CITY OF BETHEL

City Council Meeting Agenda, June 25, 2019 – 6:30 PM

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

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

Council Members: Fred Watson, Mayor; Thor Williams, Vice-Mayor; Leif Albertson; Mitchell Forbes; Perry Barr; Carole Jung-Jordan; Fritz Charles

1. **CALL TO ORDER**
2. **PLEDGE OF ALLEGIANCE**
3. **ROLL CALL**
4. **PEOPLE TO BE HEARD – FIVE MINUTES PER PERSON**
5. **APPROVAL OF CONSENT AGENDA AND REGULAR AGENDA**
6. **APPROVAL OF MEETING MINUTES**
   - 6.1. * 6-4-2019 Special City Council Meeting Minutes
   - 6.2. * 6-6-2019 Special City Council Meeting Minutes
   - 6.3. * 6-11-2019 Regular City Council Meeting Minutes
   - 6.4. *6-13-2019 Special City Council Meeting Minutes
7. **REPORTS OF STANDING COMMITTEES**
   - 7.1. Committees and Commissions Agendas and Draft Meeting Minutes
8. **SPECIAL ORDER OF BUSINESS**
9. **UNFINISHED BUSINESS**
   - 9.1. Public Hearing Of Ordinance 19-12: Authorizing The Disposal Via Lease Of Office Space Located At Lot 2, Courthouse Subdivision, Plat 99-12, 300 Chief Eddie Hoffman Highway (DMV) Pursuant To BMC 4.08.030(B) (Acting City Manager Howell)
10. **NEW BUSINESS**
    - 10.1. *Introduction Of Ordinance 19-13: Authorizing The Disposal Via Lease Of Land And Building To Yukon Kuskokwim Health Corporation Lot 11, Block 7, US Survey 3230 A&B (378 Fifth Avenue) Pursuant To BMC 4.08.030(C) (Acting City Manager Howell)
    - 10.2. *Introduction Of Ordinance 19-14: Amending Title 5.08 Alcoholic Beverages (Council Member Albertson)
    - 10.3. Resolution 19-07: Protesting The Transfer Or Package Store Liquor License From Kusko Liquor To ACC Liquor Store LLC, To Be Located At 811 3rd Avenue (Council Member Albertson)
      i. ACC Liquor Store's Opportunity To Defend The License Transfer In Accordance With3 AAC 304.145

Posted June 19, 2019 at City Hall, AC Co., Swanson's, and the Post Office.

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Kevin Morgan, Asst. 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 19-36: Authorize And Approve City Administration To Issue Checks Totaling $11,000 To Year 2, Quarter 2 Community Action Grant Awardees Based On The Community Action Grant Technical Review Board's (CAGTRB) Work On Scoring Applications And Deciding How Much To Award Each Applicant (Acting City Manager Howell)

10.5. AM 19-37: Authorize The City Manager To Negotiate And Execute A Contract For Lift Station Control Improvements With The Only Responsive Bidder (Acting City Manager Howell)

10.6. *Personal Leave Request- Acting City Manager- July 5th, 8th, 9th, 2019.

10.7. *Personal Leave Request- City Clerk- July 12th, 15th, 2019.

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 June 19, 2019 at City Hall, AC Co., Swanson's, and the Post Office.

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Kevin Morgan, Asst. City Clerk

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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 Special Meeting of the Bethel City Council was held on June 4, 2019 at 6:00 p.m., in the Council chambers, Bethel, Alaska.

Mayor Watson called the meeting to order at 6:00 p.m.

2. PLEDGE OF ALLEGIANCE

3. ROLL CALL

Comprising a quorum of the Council, the following members were present:
Council Member Carole Jung-Jordan Council Member Leif Albertson Council Member Perry Barr Council Member Mitchell Forbes Vice-Mayor Thor Williams Mayor Fred Watson
Members Absent:
Council Member Fritz Charles
Also in attendance were the following:
Acting City Manager Bill Howell, City Clerk Lori Strickler

4. PEOPLE TO BE HEARD – Five minutes per person

No one present to be heard.

5. APPROVAL OF AGENDA

Approve the Agenda.

Moved by:	Carole Jung-Jordan
Seconded by:	Perry Barr
In favor:	Carole Jung-Jordan, Leif Albertson, Perry Barr, Mitchell Forbes, Fred Watson, Thor Williams
Opposed:	None

Results:	Motion Carries

6. UNFINISHED BUSINESS

Item 6.1. - City Council's Review/Amendment of Administration's Proposed FY 2020 Budget General Fund a. Administration b. Finance Department c. Information Technology d. City Attorney's Office e. Fire Department f. Police Department g. City Clerk's Office h. Planning Department i. Public Works Administration j. Public Works Streets and Roads k. Public Works Property Maintenance l. Community Services m. In Kinds and Transfers

Move into committee of the whole.

Moved by:	Mitchell Forbes
Seconded by:	Leif Albertson
In favor:	Carole Jung-Jordan, Leif Albertson, Perry Barr, Mitchell Forbes, Fred Watson, Thor Williams
Opposed:	None
Results:	Motion Carries

Council Member Albertson departed the meeting at 7:01 p.m.

Amend the IT budget to strike under 10-55-690 capital Expenditures $205,000 and insert $79,875. Amend the City department associated line items to account for the distribution of the 65 new desktop hardware and software in an amount equal to $1,925 per unit.

Direct Administration to apply the costs of the Fire Department's Ambulance Remount at $168,000 to the City's Fleet Replacement Fund balance.

Amend to insert under 51-81-699 a transfer to F58 Fleet Replacement fund in the amount of $1,573,938 to be funded by the General Fund Un-designated Fund Balance.
Account for this transfer under 58-50-451, Fleet Replacement Fund and insert a capital Outlay expense 690 Hauled Water Truck in the amount of $1,573,938.
Amend line item 57-50 Capital Expenses F-250 Pickup to strike $34,587.

Amend line item 10-52-644, to insert $25,000.

Moved by:	Mitchell Forbes
Seconded by:	Perry Barr
In favor:	Carole Jung-Jordan, Perry Barr, Mitchell Forbes, Fred Watson, Thor Williams
Opposed:	None
Results:	Motion Carries

Moved by:	Mitchell Forbes

Seconded by:	Perry Barr
In favor:	Carole Jung-Jordan, Perry Barr, Mitchell Forbes, Fred Watson, Thor Williams
Opposed:	None
Results:	Motion Carries

Item 6.2. - Special Revenue Funds
a. Community Service Patrol b. Enhanced 911 System

Item 6.3. - Enterprise Funds
a. YK Aquatic Health and Safety Center b. Solid Waste c. Water and Sewer d. Municipal Dock e. Leased Properties f. Bethel Transit System

Item 6.4. - Internal Service Funds
Employee Group Health Benefits
Vehicles and Equipment
Property Maintenance

Item 6.5. - Council's Review/Amendment of Administration's Proposed FY 2020 Budget- Endowment Fund

Item 6.6. - Council's Review/Amendment of Administration's Proposed FY 2020 Capital Budget

Item 6.7. - Internal Service Funds
Employee Group Health Benefits
Vehicles and Equipment
Property Maintenance

7. NEW BUSINESS

8. ADJOURNMENT

Main Motion: Adjournment.

Moved by:	Barr
Seconded by:	Forbes

In favor:	Carole Jung-Jordan, Perry Barr, Mitchell Forbes, Fred Watson, Thor Williams
Opposed:	None
Results:	Motion Carries

Meeting ended at 8:25 p.m.

Fred Watson, Mayor

ATTEST:

Lori Strickler, City Clerk

1. CALL TO ORDER

A Special Meeting of the Bethel City Council was held on June 6, 2019 at 6:00 p.m., in the Council chambers, Bethel, Alaska.

Mayor Watson called the meeting to order at 6:00 p.m.

2. PLEDGE OF ALLEGIANCE

3. ROLL CALL

Comprising a quorum of the Council, the following members were present:
Council Member Carole Jung-Jordan Council Member Leif Albertson Council Member Perry Barr Council Member Mitchell Forbes Mayor Fred Watson
Members Absent:
Council Member Fritz Charles Vice-Mayor Thor Williams
Also in attendance were the following:
Acting City Manager Howell, City Clerk Lori Strickler

4. PEOPLE TO BE HEARD – Five minutes per person

Anny Cochrane- Youth advocate in the community of Bethel. Supported funding of the transit system, teen center, recreation facility. Added that she wishes the council can resolve conflicts in an appropriate manner and suggested the adoption of a code of conduct.
Jon Cochrane- Spoke in favor of the funding of the recreation facility. Identified the numerous opportunities for children to learn how to swim and the funding support that other non profits provide to the effort.
Megan Newport - Spoke in support of the Bethel 4H program.

5. APPROVAL OF AGENDA

Approve the agenda.

Moved by:	Perry Barr
Seconded by:	Mitchell Forbes
In favor:	Carole Jung-Jordan, Leif Albertson, Perry Barr, Mitchell Forbes, Fred Watson
Opposed:	None
Results:	Motion Carries

Move into the committee of the whole.

Moved by:	Mitchell Forbes
Seconded by:	Perry Barr
In favor:	Carole Jung-Jordan, Leif Albertson, Perry Barr, Mitchell Forbes, Fred Watson
Opposed:	None
Results:	Motion Carries

6. UNFINISHED BUSINESS

Item 6.1. - City Council's Review/Amendment of Administration's Proposed FY 2020 Budget General Fund a. Administration b. Finance Department c. Information Technology d. City Attorney's Office e. Fire Department f. Police Department g. City Clerk's Office h. Planning Department i. Public Works Administration j. Public Works Streets and Roads k. Public Works Property Maintenance l. Community Services m. In Kinds and Transfers

Amend General Fund Revenue
Transient Lodging to strike $480,159 and insert $600,000
Alcohol Tax to strike $400,000 and insert $500,000
Gaming Tax to strike $430,928 and insert $500,000
Marijuana Tax to insert $100,000

Amend the proposed budget to account for the purchase of 20 computers at $1,925 per computer to be allocated under IT Minor Equipment line item 10-55-683 and to strike the costs associated with any other computers and software costs from the other departments.

Amend the proposed budget to reflect the updated Health Benefits rates through the entire budget.

Amend to ensure there is a 3% annual increase applied to each of the Department Heads, and Contract Employees.

Amend to ensure each of the union employees have a COLA increase of 2.5 and a

merit increase of 2.5%.

Amend to reduce unemployment group benefits from 2.23% to 1.78%.

Amend the Worker's Compensation update to Combs quote.

Amend the Property and Liability rates.

Amend Personnel line item 13101 General Ledger Accountant to strike 64,091 and insert $72,643.

Amend the Planning Department Personnel Budget to reflect the City Planner with a 3% salary increase and the Planning Clerk with the associated merit and COLA increase and to strike the Assistant Planner.

Moved by:	Mitchell Forbes
Seconded by:	Leif Albertson
In favor:	Carole Jung-Jordan, Leif Albertson, Perry Barr, Mitchell Forbes, Fred Watson
Opposed:	None
Results:	Motion Carries

Item 6.2. - Special Revenue Funds
a. Community Service Patrol b. Enhanced 911 System

Item 6.3. - Enterprise Funds
a. YK Aquatic Health and Safety Center b. Solid Waste c. Water and Sewer d. Municipal Dock e. Leased Properties f. Bethel Transit System

Item 6.4. - Council's Review/Amendment of Administration's Proposed FY 2020 Budget- Endowment Fund

Item 6.5. - Council's Review/Amendment of Administration's Proposed FY 2020 Capital Budget

Item 6.6. - Internal Service Funds
Employee Group Health Benefits
Vehicles and Equipment
Property Maintenance

7. NEW BUSINESS

8. ADJOURNMENT

Adjourn.

Moved by:	Leif Albertson
Seconded by:	Perry Barr
In favor:	Carole Jung-Jordan, Leif Albertson, Perry Barr, Mitchell Forbes, Fred Watson
Opposed:	None
Results:	Motion Carries

Meeting Adjourned at 8:30 p.m.

Fred Watson, Mayor

ATTEST:

Lori Strickler, City Clerk

1. CALL TO ORDER

A Regular Meeting of the Bethel City Council was held on June 11, 2019 at 6:30 p.m., in the Council chambers, Bethel, Alaska.

Mayor Watson 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:
Council Member Carole Jung-Jordan Council Member Leif Albertson (telephonically) Council Member Perry Barr Council Member Fritz Charles Council Member Mitchell Forbes Mayor Fred Watson Vice-Mayor Thor Williams
Members Absent:
Also in attendance were the following:
Acting City Manager Bill Howell, City Attorney Patty Burley, City Clerk Lori Strickler

4. PEOPLE TO BE HEARD – Five minutes per person

Cezary Maczynski, spoke in favor of the transfer of the Package Store License from his Liquor Establishment to ACC Liquor Store.

5. APPROVAL OF CONSENT AGENDA AND REGULAR AGENDA

Main Motion: Approve Consent Agenda and Regular Agenda.

Moved by:	Mitchell Forbes
Seconded by:	Perry Barr

Remove items 10.1 and 10.2 from the Consent Agenda- Vice-Mayor Williams.

In favor:	Carole Jung-Jordan, Leif Albertson, Perry Barr, Fritz Charles, Mitchell Forbes, Fred Watson, Thor Williams
Opposed:	None
Results:	Motion Carries

6. APPROVAL OF MEETING MINUTES

Item 6.1. - *5-21-2019 Special City Council Meeting Minutes
Passed on the consent agenda.

Item 6.2. - *5-23-2019 Special City Council Meeting Minutes
Passed on the consent agenda.

Item 6.3. - *5-28-2019 Regular City Council Meeting Minutes
Passed on the consent agenda.

Item 6.4. - *5-30-2019 Special City Council Meeting Minutes
Passed on the consent agenda.

7. REPORTS OF STANDING COMMITTEES

Item 7.1. - Committee And Commission Agendas And Draft Meeting Minutes

Port Commission, Mayor Watson-
A meeting has not been held since the last City Council Meeting.

