

CITY OF BETHEL

City Council Meeting Agenda, September 12, 2023 – 6:30 PM

Website: <https://www.cityofbethel.org/council>

Location: Council Chambers, City Hall, 300 Chief Eddie Hoffman Highway, Bethel

Council Members: Mayor Rose Henderson, Vice-Mayor Henry Batchelor, Mark Springer, Eric Whitney, Beth Hessler, Sophie Swope, Patrick Snow

Zoom Meeting Link: <https://us06web.zoom.us/j/4888456188?pwd=bkN1dGI4MHpGZ1kwOUVYWU5kd0xhZz09>

Zoom Meeting ID: 488 845 6188

Zoom Meeting Passcode: 13871

Zoom Meeting Conference Line Numbers: 833 548 0276 US Toll-free

833 548 0282 US Toll-free

877 853 5257 US Toll-free

888 475 4499 US Toll-free



1. CALL TO ORDER

2. PLEDGE OF ALLEGIANCE

3. ROLL CALL

4. PEOPLE TO BE HEARD – FIVE MINUTES PER PERSON

4.1.



Written Public Comments can be submitted by opening your phone camera and hovering over this URL code. The link to the submission form will appear. You may also go to www.cityofbethel.org.

5. APPROVAL OF CONSENT AGENDA AND REGULAR AGENDA

6. APPROVAL OF MEETING MINUTES

6.1. *8-22-2023 Regular City Council Meeting

6.2. *8-29-2023 Special City Council Meeting

7. REPORTS OF STANDING COMMITTEES

7.1. Committee/Commission Agendas And Draft Meeting Minutes

8. SPECIAL ORDER OF BUSINESS

9. UNFINISHED BUSINESS

10. NEW BUSINESS

10.1. *Introduction Of Ordinance 23-03(d): Amending The City Of Bethel Fiscal Year 2024 Capital Improvement Plan (Interim City Manager Lanning)

10.2. *Introduction Of Ordinance 23-11(a): Amending The City Of Bethel Fiscal Year 2024 Operating Budget (Interim City Manager Lanning)

10.3. *AM 23-23 Pressure Filter Rehabilitation, Bethel Heights WTP And City Subdivision WTP Purchase Agreement (Interim City Manager Lanning)

Posted September 6, 2023 at AC Co., Swanson's, City Hall, and the Post Office.

Kevin Morgan, Deputy City Clerk

City Clerk's Office Contact Information: Email cityclerk@cityofbethel.net Phone 907-543-1384

Items noted with an asterisk (*) are consent agenda items, unless removed from the consent agenda they are approved upon the approval of the agenda. Ordinances introduced at this meeting may be set for public hearing at the next regular meeting.

The Council may by unanimous consent, after 12:00 AM Fix the Time to Which To Adjourn until the following day at 6:30 PM

- 10.4. *AM 23-24: Authorize The City Manager To Negotiate And Execute The Contract With Health Fitness For The Operations And Maintenance Of The YK Fitness Center (Interim City Manager Lanning)
- 10.5. *AM 23-25: Authorizing The City Manager To Negotiate And Execute An Amendment To The Bethel Friends Of Canines Contract For Additional Enforcement Services In The Community Related To Animal Control And Care (Interim City Manager Lanning)
- 10.6. *AM 23-26: Direct Administration To Negotiate And Execute A Contract To Purchase Bulk Fuel Services With The Company That Submitted A Proposal With The Highest Score (Interim City Manager Lanning)

11. REPORTS

- 11.1. Mayor's Report
- 11.2. City Manager's Report
- 11.3. Clerk's Report

12. COUNCIL MEMBER COMMENTS

13. EXECUTIVE SESSION

14. ADJOURNMENT

Posted September 6, 2023 at AC Co., Swanson's, City Hall, and the Post Office.

Kevin Morgan, Deputy City Clerk

City Clerk's Office Contact Information: Email cityclerk@cityofbethel.net Phone 907-543-1384

Items noted with an asterisk (*) are consent agenda items, unless removed from the consent agenda they are approved upon the approval of the agenda. Ordinances introduced at this meeting may be set for public hearing at the next regular meeting.

The Council may by unanimous consent, after 12:00 AM Fix the Time to Which To Adjourn until the following day at 6:30 PM

1. CALL TO ORDER

A Regular Meeting of the Bethel City Council was held on August 22, 2023 at 6:30 p.m., in the Council Chambers, Bethel, Alaska.

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

2. PLEDGE OF ALLEGIANCE

3. ROLL CALL

Comprising a quorum of the Council, the following members were present:
City Council Member Mark Springer (telephonically) City Council Member Eric Whitney City Council Member Sophie Swope City Council Member Patrick Snow Vice-Mayor Henry Batchelor Mayor Rose Henderson City Council Member Beth Hessler (telephonically)
Members Absent:
Also in attendance were the following:
Interim City Manager Lanning, City Clerk Lori Strickler, City Attorney Libby Bakalar (telephonically)

4. PEOPLE TO BE HEARD – Five minutes per person

No one present to be heard.

Item 4.1. - Written Public Comments

No Written Comments Submitted.

5. APPROVAL OF CONSENT AGENDA AND REGULAR AGENDA

Main Motion: Approval of the Consent and Regular Agenda.

Moved by: | Eric Whitney

Seconded by: | Patrick Snow

Remove Item 10.3 AM 23-21 Council Member Springer.

Remove Item 10.2 AM 23-20 Council Member Whitney.

In favor: | Henry Batchelor, Sophie Swope, Patrick Snow, Beth Hessler, Mark Springer, Rose

	Henderson, Eric Whitney
Opposed:	None
Results:	Motion Carries

6. APPROVAL OF MEETING MINUTES

Item 6.1. - *8-08-2023 Regular City Council Meeting Minutes
Passed on the consent agenda.

7. REPORTS OF STANDING COMMITTEES

Item 7.1. - Committee/Commission Agendas And Draft Meeting Minutes
Port Commission, Council Member Hessler- A meeting was not held due to lack of public posting.

Planning Commission, Council Member Swope- The Commission discussed the ordinance referred by the council to consider disposal of land to AVCP from the City.

Community Action Grant Committee, Vice-Mayor Batchelor- A meeting has not been held or scheduled.

Community Parks and Recreation Committee, Council Member Whitney- The Committee discussed issues related to the expenses of the YK Fitness Center. The committee is hoping to modify the contract to transition to a city-operated facility. Looking to get an update on the construction of the park equipment.

Finance Committee, Council Member Henderson- A meeting is scheduled for August 28th.

Public Works Committee, Council Member Springer- A meeting was not held because the body doesn't have enough members to hold a meeting.

Public Safety and Transportation Commission, Council Member Snow- A meeting has not been held since the last city council meeting due to lack of quorum.

8. SPECIAL ORDER OF BUSINESS

9. UNFINISHED BUSINESS

10. NEW BUSINESS

Item 10.1. - AM 23-19 City Of Bethel Organizational Goals And Priorities Meeting

Coordination (Council Member Hessler)

Main Motion: Approve AM 23-19.

Moved by: Beth Hessler
Seconded by: Eric Whitney
In favor: Patrick Snow, Beth Hessler
Opposed: Henry Batchelor, Sophie Swope, Mark Springer, Rose Henderson, Eric Whitney
Results: Motion Fails

Item 10.2. - *AM 23-20 Negotiate And Execute Contract For Track Carrier Purchase (Interim City Manager Lanning)

Main Motion: Approve AM 23-20.

Moved by: Eric Whitney
Seconded by: Patrick Snow
In favor: Henry Batchelor, Sophie Swope, Patrick Snow, Beth Hessler, Mark Springer, Rose Henderson, Eric Whitney
Opposed: None
Results: Motion Carries

Item 10.3. - *AM 23-21 Negotiate And Execute Contract For Chemical Purchase (Interim City Manager Lanning)

Main Motion: Approve AM 23-21.

Moved by: Mark Springer
Seconded by: Patrick Snow
In favor: Henry Batchelor, Sophie Swope, Patrick Snow, Beth Hessler, Mark Springer, Rose Henderson, Eric Whitney
Opposed: None
Results: Motion Carries

Item 10.4. - *AM 23-22 Accepting The Resignation Of Boyd Blihovde, Board Of Ethics (Mayor Henderson)

Passed on the consent agenda.

Item 10.5. - *IM 23-13 RUBA July 2023 (Interim City Manager Lanning)

Passed on the consent agenda.

11. REPORTS

Item 11.1. - Mayor's Report

Item 11.2. - City Manager's Report

Item 11.3. - Clerk's Report

12. COUNCIL MEMBER COMMENTS

Mayor Henderson- Thanked the City staff and the Tundra Center Team for their work at the cemeteries. Thanked the first responders. Excited to see eight people certified as candidates for the October election.

Vice-Mayor Batchelor- No comment.

Council Member Springer- Believed the City should be working towards expanding the YK Fitness Center. Appreciated the work on the roads and the use of the EK-35. Fall is here, be careful boating.

Council Member Whitney- Looking forward to seeing the Marooka.

Council Member Hessler- Encouraged people to have a good evening.

Council Member Swope- Be safe and be good to each other.

Council Member Snow- Encouraged people to get out and enjoy the season.

13. EXECUTIVE SESSION

14. ADJOURNMENT

Main Motion: Adjournment.

Moved by:	Sophie Swope
Seconded by:	Henry Batchelor
In favor:	Henry Batchelor, Sophie Swope, Patrick Snow, Beth Hessler, Mark Springer, Rose Henderson, Eric Whitney
Opposed:	None
Results:	Motion Carries

Meeting ended at 7:33p p.m.

Rose Henderson, Mayor

ATTEST:

Lori Strickler, City Clerk

1. CALL TO ORDER

A Special Meeting of the Bethel City Council was held on August 29, 2023 at 6:00 p.m., in the Council Chambers, Bethel, Alaska.

Mayor Henderson called the meeting to order at 6:01 p.m.

2. PLEDGE OF ALLEGIANCE

3. ROLL CALL

Comprising a quorum of the Council, the following members were present:
City Council Member Mark Springer (telephonically) Mayor Rose Henderson City Council Member Eric Whitney (Arrived after roll call at 6:35 p.m.) City Council Member Beth Hessler Vice-Mayor Henry Batchelor City Council Member Patrick Snow City Council Member Sophie Swope
Members Absent:
Also in attendance were the following:
Interim City Manager Lanning, City Clerk Lori Strickler (telephonically), City Attorney Libby Bakalar (telephonically), Deputy City Clerk Kevin Morgan

4. PEOPLE TO BE HEARD – Five minutes per person

No one present to be heard.

5. APPROVAL OF AGENDA

Main Motion: Approval of the Agenda.

Moved by:	Henry Batchelor
Seconded by:	Sophie Swope
In favor:	Henry Batchelor, Sophie Swope, Patrick Snow, Beth Hessler, Mark Springer, Rose Henderson
Opposed:	None
Results:	Motion Carries

Primary Amendment: Remove Executive Session Item 8.2 from the meeting.

Moved by:	Sophie Swope
Seconded by:	Henry Batchelor
In favor:	Henry Batchelor, Sophie Swope, Patrick Snow, Beth Hessler, Mark Springer, Rose Henderson

Opposed: | None
Results: | Motion Carries

6. UNFINISHED BUSINESS

7. NEW BUSINESS

Item 7.1. - Presentation Of City Manager Candidate Finalists From GovHR, And Determination Of Next Rounds of Candidate Considerations (Mayor Henderson)

Sarah McKee from GovHR addressed the council.

8. EXECUTIVE SESSION

Item 8.1. - In Accordance With AS 44.62.310(c)(2) Subjects That Tend To Prejudice The Reputation And Character Of Any Person- City Manager Review and Employment Agreement Development (Note, All City Manager Candidates May be Discussed During the Executive Session) (Mayor Henderson)

Main Motion: Move into Executive Session In Accordance With AS 44.62.310(c)(2) Subjects That Tend To Prejudice The Reputation And Character Of Any Person- City Manager Review and Employment Agreement Development (Note, All City Manager Candidates May be Discussed During the Executive Session) Those attending were the City Council, City Clerk, City Attorney, Interim City Manager, Deputy Clerk, and Sarah McKee from GovHR.

Moved by: | Mark Springer
Seconded by: | Sophie Swope
In favor: | Henry Batchelor, Sophie Swope, Patrick Snow, Beth Hessler, Mark Springer, Rose Henderson
Opposed: | None
Results: | Motion Carries

Council Moved into Executive Session at 6:11 p.m.

Council Member Whitney arrived at 6:35 p.m.

Council Moved out of Executive Session at 7:44 p.m

Council recommended 3 candidates to GovHR for the next round of candidate considerations.

Item 8.2. - In Accordance With AS 44.62.310(c)(1) Matters, The Immediate Knowledge Of Which Would Clearly Have An Adverse Effect Upon The Finances Of The Public Entity- Employment Terms For Executive Level Team Members and AS 44.62.310(c)(2) Subjects That Tend To Prejudice The Reputation And Character Of Any Person- Finance Director Candidate Review and Employment Agreement

Development (Note, All Finance Director Candidates May be Discussed During the Executive Session) (Interim City Manager Lanning)

This item was removed from the agenda.

9. ADJOURNMENT

Main Motion: Adjournment.

Moved by:	Mark Springer
Seconded by:	Sophie Swope
In favor:	Henry Batchelor, Sophie Swope, Patrick Snow, Beth Hessler, Mark Springer, Rose Henderson, Eric Whitney
Opposed:	None
Results:	Motion Carries

Meeting ended at 7:46 p.m.

Rose Henderson, Mayor

ATTEST:

Lori Strickler, City Clerk



CITY OF BETHEL

FINANCE COMMITTEE

MONDAY, AUGUST 28, 2023, 6:30 PM

LOCATION: 300 CHIEF EDDIE HOFFMAN HIGHWAY, BETHEL, ALASKA

ZOOM MEETING LINK <https://us06web.zoom.us/j/87274519480?pwd=WUTESNPDYVC3NKVYUHZZNDJKOVLAQT09>

ZOOM MEETING ID: 872 7451 9480 PASSCODE: 060155

877 853 5257 US TOLL-FREE

888 475 4499 US TOLL-FREE

MEMBERS

John Hamilton, Chair
Robert Rey, Vice Chair
Farah Sears
Carol Ann Willard
Rose Henderson, Council Rep.
Vacancies (4)

STAFF

Brent Hartzell, Ex Officio Member
Alexandra Batchelor, Ex Officio Member
abatchelor@cityofbethel.net
907-543-1381

I. CALL TO ORDER

II. ROLL CALL

III. PEOPLE TO BE HEARD – FIVE MINUTES PER PERSON

- A. Please submit written public comments to finance@cityofbethel.net by 4:00 p.m. the day of the meeting.

IV. APPROVAL OF AGENDA

- A. 08/28/2023

V. APPROVAL OF MEETING MINUTES

- A. 03/27/2023
- B. 04/24/2023
- C. 05/22/2023
- D. 06/26/2023
- E. 07/26/2023

VI. UNFINISHED BUSINESS

VII. NEW BUSINESS

- A. Discuss adding deadline dates for Transient Lodging B.M.C. 04.14.050 (Brent Hartzell)
- B. Discuss proposed changes to B.M.C. 13.04.120 (Brent Hartzell)
- C. Discuss updating B.M.C. 4.17.020 Excise Tax on Tobacco. (Brent Hartzell)

VIII. EX OFFICIO REPORT

- A. July Report

IX. MEMBER COMMENTS

X. ADJOURNMENT

Posted 08/23/2023 at City Hall, AC Co., Swanson's, and the Post Office.

Alexandra Batchelor, Ex-Officio Staff



CITY OF BETHEL

COMMUNITY PARKS AND RECREATION COMMITTEE

MONDAY, AUGUST 14, 2023, 6:00 PM

LOCATION: 300 CHIEF EDDIE HOFFMAN HIGHWAY, BETHEL, ALASKA

JOIN ZOOM MEETING: <https://us06web.zoom.us/j/89727002271?pwd=VjJWYWFWNWUZEjZGSAU8OUVZCYWVXQT09>

MEETING ID: 897 2700 2271

PASSCODE: 924366

PHONE NUMBERS: 888 475 4499 US TOLL-FREE 833 548 0276 US TOLL-FREE

833 548 0282 US TOLL-FREE 877 853 5257 US TOLL-FREE

MEMBERS

Brian Lefferts, Chair	Beverly Hoffman, Vice-Chair
Eric Whitney, Council Rep	Kathy Hanson
Brian Jackson	Jessica Pew
Michelle DeWitt	Sean Glasheen, Alternate 1
Alternate 2-Vacant	

STAFF

Ex-Officos: Jason Spann, Facility Maint. Foreman
Anna Larson, Administrative Assistant
Email: pwadmin@cityofbethel.net Phone: 907-543-3110

I. CALL TO ORDER

II. ROLL CALL

III. PEOPLE TO BE HEARD – FIVE MINUTES PER PERSON

- A. Please submit written public comments to pwadmin@cityofbethel.net by 4:00 p.m. the day of the meeting.

IV. APPROVAL OF AGENDA

V. APPROVAL OF MEETING MINUTES

VI. UNFINISHED BUSINESS

- A. Request for Proposal Released-YK Fitness Center Operations and Recreational Services
- B. YK Fitness Center Operational Budget Change from Enterprise Fund to General Fund (Lefferts)
- C. YK Fitness Center Review Of Fiscal Year Operational Budget's Expenditures, Revenues, Transfers (Lefferts)
- FY22 and FY23 DOWL Expense Report for YK Fitness Center
- FY22 and FY23 Heating Fuel Expenses for YK Fitness Center
- D. Recommending the City Council Reduce Reliance on Contract Support to Operate the YK Fitness Center (Lefferts)
- E. Update From HealthFit On The Pay What You Can Program Role Out (Lefferts)
- F. Healthy & Equitable Communities Grant- City's Grant Award \$190,000 (City Manager Williams)
- G. Legislative Grant Award in the Amount of \$500,000 for the Design of YK Fitness Center Phase II (Lefferts)
- H. Kilbuck Site for Park Land and Blue Sky Subdivision

Posted August 8, 2023 at City Hall, AC Co., Swanson's, and the Post Office.

Anna Larson, Ex-Officio Staff

- I. 2023 Harbor Park Sign Design Contest - Narrowed Down Design Selection

VII. NEW BUSINESS

VIII. EX OFFICIO REPORT

- A. Community Parks and Recreation Committee Attendance Log
- B. Health Fitness Report

IX. MEMBER COMMENTS

X. ADJOURNMENT

Posted August 8, 2023 at City Hall, AC Co., Swanson's, and the Post Office.

Anna Larson, Ex-Officio Staff

City of Bethel, Alaska

Planning Commission

August 10, 2023

Regular Meeting

Bethel, Alaska

I. CALL TO ORDER:

A regular meeting of the Planning Commission was held virtually via Zoom and in person at the City Hall Council Chambers in Bethel, Alaska on August 10, 2023. The 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, Alex Wasierski, Greg Morgan and Council Rep. Sophie Swope

Excused absence: Shadi Rabi Unexcused absence: Stosh Hoffman, Haley Hanson, Lorin Bradbury

Also Present: Pauline Boratko, Recorder; LaQuita Chmielowski, DOWL; Libby Bakalar, City Attorney

III. PEOPLE TO BE HEARD:

IV. APPROVAL OF THE AGENDA:

MOVED:	Sophie Swope	Motion to approve the agenda.
SECONDED:	Greg Morgan	
VOTE ON MOTION	Unanimous	

V. APPROVAL OF THE MINUTES:

MOVED:	Sophie Swope	Motion to approve regular meeting minutes for July 13, 2023
SECONDED:	Greg Morgan	
VOTE ON MOTION	Unanimous	

VI. SPECIAL ORDER OF BUSINESS

VII. UNFINISHED BUSINESS:

A. Ordinance review of disposal of property of 161 Atsaq, Block 2, Tract D, Turnkey III to AVCP: Tabled until September meeting for further details.

VIII. NEW BUSINESS:

IX. PLANNER'S REPORT:

X. COMMISSIONER'S COMMENTS:

K.Hanson- no comment.

A. Wasierski-no comment.

S. Swope- Thank you Kathy.

G. Morgan-no comment.

X. ADJOURNMENT:

MOVED:	Sophie Swope	Motion to adjourn the meeting.
SECONDED:	Greg Morgan	
VOTE ON MOTION	Unanimous	

With no further business the meeting adjourned 6:51 pm

APPROVED THIS ____ DAY OF _____, 2023

Kathy Hanson, Chair

ATTEST: Pauline Boratko, Recorder

DRAFT



CITY OF BETHEL

PUBLIC SAFETY AND TRANSPORTATION COMMISSION

WEDNESDAY, SEPTEMBER 6, 2023, 6:30 PM

LOCATION: COUNCIL CHAMBERS-CITY HALL, 300 STATE HWY

JOIN ZOOM MEETING

[HTTPS://US06WEB.ZOOM.US/J/88274684692?PWD=Z3N4VFJ4T24ZSFCWM0MRSXPAA3LZUT09](https://us06web.zoom.us/j/88274684692?pwd=Z3N4VFJ4T24ZSFCWM0MRSXPAA3LZUT09)

MEETING ID: 882 7468 4692

PASSCODE: 773554

• 833 548 0276 US TOLL-FREE

• 833 548 0282 US TOLL-FREE

• 877 853 5257 US TOLL-FREE

• 888 475 4499 US TOLL-FREE

MEMBERS

Theresa Quiner *Chair*

Melanie Fredericks

Patrick Snow *Council Representative*

Megan Newport *Vice-Chair*

DeShan Foret

Farah Sears

Musa Saliu

STAFF

Peter Hicks, Ex Officio Member

Daron Solesbee, Ex Officio Member

Damon Oscar, Ex Officio Member

fire@cityofbethel.net

907-543-2131

I. CALL TO ORDER

II. ROLL CALL

III. PEOPLE TO BE HEARD – FIVE MINUTES PER PERSON

- A. Please submit written public comments to bfdadmin@cityofbethel.net by 4:00 p.m. the day of the meeting.

IV. APPROVAL OF AGENDA

V. APPROVAL OF MEETING MINUTES

VI. UNFINISHED BUSINESS

- A. Implement of Ordinance Pertaining to Misuse of Emergency Services (Johnathan Smith BPD)
- B. Discussion for BPD recruitment, retention, hiring, longevity bonuses, housing and travel (Chief Hicks)

VII. NEW BUSINESS

- A. Ordinance on Misuse of 911 (Chief Hicks)
- B. Explanation on how the police department is responding to the increased accidents related to alcohol. (Theresa Quiner)
- C. Update on the fires. (Theresa Quiner)
- D. Updates on the personnel from both Police and Fire departments. (Theresa Quiner)
- E. Bethel Friends of Canines contract amendment. (Theresa Quiner)

Posted 09/01/2023, at Fire Department, AC Co., Swanson's, and the Post Office, City Hall at City Hall, AC Co., Swanson's, and the Post Office.

Name, Ex-Officio Staff

F. Update on the school resource officer. (Theresa Quiner)

G. Declaring seats vacant according to BMC 2.60.030(F)1.b and d (Theresa Quiner)

VIII. EX OFFICIO REPORT

A. Bethel Dog Pound Concept Memo 022323

IX. MEMBER COMMENTS

X. ADJOURNMENT

Posted 09/012023, at Fire Department, AC Co., Swanson's, and the Post Office, City Hall at City Hall, AC Co., Swanson's, and the Post Office.

Name, Ex-Officio Staff



CITY OF BETHEL

COMMUNITY PARKS AND RECREATION COMMITTEE

MONDAY, SEPTEMBER 11, 2023, 6:00 PM

LOCATION: 300 CHIEF EDDIE HOFFMAN HIGHWAY, BETHEL, ALASKA

JOIN ZOOM MEETING: <https://us06web.zoom.us/j/89727002271?pwd=BVJWYWFWNWUZEgFSAU80UVZCYWVXQT09>

MEETING ID: 897 2700 2271

PASSCODE: 924366

PHONE NUMBERS: 888 475 4499 US TOLL-FREE

833 548 0276 US TOLL-FREE

833 548 0282 US TOLL-FREE

877 853 5257 US TOLL-FREE

MEMBERS

Brian Lefferts, Chair

Beverly Hoffman,

Vice-Chair

Eric Whitney, Council Rep

Kathy Hanson

Brian Jackson

Jessica Pew

Michelle DeWitt

Sean Glasheen,

Alternate 1

Alternate 2-Vacant

STAFF

Ex-Officios: Jason Spann, Facility Maint. Foreman Salina Tom,
Administrative Assistant

Email: pwadmin@cityofbethel.net Phone: 907-543-3110

I. CALL TO ORDER

II. ROLL CALL

III. PEOPLE TO BE HEARD – FIVE MINUTES PER PERSON

- A. Please submit written public comments to pwadmin@cityofbethel.net by 4:00 p.m. the day of the meeting.

IV. APPROVAL OF AGENDA

V. APPROVAL OF MEETING MINUTES

- A. August 14, 2023 Meeting Minutes

VI. UNFINISHED BUSINESS

- A. Request for Proposal Released-YK Fitness Center Operations and Recreational Services
- B. YK Fitness Center Operational Budget Change from Enterprise Fund to General Fund (Lefferts)
- C. YK Fitness Center Review Of Fiscal Year Operational Budget's Expenditures, Revenues, Transfers (Lefferts)
- D. FY22 and FY23 DOWL Expense Report for YK Fitness Center
- E. FY22 and FY23 Heating Fuel Expenses for YK Fitness Center
- F. Recommending the City Council Reduce Reliance on Contract Support to Operate the YK Fitness Center (Lefferts)
- G. Update From HealthFit On The Pay What You Can Program Role Out (Lefferts)
- H. Healthy & Equitable Communities Grant- City's Grant Award \$190,000 (City Manager Williams)

Posted September 6, 2023 at City Hall, AC Co., Swanson's, and the Post Office.

Name, Ex-Officio Staff

- I. Legislative Grant Award in the Amount of \$500,000 for the Design of YK Fitness Center Phase II (Lefferts)
- J. Kilbuck Site for Park Land and Blue Sky Subdivision

VII. NEW BUSINESS

- A. YK Fitness Center Maintenance Issue

VIII. EX OFFICIO REPORT

- A. Reports

IX. MEMBER COMMENTS

X. ADJOURNMENT

Posted September 6, 2023 at City Hall, AC Co., Swanson's, and the Post Office.

Name, Ex-Officio Staff

City of Bethel, Alaska

Community Parks and Recreation Committee Minutes

August 14, 2023

Regular Meeting

Bethel, Alaska

I. CALL TO ORDER:

A regular Community Parks and Recreation Committee Meeting was held on August 14, 2023. Brian Lefferts called the meeting to order at 6:04pm.

II. ROLL CALL:

Comprising a quorum of the committee, the following were present for Roll Call: Brian Lefferts, Kathy Hanson, Brian Jackson, Eric Whitney (arrived at 6:09 P.M.), Michelle Dewitt, Sean Glasheen

Absent: Beverly Hoffman excused; Jessica Pew unexcused

III. PEOPLE TO BE HEARD:

IV. APPROVAL OF AGENDA:

MOVED BY:	Kathy Hanson	Motion to approve Agenda.
SECONDED BY:	Brian Jackson	
VOTE ON MOTION	Motion carried by unanimous vote.	

V. APPROVAL OF MINUTES:

A. July 10, 2023 Meeting Minutes

VI. UNFINISHED BUSINESS:

A. Request for Proposal Released-YK Fitness Center Operations and Recreational Services

B. YK Fitness Center Operational Budget Change from Enterprise Fund to General Fund

C. YK Fitness Center Review Of Fiscal Year Operational Budget's Expenditures, Revenues, Transfers.

The Committee requested fuel tickets reflecting the charges to the YK Fitness Center in July 2021,2022, September 2021,2022 November 2021,2022.

D. Update From Health Fit On The Pay What You Can Program Role Out

E. Healthy & Equitable Communities Grant- City's Grant Award \$190,000

F. Legislative Grant Award in the Amount of \$500,000 for the Design of YK Fitness Center Phase II

The Committee requested a follow up email from administration on this item.

G. Kilbuck Site for Park Land and Blue-Sky Subdivision

H. 2023 Harbor Park Sign Design Contest - Narrowed Down Design Selection

VII. NEW BUSINESS:

VIII. EX OFFICIO MEMBER REPORT:

A. Community Parks and Recreation Committee Attendance Log

B. Health Fitness Report

IX. COMMITTEE MEMBER COMMENTS:

Brian Lefferts: Hoped to get membership at the YK Fitness Center up.

Kathy Hanson: No comment.

Brian Jackson: Stated intent to encourage people to buy the YK Fitness Center memberships.

Eric Whitney: Shared that he enjoyed his time at the Fitness Center this morning.

Michelle DeWitt: Drew attention to the organizational restructuring within the City.

Sean Glasheen: Thanked Stacey Reardon.

X. ADJOURNMENT:

MOVED BY:	Kathy Hanson	Motion to adjourn.
SECONDED BY:	Brain Jackson	
VOTE ON MOTION	Motion carried by unanimous vote.	

With no further business, meeting adjourned at 7:25PM.

APPROVED THIS _____ DAY OF _____, 2023.

Brian Lefferts
Committee Chair

Frank Bayer
Recorder of Minutes

Introduced by: Interim City Manager Lanning
Introduction Date: September 12, 2023
Public Hearing Date: September 26, 2023
Action:
Vote:

CITY OF BETHEL, ALASKA

Ordinance 23-03 (d)

AN ORDINANCE AMENDING THE CITY OF BETHEL FISCAL YEAR 2024 CAPITAL IMPROVEMENT PLAN

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

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

SECTION 2. Fiscal Year Budget Amendments. The following estimated revenues and expenditures are hereby appropriated for the corporate purposes and objects of the City of Bethel Fiscal Year 2024 Capital Improvement Plan and Fiscal Year 2024 Operating Budget.

Whereas, the City was granted \$2,931,965 through the American Rescue Plan Act (ARPA), the Capital expenditures have been approved to fund a Chemical Building in the amount of \$1,500,000 and the Rehabilitation of Filters for the City Subdivision, and Bethel Heights Water Treatment Plant for \$500,000 each, totaling of \$2.5 Million allocated and \$431,965 remaining undesignated in the grant appropriations;

Whereas, the quote for the Rehabilitation Filters requires an increase of \$100,000 for the capital project, the funds will be transferred from the Cash in Combined Funds designated holding account for the ARPA funds;

D-1 American Rescue Plan Act (ARPA)				
Line Item	Description	Approved Appropriations	Proposed Amendment	Proposed Total Appropriations
660-70-6892	Capital Expenditures-ARPA	\$1,000,000	\$100,000	\$1,100,000
	Bethel Heights Water Treatment Plant			
	City Subdivision Water Treatment Plant			
660-10-100	American Rescue Plan Act Grant	431,965	(\$100,000)	\$331,965

Introduced by: Interim City Manager Lanning
Introduction Date: September 12, 2023
Public Hearing Date: September 26, 2023
Action:
Vote:

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

ENACTED THIS 26TH DAY OF SEPTEMBER 2023 BY A VOTE OF _ IN FAVOR AND _ OPPOSED.

Rose Henderson, Mayor

ATTEST:

Lori Strickler, City Clerk

Introduced by: Alan Lanning, Interim City Manager
Introduction Date: September 12, 2023
Public Hearing Date: September 26, 2023
Action:
Vote:

CITY OF BETHEL, ALASKA

Ordinance 23-11 (a)

AN ORDINANCE AMENDING THE CITY OF BETHEL FISCAL YEAR 2024 OPERATING BUDGET

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

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

SECTION 2. Fiscal Year Budget Amendments. The following estimated revenues and expenditures are hereby appropriated for the corporate purposes and objects of the City of Bethel for Fiscal Year 2024.

WHEREAS, the City is responsible for complying with the State of Alaska Public Records Act (AS 10.25.100-40.25.295) which states generally, a person may request a public agency's public records, and the agency must disclose the requested record unless they are protected from disclosure;

WHEREAS, the city's social media posts and the public's comments and messages (amended and deleted) on the City's social media accounts fall under this public record disclosure requirement;

WHEREAS, after an audit and reevaluation of the current archival services, it was determined the current provider does not meet the performance standards required by the City Clerk's Office, the requested additional funds will be used to amplify the City's archival ability, maximizing our search and retrieval processes to help ensure the City is able to effectively respond to public records requests;

A-1 City Clerk				
Line Item	Description	Approved Appropriations	Proposed Amendment	Proposed Total Appropriations
100-52-6335	Other Purchased Svs.	\$23,800	\$5,500	\$29,300
100-10100	Cash in Combined Funds	\$8,352,397	(\$5,500)	\$8,346,897

Introduced by: Alan Lanning, Interim City Manager
Introduction Date: September 12, 2023
Public Hearing Date: September 26, 2023
Action:
Vote:

WHEREAS, the City of Bethel entered into an agreement with community partner, Bethel Friends of Canines, in April of 2023, which stipulates, the City's payment of \$85,000 annually through June 30, 2024, in exchange, Bethel Friends of Canines agreed to: manage and operate the animal shelter; provide care and impoundment of animals; provide redemption, adoption, and disposition services; promote education on care and treatment of animals; enforce animal control ordinances; collect fees and keep associated animal control records;

WHEREAS, IM 23-09, presented to the Council during the FY24 budget amendment special meetings, outlined two possible amendments to the City's agreement for additional services that could be performed by Bethel Friends of Canines for additional fees, although discussed, an amendment to the city's operating budget was never presented for consideration;

WHEREAS, the proposed \$30,000 increase to the annual budgetary expense listed in A-2, is associated with an amendment to the agreement (presented through AM 23-xx) increasing the City's fees for the partnership to \$115,000 and include the following additional services:

- Agents of the Contractor are hereby deputized by the Bethel Police Department as volunteer animal control officers to write citations.
- All dogs released from the shelter will be verified for rabies vaccination or vaccinated by Contractor before release.
- Between the hours of 8:00 a.m. to 7:00 p.m. on Monday through Friday and 12:00 p.m. to 7:00 p.m. on Saturday and Sunday, Contractor will respond to calls to pick up owner surrenders and stray dogs.
- Contractor will respond to and aid the Bethel Police Department in picking up animals related to arrests or other enforcement actions conducted by law enforcement.

A-2 Community Services				
Line Item	Description	Approved Appropriations	Proposed Amendment	Proposed Total Appropriations
100-72-6171	Bethel Friends of Canines	\$85,000	\$30,000	\$115,000
100-10100	Cash in Combined Funds	\$8,346,897	(\$30,000)	\$8,316,897

Introduced by: Alan Lanning, Interim City Manager
Introduction Date: September 12, 2023
Public Hearing Date: September 26, 2023
Action:
Vote:

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

ENACTED THIS 26th DAY OF SEPTEMBER 2023 BY A VOTE OF ___ IN FAVOR AND ___ OPPOSED.

Rose Henderson, Mayor

ATTEST:

Lori Strickler, City Clerk

CITY OF BETHEL ALASKA
CONTRACT NO. _____
ANIMAL SHELTER SERVICES

THIS CONTRACT is made and executed by and between the City of Bethel, 300 State Highway, P.O. Box 1388, Bethel, AK 99559 ("the City" or "City of Bethel"), and the Bethel Friends of Canines, PO Box 3167, Bethel, AK 99559 ("the Contractor").

ARTICLE I

For and in consideration of the terms, covenants, conditions, and provisions contained herein, it is mutually agreed between the parties as follows:

1. Agreement to Perform. The Contractor agrees to perform, complete, provide, and furnish in a timely manner all work, services, labor, and materials required to accomplish the work described in Article II of this contract at the times, and in the manner, and for the consideration hereinafter set forth.

2. Term of Contract. This Contract will be effective from July 1, 2022, and continue in force until June 30, 2024, except that, in addition to the termination provisions in Section 6 (Insurance), it may be terminated by either party upon thirty (30) days written notification to the other. This Contract may also be amended at any time during the term by written agreement of the parties.

3. Independent Contractor. The parties expressly agree that the Contractor shall be and is an independent contractor and is not an employee or agent of the City for any purpose, and the employees of the Contractor are not entitled to any of the benefits the City provides for the City's employees, including but not limited to, health insurance, life insurance, disability insurance, sick or annual leave, or workers' compensation. The City is interested only in the results to be achieved, and the contract and control of the work will lie solely with the Contractor. It is understood that the City agrees to use the Contractor exclusively for management and operation of the animal shelter.

4. Contractor Authority. The Contractor is hereby authorized to receive domestic animals coming into its custody (i.e., impounded, quarantined, owner-surrendered), to safely place such animals that come into the animal shelter, and to manage and enforce the animal regulations for all impounded animals pursuant to all ordinances now in effect, or which may later be enacted. The Contractor shall accept all animals that can be safely maintained and cared for within the shelter facility provided by the City. If an animal cannot be safely maintained, the Contractor will immediately notify the Chief of Police, or their designee by calling the 24-hour police dispatch line at (907) 543-3781.

5. Contractor Qualified and Responsible for Personnel. (a) The Contractor represents it has, or will secure at its own expense, all personnel required to perform this Contract in a timely and proper manner. Such personnel shall not be employees or have any contractual relationship with the City, and the City shall have no responsibility or liability whatsoever to any such persons, or for the acts or omissions of any such persons.

(b) All of the services required under this Contract shall be performed by the Contractor or under its supervision.

(c) None of the work or services covered by this Contract shall be subcontracted without prior written approval of the City.

6. Insurance/Indemnification. (a) Public Liability Insurance. The Contractor shall maintain Public Liability Insurance with a minimum of \$1,000,000 per occurrence and/or aggregate combined single limit, personal injury, bodily injury, and property damage.

(b) Additional Insured. The following shall be listed as Additional Insureds: "The City of Bethel, including all elected and appointed officials, all employees and City volunteers, all boards, commissions and/or authorities and their board members, employees, and volunteers. This coverage shall be primary to the City of Bethel and not contributing with any other insurance or similar protection available to the City of Bethel, whether other available coverage be primary, contributing, or excess."

(c) Indemnification. To the fullest extent permitted by law, Contractor agrees to defend, indemnify, and hold harmless the City of Bethel, its elected and appointed officials, employees, and volunteers against any and all liabilities, claims, demands, lawsuits, or losses, including costs and attorney fees incurred in defense thereof, arising out of or in any way connected or associated with this contract.

(d) Notice of Cancellation Required. Fourteen (14) days Notice of Cancellation or Change, Non-Renewal, Reduction and/or Materials Change shall be sent to: Police Chief, POB 809, 157 Salmonberry Rd, Bethel AK 99559 and emailed to "police@cityofbethel.net".

(e) Evidence of Coverage Required. Contractor shall provide to the City of Bethel at the time that the Contract is presented to the City for execution, certificates of insurance and/or policies acceptable to the City of Bethel as listed below:

One (1) copy of Certificate of Public Liability Insurance Workers' Compensation Insurance

One (1) copy of Certificate of Public Liability Insurance

(f) Continuation of Coverage. If the above coverage expires during the term of this Contract, Contractor shall deliver renewal certificates and/or policies to the City of Bethel at least fourteen (14) days prior to the expiration date. Contractor shall not commence performance under this Contract until it has obtained the coverage required under the terms of this Contract. All coverage shall be with insurance carriers licensed and admitted to do business in the State of Alaska. All coverage shall be with carriers acceptable to the City of Bethel. If Contractor fails to comply with the insurance requirements of this Contract, the City of Bethel may terminate the Contract on fourteen (14) days written notice. Contractor covenants to maintain all insurance policies required in this Contract for the period of time in which a person may commence a civil action as prescribed by the applicable statute of limitations. The coverage required by this Contract shall cover all claims arising in connection with Contractor's use under this Contract, whether or not asserted during the term of this Contract and even though judicial proceedings may not be commenced until after this Contract expires.

(g) Workers' Compensation Insurance. The Contractor shall provide and maintain, for all employees of the Contractor engaged in work under this Contract, Workers' Compensation Insurance as required by AS 23.30.045 or any other applicable statutes or regulations. The Contractor shall be responsible for Workers' Compensation Insurance for any subcontractor who directly or indirectly provides services under this Contract.

7. Assignment or Delegation. The Contractor may not assign its rights or delegate its duties under this Contract, or any part of it, except with the prior written consent of the City.

8. Governing Law. This Contract shall be governed by the laws of the State of Alaska and any suit or legal action hereon shall be brought only in the courts of said State, in the Fourth Judicial District at Bethel, Alaska.

9. Miscellaneous. (a) Relationship of Parties. Nothing herein contained shall be deemed or construed by the parties hereto, nor by any third party, as creating the relationship of principal and agent or of partnership or of joint venture between the parties. It being understood and agreed that neither method of computation of payment or any other provision contained herein, nor any act of the parties, shall be deemed to create any relationship between the parties other than the relationship of the City and an independent contractor.

(b) Nonwaiver. The failure of the City to insist in any one or more instances upon the strict performance by the Contractor of any provision or covenant in this Contract may not be considered as a waiver or relinquishment for the future, but the provision or covenant will continue in full force. The

waiver by the City of any provision or covenant in this Contract cannot be enforced or relied upon unless the waiver is in writing signed on behalf of the City by the City Manager or the City Manager's designee.

(c) **Improvements.** The Contractor shall make no alterations or additions to the Animal Shelter, or any City property associated with it, without first obtaining the written consent of the City Manager and, unless otherwise provided in such written consent, any improvements or additions constructed by the Contractor shall become the City's property upon their substantial completion.

(d) **Liens.** The Contractor shall keep the Animal Shelter free of all liens, pay all costs for labor and materials arising out of any construction or improvements by the Contractor on the Animal Shelter, and hold the City harmless from liability for any such liens, including costs and attorney fees.

(e) **Severability.** If any provision or covenant of this Contract is declared to be invalid by a court of competent jurisdiction, the remaining covenants and provisions will continue in full force and effect.

(f) **Corporate Authority.** If the Contractor is a corporation, the Contractor shall deliver to the City at the time of execution of this Contract a copy of a resolution of its board of directors authorizing the execution of this Contract and naming the officers that are authorized to execute this agreement on behalf of the corporation.

(g) **Entire Agreement.** This Contract sets forth all the terms, conditions, and agreements of the parties and supersedes any previous understandings or agreements regarding the Animal Shelter whether oral or written. No modification or amendment of this Contract is effective unless in writing and signed by both the parties.

(h) **Notice.** Any notice required by this Contract must be hand delivered or sent by first class mail to the appropriate party at the address set forth on the last page of this Contract or to any other address, which the parties subsequently designate in writing.

ARTICLE II

In furtherance of these obligations, the Contractor shall perform, supply, and provide all the work, services, and materials as follows:

1. Management and Operation of Animal Shelter. (a) The Contractor shall furnish animal shelter services and humane treatment of animals at the Contractor's expense.

(b) The Contractor shall maintain proper housing for all animals, which come into its custody.

(c) The animal shelter shall be open a minimum of four hours per day, five days a week, including one weekend day, for the convenience of the public and to transact business in connection with the duties under this Contract and to receive animals or for the redemption of impounded animals. The shelter may be closed to the public two days a week and on national, state, and local holidays.

(d) The Contractor shall consult directly with the City in developing programs and policies regarding operation of the animal shelter, implementing new program components, and recommending ordinance revisions.

2. Care of Impounded Animals. (a) Proper care includes, but is not limited to, adequate and sanitary food and water, regular cleaning of kennels and cages, and humane handling.

(b) The animal food used by the Contractor shall be of a satisfactory quality. Food and water shall be provided animals in adequate amounts and frequencies with water being supplied each animal at least once every twelve hours.

(c) The Contractor shall clean, disinfect, and otherwise maintain the cages and pens where animals are kept frequently enough to assure animal health and prevent the spread of disease. Cleaning and disinfecting shall be no less than once per day.

3. Redemption, Adoption, and Disposition of Animals. (a) The Contractor shall, in accordance with Bethel Municipal Code (BMC) Chapter 6.04 release animals impounded by the City to their owners upon presentation of a receipt from the Bethel Police Department showing that all impound charges or other fees owed to the City have been paid in full.

(b) The Contractor shall promote and administer the adoption of unclaimed animals to responsible owners. The Contractor shall develop and have on file a program for adoption. The Contractor shall adhere to the City's policy of, wherever feasible, spaying or neutering and vaccinating all animals prior to adoption.

(c) Animals which are not reclaimed by owners within four (4) days after compliance with the provisions of BMC 6.04.070.C or any other applicable provisions of law governing notification to the owner or custodian and are deemed suitable for adoption will become available for adoption to responsible persons.

(d) Animals not suitable for adoption will be humanely euthanized by the City in accordance with Animal Control policies and procedures.

4. Education on Animal Care and Treatment. The Contractor shall promote the proper and humane care and treatment of animals and to stimulate public support for such treatment and for the enforcement of City ordinances relating to animal control. The Contractor shall conduct tours of the animal shelter upon reasonable request. The Contractor shall educate the community through classroom visits, radio interviews, newspaper articles, and public service announcements.

5. Training. The Contractor shall designate an employee as shelter manager and this employee is required to annually attend and complete a course in professional services relating to management and operation of an animal shelter or animal behavior. The Contractor shall provide the Bethel Police Department with an outline of the course of instruction.

6. Enforcement of Animal Control Ordinances. (a) The Contractor shall, through qualified agents, observe and assist in the enforcement of all animal control ordinances relating to impounded animals.

(b) The Contractor shall cooperate with the City by following procedures required by Chapter 6.04 of the Bethel Municipal Code concerning persons or animals bitten by an animal in the City of Bethel.

7. Collection of Fees and Keeping of Records. (a) The Contractor shall follow established City procedures regarding collection of dog license fees and impound fines, as applicable. Fees for animal licensing and impoundment are established by the Bethel City Council and retained by the City. The Contractor has no authority to waive or reduce these fees. Other fees for services (e.g., adoption) will be established by the Contractor and retained by the contractor. Donations made to the animal shelter by members of the public will also be retained by the Contractor. The Contractor shall permit the City, at all reasonable times, to inspect and audit any records and shall make such reports of monies received and operational statistics as shall be required. The records are considered public records under BMC Chapter 2.40 and shall be open to City inspection during regular office hours.

(b) The Contractor shall daily maintain, at the animal shelter, records of all animals impounded. Records shall include dates of intake, notation of history, behavior, health status, and any veterinary procedures of each animal while retained; detailed information on redemptions and adoptions (e.g., dates, fees, owner data, spay/neuter deadline, etc.); date and reason euthanized; licenses issued; correspondence with State and federal agencies; and complaints made by the public with response indicated.

