



Planning Commission Meeting Agenda  
Regular Scheduled Meeting Thursday, August 9, 2018– 6:30PM  
CITY HALL COUNCIL CHAMBERS 300 CHIEF EDDIE HOFFMAN HIGHWAY

**MEMBERS**

Kathy Hanson  
*Chair*  
Term Expires 12/2018

Lorin Bradbury  
*Vice-Chair*  
Term Expires 12/2020

John Guinn  
*Commission Member*  
Term Expires 12/2019

Alex Wasierski  
*Commission Member*  
Term Expires 12/2018

Shadi Rabi  
*Commission Member*  
Term Expires 12/2019

Scott Campbell  
*Commission Member*  
Term Expires 1/2020

Thor Williams  
*Council Representative*  
Term Expires 10/2019

Betsy Jumper  
*Ex-Officio Member*

Pauline Boratko  
*Recorder*

A handwritten signature in blue ink, appearing to read "P. Boratko", written over the typed name and title.

**AGENDA**

- I. CALL TO ORDER
- II. ROLL CALL
- III. PEOPLE TO BE HEARD – (5 Minute Limit)
- IV. APPROVAL OF THE AGENDA:
- V. APPROVAL OF THE MINUTES:
  - A. Regular Meeting- July 12, 2018
- VI. NEW BUSINESS:
  - A. Blue Sky Subdivision Development Agreement
- VII. UNFINISHED BUSINESS:
  - A. Wind Energy Conversion Systems (WECS) for Residential Zone Districts
- VIII. PLANNER'S REPORT
- IX. SPECIAL ORDER OF BUSINESS
- X. COMMISSIONER'S COMMENTS
- XI. ADJOURNMENT



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# City of Bethel, Alaska

## Planning Commission

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July 12, 2018

Regular Meeting

Bethel, Alaska

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### I. CALL TO ORDER:

A regular meeting of the Planning Commission was held on July 12, 2018 at the Bethel City Hall, Council Chambers in Bethel, Alaska. Chair of the Commission Kathy Hanson called the meeting to order at 6:30 PM.

### II. ROLL CALL:

Compromising a quorum of the Commission, the following members were present for roll call: Kathy Hanson, Lorin Bradbury, Alex Wasierski, and Scott Campbell.

Excused Absence: Shadi Rabi

Unexcused Absence: John Guinn

Also Present: Betsy Jumper, Planner; Pauline Boratko, Recorder, and Fire Chief, Bill Howell.

**III. PEOPLE TO BE HEARD:** No one wished to be heard

### IV. APPROVAL OF THE AGENDA:

<b>MOVED:</b>	Lorin Bradbury	Motion to approve the agenda.
<b>SECONDED:</b>	Scott Campbell	
<b>VOTE ON MOTION</b>	Unanimous	

### V. APPROVAL OF THE MINUTES:

<b>MOVED:</b>	Alex Wasierski	Motion to approve the June 14, 2018 meeting minutes.
<b>SECONDED:</b>	Lorin Bradbury	
<b>VOTE ON MOTION</b>	Unanimous	

### VI. NEW BUSINESS:

A. Address Code with Fire Chief Howell: Chief Howell reviewed the re-written draft of the Bethel Municipal Code 17.50

<b>MOVED:</b>	Lorin Bradbury	Motion to recommend the City Council to support the amended address code 17.50.
<b>SECONDED:</b>	Alex Wasierski	
<b>VOTE ON MOTION</b>	Unanimous	

B. Residential small tower structures: Commission members discussed small wind energy conversion systems (WECS).

**VII. PLANNER'S REPORT:** Betsy Jumper gave her monthly report.

### VIII. SPECIAL ORDER OF BUSINESS:

A. **COMMISSIONER'S COMMENTS:**

- L. Bradbury- I want Haroldson's Sub on the agenda.
- A. Wasierski- no comment.
- S. Campbell- no comment.
- K. Hanson- August 9<sup>th</sup> is our next meeting.
- T. Williams- no comment.

**B. ADJOURNMENT:**

<b>MOVED:</b>	Lorin Bradbury	Motion to adjourn the meeting.
<b>SECONDED:</b>	Scott Campbell	
<b>VOTE ON MOTION</b>	Unanimous	

With no further business the meeting adjourned at 7:59 pm  
 APPROVED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2018

\_\_\_\_\_  
 ATTEST: Pauline Boratko, Recorder

\_\_\_\_\_  
 Kathy Hanson, Chair

TO: The Planning Commission  
DATE: August 9, 2018  
RE: Blue Sky Subdivision Agreement  
Planner's Report

The Blue Sky Estates Preliminary Plat was approved by the Planning Commission on May 11, 2017 with conditions (see attached Resolution 2017-06). Item number 10, addresses the Subdivision Agreement.

1. Subdivision Agreement: The Subdivider shall enter into a Subdivision Agreement with the City of Bethel which meets, at a minimum, the requirements set out in this report. All of the conditions and expectations necessary for final plat approval to be clearly spelled out by both the City and the Subdivider in the Subdivision Agreement. Both the City and the Subdivider to work cooperatively to complete the Subdivision Agreement within no more than 60 days from the date of the preliminary plat approval. No work to commence until the subdivision agreement is completed.

The Subdivision Agreement shall include, but not limited to the following:

- a. A designation of the public improvements required to be constructed.
- b. The construction and inspection requirements of the City or utility for which the improvements are constructed.
- c. The time schedule for completing the improvements.
- d. A performance guarantee.
- e. The allocation of costs between the City and the subdivider for required public improvements.
- f. A reasonable warranty on public improvements.
- g. The consent of the subdivider for the ownership of specified public improvements to vest with the City upon final acceptance by the City.
- h. A warranty that the subdivider has title to the subdivision property and the authority to execute the subdivision agreement.
- i. A provision requiring the subdivider to submit plans, specifications, descriptions of work, the limits of the work area, the methods to be employed, a traffic control plan, and any other pertinent data and information necessary for City officials to evaluate the proposed installation.
- j. A provision that work shall not commence until plans have been approved by the Planning Department and the Public Works Department and the notice to proceed is given.

Bethel Municipal Code:  
**17.04.067 Subdivision agreements.**

**A.** In order to assure a subdivider that the subdivider may proceed with the subdivision of a parcel in accordance with existing standards and requirements under this title and not be subject to changes in such standards and requirements before the subdivider receives unconditional approval of the final plat of the parcel, the subdivider and the city may enter into a subdivision agreement pursuant to the provisions of this section. The rejection and the approval and execution of a requested subdivision agreement are within the absolute discretion of the city. A subdivision agreement is enforceable by each party to the agreement, but is effective only if approved by the planning commission by resolution and approved by the city council by a noncode ordinance.