Planning Commission, Vice-Mayor Williams-
A meeting will be held on the 13th to consider the Conditional Use Permit for ACC Liquor Store.

Community Action Grant Technical Review Board, Council Member Albertson-
Committee has evaluated the application and will be performing the scoring of the applications at their meeting tomorrow night.

Parks, Recreation, Aquatic Health and Safety Center Committee, Council Member Forbes-
4th of July preparation; reviewed the City's budget for the pool facility and expressed concerns with the facilities budget;

Finance Committee, Council Member Barr-
A meeting was not held due to a lack of a quorum. Need to get more people to volunteer for the Committee.

Public Works Committee, Council Member Jung-Jordan-
A meeting has not been held since the last City Council Meeting.

Public Safety and Transportation Commission, Council Member Charles-
A quorum of the body was not established; a meeting was not held.

8. SPECIAL ORDER OF BUSINESS

Item 8.1. - Appreciation For Years Of Service To Shawn Ahlo (Mayor Watson)

9. UNFINISHED BUSINESS

Item 9.1. - Public Hearing Of Ordinance 19-11: Establishing A City Of Bethel Budget For Fiscal Year 2020 (Acting City Manager Howell)

Main Motion: Adopt Ordinance 19-11.

Moved by:	Perry Barr
Seconded by:	Mitchell Forbes

Postpone until the Council's Special Meeting scheduled for Thursday June 13.

Moved by:	Mitchell Forbes
Seconded by:	Perry Barr
In favor:	Carole Jung-Jordan, Leif Albertson, Perry Barr, Fritz Charles, Mitchell Forbes, Fred Watson, Thor Williams
Opposed:	None
Results:	Motion Carries

10. NEW BUSINESS

Item 10.1. - *Introduction Of Ordinance 19-12: Authorizing The Disposal Via Lease

Of Office Space Located At Lot 2, Courthouse Subdivision, Plat 99-12, 300 Chief Eddie Hoffman Highway (DMV) Pursuant To BMC 4.08.030(B) (Acting City Manager Howell)

Introduce Ordinance 19-12.

Moved by:	Perry Barr
Seconded by:	Mitchell Forbes
In favor:	Carole Jung-Jordan, Leif Albertson, Perry Barr, Fritz Charles, Mitchell Forbes, Fred Watson, Thor Williams
Opposed:	None
Results:	Motion Carries

Amend to strike the 6th Whereas Statement.

Moved by:	Mitchell Forbes
Seconded by:	Thor Williams
In favor:	Carole Jung-Jordan, Leif Albertson, Perry Barr, Fritz Charles, Mitchell Forbes, Fred Watson, Thor Williams
Opposed:	None
Results:	Motion Carries

Primary amendment to direct legal to amend the ordinance to reflect the lease rate of fair market value.

Moved by:	Mitchell Forbes
Seconded by:	Perry Barr
In favor:	Carole Jung-Jordan, Leif Albertson, Perry Barr, Mitchell Forbes, Fred Watson, Thor Williams
Opposed:	Fritz Charles
Results:	Motion Carries

Secondary amend to insert fair market value to be $1,001 per month.

Moved by:	Mitchell Forbes
Seconded by:	Perry Barr
In favor:	Carole Jung-Jordan, Leif Albertson, Perry Barr, Fritz Charles, Mitchell Forbes, Fred Watson
Opposed:	Thor Williams
Results:	Motion Carries

Secondary amendment to add in the Consumer Price index into the calculation of fair market value.

Moved by:	Mitchell Forbes
Seconded by:	Perry Barr
In favor:	Leif Albertson, Perry Barr, Fritz Charles, Mitchell Forbes
Opposed:	Carole Jung-Jordan, Fred Watson, Thor Williams
Results:	Motion Carries

Item 10.2. - *Resolution 19-06: Authorizing Administration To Negotiate And Execute A Loan Commitment To Be Converted Into An Interim Bond For The Avenues Water And Sewer Improvements (Acting City Manager Howell)

Main Motion: Adopt Resolution 19-06.

Moved by:	Perry Barr
Seconded by:	Mitchell Forbes
In favor:	Carole Jung-Jordan, Leif Albertson, Perry Barr, Fritz Charles, Mitchell Forbes, Fred Watson
Opposed:	Thor Williams
Results:	Motion Carries

Item 10.3. - AM 19-35: Direct Administration To Cut A Check To The Alaska Fire Chief's Association For $10,000 As Reimbursement For Their Work With AP Triton In Negotiating An Agreement With The State Of Alaska Medicaid Office To Implement The Ground Emergency Medical Transports (GEMT) Program Statewide (Acting City Manager Howell)

Main Motion: Approve AM 19-35.

Moved by:	Perry Barr
Seconded by:	Mitchell Forbes
In favor:	Carole Jung-Jordan, Leif Albertson, Perry Barr, Fritz Charles, Mitchell Forbes, Fred Watson, Thor Williams
Opposed:	None
Results:	Motion Carries

Item 10.4. - Review Administrative Report And Liquor License Transfer, License Number 5533, From Kusko Liquor To ACC Liquor Store, Operation Location- 811 3rd Avenue, Bethel AK. 99559 (Mayor Watson)

Item 10.5. - *IM 19-06: Presentation Of The City's Water And Sewer Services Expenditures Compared To Budget From July 1, 2018 To May 31, 2019 – Utilities Maintenance – Water And Wastewater Activity Report (Acting City Manager Howell)

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 Watson-
Please be sure to give other people fishing space and be safe out there and wear your life jackets.

Vice-Mayor Williams-
There will be a fishing opening tomorrow; hopes everyone is safe on the river this year.
Thanked Council Member Forbes for his certification in EMT II.

Council Member Albertson-
No comment.

Council Member Forbes-
Asked that the boaters wear life jackets.
Thanked Mayor Watson and Vice-Mayor Williams for helping out at the Fire Department training.
Encouraged people and parents to keep an eye on kids when they play near the roadway.
Thanked the property maintenance workers for their hard work on the Owl Park playground equipment.

Council Member Barr-
Bethel Search and Rescue is still searching for Paul Kaganak; this is day 20. Bethel Search and Rescue appreciates the donations from the community.

Council Member Jung-Jordan-
Reminded drivers to slow down and watch for kids and asked parents to keep their

kids safe.
Thanked streets and roads for their good work; noted the care an employee took grading the road.

Council Member Charles-
Identified that he made a poor decision last week but that he will need to move forward. Everyone makes mistakes.
Fishing starts at 6:00 AM.

13. EXECUTIVE SESSION

14. ADJOURNMENT

Main Motion: Adjournment.

Moved by:	Mitchell Forbes
Seconded by:	Perry Barr
In favor:	Carole Jung-Jordan, Leif Albertson, Perry Barr, Fritz Charles, Mitchell Forbes, Fred Watson, Thor Williams
Opposed:	None
Results:	Motion Carries

Meeting ended at 8:55 p.m.

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Fred Watson, Mayor

ATTEST:

_____
Lori Strickler, City Clerk

1. CALL TO ORDER

A Special Meeting of the Bethel City Council was held on June 13, 2019 at 6:00 p.m., in the Council chambers, Bethel, Alaska.

Vice-Mayor Williams 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:
Council Member Carole Jung-Jordan Council Member Leif Albertson Council Member Perry Barr Council Member Mitchell Forbes Mayor Fred Watson (telephonically) Vice-Mayor Thor Williams
Members Absent:
Council Member Fritz Charles
Also in attendance were the following:
Acting City Manager Bill Howell, City Clerk Lori Strickler

4. PEOPLE TO BE HEARD – Five minutes per person

Theresa Quiner- Advocated for continued funding for the Library.
Samantha Graf and Margalo Changsak- Spoke in favor of the 4H program.
Amanda Isaac, 4H Junior leader- Spoke in favor of the 4H Program.
Beth Graf- Spoke in favor of the Library.
Deanna Trammell- Spoke in favor of the 4H Program.
Tabitha Prince- Spoke in favor of the library.
Kylee Henderson- Spoke in favor of the library.
Ronda Phillips- Read a letter on behalf of a parent and minor in support of the 4H program. Also spoke in favor of the 4H program.
Sharon Chakuchin- Spoke in favor of the 4H Program and the library.
Monica Turrentine- Spoke in favor of the 4H Program.

Susan Taylor- Spoke in favor of the library and 4H Program.
Anny Cochrane- Spoke in favor of the Library, Aquatic Health and Safety Center, Transit System, and 4H Program
Shane Iverson- Spoke about the Kuskokwim Kickers Children's Soccer program which is operated by volunteers but is made possible through the 4H Program.
Grady Deaton- Spoke in support of the City Services mentioned by the previous people who spoke before him.

5. APPROVAL OF AGENDA

Main Motion: Approve the Agenda.

Moved by:	Mitchell Forbes
Seconded by:	Carole Jung-Jordan
In favor:	Carole Jung-Jordan, Leif Albertson, Perry Barr, Mitchell Forbes, Fred Watson, Thor Williams
Opposed:	None
Results:	Motion Carries

6. UNFINISHED BUSINESS

Main Motion: Move into Committee of the Whole.

Moved by:	Mitchell Forbes
Seconded by:	Carole Jung-Jordan
In favor:	Carole Jung-Jordan, Leif Albertson, Perry Barr, Mitchell Forbes, Fred Watson, Thor Williams
Opposed:	None
Results:	Motion Carries

Item 6.1. - Public Hearing Of Ordinance 19-11: Establishing A City Of Bethel Budget For Fiscal Year 2020 (Acting City Manager Howell)

Mayor Watson left the meeting at 8:00 P.M.

Motion to extend the meeting past 8:30 p.m.

Moved by:	Perry Barr
Seconded by:	Leif Albertson
In favor:	Carole Jung-Jordan, Leif Albertson, Perry Barr, Mitchell Forbes, Thor Williams
Opposed:	None
Results:	Motion Carries

Move into a committee of the whole.

Moved by:	Leif Albertson
Seconded by:	Mitchell Forbes
In favor:	Carole Jung-Jordan, Leif Albertson, Perry Barr, Mitchell Forbes, Thor Williams
Opposed:	None
Results:	Motion Carries

Main Motion:
Amend line item 10-55-883, IT Minor Equipment to insert 20,000 and strike.
Amend 10-55-690, IT Capital Expenditures to strike $79,875 and insert 27,875. One copier and monitoring software will be removed from capital.
Amend Planning 10-54-545 Training and Travel to strike $5,000 and insert $17,000.
Amend Planning 10-54-642 Legal Fees to strike $10,000 and insert $5,000.
Amend the Leave Cash Out Line items in all relevant budgets to strike the 8% allocation and insert 5% allocation.
Amend Planning Department 10-54-649 to strike $50,000 and insert $30,000.
Amend City Clerk Council Travel and Training 10-52-541 to strike 19,000 and insert $10,000.
Amend Streets and Roads 10-66-695 Cat Loader to strike $265,533.
Amend 10-70-595 Boardwalk Maintenance to strike $10,000 and insert 7,000.
Amend 10-70-683 Property Maintenance to strike $25,000 and insert $17,000.
Amend 10-61-563 Police Department Wearing Apparel to strike $21,250 and insert 16,250.
Amend 10-61-683 Police Department Minor Equipment to strike $40,000 and insert 30,000.
Amend 10-61-561 Police Department Supplies to strike $15,000 and insert $10,000.
Amend Police Department Overtime, to strike $200,000 and insert $180,000.
Amend 10-60-662 Property Maintenance to strike 36,500 and insert $16,500.
Amend Fire Department Personnel, Summer Intern Program to strike 31,200 and insert $11,200.
Amend 10-53-641 Finance Department Audit Expense to strike $75,000 and insert $95,000.
Amend 10-53-649 to strike $30,000 and insert $10,000.
Amend 10-66-771 to strike 450,000 and insert $375,000.
Amend Revenue line item 414 to strike 100,000 and insert 120,000.
Amend Revenue line item 401 to strike 6,419,744 and insert 6,464,744.
Amend Property Maintenance 10-70 to insert capital project line item 69x to insert 435,000.

Moved by:	Leif Albertson
Seconded by:	Perry Barr

In favor:	Carole Jung-Jordan, Leif Albertson, Perry Barr, Mitchell Forbes,,
Opposed:	Thor Williams
Results:	Motion Carries

Main Motion: Adopt Ordinance 19-11 as amended.

Moved by:	Mitchell Forbes
Seconded by:	Leif Albertson

In favor:	Carole Jung-Jordan, Leif Albertson, Perry Barr, Mitchell Forbes, Thor Williams

Opposed:	None
Results:	Motion Carries

7. NEW BUSINESS

8. ADJOURNMENT

Main Motion: Adjournment.

Moved by:	Mitchel Forbes
Seconded by:	Carole Jung-Jordan

In favor:	Carole Jung-Jordan, Leif Albertson, Perry Barr, Mitchell Forbes, Thor Williams
Opposed:	None
Results:	Motion Carries

Meeting ended at approximately 9:08 p.m.

Thor Williams, Vice-Mayor

ATTEST:

Lori Strickler, City Clerk

PUBLIC NOTICE
REGULAR MEETING OF THE
Community Action Grant Technical Review Board
Wednesday, June 12, 2019, 7:00 p.m.
Council Chambers, 300 State Highway, Bethel, Alaska

AGENDA

Members
Jennifer Dobson, Chair
Louise Russell
S. Grady Deaton
Amber Jones
Lucinda Alexie
Leif Albertson (Council Rep)

Ex-Officio
John Sargent

Recorder
John Sargent

I. CALL TO ORDER

II. ROLL CALL

III. PEOPLE TO BE HEARD

IV. APPROVAL OF AGENDA

V. APPROVAL OF MINUTES
A. June 4, 2019 Regular Meeting

VI. NEW BUSINESS
A. Review and score applications and responses received (may include questions to applicants in attendance).

