer registered as a professional engineer under the laws of the State of Alaska, to design and administer the construction of the improvements, including preparing plans and specifications, inspecting and controlling the quality of the work, and preparing as-built data. The Engineer shall perform the work described herein in accordance with the City's recommended procedures for consulting engineers. The Engineer shall provide a true and correct copy of his certificate of registration to the City of Bethel Engineer. If the City requires work unrelated to the Developer's subdivision improvements, the City will reimburse the Developer for any portion of the engineering costs based on the professional fee schedule that will be provided to the City Engineer

B. The Engineer shall have the following insurance:

   1. E&O insurance of at least One Million ($1,000,000) Dollars

      The Engineer will maintain the E&O insurance for a period ending no later than two years after the completion of the work set out in the Subdivision Agreement. The Engineer will provide a true and correct copy of the E&O policy to the City Engineer.

2. The Developer shall inform the City of the name and mailing address of the Engineer he has retained to perform the duties described in subsection A of this section, and agrees that notice to the engineer at the address so specified regarding the performance of such duties shall constitute notice to the Developer. The Developer shall promptly inform the City of any change in the information required under this section.

2.7 Plans and Specifications

A. The Developer shall submit to the City, in such form as the City may specify all plans and specifications pertaining to the construction of the improvements.

B. The Developer shall submit to the City proof that he has retained an engineer to perform the duties described in §2.6.

C. If the City Engineer requires soil tests or other tests pertaining to the design of improvements, the Developer shall submit reports of the test results with the plans and specifications to the City Engineer.

D. The City, either in-house or through retained professionals, shall approve the plans and specifications as submitted or indicate to the Developer how it may modify them to secure approval within eight (8) weeks from [1] the submission of all plans and specification for the improvements, and [2] the payment of the performance guarantee required under Section 2.2.

2.8 Cost Estimate

A. The Developer shall submit for the City's approval a cost estimate for each improvement required by this Agreement. The cost estimate shall be provided by the Developer's Engineer and shall be based on final stamped and sealed plans and specifications.

2.9 Reserved

2.10 Quality Control Program

A. The Developer shall submit to the City, in such form as the City may specify, a quality control program for the construction of the improvements.

B. The quality control program shall provide sufficient inspection and test procedures to determine compliance with all applicable plans, specifications, and safety requirements. The program shall include at least the following:

1. The frequency and type of all tests to be performed.
2. A list of all persons who will perform tests and inspections.
3. Procedures for coordinating testing and inspection with the City Engineer, and for providing advance notice to the City Engineer of all inspections and tests which the City Engineer shall witness.

C. Procedures for reporting quality control activities including discoveries of deficiencies in the work.

1. Quality Control Program to be attached as Exhibit A.

2.11 Work Schedule

A. The Developer shall submit to the City Engineer, in such a form as the City may specify, a work schedule.

B. The work schedule shall include a progress chart of a suitable scale indicating the approximate percentage of work scheduled for completion at any given time. For each improvement the schedule shall indicate starting and completion dates for the following:

1. Clearing, grubbing, removing overburden.
2. Excavation, installation and backfill and 95% compaction for each utility to be installed by the Developer.
3. Excavation, backfill and 95% compaction for street facilities.

C. Work Schedule to be attached as Exhibit B.

2.12 Materials

A. The Developer shall submit, in such form as the City may specify, detailed information concerning all materials and equipment it proposes to incorporate into an improvement.

B. Upon the City's request, the Developer shall submit samples of materials or equipment it proposes to incorporate into an improvement.

2.13 Liability Insurance

The Developer shall provide adequate proof that they have acquired the insurance required as outlined in Exhibit C.

2.14 General Standard of Workmanship

A. The Developer shall construct all improvements in accordance with plans, specifications and contracts approved by the City and with the terms, covenants and conditions of this Agreement. The Developer shall not incorporate any material or equipment into an improvement unless the City has approved its use. Unless the City specifically agrees otherwise in writing, all materials, supplies and equipment incorporated into an improvement shall be new.