**B.** A subdivider, upon payment of the required subdivision agreement application fee and the submission of such documents as the platting officer or planning commission may require, may submit to the planning commission a request that the city enter into a subdivision agreement with respect to the subdivision of a parcel for which a complete preliminary plat application has been submitted. The submission of a request for a subdivision agreement, whether or not the request is complete, suspends the running of the time within which a pending or subsequently submitted plat must be approved until the request is withdrawn, or is rejected by the planning commission or the city council, or receives the required approvals and the agreement is executed.

**C.** The planning commission shall consider the request for the subdivision agreement after reviewing the preliminary plat. If the commission determines that the existing standards and requirements of this title are adequate to deal with the likely impact of the subdivision as proposed or that they would be adequate if supplemented with additional requirements to which the subdivider agrees, the commission may, in its discretion, proceed to negotiate with the subdivider for a subdivision agreement containing such additional requirements, if any, as the commission believes are appropriate. The agreement may impose additional standards, requirements and exactions not otherwise applicable to the subdivision, without regard to whether such standards, requirements or exactions could be lawfully imposed as a subdivision or other city regulation.

**D.** A subdivision agreement may not reduce or eliminate the application of any standard or requirement of this title or of any other provision of this code, nor of any standard or requirement issued by the city engineer. An agreement may limit the application of proposed standards

and requirements to the pending plat, but may not limit or reduce any other discretion of the planning commission, require any particular decision or approval by the commission, or in any way lessen, affect or control the plat approval procedures in effect when the agreement is executed after city council approval. An agreement may not be inconsistent with applicable provisions of the comprehensive plan and shall, when possible, further the goals of the plan.

**E.** A subdivision agreement may not limit the application of any amendment of any title other than this title whether such amendment was recommended, proposed or adopted before or after execution of the agreement. The provision of any agreement that would have an effect prohibited by this subsection is void and unenforceable.

**F.** The provisions of an agreement that protect the subdivider from changes to the standards and requirements applicable to the subdivision of the parcel remain effective for so long as no party other than the city is in default under the agreement and there is timely performance by the subdivider of the construction of required subdivision improvements. The city may terminate the agreement if the final plat of the subdivision has not been approved within eighteen (18) months of the date the agreement is approved by the city council by ordinance or by the earlier of such other date as is set out in the agreement or is set out in the ordinance approving the agreement. Upon the termination of the agreement by the city for a default of the subdivider under the agreement or the failure of the subdivider to comply with a requirement of this subsection, the city may require the subdivider to bring the subdivision into compliance with all standards and requirements it avoided by virtue of the agreement and with all standards and requirements the planning commission may recommend within sixty (60) days of the date the agreement is terminated.

**G.** A subdivision agreement does not have effect beyond the plat to which it applies and any resubdivision of any part of the same parcel shall be subject to all changes to the standards and requirements of this title except to the extent such resubdivision is subject to a new subdivision agreement. [Ord. 01-05 § 7.]

The Planning Commission is tasked with going over the enclosed Subdivision agreement. Specifically, review the agreement and the requested changes on both sides, i.e., the City's and the Developer.

**Enclosed is the Clean-copy and a copy of the write up's/changes/notes, etc.** On the write up, the red-lettered strike out's are the original agreement verbiage; the unstricken red-lettering is what the

developer proposes. The yellow highlights, blue lettering, etc, are notes that that various entities of the developer had comments on.

--Planning Commission accepts or rejects the subdivision agreement (with, or without changes).

--if the Planning Commission accepts the agreement, (with, or without changes) then the agreement goes to the City Council for final approval (since it binds the City).

Planner's comments: The Work Schedule (p. 11- 2.12 exhibit B) would be submitted post approval of the subdivision development agreement.

The City Engineer's Comments: Please see attached.

Attachments: Resolution 2017-06  
Clean Copy of Subdivision Development Agreement  
Marked up Copy of Subdivision Development Agreement  
City Engineer Comments  
City Engineer Projected Impacts of Water and Sewer

**City of Bethel Planning Commission  
Resolution 2017-06**

**A RESOLUTION APPROVING THE PRELIMINARY PLAT APPLICATION FOR SUBDIVISION OF TRACT 41 SUBMITTED BY LYMAN HOFFMAN TO CREATE BLUE SKY ESTATES: TRACTS A, B, C, D, E, F, AND BLOCK 1: LOTS 1 – 33; BLOCK 2: LOTS 1 – 10; BLOCK 3: LOT 1; BLOCK 4: LOTS 1 – 16; BLOCK 5: LOTS 1 – 8; BLOCK 6: LOTS 1 – 7; BLOCK 7: LOTS 1 – 3; SECTION 11 AND 12, TOWNSHIP 8 NORTH, RANGE 72 WEST, SEWARD MERIDIAN BETHEL, ALASKA**

**WHEREAS**, the new subdivision creates 79 lots including six lots of open space, and four streets consisting of Madilyn's Way, D Street, Karris Street, and Elisabeth Street, as shown on the Preliminary Plat, and

**WHEREAS**, the City Planner reviewed the Preliminary Plat and all supporting documentation and accepted the documents as complete and in compliance with Bethel Municipal Code 17.12.030 (Submittal, form and contents), and

**WHEREAS**, the Preliminary Plat was forwarded to all pertinent City of Bethel departments, federal and state agencies, and public utilities for comments, in compliance with BMC 17.12.0950 (Transmittal to concerned agencies), and

**WHEREAS**, the Planner has reviewed and wrote Findings of Fact for the Preliminary Plat and recommends the Preliminary Plat be approved with conditions, and

**NOW, THEREFORE BE IT RESOLVED** the Planning Commission for the City of Bethel has reviewed the plat, supporting documentation, and staff findings, and determines that this Preliminary Plat conforms to BMC Title 17 and approves the Preliminary Plat for Blue Sky Estates with the following conditions:

1. All platting, permitting, and construction processes must conform to the City of Bethel Municipal Code.
2. Subdivider is responsible for obtaining and conforming to all required Local, State, and Federal permits.
3. Site Plan Permits must be obtained from the Bethel Planning Department for all components of subdivision development.
4. As required by AVEC, the subdivider shall acquire an additional easement outside the Blue Sky Subdivision on the south side of BIA Road for a required utility pole and anchor. Any other requests from AVEC for preparing the subdivision for power distribution must be met by the subdivider.