B. Election of Chair and Vice-Chair

C. Review amount of CAG funding available.

D. Review/revise application, forms, & processes.

E. Update on previous award recipients, projects funded, final reports, CAG award agreements, and other follow-up issues.

VII. COMMISSION MEMBER COMMENTS

VIII. ADJOURNMENT

POSTED: Post Office, AC, AC Quickstop, Swanson's, and City Hall

City of Bethel Community Action Grant Technical Review Board Meeting Minutes

June 4, 2019 Regular Meeting 7 p.m. Bethel, Alaska

I. CALL TO ORDER

MEETING CALLED TO ORDER AT 7:02 pm.

II. ROLL CALL

BOARD MEMBERS PRESENT:	
Jennifer Dobson, Chair	Lucinda Alexie
Amber Jones	Leif Albertson, Council Rep
BOARD MEMBERS ABSENT:	
Louise Russell	S. Grady Deaton
ALSO IN ATTENDANCE:	
John Sargent, Recorder	

III. PEOPLE TO BE HEARD

None.

IV. APPROVAL OF AGENDA

MOVED:	L. Albertson	Switch New Business Item A with B to allow Darren Leib to speak to Wrestling Club application.
SECONDED:	A. Jones	
VOTE ON MAIN MOTION	4-0 All in favor	

MOVED:	A. Jones	Approval of Agenda as amended.
SECONDED:	L. Alexie	
VOTE ON MAIN MOTION	4-0 All in favor	

IV. APPROVAL OF MINUTES

MOVED:	L. Albertson	Approve March 13, 2019 Meeting Minutes with change to delete names in score table and replace with numbers.
SECONDED:	L. Alexie	
VOTE ON MAIN MOTION	4-0 All in favor	

V. NEW BUSINESS

A. Review and score applications and responses received (may include questions to applicants in attendance).

MOVED:	A. Jones	Move into Committee as a Whole to discuss three applications received
SECONDED:	L. Alexie	

		for funding.
VOTE ON MAIN MOTION	4-0 All in favor	

Darren Leib spoke to the group about his application to request money for a summer wrestling camp. Committee members engaged him with questions and he provided answers.

All three applications were reviewed by the group. A list of questions was generated to ask each applicant so that answers could be considered at the next CAGTRB meeting.

Chair J. Dobson moved group out of Committee as a Whole at 8:10 pm.

MOVED:	A. Jones	John to prepare and send out letters to the applicants with the questions generated from Committee's discussion so that answers can be used in scoring.
SECONDED:	L. Alexie	
VOTE ON MAIN MOTION	4-0 All in favor	

B. Election of Chair and Vice-Chair.

MOVED:	L. Alexie	Postpone Election of Chair and Vice-Chair agenda item to the next meeting.
SECONDED:	A. Jones	
VOTE ON MAIN MOTION	4-0 All in favor	

C. Review amount of CAG funding available.

John explained the figures in his memorandum to Committee members. Amount available is $83,354.15.

D. Review/revise applications, forms, & processes.

MOVED:	L. Alexie	Include indirect costs as an exclusion in future CAG applications.
SECONDED:	A. Jones	
VOTE ON MAIN MOTION	4-0 All in favor	

MOVED:	L. Alexie	John to make all changes discussed for the forms, repost the updated forms, and to put Exit Report into Word format.
SECONDED:	A. Jones	
VOTE ON MAIN MOTION	4-0 All in favor	

E. Update on previous award recipients, projects funded, final reports, and other follow-up issues.

John discussed update sheet provided in Committee meeting packet. He suggested that Agenda Items E. and F. be combined in future agendas. Committee members agreed.

F. Status of contracts for awards.

This item was discussed in Agenda Item E.

VI. BOARD MEMBER COMMENTS

A. Jones: This was a productive and concise meeting.
L. Alexie: None.
L. Albertson: This was a very tight meeting.
J. Dobson: None.
J. Sargent: None.

VII. ADJOURNMENT

MOVED:	L. Albertson	Adjourn the meeting.
SECONDED:	A. Jones	
VOTE ON MAIN MOTION	4-0 All in favor	

Meeting Adjourned at 8:40 pm.

Respectfully Submitted:

_____
Jennifer Dobson, Chair

APPROVED THIS _____ day of_____ 2018.

ATTEST: _____

City of Bethel, Alaska
Public Safety & Transportation Commission

June 05, 2019 Regular Meeting Bethel, Alaska

I. CALL TO ORDER

A regular meeting of the Public Safety and Transportation Commission was held on June 05, 2019 in the Bethel City Hall Council Chambers.

This meeting was called to order at 6:40pm.

II. ROLL CALL

Present: Monroe Tyler *Chair*
Rick Garcia *Vice Chair*
Azara Mohammadi

Absent: Fritz Charles *Council Representative*
Joan Dewey

Ex-Officio Present: Amy Davis *Lieutenant*
Daron Solesbee *Acting Fire Chief*
Jesslyn McGowan *Recorder*

A quorum was not established of the Commission.

III. ADJOURNMENT

Meeting adjourned at 6:41 pm.

APPROVED THIS _____ DAY OF_____, 2019.

_____ _____
Jesslyn McGowan, Recorder Monroe Tyler, Chair

DRAFT

City of Bethel Community Action Grant Technical Review Board Meeting Minutes

June 12, 2019 Regular Meeting 7 p.m. Bethel, Alaska

I. CALL TO ORDER

Meeting called to order at 7:10 pm.

II. ROLL CALL

BOARD MEMBERS PRESENT:	
Jennifer Dobson, Chair	Louise Russell
Grady Deaton	Leif Albertson, Council Rep
BOARD MEMBERS ABSENT:	
Lucinda Alexie	Amber Jones
ALSO IN ATTENDANCE:	
John Sargent, Recorder	

III. PEOPLE TO BE HEARD

Theresa Quiner spoke in support of the library application.

IV. APPROVAL OF AGENDA

MOVED:	L. Albertson	Approve agenda.
SECONDED:	L. Russell	
VOTE ON MAIN MOTION	4-0 All in favor	

IV. APPROVAL OF MINUTES

MOVED:	L. Albertson	Approve CAGTRB June 4, 2019 Meeting Minutes.
SECONDED:	L. Russell	
VOTE ON MAIN MOTION	4-0 All in favor	

V. NEW BUSINESS

A. Review and score applications and responses received (may include questions to applicants in attendance).

MOVED:	L. Russell	Move into Committee as a Whole at 7:15 pm to discuss three applications received for funding.
SECONDED:	L. Albertson	
VOTE ON MAIN MOTION	4-0 All in favor	

Thor Williams spoke in favor of the Wrestling Club application and answered questions from the Board.

Theresa Quiner answered questions from the Board members on the Friends of the Library application for the 2019 Summer Reading Program.

Board members decided not to score the BSAR application because it was incomplete. They based this decision on the incomplete nature of the application originally submitted and the fact that no information and exit reports were provided in response to the letter emailed to the applicant from the Board.

The Board discussed the Bethel Wrestling Club application.

The Board discussed the application to fund the Summer Reading Program 2019 submitted by the Friends of the Kuskokwim Consortium Library.

The average scores for each of the two applications scored by four Board members:

1. Bethel Wrestling Club (149)
2. Summer Reading Program 2019 (120).

The Board agreed to the following funding arrangement:

1. Bethel Wrestling Club > $4,500 full funding + $500 for scholarships (extra) = $5,000. Agreement should specify this spending plan.
2. Summer Reading Program 2019 > $2,000 for STEM programming + $4,000 for books (reduction) = $6,000. Agreement should specify that applicant be required to track the number of books given out at each event (name of event) and the number of kids attending each event.

Chair J. Dobson moved group out of Committee as a Whole at 8:48 pm.

MOVED:	**L. Russell**	Recommend to City Council that they provide $5,000 to the Bethel Wrestling Club ($4,500 for program and $500 for scholarships), and $6,000 to the Friends of the Kuskokwim Consortium Library ($2,000 for program and $4,000 for books) to support the programs specified in the applications and that the CAG grant agreements contain stipulations discussed.
SECONDED:	**L. Albertson**	
VOTE ON MAIN MOTION		4-0 All in favor

B. Election of Chair and Vice-Chair.

MOVED:	J. Dobson	Nominate Grady for Chair.
SECONDED:	L. Albertson	Nominate Leif for Vice Chair.
VOTE ON MAIN MOTION	4-0 All in favor	

Chair directed the meeting to Commission Member Comments, bypassing agenda items C, D, E, under New Business.

VI. BOARD MEMBER COMMENTS

L. Albertson: We had a very productive meeting. I think this is the best thing I do for the City.
J. Dobson: I'm happy to be a part of it.
L. Russell: I'm happy to be here.
G. Deaton: I am both honored and flabbergasted to be chosen Chair.
J. Sargent: None.

VII. ADJOURNMENT

MOVED:	G. Deaton	Adjourn the meeting.
SECONDED:	L. Russell	
VOTE ON MAIN MOTION	4-0 All in favor	

Meeting Adjourned at 8:58 pm.

Respectfully Submitted:

_____
Jennifer Dobson, Chair

APPROVED THIS _____ day of_____ 2019.

ATTEST: _____

City of Bethel, Alaska
Planning Commission

June 13, 2019 Regular Meeting Bethel, Alaska

I. CALL TO ORDER:

A regular meeting of the Planning Commission was held on June 13, 2019 at the Bethel City Hall, Council Chambers in Bethel, Alaska. The Chair of Commission, Kathy Hanson called the meeting to order at 6:30 PM.

II. ROLL CALL:

Comprising a quorum of the Commission, the following members were present for roll call: Kathy Hanson, Lorin Bradbury, John Guinn, Alex Wasierski, Shadi Rabi, Scott Campbell, and Tracy Beans.
Excused Absence: Thor Williams
Also Present: Pauline Boratko, Recorder; Patty Burley, City Attorney; and Jeff Chihosz, Alaska Commercial Company (AC) Representative.

III. PEOPLE TO BE HEARD:

IV. APPROVAL OF THE AGENDA:

MOVED:	John Guinn	Motion to approve the agenda
SECONDED:	Alex Wasierski	
VOTE ON MOTION	Unanimous	

V. APPROVAL OF THE MINUTES:

MOVED:	Shadi Rabi	Motion to approve the April 11, 2019 regular meeting minutes.
SECONDED:	John Guinn	
VOTE ON MOTION	Unanimous	

VI. SPECIAL ORDER OF BUSINESS:

VI. NEW BUSINESS:

A. Public Hearing Continuation: Request for Conditional Use Permit- On March 28, 2019, the City of Bethel Planning Office received an application from the Alaska Commercial Company for a Conditional Use Permit (CUP) to open a package retail sales store for alcohol. The legal description lots 3A and 3B, block 15 of United States Survey 3230 A&B, Plat No. 80-5 in the Bethel Recording District. The physical address is 811 Third Avenue. (action item)

Chair of the committee, Kathy Hanson gave the community an opportunity to be heard:
Jeff Chihosz- AC Representative spoke in favor of the AC CUP.
Cezary Maczynski-supports the approval of the AC CUP.
Annie Cochrane-voiced concerns about the sell list.

DRAFT

MOVED:	Shadi Rabi	Motion to approve Resolution 2019-07 with two minor grammar wording to be changed for the Conditional Use Permit Application for Alcohol submitted Resolution 2019-07 by the Northwest Company for the property located at 881 3rd Avenue.
SECONDED:	Alex Wasierski	
VOTE ON MOTION	Unanimous	

VI. PLANNER'S REPORT:

VII. COMMISSIONER'S COMMENTS:

S. Rabi- no comment
A. Wasierski- no comment
S. Campbell- no comment
T. Beans- no comment
K. Hanson- no comment
L. Bradbury-no comment
J. Guinn- good planner, hate to see her go

X. ADJOURNMENT:

MOVED:	Shadi Rabi	Motion to adjourn the meeting.
SECONDED:	Lorin Bradbury	
VOTE ON MOTION	Unanimous	

With no further business the meeting adjourned 7:15 pm

APPROVED THIS _____ DAY OF _____, 2019

_____ _____

ATTEST: Pauline Boratko, Recorder Kathy Hanson, Chair

DRAFT

Introduced by: AC. Manager Howell
Introduction Date: June 11, 2019
Public Hearing Date: June 25, 2019
Action:
Vote:

CITY OF BETHEL, ALASKA

Ordinance #19-12

AN ORDINANCE AUTHORIZING THE DISPOSAL VIA LEASE OF OFFICE SPACE LOCATED WITHIN CITY HALL AT LOT 2, COURTHOUSE SUBDIVISION, PLAT 99-12, 300 CHIEF EDDIE HOFFMAN HIGHWAY PURSUANT TO BMC 4.08.030(b)

WHEREAS, the City of Bethel owns land and an office space at 300 Chief Eddie Hoffman Highway;

WHEREAS, the legal description for the land is Lot 2, Courthouse Subdivision, Plat 99-12, Bethel Recording District, Fourth Judicial District, State of Alaska;

WHEREAS, the office space to be rented has been used by the State of Alaska for operation of a Department of Motor Vehicle Office (DMV);

WHEREAS, the State of Alaska held a lease with the City of Bethel which is set to expire on June 30, 2019;

WHEREAS, the State of Alaska desires to renew the lease for a period of three (3) years;

~~**WHEREAS,** YKHC is interested in renting the building knowing its condition;~~

WHEREAS, the office space was appraised earlier this year;

WHEREAS, the appraisal provided a fair market rent price for the office space;

~~**WHEREAS,** the lease being proposed requires rent at full fair market value as though the building is in full repair with a set stipend credit for repairs;~~

~~**WHEREAS,** the State of Alaska has advised that due to severe budget cuts, it cannot afford the fair market rent value of $1001 to $1030 per month;~~

~~**WHEREAS,** the State of Alaska has proposed a three (3) year lease extension at a rate lower than fair market value but more in line with the State's ability to pay;~~

WHEREAS, the City of Bethel and the State of Alaska have agreed to the following monthly lease rates;

For the period July 1, 2019 through June 30, 2020, the monthly lease rate shall be $1,001.00;
For the period July 1, 2020 through June 30, 2021, the monthly lease rate shall be $1,005.00;
For the period July 1, 2021 through June 30, 2022, the monthly lease rate shall be $1,010.00.