B. If, in the course of construction, conditions appear that in the exercise of reasonable engineering judgment require a modification of or substitution for approved materials, equipment, plans, specifications or contracts to meet a

higher standard of performance, the Developer shall give written notice thereof to the City and, subject to the City's prior approval, make the modification or substitution.

C. The Developer shall construct all facilities in the subdivision not otherwise subject to this agreement in accordance with applicable statutes, ordinances and specifications.

D. Developer will build the roads to the standards presently accepted by the City of Bethel Public Works department Director or his designee.

2.15 Work in Proposed Right-of-Way

The Developer shall comply with all ordinances and secure all necessary permits and authorizations pertaining to work in public rights-of-way. The Developer shall coordinate and supervise the installation and construction of all utility improvements, including those not otherwise covered by this Agreement, in a manner that will prevent delays in City construction or other damage to the City, and that will permit the City properly to schedule work that it will perform.

2.16 Surveyor

All surveys required for the completion of improvements under this Agreement shall be made by a person registered as a professional land surveyor under the laws of the State of Alaska.

2.17 Required Reporting

A. Quality control.

1. The Developer shall submit to the City, regularly and promptly, written reports describing the results of all tests and inspections required by the quality control program, and all other tests and inspections which the Developer may make.

2. The Developer or Developer's Engineer shall coordinate testing and inspections with the City and provide reasonable advance notice to the City of all tests and inspections which the City shall witness, as required by the approved quality control program.

B. Construction progress.

1. At such intervals as the City may require, the Developer shall enter on the approved work schedule progress chart the actual work progress to date, and immediately forward two (2) copies of the marked progress chart to the City.

2. If actual progress indicates that the Developer will not perform the work as scheduled, the Developer shall prepare and submit a revised schedule for the City's approval.

3. In addition to any other notice that this Agreement may require, the Developer shall give the City reasonable notice prior to commencing each of the following:

a. Clearing and grubbing

b. Completion of any excavation;

c. Installation of each utility;

d. Placement of backfill, or classified backfill;

e. First placement of leveling course;

f. First placement of gravel;

g. Compaction – streets (roads);

2.18 Progress Payments

The Developer shall pay his contractors all contract progress payments when due.

2.19 Surveillance

A. The City may monitor the progress of the work and the Developer's compliance with this Agreement and perform any inspection or test which it deems necessary to determine whether the work conforms to this Agreement.

B. If the Developer fails to notify the City of inspections, tests and construction progress as required by Section 2.17, the City may require, at the Developer's expense, retesting, exposure of previous stages of construction, or any other steps which the City deems necessary to determine whether the work conforms to this Agreement.

C. Any monitoring, tests or inspections that the City orders or performs pursuant to this section are solely for the benefit of the City. The City does not undertake to test or inspect the work for the benefit of the Developer or any other person.

2.20 Stop Work Orders

A. If the City determines there is a substantial likelihood that the Developer will fail to comply, or if the Developer does fail to comply, with this Agreement, the City may stop all further construction of all or some of the improvements by posting a stop work order at the site of the nonconforming construction and notifying the Developer or its Engineer of the order. In this section, "nonconforming construction" includes, by way of example and not by way of limitation, construction work for which the Developer failed to strictly comply with the requirements contained in §2.07 or 2.10, even though the constructed work passes the tests.

B. A stop work order shall remain in effect until the City approves:

1. Arrangements made by the Developer to remedy the nonconformity; and
2. Assurances by the Developer that future nonconformities will not occur.

C. The issuance of stop work order under this section is solely for the benefit of the City. The City does not undertake to supervise the work for the benefit of the Developer or any other person. No suspension of work under this section shall be grounds for an action or claim against the City, except for an extension of time to perform the work.

D. The Developer shall include in all contracts for work to be performed or materials to be used under this Agreement the following provision:

The City of Bethel, pursuant to a Subdivision Agreement on file with the City Clerk and incorporated herein by reference, has the authority to inspect all work or materials under this contract, and to stop work in the event that the work performed under this contract fails to comply with any provision of the Subdivision Development Agreement. In the event that a stop work order is issued by the City of Bethel, the contractor shall immediately cease all work or all affected work at the City's discretion and await further instructions from the Developer.