5. A note must be placed on the Final Plat identifying the function of each Open Space Tract lot.
6. 80% of the required Open Space acreage must be designated for recreational purposes.
7. The subdivision must provide and show dedicated areas/easements for locations of neighborhood dumpsters.
8. Subdivider is required to submit a zoning application for proposed zoning designation(s) of the subdivision.
9. All surface drainage within the subdivision shall be directed away from adjacent properties. Subdivider must comply with the Army Corps of Engineers condition for approval of the Wetlands Permit which states the subdivider shall provide remediation of three problematic culverts located inside the neighboring Tsikoyak Subdivision to ensure good drainage between and beyond the two subdivisions. Any and all culverts to be repaired, replaced, or installed as requested by the City or the Corps are to be completed as requested.
10. Subdivision Agreement: The Subdivider shall enter into a Subdivision Agreement with the City of Bethel which meets, at a minimum, the requirements set out in this report. All of the conditions and expectations necessary for final plat approval to be clearly spelled out by both the City and the Subdivider in the Subdivision Agreement. Both the City and the Subdivider to work cooperatively to complete the Subdivision Agreement within no more than 60 days from the date of the preliminary plat approval. No work to commence until the subdivision agreement is completed.

The Subdivision Agreement shall include, but not limited to the following:

- a. A designation of the public improvements required to be constructed.
- b. The construction and inspection requirements of the City or utility for which the improvements are constructed.
- c. The time schedule for completing the improvements.
- d. A performance guarantee.
- e. The allocation of costs between the City and the subdivider for required public improvements.
- f. A reasonable warranty on public improvements.
- g. The consent of the subdivider for the ownership of specified public improvements to vest with the City upon final acceptance by the City.
- h. A warranty that the subdivider has title to the subdivision property and the authority to execute the subdivision agreement.
- i. A provision requiring the subdivider to submit plans, specifications, descriptions of work, the limits of the work area, the methods to be employed, a traffic control plan, and any other pertinent data and information necessary for City officials to evaluate the proposed installation.
- j. A provision that work shall not commence until plans have been approved by the

Planning Department and the Public Works Department and the notice to proceed is given.

11. Final Plat not to be approved until the City accepts all improvements.

**PASSED AND APPROVED BY THE BETHEL PLANNING COMMISSION** by a duly constituted quorum on this 11th day of May, 2017.

City of Bethel City Planning Commission Action:

Vote: In Favor: 5 Opposed: 0 Abstained: 0

ATTEST:



Lorin Bradbury, Vice Chair  
City of Bethel Planning Commission



Betsy Jumpet, Recorder  
City of Bethel Planning Commission

Bethel Recording District:  
After recording please return to:  
City of Bethel Planning Department  
PO Box 1388  
Bethel, Alaska 99559



**SUBDIVISION AGREEMENT**

Subdivision: Blue Sky Subdivision,

The City of Bethel (hereinafter the City) a municipal corporation, and Blue Sky MKE, LLC (hereinafter Developer) enter into the following agreement this \_\_\_\_\_ day of August, 2018.

Blue Sky MKE, LLC, owner of Blue Sky Subdivision, executes this Agreement. It is understood that the Developer is acting as an individual and not a company or corporation, and that the person who executes the agreement on behalf of the Developer does so in the capacity of an authorized member and warrants that he has the authority to execute this Agreement on behalf of the Developer. The parties to this Agreement shall accept notices at the following addresses:

Developer  
Blue Sky MKE, LLC  
PO Box 1374  
Girdwood, AK 99587

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:

Sections 11 and 12 of Tract 41, Township 8 North, Range 72  
West, Seward Meridian

Containing 22.38 Acres (more or less)

\*\* 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 insure 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 subdivision is approved for recordation, all physical improvements required by said ordinance for the land so subdivided shall have been installed therein, 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 total cost of such improvements guaranteeing that the improvements will be installed within a designated length of time.

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.

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 or the party named herein.

- Circulation System (Roads)
- Complete Streets – Compliance
- Drainage (in conformance with Army Corp and City requirements)
- Dedicated dumpster easements with fill (dumpsters provided by City)
- Easements – including telephone and cable
- Electrical Power Lines & Easements (as approved by AVEC)
- Graveled and compacted Streets
- LED Street Lighting
- Lots and Blocks
- Monuments
- Property Numbering and Street Names
- Recreation and Open Space Dedications
- Street Signs
- Water &  Sewer (developer to pay up to \$20,000 for a study that will be requested by the City to analyze future water and sewer needs). Developer will not be required to pay for study recommendations.).
- Zoning
- Other: Remediation of three (3) problematic culverts located inside Tsikoyak Subdivision.
- Other: The Developer will not sell any lots or begin any improvements until the Developer has obtained written permission from the Bureau of Indian Affairs (BIA) and provided a copy of same to the City.
- Other: All construction shall be in accordance with City of Bethel standards.

The Developer estimates the cost of the improvements to be \$ \_\_\_\_\_

The Developer agrees to attach a time schedule for completing all of the above improvements as an Exhibit to this Agreement.

Revised Estimates of Cost of All Improvements:

**Estimate**

**Date**

Roads: Joe Dale (Attachement C) 7-1-17

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Power: AVEC (Attachment D)

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Developer acknowledges that although the City requires construction and installation of these items, that the Developer is solely liable for the cost thereof.

DRAFT

**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 2.8 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, his 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 Public Utilities

- A. Any public utility service contemplated by this Agreement need be provided only to areas where the service is not prohibited by the Regulatory Commission of Alaska and applicable law. All utility service shall conform to the rules, regulations and tariffs of the Regulatory Commission of Alaska.
- B. If the Regulatory Commission of Alaska disallows any utility service by the City following the execution of this Agreement, the provision of the disallowed service shall be deleted from the requirements under this Agreement without affecting any other part thereof. The disallowance shall not be grounds for any claim, action or demand against the City.
- C. Any public utilities shall be granted any necessary easements.

1.11 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.

1.12 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 1.13 or at law or in equity.
- B. The Developer may assign its interest or delegate its duties under this Contract:
  - 1. To the extent that Article 9 or the Uniform Commercial Code requires that assignments of contract rights be allowed.

2. To contractors and subcontractors, subject to section 1.5.
3. As expressly permitted in writing by the City.

1.13 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; or 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.

1.14 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.

1.15 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 title "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.

1.16 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.