~~**WHEREAS,** the State of Alaska urges the City Council to consider granting the lease at the lower rate given the number of citizens which the Department of Motor Vehicles serves in this community;~~
~~**WHEREAS,** the Bethel Municipal Code, Section 4.08.030(b) allows the City Council to dispose of property via lease to an entity providing a necessary public service and allows for the rental price to be below fair market value;~~

NOW, BE IT ORDAINED, the City Council authorizes the disposal of the above building via lease of ~~land~~ Office Space to ~~an Entity Providing a Public Service~~ the State of Alaska Department of Administration for a period of three years.

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

SECTION 2. Authorization. Pursuant to Bethel Municipal Code 04.08.030(b) Disposal.

SECTION 3. Effective Date. This Ordinance shall become effective immediately upon passage.

ENACTED THIS _____ DAY OF JUNE 2019, BY A VOTE OF _____ IN FAVOR AND _____ OPPOSED.

_____
Fred Watson, Mayor

ATTEST:

_____
Lori Strickler, City Clerk

STATE OF ALASKA

AMENDMENT TO LEASE
LEASE NUMBER 2624

This agreement, to be known as **Amendment Number Ten (10)** to the existing lease, entered into on the 1st day of July, 2009, and **first recorded at the Bethel Recording District as Serial Number 2009-000914-0,** by and between:

CITY OF BETHEL
P.O. BOX 1388
BETHEL, ALASKA 99559
ATTN: CITY MANAGER'S OFFICE

Correspondence to:

CITY OF BETHEL
P.O. BOX 1388
BETHEL, ALASKA 99559
ATTN: LEGAL DEPARTMENT

Hereinafter called the Lessor, and

STATE OF ALASKA
DEPARTMENT OF ADMINISTRATION - 02
550 WEST 7TH AVENUE, SUITE 1960
ANCHORAGE, ALASKA 99501-3558

Hereinafter called the Lessee.

The Lessor hereby leases to the State of Alaska the following described premises:

Approximately 256 square feet of net usable office space located at 300 Chief Eddie Hoffman Highway, Bethel, Alaska. LEGAL: The [City Hall] ... [is] situated on a parcel of land within U.S. Survey No. 870 adjacent to the Townsite of Bethel, Alaska, commencing at Corner No. 3 of U.S. Survey No. 870, identical with corner No. 1 of U.S. Survey No. 4000; thence South 24◦32'08" East, along the line between said U.S. Surveys Nos. 870 and 4000, 492.64 feet; thence North 65◦27'52" East, 314.60 feet to the True Point of Beginning of the herein described parcel, thence North 21◦31’37” East, 115.01 feet; thence South 68◦28’23” East, 80.00 feet, thence North 21◦31’37” East, 115.00 feet; thence South 68◦28’23” East, 252.65 feet to a point on the northwesterly Right-of-Way Line of the State Highway; thence South 20◦33’46” West, along said Right-of-Way Line, 109.83 feet to the P.C. of a curve to the right (Radius = 523.20 feet, Delta = 31◦36’33”); thence around said curve 288.64 feet to a point on said curve; thence North 37◦45’54” West, 304.14 feet to the True Point of Beginning and containing 2.135 acres, more or less.

THIS AMENDMENT SHALL

1. Recognize that Amendment No. 9 is deleted in its entirety.

2. Extend this lease of approximately 256 square feet of net usable office space for the Department of Administration, Division of Motor Vehicles (DMV) for a period of three (3) year beginning July 1, 2019 and ending June 30, 2022.

3. Recognize that effective July 1, 2019, all CPI adjustment language shall be deleted from the lease and recognize that the **Current Monthly Lease Rate(s) for the space outlined in Item No. 2 above, shall be as follows:**

    a. For the period July 1, 2019 through June 30, 2020; **the monthly lease rate shall be $1,001.00;**

    b. For the period July 1, 2020 through June 30, 2021; **the monthly lease rate shall be $1,005.00;**

c. For the period July 1, 2021 through June 30, 2022; **the monthly lease rate shall be $1,010.00.**

4. Recognize that any under or overpayment of rent resulting from this lease amendment, shall be adjusted in a future month's rent payment.

All other terms and conditions of the lease remain the same.

Lessor: CITY OF BETHEL

By: _____ Date: _____

Title: _____

Lessee: STATE OF ALASKA

By: _____ Date: _____
Rashaad Esters
Contracting Officer II

ACKNOWLEDGMENT BY LESSOR: CITY OF BETHEL
STATE OF ALASKA
CITY OF BETHEL

This is to certify that on this _____**day of**_____**, 2019** before me a Notary Public in and for the State of Alaska duly commissioned and sworn, personally appeared _____**,** to me known and known by me to be the person described in the executed instruments set forth above and severally stated to me under oath that (he, she) is _____ and that (he, she) has been authorized by _____ to execute the foregoing lease amendment for and on behalf of the said company, corporation, individual, or other entity and they executed same freely and voluntarily as a free act and deed of **Same.**

WITNESS my hand and official seal the day and year this certificate first above written.

_____

_____
Notary Public for Alaska
My Commission Expires with Office
Residing at: _____

ACKNOWLEDGMENT BY LESSEE: STATE OF ALASKA
STATE OF ALASKA
MUNICIPALITY OF ANCHORAGE

This is to certify that on this _____**day of**_____**, 2019** before me a Notary Public in and for the State of Alaska duly commissioned and sworn, personally appeared **Rashaad Esters, Contracting Officer II,** to me known and known by me to be the person described in the executed instruments set forth above as an agent of the **Shared Services of Alaska** of the State of Alaska and that this person has been authorized by the State of Alaska to execute the foregoing lease amendment on behalf of said State of Alaska and that this person executed the same freely and voluntarily as the free act and deed of the **State of Alaska**.

WITNESS my hand and official seal the day and year this certificate first above written.

_____

_____
Notary Public for Alaska
My Commission Expires with Office
Residing at: Anchorage, Alaska

Introduced by: Acting CM Howell
Introduction Date: June 25, 2019
Public Hearing July 9, 2019
Action:
Vote:

CITY OF BETHEL, ALASKA

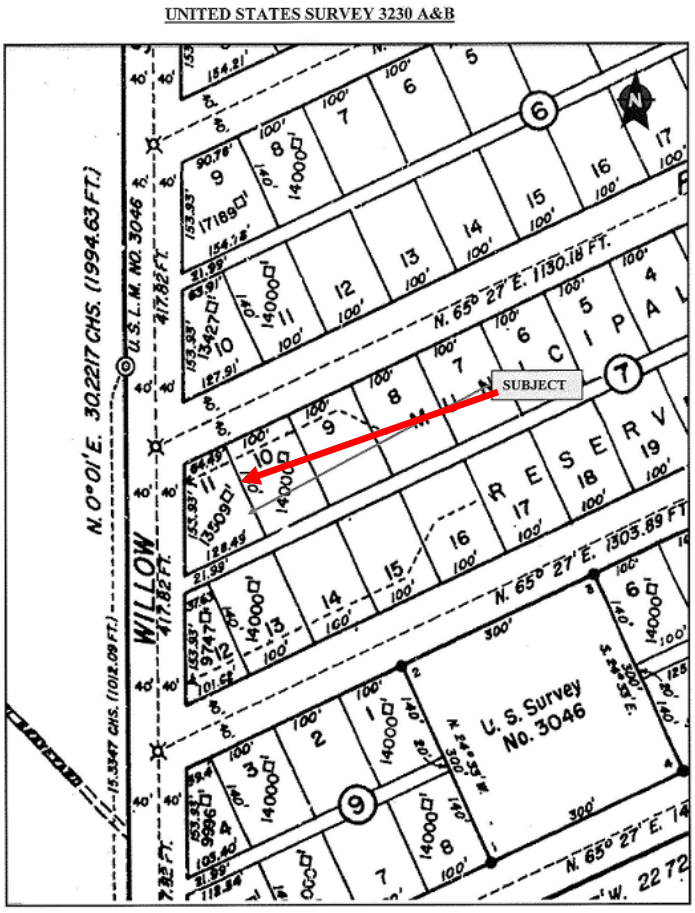
Ordinance #19-13

AN ORDINANCE AUTHORIZING THE DISPOSAL VIA LEASE OF LAND AND BUILDING TO YUKON KUSKOKWIM HEALTH COROPORATION LOT 11, BLOCK 7, US SURVEY 3230 A&B (378 FIFTH AVENUE) PURSUANT TO BMC 4.08.030(c)

WHEREAS, the City of Bethel owns land and a vacant open interior undeveloped building situated at 378 Fifth Avenue;

WHEREAS, the legal description for the land is Lot 11, Block 7, US Survey 3230 A&B, Bethel Recording District, Fourth Judicial District, State of Alaska;

WHEREAS, the property, is pictorially depicted as:



WHEREAS, the building was given to the City by the Department of Defense when they vacated the Armory;

WHEREAS, the building sits on land owned by the City and commonly referred to as the Armory Lands;

WHEREAS, the building is currently in such a state of disrepair as to be uninhabitable;

WHEREAS, Yukon Kuskokwim Health Corporation (YKHC), Office of Environmental Health and Engineering (OEH) is interested in renting the building knowing its condition;

WHEREAS, the appraisal conducted earlier this years provided a fair market rent price for the building in its current condition, for the building once it is repaired and the estimated cost to repair the building;

WHEREAS, the lease being proposed requires rent at full fair market value as though the building is in full repair with a set stipend credit for repairs;

WHEREAS, the City Attorney's office researched a number of ways to rent the building and this method was the most economically sound for the City and gave the City the most financial control and stability;

WHEREAS, the proposed lease contains a full acknowledgement of the condition of the building, a ceiling for repair credits and a timeline for completion of the repairs, along with required City approval of all repairs;

WHEREAS, the lease is significantly beneficial to the City as otherwise the City would have to either contract the repairs out or wait until Property Maintenance could carve out time to make the repairs, an estimated lengthy and time consuming process;

WHEREAS, the Bethel Municipal Code, Section 4.08.030(C) allows the City Council to dispose of property via lease in furtherance of the Development of Local Trade or Industry; to an entity providing a necessary public service without seeking bids and for less than the current appraised value;

WHEREAS, YKHC OEH leases adjacent and land a building where they provide water operator training which has been made available to City employees at no charge;

WHEREAS the building will be used in support of that same program which supports the health and safety of the community;

Introduced by: Acting CM Howell
Introduction Date: June 25, 2019
Public Hearing July 9, 2019
Action:
Vote:

NOW, BE IT ORDAINED, the City Council authorizes the disposal of the above building via lease of land to an Entity in furtherance of Local Trade or Industry.

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

SECTION 2. Authorization. Pursuant to Bethel Municipal Code 04.08.030(C) Disposal

SECTION 3. Effective Date. This Ordinance shall become effective immediately upon passage.

ENACTED THIS _____ DAY OF JULY 2019, BY A VOTE OF _____ IN FAVOR AND _____ OPPOSED.

_____
Fred Watson, Mayor

ATTEST:

_____
Lori Strickler, City Clerk

COMMERCIAL LEASE BETWEEN
CITY OF BETHEL and
BTP, LLC

This LEASE is made on _____, 2019 by and between the City of Bethel, a municipal corporation ("Landlord") and the Yukon Kuskokwim Health Corporation or “YKHC” ("Tenant").

ARTICLE 1
LEASED PREMISES AND TERM

1.01 **Leased Premises**. Landlord, for and in consideration of the rents, covenants and conditions hereinafter specified to be paid, performed and observed by Tenant, hereby leases to Tenant and Tenant hereby leases from Landlord, a building located on a parcel of land situated in the Bethel Recording District, Fourth Judicial District, State of Alaska, more particularly described as:

> A 1970’s vintage, 1,256 square foot one-story wood-frame building situated at *378 Fifth Avenue.*

(Southeast corner of the intersection of Willow Street and Fifth Avenue, more specifically located on Lot 11, Block 7, US Survey 3230 A&B, Bethel Recording District, Fourth Judicial District, State of Alaska)

Latitude/Longitude: 60.795665 North/161.768702 West, NAD 83 Datum

together with all rights, easements, privileges, both subterranean and vertical, and appurtenances attaching or belonging to the described building, but subject to the reservation contained in paragraph 1.02 and the Covenants contained in Article 4 hereof (herein called the "Leased Premises").

1.02 **Reservation of Minerals**. All oil, gas, coal, geothermal resources and minerals whatever nature in or under the above-described land are excluded from the Leased Premises and are reserved to Landlord; provided, however, that during the term of this Lease, Landlord shall not have the right to enter on the surface of the Leased Premises for the purpose of mining and/or excavating such oil, gas, coal, geothermal resources or minerals.

1.03 **Improvements Owned by Landlord**. The following described improvements ("Landlord's Improvements") are situated on and are part of the Leased Premises and are and shall remain throughout the term of this Lease the property of the Landlord:

All fill, retaining walls, berms, fencing, earth contours, wells, utility pipes and lines and all other at-surface or below-surface improvements situated on the Leased Premises on the date of this Lease.

1.04 This Lease shall be and continue in full force and effect for a term of Five (5) years commencing on July 1, 2019 and terminating on June 30, 2024 unless earlier terminated in accordance with the terms of this Lease. Tenant shall have two (2) options for renewal of five (5) year's per renewal.

1.05 **Renewal.** The Tenant shall have the option to renew the Lease for two (2) additional periods of five (5) years by giving the Landlord notice in writing not less than One Hundred and Eighty (180) days prior to the expiration of the initial Lease term or renewal term. The monthly rent rate shall not be increased except as outlined in Section 2 of this Lease Agreement.