2.21 Access

The City shall have access to all parts of the subdivision necessary or convenient for monitoring the Developer's performance, inspecting, surveying, testing or performing any of the work.

2.22 Maintenance

The Developer shall repair or pay the cost of repairing damage to any improvement that occurs prior to the City's acceptance of the improvements, except for damage caused solely by the City, its agents, employees or contractors. The Developer shall give reasonable notice to the City before undertaking the repair of the damaged improvement.

2.23 Operation of Improvements Prior to Acceptance

A. Before the City accepts the improvements, the City may enter upon, inspect, control and operate any improvement if the City determines that such is necessary to protect the public health, safety and welfare.

B. The action described in subsection A of this section shall not constitute the acceptance of any improvement by the City, nor shall the action affect in any way the Developer's warranty under this Agreement.

2.24 Time

A. All improvements required by this Agreement shall be completed within two (2) years of the date of execution hereof.

B. The Developer shall begin actual construction of improvements required under this Agreement in accord with the Developer's work schedule (Exhibit B) as approved by the City.

C. If the Developer is delayed by an action or omission of the City not otherwise authorized under this Agreement, or by changes ordered in the work, labor disputes, fire, delays in transportation, casualties, or other cause which the City in its discretion determines to be adequate to justify the delay, the time of completion of construction under this Agreement may be extended for a reasonable time which shall be determined by the City. No extension shall be granted unless the Developer gives notice in writing to the City within ten (10) days after the occurrence of the cause for delay. In the case of a continuing delay, only one notice is required.

ARTICLE III

ACCEPTANCE OF IMPROVEMENTS

3.1 Prerequisites to Acceptance

The City shall not accept the improvements until all the requirements of Sections 3.2 through 3.6 and 3.8 have been met.

3.2 As-Built Drawings

Prior to the final inspection and certification under Section 3.6.E, the Developer shall provide to the City two (2) acceptable sets of reproducible Mylar as-built drawings for each improvement and two (2) acceptable electronic data copies of each improvement drawing in an AutoCAD .DWG or .DWF or other format and on media as specified by the City. The as-built drawings and electronic information shall be certified by a professional engineer registered under the laws of the State of Alaska to represent accurately the improvements as actually constructed.

3.3 Monuments

By signing the final Subdivision Mylar Plat for recording with the State Recorder's Office, the Professional Land Surveyor of record acknowledges that all lot corners and boundary corners are set.

3.4 Certificate of Compliance

The Developer shall furnish the City with a certificate of compliance for the work performed under this Agreement, in the form prescribed by the standard specifications of the City in effect at the time of this Agreement.

3.5 Conveyance of Easements and Rights-of-Way to City

The Developer shall convey to the City or the public, any easement, right-of-way or other property interest necessary to allow the City reasonable access to the municipal improvements and to operate, maintain, or repair the municipal improvements. The Developer may condition the conveyance upon the City's acceptance of the improvements.

3.6 Inspection

A. Upon receiving notice that the Developer has completed the improvements, the City shall schedule inspections of the improvements. The City may inspect all improvements, and any other work in dedicated easements or rights-of-way.

B. The City shall inform the Developer, in writing, of any deficiencies in the work found in the course of its inspection.

C. At its own expense, the Developer shall correct all deficiencies found by inspections under this section. Upon receiving notice that the deficiencies have been corrected, the City shall re-inspect the improvements.

D. The City may continue to re-inspect an improvement(s) until the City is satisfied that the Developer has corrected all deficiencies in the improvement(s).

E. Only after a final inspection has revealed that all improvements and other work in dedicated easements and rights-of-way meet City standards, and the Developer has furnished the as-built drawings and electronic data required by Section 3.2, and the Developer has submitted the Warranty Guaranty required by Section 3.8, may the City notify the Developer that all improvements have been accepted.