(c) The Contractor shall submit a monthly activity report to the Bethel Police Department by the twentieth (20th) day of the following month detailing the category of animals impounded at the shelter, disposition of animals, licenses issued, number of hours shelter was open to the public, fees collected by category, and veterinary services by category.

(d) The Contractor shall, by July 31 of each year, submit to the City a program report of the previous fiscal year's activities.

8. Liaison. The Contractor shall report to the Bethel Police Chief, or designee, who shall act a liaison between the Contractor and the City, for all matters relating to the Contractor's performance of its obligations pursuant to this Contract.

9. Sick and Injured Animals (a) Contractor will treat sick and injured animals that come into its care to the best of its recognized limited ability.

(b) The decision to medically treat or transport a sick or injured animal subject to quarantine or impoundment, and to what extent or none at all, is the responsibility of the City, in consultation with Contractor

(c) Contractor is not authorized to engage veterinarian services, or transportation for that purpose, for sick or injured animals subject to quarantine or impoundment.

(d) Animals that are subject to quarantine or impoundment, that become injured or die while in custody of the contractor, will not be moved beyond what is necessary to safeguard the animal. Contractor will notify the police department to document the incident and to remove the remains as necessary.

10. Euthanasia. (a) Euthanasia of animals subject to quarantine or impoundment is the responsibility of the City, in accordance with applicable Animal Control policy and procedures.

(b) Animal remains will be disposed of by the City.

ARTICLE III

In accordance with the terms and conditions of this Contract, the parties hereto further agree as follows:

1. Assistance to Contractor's Agents. The Community Service Officer will provide assistance to the Contractor's agents upon the agent's request. Upon receiving a request for assistance, the CSO will evaluate the priority of the agent's request and respond in accordance with the terms of this contract, the policies and procedures of the City of Bethel and the Bethel Police Department, as time and other duties permit.

2. Amount of Contract, Method and Computation of Payment. (a) The City shall pay the Contractor \$85,000 for FY2023 and \$85,000 for FY2024.

(b) The City shall pay the Contractor, twice a year in equal installments, in advance.

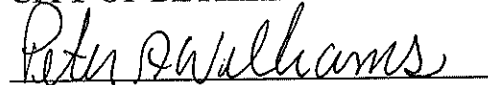
(c) The Contractor shall be required to provide and pay for all consumable supplies and equipment, including but not limited to food, cat litter, body bags, leashes, cleaning materials, paper, and medicines.

(d) The City shall pay for utilities, sewer, water, and building maintenance.

(e) The City shall provide the facility, license forms, dog license tags, and one telephone line.

The undersigned signatories to this Contract, by signing below, explicitly represent that they are fully authorized to bind the parties to all terms of this Contract.

CITY OF BETHEL

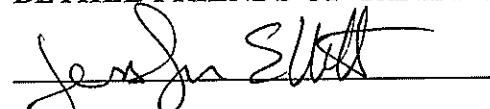


By: Peter Williams

Title: City Manager

Dated: 4/26/2023

BETHEL FRIENDS OF CANINES



By: Jesslyn Elliott

Title: Executive Director

Dated: 4/26/23

MODIFICATION TO APRIL 26, 2023 CONTRACT FOR ANIMAL SHELTER SERVICES

This Agreement Modification is made this _____ day of _____ by and between the City of Bethel, a municipal corporation (hereinafter the "City") and Bethel Friends of Canines (hereinafter "Contractor") (hereafter collectively, the "Parties.")

WHEREAS, on April 26, 2023, the Parties entered into a Contract for Animal Shelter Services (hereafter "Contract") regarding the management and operation of an animal shelter.

WHEREAS, Article I(9)(g) of the Agreement allows the Agreement to be modified by mutual consent, reflected in a writing signed by both parties.

WHEREAS, the Parties wish to modify select sections of the Agreement.

NOW THEREFORE, the following modifications shall be made to the Agreement, effective upon the date shown above. New language is underlined and old language is stricken.

ARTICLE II

6. Enforcement of Animal Control Ordinances

(a) The Contractor shall, through qualified agents, observe and assist in the enforcement of all animal control ordinances relating to impounded animals.

(b) The Contractor shall cooperate with the City by following procedures required by Chapter 6.04 of the Bethel Municipal Code concerning persons or animals bitten by an animal in the City of Bethel

(c) Qualified agents of the Contractor are hereby deputized by the Bethel Police Department as volunteer animal control officers to write citations.

(d) All dogs released from the shelter will be verified for rabies vaccination or vaccinated by Contractor before release.

(e) Between the hours of 8:00 a.m. to 7:00 p.m. on Monday through Friday and 12:00 p.m. to 7:00 p.m. on Saturday and Sunday, Contractor will respond to calls to pick up owner surrenders and stray dogs contained by resident.

(f) Contractor will respond to and aid the Bethel Police Department in picking up animals related to arrests or other enforcement actions conducted by law enforcement.

ARTICLE III

2. Amount of Contract, Method and Computation of Payment

(a) The City shall pay the Contractor \$85,000 for FY2023 and ~~\$85,000~~ \$115,000 for FY2024.

(b) The City shall pay the Contractor, twice a year in equal installments, in advance.

(c) The Contractor shall be required to provide and pay for all consumable supplies and equipment, including but not limited to food, cat litter, body bags, leashes, cleaning materials, paper, and medicines.

- (d) The City shall pay for utilities, sewer, water, and building maintenance.
- (e) The City shall provide the facility, license forms, dog license tags, and one telephone line.

The undersigned signatories represent that they are fully authorized to bind the parties to this modification. No other provision of the Agreement is modified.

CITY OF BETHEL

BETHEL FRIENDS OF CANINES

Alan Lanning
Interim City Manager

Jesslynn Elliot
Executive Director
Bethel Friends of Canines

City of Bethel Information Memorandum

Information Memo No.	23-09		
Date introduced:	May 16, 2023	Introduced by:	Peter A. Williams, City Manager
Amended actions:			
Confirmed by:	K M		

Title: Request for an increase in budgeted funding for Bethel Friends of K9's for FY24.

Attachment(s): None

Department/Individual:	Initials:	Remarks:
Administration / Peter Williams	PW	Recommend approval.
Chief of Police / Leonard Hicks	WA	Recommend approval.
Amount of fiscal impact	Account information:	
\$30,000	FY 2024	100-72-6171
\$85,000	FY 2024	100-72-6171

Summary Statement

During FY23 the COB budgeted \$85,000 to support Bethel Friends of K9's (BFK9) operation of the city's dog pound. For FY24 \$85,000 was originally sought after to continue this mutually beneficial relationship. BFK9 has offered to accept additional responsibilities in assisting the Bethel Police Department with its animal control efforts. As part of this BFK9 is requesting an additional \$30,000, bringing their total financial support from the COB to \$115,000 for FY24.

The additional funds would be used as follows:

The city increases the contract amount by \$30,000 (to cover payroll taxes), and BFK9 is deputized as volunteer animal control officers to write citations. All dogs released from the pound will be verified for rabies vaccination or vaccinated by BFK9 before release. Between the hours of 8-7 M-F and Noon-7 Saturday/ Sunday, BFK9 will respond to calls to pick up owner surrenders and stray dogs that people have held on to. BFK9 will also respond to and aid the police department in picking up animals related to arrested or other enforcement actions conducted by BPD.

City of Bethel Action Memorandum

Action memorandum No.	23-23		
Date action introduced:	09/12/2023	Introduced by:	Alan Lanning, City Manager
Date action taken:		Approved	Denied
Confirmed by:			

Action Title: Pressure Filter rehabilitation, Bethel Heights WTP and City Subdivision WTP.

Attachment(s): (1) Draft purchase agreement

Amount of fiscal impact	Source of Funding	Account information
\$100,000	FY 2024 Budget modification	660-70-6892

Summary Statement

The City of Bethel prepared and issued a Request for Bids (RFB) on July 19, 2023 to solicit bids from a qualified companies to remove and replace existing filter media and internal structures for three (3) existing vertical pressure filters located at the Bethel Heights Water Treatment Plant and three (3) existing vertical pressure filters located at the City Subdivision Water Treatment Plant.

The City posted the RFB on the City website and advertised it on electronic dissemination services, like the Plans Room, Associated General Contractors of Alaska, Contractor Plan Center, Dodge Analytics, and the Procurement Technical Assistance Center at the University of Alaska, Anchorage. One addendum was issued. One bid was received by the deadline.

The City issued a Notice of Intent to Award on August 30, 2023 to the company with the lowest price notifying them of the City's intention to award the contract. The attached purchase agreement is a draft of the contract included in the Request for Bid document.

STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

TABLE OF CONTENTS

	Page
Article 1 – Definitions and Terminology	1
1.01 Defined Terms	1
1.02 Terminology.....	5
Article 2 – Preliminary Matters	6
2.01 Delivery of Bonds and Evidence of Insurance	6
2.02 Copies of Documents.....	6
2.03 Before Starting Construction.....	7
2.04 Preconstruction Conference; Designation of Authorized Representatives	7
2.05 Initial Acceptance of Schedules.....	7
2.06 Electronic Transmittals.....	8
Article 3 – Documents: Intent, Requirements, Reuse.....	8
3.01 Intent	8
3.02 Reference Standards	9
3.03 Reporting and Resolving Discrepancies.....	9
3.04 Requirements of the Contract Documents	10
3.05 Reuse of Documents.....	10
Article 4 – Commencement and Progress of the Work.....	11
4.01 Commencement of Contract Times; Notice to Proceed	11
4.02 Starting the Work	11
4.03 Reference Points.....	11
4.04 Progress Schedule.....	11
4.05 Delays in Contractor’s Progress.....	11
Article 5 – Availability of Lands; Subsurface and Physical Conditions; Hazardous Environmental Conditions	12
5.01 Availability of Lands.....	12
5.02 Use of Site and Other Areas	13
5.03 Subsurface and Physical Conditions	14
5.04 Differing Subsurface or Physical Conditions.....	15
5.05 Underground Facilities	16

5.06	Hazardous Environmental Conditions at Site	18
Article 6 – Bonds and Insurance		20
6.01	Performance, Payment, and Other Bonds	20
6.02	Insurance—General Provisions	21
6.03	Contractor’s Insurance	22
6.04	Owner’s Liability Insurance	24
6.05	Property Insurance	24
6.06	Waiver of Rights	26
6.07	Receipt and Application of Property Insurance Proceeds	27
Article 7 – Contractor’s Responsibilities		27
7.01	Supervision and Superintendence	27
7.02	Labor; Working Hours	28
7.03	Services, Materials, and Equipment	28
7.04	“Or Equals”	28
7.05	Substitutes	29
7.06	Concerning Subcontractors, Suppliers, and Others	31
7.07	Patent Fees and Royalties	32
7.08	Permits	33
7.09	Taxes	33
7.10	Laws and Regulations	33
7.11	Record Documents	34
7.12	Safety and Protection	34
7.13	Safety Representative	36
7.14	Hazard Communication Programs	36
7.15	Emergencies	36
7.16	Shop Drawings, Samples, and Other Submittals	36
7.17	Contractor’s General Warranty and Guarantee	38
7.18	Indemnification	39
7.19	Delegation of Professional Design Services	40
Article 8 – Other Work at the Site		40
8.01	Other Work	40
8.02	Coordination	41
8.03	Legal Relationships	41

Article 9 – Owner’s Responsibilities	42
9.01 Communications to Contractor	42
9.02 Replacement of Engineer	42
9.03 Furnish Data.....	43
9.04 Pay When Due	43
9.05 Lands and Easements; Reports, Tests, and Drawings	43
9.06 Insurance	43
9.07 Change Orders	43
9.08 Inspections, Tests, and Approvals	43
9.09 Limitations on Owner’s Responsibilities.....	43
9.10 Undisclosed Hazardous Environmental Condition	43
9.11 Evidence of Financial Arrangements	43
9.12 Safety Programs.....	43
Article 10 – Engineer’s Status During Construction	44
10.01 Owner’s Representative	44
10.02 Visits to Site	44
10.03 Project Representative	44
10.04 Rejecting Defective Work	44
10.05 Shop Drawings, Change Orders and Payments	44
10.06 Determinations for Unit Price Work.....	45
10.07 Decisions on Requirements of Contract Documents and Acceptability of Work.....	45
10.08 Limitations on Engineer’s Authority and Responsibilities	45
10.09 Compliance with Safety Program	45
Article 11 – Amending the Contract Documents; Changes in the Work.....	46
11.01 Amending and Supplementing Contract Documents.....	46
11.02 Owner-Authorized Changes in the Work	46
11.03 Unauthorized Changes in the Work	47
11.04 Change of Contract Price	47
11.05 Change of Contract Times	48
11.06 Change Proposals	48
11.07 Execution of Change Orders	49
11.08 Notification to Surety	49
Article 12 – Claims	50

12.01	Claims	50
Article 13 – Cost of the Work; Allowances; Unit Price Work		51
13.01	Cost of the Work.....	51
13.02	Allowances.....	54
13.03	Unit Price Work	54
Article 14 – Tests and Inspections; Correction, Removal or Acceptance of Defective Work.....		55
14.01	Access to Work	55
14.02	Tests, Inspections, and Approvals	55
14.03	Defective Work.....	56
14.04	Acceptance of Defective Work.....	57
14.05	Uncovering Work.....	57
14.06	Owner May Stop the Work.....	57
14.07	Owner May Correct Defective Work	58
Article 15 – Payments to Contractor; Set-Offs; Completion; Correction Period.....		58
15.01	Progress Payments	58
15.02	Contractor’s Warranty of Title.....	62
15.03	Substantial Completion	62
15.04	Partial Use or Occupancy.....	63
15.05	Final Inspection.....	63
15.06	Final Payment	64
15.07	Waiver of Claims.....	65
15.08	Correction Period	65
Article 16 – Suspension of Work and Termination.....		66
16.01	Owner May Suspend Work.....	66
16.02	Owner May Terminate for Cause	66
16.03	Owner May Terminate For Convenience	67
16.04	Contractor May Stop Work or Terminate	67
Article 17 – Final Resolution of Disputes.....		68
17.01	Methods and Procedures	68
Article 18 – Miscellaneous		68
18.01	Giving Notice	68
18.02	Computation of Times	68
18.03	Cumulative Remedies.....	69

18.04	Limitation of Damages.....	69
18.05	No Waiver	69
18.06	Survival of Obligations.....	69
18.07	Controlling Law.....	69
18.08	Headings	69

ARTICLE 1 – DEFINITIONS AND TERMINOLOGY

1.01 *Defined Terms*

- A. Wherever used in the Bidding Requirements or Contract Documents, a term printed with initial capital letters, including the term's singular and plural forms, will have the meaning indicated in the definitions below. In addition to terms specifically defined, terms with initial capital letters in the Contract Documents include references to identified articles and paragraphs, and the titles of other documents or forms.
1. *Addenda*—Written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the Bidding Requirements or the proposed Contract Documents.
 2. *Agreement*—The written instrument, executed by Owner and Contractor, that sets forth the Contract Price and Contract Times, identifies the parties and the Engineer, and designates the specific items that are Contract Documents.
 3. *Application for Payment*—The form acceptable to Engineer which is to be used by Contractor during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Contract Documents.
 4. *Bid*—The offer of a Bidder submitted on the prescribed form setting forth the prices for the Work to be performed.
 5. *Bidder*—An individual or entity that submits a Bid to Owner.
 6. *Bidding Documents*—The Bidding Requirements, the proposed Contract Documents, and all Addenda.
 7. *Bidding Requirements*—The advertisement or invitation to bid, Instructions to Bidders, Bid Bond or other Bid security, if any, the Bid Form, and the Bid with any attachments.
 8. *Change Order*—A document which is signed by Contractor and Owner and authorizes an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the Contract Times, or other revision to the Contract, issued on or after the Effective Date of the Contract.
 9. *Change Proposal*—A written request by Contractor, duly submitted in compliance with the procedural requirements set forth herein, seeking an adjustment in Contract Price or Contract Times, or both; contesting an initial decision by Engineer concerning the requirements of the Contract Documents or the acceptability of Work under the Contract Documents; challenging a set-off against payments due; or seeking other relief with respect to the terms of the Contract.
 10. *Claim*—(a) A demand or assertion by Owner directly to Contractor, duly submitted in compliance with the procedural requirements set forth herein: seeking an adjustment of Contract Price or Contract Times, or both; contesting an initial decision by Engineer concerning the requirements of the Contract Documents or the acceptability of Work under the Contract Documents; contesting Engineer's decision regarding a Change Proposal; seeking resolution of a contractual issue that Engineer has declined to address; or seeking other relief with respect to the terms of the Contract; or (b) a demand or assertion by Contractor directly to Owner, duly submitted in compliance with the procedural

requirements set forth herein, contesting Engineer's decision regarding a Change Proposal; or seeking resolution of a contractual issue that Engineer has declined to address. A demand for money or services by a third party is not a Claim.

11. *Constituent of Concern*—Asbestos, petroleum, radioactive materials, polychlorinated biphenyls (PCBs), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to (a) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. ("CERCLA"); (b) the Hazardous Materials Transportation Act, 49 U.S.C. §§5501 et seq.; (c) the Resource Conservation and Recovery Act, 42 U.S.C. §6901 et seq. ("RCRA"); (d) the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; (e) the Clean Water Act, 33 U.S.C. §§1251 et seq.; (f) the Clean Air Act, 42 U.S.C. §§7401 et seq.; or (g) any other federal, state, or local statute, law, rule, regulation, ordinance, resolution, code, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.
12. *Contract*—The entire and integrated written contract between the Owner and Contractor concerning the Work.
13. *Contract Documents*—Those items so designated in the Agreement, and which together comprise the Contract.
14. *Contract Price*—The money that Owner has agreed to pay Contractor for completion of the Work in accordance with the Contract Documents. .
15. *Contract Times*—The number of days or the dates by which Contractor shall: (a) achieve Milestones, if any; (b) achieve Substantial Completion; and (c) complete the Work.
16. *Contractor*—The individual or entity with which Owner has contracted for performance of the Work.
17. *Cost of the Work*—See Paragraph 13.01 for definition.
18. *Drawings*—The part of the Contract that graphically shows the scope, extent, and character of the Work to be performed by Contractor.
19. *Effective Date of the Contract*—The date, indicated in the Agreement, on which the Contract becomes effective.
20. *Engineer*—The individual or entity named as such in the Agreement.
21. *Field Order*—A written order issued by Engineer which requires minor changes in the Work but does not change the Contract Price or the Contract Times.
22. *Hazardous Environmental Condition*—The presence at the Site of Constituents of Concern in such quantities or circumstances that may present a danger to persons or property exposed thereto. The presence at the Site of materials that are necessary for the execution of the Work, or that are to be incorporated in the Work, and that are controlled and contained pursuant to industry practices, Laws and Regulations, and the requirements of the Contract, does not establish a Hazardous Environmental Condition.
23. *Laws and Regulations; Laws or Regulations*—Any and all applicable laws, statutes, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.

24. *Liens*—Charges, security interests, or encumbrances upon Contract-related funds, real property, or personal property.
25. *Milestone*—A principal event in the performance of the Work that the Contract requires Contractor to achieve by an intermediate completion date or by a time prior to Substantial Completion of all the Work.
26. *Notice of Award*—The written notice by Owner to a Bidder of Owner's acceptance of the Bid.
27. *Notice to Proceed*—A written notice by Owner to Contractor fixing the date on which the Contract Times will commence to run and on which Contractor shall start to perform the Work.
28. *Owner*—The individual or entity with which Contractor has contracted regarding the Work, and which has agreed to pay Contractor for the performance of the Work, pursuant to the terms of the Contract.
29. *Progress Schedule*—A schedule, prepared and maintained by Contractor, describing the sequence and duration of the activities comprising the Contractor's plan to accomplish the Work within the Contract Times.
30. *Project*—The total undertaking to be accomplished for Owner by engineers, contractors, and others, including planning, study, design, construction, testing, commissioning, and start-up, and of which the Work to be performed under the Contract Documents is a part.
31. *Project Manual*—The written documents prepared for, or made available for, procuring and constructing the Work, including but not limited to the Bidding Documents or other construction procurement documents, geotechnical and existing conditions information, the Agreement, bond forms, General Conditions, Supplementary Conditions, and Specifications. The contents of the Project Manual may be bound in one or more volumes.
32. *Resident Project Representative*—The authorized representative of Engineer assigned to assist Engineer at the Site. As used herein, the term Resident Project Representative or "RPR" includes any assistants or field staff of Resident Project Representative.
33. *Samples*—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and that establish the standards by which such portion of the Work will be judged.
34. *Schedule of Submittals*—A schedule, prepared and maintained by Contractor, of required submittals and the time requirements for Engineer's review of the submittals and the performance of related construction activities.
35. *Schedule of Values*—A schedule, prepared and maintained by Contractor, allocating portions of the Contract Price to various portions of the Work and used as the basis for reviewing Contractor's Applications for Payment.
36. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information that are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work. Shop Drawings, whether approved or not, are not Drawings and are not Contract Documents.

37. *Site*—Lands or areas indicated in the Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements, and such other lands furnished by Owner which are designated for the use of Contractor.
38. *Specifications*—The part of the Contract that consists of written requirements for materials, equipment, systems, standards, and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable to the Work.
39. *Subcontractor*—An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work.
40. *Substantial Completion*—The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms “substantially complete” and “substantially completed” as applied to all or part of the Work refer to Substantial Completion thereof.
41. *Successful Bidder*—The Bidder whose Bid the Owner accepts, and to which the Owner makes an award of contract, subject to stated conditions.
42. *Supplementary Conditions*—The part of the Contract that amends or supplements these General Conditions.
43. *Supplier*—A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or a Subcontractor.
44. *Technical Data*—Those items expressly identified as Technical Data in the Supplementary Conditions, with respect to either (a) subsurface conditions at the Site, or physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities) or (b) Hazardous Environmental Conditions at the Site. If no such express identifications of Technical Data have been made with respect to conditions at the Site, then the data contained in boring logs, recorded measurements of subsurface water levels, laboratory test results, and other factual, objective information regarding conditions at the Site that are set forth in any geotechnical or environmental report prepared for the Project and made available to Contractor are hereby defined as Technical Data with respect to conditions at the Site under Paragraphs 5.03, 5.04, and 5.06.
45. *Underground Facilities*—All underground pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments, and any encasements containing such facilities, including but not limited to those that convey electricity, gases, steam, liquid petroleum products, telephone or other communications, fiber optic transmissions, cable television, water, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.
46. *Unit Price Work*—Work to be paid for on the basis of unit prices.
47. *Work*—The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction; furnishing, installing, and incorporating all materials and equipment into such

construction; and may include related services such as testing, start-up, and commissioning, all as required by the Contract Documents.

48. *Work Change Directive*—A written directive to Contractor issued on or after the Effective Date of the Contract, signed by Owner and recommended by Engineer, ordering an addition, deletion, or revision in the Work. **A Work Change Directive cannot change Contract Price or Contract Times without a subsequent Change Order.**

1.02 *Terminology*

- A. The words and terms discussed in the following paragraphs are not defined but, when used in the Bidding Requirements or Contract Documents, have the indicated meaning.
- B. *Intent of Certain Terms or Adjectives:*
1. The Contract Documents include the terms “as allowed,” “as approved,” “as ordered,” “as directed” or terms of like effect or import to authorize an exercise of professional judgment by Engineer. In addition, the adjectives “reasonable,” “suitable,” “acceptable,” “proper,” “satisfactory,” or adjectives of like effect or import are used to describe an action or determination of Engineer as to the Work. It is intended that such exercise of professional judgment, action, or determination will be solely to evaluate, in general, the Work for compliance with the information in the Contract Documents and with the design concept of the Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective is not intended to and shall not be effective to assign to Engineer any duty or authority to supervise or direct the performance of the Work, or any duty or authority to undertake responsibility contrary to the provisions of Article 10 or any other provision of the Contract Documents.
- C. *Day:*
1. The word “day” means a calendar day of 24 hours measured from midnight to the next midnight.
- D. *Defective:*
1. The word “defective,” when modifying the word “Work,” refers to Work that is unsatisfactory, faulty, or deficient in that it:
 - a. does not conform to the Contract Documents; or
 - b. does not meet the requirements of any applicable inspection, reference standard, test, or approval referred to in the Contract Documents; or
 - c. has been damaged prior to Engineer’s recommendation of final payment (unless responsibility for the protection thereof has been assumed by Owner at Substantial Completion in accordance with Paragraph 15.03 or 15.04).
- E. *Furnish, Install, Perform, Provide:*
1. The word “furnish,” when used in connection with services, materials, or equipment, shall mean to supply and deliver said services, materials, or equipment to the Site (or some other specified location) ready for use or installation and in usable or operable condition.

2. The word “install,” when used in connection with services, materials, or equipment, shall mean to put into use or place in final position said services, materials, or equipment complete and ready for intended use.
 3. The words “perform” or “provide,” when used in connection with services, materials, or equipment, shall mean to furnish and install said services, materials, or equipment complete and ready for intended use.
 4. If the Contract Documents establish an obligation of Contractor with respect to specific services, materials, or equipment, but do not expressly use any of the four words “furnish,” “install,” “perform,” or “provide,” then Contractor shall furnish and install said services, materials, or equipment complete and ready for intended use.
- F. Unless stated otherwise in the Contract Documents, words or phrases that have a well-known technical or construction industry or trade meaning are used in the Contract Documents in accordance with such recognized meaning.

ARTICLE 2 – PRELIMINARY MATTERS

2.01 *Delivery of Bonds and Evidence of Insurance*

- A. *Bonds*: When Contractor delivers the executed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner such bonds as Contractor may be required to furnish.
- B. *Evidence of Contractor’s Insurance*: When Contractor delivers the executed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner, with copies to each named insured and additional insured (as identified in the Supplementary Conditions or elsewhere in the Contract), the certificates and other evidence of insurance required to be provided by Contractor in accordance with Article 6.
- C. *Evidence of Owner’s Insurance*: After receipt of the executed counterparts of the Agreement and all required bonds and insurance documentation, Owner shall promptly deliver to Contractor, with copies to each named insured and additional insured (as identified in the Supplementary Conditions or otherwise), the certificates and other evidence of insurance required to be provided by Owner under Article 6.
- D. **Contractor shall use forms EJCDC No. C-610 and C-615 (2013 ed.) for the Labor and Material Payment Bond and Performance Bond. Each bond shall be in the amount of 100 percent of the contract amount. City of Bethel shall be named as co-obligee or a separate Warranty Bond shall be provided to them upon completion of the work.**

2.02 *Copies of Documents*

- A. Owner shall furnish to Contractor **four (4)** printed copies of the Contract (including one fully executed counterpart of the Agreement), and one copy in electronic portable document format (PDF). Additional printed copies will be furnished upon request at the cost of reproduction.
- B. Owner shall maintain and safeguard at least one original printed record version of the Contract, including Drawings and Specifications signed and sealed by Engineer and other design professionals. Owner shall make such original printed record version of the Contract available to Contractor for review. Owner may delegate the responsibilities under this provision to Engineer.

2.03 *Before Starting Construction*

- A. *Preliminary Schedules:* Within 10 days after the Effective Date of the Contract (or as otherwise specifically required by the Contract Documents), Contractor shall submit to Engineer for timely review:
1. a preliminary Progress Schedule indicating the times (numbers of days or dates) for starting and completing the various stages of the Work, including any Milestones specified in the Contract;
 2. a preliminary Schedule of Submittals; and
 3. a preliminary Schedule of Values for all of the Work which includes quantities and prices of items which when added together equal the Contract Price and subdivides the Work into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work.
 4. **Contractor shall submit a preliminary list of construction equipment with hourly rates, owned or rented by the Contractor and all Subcontractors that will be used in the performance of the Work. The equipment list will include information necessary to confirm the hourly rates per Paragraph 13.01.B.5.c of these General Conditions including: make, model, and year of manufacture as well as horse power, capacity or weight and accessories.**

2.04 *Preconstruction Conference; Designation of Authorized Representatives*

- A. Before any Work at the Site is started, a conference attended by Owner, Contractor, Engineer, and others as appropriate will be held to establish a working understanding among the parties as to the Work and to discuss the schedules referred to in Paragraph 2.03.A, procedures for handling Shop Drawings, Samples, and other submittals, processing Applications for Payment, electronic or digital transmittals, and maintaining required records.
- B. At this conference Owner and Contractor each shall designate, in writing, a specific individual to act as its authorized representative with respect to the services and responsibilities under the Contract. Such individuals shall have the authority to transmit and receive information, render decisions relative to the Contract, and otherwise act on behalf of each respective party.
- C. **A preconstruction conference will be held in Bethel and will be coordinated with the Contractor after bid opening.**

2.05 *Initial Acceptance of Schedules*

- ~~A. Prior to the first application for payment all schedules and documents identified in paragraph 2.03 shall be finalized and acceptable to Owner and Engineer. No progress payment shall be made to Contractor until acceptable schedules are submitted to Engineer and Owner as provided below. Acceptance of these schedules and documents by either Engineer or Owner will neither impose on Engineer or Owner responsibility for sequencing, scheduling or progress of the Work and will not interfere with or relieve Contractor from Contractor's full responsibility therefore. At least 10 days before submission of the first Application for Payment a conference, attended by Contractor, Engineer, and others as appropriate, will be held to review for acceptability to Engineer as provided below the schedules submitted in accordance with Paragraph 2.03.A. Contractor shall have an additional 10 days to make corrections and~~

~~adjustments and to complete and resubmit the schedules. No progress payment shall be made to Contractor until acceptable schedules are submitted to Engineer.~~

1. The Progress Schedule will be acceptable to Engineer if it provides an orderly progression of the Work to completion within the Contract Times. Such acceptance will not impose on Engineer responsibility for the Progress Schedule, for sequencing, scheduling, or progress of the Work, nor interfere with or relieve Contractor from Contractor's full responsibility therefor.
2. Contractor's Schedule of Submittals will be acceptable to Engineer if it provides a workable arrangement for reviewing and processing the required submittals.
3. Contractor's Schedule of Values will be acceptable to Engineer as to form and substance if it provides a reasonable allocation of the Contract Price to the component parts of the Work.
4. **Contractor's Schedule of Equipment will be acceptable to Engineer as to form and substance if it provides the necessary information to reference the equipment and establish the hourly rates in accordance with paragraph 13.01.B.5.c.**

2.06 *Electronic Transmittals*

- A. Except as otherwise stated elsewhere in the Contract, the Owner, Engineer, and Contractor may transmit, and shall accept, Project-related correspondence, text, data, documents, drawings, information, and graphics, including but not limited to Shop Drawings and other submittals, in electronic media or digital format, either directly, or through access to a secure Project website.
- B. If the Contract does not establish protocols for electronic or digital transmittals, then Owner, Engineer, and Contractor shall jointly develop such protocols.
- C. When transmitting items in electronic media or digital format, the transmitting party makes no representations as to long term compatibility, usability, or readability of the items resulting from the recipient's use of software application packages, operating systems, or computer hardware differing from those used in the drafting or transmittal of the items, or from those established in applicable transmittal protocols.

ARTICLE 3 – DOCUMENTS: INTENT, REQUIREMENTS, REUSE

3.01 *Intent*

- A. The Contract Documents are complementary; what is required by one is as binding as if required by all.
- B. It is the intent of the Contract Documents to describe a functionally complete project (or part thereof) to be constructed in accordance with the Contract Documents.
- C. Unless otherwise stated in the Contract Documents, if there is a discrepancy between the electronic or digital versions of the Contract Documents (including any printed copies derived from such electronic or digital versions) and the printed record version, the printed record version shall govern.
- D. The Contract supersedes prior negotiations, representations, and agreements, whether written or oral.

- E. Engineer will issue clarifications and interpretations of the Contract Documents as provided herein.

3.02 *Reference Standards*

A. Standards Specifications, Codes, Laws and Regulations

1. Reference in the Contract Documents to standard specifications, manuals, reference standards, or codes of any technical society, organization, or association, or to Laws or Regulations, whether such reference be specific or by implication, shall mean the standard specification, manual, reference standard, code, or Laws or Regulations in effect at the time of opening of Bids (or on the Effective Date of the Contract if there were no Bids), except as may be otherwise specifically stated in the Contract Documents.
2. No provision of any such standard specification, manual, reference standard, or code, or any instruction of a Supplier, shall be effective to change the duties or responsibilities of Owner, Contractor, or Engineer, or any of their subcontractors, consultants, agents, or employees, from those set forth in the part of the Contract Documents prepared by or for Engineer. No such provision or instruction shall be effective to assign to Owner, Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of the part of the Contract Documents prepared by or for Engineer.

3.03 *Reporting and Resolving Discrepancies*

A. *Reporting Discrepancies:*

1. *Contractor's Verification of Figures and Field Measurements:* Before undertaking each part of the Work, Contractor shall carefully study the Contract Documents, and check and verify pertinent figures and dimensions therein, particularly with respect to applicable field measurements. Contractor shall promptly report in writing to Engineer any conflict, error, ambiguity, or discrepancy that Contractor discovers, or has actual knowledge of, and shall not proceed with any Work affected thereby until the conflict, error, ambiguity, or discrepancy is resolved, by a clarification or interpretation by Engineer, or by an amendment or supplement to the Contract Documents issued pursuant to Paragraph 11.01.
2. *Contractor's Review of Contract Documents:* If, before or during the performance of the Work, Contractor discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents, or between the Contract Documents and (a) any applicable Law or Regulation, (b) actual field conditions, (c) any standard specification, manual, reference standard, or code, or (d) any instruction of any Supplier, then Contractor shall promptly report it to Engineer in writing. Contractor shall not proceed with the Work affected thereby (except in an emergency as required by Paragraph 7.15) until the conflict, error, ambiguity, or discrepancy is resolved, by a clarification or interpretation by Engineer, or by an amendment or supplement to the Contract Documents issued pursuant to Paragraph 11.01.
3. Contractor shall not be liable to Owner or Engineer for failure to report any conflict, error, ambiguity, or discrepancy in the Contract Documents unless Contractor had actual knowledge thereof.

B. *Resolving Discrepancies:*

1. Except as may be otherwise specifically stated in the Contract Documents, the provisions of the part of the Contract Documents prepared by or for Engineer shall take precedence in resolving any conflict, error, ambiguity, or discrepancy between such provisions of the Contract Documents and:
 - a. the provisions of any standard specification, manual, reference standard, or code, or the instruction of any Supplier (whether or not specifically incorporated by reference as a Contract Document); or
 - b. the provisions of any Laws or Regulations applicable to the performance of the Work (unless such an interpretation of the provisions of the Contract Documents would result in violation of such Law or Regulation).

3.04 *Requirements of the Contract Documents*

- A. During the performance of the Work and until final payment, Contractor and Owner shall submit to the Engineer all matters in question concerning the requirements of the Contract Documents (sometimes referred to as requests for information or interpretation—RFIs), or relating to the acceptability of the Work under the Contract Documents, as soon as possible after such matters arise. Engineer will be the initial interpreter of the requirements of the Contract Documents, and judge of the acceptability of the Work thereunder.
- B. Engineer will, with reasonable promptness, render a written clarification, interpretation, or decision on the issue submitted, or initiate an amendment or supplement to the Contract Documents. Engineer's written clarification, interpretation, or decision will be final and binding on Contractor, unless it appeals by submitting a Change Proposal, and on Owner, unless it appeals by filing a Claim.
- C. If a submitted matter in question concerns terms and conditions of the Contract Documents that do not involve (1) the performance or acceptability of the Work under the Contract Documents, (2) the design (as set forth in the Drawings, Specifications, or otherwise), or (3) other engineering or technical matters, then Engineer will promptly give written notice to Owner and Contractor that Engineer is unable to provide a decision or interpretation. If Owner and Contractor are unable to agree on resolution of such a matter in question, either party may pursue resolution as provided in Article 12.

3.05 *Reuse of Documents*

- A. Contractor and its Subcontractors and Suppliers shall not:
 1. have or acquire any title to or ownership rights in any of the Drawings, Specifications, or other documents (or copies of any thereof) prepared by or bearing the seal of Engineer or its consultants, including electronic media editions, or reuse any such Drawings, Specifications, other documents, or copies thereof on extensions of the Project or any other project without written consent of Owner and Engineer and specific written verification or adaptation by Engineer; or
 2. have or acquire any title or ownership rights in any other Contract Documents, reuse any such Contract Documents for any purpose without Owner's express written consent, or violate any copyrights pertaining to such Contract Documents.

- B. The prohibitions of this Paragraph 3.05 will survive final payment, or termination of the Contract. Nothing herein shall preclude Contractor from retaining copies of the Contract Documents for record purposes.

ARTICLE 4 – COMMENCEMENT AND PROGRESS OF THE WORK

4.01 *Commencement of Contract Times; Notice to Proceed*

- A. The Contract Times will commence to run on the thirtieth day after the Effective Date of the Contract or, if a Notice to Proceed is given, on the day indicated in the Notice to Proceed. A Notice to Proceed may be given at any time within 30 days after the Effective Date of the Contract. In no event will the Contract Times commence to run later than the sixtieth day after the day of Bid opening or the thirtieth day after the Effective Date of the Contract, whichever date is earlier.

4.02 *Starting the Work*

- A. Contractor shall start to perform the Work on the date when the Contract Times commence to run. No Work shall be done at the Site prior to such date.

4.03 *Reference Points*

- A. Owner shall provide engineering surveys to establish reference points for construction which in Engineer's judgment are necessary to enable Contractor to proceed with the Work. Contractor shall be responsible for laying out the Work, shall protect and preserve the established reference points and property monuments, and shall make no changes or relocations without the prior written approval of Owner. Contractor shall report to Engineer whenever any reference point or property monument is lost or destroyed or requires relocation because of necessary changes in grades or locations, and shall be responsible for the accurate replacement or relocation of such reference points or property monuments by professionally qualified personnel.

4.04 *Progress Schedule*

- A. Contractor shall adhere to the Progress Schedule established in accordance with Paragraph 2.05 as it may be adjusted from time to time as provided below.
 - 1. Contractor shall submit to Engineer for acceptance (to the extent indicated in Paragraph 2.05) proposed adjustments in the Progress Schedule that will not result in changing the Contract Times.
 - 2. Proposed adjustments in the Progress Schedule that will change the Contract Times shall be submitted in accordance with the requirements of Article 11.
- B. Contractor shall carry on the Work and adhere to the Progress Schedule during all disputes or disagreements with Owner. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, or during any appeal process, except as permitted by Paragraph 16.04, or as Owner and Contractor may otherwise agree in writing.

4.05 *Delays in Contractor's Progress*

- A. If Owner, Engineer, or anyone for whom Owner is responsible, delays, disrupts, or interferes with the performance or progress of the Work, then Contractor shall be entitled to an equitable adjustment in the Contract Times and Contract Price. Contractor's entitlement to an adjustment

of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times.

- B. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for delay, disruption, or interference caused by or within the control of Contractor. Delay, disruption, and interference attributable to and within the control of a Subcontractor or Supplier shall be deemed to be within the control of Contractor.
- C. If Contractor's performance or progress is delayed, disrupted, or interfered with by unanticipated causes not the fault of and beyond the control of Owner, Contractor, and those for which they are responsible, then Contractor shall be entitled to an equitable adjustment in Contract Times. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times. Such an adjustment shall be Contractor's sole and exclusive remedy for the delays, disruption, and interference described in this paragraph. Causes of delay, disruption, or interference that may give rise to an adjustment in Contract Times under this paragraph include but are not limited to the following:
 - 1. severe and unavoidable natural catastrophes such as fires, floods, epidemics, and earthquakes;
 - 2. abnormal weather conditions;
 - 3. acts or failures to act of utility owners (other than those performing other work at or adjacent to the Site by arrangement with the Owner, as contemplated in Article 8); and
 - 4. acts of war or terrorism.
- D. Delays, disruption, and interference to the performance or progress of the Work resulting from the existence of a differing subsurface or physical condition, an Underground Facility that was not shown or indicated by the Contract Documents, or not shown or indicated with reasonable accuracy, and those resulting from Hazardous Environmental Conditions, are governed by Article 5.
- E. Paragraph 8.03 governs delays, disruption, and interference to the performance or progress of the Work resulting from the performance of certain other work at or adjacent to the Site.
- F. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for any delay, disruption, or interference if such delay is concurrent with a delay, disruption, or interference caused by or within the control of Contractor.
- G. Contractor must submit any Change Proposal seeking an adjustment in Contract Price or Contract Times under this paragraph within 30 days of the commencement of the delaying, disrupting, or interfering event.

ARTICLE 5 – AVAILABILITY OF LANDS; SUBSURFACE AND PHYSICAL CONDITIONS; HAZARDOUS ENVIRONMENTAL CONDITIONS

5.01 *Availability of Lands*

- A. Owner shall furnish the Site. Owner shall notify Contractor of any encumbrances or restrictions not of general application but specifically related to use of the Site with which Contractor must comply in performing the Work.

- B. Upon reasonable written request, Owner shall furnish Contractor with a current statement of record legal title and legal description of the lands upon which permanent improvements are to be made and Owner's interest therein as necessary for giving notice of or filing a mechanic's or construction lien against such lands in accordance with applicable Laws and Regulations.
- C. Contractor shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment. **If it is necessary or desirable that the Contractor use land outside of the Owner's site, easement or right-of-way, the Contractor shall obtain consent from the property owner and tenant of the land. The Contractor shall not enter for material delivery, storage or occupy for any other purpose with men, tools, equipment, construction material, or with materials excavated from the site, any private property outside the designated limits of the construction site, easement boundaries, or right-of-way without written permission from the property owner and tenant.**

5.02 *Use of Site and Other Areas*

A. *Limitation on Use of Site and Other Areas:*

- 1. Contractor shall confine construction equipment, temporary construction facilities, the storage of materials and equipment, and the operations of workers to the Site, adjacent areas that Contractor has arranged to use through construction easements or otherwise, and other adjacent areas permitted by Laws and Regulations, and shall not unreasonably encumber the Site and such other adjacent areas with construction equipment or other materials or equipment. Contractor shall assume full responsibility for (a) damage to the Site; (b) damage to any such other adjacent areas used for Contractor's operations; (c) damage to any other adjacent land or areas; and (d) for injuries and losses sustained by the owners or occupants of any such land or areas; provided that such damage or injuries result from the performance of the Work or from other actions or conduct of the Contractor or those for which Contractor is responsible.
 - 2. If a damage or injury claim is made by the owner or occupant of any such land or area because of the performance of the Work, or because of other actions or conduct of the Contractor or those for which Contractor is responsible, Contractor shall (a) take immediate corrective or remedial action as required by Paragraph 7.12, or otherwise; (b) promptly attempt to settle the claim as to all parties through negotiations with such owner or occupant, or otherwise resolve the claim by arbitration or other dispute resolution proceeding, or at law; and (c) to the fullest extent permitted by Laws and Regulations, indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against any such claim, and against all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any claim or action, legal or equitable, brought by any such owner or occupant against Owner, Engineer, or any other party indemnified hereunder to the extent caused directly or indirectly, in whole or in part by, or based upon, Contractor's performance of the Work, or because of other actions or conduct of the Contractor or those for which Contractor is responsible.
- B. *Removal of Debris During Performance of the Work:* During the progress of the Work the Contractor shall keep the Site and other adjacent areas free from accumulations of waste

materials, rubbish, and other debris. Removal and disposal of such waste materials, rubbish, and other debris shall conform to applicable Laws and Regulations.

- C. *Cleaning*: Prior to Substantial Completion of the Work Contractor shall clean the Site and the Work and make it ready for utilization by Owner. At the completion of the Work Contractor shall remove from the Site and adjacent areas all tools, appliances, construction equipment and machinery, and surplus materials and shall restore to original condition all property not designated for alteration by the Contract Documents.
- D. *Loading of Structures*: Contractor shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall Contractor subject any part of the Work or adjacent structures or land to stresses or pressures that will endanger them.

5.03 *Subsurface and Physical Conditions*

- A. *Reports and Drawings*: The Supplementary Conditions identify:
 - 1. those reports known to Owner of explorations and tests of subsurface conditions at or adjacent to the Site;
 - 2. those drawings known to Owner of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities); and
 - 3. Technical Data contained in such reports and drawings.
- B. *Reliance by Contractor on Technical Data Authorized*: Contractor may rely upon the accuracy of the Technical Data expressly identified in the Supplementary Conditions with respect to such reports and drawings, but such reports and drawings are not Contract Documents. If no such express identification has been made, then Contractor may rely upon the accuracy of the Technical Data (as defined in Article 1) contained in any geotechnical or environmental report prepared for the Project and made available to Contractor. Except for such reliance on Technical Data, Contractor may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, with respect to:
 - 1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, and safety precautions and programs incident thereto; or
 - 2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings; or
 - 3. any Contractor interpretation of or conclusion drawn from any Technical Data or any such other data, interpretations, opinions, or information.
 - 4. **Contractor is required to visit the site and become familiar with and satisfied as to the general, local, and site conditions that may affect cost, progress, performance, and furnishing of the Work. This is to involve an alert, heads-up, eyes open, reasonable examination of the area and the conditions under which the Work is to be performed (See 5.04 D.2b)**

5.04 *Differing Subsurface or Physical Conditions*

- A. *Notice by Contractor:* If Contractor believes that any subsurface or physical condition that is uncovered or revealed at the Site either:
1. is of such a nature as to establish that any Technical Data on which Contractor is entitled to rely as provided in Paragraph 5.03 is materially inaccurate; or
 2. is of such a nature as to require a change in the Drawings or Specifications; or
 3. differs materially from that shown or indicated in the Contract Documents; or
 4. is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents;

then Contractor shall, promptly after becoming aware thereof and before further disturbing the subsurface or physical conditions or performing any Work in connection therewith (except in an emergency as required by Paragraph 7.15), notify Owner and Engineer in writing about such condition **within 15 calendar days of discovery**. Contractor shall not further disturb such condition or perform any Work in connection therewith (except with respect to an emergency) until receipt of a written statement permitting Contractor to do so.

No Change Proposal or Claim for an adjustment in Contract Price or Contract Time (including Milestones) will be valid for differing subsurface or physical conditions if notice provisions of the Paragraph 5.04 are not followed.