1.06 **Holdover.**

A. **With Consent.** If Tenant continues occupying the Premises after the Term ends (Holdover) and if the Holdover is with the Landlord's written consent, it shall be a month-to-month tenancy, terminable on thirty (30) days advance written notice by either party. During the holdover period, rent shall automatically be increased by ten (10%) percent and will remain due and owing on the first day of each month.

B. **Holdover (without consent).** If the Holdover is without Landlord's written consent, then Tenant shall be a tenant-at-sufferance and shall be liable for any damages suffered by Landlord because of Tenant's Holdover. Landlord shall retain all remedies against Tenant who holds over without written consent.

C. **Holdover Terms**. The Holdover shall be on the same terms and conditions of the Lease except: (i) the Term; (ii) Rent; (iii) the extension Term is deleted; (iv) the Quiet Possession provision is deleted if the Holdover is without consent; (v) consent to a sublease may be unreasonably withheld and delayed; (vi) the provision on Landlord's Default is deleted if the Holdover is without consent; and (vii) the Defaulting Party may be Tenant only.

ARTICLE 2
RENT

2.01 **Rent**. Effective July 1, 2019, Tenant shall pay to Landlord, without deduction and without notice or demand, net of all real property taxes, assessments, rates and other charges required to be paid by Tenant under this Lease with respect to the Leased Premises, One Thousand Six Hundred ($1,600) Dollars per month on or before the 1st day of each month during the Lease Term.

Rent shall be adjusted annually on the anniversary date of the Lease by adjusting the then-current rent to reflect any percentage increase in the Consumer Price Index for All Urban Consumers (CPI-U), published by the U.S. Department of Labor, Bureau of Labor Statistics for Anchorage, Alaska from its level at the

beginning to its level at the end of the then-current year. In the event that the Consumer Price Index for the Municipality of Anchorage has decreased during such period, the rent shall remain and hold from the previous year.

ARTICLE 3
BUILDING IMPROVEMENTS

3.01 **Condition of Building.** Tenant acknowledges that the building is currently in significant disrepair. Among the items noted during the appraisal:

- The south side of the building has settled downhill to the south.
- It appears the 2nd room was an add-on. At the marriage line point between the rooms along the east wall, room #2 appears to be pulling away from room #1.
- The building, decks and stairs need to be leveled.
- The exterior siding needs paint and repairs. Some cedar shakes are missing.
- The building is not connected to the public electricity line.
- The building lacks a Toyo space heater.

The appraiser's estimate to repair all such improvements was Twenty-Four Thousand ($24,000) Dollars.

3.02 **Tenant Improvement Allowance.** Landlord agrees to provide Tenant with an allowance of Thirty-Five Thousand ($35,000) Dollars, subject to the provisions set forth herein. Landlord shall reimburse Tenant for the costs actually incurred by Tenant in connection with Tenant's work, which costs may include, without limitation, costs in connection with engineering and design, as well as construction-related costs and expenses up to a maximum aggregate amount of the Tenant Improvement Allowance.

3.03 **Tenant Reimbursement Schedule.** After Tenant certifies to Landlord that Tenant has substantially completed fifty (50%) percent of the construction of Tenant's Leasehold Improvements, and again after Tenant certifies to Landlord that Tenant has substantially completed eighty-five (85%) percent of the construction of Tenant's Leasehold Improvement, Tenant may, in each instance, deliver a written request to Landlord seeking Landlord's payment to Tenant for progress payments equal to fifty (50%) percent and thirty-five (35%) percent respectively, of the Tenant Improvement Allowance, which progress payments Landlord shall remit to Tenant within thirty (30) calendar day after Landlord's receipt of Tenant's written request therefor provided that Tenant has provided certification and submitted to Landlord reasonable evidence of Tenant's payment of amounts attributable to Tenant's soft and hard costs of constructing the Leasehold Improvements, the aggregate amount of which equals or exceeds the amount of the progress payment then sought by Tenant. In no even shall Landlord be obligated to make disbursements in a total amount which exceeds the Tenant Improvement Allowance.

3.04 **Final Reimbursement.** Final reimbursement to Tenant shall be subject to Tenant's furnishing of an unconditional lien waiver from Tenant's general contractor, including a certification from such general contractor that all subcontractors and materialmen have been paid in full.

3.05 **Ownership of Improvements.** All Tenant improvements for which the Tenant Improvement Allowance has been made available shall be deemed Landlord's property upon expiration or earlier termination of the term of this Lease and may not be removed by Tenant from the Premises at any time unless required by Landlord in accordance with a specific provision of this Lease.

ARTICLE 4
QUIET ENJOYMENT

Upon timely payment by Tenant of all rent and other payments required to be paid by Tenant under this Lease, and upon full and faithful observance and performance by Tenant of all of its covenants contained in this Lease, and so long as such observance and performance continues, Tenant shall peaceably hold and enjoy the Leased Premises during the Lease Term without hindrance or interruption by Landlord or anyone lawfully claiming by, through, or under it.

ARTICLE 5
TENANT'S COVENANTS

5.01 **Disposal to Entity Providing Necessary Public Service.** Tenant, as a nonprofit public entity, will be utilizing the Leased Premises to assist Tenant in providing a necessary public service. Should the use of the Leased Premises cease for a period of ninety (90) or more continuous days or should the use of the building no longer be in furtherance of the provision of services to the public, the Tenant shall be deemed to be in default of this Lease Agreement.

5.02 **Improvements Required by Law**. Notwithstanding the provisions of Article 3, Tenant, at Tenant's own expense, during the Lease Term and subject to the requirements of this Lease, shall make, build, maintain and repair any fences, sewers, drains, roads, road widening, driveways, sidewalks, water, underground electric and telecommunications lines, curbs, gutters and other installations which may be required by law to be made, built, maintained, or repaired upon, and in connection with, or for use of the Leased Premises or any part of it, and regardless of whether the same were erected by Landlord or in existence at the inception of this Lease. In case any such installations required by law shall be made, built, maintained or repaired by Landlord after giving the required notice provided for in paragraph 4.06, and if Tenant does not complete the required work within the timeframe provided for in the notice, Tenant shall reimburse Landlord for the actual reasonable costs to cover Landlord's overhead, upon presentation of a bill therefore, as additional rent.

5.03 **Construction or Removal of Improvements, Additions and Alterations.** "Significant Work" as used in this section, means all work which (1) involves the excavation, filling, or other alteration of the grade or drainage of the Leased Premises, or (2) involves the construction, demolition, or removal on or from the Leased Premises of any improvement.

Tenant shall not make alterations to the grade or drainage of the Leased Premises without the written approval of the Landlord. Landlord shall not alter the grade or drainage of the adjacent properties such that drainage will flow over or through the Leased Premises of the Tenant.

5.04 **Repair and Maintenance**. Tenant shall, at Tenant's expense and without notice from Landlord, at all times during the Lease Term, keep all improvements now or hereafter built on the Leased Premises, especially those improvements constructed thereon which are exposed to the view of the public (including but not limited to exterior building walls, windows, doors, fences, signs, landscaping, and yard areas) in good order, condition, maintenance, operability, and repair and of a neat, clean and pleasing appearance to Landlord.

5.05 **Snow Removal**. Tenant shall be responsible for snow removal on the Leased Premises.

5.06 **Observance of Laws.** Tenant, at all times during the Lease Term, at its own expense, and with all due diligence shall observe and comply with all state and federal laws, municipal ordinances, rules and regulations which are now in effect or may later be adopted by any governmental agency, and which may be applicable to the Leased Premises or any improvement on it or any use of it, and shall promptly furnish such evidence of compliance with such laws, ordinances, rules and regulations as Landlord may request from time to time.

In furtherance, and not in limitation, Tenant must, at its own expense, comply with all laws, ordinances, regulations and administrative agency or court orders relating to health, safety, noise, environmental protection, waste disposal, hazardous or toxic materials, and water and air quality. In the event any discharge, leakage, spillage, emission or pollution of any type occurs upon or from the Leased Premises during the Lease Term or any holdover thereafter, Tenant, at its own expense, must clean and restore the Leased Premises to the satisfaction of the Landlord and any governmental body or court having jurisdiction over the matter. However, Tenant shall not be responsible for the clean-up or restoration of the Leased Premises resulting from any discharge, leakage, spillage, emission or pollution to the Leased Premises from surrounding or adjacent premises unless Tenant's actions caused in whole or in part such discharge, leakage, spillage, emission, or pollution, in which case Tenant shall be responsible for the portion of such discharge, leakage, spillage, emission or pollution which was caused by Tenant.

Landlord warrants that at the time this Lease between the parties, Landlord is not aware of any hazardous or toxic materials on the land or inside the Leased Premises.

5.07 Tenant agrees to hold harmless Landlord against all liability, cost and expense (including without limitation, any fines, clean-up costs, judgments, litigation costs, and attorneys' fees) incurred by or levied against Landlord as a result of Tenant's breach of this Lease.

5.08 **Inspection and Repair by Landlord**. Tenant shall repair, maintain, and make good, all conditions required under the provisions of this Lease to be repaired or maintained within five (5) working days from the date of written notice from Landlord with regard to removal of trash or debris, landscape or yard maintenance, snow removal or cleaning, or parking lot lighting replacement and repair, and thirty (30) days from the date of written notice from Landlord with regard to all other matters. If Tenant refuses or neglects to repair or maintain the Leased Premises as required under the terms of this Lease to the reasonable satisfaction of the Landlord after written demand, then Landlord, without prejudice to any other right or remedy it has under this Lease or otherwise, may perform such maintenance work or make such repairs without liability to Tenant for any loss or damage that may accrue to Tenant's property or Tenant's business by reason of the work or repairs. Upon completion of any such repair or maintenance, and no later than ten (10) days after presentation of a bill therefore, Tenant shall pay as additional rent, Landlord's actual costs for making such repairs or performing such maintenance. However, Tenant shall not be responsible for the replacement or repair of any street lights that may illuminate the Premises.

5.09 **Waste and Wrongful Use**. Tenant shall not commit or suffer any waste of the Leased Premises or any unlawful, unsafe, improper, or offensive use thereof or any public or private nuisance thereon.

5.10 **Setback**. Tenant shall observe all setback lines applicable to the Leased Premises and shall not construct or maintain any building or other structure between any street boundary of the Leased Premises and any setback along such boundary, except for fences or walls approved by Landlord.

5.11 **Liens**. Tenant shall not commit or suffer any act or neglect whereby the Leased Premises or the interest of Landlord or Tenant therein at any time during the Lease Term may become subject to any attachment, execution lien, charge, or other encumbrance, and shall defend, indemnify and hold Landlord harmless against all losses, costs, and expenses, including reasonable attorney's fees, paid or incurred by Landlord in connection therewith.

5.12 **Indemnification.** Tenant shall indemnify, defend and hold Landlord harmless from and against any and all claims arising from (1) Tenant's use of the Leased Premises, or from the conduct of Tenant's business, or from any activity, work or

things done, permitted or suffered by Tenant in or about the Leased Premises; (2) any breach or default in the performance of any obligation on Tenant's part to be performed under the terms of this Lease; (3) any negligence of Tenant, or any of Tenant's agents, contractors, customers or employees, or any person claiming by, through or under Tenant; and (4) any accident on or in connection with the Leased Premises, or any fire thereon, or any nuisance made or suffered thereon when and to the extent such claim arises from the negligence of Tenant.

Tenant, upon notice from Landlord, shall defend any of the above described claims at Tenant's expense. Tenant, as a material part of the consideration to Landlord, hereby assumes all risk of damage to property or injury to persons, in, upon or about the Leased Premises. However, this section does not require Tenant to indemnify, defend and hold harmless Landlord from and against any portion of a claim to the extent that portion of the claim is caused by Landlord's negligence, or the negligence of Landlord's agents, contractors or employees arising from Landlord's activities on the Leased Premises. Landlord shall indemnify, defend, and hold harmless Tenant from and against any portion of a claim to the extent that portion of the claim is caused by Landlord's negligence, or the negligence of Landlord's agents, contractors or employees arising from Landlord's activities on the Leased Premises.

Tenant acknowledges that before entering into this Lease it has fully inspected or been provided with an opportunity to fully inspect the Leased Premises and all documents in the possession of Landlord relating to the condition of the Leased Premises, and to test or examine all conditions of or on the Leased Premises. Tenant further acknowledges that, at the time this Lease is entered into and on the basis of the foregoing inspection or opportunity to inspect, Tenant is as knowledgeable about the physical condition of the Leased Premises as Landlord, and on that basis, assumes all risks relating to the condition of the Leased Premises, except risks relating to environmental pollution not caused by Tenant.

5.13 **Costs and Expenses of Landlord**. Tenant shall forthwith pay to Landlord all costs and expenses, including reasonable attorney's fees, which are (1) paid or incurred by Landlord but are required to be paid by Tenant under any provision of this Lease; (2) paid or incurred by Landlord in enforcing any covenant of Tenant contained in this Lease, in protecting itself against or remedying any breach thereof, in recovering possession of the Leased Premises or any part thereof, or in collecting or causing to be paid any delinquent rents, taxes, assessments, or rates; (3) incurred by Landlord in reviewing any matter for which Landlord's approval is sought and in processing such approval under this Lease; or (4) incurred by Landlord in connection with any other action in any respect related to this Lease, the Leased Premises, or Tenant's actions or omissions and the Leased Premises, other than a condemnation action filed by or against Tenant, to and in which Landlord is made a party but not adjudicated to be at fault. The term "costs and expenses" as used in this Lease shall include but not be limited to all of Landlord's out-of-pocket expenditures attributable to the matter involved. Except

as otherwise expressly provided herein, all costs and expenses of Landlord shall be payable by Tenant to Landlord forthwith after mailing or personal delivery of statements therefore to Tenant. Such obligations and interest shall constitute additional rents.