1.17 Amendment

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

1.18 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 law of the State of Alaska shall govern the rights and duties of the parties under this Agreement.

1.19 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.

1.20 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.

1.21 Responsibility for Claims

In addition to Developer's duties contained in §1.6 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; of 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.

1.22 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.

1.23 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 the City or to the public, or improvements operated and controlled by the City.

1.24 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.

**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 §2.2 and the Developer has complied fully with §2.8 through §2.14.

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 one of the forms specified by Sections 2.03, 2.04 or 2.05. During the term of this Agreement, the Developer may, with the written consent of the City, substitute for a performance guaranty submitted under this section another guaranty in the required amount and in one of the forms specified by Sections 2.3, 2.4 and 2.5.

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 provided by Developer's engineer and may be based on final or preliminary plans and specifications. In the estimates, the engineer must certify that the plans and specs are sufficiently detailed so that engineer's estimated costs are at least as high as they would have been if the plans and specs were completed in final. The Developer's engineer shall prepare and certify to the City all cost estimates on the form, a copy of which is attached hereto as Exhibit A. 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 §3.08.

- D. As soon as one of the following occurs, the City shall release any performance guaranty that has not been used or encumbered under §1.13:
1. The final acceptance of all improvements and the posting of a warranty guaranty as provided in §3.07; or
  2. The expiration of the warranty period as provided in §3.08A.

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 obligee 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 Letter of Credit

The Developer may cause a bank qualified to do business in the State of Alaska to issue an irrevocable letter of credit or loan commitment agreement to the City as beneficiary. The letter of credit or loan commitment agreement shall be in a form approved by the City.

2.6 Deed of Trust

The Developer may grant the City a first deed of trust on real property located in the City to secure the estimated cost of all improvements. The City will accept the first deed of trust if (1) the assessed value equals or exceeds the amount to be secured by the Deed of Trust and (2) the City obtains, at Developer's expense, a policy of title insurance from a recognized title company doing business in the State of Alaska, naming the City as the insured beneficiary of the first deed of trust in the amount of the estimated cost of all improvements.

2.7 Prerequisites to Construction

The Developer shall not obtain permits for the construction of improvements or commence the construction of improvements until the requirements of Sections 2.8 through 2.14 have been met and the City has delivered to the Developer the Notice to Proceed.

2.8 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 local standards of practice.

- B. 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.

2.9 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 §2.8A.
- C. If the City 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
- 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 two (2) weeks from either [1] the submission of all plans and specification for the improvements, or [2] the payment of the deposit required upon plan submission under §2.10, whichever occurs later.

2.10 Reserved

2.11 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.

2.12 Work Schedule

- A. Work Schedule is attached as Exhibit B.

2.13 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.

2.14 Liability Insurance

The Developer shall provide adequate proof that it has acquired the insurance required under the City's standard construction specifications in effect at the time of the execution of this Agreement, in the form prescribed in those standard specifications, or, if the Developer has engaged a prime contractor to perform the work under this Agreement, adequate proof that the prime contractor has acquired such insurance naming the Developer as an insured.

2.15 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. Dale Construction Company will build the roads to the standards presently accepted by the City of Bethel Public Works department.

2.16 Work in 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. This is not Right of Way until the plat is approved and recorded

2.17 Surveyor

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

2.18 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.

B. Should put the providing of reports into the work schedule. The testing will be in the work schedule so give the # of days after the testing that the report will be provided to the City. Also put in the time before testing we will notify the City of the testing (part 2 below)

(2) The Developer or Developer's authorized designee 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.
- b. Completion of any excavation;
- c. Installation of each utility;
- d. Placement of backfill, or classified backfill;
- e.
- f. First placement of leveling course;
- g. First placement of gravel;
- h. Compaction – streets (roads) ;

This would be a repeat of the Work Schedule in Excel format where it has a calendar format to track actual completion of the items listed in the Field Schedule

2.19 Progress Payments

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

2.20 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 2.18., the City may require, at the Developer's expense, retesting, exposure or 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.

2.21 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 §2.9, 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

Development Agreement. In the event that a stop work order is issued by the City of Bethel, the contractor immediately shall cease all work or all affected work at the City's discretion, and await further instructions from the Developer.

2.22 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.

2.23 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.

2.24 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 on 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.

2.25 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 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**

3.01 Prerequisites to Acceptance

The City shall not accept the improvements until all the requirements of Sections 3.02 through 3.05 have been met.

3.02 As-Built Drawings

Prior to the final inspection and certification under Section 3.05E, the Developer shall provide to the City one acceptable set of reproducible Mylar as-built drawings for each improvement and acceptable electronic data copy of each improvement drawing in an AutoCAD .DWG or .DWF or other format as specified by the City 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.

Monuments

By signing the final Subdivision Mylar Plat for recording with the State recorder's office, the Professional Land Surveyor Mike Horne P.L.S (Farpoint Land Services) acknowledges that all Lot corners and boundary corners are set.

3.03 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.

3.04 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 to operate, maintain, or repair the municipal improvements. The Developer may condition the conveyance upon the City's acceptance of the improvements. ***Is made on the final Plat***

3.05 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 subsection A of 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 until the City is satisfied that the Developer has corrected all deficiencies in the improvement.
- E. 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

§3.02, the City shall notify the Developer that all improvements have been accepted.

3.06 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 unless obligated to do so by applicable statute, ordinance, regulation or tariff.

3.07 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. The Developer's warranty shall not extend to any failure or defect caused solely by changes in design, construction or materials required by the City.
- C. Except as provided in subsection B of this section, 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.

3.08 Warranty Guaranty

- A. To secure the Developer's performance of the warranty under §3.07, 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 2.5.
- 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:

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

3.09 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 §3.07. 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 therefor, 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.

3.10 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.

3.11 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 §3.09.
- 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 posting a performance guaranty under this Subdivision.

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

CITY OF BETHEL

DEVELOPER – BLUE SKY MKE, LLC

\_\_\_\_\_  
Peter A. Williams  
City Manager

\_\_\_\_\_

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 June, 2017 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 June, 2017, 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 Blue Sky MKE, LLC, a Limited Liability Company, organized and existing by virtue of the laws of the State of Alaska, 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: \_\_\_\_\_

DRAFT



ENGINEER'S CERTIFICATE

TO: CITY OF BETHEL, ALASKA

David Nyman, PE, hereinafter "Engineer" has been employed by Blue Sky MKE, a Limited Liability Company, the "Developer" to provide special engineering services regarding Blue Sky Subdivision, a proposed subdivision, located in the City of Bethel, Alaska.