- B. *Engineer's Review:* After receipt of written notice as required by the preceding paragraph, Engineer will promptly review the subsurface or physical condition in question; determine the necessity of Owner's obtaining additional exploration or tests with respect to the condition; conclude whether the condition falls within any one or more of the differing site condition categories in Paragraph 5.04.A above; obtain any pertinent cost or schedule information from Contractor; prepare recommendations to Owner regarding the Contractor's resumption of Work in connection with the subsurface or physical condition in question and the need for any change in the Drawings or Specifications; and advise Owner in writing of Engineer's findings, conclusions, and recommendations.
- C. *Owner's Statement to Contractor Regarding Site Condition:* After receipt of Engineer's written findings, conclusions, and recommendations, Owner shall issue a written statement to Contractor (with a copy to Engineer) regarding the subsurface or physical condition in question, addressing the resumption of Work in connection with such condition, indicating whether any change in the Drawings or Specifications will be made, and adopting or rejecting Engineer's written findings, conclusions, and recommendations, in whole or in part.
- D. *Possible Price and Times Adjustments:*
1. Contractor shall be entitled to an equitable adjustment in Contract Price or Contract Times, or both, to the extent that the existence of a differing subsurface or physical condition, or any related delay, disruption, or interference, causes an increase or decrease in Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:
 - a. such condition must fall within any one or more of the categories described in Paragraph 5.04.A;

- b. with respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraph 13.03; and,
 - c. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times.
- 2. Contractor shall not be entitled to any adjustment in the Contract Price or Contract Times with respect to a subsurface or physical condition if:
 - a. Contractor knew of the existence of such condition at the time Contractor made a commitment to Owner with respect to Contract Price and Contract Times by the submission of a Bid or becoming bound under a negotiated contract, or otherwise; or
 - b. the existence of such condition reasonably could have been discovered or revealed as a result of any examination, investigation, exploration, test, or study of the Site and contiguous areas expressly required by the Bidding Requirements or Contract Documents to be conducted by or for Contractor prior to Contractor's making such commitment; or
 - c. Contractor failed to give the written notice as required by Paragraph 5.04.A.
- 3. If Owner and Contractor agree regarding Contractor's entitlement to and the amount or extent of any adjustment in the Contract Price or Contract Times, or both, then any such adjustment shall be set forth in a Change Order.
- 4. Contractor may submit a Change Proposal regarding its entitlement to or the amount or extent of any adjustment in the Contract Price or Contract Times, or both, no later than 30 days after Owner's issuance of the Owner's written statement to Contractor regarding the subsurface or physical condition in question.

5.05 *Underground Facilities*

- A. *Contractor's Responsibilities:* The information and data shown or indicated in the Contract Documents with respect to existing Underground Facilities at or adjacent to the Site is based on information and data furnished to Owner or Engineer by the owners of such Underground Facilities, including Owner, or by others. Unless it is otherwise expressly provided in the Supplementary Conditions:
 - 1. Owner and Engineer do not warrant or guarantee the accuracy or completeness of any such information or data provided by others; and
 - 2. the cost of all of the following will be included in the Contract Price, and Contractor shall have full responsibility for:
 - a. reviewing and checking all information and data regarding existing Underground Facilities at the Site;
 - b. locating all Underground Facilities shown or indicated in the Contract Documents as being at the Site;
 - c. coordination of the Work with the owners (including Owner) of such Underground Facilities, during construction; and

- d. the safety and protection of all existing Underground Facilities at the Site, and repairing any damage thereto resulting from the Work.
 - e. **Before beginning any excavation, the Contractor shall contact the appropriate "one call" underground utility locate service and/or notify all owners of underground facilities (as applicable) and coordinate the Work with the owners of such underground facilities. The information shown or indicated in the Contract Documents with respect to existing underground facilities is based on information and data obtained from the owners of the facilities without field exploration and as such Owner and Engineer are not responsible for the accuracy or completeness of such information or data.**
- B. *Notice by Contractor:* If Contractor believes that an Underground Facility that is uncovered or revealed at the Site **is unusual and payment per the applicable unit price item Bid for encountering existing Underground Facilities isn't applicable** was not shown or indicated in the Contract Documents, or was not shown or indicated with reasonable accuracy, then Contractor shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as required by Paragraph 7.15), identify the owner of such Underground Facility and give written notice to that owner and to Owner and Engineer.
- C. *Engineer's Review:* Engineer will promptly review the Underground Facility and conclude whether such Underground Facility was not shown or indicated in the Contract Documents, or was not shown or indicated with reasonable accuracy; obtain any pertinent cost or schedule information from Contractor; prepare recommendations to Owner regarding the Contractor's resumption of Work in connection with the Underground Facility in question; determine the extent, if any, to which a change is required in the Drawings or Specifications to reflect and document the consequences of the existence or location of the Underground Facility; and advise Owner in writing of Engineer's findings, conclusions, and recommendations. During such time, Contractor shall be responsible for the safety and protection of such Underground Facility.
- D. *Owner's Statement to Contractor Regarding Underground Facility:* After receipt of Engineer's written findings, conclusions, and recommendations, Owner shall issue a written statement to Contractor (with a copy to Engineer) regarding the Underground Facility in question, addressing the resumption of Work in connection with such Underground Facility, indicating whether any change in the Drawings or Specifications will be made, and adopting or rejecting Engineer's written findings, conclusions, and recommendations in whole or in part.
- E. *Possible Price and Times Adjustments:*
- 1. Contractor shall **be paid at the unit price Bid for encountering Underground Facilities and will not** be entitled to **additional** equitable adjustment in the Contract Price or Contract Times, or both, **unless the Engineer's review determines that the existing facility is unusual and shouldn't be covered by the unit price and the** ~~to the extent that any existing Underground Facility at the Site that was not shown or indicated in the Contract Documents, or was not shown or indicated with reasonable accuracy, or any related~~ ~~causes~~ causing an increase or decrease in Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:

- a. Contractor did not know of and could not reasonably have been expected to be aware of or to have anticipated the existence or actual location of the Underground Facility in question;
 - b. With respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraph 13.03;
 - c. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times; and
 - d. Contractor gave the notice required in Paragraph 5.05.B.
2. If Owner and Contractor agree regarding Contractor's entitlement to and the amount or extent of any adjustment in the Contract Price or Contract Times, or both, then any such adjustment shall be set forth in a Change Order.
 3. Contractor may submit a Change Proposal regarding its entitlement to or the amount or extent of any adjustment in the Contract Price or Contract Times, or both, no later than 30 days after Owner's issuance of the Owner's written statement to Contractor regarding the Underground Facility in question.

5.06 Hazardous Environmental Conditions at Site

A. Reports and Drawings: The Supplementary Conditions identify:

1. those reports and drawings known to Owner relating to Hazardous Environmental Conditions that have been identified at or adjacent to the Site; and
2. Technical Data contained in such reports and drawings.

B. Reliance by Contractor on Technical Data Authorized: Contractor may rely upon the accuracy of the Technical Data expressly identified in the Supplementary Conditions with respect to such reports and drawings, but such reports and drawings are not Contract Documents. If no such express identification has been made, then Contractor may rely on the accuracy of the Technical Data (as defined in Article 1) contained in any geotechnical or environmental report prepared for the Project and made available to Contractor. Except for such reliance on Technical Data, Contractor may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors with respect to:

1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences and procedures of construction to be employed by Contractor and safety precautions and programs incident thereto; or
2. other data, interpretations, opinions and information contained in such reports or shown or indicated in such drawings; or
3. any Contractor interpretation of or conclusion drawn from any Technical Data or any such other data, interpretations, opinions or information.

C. Contractor shall not be responsible for removing or remediating any Hazardous Environmental Condition encountered, uncovered, or revealed at the Site unless such removal or remediation is expressly identified in the Contract Documents to be within the scope of the Work.

- D. Contractor shall be responsible for controlling, containing, and duly removing all Constituents of Concern brought to the Site by Contractor, Subcontractors, Suppliers, or anyone else for whom Contractor is responsible, and for any associated costs; and for the costs of removing and remediating any Hazardous Environmental Condition created by the presence of any such Constituents of Concern.
- E. If Contractor encounters, uncovers, or reveals a Hazardous Environmental Condition whose removal or remediation is not expressly identified in the Contract Documents as being within the scope of the Work, or if Contractor or anyone for whom Contractor is responsible creates a Hazardous Environmental Condition, then Contractor shall immediately: (1) secure or otherwise isolate such condition; (2) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by Paragraph 7.15); and (3) notify Owner and Engineer (and promptly thereafter confirm such notice in writing). Owner shall promptly consult with Engineer concerning the necessity for Owner to retain a qualified expert to evaluate such condition or take corrective action, if any. Promptly after consulting with Engineer, Owner shall take such actions as are necessary to permit Owner to timely obtain required permits and provide Contractor the written notice required by Paragraph 5.06.F. If Contractor or anyone for whom Contractor is responsible created the Hazardous Environmental Condition in question, then Owner may remove and remediate the Hazardous Environmental Condition, and impose a set-off against payments to account for the associated costs.
- F. Contractor shall not resume Work in connection with such Hazardous Environmental Condition or in any affected area until after Owner has obtained any required permits related thereto, and delivered written notice to Contractor either (1) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work, or (2) specifying any special conditions under which such Work may be resumed safely.
- G. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times, or both, as a result of such Work stoppage or such special conditions under which Work is agreed to be resumed by Contractor, then within 30 days of Owner's written notice regarding the resumption of Work, Contractor may submit a Change Proposal, or Owner may impose a set-off.
- H. If after receipt of such written notice Contractor does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special conditions, then Owner may order the portion of the Work that is in the area affected by such condition to be deleted from the Work, following the contractual change procedures in Article 11. Owner may have such deleted portion of the Work performed by Owner's own forces or others in accordance with Article 8.
- I. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, Subcontractors, and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition, provided that such Hazardous Environmental Condition (1) was not shown or indicated in the Drawings, Specifications, or other Contract Documents, identified as Technical Data entitled to limited reliance pursuant to Paragraph 5.06.B, or identified in the Contract Documents to be included within the scope of the Work, and (2) was not created by Contractor or by anyone for

whom Contractor is responsible. Nothing in this Paragraph 5.06.H shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.

- J. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the failure to control, contain, or remove a Constituent of Concern brought to the Site by Contractor or by anyone for whom Contractor is responsible, or to a Hazardous Environmental Condition created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 5.06.J shall obligate Contractor to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.
- K. The provisions of Paragraphs 5.03, 5.04, and 5.05 do not apply to the presence of Constituents of Concern or to a Hazardous Environmental Condition uncovered or revealed at the Site.

ARTICLE 6 – BONDS AND INSURANCE

6.01 *Performance, Payment, and Other Bonds*

- A. Contractor shall furnish a performance bond and a payment bond, each in an amount at least equal to the Contract Price, as security for the faithful performance and payment of all of Contractor's obligations under the Contract. These bonds shall remain in effect until one year after the date when final payment becomes due or until completion of the correction period specified in Paragraph 15.08, whichever is later, except as provided otherwise by Laws or Regulations, the Supplementary Conditions, or other specific provisions of the Contract. Contractor shall also furnish such other bonds as are required by the Supplementary Conditions or other specific provisions of the Contract.
- B. All bonds shall be in the form prescribed by the Contract except as provided otherwise by Laws or Regulations, and shall be executed by such sureties as are named in "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (as amended and supplemented) by the Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury. A bond signed by an agent or attorney-in-fact must be accompanied by a certified copy of that individual's authority to bind the surety. The evidence of authority shall show that it is effective on the date the agent or attorney-in-fact signed the accompanying bond.
- C. Contractor shall obtain the required bonds from surety companies that are duly licensed or authorized in the jurisdiction in which the Project is located to issue bonds in the required amounts.
- D. If the surety on a bond furnished by Contractor is declared bankrupt or becomes insolvent, or its right to do business is terminated in any state or jurisdiction where any part of the Project is located, or the surety ceases to meet the requirements above, then Contractor shall promptly notify Owner and Engineer and shall, within 20 days after the event giving rise to such

notification, provide another bond and surety, both of which shall comply with the bond and surety requirements above.

- E. If Contractor has failed to obtain a required bond, Owner may exclude the Contractor from the Site and exercise Owner's termination rights under Article 16.
- F. Upon request, Owner shall provide a copy of the payment bond to any Subcontractor, Supplier, or other person or entity claiming to have furnished labor or materials used in the performance of the Work.

6.02 *Insurance—General Provisions*

- A. Owner and Contractor shall obtain and maintain insurance as required in this Article and in the Supplementary Conditions.
- B. All insurance required by the Contract to be purchased and maintained by Owner or Contractor shall be obtained from insurance companies that are duly licensed or authorized, in the state or jurisdiction in which the Project is located, to issue insurance policies for the required limits and coverages. Unless a different standard is indicated in the Supplementary Conditions, all companies that provide insurance policies required under this Contract shall have an A.M. Best rating of A-VII or better.
- C. Contractor shall deliver to Owner, with copies to each named insured and additional insured (as identified in this Article, in the Supplementary Conditions, or elsewhere in the Contract), certificates of insurance establishing that Contractor has obtained and is maintaining the policies, coverages, and endorsements required by the Contract. Upon request by Owner or any other insured, Contractor shall also furnish other evidence of such required insurance, including but not limited to copies of policies and endorsements, and documentation of applicable self-insured retentions and deductibles. Contractor may block out (redact) any confidential premium or pricing information contained in any policy or endorsement furnished under this provision.
- D. Owner shall deliver to Contractor, with copies to each named insured and additional insured (as identified in this Article, the Supplementary Conditions, or elsewhere in the Contract), certificates of insurance establishing that Owner has obtained and is maintaining the policies, coverages, and endorsements required of Owner by the Contract (if any). Upon request by Contractor or any other insured, Owner shall also provide other evidence of such required insurance (if any), including but not limited to copies of policies and endorsements, and documentation of applicable self-insured retentions and deductibles. Owner may block out (redact) any confidential premium or pricing information contained in any policy or endorsement furnished under this provision.
- E. Failure of Owner or Contractor to demand such certificates or other evidence of the other party's full compliance with these insurance requirements, or failure of Owner or Contractor to identify a deficiency in compliance from the evidence provided, shall not be construed as a waiver of the other party's obligation to obtain and maintain such insurance.
- F. If either party does not purchase or maintain all of the insurance required of such party by the Contract, such party shall notify the other party in writing of such failure to purchase prior to the start of the Work, or of such failure to maintain prior to any change in the required coverage.

- G. If Contractor has failed to obtain and maintain required insurance, Owner may exclude the Contractor from the Site, impose an appropriate set-off against payment, and exercise Owner's termination rights under Article 16.
- H. Without prejudice to any other right or remedy, if a party has failed to obtain required insurance, the other party may elect to obtain equivalent insurance to protect such other party's interests at the expense of the party who was required to provide such coverage, and the Contract Price shall be adjusted accordingly.
- I. Owner does not represent that insurance coverage and limits established in this Contract necessarily will be adequate to protect Contractor or Contractor's interests.
- J. The insurance and insurance limits required herein shall not be deemed as a limitation on Contractor's liability under the indemnities granted to Owner and other individuals and entities in the Contract.

6.03 Contractor's Insurance

- A. *Workers' Compensation:* Contractor shall purchase and maintain workers' compensation and employer's liability insurance for:
 - 1. claims under workers' compensation, disability benefits, and other similar employee benefit acts.
 - 2. United States Longshoreman and Harbor Workers' Compensation Act and Jones Act coverage (if applicable).
 - 3. claims for damages because of bodily injury, occupational sickness or disease, or death of Contractor's employees (by stop-gap endorsement in monopolist worker's compensation states).
 - 4. Foreign voluntary worker compensation (if applicable).
- B. *Commercial General Liability—Claims Covered:* Contractor shall purchase and maintain commercial general liability insurance, covering all operations by or on behalf of Contractor, on an occurrence basis, against:
 - 1. claims for damages because of bodily injury, sickness or disease, or death of any person other than Contractor's employees.
 - 2. claims for damages insured by reasonably available personal injury liability coverage.
 - 3. claims for damages, other than to the Work itself, because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom.
- C. *Commercial General Liability—Form and Content:* Contractor's commercial liability policy shall be written on a 1996 (or later) ISO commercial general liability form (occurrence form) and include the following coverages and endorsements:
 - 1. Products and completed operations coverage:
 - a. Such insurance shall be maintained for three years after final payment.
 - b. Contractor shall furnish Owner and each other additional insured (as identified in the Supplementary Conditions or elsewhere in the Contract) evidence of continuation of such insurance at final payment and three years thereafter.

2. Blanket contractual liability coverage, to the extent permitted by law, including but not limited to coverage of Contractor's contractual indemnity obligations in Paragraph 7.18.
 3. Broad form property damage coverage.
 4. Severability of interest.
 5. Underground, explosion, and collapse coverage.
 6. Personal injury coverage.
 7. Additional insured endorsements that include both ongoing operations and products and completed operations coverage through ISO Endorsements CG 20 10 10 01 and CG 20 37 10 01 (together); or CG 20 10 07 04 and CG 20 37 07 04 (together); or their equivalent.
 8. For design professional additional insureds, ISO Endorsement CG 20 32 07 04, "Additional Insured—Engineers, Architects or Surveyors Not Engaged by the Named Insured" or its equivalent.
- D. *Automobile liability:* Contractor shall purchase and maintain automobile liability insurance against claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance, or use of any motor vehicle. The automobile liability policy shall be written on an occurrence basis.
- E. *Umbrella or excess liability:* Contractor shall purchase and maintain umbrella or excess liability insurance written over the underlying employer's liability, commercial general liability, and automobile liability insurance described in the paragraphs above. Subject to industry-standard exclusions, the coverage afforded shall follow form as to each and every one of the underlying policies.
- F. *Contractor's pollution liability insurance:* Contractor shall purchase and maintain a policy covering third-party injury and property damage claims, including clean-up costs, as a result of pollution conditions arising from Contractor's operations and completed operations. This insurance shall be maintained for no less than three years after final completion.
- G. *Additional insureds:* The Contractor's commercial general liability, automobile liability, umbrella or excess, and pollution liability policies shall include and list as additional insureds Owner and Engineer, and any individuals or entities identified in the Supplementary Conditions; include coverage for the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of all such additional insureds; and the insurance afforded to these additional insureds shall provide primary coverage for all claims covered thereby (including as applicable those arising from both ongoing and completed operations) on a non-contributory basis. Contractor shall obtain all necessary endorsements to support these requirements.
- H. *Contractor's professional liability insurance:* If Contractor will provide or furnish professional services under this Contract, through a delegation of professional design services or otherwise, then Contractor shall be responsible for purchasing and maintaining applicable professional liability insurance. This insurance shall provide protection against claims arising out of performance of professional design or related services, and caused by a negligent error, omission, or act for which the insured party is legally liable. It shall be maintained throughout the duration of the Contract and for a minimum of two years after Substantial Completion. If such professional design services are performed by a Subcontractor, and not by Contractor itself,

then the requirements of this paragraph may be satisfied through the purchasing and maintenance of such insurance by such Subcontractor.

- I. *General provisions:* The policies of insurance required by this Paragraph 6.03 shall:
 - 1. include at least the specific coverages provided in this Article.
 - 2. be written for not less than the limits of liability provided in this Article and in the Supplementary Conditions, or required by Laws or Regulations, whichever is greater.
 - 3. contain a provision or endorsement that the coverage afforded will not be canceled, materially changed, or renewal refused until at least 10 days prior written notice has been given to Contractor. Within three days of receipt of any such written notice, Contractor shall provide a copy of the notice to Owner, Engineer, and each other insured under the policy.
 - 4. remain in effect at least until final payment (and longer if expressly required in this Article) and at all times thereafter when Contractor may be correcting, removing, or replacing defective Work as a warranty or correction obligation, or otherwise, or returning to the Site to conduct other tasks arising from the Contract Documents.
 - 5. be appropriate for the Work being performed and provide protection from claims that may arise out of or result from Contractor's performance of the Work and Contractor's other obligations under the Contract Documents, whether it is to be performed by Contractor, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable.
- J. The coverage requirements for specific policies of insurance must be met by such policies, and not by reference to excess or umbrella insurance provided in other policies.

6.04 *Owner's Liability Insurance*

- A. In addition to the insurance required to be provided by Contractor under Paragraph 6.03, Owner, at Owner's option, may purchase and maintain at Owner's expense Owner's own liability insurance as will protect Owner against claims which may arise from operations under the Contract Documents.
- B. Owner's liability policies, if any, operate separately and independently from policies required to be provided by Contractor, and Contractor cannot rely upon Owner's liability policies for any of Contractor's obligations to the Owner, Engineer, or third parties.

6.05 *Property Insurance*

- A. *Builder's Risk:* Unless otherwise provided in the Supplementary Conditions, Contractor shall purchase and maintain builder's risk insurance upon the Work on a completed value basis, in the amount of the full insurable replacement cost thereof (subject to such deductible amounts as may be provided in the Supplementary Conditions or required by Laws and Regulations). This insurance shall:
 - 1. include the Owner and Contractor as named insureds, and all Subcontractors, and any individuals or entities required by the Supplementary Conditions to be insured under such builder's risk policy, as insureds or named insureds. For purposes of the remainder of this Paragraph 6.05, Paragraphs 6.06 and 6.07, and any corresponding Supplementary Conditions, the parties required to be insured shall collectively be referred to as "insureds."

2. be written on a builder's risk "all risk" policy form that shall at least include insurance for physical loss or damage to the Work, temporary buildings, falsework, and materials and equipment in transit, and shall insure against at least the following perils or causes of loss: fire; lightning; windstorm; riot; civil commotion; terrorism; vehicle impact; aircraft; smoke; theft; vandalism and malicious mischief; mechanical breakdown, boiler explosion, and artificially generated electric current; earthquake; volcanic activity, and other earth movement; flood; collapse; explosion; debris removal; demolition occasioned by enforcement of Laws and Regulations; water damage (other than that caused by flood); and such other perils or causes of loss as may be specifically required by the Supplementary Conditions. If insurance against mechanical breakdown, boiler explosion, and artificially generated electric current; earthquake; volcanic activity, and other earth movement; or flood, are not commercially available under builder's risk policies, by endorsement or otherwise, such insurance may be provided through other insurance policies acceptable to Owner and Contractor.
3. cover, as insured property, at least the following: (a) the Work and all materials, supplies, machinery, apparatus, equipment, fixtures, and other property of a similar nature that are to be incorporated into or used in the preparation, fabrication, construction, erection, or completion of the Work, including Owner-furnished or assigned property; (b) spare parts inventory required within the scope of the Contract; and (c) temporary works which are not intended to form part of the permanent constructed Work but which are intended to provide working access to the Site, or to the Work under construction, or which are intended to provide temporary support for the Work under construction, including scaffolding, form work, fences, shoring, falsework, and temporary structures.
4. cover expenses incurred in the repair or replacement of any insured property (including but not limited to fees and charges of engineers and architects).
5. extend to cover damage or loss to insured property while in temporary storage at the Site or in a storage location outside the Site (but not including property stored at the premises of a manufacturer or Supplier).
6. extend to cover damage or loss to insured property while in transit.
7. allow for partial occupation or use of the Work by Owner, such that those portions of the Work that are not yet occupied or used by Owner shall remain covered by the builder's risk insurance.
8. allow for the waiver of the insurer's subrogation rights, as set forth below.
9. provide primary coverage for all losses and damages caused by the perils or causes of loss covered.
10. not include a co-insurance clause.
11. include an exception for ensuing losses from physical damage or loss with respect to any defective workmanship, design, or materials exclusions.
12. include performance/hot testing and start-up.
13. be maintained in effect, subject to the provisions herein regarding Substantial Completion and partial occupancy or use of the Work by Owner, until the Work is complete.

- B. *Notice of Cancellation or Change:* All the policies of insurance (and the certificates or other evidence thereof) required to be purchased and maintained in accordance with this Paragraph 6.05 will contain a provision or endorsement that the coverage afforded will not be canceled or materially changed or renewal refused until at least 10 days prior written notice has been given to the purchasing policyholder. Within three days of receipt of any such written notice, the purchasing policyholder shall provide a copy of the notice to each other insured.
- C. *Deductibles:* The purchaser of any required builder's risk or property insurance shall pay for costs not covered because of the application of a policy deductible.
- D. *Partial Occupancy or Use by Owner:* If Owner will occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work as provided in Paragraph 15.04, then Owner (directly, if it is the purchaser of the builder's risk policy, or through Contractor) will provide notice of such occupancy or use to the builder's risk insurer. The builder's risk insurance shall not be canceled or permitted to lapse on account of any such partial use or occupancy; rather, those portions of the Work that are occupied or used by Owner may come off the builder's risk policy, while those portions of the Work not yet occupied or used by Owner shall remain covered by the builder's risk insurance.
- E. *Additional Insurance:* If Contractor elects to obtain other special insurance to be included in or supplement the builder's risk or property insurance policies provided under this Paragraph 6.05, it may do so at Contractor's expense.
- F. *Insurance of Other Property:* If the express insurance provisions of the Contract do not require or address the insurance of a property item or interest, such as tools, construction equipment, or other personal property owned by Contractor, a Subcontractor, or an employee of Contractor or a Subcontractor, then the entity or individual owning such property item will be responsible for deciding whether to insure it, and if so in what amount.

6.06 *Waiver of Rights*

- A. All policies purchased in accordance with Paragraph 6.05, expressly including the builder's risk policy, shall contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any insureds thereunder, or against Engineer or its consultants, or their officers, directors, members, partners, employees, agents, consultants, or subcontractors. Owner and Contractor waive all rights against each other and the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work; and, in addition, waive all such rights against Engineer, its consultants, all Subcontractors, all individuals or entities identified in the Supplementary Conditions as insureds, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, under such policies for losses and damages so caused. None of the above waivers shall extend to the rights that any party making such waiver may have to the proceeds of insurance held by Owner or Contractor as trustee or fiduciary, or otherwise payable under any policy so issued.
- B. Owner waives all rights against Contractor, Subcontractors, and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, for:

1. loss due to business interruption, loss of use, or other consequential loss extending beyond direct physical loss or damage to Owner's property or the Work caused by, arising out of, or resulting from fire or other perils whether or not insured by Owner; and
 2. loss or damage to the completed Project or part thereof caused by, arising out of, or resulting from fire or other insured peril or cause of loss covered by any property insurance maintained on the completed Project or part thereof by Owner during partial occupancy or use pursuant to Paragraph 15.04, after Substantial Completion pursuant to Paragraph 15.03, or after final payment pursuant to Paragraph 15.06.
- C. Any insurance policy maintained by Owner covering any loss, damage or consequential loss referred to in Paragraph 6.06.B shall contain provisions to the effect that in the event of payment of any such loss, damage, or consequential loss, the insurers will have no rights of recovery against Contractor, Subcontractors, or Engineer, or the officers, directors, members, partners, employees, agents, consultants, or subcontractors of each and any of them.
- D. Contractor shall be responsible for assuring that the agreement under which a Subcontractor performs a portion of the Work contains provisions whereby the Subcontractor waives all rights against Owner, Contractor, all individuals or entities identified in the Supplementary Conditions as insureds, the Engineer and its consultants, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, relating to, or resulting from any of the perils or causes of loss covered by builder's risk insurance and any other property insurance applicable to the Work.

6.07 *Receipt and Application of Property Insurance Proceeds*

- A. Any insured loss under the builder's risk and other policies of insurance required by Paragraph 6.05 will be adjusted and settled with the named insured that purchased the policy. Such named insured shall act as fiduciary for the other insureds, and give notice to such other insureds that adjustment and settlement of a claim is in progress. Any other insured may state its position regarding a claim for insured loss in writing within 15 days after notice of such claim.
- B. Proceeds for such insured losses may be made payable by the insurer either jointly to multiple insureds, or to the named insured that purchased the policy in its own right and as fiduciary for other insureds, subject to the requirements of any applicable mortgage clause. A named insured receiving insurance proceeds under the builder's risk and other policies of insurance required by Paragraph 6.05 shall distribute such proceeds in accordance with such agreement as the parties in interest may reach, or as otherwise required under the dispute resolution provisions of this Contract or applicable Laws and Regulations.
- C. If no other special agreement is reached, the damaged Work shall be repaired or replaced, the money so received applied on account thereof, and the Work and the cost thereof covered by Change Order, if needed.

ARTICLE 7 – CONTRACTOR'S RESPONSIBILITIES

7.01 *Supervision and Superintendence*

- A. Contractor shall supervise, inspect, and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. Contractor shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction.

- B. At all times during the progress of the Work, Contractor shall assign a competent resident superintendent who shall not be replaced without written notice to Owner and Engineer except under extraordinary circumstances.

7.02 *Labor; Working Hours*

- A. Contractor shall provide competent, suitably qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. Contractor shall at all times maintain good discipline and order at the Site.
- B. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise stated in the Contract Documents, all Work at the Site shall be performed during daytime hours (7:00 AM to 7:00 PM), Monday through Friday. Contractor will not perform Work on a Saturday, Sunday, or any legal holiday. Contractor may perform Work outside regular working hours or on Saturdays, Sundays, or legal holidays only with Owner's written consent, which will not be unreasonably withheld.

7.03 *Services, Materials, and Equipment*

- A. Unless otherwise specified in the Contract Documents, Contractor shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, testing, start up, and completion of the Work, whether or not such items are specifically called for in the Contract Documents.
- B. All materials and equipment incorporated into the Work shall be of good quality and new, except as otherwise provided in the Contract Documents. All special warranties and guarantees required by the Specifications shall expressly run to the benefit of Owner. If required by Engineer, Contractor shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment.
- C. All materials and equipment shall be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable Supplier, except as otherwise may be provided in the Contract Documents.

7.04 *"Or Equals"*

- A. Whenever an item of material or equipment is specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular Supplier, the Contract Price has been based upon Contractor furnishing such item as specified. The specification or description of such an item is intended to establish the type, function, appearance, and quality required. Unless the specification or description contains or is followed by words reading that no like, equivalent, or "or equal" item is permitted, Contractor may request that Engineer authorize the use of other items of material or equipment, or items from other proposed suppliers under the circumstances described below.
 - 1. If Engineer in its sole discretion determines that an item of material or equipment proposed by Contractor is functionally equal to that named and sufficiently similar so that no change in related Work will be required, Engineer shall deem it an "or equal" item. For the purposes of this paragraph, a proposed item of material or equipment will be considered functionally equal to an item so named if:

- a. in the exercise of reasonable judgment Engineer determines that:
 - 1) it is at least equal in materials of construction, quality, durability, appearance, strength, and design characteristics;
 - 2) it will reliably perform at least equally well the function and achieve the results imposed by the design concept of the completed Project as a functioning whole;
 - 3) it has a proven record of performance and availability of responsive service; and
 - 4) it is not objectionable to Owner.
- b. Contractor certifies that, if approved and incorporated into the Work:
 - 1) there will be no increase in cost to the Owner or increase in Contract Times; and
 - 2) it will conform substantially to the detailed requirements of the item named in the Contract Documents.
- B. *Contractor's Expense:* Contractor shall provide all data in support of any proposed "or equal" item at Contractor's expense.
- C. *Engineer's Evaluation and Determination:* Engineer will be allowed a reasonable time to evaluate each "or-equal" request. Engineer may require Contractor to furnish additional data about the proposed "or-equal" item. Engineer will be the sole judge of acceptability. No "or-equal" item will be ordered, furnished, installed, or utilized until Engineer's review is complete and Engineer determines that the proposed item is an "or-equal", which will be evidenced by an approved Shop Drawing or other written communication. Engineer will advise Contractor in writing of any negative determination.
- D. *Effect of Engineer's Determination:* Neither approval nor denial of an "or-equal" request shall result in any change in Contract Price. The Engineer's denial of an "or-equal" request shall be final and binding, and may not be reversed through an appeal under any provision of the Contract Documents.
- E. *Treatment as a Substitution Request:* If Engineer determines that an item of material or equipment proposed by Contractor does not qualify as an "or-equal" item, Contractor may request that Engineer considered the proposed item as a substitute pursuant to Paragraph 7.05.

7.05 Substitutes

- A. Unless the specification or description of an item of material or equipment required to be furnished under the Contract Documents contains or is followed by words reading that no substitution is permitted, Contractor may request that Engineer authorize the use of other items of material or equipment under the circumstances described below. To the extent possible such requests shall be made before commencement of related construction at the Site.
 - 1. Contractor shall submit sufficient information as provided below to allow Engineer to determine if the item of material or equipment proposed is functionally equivalent to that named and an acceptable substitute therefor. Engineer will not accept requests for review of proposed substitute items of material or equipment from anyone other than Contractor.
 - 2. The requirements for review by Engineer will be as set forth in Paragraph 7.05.B, as supplemented by the Specifications, and as Engineer may decide is appropriate under the circumstances.

3. Contractor shall make written application to Engineer for review of a proposed substitute item of material or equipment that Contractor seeks to furnish or use. The application:
 - a. shall certify that the proposed substitute item will:
 - 1) perform adequately the functions and achieve the results called for by the general design,
 - 2) be similar in substance to that specified, and
 - 3) be suited to the same use as that specified.
 - b. will state:
 - 1) the extent, if any, to which the use of the proposed substitute item will necessitate a change in Contract Times,
 - 2) whether use of the proposed substitute item in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with Owner for other work on the Project) to adapt the design to the proposed substitute item, and
 - 3) whether incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty.
 - c. will identify:
 - 1) all variations of the proposed substitute item from that specified, and
 - 2) available engineering, sales, maintenance, repair, and replacement services.
 - d. shall contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including but not limited to changes in Contract Price, shared savings, costs of redesign, and claims of other contractors affected by any resulting change.
- B. *Engineer's Evaluation and Determination:* Engineer will be allowed a reasonable time to evaluate each substitute request, and to obtain comments and direction from Owner. Engineer may require Contractor to furnish additional data about the proposed substitute item. Engineer will be the sole judge of acceptability. No substitute will be ordered, furnished, installed, or utilized until Engineer's review is complete and Engineer determines that the proposed item is an acceptable substitute. Engineer's determination will be evidenced by a Field Order or a proposed Change Order accounting for the substitution itself and all related impacts, including changes in Contract Price or Contract Times. Engineer will advise Contractor in writing of any negative determination.
- C. *Special Guarantee:* Owner may require Contractor to furnish at Contractor's expense a special performance guarantee or other surety with respect to any substitute.
- D. *Reimbursement of Engineer's Cost:* Engineer will record Engineer's costs in evaluating a substitute proposed or submitted by Contractor. Whether or not Engineer approves a substitute so proposed or submitted by Contractor, Contractor shall reimburse Owner for the reasonable charges of Engineer for evaluating each such proposed substitute. Contractor shall also reimburse Owner for the reasonable charges of Engineer for making changes in the Contract

Documents (or in the provisions of any other direct contract with Owner) resulting from the acceptance of each proposed substitute.

- E. *Contractor's Expense:* Contractor shall provide all data in support of any proposed substitute at Contractor's expense.
- F. *Effect of Engineer's Determination:* If Engineer approves the substitution request, Contractor shall execute the proposed Change Order and proceed with the substitution. The Engineer's denial of a substitution request shall be final and binding, and may not be reversed through an appeal under any provision of the Contract Documents. Contractor may challenge the scope of reimbursement costs imposed under Paragraph 7.05.D, by timely submittal of a Change Proposal.

7.06 *Concerning Subcontractors, Suppliers, and Others*

- A. Contractor may retain Subcontractors and Suppliers for the performance of parts of the Work. Such Subcontractors and Suppliers must be acceptable to Owner. **The Contractor shall not award work valued at more than fifty percent (50%) of the Contract Price to Subcontractor(s), without prior written approval of the Owner.**
- B. ~~**Deleted.** Contractor shall retain specific Subcontractors, Suppliers, or other individuals or entities for the performance of designated parts of the Work if required by the Contract to do so.~~
- C. Subsequent to the submittal of Contractor's Bid or final negotiation of the terms of the Contract, Owner may not require Contractor to retain any Subcontractor, Supplier, or other individual or entity to furnish or perform any of the Work against which Contractor has reasonable objection.
- D. Prior to entry into any binding subcontract or purchase order, Contractor shall submit to Owner the identity of the proposed Subcontractor or Supplier (unless Owner has already deemed such proposed Subcontractor or Supplier acceptable, during the bidding process or otherwise). Such proposed Subcontractor or Supplier shall be deemed acceptable to Owner unless Owner raises a substantive, reasonable objection within five days.
- E. Owner may require the replacement of any Subcontractor, Supplier, or other individual or entity retained by Contractor to perform any part of the Work. ~~Owner also may require Contractor to retain specific replacements; provided, however, that~~ Owner may not require a replacement to which Contractor has a reasonable objection. If Contractor has submitted the identity of certain Subcontractors, Suppliers, or other individuals or entities for acceptance by Owner, and Owner has accepted it (either in writing or by failing to make written objection thereto), then Owner may subsequently revoke the acceptance of any such Subcontractor, Supplier, or other individual or entity so identified solely on the basis of substantive, reasonable objection after due investigation. Contractor shall submit an acceptable replacement for the rejected Subcontractor, Supplier, or other individual or entity.
- F. If Owner requires the replacement of any Subcontractor, Supplier, or other individual or entity retained by Contractor to perform any part of the Work, then Contractor shall be entitled to an adjustment in Contract Price or Contract Times, or both, with respect to the replacement; and Contractor shall initiate a Change Proposal for such adjustment within 30 days of Owner's requirement of replacement.

- G. No acceptance by Owner of any such Subcontractor, Supplier, or other individual or entity, whether initially or as a replacement, shall constitute a waiver of the right of Owner to the completion of the Work in accordance with the Contract Documents.
- H. On a monthly basis Contractor shall submit to Engineer a complete list of all Subcontractors and Suppliers having a direct contract with Contractor, and of all other Subcontractors and Suppliers known to Contractor at the time of submittal.
- I. Contractor shall be fully responsible to Owner and Engineer for all acts and omissions of the Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work just as Contractor is responsible for Contractor's own acts and omissions.
- J. Contractor shall be solely responsible for scheduling and coordinating the work of Subcontractors, Suppliers, and all other individuals or entities performing or furnishing any of the Work.
- K. Contractor shall restrict all Subcontractors, Suppliers, and such other individuals or entities performing or furnishing any of the Work from communicating with Engineer or Owner, except through Contractor or in case of an emergency, or as otherwise expressly allowed herein.
- L. The divisions and sections of the Specifications and the identifications of any Drawings shall not control Contractor in dividing the Work among Subcontractors or Suppliers or delineating the Work to be performed by any specific trade.
- M. All Work performed for Contractor by a Subcontractor or Supplier shall be pursuant to an appropriate contractual agreement that specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract Documents for the benefit of Owner and Engineer.
- N. Owner may furnish to any Subcontractor or Supplier, to the extent practicable, information about amounts paid to Contractor on account of Work performed for Contractor by the particular Subcontractor or Supplier.
- O. Nothing in the Contract Documents:
 - 1. shall create for the benefit of any such Subcontractor, Supplier, or other individual or entity any contractual relationship between Owner or Engineer and any such Subcontractor, Supplier, or other individual or entity; nor
 - 2. shall create any obligation on the part of Owner or Engineer to pay or to see to the payment of any money due any such Subcontractor, Supplier, or other individual or entity except as may otherwise be required by Laws and Regulations.

7.07 Patent Fees and Royalties

- A. Contractor shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product, or device which is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product, or device is specified in the Contract Documents for use in the performance of the Work and if, to the actual knowledge of Owner or Engineer, its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by Owner in the Contract Documents.

- B. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, and its officers, directors, members, partners, employees, agents, consultants, and subcontractors from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device specified in the Contract Documents, but not identified as being subject to payment of any license fee or royalty to others required by patent rights or copyrights.
- C. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device not specified in the Contract Documents.

7.08 *Permits*

- A. Unless otherwise provided in the Contract Documents, Contractor shall obtain and pay for all construction permits and licenses. Owner shall assist Contractor, when necessary, in obtaining such permits and licenses. Contractor shall pay all governmental charges and inspection fees necessary for the prosecution of the Work which are applicable at the time of the submission of Contractor's Bid (or when Contractor became bound under a negotiated contract). Owner shall pay all charges of utility owners for connections for providing permanent service to the Work

7.09 *Taxes*

- A. Contractor shall pay all sales, consumer, use, and other similar taxes required to be paid by Contractor in accordance with the Laws and Regulations of the place of the Project which are applicable during the performance of the Work.

7.10 *Laws and Regulations*

- A. Contractor shall give all notices required by and shall comply with all Laws and Regulations applicable to the performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, neither Owner nor Engineer shall be responsible for monitoring Contractor's compliance with any Laws or Regulations.
- B. If Contractor performs any Work or takes any other action knowing or having reason to know that it is contrary to Laws or Regulations, Contractor shall bear all resulting costs and losses, and shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such Work or other action. It shall not be Contractor's responsibility to make certain that the Work described in the Contract Documents

is in accordance with Laws and Regulations, but this shall not relieve Contractor of Contractor's obligations under Paragraph 3.03.

- C. Owner or Contractor may give notice to the other party of any changes after the submission of Contractor's Bid (or after the date when Contractor became bound under a negotiated contract) in Laws or Regulations having an effect on the cost or time of performance of the Work, including but not limited to changes in Laws or Regulations having an effect on procuring permits and on sales, use, value-added, consumption, and other similar taxes. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times resulting from such changes, then within 30 days of such notice Contractor may submit a Change Proposal, or Owner may initiate a Claim.

7.11 *Record Documents*

- A. Contractor shall maintain in a safe place at the Site one printed record copy of all Drawings, Specifications, Addenda, Change Orders, Work Change Directives, Field Orders, written interpretations and clarifications, and approved Shop Drawings. Contractor shall keep such record documents in good order and annotate them to show changes made during construction. These record documents, together with all approved Samples, will be available to Engineer for reference. Upon completion of the Work, Contractor shall deliver these record documents to Engineer. **The Engineer will transfer the Contractor's record information to the original drawings, and submit prints to the Contractor for review. Contractor shall provide writing confirmation that the record drawings are complete and accurate before final payment is approved by the Engineer.**

7.12 *Safety and Protection*

- A. Contractor shall be solely responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. Such responsibility does not relieve Subcontractors of their responsibility for the safety of persons or property in the performance of their work, nor for compliance with applicable safety Laws and Regulations. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury, or loss to:
 - 1. all persons on the Site or who may be affected by the Work;
 - 2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and
 - 3. other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, other work in progress, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.
- B. Contractor shall comply with all applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection. Contractor shall notify Owner; the owners of adjacent property, Underground Facilities, and other utilities; and other contractors and utility owners performing work at or adjacent to the Site, when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property or work in progress.

- C. Contractor shall comply with the applicable requirements of Owner's safety programs, if any. The Supplementary Conditions identify any Owner's safety programs that are applicable to the Work.
- D. Contractor shall inform Owner and Engineer of the specific requirements of Contractor's safety program with which Owner's and Engineer's employees and representatives must comply while at the Site.
- E. All damage, injury, or loss to any property referred to in Paragraph 7.12.A.2 or 7.12.A.3 caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by Contractor at its expense (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of Owner or Engineer or anyone employed by any of them, or anyone for whose acts any of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of Contractor or any Subcontractor, Supplier, or other individual or entity directly or indirectly employed by any of them).
- F. Contractor's duties and responsibilities for safety and protection shall continue until such time as all the Work is completed and Engineer has issued a notice to Owner and Contractor in accordance with Paragraph 15.06.B that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion).
- G. Contractor's duties and responsibilities for safety and protection shall resume whenever Contractor or any Subcontractor or Supplier returns to the Site to fulfill warranty or correction obligations, or to conduct other tasks arising from the Contract Documents.
- H. **It is expressly understood by the parties to this Agreement that the Contractor is solely responsible for initiation, maintenance, and supervision of safety precautions and programs in connection with the Work. The right of the Owner and Engineer to observe or otherwise review the Work and operations shall not relieve the Contractor from any of his covenants and obligations hereunder.**
- I. **The Contractor shall be responsible for and shall take necessary precautions and provide all material and equipment to protect, shore, brace and maintain all underground pipes, conduits, drains, sewers, water mains, gas mains, cables, and other underground construction uncovered in the proximity or otherwise affected by the Work. All pavement surfacing, driveways, curbs, walks, buildings, grass areas, trees, utility poles or guy wires damaged by the Contractor in performance of the Work shall be repaired and/or replaced to the satisfaction of the Owner, Engineer and effected property owner at the Contractor's expense. The Contractor shall also be responsible for all damage to streets, roads, highways, shoulders, ditches, embankments, culverts, bridges or other public or private property or facility, regardless of location or character, which may be caused by moving, hauling, or otherwise transporting equipment, materials, or men to and from the Work whether by Contractor or Subcontractors. The Contractor shall make satisfactory and acceptable arrangements with the owner of, or the agency or authority having jurisdiction over the damaged property or facility concerning its repair, replacement or payment of costs incurred in connection with said damage.**
- J. **The Contractor shall conduct its work so as to interfere as little as possible with public travel, whether vehicular or pedestrian. Whenever it is necessary to cross, obstruct or close roads, driveways, and walks, whether public or private, the Contractor shall obtain approval from the**

governing party and shall at its own expense provide and maintain suitable and safe bridges, detours and other temporary expedients for the accommodation of public and private drives before interfering with them. The provision for temporary expedients will not be required if the Contractor has obtained permission from the owner and tenant of the private property, or from the authority having jurisdiction over public property involved, to obstruct traffic at the designated point.

- K. **Safety provisions must be entirely adequate and meet with city, state or Federal regulations to protect the public on the sidewalks, streets and roads.**

7.13 *Safety Representative*

- A. Contractor shall designate a qualified and experienced safety representative at the Site whose duties and responsibilities shall be the prevention of accidents and the maintaining and supervising of safety precautions and programs.

7.14 *Hazard Communication Programs*

- A. Contractor shall be responsible for coordinating any exchange of material safety data sheets or other hazard communication information required to be made available to or exchanged between or among employers at the Site in accordance with Laws or Regulations.

7.15 *Emergencies*

- A. In emergencies affecting the safety or protection of persons or the Work or property at the Site or adjacent thereto, Contractor is obligated to act to prevent threatened damage, injury, or loss. Contractor shall give Engineer prompt written notice if Contractor believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby or are required as a result thereof. If Engineer determines that a change in the Contract Documents is required because of the action taken by Contractor in response to such an emergency, a Work Change Directive or Change Order will be issued.

7.16 *Shop Drawings, Samples, and Other Submittals*

- A. *Shop Drawing and Sample Submittal Requirements:*
1. Before submitting a Shop Drawing or Sample, Contractor shall have:
 - a. reviewed and coordinated the Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Work and the Contract Documents;
 - b. determined and verified all field measurements, quantities, dimensions, specified performance and design criteria, installation requirements, materials, catalog numbers, and similar information with respect thereto;
 - c. determined and verified the suitability of all materials and equipment offered with respect to the indicated application, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of the Work; and
 - d. determined and verified all information relative to Contractor's responsibilities for means, methods, techniques, sequences, and procedures of construction, and safety precautions and programs incident thereto.