3.7 Consequences of Acceptance of Improvements

A. The City's final acceptance of the municipal improvements constitutes a grant to the City of all the Developer's right, title and interest in and to the municipal improvements.

B. By accepting the municipal improvements under this Agreement, the City does not undertake to maintain any such improvement.

3.8 Developer's Warranty

A. The Developer shall warrant the design, construction materials and workmanship of the improvements against any failure or defect in design, construction, material or workmanship discovered no more than two (2) years from the date the City notifies the Developer of the acceptance of the improvements. This warranty shall cover all direct and indirect costs of repair or replacement, and damage to the property, improvements or facilities of the

City, or other person, caused by such failure or defect or in the course of the repairs thereof, and any increase in cost to the City of operating and maintaining a municipal improvement resulting from such failures, defects or damage.

B. That the City takes any action, or omits to take any action authorized by this Agreement, including but not limited to operation or routine maintenance of the improvements prior to acceptance, or surveillance, inspections, review or approval of plans, tests or reports, shall in no way limit the scope of the Developer's warranty.

3.9 Warranty Guaranty

A. To secure the Developer's performance of the warranty under §3.8, the performance guaranty provided by the Developer under §2.2 shall remain in effect until the end of the warranty period, or the Developer shall provide a warranty guaranty by one or more of the methods described in Sections 2.3 through 2.4.

B. The amount of the warranty guaranty shall be the percentage of the estimated cost of all improvements calculated pursuant to §2.2B, determined by the following table:

Estimated Cost of All Improvements	Percent to Secure Warranty
$0 - $500,000	10%
$500,001 to $1,000,000	7.5%
$1,000,001 and over	5.0%

3.10 City's Remedies Under Warranty

A. The City shall notify the Developer in writing upon its discovery of any failure or defect covered by the warranty in §3.8. Except in case of emergency, the City shall notify the Developer before conducting any tests or inspections to determine the cause of the failure or defect and shall notify the Developer of the results of all such tests and inspections.

B. The Developer shall correct any failure or defect covered by the warranty within thirty (30) days of receiving notice of the failure or defect from the City. The Developer shall correct the failure or defect at its own expense and to the satisfaction of the City.

C. If the Developer fails to correct the failure or defect within the time allowed by subsection B of this section, the City may correct the failure or defect at the Developer's expense. If the Developer fails to pay the City for the corrective

work within thirty (30) days of receiving the City's bill therefore, the City may pursue any remedy provided by law or this Agreement to recover the cost of the corrective work, together with interest, costs and reasonable attorney's fees.

3.11 Conditions of Reimbursement

A. If this Agreement requires the City to reimburse the Developer for all or part of the cost of an improvement, the reimbursement shall be conditioned upon the Developer's performance of all its obligations under this Agreement.

B. Any reimbursement shall be subject to the approval of bonds and the appropriation of funds as required by law. If funds are not available at the time any reimbursement is due under this Agreement, the City shall reimburse the Developer when funds become available. The City shall not be liable for any delay in reimbursing the Developer due to the unavailability of funds except for payment of interest, nor shall such delay constitute a breach of this Agreement.

C. The City may reimburse the Developer in installments, and in such event any unpaid balance shall bear interest at the rate paid on bonds sold to finance the reimbursement, or otherwise at three (3%) percent per annum simple interest.

3.12 Completion of Performance: Release of Warranty.

A. The City shall inspect the improvements at or before the end of the warranty period, and before releasing any performance guaranty or warranty guaranty then in effect. The Developer shall correct any failure or defect in the work revealed by the inspection as required by §3.6.

B. On the Developer's apparent satisfactory performance of all its obligations under this Agreement, the City shall execute a written statement acknowledging such performance and shall release any remaining security posted by the Developer under this Agreement. Such release of warranty shall not waive the City's rights against Developer for contract claims or tort claims.

The Developer is required to post a performance guaranty under this Agreement.

IN WITNESS WHEREOF, the parties hereto have set their hands on the date first set forth above.