Engineer hereby certifies to the City that he holds a current certificate of registration as a professional engineer with the State of Alaska in accordance with AS 08.48 authorizing him to perform engineering services to work for the public and to sign and seal engineering documents; and Engineering promises to maintain such certificate of registration while performing services related to this Subdivision Agreement. Engineer also certifies to the City that he has E&O insurance with an insurance carrier admitted to the State of Alaska in amount of at least Five Hundred Thousand (\$500,000) Dollars; and Engineer promises to maintain said E&O insurance for a period ending no later than two (2) years after the completion of the work set out in the Subdivision Agreement. Engineer will submit with this Certificate a true and correct copy of his (1) certificate of registration and (2) E&O policy.

Engineer hereby certifies to the City that said estimates are true and correct to the best of Engineer's knowledge and that Engineer has used due care and met professional standards in determining said estimates. **If the estimates are based on preliminary plans and specifications, Engineer certifies that the plans and specs are sufficiently detailed so that Engineer estimated costs are at least as high as they would have been if the plans and specs were completed in final.**

Engineer further certifies that Engineer has discussed with the City whether the Little Davis-Bacon Act (AS 36.05) is likely to apply to the construction of any of the improvements. The Engineer has estimated the cost of said improvement taking into account such requirement of law.

Improvement

Estimated Cost

*See Attached Spreadsheet, dated \_\_\_\_\_*

Dated: \_\_\_\_\_

\_\_\_\_\_  
David Nyman, PE

---

Exhibit A

DRAFT



**SUBDIVISION AGREEMENT**

Subdivision: Blue Sky Subdivision,

The City of Bethel (hereinafter the City) a municipal corporation, and Blue Sky MKE, LLC (hereinafter Developer) enter into the following agreement this \_\_\_\_ day of June, 2017.

Blue Sky MKE, LLC, owner of Blue Sky Subdivision, executes this Agreement. It is understood that the Developer is acting as an individual and not a company or corporation, and that the person who executes the agreement on behalf of the Developer does so in the capacity of an authorized member and warrants that he has the authority to execute this Agreement on behalf of the Developer. The parties to this Agreement shall accept notices at the following addresses:

Developer  
Blue Sky MKE, LLC  
PO Box 1374  
Girdwood, AK 99587

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:

Sections 11 and 12 of Tract 41, Township 8 North, Range 72  
West, Seward Meridian

Containing 22.38 Acres (more or less)

\*\* 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 insure 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 subdivision is approved for recordation, all physical improvements required by said ordinance for the land so subdivided shall have been installed therein, 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 total cost of such improvements guaranteeing that the improvements will be installed within a designated length of time.

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.

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 or the party named herein.

- ~~Cable Lines (as approved by GCI)~~
- Circulation System (~~Roads~~)
- Complete Streets – Compliance
- Drainage (in conformance with Army Corp and City requirements)
- ~~Dedicated dumpster easements with fill (dumpsters provided by City)s (with dedicated easement)~~
- ~~Easements – including telephone and cable~~
- Electrical Power Lines & Easements (as approved by AVEC)
- Graveled and ~~100%~~ compacted Streets
- LED Street Lighting
- Lots and Blocks
- Monuments
- Property Numbering and Street Names
- Recreation and Open Space Dedications
- Street Signs
- ~~Telephone Service Capability (as approved by United Utilities and/or GCI)~~
- Water &  Sewer (~~developer to pay up to \$20,000 for a study that will be requested by the City to analyze future water and sewer needs). Developer will not be required to pay for study recommendations.~~ (up to and including pro-rata costs of lift stations, water plants and or trucks as determined most feasible by neutral expert)
- Zoning
- Other: Remediation of three (3) problematic culverts located inside Tsikoyak Subdivision.
- Other: The Developer will not sell any lots or begin any improvements until the Developer has obtained written permission from the Bureau of Indian Affairs (BIA) and provided a copy of same to the City.
- Other: All construction shall be in accordance with City of Bethel and State of Alaska standards.

Commented [DN1]: Wondering what standards are these? I am attaching a set of Alaska subd. standards

The Developer estimates the cost of the improvements to be \$ \_\_\_\_\_

The Developer agrees to attach a time schedule for completing all of the above improvements as an Exhibit to this Agreement.

Revised Estimates of Cost of All Improvements:

Estimate

Date

Roads: Joe Dale (Attachement C) 7-1-17

Power: AVEC (Attachment D)

- Commented [DN2]: Should add a contingency onto the estimate
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Developer acknowledges that although the City requires construction and installation of these items, that the Developer is solely liable for the cost thereof.

**ARTICLE IS**  
**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 ~~2.08~~ 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.

Commented [DN3]: There is no Section 2.08

**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, his 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 Public Utilities

- A. Any public utility service contemplated by this Agreement need be provided only to areas where the service is not prohibited by the Regulatory Commission of Alaska and applicable law. All utility service shall conform to the rules, regulations and tariffs of the Regulatory Commission of Alaska.
- B. If the Regulatory Commission of Alaska disallows any utility service by the City following the execution of this Agreement, the provision of the disallowed service shall be deleted from the requirements under this Agreement without affecting any other part thereof. The disallowance shall not be grounds for any claim, action or demand against the City.
- C. Any public utilities shall be granted any necessary easements.

1.11 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.

1.12 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 1.13 or at law or in equity.
- B. The Developer may assign its interest or delegate its duties under this Contract:
  - 1. To the extent that Article 9 or the Uniform Commercial Code requires that assignments of contract rights be allowed.

2. To contractors and subcontractors, subject to section 1.05
3. As expressly permitted in writing by the City.

Commented [DN4]: There is no section 1.05

1.13 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.

1.14 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.

1.15 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 or section titled "Special Provisions";
2. Article ~~II~~ IV of this Agreement title "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.

Commented [DN5]: There is no such item called "special provisions"

Commented [DN6]: I changed the header to Article I to match this statement

1.16 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.

Commented [DN7]: Not sure if this is necessary but not a problem

1.17 Amendment

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

1.18 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 law of the State of Alaska shall govern the rights and duties of the parties under this Agreement.

1.19 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.

1.20 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.

1.21 Responsibility for Claims

In addition to Developer's duties contained in ~~§1.06~~ 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

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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.

Commented [DN9]: or?

1.22 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 ~~thereof a third party~~ 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.

1.23 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 the City or to the public, or improvements operated and controlled by the City.

1.24 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.