2. Each submittal shall bear a stamp or specific written certification that Contractor has satisfied Contractor's obligations under the Contract Documents with respect to Contractor's review of that submittal, and that Contractor approves the submittal.
 3. With each submittal, Contractor shall give Engineer specific written notice of any variations that the Shop Drawing or Sample may have from the requirements of the Contract Documents. This notice shall be set forth in a written communication separate from the Shop Drawings or Sample submittal; and, in addition, in the case of Shop Drawings by a specific notation made on each Shop Drawing submitted to Engineer for review and approval of each such variation.
- B. *Submittal Procedures for Shop Drawings and Samples:* Contractor shall submit Shop Drawings and Samples to Engineer for review and approval in accordance with the accepted Schedule of Submittals. Each submittal will be identified as Engineer may require.
1. *Shop Drawings:*
 - a. Contractor shall submit the number of copies required in the Specifications.
 - b. Data shown on the Shop Drawings will be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to show Engineer the services, materials, and equipment Contractor proposes to provide and to enable Engineer to review the information for the limited purposes required by Paragraph 7.16.D.
 2. *Samples:*
 - a. Contractor shall submit the number of Samples required in the Specifications.
 - b. Contractor shall clearly identify each Sample as to material, Supplier, pertinent data such as catalog numbers, the use for which intended and other data as Engineer may require to enable Engineer to review the submittal for the limited purposes required by Paragraph 7.16.D.
 3. Where a Shop Drawing or Sample is required by the Contract Documents or the Schedule of Submittals, any related Work performed prior to Engineer's review and approval of the pertinent submittal will be at the sole expense and responsibility of Contractor.
- C. *Other Submittals:* Contractor shall submit other submittals to Engineer in accordance with the accepted Schedule of Submittals, and pursuant to the applicable terms of the Specifications.
- D. *Engineer's Review:*
1. Engineer will provide timely review of Shop Drawings and Samples in accordance with the Schedule of Submittals acceptable to Engineer. Engineer's review and approval will be only to determine if the items covered by the submittals will, after installation or incorporation in the Work, conform to the information given in the Contract Documents and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.
 2. Engineer's review and approval will not extend to means, methods, techniques, sequences, or procedures of construction or to safety precautions or programs incident thereto.
 3. Engineer's review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.

4. Engineer's review and approval of a Shop Drawing or Sample shall not relieve Contractor from responsibility for any variation from the requirements of the Contract Documents unless Contractor has complied with the requirements of Paragraph 7.16.A.3 and Engineer has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample. Engineer will document any such approved variation from the requirements of the Contract Documents in a Field Order.
5. Engineer's review and approval of a Shop Drawing or Sample shall not relieve Contractor from responsibility for complying with the requirements of Paragraph 7.16.A and B.
6. Engineer's review and approval of a Shop Drawing or Sample, or of a variation from the requirements of the Contract Documents, shall not, under any circumstances, change the Contract Times or Contract Price, unless such changes are included in a Change Order.
7. Neither Engineer's receipt, review, acceptance or approval of a Shop Drawing, Sample, or other submittal shall result in such item becoming a Contract Document.
8. Contractor shall perform the Work in compliance with the requirements and commitments set forth in approved Shop Drawings and Samples, subject to the provisions of Paragraph 7.16.D.4.

E. *Resubmittal Procedures:*

1. Contractor shall make corrections required by Engineer and shall return the required number of corrected copies of Shop Drawings and submit, as required, new Samples for review and approval. Contractor shall direct specific attention in writing to revisions other than the corrections called for by Engineer on previous submittals.
2. Contractor shall furnish required submittals with sufficient information and accuracy to obtain required approval of an item with no more than three submittals. Engineer will record Engineer's time for reviewing a fourth or subsequent submittal of a Shop Drawings, sample, or other item requiring approval, and Contractor shall be responsible for Engineer's charges to Owner for such time. Owner may impose a set-off against payments due to Contractor to secure reimbursement for such charges.
3. If Contractor requests a change of a previously approved submittal item, Contractor shall be responsible for Engineer's charges to Owner for its review time, and Owner may impose a set-off against payments due to Contractor to secure reimbursement for such charges, unless the need for such change is beyond the control of Contractor.

7.17 *Contractor's General Warranty and Guarantee*

- A. Contractor warrants and guarantees to Owner that all Work will be in accordance with the Contract Documents and will not be defective. Engineer and its officers, directors, members, partners, employees, agents, consultants, and subcontractors shall be entitled to rely on Contractor's warranty and guarantee.
- B. Contractor's warranty and guarantee hereunder excludes defects or damage caused by:
 1. abuse, modification, or improper maintenance or operation by persons other than Contractor, Subcontractors, Suppliers, or any other individual or entity for whom Contractor is responsible; or
 2. normal wear and tear under normal usage.

- C. Contractor's obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents or a release of Contractor's obligation to perform the Work in accordance with the Contract Documents:
1. observations by Engineer;
 2. recommendation by Engineer or payment by Owner of any progress or final payment;
 3. the issuance of a certificate of Substantial Completion by Engineer or any payment related thereto by Owner;
 4. use or occupancy of the Work or any part thereof by Owner;
 5. any review and approval of a Shop Drawing or Sample submittal;
 6. the issuance of a notice of acceptability by Engineer;
 7. any inspection, test, or approval by others; or
 8. any correction of defective Work by Owner.
- D. If the Contract requires the Contractor to accept the assignment of a contract entered into by Owner, then the specific warranties, guarantees, and correction obligations contained in the assigned contract shall govern with respect to Contractor's performance obligations to Owner for the Work described in the assigned contract.

7.18 *Indemnification*

- A. To the fullest extent permitted by Laws and Regulations, and in addition to any other obligations of Contractor under the Contract or otherwise, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the performance of the Work, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom but only to the extent caused by any negligent act or omission of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work or anyone for whose acts any of them may be liable.
- B. In any and all claims against Owner or Engineer or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors by any employee (or the survivor or personal representative of such employee) of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under Paragraph 7.18.A shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Contractor or any such Subcontractor, Supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts.
1. **Contractor specifically and expressly waives any immunity that may be granted it under workers' compensation acts, disability benefit acts, or other employee benefit acts in**

regard to 17.1.B above; provided Contractor's waiver of immunity by the provisions of this paragraph extends only to claims against Contractor by Indemnitees, and does not include, or extend to, any claims by Contractor's employees directly against Contractor.

- C. The indemnification obligations of Contractor under Paragraph 7.18.A shall not extend to the liability of Engineer and Engineer's officers, directors, members, partners, employees, agents, consultants and subcontractors arising out of:
 - 1. the preparation or approval of, or the failure to prepare or approve maps, Drawings, opinions, reports, surveys, Change Orders, designs, or Specifications; or
 - 2. giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage.

7.19 *Delegation of Professional Design Services*

- A. Contractor will not be required to provide professional design services unless such services are specifically required by the Contract Documents for a portion of the Work or unless such services are required to carry out Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. Contractor shall not be required to provide professional services in violation of applicable Laws and Regulations.
- B. If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of Contractor by the Contract Documents, Owner and Engineer will specify all performance and design criteria that such services must satisfy. Contractor shall cause such services or certifications to be provided by a properly licensed professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to Engineer.
- C. Owner and Engineer shall be entitled to rely upon the adequacy, accuracy, and completeness of the services, certifications, or approvals performed by such design professionals, provided Owner and Engineer have specified to Contractor all performance and design criteria that such services must satisfy.
- D. Pursuant to this paragraph, Engineer's review and approval of design calculations and design drawings will be only for the limited purpose of checking for conformance with performance and design criteria given and the design concept expressed in the Contract Documents. Engineer's review and approval of Shop Drawings and other submittals (except design calculations and design drawings) will be only for the purpose stated in Paragraph 7.16.D.1.
- E. Contractor shall not be responsible for the adequacy of the performance or design criteria specified by Owner or Engineer.

ARTICLE 8 – OTHER WORK AT THE SITE

8.01 *Other Work*

- A. In addition to and apart from the Work under the Contract Documents, the Owner may perform other work at or adjacent to the Site. Such other work may be performed by Owner's employees, or through contracts between the Owner and third parties. Owner may also arrange to have third-party utility owners perform work on their utilities and facilities at or adjacent to the Site.

- B. If Owner performs other work at or adjacent to the Site with Owner's employees, or through contracts for such other work, then Owner shall give Contractor written notice thereof prior to starting any such other work. If Owner has advance information regarding the start of any utility work at or adjacent to the Site, Owner shall provide such information to Contractor.
- C. Contractor shall afford each other contractor that performs such other work, each utility owner performing other work, and Owner, if Owner is performing other work with Owner's employees, proper and safe access to the Site, and provide a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work. Contractor shall do all cutting, fitting, and patching of the Work that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. Contractor shall not endanger any work of others by cutting, excavating, or otherwise altering such work; provided, however, that Contractor may cut or alter others' work with the written consent of Engineer and the others whose work will be affected.
- D. If the proper execution or results of any part of Contractor's Work depends upon work performed by others under this Article 8, Contractor shall inspect such other work and promptly report to Engineer in writing any delays, defects, or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of Contractor's Work. Contractor's failure to so report will constitute an acceptance of such other work as fit and proper for integration with Contractor's Work except for latent defects and deficiencies in such other work.

8.02 *Coordination*

- A. If Owner intends to contract with others for the performance of other work at or adjacent to the Site, to perform other work at or adjacent to the Site with Owner's employees, or to arrange to have utility owners perform work at or adjacent to the Site, the following will be set forth in the Supplementary Conditions or provided to Contractor prior to the start of any such other work:
 - 1. the identity of the individual or entity that will have authority and responsibility for coordination of the activities among the various contractors;
 - 2. an itemization of the specific matters to be covered by such authority and responsibility; and
 - 3. the extent of such authority and responsibilities.
- B. Unless otherwise provided in the Supplementary Conditions, Owner shall have sole authority and responsibility for such coordination.

8.03 *Legal Relationships*

- A. If, in the course of performing other work at or adjacent to the Site for Owner, the Owner's employees, any other contractor working for Owner, or any utility owner causes damage to the Work or to the property of Contractor or its Subcontractors, or delays, disrupts, interferes with, or increases the scope or cost of the performance of the Work, through actions or inaction, then Contractor shall be entitled to an equitable adjustment in the Contract Price or the Contract Times, or both. Contractor must submit any Change Proposal seeking an equitable adjustment in the Contract Price or the Contract Times under this paragraph within 30 days of the damaging, delaying, disrupting, or interfering event. The entitlement to, and extent of, any such equitable adjustment shall take into account information (if any) regarding such other work that was

provided to Contractor in the Contract Documents prior to the submittal of the Bid or the final negotiation of the terms of the Contract. When applicable, any such equitable adjustment in Contract Price shall be conditioned on Contractor assigning to Owner all Contractor's rights against such other contractor or utility owner with respect to the damage, delay, disruption, or interference that is the subject of the adjustment. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times.

- B. Contractor shall take reasonable and customary measures to avoid damaging, delaying, disrupting, or interfering with the work of Owner, any other contractor, or any utility owner performing other work at or adjacent to the Site. If Contractor fails to take such measures and as a result damages, delays, disrupts, or interferes with the work of any such other contractor or utility owner, then Owner may impose a set-off against payments due to Contractor, and assign to such other contractor or utility owner the Owner's contractual rights against Contractor with respect to the breach of the obligations set forth in this paragraph.
- C. When Owner is performing other work at or adjacent to the Site with Owner's employees, Contractor shall be liable to Owner for damage to such other work, and for the reasonable direct delay, disruption, and interference costs incurred by Owner as a result of Contractor's failure to take reasonable and customary measures with respect to Owner's other work. In response to such damage, delay, disruption, or interference, Owner may impose a set-off against payments due to Contractor.
- D. If Contractor damages, delays, disrupts, or interferes with the work of any other contractor, or any utility owner performing other work at or adjacent to the Site, through Contractor's failure to take reasonable and customary measures to avoid such impacts, or if any claim arising out of Contractor's actions, inactions, or negligence in performance of the Work at or adjacent to the Site is made by any such other contractor or utility owner against Contractor, Owner, or Engineer, then Contractor shall (1) promptly attempt to settle the claim as to all parties through negotiations with such other contractor or utility owner, or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law, and (2) indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against any such claims, and against all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such damage, delay, disruption, or interference.

ARTICLE 9 – OWNER'S RESPONSIBILITIES

9.01 *Communications to Contractor*

- A. Except as otherwise provided in these General Conditions, Owner shall issue all communications to Contractor through Engineer.

9.02 *Replacement of Engineer*

- A. Owner may at its discretion appoint an engineer to replace Engineer, provided Contractor makes no reasonable objection to the replacement engineer. The replacement engineer's status under the Contract Documents shall be that of the former Engineer.

9.03 *Furnish Data*

- A. Owner shall promptly furnish the data required of Owner under the Contract Documents.

9.04 *Pay When Due*

- A. Owner shall make payments to Contractor when they are due as provided in the Agreement.

9.05 *Lands and Easements; Reports, Tests, and Drawings*

- A. Owner's duties with respect to providing lands and easements are set forth in Paragraph 5.01.
- B. Owner's duties with respect to providing engineering surveys to establish reference points are set forth in Paragraph 4.03.
- C. Article 5 refers to Owner's identifying and making available to Contractor copies of reports of explorations and tests of conditions at the Site, and drawings of physical conditions relating to existing surface or subsurface structures at the Site.

9.06 *Insurance*

- A. Owner's responsibilities, if any, with respect to purchasing and maintaining liability and property insurance are set forth in Article 6.

9.07 *Change Orders*

- A. Owner's responsibilities with respect to Change Orders are set forth in Article 11.

9.08 *Inspections, Tests, and Approvals*

- A. Owner's responsibility with respect to certain inspections, tests, and approvals is set forth in Paragraph 14.02.B.

9.09 *Limitations on Owner's Responsibilities*

- A. The Owner shall not supervise, direct, or have control or authority over, nor be responsible for, Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Owner will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.

9.10 *Undisclosed Hazardous Environmental Condition*

- A. Owner's responsibility in respect to an undisclosed Hazardous Environmental Condition is set forth in Paragraph 5.06.

9.11 *Evidence of Financial Arrangements*

- A. Upon request of Contractor, Owner shall furnish Contractor reasonable evidence that financial arrangements have been made to satisfy Owner's obligations under the Contract Documents (including obligations under proposed changes in the Work).

9.12 *Safety Programs*

- A. While at the Site, Owner's employees and representatives shall comply with the specific applicable requirements of Contractor's safety programs of which Owner has been informed.
- B. Owner shall furnish copies of any applicable Owner safety programs to Contractor.

ARTICLE 10 – ENGINEER’S STATUS DURING CONSTRUCTION

10.01 *Owner’s Representative*

- A. Engineer will be Owner’s representative during the construction period. The duties and responsibilities and the limitations of authority of Engineer as Owner’s representative during construction are set forth in the Contract.

10.02 *Visits to Site*

- A. Engineer will make visits to the Site at intervals appropriate to the various stages of construction as Engineer deems necessary in order to observe as an experienced and qualified design professional the progress that has been made and the quality of the various aspects of Contractor’s executed Work. Based on information obtained during such visits and observations, Engineer, for the benefit of Owner, will determine, in general, if the Work is proceeding in accordance with the Contract Documents. Engineer will not be required to make exhaustive or continuous inspections on the Site to check the quality or quantity of the Work. Engineer’s efforts will be directed toward providing for Owner a greater degree of confidence that the completed Work will conform generally to the Contract Documents. On the basis of such visits and observations, Engineer will keep Owner informed of the progress of the Work and will endeavor to guard Owner against defective Work.
- B. Engineer’s visits and observations are subject to all the limitations on Engineer’s authority and responsibility set forth in Paragraph 10.08. Particularly, but without limitation, during or as a result of Engineer’s visits or observations of Contractor’s Work, Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor’s means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work.

10.03 *Project Representative*

- A. A Project Representative will also represent Engineer at the Site and assist Engineer in observing the progress and quality of the Work, then the authority and responsibilities of any such Project Representative will be as provided in the Supplementary Conditions, and limitations on the responsibilities thereof will be as provided in Paragraph 10.08. If Owner designates another representative or agent to represent Owner at the Site who is not Engineer’s consultant, agent, or employee, the responsibilities and authority and limitations thereon of such other individual or entity will be as provided in the Supplementary Conditions.

10.04 *Rejecting Defective Work*

- A. Engineer has the authority to reject Work in accordance with Article 14.

10.05 *Shop Drawings, Change Orders and Payments*

- A. Engineer’s authority, and limitations thereof, as to Shop Drawings and Samples, are set forth in Paragraph 7.16.
- B. Engineer’s authority, and limitations thereof, as to design calculations and design drawings submitted in response to a delegation of professional design services, if any, are set forth in Paragraph 7.19.
- C. Engineer’s authority as to Change Orders is set forth in Article 11.

- D. Engineer's authority as to Applications for Payment is set forth in Article 15.

10.06 *Determinations for Unit Price Work*

- A. Engineer will determine the actual quantities and classifications of Unit Price Work performed by Contractor as set forth in Paragraph 13.03.

10.07 *Decisions on Requirements of Contract Documents and Acceptability of Work*

- A. Engineer will render decisions regarding the requirements of the Contract Documents, and judge the acceptability of the Work, pursuant to the specific procedures set forth herein for initial interpretations, Change Proposals, and acceptance of the Work. In rendering such decisions and judgments, Engineer will not show partiality to Owner or Contractor, and will not be liable to Owner, Contractor, or others in connection with any proceedings, interpretations, decisions, or judgments conducted or rendered in good faith.

10.08 *Limitations on Engineer's Authority and Responsibilities*

- A. Neither Engineer's authority or responsibility under this Article 10 or under any other provision of the Contract, nor any decision made by Engineer in good faith either to exercise or not exercise such authority or responsibility or the undertaking, exercise, or performance of any authority or responsibility by Engineer, shall create, impose, or give rise to any duty in contract, tort, or otherwise owed by Engineer to Contractor, any Subcontractor, any Supplier, any other individual or entity, or to any surety for or employee or agent of any of them.
- B. Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Engineer will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.
- C. Engineer will not be responsible for the acts or omissions of Contractor or of any Subcontractor, any Supplier, or of any other individual or entity performing any of the Work.
- D. Engineer's review of the final Application for Payment and accompanying documentation and all maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection, tests and approvals, and other documentation required to be delivered by Paragraph 15.06.A will only be to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, tests, and approvals, that the results certified indicate compliance with the Contract Documents.
- E. The limitations upon authority and responsibility set forth in this Paragraph 10.08 shall also apply to the Resident Project Representative, if any.

10.09 *Compliance with Safety Program*

- A. While at the Site, Engineer's employees and representatives will comply with the specific applicable requirements of Owner's and Contractor's safety programs (if any) of which Engineer has been informed.

ARTICLE 11 – AMENDING THE CONTRACT DOCUMENTS; CHANGES IN THE WORK

11.01 *Amending and Supplementing Contract Documents*

- A. The Contract Documents may be amended or supplemented by a Change Order, a Work Change Directive, or a Field Order.
 - 1. *Change Orders:*
 - a. If an amendment or supplement to the Contract Documents includes a change in the Contract Price or the Contract Times, such amendment or supplement must be set forth in a Change Order. A Change Order also may be used to establish amendments and supplements of the Contract Documents that do not affect the Contract Price or Contract Times.
 - b. Owner and Contractor may amend those terms and conditions of the Contract Documents that do not involve (1) the performance or acceptability of the Work, (2) the design (as set forth in the Drawings, Specifications, or otherwise), or (3) other engineering or technical matters, without the recommendation of the Engineer. Such an amendment shall be set forth in a Change Order.
 - 2. *Work Change Directives:* A Work Change Directive will not change the Contract Price or the Contract Times but is evidence that the parties expect that the modification ordered or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order, following negotiations by the parties as to the Work Change Directive's effect, if any, on the Contract Price and Contract Times; or, if negotiations are unsuccessful, by a determination under the terms of the Contract Documents governing adjustments, expressly including Paragraph 11.04 regarding change of Contract Price. Contractor must submit any Change Proposal seeking an adjustment of the Contract Price or the Contract Times, or both, no later than 30 days after the completion of the Work set out in the Work Change Directive. Owner must submit any Claim seeking an adjustment of the Contract Price or the Contract Times, or both, no later than 60 days after issuance of the Work Change Directive.
 - 3. *Field Orders:* Engineer may authorize minor changes in the Work if the changes do not involve an adjustment in the Contract Price or the Contract Times and are compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. Such changes will be accomplished by a Field Order and will be binding on Owner and also on Contractor, which shall perform the Work involved promptly. If Contractor believes that a Field Order justifies an adjustment in the Contract Price or Contract Times, or both, then before proceeding with the Work at issue, Contractor shall submit a Change Proposal as provided herein.

11.02 *Owner-Authorized Changes in the Work*

- A. Without invalidating the Contract and without notice to any surety, Owner may, at any time or from time to time, order additions, deletions, or revisions in the Work. Such changes shall be supported by Engineer's recommendation, to the extent the change involves the design (as set forth in the Drawings, Specifications, or otherwise), or other engineering or technical matters. Such changes may be accomplished by a Change Order, if Owner and Contractor have agreed as to the effect, if any, of the changes on Contract Times or Contract Price; or by a Work Change

Directive. Upon receipt of any such document, Contractor shall promptly proceed with the Work involved; or, in the case of a deletion in the Work, promptly cease construction activities with respect to such deleted Work. Added or revised Work shall be performed under the applicable conditions of the Contract Documents. Nothing in this paragraph shall obligate Contractor to undertake work that Contractor reasonably concludes cannot be performed in a manner consistent with Contractor's safety obligations under the Contract Documents or Laws and Regulations.

11.03 *Unauthorized Changes in the Work*

- A. Contractor shall not be entitled to an increase in the Contract Price or an extension of the Contract Times with respect to any work performed that is not required by the Contract Documents, as amended, modified, or supplemented, except in the case of an emergency as provided in Paragraph 7.15 or in the case of uncovering Work as provided in Paragraph 14.05.

11.04 *Change of Contract Price*

- A. The Contract Price may only be changed by a Change Order. Any Change Proposal for an adjustment in the Contract Price shall comply with the provisions of Paragraph 11.06. Any Claim for an adjustment of Contract Price shall comply with the provisions of Article 12.
- B. An adjustment in the Contract Price will be determined as follows:
 - 1. where the Work involved is covered by unit prices contained in the Contract Documents, then by application of such unit prices to the quantities of the items involved (subject to the provisions of Paragraph 13.03); or
 - 2. where the Work involved is not covered by unit prices contained in the Contract Documents, then by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with Paragraph 11.04.C.2); or
 - 3. where the Work involved is not covered by unit prices contained in the Contract Documents and the parties do not reach mutual agreement to a lump sum, then on the basis of the Cost of the Work (determined as provided in Paragraph 13.01) plus a Contractor's fee for overhead and profit (determined as provided in Paragraph 11.04.C).
- C. *Contractor's Fee:* When applicable, the Contractor's fee for overhead and profit shall be determined as follows:
 - 1. a mutually acceptable fixed fee; or
 - 2. if a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:
 - a. for costs incurred under Paragraphs 13.01.B.1 and 13.01.B.2, the Contractor's fee shall be 15 percent;
 - b. for costs incurred under Paragraph 13.01.B.3, the Contractor's fee shall be five percent;
 - c. where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of Paragraphs 11.01.C.2.a and 11.01.C.2.b is that the Contractor's fee shall be based on: (1) a fee of 15 percent of the costs incurred under Paragraphs 13.01.A.1 and 13.01.A.2 by the Subcontractor that actually performs the Work, at whatever tier, and (2) with respect to Contractor itself and to any Subcontractors of a tier higher than that of the Subcontractor that actually

performs the Work, a fee of five percent of the amount (fee plus underlying costs incurred) attributable to the next lower tier Subcontractor; provided, however, that for any such subcontracted work the maximum total fee to be paid by Owner shall be no greater than 27 percent of the costs incurred by the Subcontractor that actually performs the work;

- d. no fee shall be payable on the basis of costs itemized under Paragraphs 13.01.B.4, 13.01.B.5, and 13.01.C;
- e. the amount of credit to be allowed by Contractor to Owner for any change which results in a net decrease in cost will be the amount of the actual net decrease in cost plus a deduction in Contractor's fee by an amount equal to five percent of such net decrease; and
- f. when both additions and credits are involved in any one change, the adjustment in Contractor's fee shall be computed on the basis of the net change in accordance with Paragraphs 11.04.C.2.a through 11.04.C.2.e, inclusive.

11.05 *Change of Contract Times*

- A. The Contract Times may only be changed by a Change Order. Any Change Proposal for an adjustment in the Contract Times shall comply with the provisions of Paragraph 11.06. Any Claim for an adjustment in the Contract Times shall comply with the provisions of Article 12.
- B. An adjustment of the Contract Times shall be subject to the limitations set forth in Paragraph 4.05, concerning delays in Contractor's progress.

11.06 *Change Proposals*

- A. Contractor shall submit a Change Proposal to Engineer to request an adjustment in the Contract Times or Contract Price; appeal an initial decision by Engineer concerning the requirements of the Contract Documents or relating to the acceptability of the Work under the Contract Documents; contest a set-off against payment due; or seek other relief under the Contract. The Change Proposal shall specify any proposed change in Contract Times or Contract Price, or both, or other proposed relief, and explain the reason for the proposed change, with citations to any governing or applicable provisions of the Contract Documents.
 - 1. *Procedures:* Contractor shall submit each Change Proposal to Engineer promptly (but in no event later than 30 days) after the start of the event giving rise thereto, or after such initial decision. The Contractor shall submit supporting data, including the proposed change in Contract Price or Contract Time (if any), to the Engineer and Owner within 15 days after the submittal of the Change Proposal. The supporting data shall be accompanied by a written statement that the supporting data are accurate and complete, and that any requested time or price adjustment is the entire adjustment to which Contractor believes it is entitled as a result of said event. Engineer will advise Owner regarding the Change Proposal, and consider any comments or response from Owner regarding the Change Proposal.
 - 2. *Engineer's Action:* Engineer will review each Change Proposal and, within 30 days after receipt of the Contractor's supporting data, either deny the Change Proposal in whole, approve it in whole, or deny it in part and approve it in part. Such actions shall be in writing, with a copy provided to Owner and Contractor. If Engineer does not take action on the Change Proposal within 30 days, then either Owner or Contractor may at any time

thereafter submit a letter to the other party indicating that as a result of Engineer's inaction the Change Proposal is deemed denied, thereby commencing the time for appeal of the denial under Article 12.

3. *Binding Decision:* Engineer's decision will be final and binding upon Owner and Contractor, unless Owner or Contractor appeals the decision by filing a Claim under Article 12.
- B. *Resolution of Certain Change Proposals:* If the Change Proposal does not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters, then Engineer will notify the parties that the Engineer is unable to resolve the Change Proposal. For purposes of further resolution of such a Change Proposal, such notice shall be deemed a denial, and Contractor may choose to seek resolution under the terms of Article 12.

11.07 *Execution of Change Orders*

- A. Owner and Contractor shall execute appropriate Change Orders covering:
 1. changes in the Contract Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in accordance with a Work Change Directive;
 2. changes in Contract Price resulting from an Owner set-off, unless Contractor has duly contested such set-off;
 3. changes in the Work which are: (a) ordered by Owner pursuant to Paragraph 11.02, (b) required because of Owner's acceptance of defective Work under Paragraph 14.04 or Owner's correction of defective Work under Paragraph 14.07, or (c) agreed to by the parties, subject to the need for Engineer's recommendation if the change in the Work involves the design (as set forth in the Drawings, Specifications, or otherwise), or other engineering or technical matters; and
 4. changes in the Contract Price or Contract Times, or other changes, which embody the substance of any final and binding results under Paragraph 11.06, or Article 12.
- B. If Owner or Contractor refuses to execute a Change Order that is required to be executed under the terms of this Paragraph 11.07, it shall be deemed to be of full force and effect, as if fully executed.

11.08 *Notification to Surety*

- A. If the provisions of any bond require notice to be given to a surety of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Contract Price or Contract Times), the giving of any such notice will be Contractor's responsibility. The amount of each applicable bond will be adjusted to reflect the effect of any such change.

ARTICLE 12 – CLAIMS

12.01 *Claims*

- A. *Claims Process:* The following disputes between Owner and Contractor shall be submitted to the Claims process set forth in this Article:
 - 1. Appeals by Owner or Contractor of Engineer's decisions regarding Change Proposals;
 - 2. Owner demands for adjustments in the Contract Price or Contract Times, or other relief under the Contract Documents; and
 - 3. Disputes that Engineer has been unable to address because they do not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters.
- B. *Submittal of Claim:* The party submitting a Claim shall deliver it directly to the other party to the Contract promptly (but in no event later than 30 days) after the start of the event giving rise thereto; in the case of appeals regarding Change Proposals within 30 days of the decision under appeal. The party submitting the Claim shall also furnish a copy to the Engineer, for its information only. The responsibility to substantiate a Claim shall rest with the party making the Claim. In the case of a Claim by Contractor seeking an increase in the Contract Times or Contract Price, or both, Contractor shall certify that the Claim is made in good faith, that the supporting data are accurate and complete, and that to the best of Contractor's knowledge and belief the amount of time or money requested accurately reflects the full amount to which Contractor is entitled.
- C. *Review and Resolution:* The party receiving a Claim shall review it thoroughly, giving full consideration to its merits. The two parties shall seek to resolve the Claim through the exchange of information and direct negotiations. The parties may extend the time for resolving the Claim by mutual agreement. All actions taken on a Claim shall be stated in writing and submitted to the other party, with a copy to Engineer.
- D. *Mediation:*
 - 1. At any time after initiation of a Claim, Owner and Contractor may mutually agree to mediation of the underlying dispute. The agreement to mediate shall stay the Claim submittal and response process.
 - 2. If Owner and Contractor agree to mediation, then after 60 days from such agreement, either Owner or Contractor may unilaterally terminate the mediation process, and the Claim submittal and decision process shall resume as of the date of the termination. If the mediation proceeds but is unsuccessful in resolving the dispute, the Claim submittal and decision process shall resume as of the date of the conclusion of the mediation, as determined by the mediator.
 - 3. Owner and Contractor shall each pay one-half of the mediator's fees and costs.
- E. *Partial Approval:* If the party receiving a Claim approves the Claim in part and denies it in part, such action shall be final and binding unless within 30 days of such action the other party invokes the procedure set forth in Article 17 for final resolution of disputes.
- F. *Denial of Claim:* If efforts to resolve a Claim are not successful, the party receiving the Claim may deny it by giving written notice of denial to the other party. If the receiving party does not take

action on the Claim within 90 days, then either Owner or Contractor may at any time thereafter submit a letter to the other party indicating that as a result of the inaction, the Claim is deemed denied, thereby commencing the time for appeal of the denial. A denial of the Claim shall be final and binding unless within 30 days of the denial the other party invokes the procedure set forth in Article 17 for the final resolution of disputes.

- G. *Final and Binding Results:* If the parties reach a mutual agreement regarding a Claim, whether through approval of the Claim, direct negotiations, mediation, or otherwise; or if a Claim is approved in part and denied in part, or denied in full, and such actions become final and binding; then the results of the agreement or action on the Claim shall be incorporated in a Change Order to the extent they affect the Contract, including the Work, the Contract Times, or the Contract Price.

ARTICLE 13 – COST OF THE WORK; ALLOWANCES; UNIT PRICE WORK

13.01 *Cost of the Work*

- A. *Purposes for Determination of Cost of the Work:* The term Cost of the Work means the sum of all costs necessary for the proper performance of the Work at issue, as further defined below. The provisions of this Paragraph 13.01 are used for two distinct purposes:
1. To determine Cost of the Work when Cost of the Work is a component of the Contract Price, under cost-plus-fee, time-and-materials, or other cost-based terms; or
 2. To determine the value of a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price. When the value of any such adjustment is determined on the basis of Cost of the Work, Contractor is entitled only to those additional or incremental costs required because of the change in the Work or because of the event giving rise to the adjustment.
- B. *Costs Included:* Except as otherwise may be agreed to in writing by Owner, costs included in the Cost of the Work shall be in amounts no higher than those prevailing in the locality of the Project, shall not include any of the costs itemized in Paragraph 13.01.C, and shall include only the following items:
1. Payroll costs for employees in the direct employ of Contractor in the performance of the Work under schedules of job classifications agreed upon by Owner and Contractor. Such employees shall include, without limitation, superintendents, foremen, and other personnel employed full time on the Work. Payroll costs for employees not employed full time on the Work shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits, which shall include social security contributions, unemployment, excise, and payroll taxes, workers' compensation, health and retirement benefits, bonuses, sick leave, and vacation and holiday pay applicable thereto. The expenses of performing Work outside of regular working hours, on Saturday, Sunday, or legal holidays, shall be included in the above to the extent authorized by Owner.
 2. Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts shall accrue to Contractor unless Owner deposits funds with Contractor with which to make payments, in which case the cash discounts shall accrue to

Owner. All trade discounts, rebates, and refunds and returns from sale of surplus materials and equipment shall accrue to Owner, and Contractor shall make provisions so that they may be obtained.

3. Payments made by Contractor to Subcontractors for Work performed by Subcontractors. If required by Owner, Contractor shall obtain competitive bids from subcontractors acceptable to Owner and Contractor and shall deliver such bids to Owner, who will then determine, with the advice of Engineer, which bids, if any, will be acceptable. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Subcontractor's Cost of the Work and fee shall be determined in the same manner as Contractor's Cost of the Work and fee as provided in this Paragraph 13.01.
4. Costs of special consultants (including but not limited to engineers, architects, testing laboratories, surveyors, attorneys, and accountants) employed for services specifically related to the Work.
5. Supplemental costs including the following:
 - a. The proportion of necessary transportation, travel, and subsistence expenses of Contractor's employees incurred in discharge of duties connected with the Work.
 - b. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office, and temporary facilities at the Site, and hand tools not owned by the workers, which are consumed in the performance of the Work, and cost, less market value, of such items used but not consumed which remain the property of Contractor.
 - c. ~~Rentals of~~ **The cost for the use of** all construction equipment and machinery, and the parts thereof, **whether owned by the Contractor or** rented from Contractor or others **shall be calculated as follows and include the** ~~in accordance with rental agreements approved by Owner with the advice of Engineer, and the costs of transportation, loading, unloading, assembly, dismantling, and removal thereof~~ **for equipment involved only in the changed portion of the work covered under the Cost of the Work method. Transportation, loading and assembly costs will not be included for equipment already on the site which is being used for other portions of the Work. Hourly equipment and machinery rates shall be calculated from the Rental Rate Blue Book for Construction Equipment, and the equipment list submitted according to Paragraph 2.03 and 2.05 and as follows. All such costs shall be in accordance with the terms of said rental agreements. The rental of any such equipment, machinery, or parts shall cease when the use thereof is no longer necessary for the Work.**
 - 1) **For working equipment, the hourly rate shall be the monthly rental rate divided by 176 hours per month plus the hourly operating cost.**
 - 2) **For equipment on standby, the hourly rate shall be 50% of the monthly rental rate divided by 176 hours per month and the hourly operating cost shall not be applied.**
 - 3) **For specialized equipment rented for a short duration used for change order work or additional work not part of the scope of the Work bid, the equipment rental rate will be in accordance with the terms of a third party rental agreement or shall be negotiated prior to the work being performed.**

- d. Sales, consumer, use, and other similar taxes related to the Work, and for which Contractor is liable, as imposed by Laws and Regulations.
 - e. Deposits lost for causes other than negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.
 - f. Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by Contractor in connection with the performance of the Work (except losses and damages within the deductible amounts of property insurance established in accordance with Paragraph 6.05), provided such losses and damages have resulted from causes other than the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and approval of Owner. No such losses, damages, and expenses shall be included in the Cost of the Work for the purpose of determining Contractor's fee.
 - g. The cost of utilities, fuel, and sanitary facilities at the Site.
 - h. Minor expenses such as communication service at the Site, express and courier services, and similar petty cash items in connection with the Work.
 - i. The costs of premiums for all bonds and insurance that Contractor is required by the Contract Documents to purchase and maintain.
- C. *Costs Excluded:* The term Cost of the Work shall not include any of the following items:
- 1. Payroll costs and other compensation of Contractor's officers, executives, principals (of partnerships and sole proprietorships), general managers, safety managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks, and other personnel employed by Contractor, whether at the Site or in Contractor's principal or branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in Paragraph 13.01.B.1 or specifically covered by Paragraph 13.01.B.4. The payroll costs and other compensation excluded here are to be considered administrative costs covered by the Contractor's fee.
 - 2. Expenses of Contractor's principal and branch offices other than Contractor's office at the Site.
 - 3. Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the Work and charges against Contractor for delinquent payments.
 - 4. Costs due to the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property.
 - 5. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in Paragraph 13.01.B.
- D. *Contractor's Fee:* When the Work as a whole is performed on the basis of cost-plus, Contractor's fee shall be determined as set forth in the Agreement. When the value of any Work covered by

a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price is determined on the basis of Cost of the Work, Contractor's fee shall be determined as set forth in Paragraph 11.04.C.

- E. *Documentation*: Whenever the Cost of the Work for any purpose is to be determined pursuant to this Article 13, Contractor will establish and maintain records thereof in accordance with generally accepted accounting practices and submit in a form acceptable to Engineer an itemized cost breakdown together with supporting data.

13.02 Allowances

- A. It is understood that Contractor has included in the Contract Price all allowances so named in the Contract Documents and shall cause the Work so covered to be performed for such sums and by such persons or entities as may be acceptable to Owner and Engineer.
- B. *Cash Allowances*: Contractor agrees that:
1. the cash allowances include the cost to Contractor (less any applicable trade discounts) of materials and equipment required by the allowances to be delivered at the Site, and all applicable taxes; and
 2. Contractor's costs for unloading and handling on the Site, labor, installation, overhead, profit, and other expenses contemplated for the cash allowances have been included in the Contract Price and not in the allowances, and no demand for additional payment on account of any of the foregoing will be valid.
- C. *Contingency Allowance*: Contractor agrees that a contingency allowance, if any, is for the sole use of Owner to cover unanticipated costs.
- D. Prior to final payment, an appropriate Change Order will be issued as recommended by Engineer to reflect actual amounts due Contractor on account of Work covered by allowances, and the Contract Price shall be correspondingly adjusted.

13.03 Unit Price Work

- A. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the unit price for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement.
- B. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Payments to Contractor for Unit Price Work will be based on actual quantities.
- C. Each unit price will be deemed to include an amount considered by Contractor to be adequate to cover Contractor's overhead and profit for each separately identified item.
- D. Engineer will determine the actual quantities and classifications of Unit Price Work performed by Contractor. Engineer will review with Contractor the Engineer's preliminary determinations on such matters before rendering a written decision thereon (by recommendation of an Application for Payment or otherwise). Engineer's written decision thereon will be final and binding (except as modified by Engineer to reflect changed factual conditions or more accurate data) upon Owner and Contractor, subject to the provisions of the following paragraph.

- E. **The unit price of an item of Unit Price Work shall be subject to reevaluation and adjustment under the following conditions** ~~Within 30 days of Engineer's written decision under the preceding paragraph, Contractor may submit a Change Proposal, or Owner may file a Claim, seeking an adjustment in the Contract Price if:~~
1. **if the extended price of a particular item of Unit Price Work amounts to five percent (5%) or more of the Contract Price (based on estimated quantities at the time of Contract formation) and the variation in the quantity of that particular item of Unit Price Work actually furnished or performed by Contractor differs by more than twenty-five percent (25%) from the estimated quantity of such item indicated in the Agreement; and**
 2. there is no corresponding adjustment with respect to any other item of Work; and
 3. Contractor believes that it is entitled to an increase in Contract Price as a result of having incurred additional expense or Owner believes that Owner is entitled to a decrease in Contract Price, and the parties are unable to agree as to the amount of any such increase or decrease.

ARTICLE 14 – TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK

14.01 *Access to Work*

- A. Owner, Engineer, their consultants and other representatives and personnel of Owner, independent testing laboratories, and authorities having jurisdiction will have access to the Site and the Work at reasonable times for their observation, inspection, and testing. Contractor shall provide them proper and safe conditions for such access and advise them of Contractor's safety procedures and programs so that they may comply therewith as applicable.

14.02 *Tests, Inspections, and Approvals*

- A. Contractor shall give Engineer timely notice of readiness of the Work (or specific parts thereof) for all required inspections and tests, and shall cooperate with inspection and testing personnel to facilitate required inspections and tests.
- B. Owner shall retain and pay for the services of an independent inspector, testing laboratory, or other qualified individual or entity to perform all inspections and tests expressly required by the Contract Documents to be furnished and paid for by Owner, except that costs incurred in connection with tests or inspections of covered Work shall be governed by the provisions of Paragraph 14.05.
- C. If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested, or approved by an employee or other representative of such public body, Contractor shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish Engineer the required certificates of inspection or approval.
- D. Contractor shall be responsible for arranging, obtaining, and paying for all inspections and tests required:
1. by the Contract Documents, unless the Contract Documents expressly allocate responsibility for a specific inspection or test to Owner;

2. to attain Owner's and Engineer's acceptance of materials or equipment to be incorporated in the Work;
3. by manufacturers of equipment furnished under the Contract Documents;
4. for testing, adjusting, and balancing of mechanical, electrical, and other equipment to be incorporated into the Work; and
5. for acceptance of materials, mix designs, or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work.

Such inspections and tests shall be performed by independent inspectors, testing laboratories, or other qualified individuals or entities acceptable to Owner and Engineer.

- E. If the Contract Documents require the Work (or part thereof) to be approved by Owner, Engineer, or another designated individual or entity, then Contractor shall assume full responsibility for arranging and obtaining such approvals.
- F. If any Work (or the work of others) that is to be inspected, tested, or approved is covered by Contractor without written concurrence of Engineer, Contractor shall, if requested by Engineer, uncover such Work for observation. Such uncovering shall be at Contractor's expense unless Contractor had given Engineer timely notice of Contractor's intention to cover the same and Engineer had not acted with reasonable promptness in response to such notice.

14.03 *Defective Work*

- A. *Contractor's Obligation:* It is Contractor's obligation to assure that the Work is not defective.
- B. *Engineer's Authority:* Engineer has the authority to determine whether Work is defective, and to reject defective Work.
- C. *Notice of Defects:* Prompt notice of all defective Work of which Owner or Engineer has actual knowledge will be given to Contractor.
- D. *Correction, or Removal and Replacement:* Promptly after receipt of written notice of defective Work, Contractor shall correct all such defective Work, whether or not fabricated, installed, or completed, or, if Engineer has rejected the defective Work, remove it from the Project and replace it with Work that is not defective.
- E. *Preservation of Warranties:* When correcting defective Work, Contractor shall take no action that would void or otherwise impair Owner's special warranty and guarantee, if any, on said Work.
- F. *Costs and Damages:* In addition to its correction, removal, and replacement obligations with respect to defective Work, Contractor shall pay all claims, costs, losses, and damages arising out of or relating to defective Work, including but not limited to the cost of the inspection, testing, correction, removal, replacement, or reconstruction of such defective Work, fines levied against Owner by governmental authorities because the Work is defective, and the costs of repair or replacement of work of others resulting from defective Work. Prior to final payment, if Owner and Contractor are unable to agree as to the measure of such claims, costs, losses, and damages resulting from defective Work, then Owner may impose a reasonable set-off against payments due under Article 15.

14.04 *Acceptance of Defective Work*

- A. If, instead of requiring correction or removal and replacement of defective Work, Owner prefers to accept it, Owner may do so (subject, if such acceptance occurs prior to final payment, to Engineer's confirmation that such acceptance is in general accord with the design intent and applicable engineering principles, and will not endanger public safety). Contractor shall pay all claims, costs, losses, and damages attributable to Owner's evaluation of and determination to accept such defective Work (such costs to be approved by Engineer as to reasonableness), and for the diminished value of the Work to the extent not otherwise paid by Contractor. If any such acceptance occurs prior to final payment, the necessary revisions in the Contract Documents with respect to the Work shall be incorporated in a Change Order. If the parties are unable to agree as to the decrease in the Contract Price, reflecting the diminished value of Work so accepted, then Owner may impose a reasonable set-off against payments due under Article 15. If the acceptance of defective Work occurs after final payment, Contractor shall pay an appropriate amount to Owner.

14.05 *Uncovering Work*

- A. Engineer has the authority to require special inspection or testing of the Work, whether or not the Work is fabricated, installed, or completed.
- B. If any Work is covered contrary to the written request of Engineer, then Contractor shall, if requested by Engineer, uncover such Work for Engineer's observation, and then replace the covering, all at Contractor's expense.
- C. If Engineer considers it necessary or advisable that covered Work be observed by Engineer or inspected or tested by others, then Contractor, at Engineer's request, shall uncover, expose, or otherwise make available for observation, inspection, or testing as Engineer may require, that portion of the Work in question, and provide all necessary labor, material, and equipment.
 - 1. If it is found that the uncovered Work is defective, Contractor shall be responsible for all claims, costs, losses, and damages arising out of or relating to such uncovering, exposure, observation, inspection, and testing, and of satisfactory replacement or reconstruction (including but not limited to all costs of repair or replacement of work of others); and pending Contractor's full discharge of this responsibility the Owner shall be entitled to impose a reasonable set-off against payments due under Article 15.
 - 2. If the uncovered Work is not found to be defective, Contractor shall be allowed an increase in the Contract Price or an extension of the Contract Times, or both, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, and reconstruction. If the parties are unable to agree as to the amount or extent thereof, then Contractor may submit a Change Proposal within 30 days of the determination that the Work is not defective.

14.06 *Owner May Stop the Work*

- A. If the Work is defective, or Contractor fails to supply sufficient skilled workers or suitable materials or equipment, or fails to perform the Work in such a way that the completed Work will conform to the Contract Documents, then Owner may order Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of Owner to stop the Work shall not give rise to any duty on the part of Owner to exercise this right for the

benefit of Contractor, any Subcontractor, any Supplier, any other individual or entity, or any surety for, or employee or agent of any of them.