CITY OF BETHEL

DEVELOPER – ONC

_____

Peter A. Williams
City Manager

_____

Introduced by: Planning Commission
Introduction Date: April 23, 2019
Public Hearing Date: May 14, 2019
Action: Passed
Vote: 7-0

ACKNOWLEDGMENT FOR DEVELOPMENT AGREEMENT

City's Acknowledgment

STATE OF ALASKA)
) ss:
FOURTH JUDICIAL DISTRICT)

The foregoing Subdivision Agreement was acknowledged before me this _____ day of May, 2019 by Peter A. Williams, City Manager for the City of Bethel, Alaska, a municipal corporation organized and existing by virtue of the laws of the State of Alaska.

WITNESS my hand and official seal the day and year last above written.

_____
Notary Public in and for Alaska

My Commission Expires: _____

Developer's Acknowledgment

STATE OF ALASKA)
) ss:
FOURTH JUDICIAL DISTRICT)

THIS IS TO CERTIFY that on the day of May, 2019, before me, the undersigned Notary Public in and for Alaska, duly commissioned and sworn as such, personally appeared _____, who is known to be the _____ of Orutsararmiut Native Council, a federally recognized tribe, which is named in the foregoing Subdivision Agreement and he acknowledged to me the execution thereof to be the free and voluntary act and deed of said company for the uses and purposes therein mentioned, and on oath stated he was fully authorized to execute said instrument.

WITNESS my hand and official seal the day and year last above written.

_____
Notary Public in and for Alaska

My Commission Expires: _____

OWNER'S AFFIDAVIT

STATE OF ALASKA)
) ss
FOURTH JUDICIAL DISTRICT)

The undersigned, _____, on behalf of the Developer, Orutsararmiut Native Council, and warrants to the City, under penalty of perjury, that the Orutsararmiut Native Council has title to the subdivision property; permission from the BIA to subdivide and sell the lots, and the authority to execute this Subdivision Agreement.

_____ _____
Dated

_____
Notary Public in and for Alaska

My Commission Expires: _____

Exhibit A: Quality Control Plan

[REQUIRED PRIOR TO SITE PLAN ISSUANCE]

Exhibit B: Work Schedule

[REQUIRED PRIOR TO SITE PLAN ISSUANCE]

Exhibit C: Insurance Requirements

I. Indemnification

Except for the sole negligence of the City and to the fullest extent permitted by law, Developer shall defend, indemnify, and hold harmless the City and any applicable City contractor's from any and all claims, demands, losses, and liabilities to or by any third party, including, but not limited to, costs, attorney's fees, expenses, and claims for any damages, contributions, or indemnifications arising from, resulting from, or connected to the Developer, it's agents, sub-contractors, suppliers, and employees, even though such claims may prove to be false, groundless, or fraudulent. The indemnification obligation under this Agreement shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable to or for any third party, or any employee under Entitlement to recovery of costs, attorney's fees and expenses under any worker's compensation act, disability benefit act, or other employee benefit act. Entitlement to recovery of costs, attorney's fees and expenses under the indemnification obligation shall include all fees, costs, and expenses incurred in good faith by the City.

II. Insurance

The Developer shall purchase from and maintain in a company or companies lawfully authorized to do business in the State of Alaska as admitted insurers or surplus lines insurers approved by the City, such insurance as will protect the City from claims set forth below and others, which may arise out of or as a result of the Developer's operations under this Agreement, whether such operations are by the Developer or by a sub-contractor or by anyone directly or indirectly employed by them, or by anyone whose acts any of them may be liable. Restrictions, conditions or exclusions contained in the insurance policies shall not reduce the obligations of the Developer under this Agreement.

A. Claims under worker's compensation, employer's liability, disability benefits, and other similar employee benefit acts which are applicable to the work to be performed under this Agreement.
   Claims for damages because of bodily injury, mental anguish, sickness, disease or death of any person other than the Developer's employees.

   Claims for damages insured by usual personal injury liability insurance coverage which are sustained (1) by a person as a result of an offense directly or indirectly related to the employment of such person by the Developer, or (2) by any other person or entity.