**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 §2.02 and the Developer has complied fully with §2.08 through §2.14.

Commented [DN10]: Paragraph 2.02, 2.08 and 2.14 do not exist?

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 one of the forms specified by Sections 2.03, 2.04 or 2.05. During the term of this Agreement, the Developer may, with the written consent of the City, substitute for a performance guaranty submitted under this section another guaranty in the required amount and in one of the forms specified by Sections 2.03, 2.04 and 2.05.

Commented [DN11]: Are we changing these to 2.3, 2.4, 2.5

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 provided by Developer's engineer and may be based on final or preliminary plans and specifications. In the estimates, the engineer must certify that the plans and specs are sufficiently detailed so that engineer's estimated costs are at least as high as they would have been if the plans and specs were completed in final. The Developer's engineer shall prepare and certify to the City all cost estimates on the form, a copy of which is attached hereto as Exhibit A. 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:

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

1.2. 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.

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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 §3.008.

Commented [DN13]: I assume this is the correct reference

- D. As soon as one of the following occurs, the City shall release any performance guaranty that has not been used or encumbered under §1.13:
1. The final acceptance of all improvements and the posting of a warranty guaranty as provided in §3.07; or
  2. The expiration of the warranty period as provided in §3.08A.

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 obligee 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 Letter of Credit

The Developer may cause a bank qualified to do business in the State of Alaska to issue an irrevocable letter of credit or loan commitment agreement to the City as beneficiary. The letter of credit or loan commitment agreement shall be in a form approved by the City.

2.6 Deed of Trust

The Developer may grant the City a first deed of trust on real property located in the City to secure the estimated cost of all improvements. The City will accept the first deed of trust if (1) the assessed value equals or exceeds the amount to be secured by the Deed of Trust and (2) the City obtains, at Developer's expense, a policy of title insurance from a recognized title company doing business in the State of Alaska, naming the City as the insured beneficiary of the first deed of trust in the amount of the estimated cost of all improvements.

2.7 Prerequisites to Construction

The Developer shall not obtain permits for the construction of improvements or commence the construction of improvements until the requirements of Sections 2.08 through 2.14 have been met and the City has delivered to the Developer the Notice to Proceed.

Commented [DN14]: There is no 2.08

2.8 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 local standards of practice.

- B. 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.

2.9 Plans and Specifications

- A. The Developer shall submit to the City, in such form as the City may specific, 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 §2.08A.
- C. If the City 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.
- 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 ~~four (4)~~ two (2) weeks from either [1] the submission of all plans and specification for the improvements, or [2] the payment of the deposit required upon plan submission under §2.10, whichever occurs later.

2.10 Reserved

2.11 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 inspections with the City, and for providing advance notice to the City of all inspections and tests which the City shall witness.~~
    - (4) ~~Procedures for reporting quality control activities including discoveries of deficiencies in the work.~~
- See attached

1. Quality Control Program is attached as exhibit A.

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2.12 Work Schedule

- A. The Developer shall submit to the City, in such 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 100% compaction for each utility to be installed by the Developer;
  - (3) Excavation, backfill and 100% compaction for street facilities;
  - (4) Curb, gutter, paving, etc.

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A. Work Schedule is attached as Exhibit B.

2.13 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.

2.14 Liability Insurance

The Developer shall provide adequate proof that it has acquired the insurance required under the City's standard construction specifications in effect at the time of the execution of this Agreement, in the form prescribed in those standard specifications, or, if the Developer has engaged a prime contractor to perform the work under this Agreement, adequate proof that the prime contractor has acquired such insurance naming the Developer as an insured.

Hugh Will Blue Sky MKE LLC have liability insurance?

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2.15 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.

C.D. Dale Construction Company Contractor (Joe Dale) will build the roads to the standards presently accepted by the City of Bethel Public Works department.

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~~2.16 Placement of Utilities~~

~~The Developer shall place all utilities underground except where this requirement is specifically waived.~~

2.172.16 Work in 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. This is not Right of Way until the plat is approved and recorded

2.182.17 Surveyor

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

2.192.18 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.

B. Should put the providing of reports into the work schedule. The testing will be in the work schedule so give the # of days after the testing that the report will be provided to the City. Also put in the time before resting we will notify the City of the testing (part 2 below)

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(1)

(2) The Developer or Developer's authorized designee 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.

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(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 concrete pour;
- f. First placement of leveling course;
- g. First placement of gravel;
- h. Compaction – both streets (roads) and lots;

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This would be a repeat of the Work Schedule in Excel format where it has a calendar format to track actual completion of the items listed in the Field Schedule

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2.202.19 Progress Payments

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

2.212.20 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 2.1918., the City may require, at the Developer's expense, retesting, exposure or 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.

2.222.21 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 ~~§2.19 or §2.21~~, even though the constructed work passes the tests.

Commented [DN17]: No sure if refers to correct sections

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 Development Agreement. In the event that a stop work order is issued by the City of Bethel, the contractor immediately shall cease all work or all affected work at the City's discretion, and await further instructions from the Developer.

2.232.22 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.

2.242.23 Maintenance

The Developer shall repair or pay the cost of repairing damage ~~to any~~ to any improvement that occurs prior to the City's acceptance of ~~the improvements~~ 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.

2.252.24 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 on 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.

2.262.25 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 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~~ 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**

3.01 Prerequisites to Acceptance

The City shall not accept the improvements until all the requirements of Sections 3.02 through 3.05 have been met.

3.02 Monuments and As-Built Drawings

Prior to the final inspection and certification under Section 3.05E, the Developer shall provide to the City one acceptable set of reproducible Mylar as-built drawings for each improvement and acceptable electronic data copy of each improvement drawing in an AutoCAD .DWG or .DWF or other format as specified by the City 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.

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Monuments

By signing the final Subdivision Mylar Plat for recording with the State recorder's office, the Professional Land Surveyor Mike Horne P.L.S (Farpoint Land Services) acknowledges that all Lot corners and boundary corners are set.

3.03 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.

3.04 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 to operate, maintain, or repair the municipal improvements. The Developer may condition the conveyance upon the City's acceptance of the improvements. ***Is made on the final Plat***

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3.05 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 subsection A of 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 until the City is satisfied that the Developer has corrected all deficiencies in the improvement.
- E. 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 **§3.02B**, the City shall notify the Developer that all improvements have been accepted.

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3.06 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 unless obligated to do so by applicable statute, ordinance, regulation or tariff.