5.14 **Surrender of Leased Premises and Improvements**. Upon the expiration or termination (including termination resulting from Tenant's breach) of this Lease, Tenant, without further notice, shall deliver to Landlord, possession of the Leased Premises. Tenant's improvements shall remain the property of Tenant. At the expiration or termination of the Lease, or any extended term thereof, Tenant shall remove, demolish, or otherwise dispose of all Tenant's improvements within one hundred twenty (120) days of expiration or termination, unless Landlord agrees otherwise, in writing, and shall leave Leased Premises in a clean and cleared condition. In the event of failure or refusal of Tenant to surrender possession of the Leased Premises or to remove Tenant's improvements from the Leased Premises in accordance with this paragraph, Landlord shall have the right to re-enter the Leased Premises and remove therefrom Tenant or any other person, form or corporation claiming by, through or under Tenant, and to declare abandoned and/or remove Tenant's improvements therefrom, and to obtain damages for trespass from Tenant, including but not limited to the actual costs of removal.

5.15 **Utility Services**. Tenant shall arrange for its own utility services and bear all costs for utilities.

5.16 **Discrimination Prohibited**. Tenant will not discriminate in allowing access to and use of the Leased Premises on the grounds of race, color, religion, national origin, ancestry, marital status, disability, gender, sex, sexual orientation, gender identification, or other legally protected status.

5.17 **Underground Conditions and Water Drainage**. Tenant has made, or had the opportunity to make, prior to the construction of any improvements on the Leased Premises will make, its own soil tests of the Leased Premises. This Lease is made subject to and without any liability on the part of the Landlord, its agents or employees because of or resulting from any fill or any subsurface or soil condition on the Leased Premises. Tenant shall not drain or discharge water from the Leased Premises onto adjoining land. The Leased Premises shall be graded and drained to cause the discharge of all water on the Leased Premises at a location or locations approved by Landlord, or into an established drainage easement, if any, on the Leased Premises.

ARTICLE 6
INSURANCE

6.01 **Liability Insurance**. During the entire Lease Term, and during any holdover thereafter, whether or not authorized by Landlord, Tenant shall keep in full force and effect, a policy or policies of general liability and property damage insurance which satisfies the coverage requirements set by Landlord with respect to the

Leased Premises and the business operated by Tenant in which the limit of bodily injury, death, and property damage liability shall be not less than ONE MILLION DOLLARS per occurrence and not less than TWO MILLION DOLLARS in the aggregate, or such higher limits as Landlord may specify; provided, however, that no such limit shall in any way limit Tenant's liability or be construed as a representation of sufficiency to fully protect Tenant or Landlord. The policy or policies purchased pursuant to this paragraph shall name the Tenant as an insured and the Landlord as an additional insured with respect to the Leased Premises and the business operated by Tenant on the Leased Premises. A copy of each policy shall be provided to Landlord within three (3) days of the date this Lease is entered into.

6.02 **Policy Provisions.** Each policy of comprehensive general liability described above shall:

Provide that the liability of the insurer thereunder shall not be affected by, and that the insurer shall not claim, any right of setoff; counterclaim, apportionment, proration, or contribution by reason of any other insurance obtained by or for Landlord, for any person claiming by, through or under Landlord.

Contain no provision relieving the insurer from liability for loss occurring while the hazard to buildings and/or other improvements is increased, whether or not within the knowledge of control of; or because of any breach of warranty or condition or any other act or neglect by Landlord, or any person claiming by, through or under Landlord.

Provide that such policy may not be canceled, whether or not requested by Tenant, unless the insurer first gives not less than thirty (30) days prior written notice thereof to Landlord.

Contain a waiver by the insurer of any right to subrogation to any right of Landlord or Tenant against either of them or against any person claiming by either of them.

ARTICLE 7
EMINENT DOMAIN; CASUALTY

7.01 **Permanent Taking**. In the event of a taking by an entity of competent jurisdiction of all or materially all of the Leased Premises, or a taking of a portion of the Leased Premises that is material to Tenant’s use and occupancy of the Leased Premises, or the determination of the Landlord that all or materially all of the Leased Premises is necessary for a public purpose, this Lease shall terminate on the earlier of vesting of title in, or the taking of possession by the condemner, or the written determination of the Landlord.

If less than materially all of the Leased Premises are taken, of the a taking of a portion of the Leased Premises is not material to Tenant’s use and occupancy of the Leased Premises, or if the Landlord determines that it needs less than materially all of the Leased Premises for a public purpose (herein called a "partial taking"), this Lease shall continue

in effect except as to the portion so taken or condemned, but the rent to be paid by Tenant shall thereafter be reduced by a percentage equal to the proportion that the number of square feet in the Leased Premises so taken bears to the number of square feet of Leased Premises before the partial taking.

7.02 **Disposition of Proceeds**. Landlord is entitled to all proceeds of condemnation except those proceeds specifically allocated for Tenant's improvements.

7.03 **Temporary Taking**. If the whole or any part of the Leased Premises or of Tenant's interest under this Lease is taken by any competent authority for its temporary use or occupancy, this Lease shall not terminate by reason thereof and Tenant shall continue to pay all rental payments and other charges payable by Tenant hereunder and to perform all other terms, covenants, and conditions contained herein, except to the extent Tenant is prevented from so doing by the terms of the order of the taking authority. In the event of a temporary taking, Tenant shall be entitled to receive the entire amount of the award and shall be obligated, at its sole expense, to restore the Leased Premises as nearly as may be reasonably possible to the condition in which they existed immediately prior to such taking; provided, however, that if the period of temporary use or occupancy extends beyond the expiration of the Lease Term, the award shall be apportioned between Landlord and Tenant as of said date of expiration, after Landlord shall have received the entire portion of the award attributable to physical damage to the Leased Premises and any improvements thereon and to the restoration thereof to the condition existing immediately prior to the taking or condemnation.

7.04 **Casualty.** If the improvements on the Leased Premises shall be damaged or rendered wholly or partially unusable for Tenant's business purposes by fire or other casualty during the Term of this Lease, Tenant may terminate this Lease by giving notice to Landlord within ninety (90) days of the date of the fire or other casualty. If Tenant does not terminate this Lease, no rent shall abate after the date of the casualty, whether the Leased Premises is usable or not, and Tenant shall promptly rebuild or repair the improvements to substantially their former condition.

ARTICLE 8
ASSIGNMENTS AND MORTGAGES

Landlord 's Consent Required. Tenant shall not voluntarily or by operation of law assign, transfer, mortgage, sublet, or otherwise transfer or encumber all or any part of Tenant's interest in this Lease or in the Leased Premises without Landlord's prior written consent. Landlord's consent shall not be unreasonably withheld. Any attempted assignment, transfer, mortgage, encumbrance or subletting without such consent shall be void and shall constitute a breach of this Lease.

ARTICLE 9
TERMINATION, DEFAULT AND DEFEASANCE

9.01 **Event of Default**: Each of the following events shall be a default by Tenant and a breach of this Lease:

A. Failure to Continuously Operate a Facility for the General Public.
If the building is used for commercial or retail purposes, to be available to the general public does not require that all members of the general public be admitted, only that there be no discrimination in admission based on race, gender, sexual orientation, gender identify age, sex or other protected category. Additionally, continuously operate shall be defined as open and operating regularly scheduled days and hours with no more than ninety (90) calendar days closure during any calendar year.

B. Failure to Perform Covenants. Abandonment or surrender of the Leased Premises or of the leasehold estate, or failure or refusal to pay when due any installment of rent or any other sum required by this Lease to be paid by Tenant or to perform as required or conditioned by any other covenant or condition of this Lease.

C. Appointment of Receiver. The appointment of a receiver or trustee to take possession of the Leased Premises or improvements or of the Tenant's interest in the leasehold estate or of Tenant's operation on the Leased Premises for any reason, including but not limited to, assignment of benefit of creditors, but not including receivership pursuant to administration of the estate of any deceased or incompetent Tenant.

9.02 **Notice and Right to Cure**

A. Notices. As a precondition to pursuing any remedy for an alleged default by Tenant, Landlord shall, before pursuing any remedy, give notice of default to Tenant.

B. Method of Giving Notice. Landlord shall give notice of default by either personal service or by first class mail.

C. Tenant's Right to Cure Default(s). If the alleged default is nonpayment of rent, Tenant shall have five (5) days after the notice is given to cure the default. For the cure of any other default, Tenant shall promptly and diligently cure the default and shall have thirty (30) days after notice is given to complete the cure.

D. Non-Waiver. Acceptance by Landlord of any rents shall not be deemed to be a waiver by it of any breach by Tenant of any of its covenants contained in this Lease or of the right of Landlord to re-enter the Leased Premises or to declare forfeiture for any such breach. Waiver by Landlord of any breach by Tenant shall not be deemed to be a waiver of the right of Landlord to declare forfeiture for any other breach or of any other covenant.

9.03 **Right of Landlord to Protect Against Default**
If Tenant fails to observe or perform any of its covenants contained herein, Landlord, at any time thereafter and with seven (7) days' notice, or in the case of

a situation deemed by Landlord to constitute an emergency, without notice, shall have the right but not the obligation to observe or perform such covenant for the account and at the expense of Tenant, and shall not be liable to Tenant or anyone claiming by, through, or under it for any loss or damage by reason thereof to the occupancy, business, or property of any of them. All costs and expenses paid or incurred by Landlord in observing or performing such covenant shall constitute additional rents, which Tenant shall forthwith pay to Landlord upon statements therefore.

9.04 **Landlord's Remedies**

If any default by Tenant shall continue uncured, following notice of default as required by this Lease, for the period applicable to the default, Landlord has the following remedies in addition to all other rights and remedies provided by law or equity or other provisions of this Lease, to which Landlord may resort cumulatively or in the alternative. The election of one remedy for any one default shall not foreclose an election of any other remedy for another default or for the same default at a later time.

A. Termination in the Event of Default. Landlord may, at Landlord's election, terminate this Lease in the event of default by giving Tenant notice of termination. On the giving of the notice, all Tenants' rights in the Leased Premises shall terminate. Promptly after notice of termination, Tenant shall surrender and vacate the Leased Premises and all Improvements not required to be removed, and Landlord may re-enter and take possession of the Leased Premises and all remaining improvements. Termination under this paragraph shall not relieve Tenant from the payment of any sum then due to Landlord or from any claim for damages previously accrued or accruing against Tenant, or any other relief available to Landlord.

B. Recovery of Rent. Landlord shall be entitled, at Landlord’s election, to each installment of rent or to any combination of installments for any period before termination, plus interest at the rate of twelve and a half (12.5%) percent from the due date of each installment.

C. Tenant's Personal Property. Landlord may, if Tenant fails to remove personal property or Tenant's improvements within the time allowed above, use Tenant's personal property, Tenant's improvements and trade fixtures on the Leased Premises, or any of such property without liability for use or damage, or store them at the sole risk and cost to Tenant.

D. Damages. Landlord shall also be entitled, at Landlord's election, to damages in the following sums: (1) all amounts that would have fallen due as rent between the time of termination and the time the Leased premises are relet; (2) the amount, if any, by which the rent under this Lease exceeds the rent under any subsequent Lease upon reletting calculated over the Lease Term; and (3)

all administrative, marketing, maintenance, repair, cleaning and similar costs incurred by Landlord.

E. Application of Sums Collected by Landlord. Landlord shall apply all proceeds of reletting as follows: first, to the payment of reasonable expenses (including attorney's fees and broker's commissions or both) paid or incurred by or on behalf of Landlord; second, in recovering possession, placing the Leased Premises and improvements in good condition, and preparing or altering the Leased Premises or improvements for reletting; third, to the reasonable expenses of securing new Tenants; fourth, to the fulfillment of Tenant's covenants to the end of the Lease term; and finally, to Landlord's uses and purposes.

F. Costs. In the event Tenant shall be in default in the performance of any of its obligations under this Lease, and Landlord takes any action to enforce this Lease, including, but not limited to, court action, Tenant shall pay Landlord all the expenses incurred by Landlord in taking such action including full and reasonable attorney's fees.

ARTICLE 10
GENERAL PROVISIONS

10.01 **Landlord's Right to Entry, Inspection and Repair**

Landlord may enter and inspect the Premises, at any time during regular business hours, with or without the presence of Tenant or its authorized representative, after giving twenty-four (24) hours advance notice to Tenant of such inspection. To protect the confidentiality of Tenant's clients, Landlord shall take every step possible to not enter without the presence and consent of Tenant except in an emergency or upon agreement by Tenant, such agreement not to be unreasonably withheld or refused. In the event of an emergency, Landlord may enter and inspect the Leased Premises on reasonable notice to Tenant (including no notice if the circumstances warrant) and make such repairs or institute such measures, on the account and at the expense of Tenant, as may be necessary to avert or terminate the emergency. An emergency is any action, event or condition, either extant or imminent, that threatens significant damage to property or injury to persons on or near the Leased Premises, and includes, but is not limited to, flood, fire, explosion, uncontrolled dangerous discharge or release of water or fluids, or the unauthorized or illegal placement of hazardous or toxic materials on Leased Premises). The provisions of this paragraph apply to Landlord solely in its capacity as Landlord hereunder and not in any other capacity.

10.02 **Notices**

All notices, requests, demands and other communications hereunder shall be deemed given only if in writing signed by an authorized representative of the sender and delivered by facsimile, email (with a hard copy mailed first class) or mailed and addressed to the respective parties as follows:

To Landlord:
City Manager
City of Bethel
P.O. Box 1388
Bethel, Alaska 99559

With Required Copy to:

City of Bethel Legal Department
PO Box 1388
Bethel, Alaska 99559-1388

To Tenant:

10.03 **Covenants and Conditions**

Every provision in this Lease which imposes an obligation upon Tenant or invests an option, power, or right in Landlord shall be deemed to be a covenant of Tenant in favor of Landlord, and the time of observance and performance by Tenant of each such covenant shall be of the essence. Full and faithful observance and performance by Tenant of each of its covenants contained in this Lease shall be a condition of this Lease.