Claims for damages, other than to the product supplied, or to the services performed, itself because of damage to or destruction of tangible property, including loss of use resulting therefrom.

Claims for damages because of bodily injury, including mental anguish, death of a person, or damage to property arising out of the ownership, maintenance or use of any motor vehicle.

Claims involving the Developer's contractual obligations and assumption of liability under this Agreement.

Liability insurance shall include, at a minimum, all major divisions of coverage and be on a commercial general liability form including:

Premises/Operations Liability
Products/Completed Operations Liability
Personal/Advertising Injury Liability
Fire Damage Liability
Medical Payments
Per Project Aggregate Provision

B. The insurance required in this Agreement shall be written for not less than the limits listed in subsection (C), below, or those limits required by law, whichever limit is higher. Insurance, whether written on an occurrence or a claims-made basis, shall be maintained without interruption from the date of commencement of the work to the date of completion, or termination of any insurance required to be maintained after Final Plat Approval by the City.

C. The insurance required in this Agreement, shall be written for not less than the following limits:

1. Worker's Compensation Insurance:
   Statutory Requirements of the State of Alaska, and
   Employer Liability Insurance limits of:
   $500,000 each accident
   $500,000 disease each employee
   $500,000 disease policy limit

2. Commercial General Liability Insurance: Form CG0001 04/13 or equivalent
   $1,000,000 Combined Single Limit of Liability per Occurrence
   $1,000,000 Personal/Advertising Injury Limit of Liability, per Occurrence
   $2,000,000 Annual General Aggregate Limit of Liability

$2,000,000 Annual Products/Completed Operations Aggregate Limit of Liability
$ 100,000 Fire Damage Limit of Liability Any One Fire
$ 5,000 Medical Payment Limit on Any One Person

3. Commercial Automobile Liability Insurance: Form CA 0001 03/10 or equivalent
   $1,000,000 Combined Single Limit of Liability per Accident
   For all Owned, Hired, and Non-Owned Vehicles

4. Commercial Excess Liability Insurance
   $4,000,000 Combined Single Limit of Liability per Occurrence
   $4,000,000 Annual Aggregate Limit of Liability
   Excess of underlying Commercial General Liability Insurance, Commercial Automobile Liability Insurance, and employer Liability Insurance

5. Builder's Risk – Property Insurance
   Special Form Coverage including the perils of Earthquake and Flood on a Builder's Risk Completed Value Form.

   Deductible expense should be incurred by the Developer only, and shall not exceed two (2%) percent of the Subdivision Agreement Deposit.

   Limit of insurance equal to the completed value of the building structure, including all additions, and alterations to the new or existing facilities.

   The policy shall list the Developer, Contractor, Subcontractors, Engineers and Architects (if applicable) as a named insured, as their interest appears. This policy shall be secured at the expense of the Developer only. A copy of the policy will be delivered to the City, and any other insured entities at their request. This policy will remain in effect during the entire term of the Subdivision Agreement.

D. Worker's Compensation insurance and employers liability insurance shall be in compliance with the statutory requirements of the State of Alaska, and any other statutory obligation, whether federal or state pertaining to compensation of injured employees. The worker's compensation insurance and employers liability insurance shall contain a waiver of subrogation provision in favor of the City of Bethel.

E. The commercial general liability insurance shall name the City of Bethel as an additional insured and contain a waiver of subrogation provision in favor of the City of Bethel.

F. All liability insurance required of the Developer shall be primary. All liability insurance carried by the City of Bethel is declared to be excess and non-contributory of any insurance carried by the Developer, its contractors or subcontractors.

G. Developer's required insurance is subject to review and adjustment by the City, who may require reasonable changes in the amounts and types of insurance based upon changes of risk. Developer shall be provided a written explanation for any such changes.

H. Certificates of Insurance acceptable to the City shall be filed with the City prior to the commencement of any dirt work by the Developer. These certificates and the insurance policies shall contain a provision that the policy shall not be canceled until prior written notice has been sent to the Developer with a copy to the City.