3.07 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. The Developer's warranty shall not extend to any failure or defect caused solely by changes in design, construction or materials required by the City.
- C. Except as provided in subsection B of this section, 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.

3.08 Warranty Guaranty

A. To secure the Developer's performance of the warranty under §3.07, the performance guaranty provided by the Developer under §2.02 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 2.03 through 2.05.

Commented [DN18]: Not sure if this is correct

B. The amount of the warranty guaranty shall be the percentage of the estimated cost of all improvements calculated pursuant to §2.02B, 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%

3.09 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 §3.07. 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 therefor, 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.

3.10 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.

3.11 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 §3.09.
- 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 posting a performance guaranty under this Subdivision.

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

CITY OF BETHEL

DEVELOPER – BLUE SKY MKE, LLC

\_\_\_\_\_  
Peter A. Williams  
City Manager

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 June, 2017 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 June, 2017, 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 Blue Sky MKE, LLC, a Limited Liability Company, organized and existing by virtue of the laws of the State of Alaska, 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, Blue Sky MKE, LLC warrants to the City, under penalty of perjury, that he 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: \_\_\_\_\_

DRAFT

ENGINEER'S CERTIFICATE

TO: CITY OF BETHEL, ALASKA

David Nyman, PE, hereinafter "Engineer" has been employed by Blue Sky MKE, a Limited Liability Company, the "Developer" to provide special engineering services regarding Blue Sky Subdivision, a proposed subdivision, located in the City of Bethel, Alaska.

Engineer hereby certifies to the City that he holds a current certificate of registration as a professional engineer with the State of Alaska in accordance with AS 08.48 authorizing him to perform engineering services to work for the public and to sign and seal engineering documents; and Engineering promises to maintain such certificate of registration while performing services related to this Subdivision Agreement. Engineer also certifies to the City that he has E&O insurance with an insurance carrier admitted to the State of Alaska in amount of at least Five Hundred Thousand (\$500,000) Dollars; and Engineer promises to maintain said E&O insurance for a period ending no later than two (2) years after the completion of the work set out in the Subdivision Agreement. Engineer will submit with this Certificate a true and correct copy of his (1) certificate of registration and (2) E&O policy.

Engineer hereby certifies to the City that said estimates are true and correct to the best of Engineer's knowledge and that Engineer has used due care and met professional standards in determining said estimates. **If the estimates are based on preliminary plans and specifications, Engineer certifies that the plans and specs are sufficiently detailed so that Engineer estimated costs are at least as high as they would have been if the plans and specs were completed in final.**

Engineer further certifies that Engineer has discussed with the City whether the Little Davis-Bacon Act (AS 36.05) is likely to apply to the construction of any of the improvements. The Engineer has estimated the cost of said improvement taking into account such requirement of law.

Improvement

Estimated Cost

See Attached Spreadsheet, dated \_\_\_\_\_

Dated: \_\_\_\_\_

\_\_\_\_\_  
David Nyman, PE

Exhibit A

DRAFT





## MEMORANDUM

TO: Betsy Jumper  
City Planner  
City of Bethel

FROM: Chase A. Nelson, P.E.  
City of Bethel Contracted Engineer  
DOWL

DATE: August 3, 2018

SUBJECT: Blue Sky Subdivision Development

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The Blue Sky Subdivision Agreement has been reviewed. While the contents of the agreement appear to be generally acceptable, there is one item that must be discussed by the Planning Commission prior to an Engineer endorsed recommendation.

DOWL prepared a short memorandum, attached to this memorandum that explains the projected water and sewer revenue from the Blue Sky development will not cover the City costs to produce and deliver water and collect sewage with the City's current haul fleet.

The revised subdivision agreement requires that the developer help cover up to \$20,000 for a study to analyze future water and sewer needs, but not be required to pay for the study recommendations. This is an offer that needs further consideration.

We are generally in support of this subdivision development and the agreement appears to have been revised in acceptable ways, however without Planning Commission discussion on future water and sewer costs and rates, issuing a statement of non-objection is preliminary.



## DRAFT MEMORANDUM

TO: Peter Williams  
City Manager  
City of Bethel

FROM: Chase Nelson, P.E.  
DOWL

DATE: July 25, 2018

SUBJECT: City Water and Sewer System Impacts from Proposed Blue Sky Estates  
Subdivision

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### Introduction

Blue Sky Estates is a proposed subdivision proposed located within the City of Bethel (City) limits. The City is interested in the impact it would have on the City's existing water and sewer infrastructure.

This memorandum explains some of the projected impacts assuming the proposed subdivision is fully built-out. This memorandum only analyzes the impacts of the subdivision on the water and sewer infrastructure, and does not account for other effects on infrastructure such as roads and traffic.

The 75 parcel Blue Sky Estates subdivision would be located northeast of the Bethel Municipal Airport. It would require water, sewer, and other services such as telecommunications. There are no existing piped water or sewer mains near the proposed location, so the subdivision would be serviced by the City's water and sewer haul system.

### Operations and Maintenance Costs

The expansion of the water and sewer haul system to service the proposed subdivision would increase operation and maintenance costs (O&M) for the City. To estimate these costs, two estimates were calculated based on a mileage basis and a volume basis. These calculations were completed using rates identified in the 2013 *City of Bethel Water and Sewer Cost Allocation and Rate Study*.

The primary factor for the haul system cost is the distance between the parcel and the water source (and sewage deposit location). Driver time, fuel costs, and vehicle maintenance all increase as distance increases. Water and sewer haul service cost the City \$23.00 and \$27.00 per mile. The proposed location for the Blue Sky Estates subdivision is a 7.9 miles round trip from the City Subdivision Water Treatment Plant. The City's two-zone utility rates were developed to address the discrepancy in delivery costs between near and distant deliveries. However, it could be noted that the price differential between Zone 1 and Zone 2 do not differ for some tank sizes and service frequencies. For instance, a resident with 1000-gallon water and sewer tanks pays the same whether they live in Zone 1 or Zone 2.

## DRAFT MEMORANDUM

The projections for yearly O&M costs were calculated as follows:

Table 1: Projected Water and Sewer O&M Costs for Blue Sky Subdivision

Projected Yearly O&M Costs	Projected Yearly O&M Costs Per Parcel
\$449,869	\$5,998

Another influence on haul system costs is efficiency in delivery. Larger water and sewer tanks may take multiple truck loads to fill/empty them, and smaller tanks (100 or 200-gallon tanks) require multiple fill-ups per week. Since the subdivision application is under City review, the City could maximize City delivery efficiency by requiring developers use 1,000-gallon water and sewer tanks that typically require only weekly servicing and can be filled/emptied in one trip.