14.07 Owner May Correct Defective Work

- A. If Contractor fails within a reasonable time after written notice from Engineer to correct defective Work, or to remove and replace rejected Work as required by Engineer, or if Contractor fails to perform the Work in accordance with the Contract Documents, or if Contractor fails to comply with any other provision of the Contract Documents, then Owner may, after seven days written notice to Contractor, correct or remedy any such deficiency.
- B. In exercising the rights and remedies under this Paragraph 14.07, Owner shall proceed expeditiously. In connection with such corrective or remedial action, Owner may exclude Contractor from all or part of the Site, take possession of all or part of the Work and suspend Contractor's services related thereto, and incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere. Contractor shall allow Owner, Owner's representatives, agents and employees, Owner's other contractors, and Engineer and Engineer's consultants access to the Site to enable Owner to exercise the rights and remedies under this paragraph.
- C. All claims, costs, losses, and damages incurred or sustained by Owner in exercising the rights and remedies under this Paragraph 14.07 will be charged against Contractor as set-offs against payments due under Article 15. Such claims, costs, losses and damages will include but not be limited to all costs of repair, or replacement of work of others destroyed or damaged by correction, removal, or replacement of Contractor's defective Work.
- D. Contractor shall not be allowed an extension of the Contract Times because of any delay in the performance of the Work attributable to the exercise by Owner of Owner's rights and remedies under this Paragraph 14.07.

ARTICLE 15 – PAYMENTS TO CONTRACTOR; SET-OFFS; COMPLETION; CORRECTION PERIOD

15.01 Progress Payments

- A. *Basis for Progress Payments:* The Schedule of Values established as provided in Article 2 will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to Engineer. Progress payments on account of Unit Price Work will be based on the number of units completed during the pay period, as determined under the provisions of Paragraph 13.03. Progress payments for cost-based Work will be based on Cost of the Work completed by Contractor during the pay period.
- B. *Applications for Payments:*
 - 1. At least 20 days before the date established in the Agreement for each progress payment (but not more often than once a month), Contractor shall submit to Engineer for review an Application for Payment filled out and signed by Contractor covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment shall also be accompanied by a bill of sale, invoice, or other documentation warranting that Owner has received the materials and equipment free and clear of all Liens, and evidence that the

materials and equipment are covered by appropriate property insurance, a warehouse bond, or other arrangements to protect Owner's interest therein, all of which must be satisfactory to Owner. **Payment for materials in storage shall be based on the actual cost of the materials and equipment to Contactor and shall not include any overhead or profit. Documentation warranting Owner has received the materials and equipment free and clear of all Liens will be waived for the material in storage included in the first progress payment. However, proof of payment and clear title must be submitted with Application No. 2 for all material included in Application No. 1. Without such documentation amounts paid per Application No. 1 for materials in storage will be deducted from Application No 2. Beginning with the second application, all payment for materials in storage will require documentation warranting that Owner is receiving the materials free and clear of all liens.**

2. Beginning with the second Application for Payment, each Application shall include an affidavit of Contractor stating that all previous progress payments received on account of the Work have been applied on account to discharge Contractor's legitimate obligations associated with prior Applications for Payment.
3. The amount of retainage with respect to progress payments will be as stipulated in the Agreement. **Retainage may be used by Owner to offset costs for any of the losses enumerated in Paragraphs 15.01.C.6.a through 15.01.C.6.e inclusive, 15.01.E.1.a through 15.01.E.1.i inclusive or 16.02.E. In additions retainage may be used by the Owner to protect against loss from failure of the Contractor to complete necessary work and to offset any liquidated damages due Owner.**

No payments will be made that would deplete the retainage, place in escrow any funds that are required for retainage, or invest retainage for the benefit of the Contractor.

4. **Each Application for Payment shall be accompanied by Contractor's updated progress schedule, shop drawing schedule, procurement schedule, and other data specified herein. Owner reserves the right to required submission of certified payroll records by the Contractor.**

C. *Review of Applications:*

1. Engineer will, within 10 days after receipt of each Application for Payment, including each resubmittal, either indicate in writing a recommendation of payment and present the Application to Owner, or return the Application to Contractor indicating in writing Engineer's reasons for refusing to recommend payment. In the latter case, Contractor may make the necessary corrections and resubmit the Application.
2. Engineer's recommendation of any payment requested in an Application for Payment will constitute a representation by Engineer to Owner, based on Engineer's observations of the executed Work as an experienced and qualified design professional, and on Engineer's review of the Application for Payment and the accompanying data and schedules, that to the best of Engineer's knowledge, information and belief:
 - a. the Work has progressed to the point indicated;
 - b. the quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, the results of any subsequent tests called for in the Contract Documents, a final determination of quantities and classifications for Unit Price Work

- under Paragraph 13.03, and any other qualifications stated in the recommendation); and
- c. the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe the Work.
3. By recommending any such payment Engineer will not thereby be deemed to have represented that:
 - a. inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in the Contract; or
 - b. there may not be other matters or issues between the parties that might entitle Contractor to be paid additionally by Owner or entitle Owner to withhold payment to Contractor.
 4. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment, including final payment, will impose responsibility on Engineer:
 - a. to supervise, direct, or control the Work, or
 - b. for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or
 - c. for Contractor's failure to comply with Laws and Regulations applicable to Contractor's performance of the Work, or
 - d. to make any examination to ascertain how or for what purposes Contractor has used the money paid on account of the Contract Price, or
 - e. to determine that title to any of the Work, materials, or equipment has passed to Owner free and clear of any Liens.
 5. Engineer may refuse to recommend the whole or any part of any payment if, in Engineer's opinion, it would be incorrect to make the representations to Owner stated in Paragraph 15.01.C.2.
 6. Engineer will recommend reductions in payment (set-offs) necessary in Engineer's opinion to protect Owner from loss because:
 - a. the Work is defective, requiring correction or replacement;
 - b. the Contract Price has been reduced by Change Orders;
 - c. Owner has been required to correct defective Work in accordance with Paragraph 14.07, or has accepted defective Work pursuant to Paragraph 14.04;
 - d. Owner has been required to remove or remediate a Hazardous Environmental Condition for which Contractor is responsible; or
 - e. Engineer has actual knowledge of the occurrence of any of the events that would constitute a default by Contractor and therefore justify termination for cause under the Contract Documents.

D. *Payment Becomes Due:*

1. **The Application for Payment with Engineer's recommendations will be presented to the Owner and Agency (if applicable) for consideration. If both Owner and Agency find the Application for Payment acceptable, the recommended amount less any reduction under the provision of Paragraph 15.01.E will become due twenty (20) days after the Application for Payment is presented to the Owner, and the Owner will make payment to the Contractor.** ~~Ten days after presentation of the Application for Payment to Owner with Engineer's recommendation, the amount recommended (subject to any Owner set-offs) will become due, and when due will be paid by Owner to Contractor.~~

E. *Reductions in Payment by Owner:*

1. In addition to any reductions in payment (set-offs) recommended by Engineer, Owner is entitled to impose a set-off against payment based on any of the following:
 - a. claims have been made against Owner on account of Contractor's conduct in the performance or furnishing of the Work, or Owner has incurred costs, losses, or damages on account of Contractor's conduct in the performance or furnishing of the Work, including but not limited to claims, costs, losses, or damages from workplace injuries, adjacent property damage, non-compliance with Laws and Regulations, and patent infringement;
 - b. Contractor has failed to take reasonable and customary measures to avoid damage, delay, disruption, and interference with other work at or adjacent to the Site;
 - c. Contractor has failed to provide and maintain required bonds or insurance;
 - d. Owner has been required to remove or remediate a Hazardous Environmental Condition for which Contractor is responsible;
 - e. Owner has incurred extra charges or engineering costs related to submittal reviews, evaluations of proposed substitutes, tests and inspections, or return visits to manufacturing or assembly facilities;
 - f. the Work is defective, requiring correction or replacement;
 - g. Owner has been required to correct defective Work in accordance with Paragraph 14.07, or has accepted defective Work pursuant to Paragraph 14.04;
 - h. the Contract Price has been reduced by Change Orders;
 - i. an event that would constitute a default by Contractor and therefore justify a termination for cause has occurred;
 - j. liquidated damages have accrued as a result of Contractor's failure to achieve Milestones, Substantial Completion, or final completion of the Work;
 - k. Liens have been filed in connection with the Work, except where Contractor has delivered a specific bond satisfactory to Owner to secure the satisfaction and discharge of such Liens;
 - l. there are other items entitling Owner to a set off against the amount recommended.
2. If Owner imposes any set-off against payment, whether based on its own knowledge or on the written recommendations of Engineer, Owner will give Contractor immediate written

notice (with a copy to Engineer) stating the reasons for such action and the specific amount of the reduction, and promptly pay Contractor any amount remaining after deduction of the amount so withheld. Owner shall promptly pay Contractor the amount so withheld, or any adjustment thereto agreed to by Owner and Contractor, if Contractor remedies the reasons for such action. The reduction imposed shall be binding on Contractor unless it duly submits a Change Proposal contesting the reduction.

3. Upon a subsequent determination that Owner's refusal of payment was not justified, the amount wrongfully withheld shall be treated as an amount due as determined by Paragraph 15.01.C.1 and subject to interest as provided in the Agreement.

15.02 *Contractor's Warranty of Title*

- A. Contractor warrants and guarantees that title to all Work, materials, and equipment furnished under the Contract will pass to Owner free and clear of (1) all Liens and other title defects, and (2) all patent, licensing, copyright, or royalty obligations, no later than seven days after the time of payment by Owner.

15.03 *Substantial Completion*

- A. When Contractor considers the entire Work ready for its intended use Contractor shall notify Owner and Engineer in writing that the entire Work is substantially complete and request that Engineer issue a certificate of Substantial Completion. Contractor shall at the same time submit to Owner and Engineer an initial draft of punch list items to be completed or corrected before final payment.
- B. Promptly after Contractor's notification, Owner, Contractor, and Engineer shall make an inspection of the Work to determine the status of completion. If Engineer or Owner does not consider the Work substantially complete, Engineer will notify Contractor in writing giving the reasons therefor. **Contractor shall immediately correct the deficiencies and re-notify the Engineer in writing that the Work is substantially complete.**
- C. If Engineer considers the Work substantially complete, Engineer will deliver to Owner a preliminary certificate of Substantial Completion which shall fix the date of Substantial Completion. Engineer shall attach to the certificate a punch list of items to be completed or corrected before final payment. Owner shall have seven days after receipt of the preliminary certificate during which to make written objection to Engineer as to any provisions of the certificate or attached punch list. If, after considering the objections to the provisions of the preliminary certificate, Engineer concludes that the Work is not substantially complete, Engineer will, within 14 days after submission of the preliminary certificate to Owner, notify Contractor in writing that the Work is not substantially complete, stating the reasons therefor. If Owner does not object to the provisions of the certificate, or if despite consideration of Owner's objections Engineer concludes that the Work is substantially complete, then Engineer will, within said 14 days, execute and deliver to Owner and Contractor a final certificate of Substantial Completion (with a revised punch list of items to be completed or corrected) reflecting such changes from the preliminary certificate as Engineer believes justified after consideration of any objections from Owner.
- D. At the time of receipt of the preliminary certificate of Substantial Completion, Owner and Contractor will confer regarding Owner's use or occupancy of the Work following Substantial Completion, review the builder's risk insurance policy with respect to the end of the builder's

risk coverage, and confirm the transition to coverage of the Work under a permanent property insurance policy held by Owner. Unless Owner and Contractor agree otherwise in writing, Owner shall bear responsibility for security, operation, protection of the Work, property insurance, maintenance, heat, and utilities upon Owner's use or occupancy of the Work.

- E. After Substantial Completion the Contractor shall promptly begin work on the punch list of items to be completed or corrected prior to final payment. In appropriate cases Contractor may submit monthly Applications for Payment for completed punch list items, following the progress payment procedures set forth above.
- F. Owner shall have the right to exclude Contractor from the Site after the date of Substantial Completion subject to allowing Contractor reasonable access to remove its property and complete or correct items on the punch list.

15.04 *Partial Use or Occupancy*

- A. Prior to Substantial Completion of all the Work, Owner may use or occupy any substantially completed part of the Work which has specifically been identified in the Contract Documents, or which Owner, Engineer, and Contractor agree constitutes a separately functioning and usable part of the Work that can be used by Owner for its intended purpose without significant interference with Contractor's performance of the remainder of the Work, subject to the following conditions:
 - 1. At any time Owner may request in writing that Contractor permit Owner to use or occupy any such part of the Work that Owner believes to be substantially complete. If and when Contractor agrees that such part of the Work is substantially complete, Contractor, Owner, and Engineer will follow the procedures of Paragraph 15.03.A through E for that part of the Work.
 - 2. At any time Contractor may notify Owner and Engineer in writing that Contractor considers any such part of the Work substantially complete and request Engineer to issue a certificate of Substantial Completion for that part of the Work.
 - 3. Within a reasonable time after either such request, Owner, Contractor, and Engineer shall make an inspection of that part of the Work to determine its status of completion. If Engineer does not consider that part of the Work to be substantially complete, Engineer will notify Owner and Contractor in writing giving the reasons therefor. If Engineer considers that part of the Work to be substantially complete, the provisions of Paragraph 15.03 will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.
 - 4. No use or occupancy or separate operation of part of the Work may occur prior to compliance with the requirements of Paragraph 6.05 regarding builder's risk or other property insurance.

15.05 *Final Inspection*

- A. Upon written notice from Contractor that the entire Work or an agreed portion thereof is complete, Engineer will promptly make a final inspection with Owner and Contractor and will notify Contractor in writing of all particulars in which this inspection reveals that the Work, or agreed portion thereof, is incomplete or defective. Contractor shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.

15.06 *Final Payment*

A. *Application for Payment:*

1. After Contractor has, in the opinion of Engineer **and Owner**, satisfactorily completed all corrections identified during the final inspection and has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance, certificates of inspection, annotated record documents (as provided in Paragraph 7.11), and other documents, Contractor may make application for final payment.
2. The final Application for Payment shall be accompanied (except as previously delivered) by:
 - a. all documentation called for in the Contract Documents;
 - b. consent of the surety, if any, to final payment;
 - c. satisfactory evidence that all title issues have been resolved such that title to all Work, materials, and equipment has passed to Owner free and clear of any Liens or other title defects, or will so pass upon final payment.
 - d. a list of all disputes that Contractor believes are unsettled; and
 - e. complete and legally effective releases or waivers (satisfactory to Owner) of all Lien rights arising out of the Work, and of Liens filed in connection with the Work, **and**
 - f. **record documents.**
3. In lieu of the releases or waivers of Liens specified in Paragraph 15.06.A.2 and as approved by Owner, Contractor may furnish receipts or releases in full and an affidavit of Contractor that: (a) the releases and receipts include all labor, services, material, and equipment for which a Lien could be filed; and (b) all payrolls, material and equipment bills, and other indebtedness connected with the Work for which Owner might in any way be responsible, or which might in any way result in liens or other burdens on Owner's property, have been paid or otherwise satisfied. If any Subcontractor or Supplier fails to furnish such a release or receipt in full, Contractor may furnish a bond or other collateral satisfactory to Owner to indemnify Owner against any Lien, or Owner at its option may issue joint checks payable to Contractor and specified Subcontractors and Suppliers.

B. *Engineer's Review of Application and Acceptance:*

1. If, on the basis of Engineer's observation of the Work during construction and final inspection, and Engineer's review of the final Application for Payment and accompanying documentation as required by the Contract Documents, Engineer is satisfied that the Work has been completed and Contractor's other obligations under the Contract have been fulfilled, Engineer will, within ten days after receipt of the final Application for Payment, indicate in writing Engineer's recommendation of final payment and present the Application for Payment to Owner for payment. Such recommendation shall account for any set-offs against payment that are necessary in Engineer's opinion to protect Owner from loss for the reasons stated above with respect to progress payments. At the same time Engineer will also give written notice to Owner and Contractor that the Work is acceptable, subject to the provisions of Paragraph 15.07. Otherwise, Engineer will return the Application for Payment to Contractor, indicating in writing the reasons for refusing to recommend final

payment, in which case Contractor shall make the necessary corrections and resubmit the Application for Payment.

- C. *Completion of Work*: The Work is complete (subject to surviving obligations) when it is ready for final payment as established by the Engineer's written recommendation of final payment.
- D. *Payment Becomes Due*: Thirty days after the presentation to Owner of the final Application for Payment and accompanying documentation, the amount recommended by Engineer (less any further sum Owner is entitled to set off against Engineer's recommendation, including but not limited to set-offs for liquidated damages and set-offs allowed under the provisions above with respect to progress payments) will become due and shall be paid by Owner to Contractor.

15.07 *Waiver of Claims*

- A. The making of final payment will not constitute a waiver by Owner of claims or rights against Contractor. Owner expressly reserves claims and rights arising from unsettled Liens, from defective Work appearing after final inspection pursuant to Paragraph 15.05, from Contractor's failure to comply with the Contract Documents or the terms of any special guarantees specified therein, from outstanding Claims by Owner, or from Contractor's continuing obligations under the Contract Documents.
- B. The acceptance of final payment by Contractor will constitute a waiver by Contractor of all claims and rights against Owner other than those pending matters that have been duly submitted or appealed under the provisions of Article 17.

15.08 *Correction Period*

- A. If within one year after the date of Substantial Completion (or such longer period of time as may be prescribed by the terms of any applicable special guarantee required by the Contract Documents, or by any specific provision of the Contract Documents), any Work is found to be defective, or if the repair of any damages to the Site, adjacent areas that Contractor has arranged to use through construction easements or otherwise, and other adjacent areas used by Contractor as permitted by Laws and Regulations, is found to be defective, then Contractor shall promptly, without cost to Owner and in accordance with Owner's written instructions:
 - 1. correct the defective repairs to the Site or such other adjacent areas;
 - 2. correct such defective Work;
 - 3. if the defective Work has been rejected by Owner, remove it from the Project and replace it with Work that is not defective, and
 - 4. satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others, or to other land or areas resulting therefrom.
- B. If Contractor does not promptly comply with the terms of Owner's written instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the defective Work corrected or repaired or may have the rejected Work removed and replaced. Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others).

- C. In special circumstances where a particular item of equipment is placed in continuous service before Substantial Completion of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Specifications.
- D. Where defective Work (and damage to other Work resulting therefrom) has been corrected or removed and replaced under this paragraph, the correction period hereunder with respect to such Work will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.
- E. Contractor's obligations under this paragraph are in addition to all other obligations and warranties. The provisions of this paragraph shall not be construed as a substitute for, or a waiver of, the provisions of any applicable statute of limitation or repose.

ARTICLE 16 – SUSPENSION OF WORK AND TERMINATION

16.01 *Owner May Suspend Work*

- A. At any time and without cause, Owner may suspend the Work or any portion thereof for a period of not more than 90 consecutive days by written notice to Contractor and Engineer. Such notice will fix the date on which Work will be resumed. Contractor shall resume the Work on the date so fixed. Contractor shall be entitled to an adjustment in the Contract Price or an extension of the Contract Times, or both, directly attributable to any such suspension. Any Change Proposal seeking such adjustments shall be submitted no later than 30 days after the date fixed for resumption of Work.

16.02 *Owner May Terminate for Cause*

- A. The occurrence of any one or more of the following events will constitute a default by Contractor and justify termination for cause:
 - 1. Contractor's persistent failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the Progress Schedule);
 - 2. Failure of Contractor to perform or otherwise to comply with a material term of the Contract Documents;
 - 3. Contractor's disregard of Laws or Regulations of any public body having jurisdiction; or
 - 4. Contractor's repeated disregard of the authority of Owner or Engineer.
- B. If one or more of the events identified in Paragraph 16.02.A occurs, then after giving Contractor (and any surety) ten days written notice that Owner is considering a declaration that Contractor is in default and termination of the contract, Owner may proceed to:
 - 1. declare Contractor to be in default, and give Contractor (and any surety) notice that the Contract is terminated; and
 - 2. enforce the rights available to Owner under any applicable performance bond.
- C. Subject to the terms and operation of any applicable performance bond, if Owner has terminated the Contract for cause, Owner may exclude Contractor from the Site, take possession of the Work, incorporate in the Work all materials and equipment stored at the Site or for which

Owner has paid Contractor but which are stored elsewhere, and complete the Work as Owner may deem expedient.

- D. Owner may not proceed with termination of the Contract under Paragraph 16.02.B if Contractor within seven days of receipt of notice of intent to terminate begins to correct its failure to perform and proceeds diligently to cure such failure.
- E. If Owner proceeds as provided in Paragraph 16.02.B, Contractor shall not be entitled to receive any further payment until the Work is completed. If the unpaid balance of the Contract Price exceeds the cost to complete the Work, including all related claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals) sustained by Owner, such excess will be paid to Contractor. If the cost to complete the Work including such related claims, costs, losses, and damages exceeds such unpaid balance, Contractor shall pay the difference to Owner. Such claims, costs, losses, and damages incurred by Owner will be reviewed by Engineer as to their reasonableness and, when so approved by Engineer, incorporated in a Change Order. When exercising any rights or remedies under this paragraph, Owner shall not be required to obtain the lowest price for the Work performed.
- F. Where Contractor's services have been so terminated by Owner, the termination will not affect any rights or remedies of Owner against Contractor then existing or which may thereafter accrue, or any rights or remedies of Owner against Contractor or any surety under any payment bond or performance bond. Any retention or payment of money due Contractor by Owner will not release Contractor from liability.
- G. If and to the extent that Contractor has provided a performance bond under the provisions of Paragraph 6.01.A, the provisions of that bond shall govern over any inconsistent provisions of Paragraphs 16.02.B and 16.02.D.

16.03 *Owner May Terminate For Convenience*

- A. Upon seven days written notice to Contractor and Engineer, Owner may, without cause and without prejudice to any other right or remedy of Owner, terminate the Contract. In such case, Contractor shall be paid for (without duplication of any items):
 - 1. completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;
 - 2. expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses; and
 - 3. other reasonable expenses directly attributable to termination, including costs incurred to prepare a termination for convenience cost proposal.
- B. Contractor shall not be paid on account of loss of anticipated overhead, profits, or revenue, or other economic loss arising out of or resulting from such termination.

16.04 *Contractor May Stop Work or Terminate*

- A. If, through no act or fault of Contractor, (1) the Work is suspended for more than 90 consecutive days by Owner or under an order of court or other public authority, or (2) Engineer fails to act on any Application for Payment within 30 days after it is submitted, or (3) Owner fails for 30 days

to pay Contractor any sum finally determined to be due, then Contractor may, upon seven days written notice to Owner and Engineer, and provided Owner or Engineer do not remedy such suspension or failure within that time, terminate the contract and recover from Owner payment on the same terms as provided in Paragraph 16.03.

- B. In lieu of terminating the Contract and without prejudice to any other right or remedy, if Engineer has failed to act on an Application for Payment within 30 days after it is submitted, or Owner has failed for 30 days to pay Contractor any sum finally determined to be due, Contractor may, seven days after written notice to Owner and Engineer, stop the Work until payment is made of all such amounts due Contractor, including interest thereon. The provisions of this paragraph are not intended to preclude Contractor from submitting a Change Proposal for an adjustment in Contract Price or Contract Times or otherwise for expenses or damage directly attributable to Contractor's stopping the Work as permitted by this paragraph.

ARTICLE 17 – FINAL RESOLUTION OF DISPUTES

17.01 *Methods and Procedures*

- A. *Disputes Subject to Final Resolution:* The following disputed matters are subject to final resolution under the provisions of this Article:
1. A timely appeal of an approval in part and denial in part of a Claim, or of a denial in full; and
 2. Disputes between Owner and Contractor concerning the Work or obligations under the Contract Documents, and arising after final payment has been made.
- B. *Final Resolution of Disputes:* For any dispute subject to resolution under this Article, Owner or Contractor may:
1. elect in writing to invoke the dispute resolution process provided for in the Supplementary Conditions; or
 2. agree with the other party to submit the dispute to another dispute resolution process; or
 3. if no dispute resolution process is provided for in the Supplementary Conditions or mutually agreed to, give written notice to the other party of the intent to submit the dispute to a court of competent jurisdiction.

ARTICLE 18 – MISCELLANEOUS

18.01 *Giving Notice*

- A. Whenever any provision of the Contract Documents requires the giving of written notice, it will be deemed to have been validly given if:
1. delivered in person, by a commercial courier service or otherwise, to the individual or to a member of the firm or to an officer of the corporation for which it is intended; or
 2. delivered at or sent by registered or certified mail, postage prepaid, to the last business address known to the sender of the notice.

18.02 *Computation of Times*

- A. When any period of time is referred to in the Contract by days, it will be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a

Saturday or Sunday or on a day made a legal holiday by the law of the applicable jurisdiction, such day will be omitted from the computation.

18.03 *Cumulative Remedies*

- A. The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by Laws or Regulations, by special warranty or guarantee, or by other provisions of the Contract. The provisions of this paragraph will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right, and remedy to which they apply.

18.04 *Limitation of Damages*

- A. With respect to any and all Change Proposals, Claims, disputes subject to final resolution, and other matters at issue, neither Owner nor Engineer, nor any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, shall be liable to Contractor for any claims, costs, losses, or damages sustained by Contractor on or in connection with any other project or anticipated project.

18.05 *No Waiver*

- A. A party's non-enforcement of any provision shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Contract.

18.06 *Survival of Obligations*

- A. All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with the Contract, as well as all continuing obligations indicated in the Contract, will survive final payment, completion, and acceptance of the Work or termination or completion of the Contract or termination of the services of Contractor.

18.07 *Controlling Law*

- A. This Contract is to be governed by the law of the state in which the Project is located.

18.08 *Headings*

- A. Article and paragraph headings are inserted for convenience only and do not constitute parts of these General Conditions.

SECTION 00 80 00

SUPPLEMENTARY CONDITIONS

These Supplementary Conditions amend or supplement the Standard General Conditions of the Construction Contract, EJCDC® C-700 (2013 Edition). All provisions that are not so amended or supplemented remain in full force and effect.

To the greatest extent possible the modifications to the Standard General Conditions of the Construction Contract (EJCDC 700) have been made electronically in the text of the General Conditions. The modifications are shown in the General Conditions as strikeout for deletions and bold/underline for additions. These Supplementary Conditions contain additional “project specific” changes, additions or modifications.

The terms used in these Supplementary Conditions have the meanings stated in the General Conditions. Additional terms used in these Supplementary Conditions have the meanings stated below, which are applicable to both the singular and plural thereof.

The address system used in these Supplementary Conditions is the same as the address system used in the General Conditions, with the prefix "SC" added thereto.

ARTICLE 5 – AVAILABILITY OF LANDS; SUBSURFACE AND PHYSICAL CONDITIONS; HAZARDOUS ENVIRONMENTAL CONDITIONS

SC-5.03 *Subsurface and Physical Conditions*

SC-5.03 Add the following new paragraphs immediately after Paragraph 5.03.B:

- C. The following reports of explorations and tests of subsurface conditions at or adjacent to the Site are known to Owner:
 - 1. *No known reports for the Site.*

SC-5.06 Add the following subparagraph 5.06.A.1 and 5.06.A.2:

- 1. The following reports regarding Hazardous Environmental Conditions at the Site are known to Owner:
 - a. *No known reports for the Site.*

ARTICLE 6 – BONDS AND INSURANCE

SC-6.03 *Contractor's Liability Insurance*

Add the following new paragraph immediately after Paragraph 6.03.J:

- K. The limits of liability for the insurance required by Paragraph 6.03 of the General Conditions shall provide coverage for not less than the following amounts or greater where required by Laws and Regulations:

1. Workers' Compensation, and related coverages under Paragraphs 6.03.A.1 and A.2 of the General Conditions:

State:	<u>Statutory</u>
Federal, if applicable (e.g., Longshoreman's):	<u>Statutory</u>
Employer's Liability:	
Bodily injury, each accident	<u>\$1,000,000</u>
Bodily injury by disease, each employee	<u>\$1,000,000</u>
Bodily injury/disease aggregate	<u>\$1,000,000</u>

2. Contractor's Commercial General Liability under Paragraphs 6.03.B and 6.03.C of the General Conditions:

General Aggregate	<u>\$2,000,000</u>
Products - Completed Operations Aggregate	<u>\$1,000,000</u>
Personal and Advertising Injury	<u>\$1,000,000</u>
Each Occurrence (Bodily Injury and Property Damage)	<u>\$1,000,000</u>

3. Automobile Liability under Paragraph 6.03.D. of the General Conditions:

Combined Single Limit \$1,000,000

4. Excess or Umbrella Liability:

Per Occurrence	<u>\$4,000,000</u>
General Aggregate	<u>\$4,000,000</u>

5. Contractor's Pollution Liability:

Each Occurrence	<u>NA</u>
General Aggregate	<u>NA</u>

☒ If box is checked, Contractor is not required to provide Contractor's Pollution Liability insurance under this Contract

6. Additional Insureds: In addition to Owner and Engineer, include as additional insureds the following:

a. NA

7. Contractor's Professional Liability:

Each Claim	<u>NA</u>
Annual Aggregate	<u>NA</u>

ARTICLE 7 – CONTRACTOR'S RESPONSIBILITIES

SC-7.12 Safety and Protection

- A. The Contractor is to prepare and maintain a project specific health and safety plan. Health and Safety plan will be subject to review and approval by Engineer and Owner.

ARTICLE 17 – FINAL RESOLUTION OF DISPUTES

SC-17.02 Arbitration

- A. All matters subject to final resolution under this Article will be decided by arbitration in accordance with the Construction Industry Rules of the American Arbitration Association subject to the conditions and limitations of this paragraph. This agreement to arbitrate and any other agreement or consent to arbitrate entered into will be specifically enforceable under the prevailing law of any court having jurisdiction.
- B. The demand for arbitration will be filed in writing with the other party to the Contract. The demand for arbitration will be made within the specific time required in this Article, or if no specified time is applicable within a reasonable time after the matter in question has arisen, and in no event shall any such demand be made after the date when institution of legal or equitable proceedings based on such matter in question would be barred by the applicable statute of limitations. The demand for arbitration should include specific reference to Paragraph SC-17.02.D below.
- C. No arbitration arising out of or relating to the Contract shall include by consolidation, joinder, or in any other manner any other individual or entity (including Engineer, and Engineer's consultants and the officers, directors, partners, agents, employees or consultants of any of them) who is not a party to this Contract unless:
 1. the inclusion of such other individual or entity is necessary if complete relief is to be afforded among those who are already parties to the arbitration; and
 2. such other individual or entity is substantially involved in a question of law or fact which is common to those who are already parties to the arbitration and which will arise in such proceedings.
- D. The award rendered by the arbitrator(s) shall be consistent with the agreement of the parties, in writing, and include a concise breakdown of the award, and a written explanation of the award specifically citing the Contract provisions deemed applicable and relied on in making the award.

- E. The award will be final. Judgment may be entered upon it in any court having jurisdiction thereof, and it will not be subject to modification or appeal, subject to provisions of the Laws and Regulations relating to vacating or modifying an arbitral award.**
- F. The fees and expenses of the arbitrators and any arbitration service shall be shared equally by Owner and Contractor.**

City of Bethel Action Memorandum

Action memorandum No.	23-24		
Date action introduced:	09/12/2023	Introduced by:	Alan Lanning, City Manager
Date action taken:		Approved	Denied
Confirmed by:			

Action Title: Authorize the City Manager to Negotiate and Execute the Contract with Health Fitness for the Operations and Maintenance of the YK Fitness Center.

Attachment(s): YK Regional Aquatic Health and Safety Center: Operations and Maintenance Agreement.

Amount of fiscal impact	Source of Funding	Account information
\$698,533	Multi-year Budget FY '24-'27	100-72-6171

Summary Statement

The City of Bethel partners with Health Fitness Corp. to operate and maintain the Yukon Kuskokwin Regional Aquatic Health and Safety Center. This is a multi-year Operations and Maintenance Agreement covering FY 2024-2027.

Attachment B – Draft Contract

YUKON KUSKOKWIM REGIONAL AQUATIC HEALTH & SAFETY CENTER

CITY OF BETHEL

Bethel, Alaska

OPERATIONS AND MAINTENANCE AGREEMENT

Covering the period between July 1, 2023 through June 30, 2026



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

This Facility Operations and Maintenance Agreement (hereinafter "**Agreement**") is made and entered into on this 1st day of July 2023 (the "**Effective Date**") by and between the **CITY OF BETHEL**, a municipal corporation (hereinafter "**City**") and Health Fitness Corporation _____ (hereinafter "**Operator**").

1. PURPOSE OF AGREEMENT

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

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

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

2. SCOPE OF OPERATOR SERVICES

Operator shall operate and maintain the Facility as a public facility commencing on July 1, 2023 Operator and City shall determine the dates and hours that the Facility shall be open to the public (per Operation Plan described more fully below in Section 7 - Required Plans). Operator's professional services shall include, at a minimum, the services described in this Agreement (the "**Services**"). The parties may mutually agree to amend or modify the Services during the Term of this Agreement or any Extended Period to include additional Services or exclude unnecessary Services by doing so in a writing signed by both parties.

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

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

4. LIST OF FACILITIES

The Operator shall perform services under this Agreement at the Facility described in Exhibit A (List of Facilities). The City and the Operator shall, from time to time, amend Exhibit A to reflect changes in the Facilities that shall be covered under this Agreement, including, without limitation, amending Exhibit A to reflect the addition of real property improvements, if any, completed in accordance with the terms and conditions of this Agreement and to reflect withdrawal of Facilities as set forth below.

- A. Condition of Facility: Upon termination of this Agreement, the City and Operator will inspect the Facility and all property listed under Exhibit A. All property shall be accounted for and in good and operating condition, less reasonable wear and tear. The City shall give written notice to Operator of any defects in the condition of any of the equipment or property that is being provided to Operator under this Agreement. Operator will be responsible for repairs to or replacement of any damaged property at the sole cost and expense of the City.
- B. Facility Withdrawal: The City may withdraw all or portions of the Facility listed on Exhibit A at any time during the term of this Agreement if:
 - a. The withdrawal is necessary for the purpose of protecting the public safety or to protect, conserve, and preserve the Facility;
 - b. The operations utilizing the listed Facility have been terminated or suspended by the City;
 - c. Land or real property improvements that are made available to the Operator are no longer necessary for the operation; or
 - d. The withdrawal is necessary for use by the City or other reasonable need of the City.
- C. Effect of Withdrawal: Any permanent withdrawal of listed Facilities that the City or the Operator considers to be essential for the Operator to provide the services required by this Agreement will be treated as a termination pursuant to Section 21 of this Agreement. The Operator will be compensated pursuant to Section 3 for the value of any allowable incurred costs up to the date of the withdrawal. No other compensation is due the Operator in these circumstances.
- D. Personal Property: The City will provide certain items of personal property, including, without limitation, removable equipment, furniture, and goods, for the Operator's use in the performance of this Agreement. The City hereby provides to the Operator personal property listed in Exhibit A - Land, Real Property Improvements and Equipment.
- E. Utilities and Expenses Provided by the City: The City will provide the following utilities and expenses at no cost to the Operator for use in connection with the operations required or authorized hereunder:
 - ✓ Gasoline/Diesel/Oil
 - ✓ Electricity

- ✓ Water
- ✓ Sewer
- ✓ Garbage
- ✓ Fuel Oil
- ✓ Internet and Voice Over Internet Protocol (VOiP) Telephone
- ✓ Solid Waste Disposal
- ✓ Emergency Communications Line for Security and Fire
- ✓ Heat

The following utilities are provided by the City. The Operator will not be responsible for making payment for these items. Invoices must be presented to the City for payment.

- ✓ Cable (if desired by Operator and submitted in the approved budget); Fees associated with cable will be passed through to the City.
- ✓ Cleaning and laundry supplies
- ✓ Laundry Supplies (towels, detergent, etc.)
- ✓ First Aid, AED and CPR equipment and supplies
- ✓ Postage and delivery fees in connection with the Facility, as needed

- F. Vehicle. The City will provide a vehicle for Operator's exclusive use during the term of this Agreement. This vehicle will be the sole property of City with Operator expected to use reasonable care in the operation and maintenance of the vehicle. Costs for maintenance and/or replacement of the vehicle will be the responsibility of the City.
- G. Capital Expenditures. The City is responsible for making capital expenditures for the Facility. Capital expenditures include all items for the Facility including, but not limited to, office equipment and furniture, computer hardware and connectivity, and audio/visual equipment.

5. COMPENSATION: PAYMENT SCHEDULE AND FEES

- A. Cost-Plus Fixed Fee Type Agreement: This is a cost-plus fixed fee type Agreement. This Agreement provides for the Operator to make purchases and the City to pay the vendors and service providers for those purchases. In rare instances, the Operator may make a purchase, pay for the purchase, and seek reimbursement from the City. The approved annual budget establishes the maximum total cost for the purpose of obligating funds and establishing a ceiling that the Operator may not exceed (except at their own risk) without the approval of the City. Allowable costs are those costs directly attributable to operations and maintenance of the Facility or as otherwise permitted under this Agreement (such as vehicle maintenance). For purposes of this Agreement, allowable costs are those defined in the approved annual budget, are reasonable and prudent, and conform to generally accepted accounting practices.

Operator shall collect all revenue, including sales taxes, generated from operation of the Facility for and on behalf of the City. Operator shall remit that revenue to the City daily.

Revenue derived from operation of the Facility is the property of the City and not

compensation to the Operator. The City shall be responsible for any tax-related payments due and owing to the applicable taxing authority that are derived from the operation of the Facility.

Fee: The fixed fee payable by the City to Operator is \$166,902 for FY 2023 (July 1, 2022 – June 30, 2023 – prorated) and \$171,909 for FY 2024 (July 1, 2023 – June 30, 2024) and \$178,785 (July 1, 2024 – June 30, 2025) and \$185,937 (July 1 2025 – June 30, 2026)

- B. (the "Fee") and shall be pro-rated monthly and billed to the City. The Fee includes profit and indirect costs that are not directly attributable to the operations and maintenance of the Facility, are generally considered to be overhead, and are generally provided off-site. The Fee includes, but is not limited to, proportionate share of home office expenses, management oversight and travel, accounting and clerical personnel, human resources management, payroll processing, invoicing and required reporting.
- C. **Compensation for Personal Property:** No compensation is due to the Operator from the City or a successor operator for the Operator's personal property used in operations under this Agreement. However, the City or a successor operator may purchase such personal property from the Operator subject to mutually agreed-upon terms. Personal property not removed from the Facility by the Operator in accordance with the terms of this Agreement shall be considered abandoned property subject to disposition by the City, at full cost and expense of the Operator, in accordance with applicable laws. Any cost or expense incurred by the City because of such disposition may be offset from any amounts owed to the Operator by the City to the extent consistent with applicable laws.
- D. **Invoicing:** The Operator shall invoice its Fee each month in advance and clearly distinguish the fixed fee for the provision of recreation organization services from the fixed fee to operate the facility. For example, the fixed fee for July shall be billed in June. City shall have thirty (30) days from receipt of the invoice to submit payment to Operator.

Operator shall remit invoices to the City so that the City can make payment to the vendors and service providers. All purchases must be approved by the Finance Department. Rarely will the Operator purchase something, make payment, and expect reimbursement from the City. Copies of all receipts and other invoices for which reimbursement is requested shall be included with the Operator's invoice. Such costs shall be in accordance with the approved budget. The City shall have thirty (30) days from receipt of the invoice to submit payment to Operator.

- E. **Late Payment:** City Payments not submitted in a timely manner (within 30 days of receipt) shall incur a five (5) percent penalty. If for any reason not the fault of the Operator, the Operator does not receive payment from the City within thirty-five (35) days after the time such payment is due, then the Operator shall assess a five (5) percent finance charge to the invoice. If payment is not received within thirty (30) days, the Operator has the right to send written notice to the City, alerting it of a fourteen (14) day remedy period. If payment is not received after that fourteen (14) day remedy period, the Operator shall have the right, at its option, and within its sole discretion, to interrupt its personnel and supplies from, and stop providing Services to, the City's Facility without any further or

additional notice to the City.

- F. Disputed Invoices: In the event of a dispute regarding an invoice or part of an invoice, the City shall provide the Operator written notice of the dispute within ten (10) business days of receipt of the invoice. Operator and City agree to work cooperatively to resolve the matter. If the parties are unable to resolve the dispute within thirty (30) calendar days after written notice, the parties agree to follow the dispute process laid out in this Agreement.
- G. Fee Adjustment: In the event this Agreement expires and the Services continue to be performed without a new Agreement, there will be a five (5) percent increase to the Fees that will apply until the parties enter into a new Agreement. This fee increase will be waived in the event that the renewal delay is caused by the Operator.

The Fees total can be adjusted either upward or downward if both parties decide on a change, which would affect the totals (e.g., Facility hours or number of staff). A written amendment to this Agreement will be executed so that proper billing can be made and such terms made a part of this Agreement. No amendment may be made to this Agreement that will lower the minimum standards established in the Agreement. Both parties must sign any amendment to this Agreement before the respective terms will be binding.

6. TERM OF AGREEMENT/RENEWAL

This Agreement shall commence at midnight on July 1, 2023 and terminate on June30, 2026 at 11:59 pm (the "Term").

- A. Renewal Options: The Operator has the option to renew this contract for two years (2026-2028) and then another option to renew this contract for two additional years (2028-2030). Both renewal options are contingent on mutual satisfaction by both parties with respect to all aspects of the contract and past contract performance.
- B. Ongoing Eligibility to Contract: During the course of the Contract, the City shall ensure that Operator continues to be eligible to contract with the City (i.e., maintains a valid City of Bethel business license, a valid State of Alaska business license, and is not delinquent on any sales taxes or other fees with the City); and verify that the Operator's certificates of insurance are current. With each renewal, the City must confirm that the renewal is in the City's best interest; the rates are acceptable; and any proposed changes are acceptable.

7. CITY'S RESPONSIBILITIES AND OBLIGATIONS

- A. Cooperation: In order for Operator to provide the level and quality of Services under this Agreement as expected by City, the City shall:
 - a. Make available to Operator: access to the City's Facility as necessary to provide Services;

- b. Respond to all reasonable requests of Operator to facilitate performance of the Services;
- c. Provide good faith cooperation reasonably necessary for Operator to perform the Services;
- d. Provide and maintain a telephone that has restrictions on long distance, 900 and 976 calls. Such telephones are intended for business use only and lifeguards may use them for necessary 911 calls and to page supervisors and managers. Operator will be responsible for ensuring long distance phone bills are kept to those necessary for operation of the Facility. For safety reasons, the pool will be closed if phone is not operable;
- e. Support Operator in the enforcement of all Facility rules and regulations. Enforcement may include temporary or permanent expulsion from the Facility of any person who fails to comply with any safety rule or regulation;
- f. Provide Operator with three (3) sets of keys to all doors and gates;
- g. Cooperate with and assist, the Operator who will procure, in City's name and at City's sole cost and expense, all applicable music licenses;
- h. Designate at least one (1) management level employee as the City Representative. On an ongoing basis, the City Representative will devote an adequate amount of their time to provide management oversight for the program;
- i. Provide IT services/licenses and support; and
- j. Provide major building maintenance outside the maintenance expected from Operator.

Office Space. City will and provide a lockable and enclosed office space for the on-site program management staff that will contain:

- a. Telephone with conferencing and long-distance capability;
- b. Computer containing the City's standard software systems;
- c. Color printer with fax capability;
- d. Internet access with secure firewall system; and
- e. File cabinets with capability of being locked.

8. DUTY TO NOTIFY

Without prejudice to the other obligations in this Agreement:

- A. Operator shall, as soon as practicable after it becomes aware of the same, inform the City of any circumstances which affect, or will affect, Operator's ability to perform the requirements under this Agreement;
- B. Operator shall notify City of any maintenance issues that it observes or should reasonably observe;
- C. Operator shall notify City of any IT issues that it observes or should reasonably observe;

- D. City shall, as soon as reasonably practicable after it becomes aware of the same, inform Operator of any circumstances that affect, or will affect, its ability to operate the Facilities.

9. REQUIRED PLANS

Operator will provide facility manager, lifeguards, and other personnel as reasonably required to operate the Facility in accordance with the pool schedules, hours of operation, and staffing requirements as shown in the most recent Operations Plan. City personnel may enter the Facility for inspections and routine and emergency maintenance, as required.

Operator shall operate the Facility according to the current Plans set out in Exhibit C. These Plans set out the dates, times, hours and other essential operating parameters for the Facility. Operator will have Policies and Procedures in place for managing its personnel and those policies and procedures will be utilized for personnel management at the Facility. Thereafter, Operator shall amend and update each plan in accordance with the process and timeline set out in subsection (I) below.

- A. Operations Plan: Operator shall submit a proposed Operations Plan annually to the City that shall include, at a minimum:
- a. Proposed Facility schedules;
 - b. Recommended changes to the Fees and Rates set out in the most current City of Bethel Fee & Rate schedule, if any;
 - c. Proposed hours of operation;
 - d. Proposed program offerings;
 - e. Proposed staffing;
 - f. Draft checklists for Natatorium/Pool Maintenance (daily, weekly, monthly, quarterly, annually); and
 - g. Draft Cleaning and Maintenance Checklists (daily, weekly, monthly, quarterly, annually).
- B. Personnel Policy and Procedure Manual. The Operator shall utilize its own personnel policy and procedure manual (hereinafter "Manual") for all Operator personnel. A copy of the Manual shall be provided to the City upon signing this Agreement. Operator shall review its Manual by November 1 of each year to ensure it fully complies with State and local laws. Any deficiencies shall be addressed and corrected by Operator and a revised Personnel Policy and Procedure Manual shall be prepared. Operator shall provide City with a copy of any updates or changes to Operator's Personnel Policy and Procedure Manual within a week after such updates or changes occur. If the City hires any of Operator's management staff including the Facility Director and Program Manager (or equivalent) within 30 days of their separation from Operator, the City will owe Operator a 25 % of that parties previously billable salary for these positions.
- C. Employee Orientation. Operator shall conduct orientation with each new employee and such orientation shall cover the health and safety practices of Operator and the City.

D. Hazards (Health and Safety) Meetings. Operator shall conduct a hazards (health and safety) orientation for all employees at least quarterly. This orientation shall cover, at a minimum, at least two (2) of the following topics:

- a. The safety rules specific to Operator and/or City.
- b. The Health, Safety and Wellness policies of Operator.
- c. A tour of the work areas and Facility and explanation of work area hazards and safe work practices.
- d. Demonstrations and education on how to use emergency eyewashes, first aid kits, fire extinguishers, fire exits, and fire alarm pull boxes.
- e. Identification and training, where applicable, of workspaces and where hazardous materials are used, stored and/or disposed.
- f. Review of Emergency Evacuation Plan; evacuation signals and procedures, pointing out proper exit routes and a designated assembly area.
- g. Review of Personal Protective Equipment (PPE) that may be required for any position/employee.
- h. Review of proper reporting procedures in the event of an injury and/or accident.
- i. Review of the Facility telephone list with names of Health and Safety Committee members highlighted as well as location of safety bulletin board and list of persons who may be contacted in case of an emergency.