If any of the insurance policies required above are canceled for any reason, the Developer shall provide immediate notice to the City of the cancelation and either provide: evidence of replacement or notice of reinstatement. Immediately in this section means within five (5) business days of receipt of cancelation by the Developer.

Failure to maintain these insurance provisions required of the Developer or failure to immediately notify the City of Bethel of cancelation shall be considered a material breach of the Subdivision Agreement by the Developer.

Exhibit D: Cost Estimate for Roads

[REQUIRED PRIOR TO SITE PLAN ISSUANCE]

Exhibit E: Cost Estimate for Power
(AVEC)

[REQUIRED PRIOR TO SITE PLAN ISSUANCE]

Exhibit F

WAIVER OF SOVEREIGN IMMUNITY

RESOLUTION NUMBER _____

A RESOLUTION OF THE ORUTSARARMIUT NATIVE COUNCIL (ONC) accepting the City of Bethel's Subdivision Agreement ("Agreement") and waiving sovereign immunity from suit for actions arising out of, or in connection with, the Agreement.

WHEREAS, the City requires as a condition of the Subdivision Agreement that ONC irrevocably waives any sovereign immunity which it may possess, and consent to suit against itself or its officials as to all causes of action arising out of or in connection with the Subdivision Agreement;

NOW THEREFORE BE IT RESOLVED THAT:

1. Orutsararmiut Native Council (ONC) hereby consents to suit by the City of Bethel against ONC and its officials in state court, federal court or in administrative proceedings with respect to any disputes, claims or causes of action (including without limitation enforcement or injunctive relief) arising out of or in connection with the Subdivision Agreement; the contractual duties assumed by ONC under the Agreement, and any other Agreement pertaining to the Ciullkulek Subdivision project or the maintenance of the subdivision improvements following construction.

2. ONC hereby consents to levy, execution, garnishment against ONC's real and personal property, however held and wherever located, for any judgment or order entered in any lawsuit or administrative proceeding related to or arising out of the Subdivision Agreement and the Ciullkulek Subdivision; the contractual duties assumed by ONC under that Agreement and the Bethel Municipal Code (BMC); or the operation of the Subdivision

and improvements following construction, including, but not limited to, awards of attorney's fees and costs entered by any court.

3. ONC consents to the assertion by the City of any defenses, cross-claims, or counterclaims in any civil action that is filed by ONC against the City.

4. With respect to a claim or action by a force account employee or other employee of ONC arising out of or in connection with the Subdivision Agreement, the contractual duties assumed by ONC under that Agreement, and any other agreement pertaining to the Ciullkulek Subdivision, or the operation of the subdivision following construction, ONC waives sovereign immunity to the extent of, and to the extent necessary to secure, insurance coverage including workers compensation insurance.

5. This waiver shall in no case be deemed a waiver or consent to suit, tax, or any other charge against ONC by any party other than the City of Bethel, except as specifically provided in (4) above.

6. _____ [person] _____ [title] is hereby appointed as the authorized representative of ONC throughout the Subdivision construction process. Said named individual may negotiate, execute, and administer any other documents, agreements, and contracts required under or related to the Subdivision Agreement including any subsequent amendments.

PASSED AND APPROVED BY ORUTSARARMIUT NATIVE COUNCIL (ONC) ON

_____, 2019

IN WITNESS THERETO BY: SIGNATURE OF CHAIRMAN OF THE BOARD

_____ _____
Signature Printed Name

ATTEST: SIGNATURE OF CLERK/SECRETARY

_____ _____
Signature Printed Name

Introduced by:	Planning Commission
Introduction Date:	April 23, 2019
Public Hearing Date:	May 14, 2019
Action:	Passed
Vote:	7-0

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

ENACTED THIS 14Th DAY OF MAY, 2019 BY A VOTE OF 7 IN FAVOR AND 0 OPPOSED.

Fred Watson
Mayor

ATTEST:

Lori Strickler
City Clerk