### Workload Considerations

In addition to increased O&M costs, adjustments to employment and workload may be necessary due to the increased demands for water and sewer haul services. The projected weekly workload increase was calculated as follows:

Table 2: Projected Additional Workload from Subdivisions

Weekly Time Commitment (Hrs)	Weekly Time Commitment Per Parcel (Hrs)
12.1	0.16

### Revenue

The proposed subdivision would result in additional City water and sewer revenue. For estimation purposes, the following were assumed:

- Each parcel will have a 1,000-gallon water tank and a 1,000-gallon sewer tank.
- Each parcel would be serviced once per week.

Following the City's published rate schedule and Zone differentiation, revenue is projected as follows:

Table 3: Projected Water and Sewer Revenue from Subdivisions

Projected Yearly Revenue	Projected Yearly Revenue Per Parcel
\$328,545	\$4,381

The projected revenue will be insufficient to cover projected O&M costs.

### Conclusion

The proposed subdivision build-out will take several years, but the City will need to prepare for the developments. To keep revenue and workload in-line with demand, the City will need to hire an addition 0.3 Full Time Equivalent (FTE) driver and continue increasing water and sewer rates 3% per year.

## Water & Sewer Haul Cost Estimates for Blue Sky Estate Subdivision

The proposed Blue Sky Estates Subdivision, consisting of 75 parcels, is to be located to the northeast of the Bethel Airport. The following is analysis to determine the impact of the proposed subdivision on the existing City of Bethel water and sewer haul system.

Parcels	75 parcels
Daily Water and Sewer Volume Per Parcel	83 gallon

*\*Based on 2013 Number of Hauled Residential Customers- 1,037 and Total Water Use for Hauled Customers of 31,057,646 gallons*

Estimated Yearly Volume Usage	2,272,125 gallon
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The additional costs to the City due to the construction of the Ciullkulek Subdivisions is calculated on a volume basis as follows . The per volume costs were derived from the *City of Bethel Water and Sewer Cost Allocation and Rate Study* conducted in 2013.

### O&M Cost Projections

#### O&M Costs, Volume Basis

Projected Yearly O&M Costs		
Service	\$/1,000	Yearly Cost
Water Haul Service	\$ 62.04	\$ 140,963
Sewer Haul Service	\$ 64.05	\$ 145,530
<b>Total Yearly O&amp;M Costs</b>		<b>\$ 286,492</b>

According to the *Bethel Water and Sewer Facilities Master Plan Update (2005)*, the most critical driver of cost for the haul system is haul distance. Therefore costs-per-mile is used as another analytic to determine O&M costs. An inherent inefficiency is associated with a "Cost on a Mileage Basis" basis because it assumes the haul tank volumes will perfectly coorespond with the discrete volume sizes of the residential tanks. For instance, a 5,000 gallon tank would take three trips of a 2,100 gallon tank to fill/empty, which results in a potential 1,300 gallons of underutilized tank space. Using the underutilized volume to service multiple houses in one trip decreases the underutilization. However, efficiency of the underutilized volume is difficult to quantify.

For these calculations, it is assumed the haul tanks have a 95% utilization efficiency. The efficiency is assumed to be relatively high because there are a high number of parcels being developed and in the area, which increases probability that multiple tanks will require servicing on a given day. The following is analysis on a mileage basis, using the per-mile costs from the *City of Bethel Water and Sewer Cost Allocation and Rate Study* conducted in 2013.

#### O&M Costs, Mileage Basis

Water/Sewer Haul Tank Capacity	2,100 gallons
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Trips Per Year	1082 trips
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Round Trip Length From Water Treatment Plant	7.9 miles
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Yearly Traveled Miles	8548 miles
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Haul Tank Volume Utilization Efficiency	95%
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Projected Yearly O&M Costs		
Service	\$/mile	Yearly Cost
Water Haul Service	\$ 23.00	\$ 206,940
Sewer Haul Service	\$ 27.00	\$ 242,929
Total Yearly O&M Costs		\$ <b>449,869</b>

Since this is a long haul distance, the mileage based costs estimate will be considered more accurate. Therefore, only the mileage basis costs calculation is considered.

Total Yearly O&M Costs	\$ <b>449,869</b>
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### Time Commitment Projections

A new subdivision will require drivers to work additional hours. The monetary cost of the time commitment is included in the previous cost calculations, but the time commitment must be determine for workload and employment considerations.

Projected Additional Driver Time Commitment		
Activity	Minutes Per Trip	Weekly Time Commitment (hrs)
Drive Time	25	8.7
Fill Time	10	3.5
Additional Weekly Time Commitment (hrs)		<b>12.1</b>

### Revenue Projections

A new subdivision will result in additional revenue generation by expanding the water and sewer haul service consumer base.

Projected Additional Yearly Water & Sewer Haul Revenue		
Service	\$/gallon	Yearly Revenue
Water Service	\$ 208.67	\$ 187,803
Sewer Service	\$ 156.38	\$ 140,742
Total Yearly Revenue		\$ <b>328,545</b>

\*Assuming 1,000 gallon tanks, filled/emptied once per week. The subdivision would be located in Zone 2.





To: Pete Williams, City Manager  
From: Betsy Jumper, Planner  
Subject: July Manager's Report  
Date: July 31, 2018

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- Had a Planning Commission meeting on the 12<sup>th</sup>.
- Went over the final planning budget.
- Flood plain properties research.
- Begin process of a minor re-plat in Larson Subdivision.
- Begin process of securing surveys for two COB properties.
- Begin process of procuring new truck.
- Residential site plan applications continue to come in regularly and get processed. This month includes: 2 residential site plans for infill; 2 new single family dwellings, 1 addition, and 1 commercial site plan application to install a 99' cell tower at AT&T to replace the obsolete 260' one that was felled. Received a conditional use permit application for alcohol.
- Met with City Manager, ONC Land Manager, and RPK Kinney and DOT to discuss the ONC Subdivision and transportation issues in a teleconference.
- Research of property owners.
- Met with the Bethel Friends of Canines folks to see about COB land that may be available to relocate the building that is currently in Tundra Ridge. A couple sites identified include the dog pound area, the old police annex, and the land where the COB Bus building is as well as the COB Hauled Utilities office that sits on 4<sup>th</sup> Ave. next to the old armory.
- Answer public's questions on miscellaneous topics.
- Research into City of Bethel property.