Operator shall document and maintain a record of all health and safety trainings/meetings and forward a summary of the training/meeting and attendance to the Human Resources Manager within three (3) weeks of completion of the training or meeting.

E. Budget. Operator shall submit a proposed annual operating Budget to the City for review no later than February 15 of each year. City shall review the proposed budget, discuss any requested modifications with Operator, and present the proposed operating budget to the City Council for review and approval during the annual budget process each year. Annual budgets should be based on fiscal years from July 1 to June 30.

Because the Facility is a public facility, Operator and Operator's staff must observe a strict impartiality as to rates and services charged to all visitors in all circumstances. Operator shall have discretion to set reduced and/or complimentary rates for such things as corporate memberships; sponsorship of events; or other situations where such rate changes are a customary or reasonable business practice.

The City reserves the right to review and modify the Operator's complimentary or reduced rate policies and practices as part of its budget approval or whenever the City has concerns regarding a decision by Operator to provide a complimentary or reduced rate.

F. Maintenance Plan. The Maintenance Plan shall include, but is not limited to, addressing how Operator will provide ongoing maintenance of the Facility and the equipment located within the Facility. Examples of areas to be addressed include but are not limited to:

- a. Maintenance, incorporating the manufacturers recommended procedure to comply

- with and maintain warranties of new equipment;
- b. Upkeep and maintenance of building equipment, including fitness equipment, pumps, valves, and regulators;
- c. Upkeep and maintenance of sanitation and hygiene throughout Facility;
- d. Training of personnel on maintaining proper Facility cleanliness;
- e. Checklists and schedules for daily, weekly, monthly, quarterly, and annual cleaning; and
- f. Recommended cleaning and maintenance supply list;

G. Transition Plan. . Notwithstanding the renewal options outlined in this Agreement, it is understood by both parties that, to the maximum extent possible, the City intends to transition the facility to a City-run facility within three years. To that end, during the course of this Agreement, the City and Operator may execute an amendment to this Agreement pursuant to which Operator shall endeavor to train City personnel and actively work to develop a Transition Plan as further described in this section in exchange for fees set forth in the amendment. The City and Operator may execute an amendment to this Agreement pursuant to which Operator shall endeavor to train City personnel and actively work to develop a Transition Plan as further described in this section in exchange for fees set forth in the amendment. Nothing in this section shall be read to preclude the City from seeking bids for transition services from other contractors.

H. Amendment or Modification: Schedules, hours of operation, or staffing requirements may be amended or modified. Any amendment or modification to the hours of operation will be in writing, signed by both parties and attached as an addendum to this Agreement and incorporated into this Agreement. The parties agree that any amendment or modification will be in accordance with the fees and budget set out in this Agreement.

I. Summary of Plan Deadlines: Operator shall provide draft Plans per the deadlines outlined below. City shall review the drafts and provide any feedback to Operator. Thereafter, Operator shall complete and submit the final plan to City.

Description	Draft Deadline	City Response Deadline	Final Plan Due
Operation Plan July 1 to June 30	August 1	August 15	September 1
Maintenance Plan	August 1	August 15	September 1
Annual Operating Budget July 1 to June 30	February 15	February 28	March 15
Transition Plan (if needed)	120 days prior to Transition	90 days prior to Transition	60 days prior to Transition

10. PERSONNEL

A. Operator shall employ only personnel who have been properly trained, certified (if

appropriate for the position), and screened by Operator in accordance with Operator's personnel policy rules.

- B. Non-Discrimination: In carrying out this Agreement, Operator shall not discriminate against any employee or applicant for employment because of race, national origin, color, age, creed, religion, sex, sexual orientation, gender identity, political affiliation, marital status, ancestry, disability, or status as a disabled veteran. Operator's Personnel Policies and Procedures Manuals shall clearly reflect a non-discrimination policy.
- C. Personnel Approval: All personnel will be pre-screened, hired, trained, disciplined (if appropriate), and terminated (when appropriate) by Operator in accordance with Operator's personnel policies and procedures manual.
- D. Employer. All personnel who work at the Facility under the terms of this Agreement shall be employees, agents, or contractors of Operator, and not employees, agents, or contractors of City. Operator will pay the following for Operator's employees:
 - a. Wages;
 - b. Income tax withholdings;
 - c. Social security withholdings;
 - d. Medicare withholdings;
 - e. State unemployment insurance;
 - f. Workers' Compensation insurance; and
 - g. Any other city, State of Alaska, or federal requirements.
- E. Reporting: Operator shall be solely responsible for complying with all State of Alaska and Federal employment reporting requirements such as, but not limited to, OSHA injury reporting, worker's compensation reporting, child labor reporting, etc.
- F. Certification: All lifeguards employed by Operator shall have, at a minimum, current American Red Cross Lifeguarding, CPR for the Professional Rescuer, and First Aid Certificates, or equivalent Lifeguard Training Certificates as required by the State of Alaska.

At all times during the term of this Agreement, Operator shall have at least two (2) employees with current certification as a Certified Pool Operator (CPO). At least one (1) of the CPO's shall serve in a management capacity.
- G. Identification: Lifeguards and all other personnel will wear identification at all times. Such identification shall be in the form of a swimsuit or t-shirt displaying Operator's name and/or logo as well as identification badges.
- H. Authority. To create a safe and enjoyable experience, Lifeguards and management staff shall have the authority to discipline all individuals, including expulsion, who use the Facility and will consistently enforce all published and posted rules of the Facility and minimum safety standards. City agrees to support Lifeguard or management staff in enforcing the Facility rules and regulations to provide a safe environment.

- I. Drug, Alcohol and Tobacco Free Workplace. The Operator shall maintain, to the greatest extent possible, a drug, alcohol, and tobacco-free environment within and outside the Facility. The Operator shall publish a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance, marijuana, or alcohol, is prohibited in the Facility, and specifying actions that will be taken against the employees for violating the prohibition. In addition, Operator shall establish a drug, alcohol, and tobacco-free awareness program to inform employees about the dangers of drug, alcohol and tobacco abuse in the workplace and the Facility and Operator's policy of maintaining a drug, alcohol and tobacco-free environment both in the workplace and in the Facility. Subject to applicable laws, the Operator shall take appropriate personnel action, up to and including termination, for any employee that is found to be in violation of any of these prohibitions.
- J. Minimum Staffing/Services
- a. Lifeguards: Operator will provide a sufficient number of qualified lifeguards to maintain adequate safety standards at the Facility and to comply with all applicable State of Alaska rules and regulations. The lifeguards shall be responsible for maintaining orderly and safe conditions in and around the pool.
 - b. Instructors: Operator shall provide qualified instructors to regularly provide swim lessons, exercise lessons, and instruction for proper use of Facility equipment. The goal of providing lessons shall be to generate revenue and attendance at the Facility.
 - c. Gatekeepers/Concession Workers: Under this Agreement, Operator will provide a sufficient number of gatekeepers/concession workers to be on duty at all times during hours of operation.
 - d. Maintenance/Housekeeping: Operator will provide a sufficient number of employees to ensure the Facility remains reasonably clean at all times. Sufficient personnel must be on duty at all times to ensure regular inspections of the restrooms, mechanical rooms, and locker rooms. Locker rooms are to be checked at a minimum once every fifteen (15) minutes in order to ensure the water is not left running, the area is reasonably clean, and theft is reasonably deterred.

11. FACILITY CLOSURE

- A. In case of emergency, Operator may temporarily close the Facility. An emergency may include, but is not limited to, any failure or threatened failure of Facility equipment or other unforeseen causes outside Operator's control. Such action will be documented in writing to City. City will be notified immediately by phone and email of such closure. Further, Operator will publicly post the reason for such closure at the location, will advise the local radio station as soon as practicable and will take all reasonable steps to inform the general public of the closure. No refunds will be given for temporary closings without the

authorization of the City Council.

In no event shall a scheduled Facility Closing be cause for the amendment or modification of this Agreement and Operator will not refund any amounts of compensation paid by City because of a Facility Closing, except as allowed in the immediately following paragraph below.

Should more than seven (7) days elapse from the Facility Closing Date to perform repairs and/or restore the Facility to normal operations due to the negligent acts or omissions of Operator, then beginning on the tenth (10th) day, Operator shall refund to City one half percent (0.5%) per day of the total Agreement compensation. If the Facility is not opened for normal operation within ten (10) days after the Facility Closing Date due to the negligent acts or omissions of Operator, then the City may terminate this Agreement by giving seven (7) days advance written notice to Operator.

The date on which the Facility is closed for any reason under this section will be the Facility Closing Date. The Facility may be closed by Operator for the following:

- a. Emergency Closing: Operator reserves the right to close the Facility if, in Operator's personnel's reasonable belief, there is a threat to the safety or welfare of visitors that may result from (without limitation): hazardous weather advisories or contamination. Operator personnel will reasonably attempt to contact City's Representative if it is necessary to close the Facility early.
- b. Breakdown and Repair of Facility: In Operator's best judgment, Operator reserves the right to close the Facility due to a breakdown of the Facility including, without limitation, if the Facility:
 1. Is significantly inoperable for whatever reason;
 2. Requires repairs that must be performed during Facility hours of operation;
or
 3. Requires repairs necessitating the pool being drained of water.
- c. Annual Maintenance Closure: Operator and City may schedule an annual closure of the Facility for necessary cleaning and other repairs. If the parties choose to exercise this option, the closure shall be no longer than two (2) weeks in duration and shall be done in sections so as to minimize disruption to users of the Facility (for example, the pool area will be closed while the work-out rooms are open). Based on previous usage data, such annual closure, if it occurs, will be scheduled for the summer months whenever possible. This schedule may be amended however, as more reliable user data is collected.

12. PRIVATE USE OF FACILITY

The Facility is a municipal facility required to be made available to all members of the

public. For this reason, the Facility may not be closed to the public for the sole purpose of accommodating the private use of the Facility.

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

13. ADDITIONAL FACILITIES

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

In no event shall Operator be liable to any party for any loss or claim arising from any injury, damage, cost or other event or occurrence that takes place in any area not directly to the responsibility of Operator under this Agreement, including but not limited to the Facility parking lot and the wind turbine (and area surrounding the wind turbine) used to provide additional power to the Facility.

14. REPAIRS/MAINTENANCE

- A. City's Responsibilities: City is solely responsible for all reasonable maintenance and repair of the Facility except for damages from the negligent or otherwise actionable conduct of the Operator. City will maintain the Facility free of any mechanical, structural, electrical, or fire hazards; in compliance with all applicable local and state codes; and in a good state of general repair and maintenance suitable for the Operator's use. City may enter the Facility at all reasonable times to examine the condition of the Facility.
- B. Operator's Responsibilities: Operator shall be responsible for general maintenance, preventative maintenance, repairs, and housekeeping of the Facility to the reasonable satisfaction of the City. Operator maintenance includes, but is not limited to, all surfaces, furniture, fixtures, and equipment. This includes pool systems, fitness and exercise equipment, and concession equipment. Operator is not expected to make major repairs but is expected to maintain the Facility in reasonably good shape, less normal wear and tear. Operator is responsible for notifying City of any maintenance issues.
- C. Maintenance: Operator shall notify City of any significant maintenance or repair issues that occur at the Facility as soon as practicable but in no case no more than forty-eight (48) hours after the incident has occurred.

- D. Operator shall at all times during the term of this Agreement provide and maintain adequate safety equipment as outlined in Exhibit B.
- E. Maintenance Records and Logs. The Operator shall maintain maintenance records and logs. At a minimum, these records shall include:
- a. To the extent that the following pertains to matters for which Operator is responsible and that are included in the services to be performed by Operator under this Agreement and/or all other related documents, demonstrated compliance with current Alaska Department of Environmental Conservation (ADEC) regulations, including, but not limited to, the recording of the following information for each day that the Facility is open to the public:
 - The hours of operation.
 - The length of time that the pumps and filters are in operation, and the rate of pressure, vacuum, and rate of flow readings.
 - The date that each filter is backwashed or cleaned.
 - The frequency and results of alkalinity and hardness tests.
 - The frequency and results of pH and disinfectant tests (pH and disinfectant tests must be made two [2] or more times, and depending upon chlorine or bromine demand).
 - The amount of water and chemicals added to maintain water quality. Equipment failure.
 - Any water contamination (e.g., vomiting, feces).
 - Repair while the pool is in operation.
 - b. The Operator shall submit duplicate records on a monthly basis to ADEC while the Facility is in operation.
 - c. Checklists for routine maintenance, preventative maintenance, and janitorial duties (daily, weekly, monthly, quarterly, bi-annual and annual).
 - d. Equipment logs for each piece of major equipment with the maintenance schedule, maintenance contracts, record of work or repairs conducted, manufacturer guidelines, and specifications.
 - e. Confined space entry equipment (as specified by manufacturer).
 - f. All logs and records must be maintained for a minimum of three (3) years.
 - g. City shall be responsible for completing all major structural repairs. Operator shall be solely responsible for reporting any repair needs to the City as soon as they are identified. The City will provide snow plowing of the parking lot and will maintain the Wind Turbine. The City shall not provide any other routine maintenance of the Facility.

- h. Operator shall supply all necessary personnel and chemicals to provide the services required by this Agreement and all such materials, services, and repairs shall comply with the annual approved budget and shall be charged to the City. The Parties understand that equipment breakdowns are not always foreseeable. Operator will do everything reasonable to maintain the Facility in good repair. Any extra usage of chemicals or labor as a result of repair will be billed to City. Operator assumes no liability or responsibility for water quality or facility maintenance due to breakdowns of City's Facility (unless caused by Operator), during periods of repair, or other unforeseen reasons causing damage to the Facility, and Operator shall not be responsible or liable to City for a facility closure due to a breakdown or repair unless that breakdown or repair was caused by Operator or Operator's failure to reasonably act. Operator will maintain Water Quality by balancing all readings of chemicals to a proper and safe level for swimmers within a reasonable time once repairs have been completed. If additional services or chemicals are needed to restore the Facility to operational standards, the cost of these services and chemicals will be charged to the City. Operator may close the Facility under this Section during which time Section 9 (Facility Closing) of this Agreement shall apply.
- i. Any repairs required as the result of Operator's gross negligence or willful conduct shall be done at Operator's sole expense and shall not be subject to reimbursement.

15. SIGNAGE AND POSTING OF RULES

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

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

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

caused due to the negligence of Operator or its agents or employees.

17. CHEMICAL AND MAINTENANCE SUPPLIES

- A. Operator shall provide Facility chemicals including but not limited to, chlorine tablets, liquid chlorine, muriatic acid, stabilizers, calcium chloride, soda ash, soda bicarbonate, and other chemicals needed for normal Facility operation and to maintain Water Quality in a safe and sanitary manner.
- B. Operator shall provide miscellaneous cleaning and operating supplies, including Facility test equipment and reagents, restroom cleaning materials, toilet paper, paper towels, light bulbs, trash bags, Facility tile cleaner, hand soap, and sponges.
- C. Operator shall order sufficient quantities of all chemical and maintenance supplies during the summer barge season to have a full-year of stock on hand by the close of barge transportation (late summer). Chemical and maintenance supplies shall include all critical spare parts needed for proper operation of the Facility.

18. VISITOR SAFETY EQUIPMENT

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

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

19. INDEMNIFICATION, INSURANCE, AND LIABILITY LIMITS

A. Indemnification and Notification of Legal Action

Except for the sole negligence or willful misconduct of the City of Bethel (BETHEL) its employees, agents or any other third party and to the fullest extent permitted by law, the contractor shall defend, indemnify, and hold harmless BETHEL and any of the BETHEL's applicable subsidiaries, from any and all claims demands, losses, and liabilities to or by any third party, including, but not limited to costs, attorney's fees, expenses and claims for any damages, contributions, or indemnification arising from, resulting from, or connected with any negligent act or omission or any willful misconduct of Operator, while performing Services at the Facility under this Agreement, even though

such claims may prove to be false, groundless, or fraudulent. The indemnification obligation under this agreement shall not be limited in any way by any restriction on the amount or type of damages, compensation, or benefits payable to or for any third party, or any employee under any worker's compensation act, disability benefit act, or other employee benefit act. Entitlement to recovery of costs, attorney fees and expenses under the indemnification obligation shall include all fees, costs, and expenses incurred in good faith by BETHEL.

The City agrees to indemnify, defend, and hold harmless Operator against all claims, demands, suits, judgments, court costs, reasonable attorney's fees, attachments, and other legal action for loss of life, injury, or damage to property of any third party to the extent growing out of or by reason of any negligent act or omission or any willful misconduct of City even though such claims may prove to be false, groundless, or fraudulent. The indemnification obligation under this agreement shall not be limited in any way by any restriction on the amount or type of damages, compensation, or benefits payable to or for any third party, or any employee under any worker's compensation act, disability benefit act, or other employee benefit act. Entitlement to recovery of costs, attorney fees and expenses under the indemnification obligation shall include all fees, costs, and expenses incurred in good faith by Operator. The City shall not have any obligation to indemnify, defend and hold harmless to the extent that any such claim is caused by the sole negligence or willful misconduct of the Operator, its employees, its agents or any other third party.

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

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

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

- B. **No Third Party Benefit:** This Agreement does not create a third-party benefit to the public or any member of the public, nor does it authorize any person or entity not a party to this Agreement to maintain suit based on this Agreement or any term

or provision of the Agreement, whether for personal injuries, property damage, or any other claim or cause of action.

- C. **Required Insurance:** The contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in the State of Alaska as admitted insurers or surplus lines insurers approved by BETHEL, such insurance as will protect the contractor from claims set forth below and others, which may arise out of or as a result from the contractor's operations under this contract, whether such operations are by the contractor or by a subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable.

- a. Claims under worker's compensation, employer's liability, disability benefits, and other similar employee benefit acts which are applicable to the work to be performed under this contract.

Claims for damages because of bodily injury, mental anguish, sickness, disease or death of any person other than the contractor's employees.

Claims for damages insured by usual personal injury liability insurance coverage.

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

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

Claims involving the contractor's contractual obligations and assumption of liability under this contract.

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

Premises/Operations Liability
Products/Completed Operations Liability
Personal/Advertising Injury Liability
Fire Damage Liability
Medical Payments

- b. The insurance required in II including subsection (a.), shall be written for not less than the limits listed in (c). below or those limits required by law, whichever limit is higher. Insurance, whether written on an occurrence, or a claims-made basis, shall be maintained without interruption from the date of commencement of the work to the date of final payment, or termination of any insurance required to be maintained after final payment.
- c. The insurance required in II including subsection a. shall be written for not

less than the following limits:

1. Worker's Compensation Insurance:
Statutory Requirements of the State of Alaska, and
Employer Liability Insurance limits of:
\$500,000.00 each accident.
\$500,000.00 disease each employee.
\$500,000.00 disease policy limit.
2. Commercial General Liability Insurance:
\$1,000,000.00 Combined Single Limit of Liability per Occurrence
\$1,000,000.00 Personal/Advertising Injury Limit of Liability per Occurrence
\$2,000,000.00 Annual General Aggregate Limit of Liability
\$2,000,000.00 Annual Products/Completed Operations Aggregate Limit of Liability
\$100,000.00 Fire Damage Limit of Liability Any One Fire
\$5,000.00 Medical Payment Limit Any One Person
3. Commercial Automobile Liability Insurance:
\$1,000,000.00 Combined Single Limit of Liability per Accident
For all Owned, Hired, and Non-Owned Vehicles.
4. Professional (Errors & Omissions) Liability Insurance:
\$1,000,000.00 Limit of Liability per Claim.
\$2,000,000.00 Limit of Liability Annual Aggregate for all Claims.
Retroactive date: Prior to effective date of contract.
Effective date: Prior to effective date of contract, and for at least 24 months after completion of contract.
- d. Worker's compensation insurance and employer's liability insurance shall be in compliance with the statutory requirements of the State of Alaska, and any other statutory obligation, whether federal or state pertaining to compensation of injured employees. The worker's compensation insurance and employer's liability insurance shall contain a waiver of subrogation provision in favor of BETHEL.
- e. The commercial general liability insurance shall include BETHEL as an additional insured as respects this contract.
- f.
- g. Certificates of insurance acceptable to BETHEL shall be filed with BETHEL prior to the commencement of the beginning of any services by the Contractor.

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

Failure to maintain these insurance provisions required of the Contractor or failure to immediately notify BETHEL of cancellation shall be considered a material breach of this contract by the Contractor, subject to termination provisions of this contract.

- h. **Certificate of Insurance** - The Operator shall furnish evidence of insurance to the City upon renewal annually. The evidence shall be issued to the City and shall be a certificate of insurance:
 - 1. Denoting the type, amount, and class of operations covered;
 - 2. Showing the effective dates of the policy;
 - 3. Showing the expiration date of the policy;
 - 4. Including all required endorsements, upon request;
 - 5. Be executed by the carrier's representative; and
- i. **Liability Limits** - Both parties mutually agree to waive any remedy or claim for indirect, incidental, special or consequential damages or claims for loss of business or profits.

18. BONDING (Fidelity Bonds)

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

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

19. ACCOUNTING RECORDS AND REPORTS

- A. **Accounting System** - Operator shall maintain an accounting system with an easy-to-understand account classification system under which its accounting can be readily identified. Such accounting system shall be capable of providing the information required by this Agreement, including but not limited to, revenues collected, repair and maintenance expenses, operating expenses, etc. The Operator's system of accounts classification shall be directly related to the Operator's annual budget, monthly and annual financial reports, and invoicing.
- B. **Monthly Reports** - The Operator shall prepare and email monthly reports to the City Manager and Finance Director by 5 pm on the Tuesday before the second regularly scheduled City Council meeting of each month. The reports shall be in narrative and numerical accounting format and include copies of all invoices

supporting claimed expenses.

- C. **Narrative Report.** The Narrative Report shall clearly state whether the overall operations, both revenue and expenses, are over or under budget for the month and the year, identify specifically what cost areas are over budget or revenue areas are under budget, explain any deviation, and explain what corrective actions, if any Operator will take.
- D. **Cumulative Accounting Report.** The Cumulative Accounting Report shall provide actual costs and revenues versus budgeted amounts for each category of account classification, reported for the specific month and cumulative for the year. Deviations from the operations plan, annual budget, or maintenance plan require advance written approval from the City Manager. The monthly report shall provide a record of all such approvals provided by the City Manager the previous month.

A statement should appear on one of the reports that says, "The Narrative Report, Cumulative Accounting Report, Facility Usage Report, and all other reports and invoices submitted herein are true and correct." The statement should be dated and signed by an officer of the Operator.

- E. **Invoices.** Operator shall prepare and submit the following two distinct and separate invoices to the City:
 - 1. Invoices for City to pay vendors and occasionally, expenditures paid by Operator for reimbursement.
 - 2. Invoice of fixed fee for the following month (an advance) with fixed fee for recreation organizing services.
- F. **Sales Tax Report.** The Sales Tax Report should be prepared monthly and submitted with the sales taxes collected for the previous month. Operator shall familiarize themselves with, at a minimum, that portion of the Bethel Municipal Code (hereinafter "Code") governing Sales Tax. Operator shall collect the appropriate sales taxes for each sale and rental at the facility (currently 6%). The taxes shall be in addition to the sales and rental costs.
- G. **Facility Usage Report.** The Operator shall provide a monthly statistical and narrative report on the usage of the Facility. The report shall be in a form and format approved by the City. Operator shall submit the report monthly with the invoices and annually with the other annual reports.
- H. **Miscellaneous Reports and Data.** From time to time, the City may require the Operator to submit other reports and data regarding its performance under the Agreement or otherwise, including, but not limited to, operational information. This may include presentations to the City Council on such things as programs, and local hire and training results.
- I. **Annual Inventory.** The Operator shall perform an annual inventory of the real property as set forth in Exhibit A -Land, Real Property Improvements and

Equipment. The inventory report shall be certified as true and correct by an officer of the Operator and submitted by July 15.

- J. **Accounting Records** - For all expenditures made for the operations and maintenance of the Facility, the Operator shall maintain and make available, on reasonable notice, for inspection and examination, at all reasonable times, all records relating to this Agreement and of transactions performed pursuant to this Agreement for a minimum of five (5) years from the date of the record. If the City has reasonable cause to believe that any information on the monthly or annual financial report is not accurate, the City may audit the books and/or estimate the figures based on any information available.

The City shall notify the Operator, in writing, that the City has estimated the amount of sales and revenue, stating the estimated amount. The City shall serve notice on the Operator by delivering the notice to the Operator as per the notice section of this Agreement.

The City's estimate shall become a final determination unless:

- 1) The Operator, within thirty (30) days after service of notice of the estimate, files a formal appeal to the City Manager; or
- 2) The Operator files a complete and accurate financial statement indicating the figures in question and explaining them to the satisfaction of the City.
- 3) In either event above, Operator consents to an independent audit and agrees to cooperate fully with the audit process.
- 4) The City may request, and the Operator must furnish, any additional information deemed necessary for a correct evaluation of the finances of the Facility.

- K. **Audit by City:** The City reserves the right to conduct an annual audit by an external expert and/or industry professional at any time for any reason; provided, however, the City shall not seek or use the services of a competitor of Operator. Operator agrees to cooperate by providing, upon reasonable notice which shall be not less than thirty (30) days prior to the date of audit, and at no additional cost, such books, papers, statements, memoranda, records, accounts and other written material as may be set out in the request by the City's finance director or City Manager. In the case of an audit, the City shall be responsible for selecting and scheduling the audit. The audit may include, but is not limited to:

- 1) Agreement Compliance;
- 2) Review of Financial Records that relate to the services performed under this Agreement;
- 3) Staff Skills Assessment;
- 4) Staff Selection and Training Procedures;
- 5) Policies and Procedures Review;
- 6) Site Inspection;
- 7) Code Compliance and Record Keeping Practices;
- 8) Adherence to Aquatic Safety Standards; and
- 9) Facility and Equipment Maintenance

In the event deficiencies are identified in the audit, the Operator and the City will be required to discuss, in good faith, such findings as well as the extent to which any corrections may be made.

If the independent audit discovers more than five percent (5%) of the annual budget in errors resulting from Operator's failure to accurately report revenues, expenses, and/or sales and taxes due thereupon, the Operator shall be responsible for the full cost of the audit. Otherwise, the cost of the audit will be borne solely by the City.

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

20. NOTICES

- A. **Safety:** It is the Operator's duty and responsibility to notify the City of any problems or areas of concern pertaining to safety of the Facility and its patrons.
- B. **Injury:** Operator shall notify the City of any injuries requiring medical attention or any significant incidents (such as potential drowning) as soon as practicable but in no case no more than forty-eight (48) hours after the incident has occurred.

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

OPERATOR: [Name]
[Address]
Attention: [Title]
Facsimile: [Numeral]
Email: [Email address]

CITY: City of Bethel
Attn: City Manager
PO Box 1388
Bethel AK 99559-1388

with copy to: City of Bethel
Attn: City Attorney's Office
PO Box 1388
Bethel AK 99559-1388

Each party's designated representative for day-to-day operations and in case of emergencies shall be:

OPERATOR: [Name, Title, contact information]

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

21. SUSPENSION/TERMINATION

- A. Suspension. In the event of danger to life or significant damage to the Facility, the City may temporarily suspend operations under this Agreement in whole or in part. As soon as practicable, the City shall give notice to the Operator and determine a re-open plan. During such period of suspension, the City shall continue to pay to Operator all amounts due under this Agreement.
- B. Cancellation for Unappropriated Funds: The City reserves the right, in its best interest and sole discretion as determined by the City, to terminate this Agreement for unappropriated funds or unavailability of funds by giving written notice to the Operator at least one hundred twenty (120) days prior to the effective date of such termination. The obligation of the City for payment to Operator is limited to and contingent upon the availability of funds appropriated in a current fiscal period, and continuation of the Agreement into a subsequent fiscal period is subject to appropriation of funds, unless otherwise provided by law.
- C. Termination for Convenience: Either party may terminate this Agreement at any time and for any reason whatsoever upon providing at least six months prior written notice to the non-terminating party.
- D. Events of Default:
 - a. **Cancellation for Non-Payment:** If for any reason payment in full of any charge is not received within thirty (30) days from the due date, the Operator may cancel this Agreement and terminate all services by giving a fourteen (14) day written notice to terminate at the end of such fourteen (14) day period without further liability.
 - b. **Cancellation by Mutual Agreement:** Operator and City may terminate this Agreement at any time by mutual written

agreement. Each party shall be required to continue full performance under the terms of this Agreement until the effective cancellation date.

- c. **City's Event of Default:** Each of the events described below shall constitute a City Event of Default:
- 1) A material breach by City of any obligation under this Agreement, which (where capable of remedy) has not been remedied within thirty (30) days following notice from Operator stating that such breach has occurred, identifying the breach and demanding it to be remedied, provided that if City has diligently and as quickly as possible commenced the remedial action necessary but is unable to complete it within thirty (30) days, City shall be allowed such further period of up to sixty (60) days or as may be reasonably necessary and approved by Operator to complete the remedial action;
 - 2) City has made material misrepresentation in the representations and warranties set out in this Agreement or has not disclosed any material fact that renders any such representation or warranty materially misleading;
 - 3) The reorganization, merger, consolidation, amalgamation, dissolution or reconstruction of City, except to the extent that such events does not affect the ability of the resulting entity to perform its obligations under this Agreement;
 - 4) Except for the purposes permitted under subsection 3, the occurrence of any of the following events (other than as a direct result of Operator Event of Default):
 - Passing of a resolution or initiation of any proceeding for the bankruptcy, insolvency, winding up, liquidation of or other similar proceedings relating to the Facility;
 - The appointment of a trustee, liquidator, custodian or a similar person, which appointment has not been set aside or stayed within sixty (60) days of such appointment; or
 - A court of competent jurisdiction issuing an order winding up or otherwise confirming the bankruptcy or insolvency of the Facility, which order has not been set aside or stayed within sixty (60) days; or
 - 5) City ceasing to hold a license, permit, or consent, as a result of breach by City of the terms and conditions of such license, permit or consent, making it unlawful for City to operate.
- d. **Operator Event of Default:** Each of the events described below shall constitute an Operator Default:
- 1) A material breach by Operator of any obligation under this

Agreement, which (where capable of remedy) has not been remedied within thirty (30) days following notice from City stating that such breach has occurred, identifying the breach, and demanding it to be remedied, provided that if Operator has diligently and as quickly as possible commenced the remedial action necessary but is unable to complete it within thirty (30) days, Operator shall be allowed such further period of up to sixty (60) days or as may be reasonably necessary to complete the remedial action;

- 2) Operator has made material misrepresentation in the representations and warranties set out in this Agreement and has not disclosed any material fact that renders any such representation or warranty materially misleading;
- 3) The reorganization, merger, consolidation, amalgamation, dissolution, or reconstruction of Operator, except to the extent that it does not affect the ability of the resulting entity to perform its obligations under this Agreement;
- 4) Except for the purposes permitted under subsection (3) of this section, the occurrence of any of the following events (other than as a direct result of City Event of Default):
 - Passing of a resolution or initiation of any proceeding for the bankruptcy, insolvency, winding up, liquidation of or other similar proceedings relating to Operator;
 - The appointment of a trustee, liquidator, custodian or a similar person, which appointment has not been set aside or stayed within sixty (60) days of such appointment; or
 - A court of competent jurisdiction issuing an order winding up or otherwise confirming the bankruptcy or insolvency of Operator, which order has not been set aside or stayed within sixty (60) days; or
- 5) Operator ceasing to hold a license, permit or consent, as a result of breach by Operator of the terms and conditions of such license, permit or consent, making it unlawful for City to operate.

e. **Consequences in the Event of Default** If either party experiences an Event of Default consistent with this section, either party may issue a notice ("Termination Notice") to the other, whereupon this Agreement shall terminate upon the date specified in such Termination Notice or such later date as the Parties may have agreed.

f. **Sole Grounds for Termination:** The provisions of this

Agreement governing termination shall be the sole and exclusive grounds on which the Parties may terminate this Agreement.

- g. **Damages/Payment in the Event of Termination:** In the event of termination of this Agreement for breach, the total compensation due to the Operator for such termination shall be calculated based on the work completed through the effective date of termination.

Upon termination of this Agreement for any reason or upon its expiration, and except as otherwise provided in this section, the Operator shall, at the Operator's sole expense, promptly vacate the premises, remove all of the Operator's personal property, repair any damages caused by installation or removal of such property (reasonable wear and tear excepted), and ensure the Facility is in at least as good condition as it was at the beginning of the term of this Agreement, reasonable wear and tear excepted. The removal of such personal property must occur within thirty (30) days after the termination of this Agreement. Operator shall comply with all applicable requirements of the transition plan. All documents, manuals, logs and other records prepared by Operator during the operation of the Facility shall be provided to the City at the termination or expiration of this Agreement.

22. DISPUTE RESOLUTION

The parties agree to work cooperatively to resolve all issues.

- 1) Should an issue arise, the party believing itself to be aggrieved shall provide written notice to the other party within ten (10) days of the alleged grievance.
- 2) Upon receipt of the grievance, the parties will schedule a teleconference to attempt to resolve the issue. The teleconference shall occur within fourteen (14) days of the grievance notice.
- 3) If the parties are unable to resolve the matter during the teleconference, they shall schedule a face-to-face meeting. Said meeting shall be attended by those persons from City and Operator empowered to resolve the matter. The meeting shall occur within thirty (30) days from the date of the grievance notice unless otherwise extended by mutual consent of the parties. Such consent shall not be unreasonably withheld.
- 4) If the face-to-face meeting fails to resolve the matter; the parties may litigate the matter in a court of competent jurisdiction.

23. CONFIDENTIALITY AND SECURITY

Each party shall take all reasonable and proper steps to keep confidential any trade secrets or confidential information obtained by or about the other party or its

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

24. CONFLICTS

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

Operator further agrees that none of Operator's officers, agents, or employees shall, during the term of this Agreement, serve as an expert witness against the City in any legal or administrative proceeding in which they or the Operator is not a party, unless compelled by court process. Further, Operator agrees that such persons shall not give sworn testimony or issue a report in writing, as an expression of expert opinion, that is adverse or prejudicial to the interests of the City in connection with any such pending or threatened legal or administrative proceeding unless compelled by court process. The limitations of this section shall not preclude Operator or any persons in any way from representing themselves, including giving expert testimony in support thereof, in any action or in any administrative or legal proceeding.

To the extent Operator is permitted pursuant to this Agreement to utilize subcontractors to perform any services required by this Agreement, Operator agrees to require such subcontractors, by written contract, to comply with all applicable provisions of this Agreement to the same extent as Operator. If Operator is unable to require a subcontractor to comply with the provisions of this section, Operator shall notify the City and the parties agree to discuss, in good faith, reasonable alternatives.

25. SUBCONTRACTORS

Operator may hire or retain such employees and subcontractors as it deems reasonably necessary or appropriate to perform the Services contemplated or required by this Agreement. Prior to hiring any subcontractors, Operator shall ensure the subcontractor is eligible to work on City facilities. Eligible subcontractors are those that:

- A. Are not delinquent in their remittance of city sales taxes or other fees;
- B. Have a State of Alaska business license;
- C. Are properly licensed and/or certified to perform the services for which they are being retained (when applicable);
- D. Are in full compliance with any other applicable state, federal, or local law.

If Operator engages any subcontractor to perform any part of this Agreement, Operator shall ensure that all of Operator's subcontractors perform in accordance with the terms and conditions of this Agreement. Operator shall be fully responsible for all of Operator's subcontractors' performance, and liable for any of the Operator's subcontractors' non-performance and all of subcontractor's negligent acts and omissions. Operator shall defend, at Operator's sole expense, and indemnify and hold harmless City and City's officers, employees, and agents from or against any claim, lawsuit, third party action, fine, penalty, settlement or judgment, including any award of reasonable attorneys' fees and any award of reasonable costs, by or in favor of any of Operator's subcontractors for payment for work performed for City by any of such subcontractors; provided that City made available and paid to Operator the funds necessary to pay such subcontractor for work performed for the City, and from or against any third party claim, lawsuit, action, fine, penalty, settlement or judgment, including any award of reasonable attorney fees and any award of reasonable costs, to the extent occasioned by or arising out of any negligent act or omission by any of Operator's subcontractors.

26. GENERAL PROVISIONS

- A. Amendments: This Agreement may only be amended or varied by the written agreement of both Parties.
- B. Assignment and Performance: Neither this Agreement nor any right or interest herein shall be assigned, transferred, or encumbered without the written consent of the other party whose consent shall not be unreasonably withheld, conditioned, or delayed.
- C. Captions/Headings: The captions or headings of this Agreement are for convenience or reference only, and in no way define, describe, extend or limit the scope or intent of this Agreement or the meaning or intent of any provision hereof.
- D. Entire Agreement: This Agreement constitutes the entire agreement between the parties and supersedes all other prior agreements, relationships or negotiations, written or oral. Any rights or liabilities arising by reason of any prior written or oral representations, whether or not at the date of this Agreement, are superseded by this Agreement to the extent they have any bearing on this Agreement.
- E. Further Assurance: Each Party agrees to execute and deliver all such further instruments and do and perform all such further acts and things as shall be necessary to perform and implement this Agreement.
- F. Good Faith: The Parties undertake to act in good faith in relation to the performance and implementation of this Agreement and to take such other reasonable measures as may be necessary for the realization of its objectives.

- G. Governing Law: This Agreement shall be deemed to have been entered into in Bethel, Alaska. All questions regarding the validity, interpretation or performance of any of this Agreement's terms or of any rights or obligations of the parties to this Agreement shall be governed by Alaska law, and any action brought by either party to enforce any of the terms of this Agreement shall be filed in the appropriate local or federal court. If any claim, at law or otherwise, is made by either party to this Agreement, the prevailing party shall be entitled to its costs and reasonable attorney's fees.
- H. Joint Drafting and Neutral Construction: The parties expressly agree that each Party had the opportunity to negotiate the terms of this Agreement and to obtain the assistance of counsel in reviewing its terms prior to execution. Therefore, this Agreement shall be construed in a neutral manner, neither against nor in favor of either Party.
- J. Hazardous Materials: Operator will be working with pool chemicals that are considered hazardous materials. Operator is required to follow all Alaska Department of Environmental Conservation (DEC) rules and regulations regarding the proper storage, use, and disposal of the Facility chemicals. Any spills shall be reported immediately to the City and DEC and clean-up will be undertaken as per 18 AAC 75.300, et al. If a spill or hazardous condition is caused by or materially contributed to or by Operator and/or its use of the Facility, Operator shall be solely responsible for the safe clean-up and disposal of the hazardous material(s).
- K. Legal, Regulatory And Policy Compliance: This Agreement, operations thereunder by the Operator, and the administration and implementation of this Agreement by the Parties shall be subject to all applicable state, federal and local laws, especially, but not limited to, 18 AAC 30.500-590 (Regulations for Public Swimming Pools and Spas). Operator agrees to comply with all applicable laws in fulfilling its obligations under this Agreement at its sole cost and expense; provided, however, Operator shall have no responsibility or liability for any costs or expenses associated with compliance with applicable federal state, and/or local laws, rules or regulations governing public access to the Facility (e.g., the American Disabilities Act access standards).
- L. Materiality: City and Operator agree that each requirement, duty, and obligation set forth here was bargained for at arm's length and is agreed to by the parties in exchange for *quid pro quo*, that each is substantial and important to the formation of this Agreement and that each is, therefore, a material term hereof.

- M. Public Release: All information required to be submitted to the City by the Operator pursuant to this Agreement is subject to public release by the City.
- N. Intellectual Property. Each party acknowledges that the other party owns Intellectual Property as of the effective date of this Agreement, the possession of which shall not be challenged while this Agreement is in effect nor upon expiration or termination of this Agreement. Each party agrees that, except as explicitly and specifically provided in this Agreement, it shall acquire no license, right, title or interest in or to the other party's Intellectual Property by virtue of this Agreement. For purposes of this Agreement, "**Intellectual Property**" means the collective reference to all rights, title, interest, and privileges in or relating to intellectual property, whether arising under United States, multinational or foreign laws or otherwise, including all creative or proprietary interests, data, tools, business processes, methods, symbols, copyrights, patents, trademarks, service marks, trade names, trade secrets, internet domain names and licenses, whether now or hereafter existing.

The City shall own and continue to own: (i) all Intellectual Property owned by the City prior to the date of this Agreement, and (ii) all Intellectual Property developed or purchased by the City independent of and apart from this Agreement (collectively, "**City Intellectual Property**"), and nothing herein grants or transfers to Operator any ownership interest in such City Intellectual Property.

Operator (including, for all purposes, Operator's Affiliates, and third party licensors) shall own and continue to own all Intellectual Property owned by Operator prior to the date of this Agreement, including, without limitation, (i) all registrations worldwide for a family of trademarks used for a variety of health-related goods and services and (ii) all programming and operational manuals prepared by Operator for delivery of services and management of the Facility under this Agreement and all systems and methods of delivery for the services and management of the Facility (collectively, "**Operator Intellectual Property**"), and nothing herein grants or transfers to the City any ownership interest in such Operator Intellectual Property, even if such Intellectual Property is embodied in any services or deliverables provided to the City under this Agreement. Notwithstanding the foregoing, the City shall have the right to use and reproduce, for its business purpose and not in any way that competes with Operator, such reports and manuals produced for it by Operator under this Agreement without having to pay a royalty to Operator and (ii) Operator shall have the right to use, consistent with its customary business practices, any Operator Intellectual Property (which shall not include any City data) contained in such reports. For purposes of this Agreement, the term

"Affiliate" shall mean any other entity directly or indirectly controlling, controlled by or under common control with entity. An entity shall be deemed to control another entity if the controlling entity owns fifty-one percent (51%) or more of any class of voting securities (or other ownership interests) of the controlled entity or possesses, directly or indirectly, the power to direct or cause the direction of the management or policies of the controlled entity, whether through ownership of stock or other ownership interests, by contract or otherwise.

- O. Relationship of Parties: This Agreement does not create an association, joint venture, or partnership between the Parties. Neither Party has any right, power, or authority to enter into any agreement or undertaking for, or to act on behalf of, or to act as an agent or representative of, or to otherwise bind, the other.
- P. Right of Entry: The City shall have the right at any time to enter upon or into the Facility for any purpose it may deem necessary for the administration of this Agreement.
- Q. Rights and Remedies: The parties' rights, liabilities, responsibilities, and remedies with respect to this Agreement, whether in contract, tort, negligence or otherwise, shall be those expressly set forth in this Agreement, as well as permitted at law or in equity.
- R. Severability: If a court of competent jurisdiction invalidates or finds one or more of the provisions of this Agreement unenforceable such finding shall in no way affect any of the other provisions thereof, which shall remain in full force and effect.
- S. Successors: This Agreement binds and inures to the benefit of the Parties and their respective successors and permitted assigns.
- T. Taxes: Any and all taxes or assessments of any nature that may be lawfully imposed by a taxing authority upon the business, including sales taxes, shall be collected and paid promptly by the Operator.
- U. Third Parties: This Agreement does not grant rights or benefits of any nature to any third party.
- V. Waiver: Neither the failure of either party to insist, enforce or require strict performance of any provision in the Agreement or to act on the defaults of the other Party, nor any acceptance of payment or performance during the continuance of any such default, precludes any right, relief or remedy available to the non-defaulting Party, and may not be relied upon by the other Party as a consent to those defaults.

27. REPRESENTATION AND WARRANTIES

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

28. EXHIBITS

Exhibit A -Land, Real Property Improvements and Equipment (updated 7/1/18).

CITY OF BETHEL

HEALTH FITNESS CORP.

[Name, City Manager]

[Name, Title]

Dated: _____

Dated: _____

Attachment E
SIGNATURE AND
VERIFICATION

By signing below, I hereby acknowledge the following:

1. Proposer, nor any of their representatives or third party mandated by Proposer, has attempted to contact City representatives or members of the selection committee for the purpose of influencing their choice, judgment or recommendation relating to the contract, or with members of the City Council to influence their decision.
2. Proposer has produced the proposal without collusion, communication, agreement or arrangement with a competitor with regards to price, methods, factors or formulas for setting prices, to the decision to submit a proposal or to present a proposal that does not comply, directly or indirectly, with specifications contained in the Request for Proposals.
3. Neither the proposer nor any of its representatives engaged in discrimination, intimidating measures, influence peddling, corruption or entered any form of collusion, communication, agreement, or arrangement with other suppliers or third parties relating to a contract with the City of Bethel.
4. If selected, proposer agrees that neither it nor any of its representatives will engage in discrimination against any person because of race, national origin, color, age, creed, religion, sex, sexual orientation, gender identity, political affiliation, marital status, ancestry, disability, status as a disabled veteran, or any other status protected by law.
5. Proposer has appropriately identified proprietary and confidential information. Proposer agrees, should the City comply with the Proposer's request for non-disclosure, that Proposer shall assume all responsibility for any challenges resulting from the non-disclosure, indemnify and hold harmless the City from and against all damages (including but not limited to attorney's fees that may be awarded to the party requesting the Proposer information), and pay all costs and expenses related to the withholding of Proposer information. Proposer shall not make a claim, sue, or maintain any legal action against the City or its directors, officers, employees, or agents concerning the disclosure, or withholding from disclosure, of any Proposer information. The City shall have no obligation to withhold non-classified information from disclosure and may release the information sought without any liability to the City.

6. Proposer's failure to certify to the statements in this attachment shall result in automatic rejection of the bid.
7. If Proposer is found to have been in violation of any of the statements in this Attachment, the City shall automatically reject the bid.
8. The City may cancel a contract if, during the course of the contract, the City finds Proposer to be in violation of any of the sworn statements required by this Attachment.
9. I have read and understand the requirements of this Request for Proposals and certify that I, as the Proposer, will comply with all requirements and that I am duly authorized to execute this proposal/offer document and any contract(s) and/or other transactions required by award of this RFP.

Acknowledgement of Receipt of Addenda

1. I hereby acknowledge receipt of all addenda issued and associated with the Request for Proposals for Professional Operations and Management Services for YK Fitness Center.

Name (printed):	Title:
Company Name and Mailing Address:	Telephone Number: E-mail Address:
Authorized Signature:	

City of Bethel Action Memorandum

Action memorandum No.	AM 23-25		
Date action introduced:	September 12, 2023	Introduced by:	Alan Lanning, City Manager
Date action is taken:		Approved	
Confirmed by:			

Action Title: Authorizing the City Manager to negotiate and execute an amendment to the Bethel Friends of Canines contract for additional enforcement services in the community related to animal control and care.