10.04 **Integration and Amendment**

Except as otherwise expressly provided in this Lease, this Lease is a complete integration of every agreement and representation made by or on behalf of Landlord and Tenant with respect to the Leased Premises, and no implied covenant or prior oral or written agreement shall be held to vary the provisions of this Lease, any law or custom to the contrary notwithstanding. No amendment or other modification of the provisions of this Lease shall be effective unless incorporated in a written instrument duly executed and acknowledged by Landlord and Tenant.

10.05 **Survival and Severability**

If any provision of this Lease shall be deemed to be void or otherwise unenforceable by any court or other tribunal of competent jurisdiction, other than at the initiative or with the support of Landlord, within thirty (30) days of receipt of written notice of such holding, Landlord shall have the right and option, exercisable by written notice thereof to Tenant, to terminate this Lease effective as of the date of such written notice of exercise. It is understood and agreed that otherwise this Lease, except for such provision so held to be void or otherwise unenforceable, shall remain in full force and effect.

10.06 **Binding Effect**

This Lease shall be binding upon and shall inure to the benefit of Landlord and Tenant and their respective successors and assigns. The designations "Landlord" and "Tenant" include their respective successors and assigns and shall be so construed that the use of the singular includes the plural number, and vice versa, and the use of any gender include the other genders. If at any time during the Lease Term Tenant is more than one person or entity, including persons who are partners and operate Tenancy as a partnership, their liability thereunder shall be joint and several.

10.07 **Landlord's Authority to Convey Fee Title**

Landlord retains the absolute and unconditional right to convey fee title in the Leased Premises or an interest or estate therein, subject to this Lease and the interest of any qualified mortgagee.

10.08 **Tenant's Authority to Execute Lease**

The Tenant represents that the person signing this Lease on its behalf has been duly authorized to sign this Lease and has the authority to bind the Tenant.

10.09 **Captions**

The captions of the paragraphs are for convenience only, are not operative, and neither limit nor amplify in any way the provisions hereof.

10.10 **Execution and Counterparts**

This Lease may be executed in two or more counterparts, each of which shall be an original and all of which shall constitute one and the same instrument.

10.11 **Governing Law/Construction**

This Lease shall be construed and governed by the laws of the State of Alaska. This Lease was negotiated between the parties and shall not be strictly construed against either party. In the event that a question, dispute, or requirements for interpretation or construction shall arise with respect to this Lease, jurisdiction and venue shall lie exclusively with the Bethel Court in the Fourth Judicial District at Bethel, Alaska.

IN WITNESS WHEREOF. Landlord and Tenant have duly executed and acknowledged this Lease.

CITY OF BETHEL

William F. Howell, III
Acting City Manager

YUKON KUSKOKWIM HEALTH CORP.

By: Dan Winkleman
Its: President

Introduced by: Council Member Albertson
Introduction Date: June 25, 2019
Public Hearing July 9, 2019
Action:
Vote:

CITY OF BETHEL, ALASKA

Ordinance #19-14
AN ORDINANCE BY THE BETHEL CITY COUNCIL AMENDING TITLE 5.08 ALCOHOLIC BEVERAGES

WHEREAS, the Bethel City Council through careful evaluation of the statistics provided by our first responders, have identified an excessive rate of alcohol related calls in the community and is taking action to help reduce the harm and nuisances caused by non-responsible drinking;

WHEREAS, the qualified voters of Bethel has opted out of the State of Alaska's Local Option regulations thereby electing to of limited restrictions of the sale of alcoholic beverages within the City of Bethel;

WHEREAS, in an effort to mitigate nuisances and harm caused by alcoholic beverages in the community, the City Council hereby modifies the Bethel Municipal Code to implement more strict laws associated with the sale, distribution, purchasing and consumption of alcoholic beverages;

WHEREAS, near the sites of the current and previous retail stores, a number of professional establishments (businesses and offices) attempting to carry on a peaceful workday are facing undue interruptions from intoxicants;

WHEREAS, in an effort to reduce the harm caused by these nuisances, the Council amends the hours and days of operations for retail stores to reduce the number of hours the stores can be open during the business day which is expected to help reduce the nuisances near and around the businesses and offices;

WHEREAS, the City wishes to take extra precaution to help ensure the sales of alcoholic beverages are not made to those under the age of 21 or to those that have alcohol restrictions placed by the court;

WHEREAS, Alaska Statutes 4.21.050 proof of age and of not being restricted from purchasing alcoholic beverages, states if an agent or employee has reason to question if the person as attained the age of 21 years or is restricted from purchasing alcohol, the agent shall require the person to sign a statement that the person is over the age of 21 or is not restricted from purchasing alcohol (this form is supplied by the Alcohol Beverage Control Office);

Introduced by: Council Member Albertson
Introduction Date: June 25, 2019
Public Hearing July 9, 2019
Action:
Vote:

WHEREAS, in an effort to reduce the chances of vendors selling to people under the age of 21 or selling to someone who as restrictions, the City will now require the purchaser to provide a State of Alaska ID or Driver's License or sign a statement saying they are of age and not on restricted status, the State of Alaska Driver's License and/or ID are the only ID that will indicate court restrictions on individuals;

WHEREAS, some vendors are accepting other forms of IDs, passports, military IDs, tribal IDs, while these may be acceptable forms, they do not indicate alcohol restrictions which could mean there are people being sold alcohol that have restriction;

WHEREAS, more strict restrictions on the number of bottes of distilled spirits sold by each vendor will reduce the amount of hard spirits available to any one person, which is expected to reduce the amount of nuisances and harm caused by the consumption of this high alcohol content liquor;

WHEREAS, the sell to list will be used as a tool for the vendor to help keep track of the number of bottles of distilled spirits sold;

WHEREAS, the Police Department has identified the current law of public consumption are difficult to enforce, as the officers are rarely able to catch someone in the act of drinking;

WHEREAS, by changing the regulation to prohibiting open containers in public, anyone caught with a container that has the Internal Revenue Service strip stamp not intact, any container or package that has been opened at least once since purchase or manufacture; or any container or package containing an alcoholic beverage other than the original container or package could be fined;

WHEREAS, the City Council wishes to take

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

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

Section 2. Amendment: Section 5.08 of the Bethel Municipal Code, Alcoholic Beverages is hereby amended, new language is underlined and old language is stricken.

Introduced by: Council Member Albertson
Introduction Date: June 25, 2019
Public Hearing July 9, 2019
Action:
Vote:

Chapter 5.08

ALCOHOLIC BEVERAGES

Sections:

5.08.010 Definitions.
5.08.020 Procedure for administrative review of license applications.
5.08.030 City council review of license.
5.08.040 Council action on liquor license applications.
5.08.050 Recordkeeping required of all sellers.
5.08.060 Conditional use permit required.
5.08.070 Licensee responsible for employees' actions on premises.
5.08.080 Hours and days of operation.
5.08.090 Obligation to enforce restrictions within licensed premises.
5.08.100 Alcohol server training course requirement.
5.08.110 Operation of licensed premises.
5.08.120 Restrictions on purchase and sale of alcoholic beverages.
5.08.130* Purchase and sale of restriction on distilled spirits.
5.08.130 Sale to intoxicated persons.
5.08.140 Eviction of patrons.
5.08.150 Open container.
5.08.160 Transportation of alcohol.
5.08.170 Inspection of premises.
5.08.180 Access for enforcement.
5.08.190 Alcohol offenses.
5.08.200 Penalties.

5.08.010 Definitions.

A. "Alcoholic beverages" means all spirituous, vinous, malt or other fermented or distilled beverages whatever the origin, that are intended for human consumption as a beverage and that contain one-half of one (1) percent or more of alcohol by volume, whether produced commercially or privately.

B. "Board" means the Alcoholic Beverage Control Board established under AS 04.06.010.

C. "Intoxicated person" means a person whose physical or mental conduct is substantially impaired as a result of the introduction of an alcoholic beverage into the person's body and who exhibits those plain and easily observed or discovered outward manifestations of behavior commonly known to be produced by the overconsumption of alcoholic beverages.

D. "Licensed premises" means any or all designated portions of a building or structure, rooms or enclosures in the building or structure, or real estate leased, used, controlled, or operated by a licensee in the conduct of business for which the licensee is licensed by the ABC Board and the city at the specific address for which the license is issued.

E. "Liquor license" means any of the licenses or permits described in AS 04.11.080

F. "Open containers" means any original container or package without the Internal Revenue Service strip stamp intact upon such container or package; any container or package that has been opened at least once since purchase or manufacture; or any container or package containing an alcoholic beverage other than the original container or package.

G. "Person" means an individual, partnership, cooperative, association, joint venture, corporation, estate trust, business, receiver, or any entity, group or combination acting as a unit.

H. "Public place" means a public street, sidewalk, alley, or park, a state or municipal building or associated grounds, municipal harbor facilities, and stores or establishments doing business with the public and not authorized to sell intoxicating liquor for consumption on the premises.

5.08.020 Procedure for administrative review of license applications.

A. Upon receipt of notice from the Board of an application for the issuance, renewal, transfer of location or transfer to another person of a liquor license for a license location in the city, the clerk shall as soon as practicable distribute copies of the notice to the city manager, the city council and the city attorney.

B. The city manager shall immediately refer the application for review as follows:

1. To the planning director or their designee to determine if the applicant has complied with the conditional use provision of the Bethel Municipal Code;

2. To the finance director or their designee to determine whether the licensee or license transferee is delinquent in paying to the city any tax, assessment, business license fee, or fee or charge for utility service for the business and/or affiliate (as defined in 3 AAC 304.990) that operates or will operate, under the liquor license.

3. To the police and fire chiefs to determine whether, in their opinion, there have been excessive calls for service, excessive numbers of convictions or arrests for unlawful activity at the license location, police or ambulance reports, reports of unlawful activity at the license location, or police, fire or ambulance dispatches to the license location.

C. The fire chief, police chief, planning director and finance director shall forward written statements to the city manager within fourteen (14) calendar days after the application was referred by the city manager.

D. The city manager shall provide a written report to the city council, with a copy to the applicant, listing any objections to the Board's issuance of the application. The city manager's report is due within twenty (20) days after the date of receipt of notice from the city clerk.

E. An applicant who believes the city manager's report contains factual errors shall file a written protest outlining, with specifics, the sections of the report believed to be factually incorrect. Such protest must be filed to the city manager not later than ten (10) calendar days after issuance of the city manager report.

F. The city manager shall investigate the applicant's protest and shall issue a written decision no later than ten (10) calendar days after receipt of the protest.

G. The city clerk shall place the matter of the application upon the city council agenda not less than thirty (30) and not more than forty (40) calendar days after the date of receipt from the Board.

5.08.030 City council review of license.

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

A. City records indicating whether the applicant and/or transferor is in violation of the city sales tax ordinances or regulations, has failed to comply with any of the filing, reporting or payment provisions of the city ordinances or regulations, or has any unpaid balance due on tax accounts for which the applicant and/or transferor is liable;

B. The character and public interests of the surrounding neighborhood;

C. Actual law enforcement problems with supporting data;

D. The concentration of other licenses of the same and other types in the area;

E. The adequacy of parking facilities;

F. The safety of ingress to and egress from the premises;

G. Compliance with state and local fire, health and safety codes;

H. The degree of control the licensee has or proposes to have over the conduct of the licensed business. In determining the applicant's demonstrated ability to maintain order and prevent unlawful conduct, the city council may consider police reports, the appearance of a readily identifiable pattern or practice of recurring violent acts or unlawful conduct on the licensed premises, testimony presented before the council, written comments, or other evidence deemed to be reliable and relevant to the purpose of this subsection;

I. Whether the applicant can demonstrate prospective or continued compliance with operations procedures for licensed premises set forth in BMC 5.08.110;

J. The proximity to a school or alcohol inpatient or outpatient treatment;

K. Any history of convictions of the applicants and affiliates of the applicants for:

1. Any violation of AS Title 4;

L. Any other factor the city council determines is relevant to a particular application.

5.08.040 Council action on liquor license applications.

A. If a city council member wishes to protest the application, a resolution shall be prepared and introduced at the next regularly scheduled council meeting or earlier if necessary to meet the requirements of AS 04.11.480.

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

1. A copy of the proposed resolution; and

2. Notice of the date and time when council will consider the resolution; and

3. Notice the applicant will have an opportunity, pursuant to 3 AAC 304.145(d), to appear before the council to defend the application.

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

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

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

2. Recommend the license be approved with conditions; or

3. Take no action on the application.

5.08.050 Recordkeeping required of all sellers.

A. Premises licensed under AS 04.11 shall keep and preserve suitable records of all sales made by the seller and such other books or accounts as may be necessary to determine the amount of tax which it is obliged to collect, including records of the gross daily sales, together with invoices of purchases and sales, bills of lading, bills of sale or other pertinent records and documents as will substantiate and prove the accuracy of a tax return.

B. "Suitable records of all sales made" as used in subsection A of this section shall mean at a minimum a daily "Z" or "Z-total" report or equivalent (a "Z" or "Z-total" report is the report generated by the cash register at the end of each business day, which calculates, at least, the totals for each department key, total sales and total receipts – although some cash registers have more detailed "Z" or "Z-total" reports). Whatever records are kept must reflect the total daily purchases of taxable items. If no taxable sales are made on a business day, the records kept shall so reflect "zero" sales on that day. Records must also be kept to substantiate any claimed deductions or exclusions authorized by law. Records may be written, stored on data processing equipment or may be in any form that the city may readily examine.

C. All sellers within the city who sell alcoholic beverages must have a cash register and must record each retail sale on a cash register that provides, at a minimum, a daily "Z" or "Z-total" report, or equivalent.

D. Records shall be kept in a systematic manner conforming to accepted accounting methods and procedures. Such records include:

1. The books of accounts ordinarily maintained by a prudent business person. Records and accounting information stored on computers must be provided to the city in a readable form when requested by the city.