Route to:	Department/Individual:	Initials:	Remarks:

Attachment(s): Contract between Bethel Friends of Canines and City of Bethel

Amount of fiscal impact:		Account information:
\$30,000 per yr.	Funds are not Budgeted. Budget Ordinance 23-11 (a) includes the necessary budget appropriate to support this action.	100-72-6171

Summary Statement

The budget for Fiscal Year 2024 includes \$85,000 payment to Bethel Friends of K9's (BFK9) for their operation of the municipal animal shelter. BFK9 has offered to take on additional enforcement services to further improve the response to animals at large, rabies vaccinations for animals released, and picking up animals under specific circumstance. In association with the additional duties, the City will be subject to an additional \$30,000 for the annual contract bringing the total contract amend to \$115,000 annually.

Contract Amendments:

6. Enforcement of Animal Control Ordinances

(a) The Contractor shall, through qualified agents, observe and assist in the enforcement of all animal control ordinances relating to impounded animals.

(b) The Contractor shall cooperate with the City by following procedures required by Chapter 6.04 of the Bethel Municipal Code concerning persons or animals bitten by an animal in the City of Bethel

(c) Qualified agents of the Contractor are hereby deputized by the Bethel Police Department as volunteer animal control officers to write citations.

(d) All dogs released from the shelter will be verified for rabies vaccination or vaccinated by Contractor before release.

City of Bethel Action Memorandum

(e) Between the hours of 8:00 a.m. to 7:00 p.m. on Monday through Friday and 12:00 p.m. to 7:00 p.m. on Saturday and Sunday, Contractor will respond to calls to pick up owner surrenders and stray dogs contained by resident.

(f) Contractor will respond to and aid the Bethel Police Department in picking up animals related to arrests or other enforcement actions conducted by law enforcement.

ARTICLE III

2. Amount of Contract, Method and Computation of Payment

(a) The City shall pay the Contractor \$85,000 for FY2023 and ~~\$85,000~~ \$115,000 for FY2024.

(b) The City shall pay the Contractor, twice a year in equal installments, in advance.

(c) The Contractor shall be required to provide and pay for all consumable supplies and equipment, including but not limited to food, cat litter, body bags, leashes, cleaning materials, paper, and medicines.

CITY OF BETHEL ALASKA
CONTRACT NO. _____
ANIMAL SHELTER SERVICES

THIS CONTRACT is made and executed by and between the City of Bethel, 300 State Highway, P.O. Box 1388, Bethel, AK 99559 ("the City" or "City of Bethel"), and the Bethel Friends of Canines, PO Box 3167, Bethel, AK 99559 ("the Contractor").

ARTICLE I

For and in consideration of the terms, covenants, conditions, and provisions contained herein, it is mutually agreed between the parties as follows:

1. Agreement to Perform. The Contractor agrees to perform, complete, provide, and furnish in a timely manner all work, services, labor, and materials required to accomplish the work described in Article II of this contract at the times, and in the manner, and for the consideration hereinafter set forth.

2. Term of Contract. This Contract will be effective from July 1, 2022, and continue in force until June 30, 2024, except that, in addition to the termination provisions in Section 6 (Insurance), it may be terminated by either party upon thirty (30) days written notification to the other. This Contract may also be amended at any time during the term by written agreement of the parties.

3. Independent Contractor. The parties expressly agree that the Contractor shall be and is an independent contractor and is not an employee or agent of the City for any purpose, and the employees of the Contractor are not entitled to any of the benefits the City provides for the City's employees, including but not limited to, health insurance, life insurance, disability insurance, sick or annual leave, or workers' compensation. The City is interested only in the results to be achieved, and the contract and control of the work will lie solely with the Contractor. It is understood that the City agrees to use the Contractor exclusively for management and operation of the animal shelter.

4. Contractor Authority. The Contractor is hereby authorized to receive domestic animals coming into its custody (i.e., impounded, quarantined, owner-surrendered), to safely place such animals that come into the animal shelter, and to manage and enforce the animal regulations for all impounded animals pursuant to all ordinances now in effect, or which may later be enacted. The Contractor shall accept all animals that can be safely maintained and cared for within the shelter facility provided by the City. If an animal cannot be safely maintained, the Contractor will immediately notify the Chief of Police, or their designee by calling the 24-hour police dispatch line at (907) 543-3781.

5. Contractor Qualified and Responsible for Personnel. (a) The Contractor represents it has, or will secure at its own expense, all personnel required to perform this Contract in a timely and proper manner. Such personnel shall not be employees or have any contractual relationship with the City, and the City shall have no responsibility or liability whatsoever to any such persons, or for the acts or omissions of any such persons.

(b) All of the services required under this Contract shall be performed by the Contractor or under its supervision.

(c) None of the work or services covered by this Contract shall be subcontracted without prior written approval of the City.

6. Insurance/Indemnification. (a) Public Liability Insurance. The Contractor shall maintain Public Liability Insurance with a minimum of \$1,000,000 per occurrence and/or aggregate combined single limit, personal injury, bodily injury, and property damage.

(b) Additional Insured. The following shall be listed as Additional Insureds: "The City of Bethel, including all elected and appointed officials, all employees and City volunteers, all boards, commissions and/or authorities and their board members, employees, and volunteers. This coverage shall be primary to the City of Bethel and not contributing with any other insurance or similar protection available to the City of Bethel, whether other available coverage be primary, contributing, or excess."

(c) Indemnification. To the fullest extent permitted by law, Contractor agrees to defend, indemnify, and hold harmless the City of Bethel, its elected and appointed officials, employees, and volunteers against any and all liabilities, claims, demands, lawsuits, or losses, including costs and attorney fees incurred in defense thereof, arising out of or in any way connected or associated with this contract.

(d) Notice of Cancellation Required. Fourteen (14) days Notice of Cancellation or Change, Non-Renewal, Reduction and/or Materials Change shall be sent to: Police Chief, POB 809, 157 Salmonberry Rd, Bethel AK 99559 and emailed to "police@cityofbethel.net".

(e) Evidence of Coverage Required. Contractor shall provide to the City of Bethel at the time that the Contract is presented to the City for execution, certificates of insurance and/or policies acceptable to the City of Bethel as listed below:

One (1) copy of Certificate of Public Liability Insurance Workers' Compensation Insurance

One (1) copy of Certificate of Public Liability Insurance

(f) Continuation of Coverage. If the above coverage expires during the term of this Contract, Contractor shall deliver renewal certificates and/or policies to the City of Bethel at least fourteen (14) days prior to the expiration date. Contractor shall not commence performance under this Contract until it has obtained the coverage required under the terms of this Contract. All coverage shall be with insurance carriers licensed and admitted to do business in the State of Alaska. All coverage shall be with carriers acceptable to the City of Bethel. If Contractor fails to comply with the insurance requirements of this Contract, the City of Bethel may terminate the Contract on fourteen (14) days written notice. Contractor covenants to maintain all insurance policies required in this Contract for the period of time in which a person may commence a civil action as prescribed by the applicable statute of limitations. The coverage required by this Contract shall cover all claims arising in connection with Contractor's use under this Contract, whether or not asserted during the term of this Contract and even though judicial proceedings may not be commenced until after this Contract expires.

(g) Workers' Compensation Insurance. The Contractor shall provide and maintain, for all employees of the Contractor engaged in work under this Contract, Workers' Compensation Insurance as required by AS 23.30.045 or any other applicable statutes or regulations. The Contractor shall be responsible for Workers' Compensation Insurance for any subcontractor who directly or indirectly provides services under this Contract.

7. Assignment or Delegation. The Contractor may not assign its rights or delegate its duties under this Contract, or any part of it, except with the prior written consent of the City.

8. Governing Law. This Contract shall be governed by the laws of the State of Alaska and any suit or legal action hereon shall be brought only in the courts of said State, in the Fourth Judicial District at Bethel, Alaska.

9. Miscellaneous. (a) Relationship of Parties. Nothing herein contained shall be deemed or construed by the parties hereto, nor by any third party, as creating the relationship of principal and agent or of partnership or of joint venture between the parties. It being understood and agreed that neither method of computation of payment or any other provision contained herein, nor any act of the parties, shall be deemed to create any relationship between the parties other than the relationship of the City and an independent contractor.

(b) Nonwaiver. The failure of the City to insist in any one or more instances upon the strict performance by the Contractor of any provision or covenant in this Contract may not be considered as a waiver or relinquishment for the future, but the provision or covenant will continue in full force. The

waiver by the City of any provision or covenant in this Contract cannot be enforced or relied upon unless the waiver is in writing signed on behalf of the City by the City Manager or the City Manager's designee.

(c) **Improvements.** The Contractor shall make no alterations or additions to the Animal Shelter, or any City property associated with it, without first obtaining the written consent of the City Manager and, unless otherwise provided in such written consent, any improvements or additions constructed by the Contractor shall become the City's property upon their substantial completion.

(d) **Liens.** The Contractor shall keep the Animal Shelter free of all liens, pay all costs for labor and materials arising out of any construction or improvements by the Contractor on the Animal Shelter, and hold the City harmless from liability for any such liens, including costs and attorney fees.

(e) **Severability.** If any provision or covenant of this Contract is declared to be invalid by a court of competent jurisdiction, the remaining covenants and provisions will continue in full force and effect.

(f) **Corporate Authority.** If the Contractor is a corporation, the Contractor shall deliver to the City at the time of execution of this Contract a copy of a resolution of its board of directors authorizing the execution of this Contract and naming the officers that are authorized to execute this agreement on behalf of the corporation.

(g) **Entire Agreement.** This Contract sets forth all the terms, conditions, and agreements of the parties and supersedes any previous understandings or agreements regarding the Animal Shelter whether oral or written. No modification or amendment of this Contract is effective unless in writing and signed by both the parties.

(h) **Notice.** Any notice required by this Contract must be hand delivered or sent by first class mail to the appropriate party at the address set forth on the last page of this Contract or to any other address, which the parties subsequently designate in writing.

ARTICLE II

In furtherance of these obligations, the Contractor shall perform, supply, and provide all the work, services, and materials as follows:

1. Management and Operation of Animal Shelter. (a) The Contractor shall furnish animal shelter services and humane treatment of animals at the Contractor's expense.

(b) The Contractor shall maintain proper housing for all animals, which come into its custody.

(c) The animal shelter shall be open a minimum of four hours per day, five days a week, including one weekend day, for the convenience of the public and to transact business in connection with the duties under this Contract and to receive animals or for the redemption of impounded animals. The shelter may be closed to the public two days a week and on national, state, and local holidays.

(d) The Contractor shall consult directly with the City in developing programs and policies regarding operation of the animal shelter, implementing new program components, and recommending ordinance revisions.

2. Care of Impounded Animals. (a) Proper care includes, but is not limited to, adequate and sanitary food and water, regular cleaning of kennels and cages, and humane handling.

(b) The animal food used by the Contractor shall be of a satisfactory quality. Food and water shall be provided animals in adequate amounts and frequencies with water being supplied each animal at least once every twelve hours.

(c) The Contractor shall clean, disinfect, and otherwise maintain the cages and pens where animals are kept frequently enough to assure animal health and prevent the spread of disease. Cleaning and disinfecting shall be no less than once per day.

3. Redemption, Adoption, and Disposition of Animals. (a) The Contractor shall, in accordance with Bethel Municipal Code (BMC) Chapter 6.04 release animals impounded by the City to their owners upon presentation of a receipt from the Bethel Police Department showing that all impound charges or other fees owed to the City have been paid in full.

(b) The Contractor shall promote and administer the adoption of unclaimed animals to responsible owners. The Contractor shall develop and have on file a program for adoption. The Contractor shall adhere to the City's policy of, wherever feasible, spaying or neutering and vaccinating all animals prior to adoption.

(c) Animals which are not reclaimed by owners within four (4) days after compliance with the provisions of BMC 6.04.070.C or any other applicable provisions of law governing notification to the owner or custodian and are deemed suitable for adoption will become available for adoption to responsible persons.

(d) Animals not suitable for adoption will be humanely euthanized by the City in accordance with Animal Control policies and procedures.

4. Education on Animal Care and Treatment. The Contractor shall promote the proper and humane care and treatment of animals and to stimulate public support for such treatment and for the enforcement of City ordinances relating to animal control. The Contractor shall conduct tours of the animal shelter upon reasonable request. The Contractor shall educate the community through classroom visits, radio interviews, newspaper articles, and public service announcements.

5. Training. The Contractor shall designate an employee as shelter manager and this employee is required to annually attend and complete a course in professional services relating to management and operation of an animal shelter or animal behavior. The Contractor shall provide the Bethel Police Department with an outline of the course of instruction.

6. Enforcement of Animal Control Ordinances. (a) The Contractor shall, through qualified agents, observe and assist in the enforcement of all animal control ordinances relating to impounded animals.

(b) The Contractor shall cooperate with the City by following procedures required by Chapter 6.04 of the Bethel Municipal Code concerning persons or animals bitten by an animal in the City of Bethel.

7. Collection of Fees and Keeping of Records. (a) The Contractor shall follow established City procedures regarding collection of dog license fees and impound fines, as applicable. Fees for animal licensing and impoundment are established by the Bethel City Council and retained by the City. The Contractor has no authority to waive or reduce these fees. Other fees for services (e.g., adoption) will be established by the Contractor and retained by the contractor. Donations made to the animal shelter by members of the public will also be retained by the Contractor. The Contractor shall permit the City, at all reasonable times, to inspect and audit any records and shall make such reports of monies received and operational statistics as shall be required. The records are considered public records under BMC Chapter 2.40 and shall be open to City inspection during regular office hours.

(b) The Contractor shall daily maintain, at the animal shelter, records of all animals impounded. Records shall include dates of intake, notation of history, behavior, health status, and any veterinary procedures of each animal while retained; detailed information on redemptions and adoptions (e.g., dates, fees, owner data, spay/neuter deadline, etc.); date and reason euthanized; licenses issued; correspondence with State and federal agencies; and complaints made by the public with response indicated.

(c) The Contractor shall submit a monthly activity report to the Bethel Police Department by the twentieth (20th) day of the following month detailing the category of animals impounded at the shelter, disposition of animals, licenses issued, number of hours shelter was open to the public, fees collected by category, and veterinary services by category.

(d) The Contractor shall, by July 31 of each year, submit to the City a program report of the previous fiscal year's activities.

8. Liaison. The Contractor shall report to the Bethel Police Chief, or designee, who shall act a liaison between the Contractor and the City, for all matters relating to the Contractor's performance of its obligations pursuant to this Contract.

9. Sick and Injured Animals (a) Contractor will treat sick and injured animals that come into its care to the best of its recognized limited ability.

(b) The decision to medically treat or transport a sick or injured animal subject to quarantine or impoundment, and to what extent or none at all, is the responsibility of the City, in consultation with Contractor

(c) Contractor is not authorized to engage veterinarian services, or transportation for that purpose, for sick or injured animals subject to quarantine or impoundment.

(d) Animals that are subject to quarantine or impoundment, that become injured or die while in custody of the contractor, will not be moved beyond what is necessary to safeguard the animal. Contractor will notify the police department to document the incident and to remove the remains as necessary.

10. Euthanasia. (a) Euthanasia of animals subject to quarantine or impoundment is the responsibility of the City, in accordance with applicable Animal Control policy and procedures.

(b) Animal remains will be disposed of by the City.

ARTICLE III

In accordance with the terms and conditions of this Contract, the parties hereto further agree as follows:

1. Assistance to Contractor's Agents. The Community Service Officer will provide assistance to the Contractor's agents upon the agent's request. Upon receiving a request for assistance, the CSO will evaluate the priority of the agent's request and respond in accordance with the terms of this contract, the policies and procedures of the City of Bethel and the Bethel Police Department, as time and other duties permit.

2. Amount of Contract, Method and Computation of Payment. (a) The City shall pay the Contractor \$85,000 for FY2023 and \$85,000 for FY2024.

(b) The City shall pay the Contractor, twice a year in equal installments, in advance.

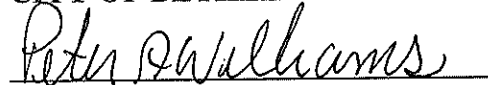
(c) The Contractor shall be required to provide and pay for all consumable supplies and equipment, including but not limited to food, cat litter, body bags, leashes, cleaning materials, paper, and medicines.

(d) The City shall pay for utilities, sewer, water, and building maintenance.

(e) The City shall provide the facility, license forms, dog license tags, and one telephone line.

The undersigned signatories to this Contract, by signing below, explicitly represent that they are fully authorized to bind the parties to all terms of this Contract.

CITY OF BETHEL

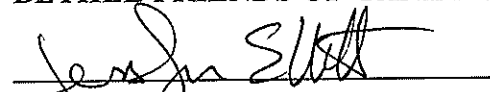


By: Peter Williams

Title: City Manager

Dated: 4/26/2023

BETHEL FRIENDS OF CANINES



By: Jesslyn Elliott

Title: Executive Director

Dated: 4/26/23

MODIFICATION TO APRIL 26, 2023 CONTRACT FOR ANIMAL SHELTER SERVICES

This Agreement Modification is made this _____ day of _____ by and between the City of Bethel, a municipal corporation (hereinafter the "City") and Bethel Friends of Canines (hereinafter "Contractor") (hereafter collectively, the "Parties.")

WHEREAS, on April 26, 2023, the Parties entered into a Contract for Animal Shelter Services (hereafter "Contract") regarding the management and operation of an animal shelter.

WHEREAS, Article I(9)(g) of the Agreement allows the Agreement to be modified by mutual consent, reflected in a writing signed by both parties.

WHEREAS, the Parties wish to modify select sections of the Agreement.

NOW THEREFORE, the following modifications shall be made to the Agreement, effective upon the date shown above. New language is underlined and old language is stricken.

ARTICLE II

6. Enforcement of Animal Control Ordinances

(a) The Contractor shall, through qualified agents, observe and assist in the enforcement of all animal control ordinances relating to impounded animals.

(b) The Contractor shall cooperate with the City by following procedures required by Chapter 6.04 of the Bethel Municipal Code concerning persons or animals bitten by an animal in the City of Bethel

(c) Qualified agents of the Contractor are hereby deputized by the Bethel Police Department as volunteer animal control officers to write citations.

(d) All dogs released from the shelter will be verified for rabies vaccination or vaccinated by Contractor before release.

(e) Between the hours of 8:00 a.m. to 7:00 p.m. on Monday through Friday and 12:00 p.m. to 7:00 p.m. on Saturday and Sunday, Contractor will respond to calls to pick up owner surrenders and stray dogs contained by resident.

(f) Contractor will respond to and aid the Bethel Police Department in picking up animals related to arrests or other enforcement actions conducted by law enforcement.

ARTICLE III

2. Amount of Contract, Method and Computation of Payment

(a) The City shall pay the Contractor \$85,000 for FY2023 and ~~\$85,000~~ \$115,000 for FY2024.

(b) The City shall pay the Contractor, twice a year in equal installments, in advance.

(c) The Contractor shall be required to provide and pay for all consumable supplies and equipment, including but not limited to food, cat litter, body bags, leashes, cleaning materials, paper, and medicines.

- (d) The City shall pay for utilities, sewer, water, and building maintenance.
- (e) The City shall provide the facility, license forms, dog license tags, and one telephone line.

The undersigned signatories represent that they are fully authorized to bind the parties to this modification. No other provision of the Agreement is modified.

CITY OF BETHEL

BETHEL FRIENDS OF CANINES

Alan Lanning
Interim City Manager

Jesslynn Elliot
Executive Director
Bethel Friends of Canines

City of Bethel Information Memorandum

Information Memo No.	23-09		
Date introduced:	May 16, 2023	Introduced by:	Peter A. Williams, City Manager
Amended actions:			
Confirmed by:	K M		

Title: Request for an increase in budgeted funding for Bethel Friends of K9's for FY24.

Attachment(s): None

Department/Individual:	Initials:	Remarks:
Administration / Peter Williams	PW	Recommend approval.
Chief of Police / Leonard Hicks	WA	Recommend approval.
Amount of fiscal impact	Account information:	
\$30,000	FY 2024	100-72-6171
\$85,000	FY 2024	100-72-6171

Summary Statement

During FY23 the COB budgeted \$85,000 to support Bethel Friends of K9's (BFK9) operation of the city's dog pound. For FY24 \$85,000 was originally sought after to continue this mutually beneficial relationship. BFK9 has offered to accept additional responsibilities in assisting the Bethel Police Department with its animal control efforts. As part of this BFK9 is requesting an additional \$30,000, bringing their total financial support from the COB to \$115,000 for FY24.

The additional funds would be used as follows:

The city increases the contract amount by \$30,000 (to cover payroll taxes), and BFK9 is deputized as volunteer animal control officers to write citations. All dogs released from the pound will be verified for rabies vaccination or vaccinated by BFK9 before release. Between the hours of 8-7 M-F and Noon-7 Saturday/ Sunday, BFK9 will respond to calls to pick up owner surrenders and stray dogs that people have held on to. BFK9 will also respond to and aid the police department in picking up animals related to arrested or other enforcement actions conducted by BPD.

City of Bethel Action Memorandum

Action memorandum No.	23-26		
Date action introduced:	09/12/2023	Introduced by:	Alan Lanning, City Manager
Date action taken:		Approved	Denied
Confirmed by:			

Action Title: Direct Administration to negotiate and execute a contract to purchase bulk fuel services with the company that submitted a proposal with the highest score.

Attachment(s): (1) Draft contract

Amount of fiscal impact	Source of Funding	Account information
	No fiscal impact at this time.	
\$1,335,319.78	FY 2023 Budget	

Summary Statement

The City of Bethel prepared and issued a Request for Proposals (RFP) on July 20, 2023, to solicit proposals from a qualified company to purchase bulk fuel.

The City posted the RFB on the City website and advertised it on electronic dissemination services, like the Plans Room, Associated General Contractors of Alaska, Contractor Plan Center, Dodge Analytics, and the Procurement Technical Assistance Center at the University of Alaska, Anchorage. No addendums were issued. Two proposals were received by the deadline.

The proposals were reviewed by three City staff members. The scores are as follows:

Company A: 100 points

Company B: 90 points

The City issued a Notice of Intent to Award on September 1, 2023, to the company with the highest proposal score and a letter to the other companies notifying them of the City's intention to award the contract. The attached contract is a draft of the contract included in the Request for Proposal document.

Attachment F

Draft Fuel Services Contract

City of Bethel

Bulk Fuel Supply Agreement



Table of Contents

1. Effectiveness and Term
2. Provision of Fuel
3. Provision of Fuel – At the Pump
4. Quantities
5. Price – Year’s One and Two
6. Invoices and Payments
7. Records
8. Insurance Requirements
9. Fuel, Title, Warranty and Indemnity
10. Passing Title and Risk in Fuel
11. Duty to Notify
12. Duties of City
13. [CONTRACTOR’s] Rights to Interrupt Supplies of Fuel
14. Fuel Quality and City’s Right to Reject Fuel
15. [CONTRACTOR’s] Delays and Default
16. Force Majeure
17. Liabilities and Indemnities
18. Pollution Prevention and Responsibility
19. Fuel Contract Extension/Renewal
20. Termination
21. Dispute Resolution
22. Governing Law
23. Enforcement
24. Representation and Warranties
25. Notices
26. Confidentiality & Security
27. Amendments
28. Waiver
29. Successors
30. Assignment and Transfer of Interest
31. Severability
32. Relationship of Parties
33. Good Faith
34. Further Assurance
35. Entirety of Agreement
36. Costs
37. Counterparts

Bulk Fuel Agreement

This Agreement is made this _____ day of June 2023, by and between the City of Bethel, a municipal corporation (hereinafter “City”) and _____ (hereinafter “Contractor”).

WITNESSETH:

WHEREAS, [CONTRACTOR] is engaged in the business of providing fuel; and

WHEREAS the City of Bethel desires to purchase fuel in bulk from Contractor, subject to and in accordance with the Terms of this Agreement.

THE PARTIES AGREE AS FOLLOWS:

1. Effectiveness and Term

This Agreement shall become effective on October 1, 2023 and shall continue to have effect thereafter until September 30, 2025. [CONTRACTOR] shall have up to three (3) options to extend/renew the contract in accordance with Section 19 below.

2. Provision of Fuel

[CONTRACTOR] shall provide Fuel to the City at the Delivery Points outlined in Attachment A, and shall ensure there is sufficient fuel in each tank outlined in Attachment A to guarantee the tanks will not run out of fuel after regular use. It will be the sole responsibility of [CONTRACTOR] to develop a schedule for monitoring fuel levels in each tank to ensure the tanks have sufficient fuel to keep from running out.

Fuel for the location at Attachment B, shall only be delivered once per month from October to April, no later than the fourteenth (14th) day of each of the months specified.

Fuel shall be made available for purchase by City employees for City vehicles as outlined in Section 3.

3. Provision of Fuel – At the Pump

Fuel at the pump will be provided by [CONTRACTOR]. The City will provide and maintain for [CONTRACTOR] a list of employees and vehicles authorized to purchase gas or diesel fuel at the pump. These employees will be issued a Fuel Access Card issued by [CONTRACTOR].

[CONTRACTOR] will ensure only those authorized employees and authorized vehicles are allowed to charge their fuel purchases to the City of Bethel account. In addition, any employee attempting to charge to the City’s account will be required to show either a City issued employee badge or other City approved credentials.

[CONTRACTOR] will submit an invoice monthly for all charges. Such invoice shall include a summary of sales by vehicle and product.

4. Quantities

Quantities of Fuel supplied shall be finally determined in accordance with the measurements provided in Attachment A.

5. Price: Year One

12.1 Heating Oil Delivered: shall be charged at the rate of \$TBD (TBD) per gallon.

12.2 HF#1 Ultra Low Sulfur Diesel (ULSD) Fuel Delivered: shall be charged at the rate of \$TBD (TBD) per gallon.

12.3 Gasoline at the Pump: shall be billed at the rate of \$TBD (TBD) per gallon.

12.4 HF#1 Ultra Low Sulfur Diesel (ULSD) Fuel at the pump: shall be billed at the rate of \$TBD (TBD) per gallon.

12.5 "Gallon" shall be defined as a U.S. standard gallon of 231 cubic inches at 60 degrees Fahrenheit.

6. Invoices and Payments

6.1 [CONTRACTOR] shall invoice the City monthly. All invoices shall be accompanied by supporting calculations and documentation of the amounts claimed.

6.2 The total amount to be paid under this Agreement shall be calculated on the basis of the total price per gallon delivered or sold under this Agreement. No claim for extra work or cost shall be allowed unless as outlined in this Agreement.

6.3 City shall pay all undisputed invoices and all undisputed portions of invoices within thirty (30) days of receipt.

6.4 In the event City fails to timely pay to [CONTRACTOR], the amount due in a timely manner, interest shall accrue at the rate of five (5%) percent per annum.

7. Records

[CONTRACTOR] and City shall each maintain and shall make available, on reasonable notice, for inspection and examination of the other Party, at all reasonable times, all records relating to this Agreement and of transactions performed pursuant to this Agreement for a minimum of five (5) years from the date of the record. If any Dispute arises between the Parties, all records relating to matters involved in such Dispute shall be preserved until the resolution of

such Dispute. Certified copies of such records as are required to be maintained by this Agreement shall be made available at the requesting Party's cost and expense.

8. Insurance Requirements

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

8.1 Claims under worker's compensation, employer's liability, disability benefits, and other similar employee benefit acts which are applicable to the work to be performed under this Agreement.

Claims for damages because of bodily injury, mental anguish, sickness, disease or death of any person other than [CONTRACTOR's] employees.

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

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

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

Claims for damages because of bodily injury, including mental anguish, death of a person or damage to property arising out of the discharge, accidental or otherwise of any pollutant onto any property of the City, or any other owner, other than the [CONTRACTOR]. Transportation risk must be included.

Claims involving the [CONTRACTOR's] contractual obligations and assumption of liability under this Agreement.

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

Premises/Operations liability

Products/Completed Operations Liability

Personal/Advertising Injury Liability

Environmental Liability

Fire Damage Liability

Medical Payments

8.2 The insurance required under this Agreement shall be written for not less than the limits listed herein or those limits required by law, whichever limit is higher. Insurance, whether written on an occurrence, or a claims-made basis, shall be maintained without interruption from the date of commencement of the work to the date of final payment, or termination of any insurance required to be maintained after final payment.

8.3 Worker's Compensation Insurance - as required by AS 23.30.045, for all employees of the [CONTRACTOR] engaged in work under this Agreement. The coverage shall include Employer Liability Insurance Limits of no less than:

- a) \$500,000 each accident;
- b) \$500,000 disease each employee;
- c) \$500,000 disease policy limit.

8.4 Commercial General Liability Insurance – Form CG001 04-13 or equivalent.

- (a) \$1,000,000 Combined Single Limit of Liability per Occurrence
- (b) \$1,000,000 Personal Injury Limit of Liability per Occurrence
- (c) \$1,000,000 Annual General Aggregate Limit of Liability
- (d) \$2,000,000 Annual Products/Completed Operations Aggregate Limit of Liability
- (e) \$1,000,000 Combined Single Limit of Liability for each environmental claim**
- (f) \$2,000,000 Combined Aggregate Limit of Liability for environmental claims**
- (g) \$100,000 Fire Damage Limit of Liability for any one fire
- (h) \$5,000 Medical Payment Limit any one person

** Coverage must begin prior to the effective date of this Agreement and must be maintained for twenty-four (24) months after the Agreement expires.

8.5 Commercial Automobile Liability Insurance: Form CA001 03/10 or equivalent

- (a) \$1,000,000 Combined Single Limit of Liability per Accident
For all owned, hired and non-owned vehicles

8.4 Commercial Excess Liability Insurance

- a) \$4,000,000 Combined Single Limit of Liability per Occurrence

- b) \$4,000,000 Annual Aggregate Limit of Liability
- c) Excess of underlying Commercial General Liability Insurance, Environmental Liability, Commercial Automobile Liability Insurance, and Employer Liability Insurance.

- 8.6 Worker's Compensation insurance and employee liability insurance shall be in compliance with the statutory requirements of the State of Alaska, and any other statutory obligation, whether federal or state pertaining to compensation of injured employees. The worker's compensation insurance and employer's liability insurance shall contain a waiver of subrogation provision in favor of the City.
- 8.7 The commercial general liability including environmental liability insurance shall name the City as an additional insured and contain a waiver of subrogation in favor of the City.
- 8.8 All liability insurance required of the [CONTRACTOR] shall be primary. All liability insurance carried by the City is declared to be excess and non-contributory of any insurance carried by the [CONTRACTOR] or subcontractors.
- 8.9 [CONTRACTOR's] required insurance is subject to review and adjustment by the City, who may require reasonable changes in the amount and types of insurance based upon changes of risk. [CONTRACTOR] shall be provided a written explanation of any such changes.
- 8.10 Certificates of insurance, acceptable to City, shall be filed with the City prior to the commencement of any services by [CONTRACTOR]. These certificates and the insurance policies shall contain a provision that the policy shall not be canceled until prior written notice has been sent to the City.
- 8.11 The [CONTRACTOR] shall furnish evidence of insurance to the City before June 1st annually. The evidence shall be issued to the City and shall be either a certificate of insurance or the policy declaration page with all required endorsements attached and must:
- 1) Denote the type, amount, and class of operations covered;
 - 2) Show the effective (and retroactive) dates of the policy;
 - 3) Show the expiration date of the policy;
 - 4) Include all required endorsements;
 - 5) Be executed by the carrier's representative; and
 - 6) If a certificate of insurance, include the following statement: *The insurance carrier agrees that it shall notify the City, in writing, at least 30 days before cancellation of any coverage or reduction in any limits of liability."*

8.12 Failure to maintain the insurance provisions required of the [CONTRACTOR] or failure to immediately notify the City of cancelation shall be considered a material breach of this Agreement by the [CONTRACTOR], subject to the termination provisions of this Agreement.

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

9. Fuel, Title, Warranty and Indemnity

[CONTRACTOR] warrants that it shall have title to all Fuel supplied under this Agreement immediately prior to passing title in Fuel to City at each Delivery Point and shall otherwise supply Fuel to each Delivery Point free and clear of all liens, encumbrances and claims whatsoever.

[CONTRACTOR] shall indemnify, defend and hold City harmless against all third party claims for damages, costs, losses, and expenses arising from or out of a breach of the warranty in section 9, including claims by any third party or parties for any royalties, taxes, license fees or charges applicable to Fuel supplied.

10. Passing Title and Risk in Fuel

Title and, subject to the passing of good title, risk in the Fuel supplied by [CONTRACTOR] shall pass from [CONTRACTOR] to City at the relevant Delivery Point.

11. Duty to Notify

Without prejudice to the other obligations in this Agreement:

11.1 [CONTRACTOR] shall, as soon as practicable after it becomes aware of the same, inform the City of any circumstances which affect, or will affect, its ability to supply fuel under this Agreement; and

11.2 City shall, as soon as reasonably practicable after it becomes aware of the same, inform [CONTRACTOR] of any circumstances which affect, or will affect, its ability to receive Fuel into its facilities.

12. Duties of City

City shall provide safe access to premises, including snow and ice removal. [CONTRACTOR] may refuse to deliver if, in their sole discretion, access to the Premises is not in a safe condition for service. In such situation, [CONTRACTOR] shall give notice to City within three (3) Business Days of failure to deliver in order for City to correct the problem and allow for re-delivery. [CONTRACTOR] may impose a reasonable fee for having to respond to the location a second time.

13. [CONTRACTOR's] Rights to Interrupt Supplies of Fuel

[CONTRACTOR] shall be entitled to interrupt the supply of Fuel under the following circumstances:

- 13.1 Where undisputed payments are due and owing to [CONTRACTOR] by City under this Agreement; or
- 13.2 Subject to Clause 16, where and to the extent there is an Event of Force Majeure affecting the supply by [CONTRACTOR] or receipt by City of the Fuel.

14. Fuel Quality and City's Right to Reject Fuel

Fuel supplied by [CONTRACTOR] under this Agreement shall conform to American Society for Testing and Materials (ASTM) D1250 (latest version).

15. [CONTRACTOR's] Delays and Default

Where [CONTRACTOR] is delayed in the supply of Fuel for more than four (4) calendar days from the original date for delivery under clause 2 for any reason (other than an Event of Force Majeure) then City shall be entitled on notice to [CONTRACTOR] either to accept the delay in the supply or cancel the supply and the quantity canceled shall constitute Shortfall and breach of this Agreement.

16. Force Majeure

- 16.1 Events of Force Majeure: For the purposes of this Agreement, an "Event of Force Majeure" means any circumstance not within the reasonable control of the Party affected, but only if and to the extent that (i) such circumstance, despite the exercise of reasonable diligence, cannot be, or caused to be, prevented, avoided, or removed by such Party, and (ii) such circumstance materially adversely affects the ability of the Party to perform its obligations under this Agreement, and such Party has taken all reasonable precautions, due care and reasonable alternative measures in order to avoid the effect of such event on the Party's ability to perform its obligations under this Agreement and to mitigate the consequences thereof.
- 16.2 Instances of Force Majeure: Subject to the provisions of Clause 16.1, Events of Force Majeure shall include, but not be limited to:
 - (a) Fire, chemical or radioactive contamination or ionizing radiation, earthquakes, lightning, cyclones, hurricanes, floods, droughts, or such other extreme weather or environmental conditions, unanticipated geological or ground conditions, epidemic, famine, plague or other natural calamities and acts of God;
 - (b) Explosion, accident, breakage of Facilities, plant or equipment, structural collapse, or chemical contamination caused by a person not being the affected Party or one of its contractors or subcontractors or any of their respective employees or agents;

- (c) Acts of War (whether declared or undeclared), invasion, acts of terrorists, blockade, embargo, riot, public disorder, violent demonstrations, insurrection, rebellion, civil commotion, and sabotage;
 - (d) Strikes, lockouts, work stoppage, labor disputes, and such other industrial action by workers related to or in response to the terms and conditions of employment of those workers or others with whom they are affiliated save when such event is directly related to, or in direct response to any employment policy or practice (with respect to wages or otherwise) of the Party whose workers resort to such action;
 - (e) Any legal prohibition on either Party's ability to perform its obligations under this Agreement, including passing of a statute, decree, regulation or order by a Competent Authority prohibiting that Party from performing its obligations under this Agreement;
- provided that breakdown of any plant, equipment or vehicles (unless due to an Event of Force Majeure) or unavailability of funds shall not constitute an Event of Force Majeure.

16.3 Consequence of Force Majeure: Either Party shall be excused from performance and shall not be in default in respect to any obligation hereunder to the extent that failure to perform such obligation is due to an Event of Force Majeure.

16.4 Notice of Force Majeure: If a party wishes to claim protection in respect of an Event of Force Majeure, it shall as soon as possible following the occurrence or date of commencement of such Event of Force Majeure and shall thereafter keep the other Party informed until such time as it is able to perform its obligations. The Parties shall use their reasonable endeavors to:

- (a) Overcome the effects of the Event of Force Majeure as soon as practicable;
- (b) Mitigate the effect of any delay occasioned by any Event of Force Majeure; including by recourse to acceptable alternative sources of Fuel (which acceptance shall not be unreasonably withheld by either Party); and
- (c) To ensure resumption of normal performance of this Agreement as soon as reasonably practicable and shall perform their obligations to the maximum extent practicable, provided that neither Party shall be obligated to settle any strike, lock out, work stoppage, labor dispute or such other industrial action by its employees.

17. Liabilities and Indemnities

17.1 [CONTRACTOR] Indemnity:

17.1.1 [CONTRACTOR] shall be responsible for any third party claim for any injury to or loss or damage to property of any person (including reasonable legal fees) arising out of transport, delivery and transfer of Fuel up to the Delivery Point (each referred to as a "[CONTRACTOR] Third Party Claim").

17.1.2 [CONTRACTOR] shall fully indemnify and hold City, its officers and employees harmless in respect of [CONTRACTOR] Third Party Claims provided that the

indemnity shall not extend to, and City hereby waives any claim against [CONTRACTOR] Third Party Claims to the extent caused by any negligent act or omission of City, its officers or employees.

17.2 City Indemnity:

17.2.1 City shall not be responsible for any third party claim for any injury to or loss or damage to property of any person (including reasonable legal fees) arising out of transfer, storage and use of Fuel at and from the Delivery Point (each referred to as a "City Third Party Claim").

17.2.2 To the extent permitted by law and to the extent there is a council appropriation to cover such occurrence, City shall fully indemnify and hold [CONTRACTOR], its Affiliates, officers, contractors, employees, and agents harmless in respect of City Third Party Claims provided that the indemnity shall not extend to, and [CONTRACTOR] hereby waives any claim against City Third Party Claims to the extent caused by any negligent act or omission [CONTRACTOR], its Affiliates, officers, employees, contractors and agents.

17.3 Right to Defend Actions: The indemnifying Party shall have the right, but not the duty, to assume the defense of any third party claim indemnified in clause 17.1 or 17.2, as the case may be. Any Party shall, as soon as practicable after receiving notice of any claim brought against it, deliver to the other indemnifying Party full particulars thereof and shall render all reasonable assistance requested by such Party in the defense of such claim.

17.4 Indemnified Party not to Compromise:

17.4.1 Where any Party has an obligation under clause 17.1 or 17.2, as the case may be, to indemnify the other Party, such other Party shall not compromise or in any way settle any claim, lawsuit, action or cause of action without the express written consent of the other Party who has the obligation of indemnifying under clause 17.1 or 17.2, as the case may be. Where such consent is not obtained prior to such compromise in settlement, the Party who had the obligation of indemnifying shall be released and discharged from all obligations under clause 17.1 or 17.2, as the case may be.

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

18. Pollution Prevention and Responsibility

In the event of a spill, escape or discharge of oil or other product occurs and causes or threatens to cause pollution damage ("Spill"), the Party responsible for the Spill shall undertake all measures reasonably necessary to prevent or mitigate the pollution damage. Any and all costs or expenses incurred as a result of any measures so taken shall be at the expense of the Party

creating or causing the spill, escape or discharge. In the event the Party's cannot agree as to the cause of the spill, escape or discharge, the State of Alaska, Department of Environmental Conservation shall be the sole determinant of responsibility.

The Party who caused the spill, escape or discharge shall be responsible to indemnify, defend and hold harmless the other Party from any and all claims, costs, expenses, clean-up costs, fines, losses, penalties, damages or other liability incurred as a result of the Spill.

19. Fuel Contract Extension/Renewals

[CONTRACTOR] shall have the option to extend/renew this Agreement up to three (3) consecutive times as follows:

- 19.1 [CONTRACTOR] shall provide City with written notice of its intention to renew the Agreement at least ninety (60) days prior to the Agreement Expiration (approximately March 30). Renewal notices shall state the following:
 - (a) The applicable rate for all types of fuel specified under this contract during the new one (1) year term; and
 - (b) Any significant changes requested to the existing Agreement; and
 - (c) Any proposed changes to the scope of services to be performed under the Agreement.
- 19.2 Upon receipt of a Notice to Extend/Renew the Agreement, the City shall:
 - (a) Ensure that [CONTRACTOR] continues to be eligible to contract with the City [i.e., maintains a valid City of Bethel business license, a valid State of Alaska business license and is not delinquent on any sales taxes or other fees with the City];
 - (b) Verify that [CONTRACTOR's] certificates of insurance are up to date;
 - (c) Update Attachment A; and
 - (d) Notify [CONTRACTOR] of any significant changes requested to the existing Agreement.
- 19.3 If City determines [CONTRACTOR] remains eligible and the increased rate for fuel is acceptable to City, then City shall give notice to [CONTRACTOR] within forty-five (45) days of receipt of Notice of Request to Renew/Extend Contract that it intends to renew. At that time a contract extension shall be prepared and executed by both parties.

20. Termination

20.1 Events of Default

20.1.1 City's Event of Default: Each of the events described below shall constitute a City Event of Default:

- (a) A material breach by City of any obligation under this Agreement, which (where capable of remedy) has not been remedied within ten (10) days

following notice from [CONTRACTOR] stating that such breach has occurred, identifying the breach and demanding it to be remedied, provided that if City has diligently and as quickly as possible commenced the remedial action necessary but is unable to complete it within ten (10) days, it shall be allowed such further period as may be reasonable to complete the remedial action, not exceeding another thirty (30) days;

- (b) City has made material misrepresentation in the representations and warranties set out in this Agreement and has not disclosed any material fact which renders any such representation or warranty materially misleading;
- (c) The reorganization, merger, consolidation, amalgamation, dissolution or reconstruction of City, except to the extent that it does not affect the ability of the resulting entity to perform its obligations under this Agreement;
- (d) Except for the purposes permitted under subsection (c), the occurrence of any of the following events (other than as a direct result of [CONTRACTOR] Event of Default):
 - (i) Passing of a resolution or initiation of any proceeding for the bankruptcy, insolvency, winding up, liquidation of or other similar proceedings relating to City;
 - (ii) The appointment of a trustee, liquidator, custodian or a similar person in a proceeding referred to in paragraph (d)(i), which appointment has not been set aside or stayed within sixty (60) days of such appointment; or
 - (iii) The making by a court having jurisdiction of an order winding up or otherwise confirming the bankruptcy or insolvency of City, which order has not been set aside or stayed within sixty (60) days; and
- (e) City ceasing to hold a license, permit or consent, as a result of breach by City of the terms and conditions of such license, permit or consent, making it unlawful for City to operate.

20.1.2 [CONTRACTOR] Event of Default: Each of the events described below shall constitute a [CONTRACTOR] Event of Default:

- (a) A material breach by [CONTRACTOR] of any obligation under this Agreement, which (where capable of remedy) has not been remedied within ten (10) days following notice from City stating that such breach has occurred, identifying the breach and demanding it to be remedied, provided that if [CONTRACTOR] has diligently and as quickly as possible commenced the remedial action necessary but is unable to complete it within ten (10) days, it shall be allowed such further period of up to another thirty (30) days as may be reasonably necessary to complete the remedial action;
- (b) [CONTRACTOR] has made material misrepresentation in the representations and warranties set out in this Agreement and has not disclosed any material fact which renders any such representation or warranty materially misleading;
- (c) The reorganization, merger, consolidation, amalgamation, dissolution or reconstruction of [CONTRACTOR], except to the extent that it does not affect

the ability of the resulting entity to perform its obligations under this Agreement;

- (d) Except for the purposes permitted under subsection (c), the occurrence of any of the following events (other than as a direct result of City Event of Default):
 - (i) Passing of a resolution or initiation of any proceeding for the bankruptcy, insolvency, winding up, liquidation of or other similar proceedings relating to [CONTRACTOR];
 - (ii) The appointment of a trustee, liquidator, custodian or a similar person in a proceeding referred to in paragraph (d)(i), which appointment has not been set aside or stayed within sixty (60) days of such appointment; or
 - (iii) The making by a court having jurisdiction of an order winding up or otherwise confirming the bankruptcy or insolvency of [CONTRACTOR], which order has not been set aside or stayed within sixty (60) days; and
- (e) [CONTRACTOR] ceasing to hold a license, permit or consent, as a result of breach by [CONTRACTOR] of the terms and conditions of such license, permit or consent, making it unlawful for City to operate.

20.2 Consequences in the Event of Default: In the case of [CONTRACTOR] Event of Default, City may terminate this Agreement and in the case of a City Event of Default, [CONTRACTOR] may terminate this Agreement, in either case by giving a notice ("Termination Notice") to the other whereupon this Agreement shall terminate upon the date specified in such Termination Notice or such later date as the Parties may have agreed.

20.3 Sole Grounds for Termination: The provisions of this Paragraph 20 shall be the sole and exclusive grounds on which the Parties may terminate this Agreement.

20.4 Consequences: On termination of this Agreement for whatever reason, neither Party shall have any liability to the other for any damages or loss, whether under this Agreement, at law or otherwise, save for claims relating to accrued rights under this Agreement prior to its termination.

21. Dispute Resolution

21.1 If any dispute arises between the Parties in connection with or relating to this Agreement (a "Dispute") the Parties through their respective Chief Executive Officers shall attempt to resolve the Dispute through discussion.

21.2 If a Dispute is not resolved within thirty (30) calendar days by discussion pursuant to clause 21.1, the matter may be referred to mediation by either Party.

21.3 If Mediation fails to resolve the matter, either party is free to request Arbitration or file in court as they deem appropriate. The City and [CONTRACTOR] both agree that the appropriate venue for any legal dispute shall be the Bethel Courthouse.

22. Governing Law

This Agreement shall be governed by, and construed under, the laws of the State of Alaska.

23. Enforcement

Subject to any right of appeal, second appeal, revision or any other legal proceeding or remedy available to either Party under the law, each Party consents with respect to the enforcement of any final judgment against it in any such proceedings, whether in Alaska or outside and to the giving of any relief or the issue of any process in connection with such proceedings (including, without limitation, the making, enforcement or execution against or in respect of any property whatsoever, irrespective of its use or intended use, and whether situate in or outside Alaska).

24. Representation and Warranties

24.1 [CONTRACTOR] represents and warrants to City that:

- 24.1.1 It has the full legal ability and authority to enter into and carry out its obligations under this Agreement and this Agreement constitutes a valid, legally binding and enforceable obligation of [CONTRACTOR] and does not conflict with the terms of any other agreement by which it may be bound;
- 24.1.2 All approvals necessary to allow [CONTRACTOR] to enter into this Agreement and to carry out the obligations contemplated herein have been given or received and shall remain in full force and effect;
- 24.1.3 There are no applicable constitutional provisions, laws, regulations, decrees or rules of Competent Authorities of Alaska in force on the date of execution of this Agreement, which restrict or prohibit the ability of [CONTRACTOR] to enter into and perform the terms of this Agreement. [CONTRACTOR] is not entitled to immunity from legal process or jurisdiction on grounds of sovereignty or otherwise; and
- 24.1.4 This Agreement does not conflict with any provisions of any law, including any regulation of the State of Alaska as in effect on the date of execution of this Agreement.

24.2 City represents and warrants to [CONTRACTOR] that:

- 24.2.1 It is a validly existing municipal corporation under the laws of the State of Alaska;
- 24.2.2 It has the full legal ability and authority to enter into and carry out its obligations under this Agreement and this Agreement constitutes a valid, legally binding and enforceable obligation of City and does not conflict with the terms of any agreement by which it may be bound; and
- 24.2.3 There are no provisions of any organizational document of City which restrict or prohibit the ability of City to enter into and perform the terms of this Agreement.

25. Notices

25.1 All notices given under this Agreement are to be in writing [in English] and shall be:

25.1.1 Sent to:

(a) for City, to: PO Box 1388, Bethel AK 99559 and marked to the attention of: City Attorney

(b) for [CONTRACTOR] to:

25.1.2 In writing and delivered by hand or sent by first class prepaid post or facsimile transmission and deemed to have been received:

(a) In case of delivery by hand when delivered; or

(b) In the case of first-class prepaid post, on the second (2nd) day following the day of posting, or

(c) In the case of facsimile transmission, at the time of actual receipt, provided that if, in accordance with the above provisions, any such notice or other communication would otherwise be deemed to be given or made outside working hours, such notice or other communication shall be deemed to be given or made at the start of working hours on the next Business Day.

25.2 Either party may notify the other Parties of a change to its name, relevant addressee, address or facsimile number for the purposes of clause 25.1, provided that such notification shall only be effective on:

25.2.1 The date specified in the notification as the date on which the change is to take place; or

25.2.2 If no date is specified or the date specified is less than fifteen (15) Business Days after the date on which notice is given, the date falling thirty (30) Business Days after notice of any such change has been given.

26. Confidentiality & Security

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

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

27. Amendments

This Agreement may only be amended or varied by the written agreement of both Parties.

28. Waiver

No waiver or failure by a Party to insist on the strict performance of this Agreement or to act in respect of the defaults of the other Party, and no acceptance of payment or performance during the continuance of any such default precludes any right, relief or remedy available to the non-defaulting Party, and may not be relied on by the other Party as a consent to those defaults.

29. Successors

This Agreement binds and ensures to the benefit of the Parties and their respective successors and permitted assigns.

30. Assignment and Transfer of Interest

Neither Party to this Agreement shall assign or transfer all or part of its rights, benefits or obligations under this Agreement except with the other Party's written consent.

31. Severability

If any provision of this Agreement is or becomes invalid or unenforceable, the remaining provisions of this Agreement shall continue in full force and effect.

32. Relationship of Parties

This Agreement does not create an association, joint venture, or partnership between the Parties. Neither Party has any right, power or authority to enter into any agreement or undertaking for, or to act on behalf of, or to act as an agent or representative of, or to otherwise bind, the other.

33. Good Faith

The Parties undertake to act in good faith in relation to the performance and implementation of this Agreement and to take such other reasonable measures as may be necessary for the realization of its objectives.

34. Further Assurance

Each Party agrees to execute and deliver all such further instruments and do and perform all such further acts and things as shall be necessary for the carrying out of the provisions of this Agreement.

35. Entirety of Agreement

This Agreement constitutes the entire agreement between the Parties in relation to its subject matter and, except in case of fraud, all prior representations, negotiations and undertakings of any nature whatsoever between the Parties with any bearing on the subject matter of this Agreement are superseded and extinguished, and all rights and liabilities arising by reason of them, whether accrued or not at the date of this Agreement, are canceled, to the extent they have such bearing.

36. Costs

Each Party shall bear all costs incurred by it in connection with entering into this Agreement.

37. Counterparts

This Agreement may be executed in any number of counterparts all of which taken together shall constitute one and the same document.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of the date first written above.

CITY OF BETHEL
Alan D. Lanning, Interim City Manager
P.O. Box 1388
Bethel, AK 99559

[CONTRACTOR]

Name

Date

Name

Date



AGENDA ITEM #

City Council Meeting Date: 9/12/2023

CITY COUNCIL COMMUNICATION FORM

FROM: Alan Lanning, Interim City Manager

DATE: 9/12/2023

ITEM: Council Report

I have worked on the following issues 8/21-9/5.

Continued to work on Collective Bargaining issues in an effort to get contract finalized.

Responded to several inquiries from Council members.

Responded to several citizen issues.

Attended 8/22 Council meeting.

Attended 8/29 Special Council meeting.

Attended Safety Team meeting, working toward a regular schedule of safety meetings.

Continuing focus on recruiting efforts, increasing our advertising foot print and participated in several candidate interviews. Conducted 2nd interview for Planner position and prepared offer letter. Expect to fill the position by 10/2.

Met with GovHR additionally, specifically focusing on possible interim/mentor roles.

Continue working with Interim Finance Director to prioritize work product and understand his ideas moving forward over the next several months.

Continue working with Carmen Jackson regarding finance issues.

Met with DOWL and other stakeholders regarding partnerships on water projects and working toward fostering those partnerships to determine if one or more specific projects are feasible. Discussed findings in water/wastewater rate study.

Began work on several property abatement letters.

Participated in 2nd Utility Rate Study meeting.

Met with Brilliant media in our ongoing informational efforts.

Continue reading various documents and files.

Schedule, Events and Programs

Visit ykfitness.org for the most up to date schedules and information.

Healthy activities club registration for our last several weeks is almost full, with waiting lists for our afternoon sessions for our last 3 weeks. We continue to seek funding to help cover scholarship costs and are grateful to have been awarded a grant from the Community Action Grant Committee to support healthy snacks.

Starting July 1st, we lowered the age requirement for individuals to supervise children. Previously the age to supervise children was 18. We have lowered that age to 16 to hopefully allow more youth who may be home with babysitters to utilize the pool.



YK Fitness Center

The Equitable Access Program provides discounted access to the YK Fitness Center for community members who may not be able to afford the full cost of facility access.

Equitable Access Program

Visit ykfitness.org or call 907-543-0390 for details and to sign up.

Starting in July we implemented an Equitable Access Program to provide discounted access to the YK Fitness Center for community members who may not be able to afford the full cost of facility access.

The Fitness Center closed on July 4th and we hosted games and activities at Big Dipper Field.



YK Fitness Center

HEALTHY ACTIVITIES CLUB

SUMMER 2023

JUNE 5TH - AUG 4TH
8:00 AM - 5:30 PM
FULL DAY \$100 PER WEEK
HALF DAY \$50 PER WEEK
SCHOLARSHIPS AVAILABLE

REGISTER FOR 1 WEEK OR ALL SUMMER

Fun indoor and outdoor sports, games, and activities including:

- Field Games
- Swimming & Water Safety
- Story Telling
- Dance
- Home & Community Safety
- Helping our community

YK FITNESS.ORG
907-543-0390



YK Fitness Center

FACILITY CLOSED

4th OF JULY

Join us at Big Dipper Field for fun and games 12pm-2pm after the parade

Volunteers needed for activities 11:00am-2:30pm. Contact Brian at 543-0390 or brian.jackson@hfit.com

YKfitness.org
907-543-0390



Join Swim Club!

Mon, Wed, & Fri at 5:30pm
July 24-Aug 4

\$20 (scholarships available)

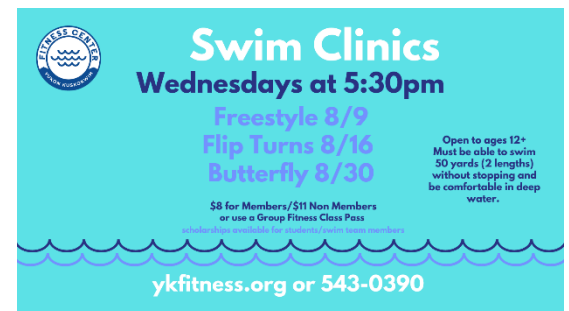
Ages 9+

Get ready for swim team, Lifeguard Training, and more!

ykfitness.org or 543-0390

Swim Club ran July 24th – Aug 4th with 7 participants.

Swim Clinics will run in August.



Swim Clinics

Wednesdays at 5:30pm

Freestyle 8/9
Flip Turns 8/16
Butterfly 8/30

\$8 for Members/\$11 Non Members or use a Group Fitness Class Pass

Open to ages 12+ Must be able to swim 50 yards (2 lengths) without stopping and be comfortable in deep water.

ykfitness.org or 543-0390

Our next set of Swim lessons will not be until October due to instructor shortages.

Two Lifeguard Training Classes are being offered in August.



Become A Lifeguard

Free Certification Courses:

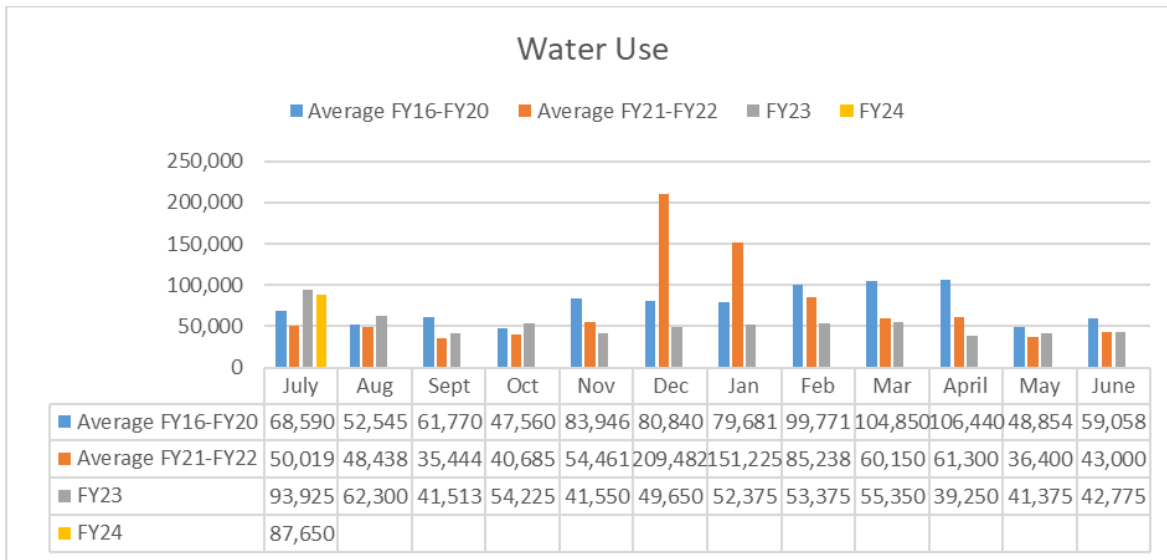
August 6th - 8th 2:30pm-8:30pm
OR
August 11th - 13th
Fri, 8/11 5:30pm-8:30pm
Sat & Sun 8/12 & 8/13 12pm-8:30pm

Visit ykfitness.org/certifications, email ykfc@cityofbethel.net, or call 907-543-0390 for details and to register.

267 Akiachak Dr
Bethel, AK 99559

www.ykfitness.org
907-543-0390

Water Use

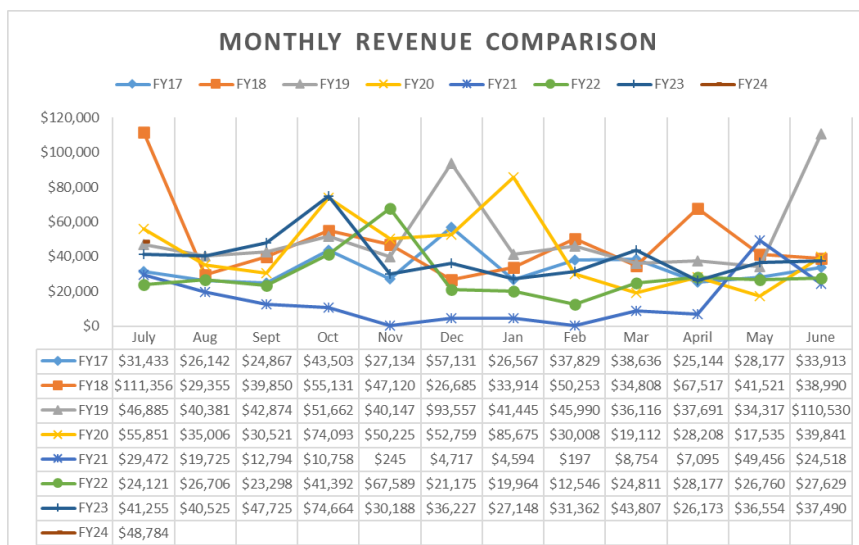


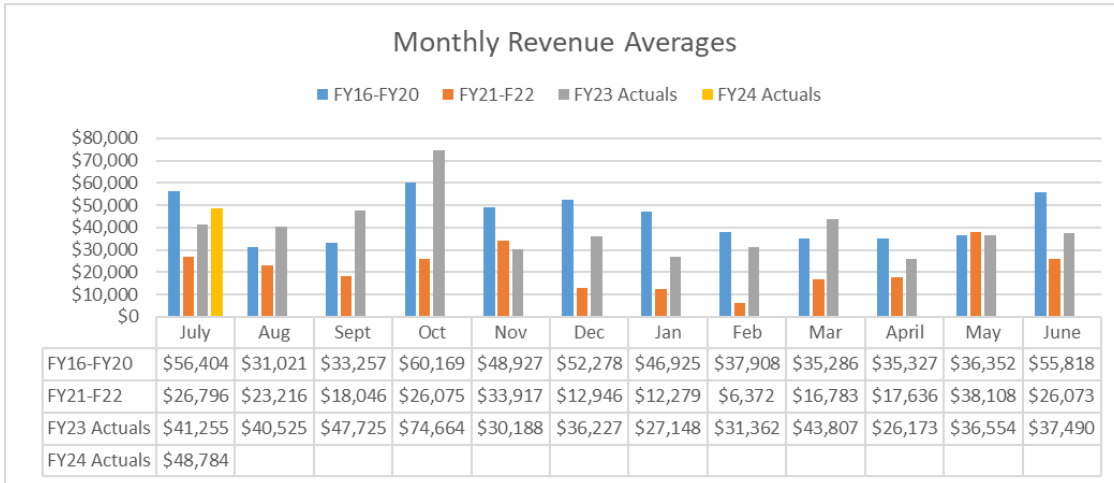
*Note: Facility opened in November of 2014 (FY15). Starting during maintenance closure in Dec 2019/Jan 2020 hot water has been used to keep pipes from freezing resulting in higher-than-normal usage. Water was turned off in late March 2020 once outside temps were consistently above freezing temperatures. Problems again arose in Dec 2020 and water was used to assure there were no freeze ups of facility piping through early March 2021.

Revenue

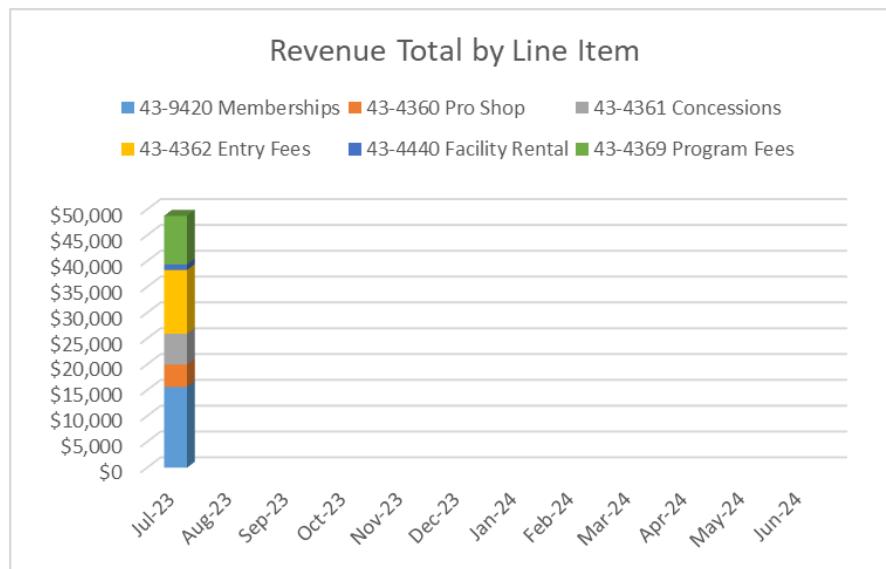
Code	Facility Revenue	Jul-23	Aug-23	Sep-23	Oct-23	Nov-23	Dec-23	Jan-24	Feb-24	Mar-24	Apr-24	May-24	Jun-24	Total	FY22 Budgeted	%attained
43-9420	Memberships	\$15,651												\$15,651	\$260,000	6%
43-4360	Pro Shop	\$4,327												\$4,327	\$40,000	11%
43-4361	Concessions	\$5,963												\$5,963	\$60,000	10%
43-4362	Entry Fees	\$12,345												\$12,345	\$100,000	12%
43-4440	Facility Rental	\$1,065												\$1,065	\$25,500	4%
43-4369	Program Fees	\$9,434												\$9,434	\$50,000	19%
Misc (Grants, Donations, Etc.)														\$0	\$5,000	0%
Facility Revenue Total		\$48,784	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$48,784	\$540,500	9%

July Revenues were at approximately 86% of pre-covid revenues with most revenue items coming close to pre-Covid numbers, but membership revenues continuing to be low. This is consistent with what other facilities are seeing across the nation with some individuals not yet comfortable with or able to purchase memberships.



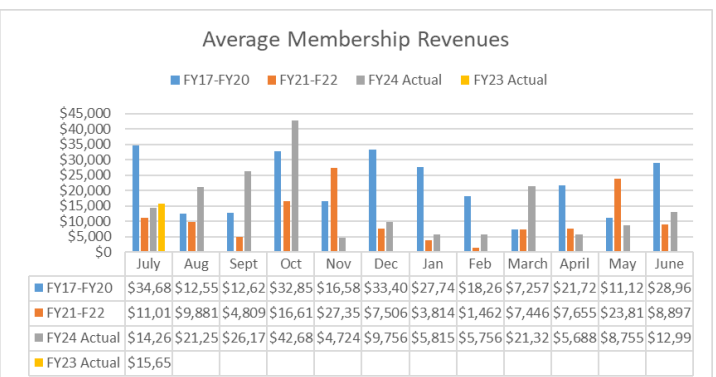
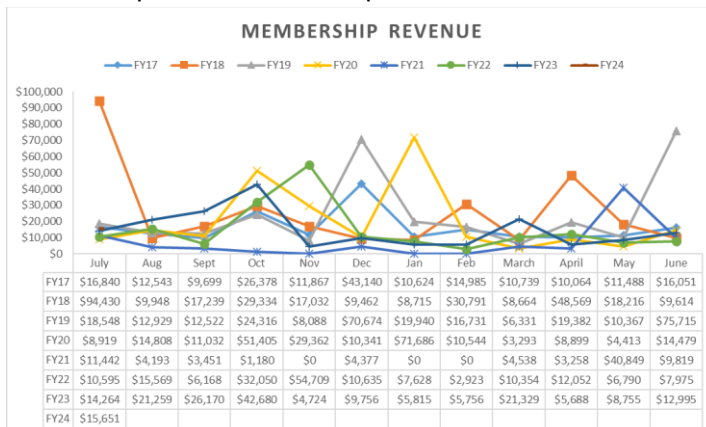


Monthly Revenue viewed by Line Item shows that Memberships and Entry fees are the largest portion of revenue funds.



Revenue Comparisons by line Item:

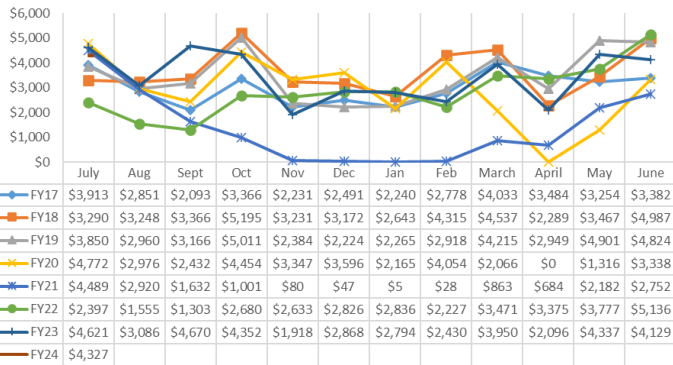
Membership revenue for June passed Covid levels but did not quite reach pre-covid averages.



June ProShop revenue is comparable to previous years. We have continued to see purchases of swim suits, goggles, and towels and June expenses will show large purchases to replenish our Proshop inventory.

PRO SHOP REVENUE

— FY17 — FY18 — FY19 — FY20 — FY21 — FY22 — FY23 — FY24



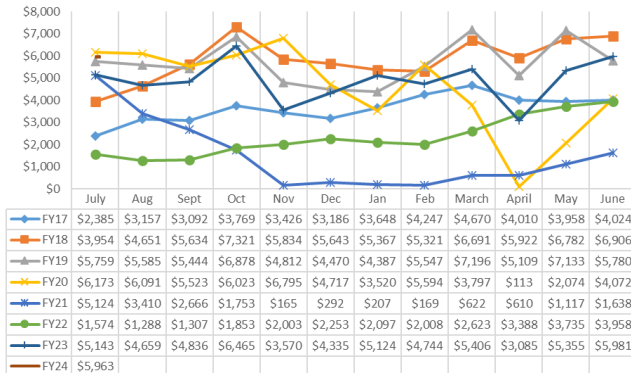
Pro Shop Average Revenue

■ FY17-FY20 ■ FY21-F22 ■ FY24 Actual ■ FY23 Actual



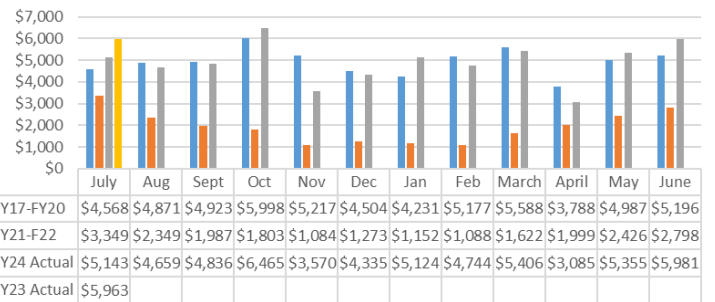
CONCESSIONS REVENUE

— FY17 — FY18 — FY19 — FY20 — FY21 — FY22 — FY23 — FY24



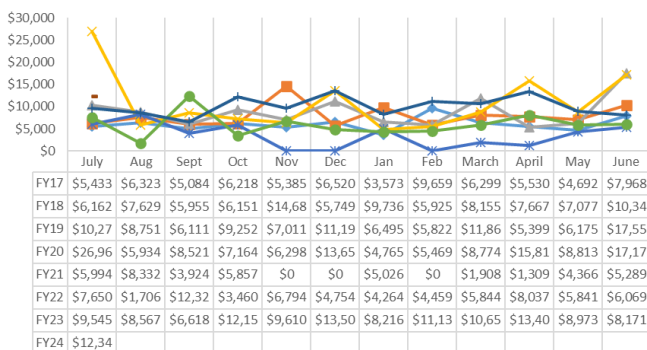
Concessions Average Revenue

■ FY17-FY20 ■ FY21-F22 ■ FY24 Actual ■ FY23 Actual



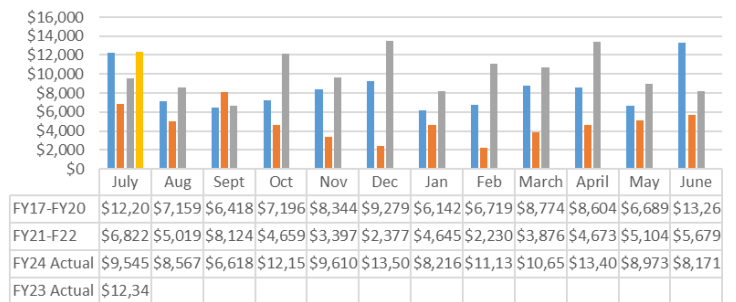
DAILY ENTRY FEES

— FY17 — FY18 — FY19 — FY20 — FY21 — FY22 — FY23 — FY24

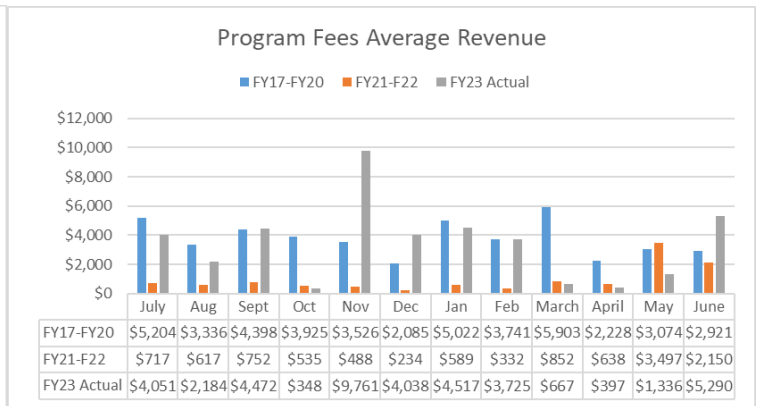
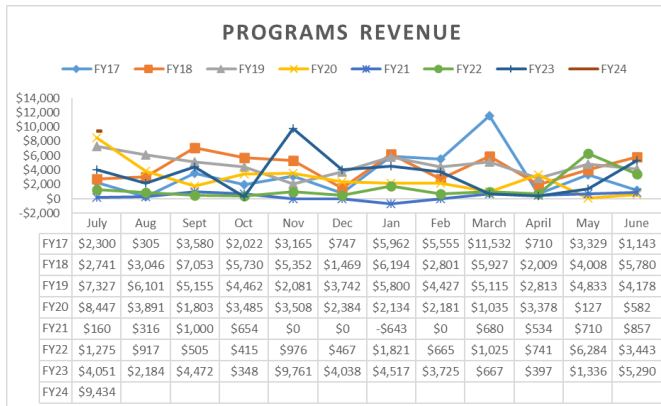
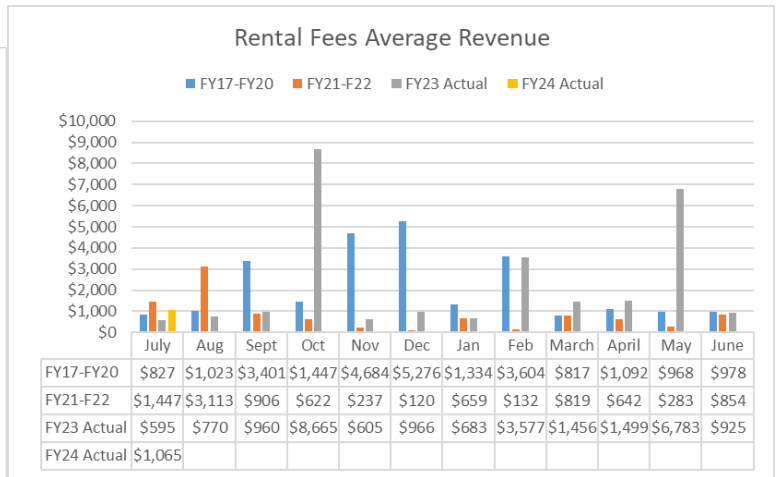
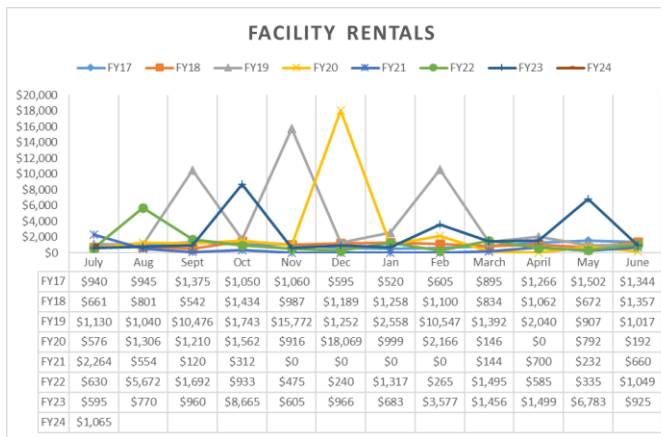


Daily Entry Fees Average Revenue

■ FY17-FY20 ■ FY21-F22 ■ FY24 Actual ■ FY23 Actual



July Rental Revenues were consistant with previous years.



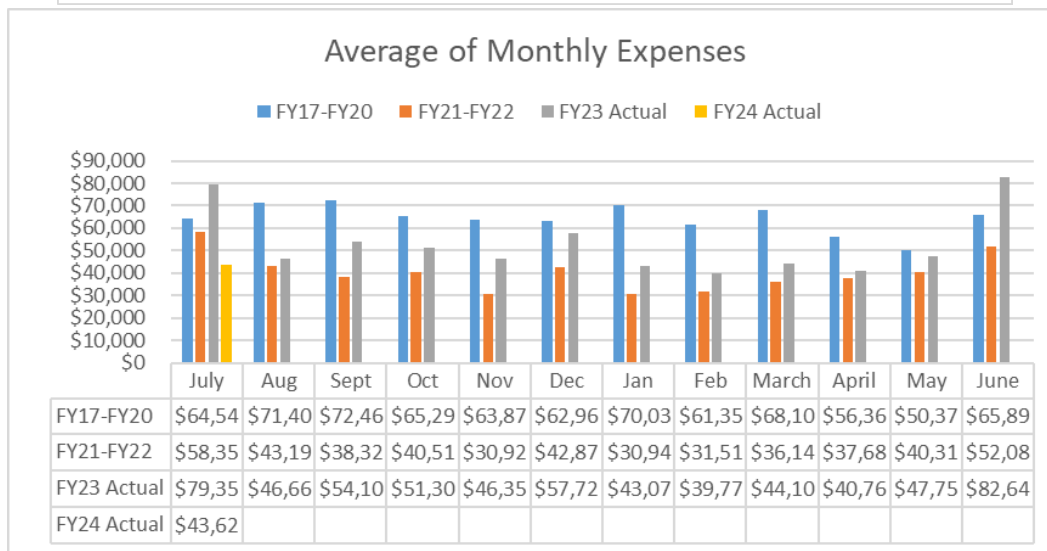
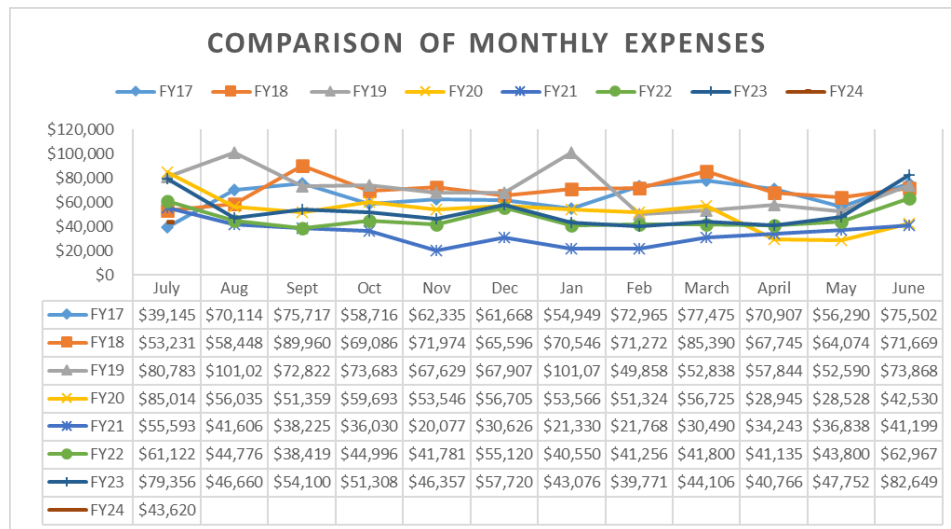
Expenses

As we return to normal facility operations we are actively working to continue to minimize facility expenses while providing necessary safety and resources.

	Expenses	Jul-23	Aug-23	Sep-23	Oct-23	Nov-23	Dec-23	Jan-24	Feb-24	Mar-24	Apr-24	May-24	Jun-24	Total	Budgeted	% used
	Wages & Benefits	\$37,934	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$37,934	\$609,921	6.22%
6060	Travel/Training	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$2,000	0.00%
6100	Supplies	\$2,408	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$2,408	\$74,000	3.25%
6110	Building Maintenance	\$565	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$565	\$16,100	3.51%
6331	Software Licenses	\$511	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$511	\$500	102.28%
6200	General Expenses	\$1,559	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$1,559	\$10,300	15.13%
6430	Allowance for Special Events	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$1,000	0.00%
6539	Unforeseen	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$2,000	0.00%
	Non Budgeted/Grant Funded	\$642	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$642		
	TOTAL	\$43,620	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$43,620	\$715,821	6.09%

* Due to our 2 week pay period structure there are 2 months out of each year in which 3 pay periods fall, skewing wages totals upwards for those months.

**Expense totals do not include purchases for the building that have been made by City of Bethel Property Maintenance or other direct city expenses.

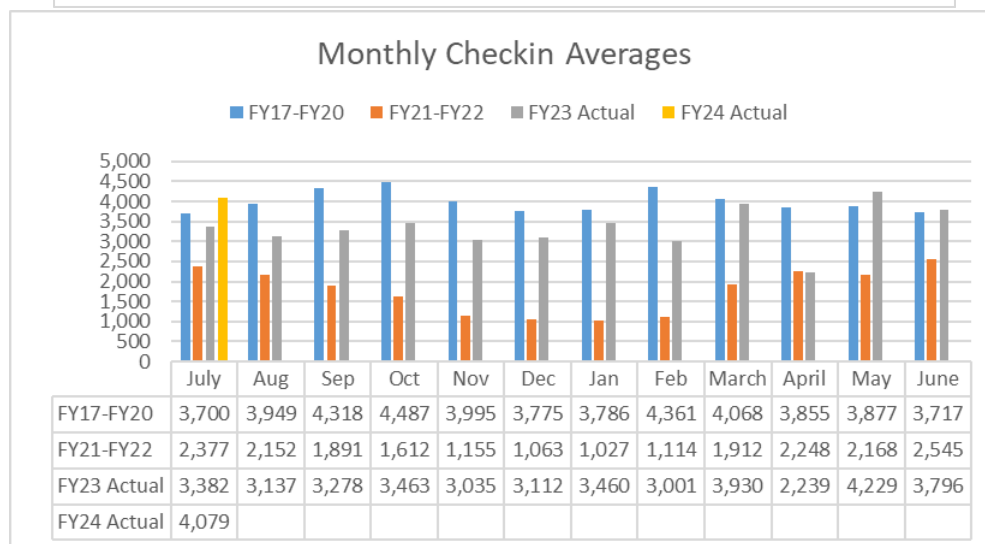
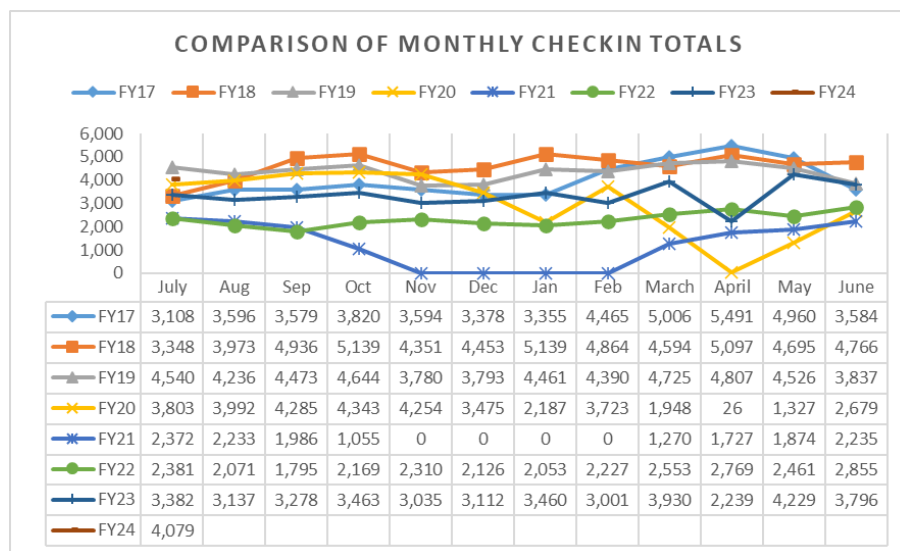


Facility Utilization

Facility Check-In: Facility Check-In numbers represent the total number of patrons who visited the facility and are based on a compilation of the number of members and bundle pass holders who checked-in, the number of daily passes sold and the number of participants in programs, activities, rentals, and special events. These numbers represent facility visits, not individuals as most individuals visit the facility multiple times over the course of the month.

Facility Check-In FY24	July	August	Sept	Oct	Nov	Dec	Jan	Feb	March	April	May	June	Total
Membership	1,880												1,880
Bundle Pass	151												151
Daily Admissions	1,515												1,515
Rentals	49												49
Fitness Programming	69												69
Aquatics Programming	15												15
Youth Programs	400												400
Monthly Totals	4,079	0	0	0	0	0	0	0	0	0	0	0	4,079

July utilization surpassed pre-Covid averages by approximately 10% in part due to high participation in our Healthy Activities Club.



Memorandum

Date: September 1, 2023

To: Alan Lanning, Interim City Manager

From: Bo Foley, IT Director

Subject: IT Director's Report



August 2023 Current Events

- **Printer Refresh Complete:**

This month, my department was able to finish replacing City printers across the board. The total number of replaced units is thirty-five with seven spares should a need for them arise. Hard drives were removed from sensitive replaced machines and the husks were dropped off at the Donlin Gold Backhaul event for e-recycling. The hard drives will be physically destroyed and discarded at a later backhaul.

So far, the new Konica Minolta printers are not giving my department too much trouble, which is a welcome surprise. In rotations past, sometimes the chosen models revealed widespread quirks that I had to end up living with given the difficulty of shipping heavy equipment in and out of Bethel. This model is responsive and allows all users the option of printing in monochrome or color.

- **Monitor Refresh Complete:**

In addition to replacing printers, my department also tackled replacing monitors in each department and managed to complete this task in time for the Donlin Gold Backhaul event. Monitors deployed number one hundred and five. Aside from a few cases, the old units were sent back for e-recycling.

For this year's rotation, I tried to get enough monitors so that everyone could receive the luxury of double screens if they wished it. Double screens can really help with user productivity and efficiency depending on their job duties. Those that didn't feel they needed two monitors were free to stick with one.

The new monitors seem excellent and everyone that has received them has offered positive feedback on the choice. We do have a handful of spares should the need for them arise.

- **Donlin Gold Backhaul Event:**

Mentioned in the previous two entries, the Donlin Gold Backhaul event is a wonderful annual service that the City has participated in for several years now. At the end of August, Donlin Gold allows businesses and organizations that it is partnering with to drop off all their e-waste so that it can be barged out of Bethel to be recycled and/or properly disposed of. This offers partnered

Memorandum

Date: September 1, 2023

To: Alan Lanning, Interim City Manager

From: Bo Foley, IT Director

Subject: IT Director's Report



businesses a convenient option to discard old technology, batteries, toner, copiers, and whatever else can be considered e-waste, instead of burying it in Bethel's landfill.

- **Caselle Updated to Version 2023.8.76:**

My department was able to update the City's financial and asset management software to its latest release (version 2023.08.76) this month. The process typically takes between three and five hours because every computer using the software must be manually updated after the server files are refreshed. And because the software will not work until it is updated, my department handles this after hours as to not disrupt the departments that need this software during their shifts.

- **Technician Annual Review Completed:**

Late August marked the anniversary of my new IT technician and so I made sure to complete his review and discuss it with him. In short, he has met or surpassed all of my expectations, and I feel he has been an excellent addition to the City's family. I hope that he continues to find a home in our team for a long while to come.

- **Initial Wiring Completed:**

Alcan technicians made a trip to Bethel in August to assist me in doing some internal wiring preparation in the Police Department, Bethel Heights Water Plant, Landfill office, Port office, and Small Boat Harbor office. In a month or so, they will be returning to install more wireless antennae for me so that I can take steps to add redundancy and resiliency to the City's wireless network. The more wireless paths that exist, the more options we have for rerouting data should one of the paths fail for equipment reasons.

- **Normal Business:**

The rest of the month has been filled with normal daily trouble-ticket response for issues regarding printing, scanning, file access, and especially employee management.

Memorandum

Date: September 1, 2023

To: Alan Lanning, Interim City Manager

From: Bo Foley, IT Director

Subject: IT Director's Report



Future Plans

- **Vacation Plans for October into November:**

I am still mulling it over, but I have plans to possibly step away for a few weeks towards the end of October so that I can spend some time with family. During this time, I would leave my technician to cover daily matters.

City of Bethel, Alaska

City Clerk's Office

Council Meetings

August 28, 2023, Special City Council Meeting

September 12, 2023, Regular City Council Meeting

September 26, 2023, Regular City Council Meeting

General

Received notice our current website host was bought out by another company which will result in an increase to our annual fee. To ensure we are getting the best value, we have and will continue to evaluate website host vendors. So far, the Office has met with two government website service providers.

Processed two burial permits.

Certified eight city council candidates for the October election. Confirmed the ballot draft and programing with election vendors. Provided notice of certification to the candidates. Reached out to KYUK to establish a date for the KYUK candidate forum. Sent email to candidates on what to expect with educational resources.

Reviewed the site plan permitting process with DOWL contractor and city staff. We will be holding a meeting with the Corps of Engineers in the coming months to identify best practices for wetland permits and their association with the city's issuances of site plan permits.

Met with Planning Commission Chair, Kathy Hanson, to go over Planning Commission items.

Assisted with the Community Parks and Recreation Committee meeting close out and summary for administration. Provided a list of documents and actions requested by the Committee for updates/inclusion in the next packet material.

Reviewed the Utility Rate Study information provided by contractor, met with Contractor and Admin. to go over the details.

Updated election notices, provided election information to Alaska Public Offices Commission. Ordered ballots, and finalized memory card programming. Confirmed most of the election official's availability.

Set up transcription services through the Zoom account to help ensure the public meetings are more accessible.

Continued to work with Planning and Legal to get a corrected plat for the KYUK property correction so that we can get the deed recorded.

Continue to work with GovHR to coordinate the City Manager selection process.

Worked with new ex officio member for the Public Safety and Transportation Commission and Public Works Committee to get onboarded and trained.

Working with contractor to coordinate the site preparation/construction of the new park equipment for Pinky's Park and Harbor Park. Will pass the coordination to Facility Maintenance from here.

Organized notices of three marijuana license renewals for Council and Departments.

Doing Business As	License Type	Name of Applicant
Kusko Kush License 21227	Retail Marijuana Store	Essenkay, LLC, Jared Karr
Mailing Address P.O. Box 2343 Bethel, AK 99559	Location of Premises 781 3 rd Avenue, Bethel	Business Telephone Number 907-545-4977
Date Notice Received by City Clerk's Office		08/22/2023
Date City Manager Sends Application Notice to Directors		08/22/2023
Deadline for Department Head Reports (14 days from Notice from City Manager)		09/05/2023
Date Written Report Sent to City Council from City Manager (20 days from Date Notice received by the City Clerk's Office)		09/11/2023
Date of Council Review (30-40 calendar days from Date Notice received by City Clerk)		09/26/2023
Deadline for Protest (60 days from the date of notice to the City Clerk's Office)		10/21/2023

Doing Business As	License Type	Name of Applicant
Good Vibes Bethel #30563	Retail Marijuana Store #30563	Brian Glasheen JR
Mailing Address 1853 Buccaneer Pl Anchorage, AK 995 01 UNITED STATES	Location of Premises 323 Chief Eddie Hoffman Hwy Bethel, AK 99559	Business Telephone Number 907-545-1144
Date Notice Received by City Clerk's Office		08/28/2023
Date City Manager Sends Application Notice to Directors		08/28/2023
Deadline for Department Head Reports (14 days from Notice from City Manager)		09/11/2023
Date Written Report Sent to City Council from City Manager (20 days from Date Notice received by the City Clerk's Office)		09/17/2023
Date of Council Review (30-40 calendar days from Date Notice received by City Clerk)		09/26/2023
Deadline for Protest (60 days from the date of notice to the City Clerk's Office)		10/27/2023

Doing Business As	License Type	Name of Applicant
ALASKABUDS, LLC	Retail Marijuana Store #18735	Nick Miller
Mailing Address PO Box 241521 Anchorage, AK 9 9524 UNITED STATES	Location of Premises 660 Third Ave, Suite B Bethel, AK 99559	Business Telephone Number 907-244-2125
Date Notice Received by City Clerk's Office		9/5/2023
Date City Manager Sends Application Notice to Directors		9/6/2023
Deadline for Department Head Reports (14 days from Notice from City Manager)		9/20/2023
Date Written Report Sent to City Council from City Manager (20 days from Date Notice received by the City Clerk's Office)		8/25/2023
Date of Council Review (30-40 calendar days from Date Notice received by City Clerk)		10/10/2023
Deadline for Protest (60 days from the date of notice to the City Clerk's Office)		11/4/2023

Committee/Commission Vacancies

	Regular	Alternate
Community Parks and Recreation Committee	full	1
Planning Commission	full	1
Port Commission	2	2
Public Safety and Transportation Commission	full	2
Community Action Grant Technical Review Board	full	1
Public Works Committee	3	2
Finance Committee	2	2
Ethics Board	full	1