2. Documents of original entry such as original source documents, prenumbered sequential source documents, prenumbered sequential receipts, cash register tapes, sales journals, invoices, job orders, contracts, or other documents of original entry that support the entries in the books of accounts.

3. All schedules or working papers used to prepare gross and taxable sales results, including receipts or invoices showing exempt sales.

E. Records must show:

1. Gross receipts and amounts due from all taxable and exempt sales; and

2. The total purchase price of all goods and other property purchased for sale, resale, consumption, or lease.

F. Every seller shall preserve suitable records of sales for a period of three (3) years from the date of the return reporting such sales, and shall preserve for a period of three (3) years all invoices of goods and merchandise purchased for resale, and all such other books, invoices and records as may be necessary to accurately determine the amount of taxes which the seller was obliged to collect under this chapter.

G. The city finance department may examine and audit any relevant books, papers, records, returns or memoranda of any seller, may require the attendance of any seller, or any officer or employee of a seller, at a meeting with the finance director or his or her designee, and may require production of all relevant business records, in order to determine whether the seller has complied with this chapter.

5.08.060 Conditional use permit required.
Unless exempt, any use that includes the retail sale or dispensing of alcoholic beverages is permitted only by a conditional use permit. The conditional use requirement applies only to the retail sale or dispensing of alcoholic beverages and not to related principal or accessory uses.

5.08.070 Licensee responsible for employees' actions on premises.
A. A licensee may neither knowingly allow agents or employees to violate this chapter or AS Title 4 or regulations adopted thereunder, or to recklessly or with criminal or civil negligence fail to act in accordance with the duties prescribed under AS 04.21.030 with the result that an agent or employee of the licensee violates a law, regulation or ordinance.

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

5.08.080 Hours and days of operation.
A. Premises licensed under AS 04.11.080 for the service and consumption of alcoholic beverages shall be closed for the sale, service and consumption of alcoholic beverages between the hours of 1:00 a.m. and 11:00 a.m. Monday through Friday, and between the hours of 2:00 a.m. and 11:00 a.m. on Saturday or Sunday or on a legal holiday recognized by the state under AS 44.12.010 with the exception of New Year's Day during which the establishment shall close by 3:00 a.m.

B. All other retail premises licensed under AS 04.11.080 ~~shall be closed~~ may be open for the sale of alcoholic beverages between the hours of ~~11:00 p.m. and 11:00 a.m~~ 2:00 p.m. and 10:00 p.m.

C. A person may not sell, offer for sale, give, furnish, deliver or consume an alcoholic beverage on premises licensed under AS 04.11 during the hours of closure set forth in this section.

D. A licensee, an agent, or employee may not permit a person to consume alcoholic beverages on the licensed premises between the hours of closure set forth in this section.

E. As authorized by AS 04.16.070(b), the sale of alcoholic beverages on state and/or city election days is not prohibited.

5.08.090 Obligation to enforce restrictions within licensed premises.
A licensee, their agent or employee may not permit the consumption of alcoholic beverages by any person within the licensed premises unless it is permitted by the license.

5.08.100 Alcohol server training course requirement.
A. A licensee, their agent or employees may not sell or dispense alcoholic beverages to the public prior to the successful completion of a liquor server awareness training program approved by the Board.

B. Licensees, their agents and employees who sell or dispense alcoholic beverages must be able to show proof of completion of a liquor server awareness training program approved by the Board upon request by a peace officer, the city manager (or their designee) or the Board.

5.08.110 Operation of licensed premises.
A. Except as otherwise provided in this section, the operations procedures set forth in subsection B of this section shall apply to all persons seeking the issuance, renewal or transfer of any license issued by the Board by virtue of AS Title 4 and other applicable provisions of law allowing the sale or service of alcoholic beverages. Subsection (B)(1) of this section shall not apply to persons seeking the issuance, transfer or renewal of licenses issued under AS Title 4 which do not authorize the sale or service of alcoholic beverages for consumption on the premises licensed.

B. Persons seeking the issuance, transfer or renewal of licenses issued by the Board under AS Title 4 and other applicable provisions of law shall comply with the following operations procedures:

1. Happy Hours. The city adopts AS 04.16.015, Pricing and marketing of alcoholic beverages.

2. Public Transportation. Licensees shall make available to their patrons access to means of public transportation or permit patrons to make arrangements for transportation off the premises.

3. Notice of Penalties. Operators shall place, at conspicuous locations within licensed premises, a clear and legible sign describing applicable penalties for driving under the influence, and for service or sale of alcoholic beverages to minors or intoxicated persons.

4. Availability of Nonalcoholic Drinks. Operators shall have nonalcoholic drinks available for their patrons.

5. Compliance Determination. In order to determine whether applicants seeking the issuance, renewal or transfer of alcoholic beverage licenses have complied with the provisions of this chapter, applicants shall, at the request of the city, submit to the city manager (or their designee) an alcoholic beverage licensee compliance form. Upon request, operators shall also provide the city manager with certificates from all current employees demonstrating that those employees have successfully completed a liquor service awareness training program such as the program for techniques in alcohol management (T.A.M.) as approved by the Board.

6. Warning Signs for Impoundment and Forfeiture of Vehicles Seized Pursuant to an Arrest for or Charge of Driving under the Influence or Refusal to Submit to Chemical Tests. Upon adoption of a municipal code allowing for the forfeiture, operators shall display at conspicuous places in licensed premises two (2) signs warning that vehicles are seized in cases of driving under the influence or refusal to submit to chemical tests. One of these warning signs shall be at least eleven (11) inches by fourteen (14) inches in size, and must read, in lettering at least one-half (1/2) inch high and in contrasting colors or black and white, "DRIVE UNDER THE INFLUENCE – LOSE YOUR CAR." The sign described in the preceding sentence must carry a logo or illustration approved by the chief of police or their designee which shows an automobile being towed. The second warning sign shall be at least eleven (11) inches by fourteen (14) inches and must read, in letters at least one-quarter (1/4) inch high and in contrasting colors or black and white:

WARNING: IF YOU DRIVE UNDER THE INFLUENCE OR LET ANYONE DRIVE YOUR VEHICLE UNDER THE INFLUENCE, YOU WILL LOSE YOUR VEHICLE. The police SEIZE cars and trucks driven by intoxicated drivers. A vehicle will be IMPOUNDED for 30 days for the driver's first

DUI offense. A vehicle will be FORFEITED if the driver has been convicted of DUI in the past ten (10) years.

7. Warning Signs Required Other. The city adopts AS 04.21.065(b).

C. Mandatory Identification Check in the Retail Sale of Alcoholic Beverages. ~~Licensee or licensee's employee or agent shall require any purchaser (and anyone accompanying the purchaser) of alcoholic beverages to produce a current government-issued identification with birth date and photograph for identification check prior to any on-premises sale. The purpose of the identification check is to verify age and eligibility to purchase alcoholic beverages. Failure to conduct the mandatory identification check required by this section is a violation of code and the licensee or licensee's employee or agent failing to conduct the mandatory identification check shall be subject to the civil penalty provisions of this chapter. For purposes of mandatory identification check required by this section:~~

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

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

Any person ordering, purchasing, attempting to purchase or otherwise procuring or attempting to procure alcoholic beverage shall present a valid Alaska driver's license or valid Alaska identification card as proof of age and that the person is not restricted from purchasing alcoholic beverages.

If a person is unable to present a valid Alaska driver's license or valid Alaska identification card, the agent may elect to accept a passport, military identification card or other government issued identification but only when the person provides a signed statement indicated the individual is 21 years of age or over or is not restricted from purchasing alcoholic beverages. The signed statement shall be retained by the vender for a period of 90 days.

3. An ongoing pattern of noncompliance with the mandatory identification check required by this code may result in review of the conditions of use or may result in the revocation of a special use permit previously approved by the city council. Action by the city council on licensee's special use permit under this section shall be in

addition to any criminal or civil penalty applicable to the individual making the sale without performing the mandatory identification check.

D. Security Personnel. Each premises licensed under AS 04.11.090, Beverage dispensary license, shall employ at least one (1) person who shall be on duty between 8:00 p.m. and the closing hour of the licensed premises. This person shall not be the bartender on duty, and shall be on duty for the express purpose of maintaining order within the establishment and assuring compliance, by the clientele, with the provisions of this chapter.

E. Security Cameras. At least one (1) twenty-four- (24-) hour time-lapse security camera is required to be installed and properly maintained in the interior of the building at all locations licensed under AS 04.11.150, Package store license. The cameras must be able to capture all sales transactions. To the extent allowed by law, the establishment operators may be required to provide any tapes or other recording media from the security camera to the police department.

F. Premises to Be Cleared upon Closing. Upon closing, licensees shall clear alcoholic beverage establishment of all persons, other than necessary employees, within fifteen (15) minutes after the closing hours.

G. Age Limit Signs to Be Exhibited. All licensees shall cause to remain displayed upon the premises and in the entrance to the premises of their establishments a conspicuous sign in a prominent place visible from outside the establishment, which shall in substance state: "No person under the age of twenty-one (21) years permitted. Any such person will be prosecuted to the full extent of the law." Excepting that licensed establishments regularly serving meals may modify the sign in accordance with the provisions of this chapter and AS Title 4.

5.08.120 <u>Licensee</u> Restrictions on purchase and sale of alcoholic beverages.

A. A person licensed under AS 04.11.090 (Beverage Dispensary License), 04.11.100 (Restaurant or Eating Place), 04.11.110 (Club License), or 04.11.150 (Package Store) may not purchase, sell, or offer for sale an alcoholic beverage unless the alcoholic beverage being purchased, sold, or offered for sale was obtained from a person licensed under:

1. AS 04.11.160 (wholesale licenses) as a primary source of supply for the alcoholic beverage being purchased, sold, or offered for sale;

2. AS 04.11.150 (package store) and the alcoholic beverage being purchased, sold, or offered for sale was obtained from a person licensed under AS 04.11.160 (wholesale) as a primary source of supply; or

3. AS 04.11.130 (licensed brewery), 04.11.140 (licensed winery), or 04.11.170 (licensed distillery).

5.08.130 Purchase and Sales Restriction on Distilled Spirits.

A. A person may not purchase more than two containers/bottles of distilled spirits from a single vendor in one day.

B. A licensee, an agent, or employee may not permit a person to purchase more than two containers/bottles of distilled spirits in one day. A licensee shall maintain a "sell to" list of customers purchasing hard spirits.

5.08.*130 Sale to intoxicated persons. ** numbering system will be corrected following the final adoption of the ordinance.*

A. A licensee, his agent or employee may not knowingly or negligently:

1. Sell, give or barter alcoholic beverages to an intoxicated person;

2. Allow another person to sell, give or barter an alcoholic beverage to an intoxicated person within the licensed premises;

3. Allow an intoxicated person to enter and remain within the licensed premises or to consume an alcoholic beverage within the licensed premises; or

4. Permit an intoxicated person to sell or serve alcoholic beverages.

5.08.140 Eviction of patrons.

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

5.08.150 ~~Open container.~~ Public possession or consumption of intoxicating liquor.

~~A. It shall be unlawful to consume an open container of alcoholic beverages on the public streets, sidewalks, alleys, parks, or other public places throughout the city. Open containers of alcoholic beverages may be carried in a vehicle in a locked truck or other secured location inaccessible to the driver and passengers within the vehicle.~~

~~B. Open containers are permitted on private residential property, with the consent of the owner or legal occupant of the property.~~

A. No person may consume an intoxicating liquor in or upon a public place.

B. No person may possess an intoxicating liquor in an open container in or upon a public place.

5.08.160 Transportation of alcohol.

The transportation of alcoholic beverages by common carrier or commercial carrier within the city of Bethel to a residential home or nonlicensed alcohol distribution facility is strictly prohibited except as expressly authorized by AS Title 4.

5.08.170 Inspection of premises.

A. The premises of licensees authorized to sell or distribute intoxicating liquor shall be easily accessible for inspection by police officers during all regular hours of the transaction of business upon the premises, and at any other time with reasonable notice by the officer.

B. The police department may inspect any premises with an alcoholic beverage license for compliance with conditions on the license. Upon discovering a violation of such conditions, the police department shall submit a written report of the violation to the city clerk for review by the city council and provide a copy thereof to the licensee.

C. If at any time there appears to be a readily identifiable pattern or practice of recurring violent acts or unlawful conduct in a licensed premises, the city may send notice of possible protest to the licensee that he or she must submit and implement a plan for remedial action or be in jeopardy that a protest will be filed to any renewal, transfer of location or transfer of ownership sought by the licensee.

D. Upon receiving a report of conditions violation, the city council may:

1. Revoke the premises' conditional use permit;

2. Protest the issuance, renewal, transfer, relocation or continued operation of the license;

3. Recommend imposition of conditions on the state liquor license pursuant to AS 04.11.480(c); or

4. Notify the Board that a licensee has violated conditions and request that an accusation pursuant to AS 04.11.370 be brought against the licensee.

E. Prior to taking any of the actions listed in subsection (D) of this section, the city shall give the permittee or licensee notice and an opportunity to be heard on the accusation(s) at a publicly noticed council meeting.

5.08.180 Access for enforcement.

A. The public entrance of licensed alcoholic beverage establishments shall be open and unlocked before and after the closing hour of such establishment if there are any patrons in the establishment.

B. Licensees of licensed alcoholic beverage establishments, their employees and all patrons in such establishments shall permit and aid the entry of any law enforcement officer during all hours of operation and at any other time when there are two or more persons in such licensed alcoholic beverage establishment.

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

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

5.08.190 Alcohol offenses.

A. Violation of any section of this chapter shall be an infraction.

B. The Bethel police department shall have the authority to write and serve citations for violations of the provisions of any portion of this chapter. [Ord. 15-32 § 2.]

5.08.200 Penalties.

Offense	BMC Section	Mandatory Court Appearance	Penalty Amount
Premises open during nonpermissible hours	5.08.080(A) & (B)	No	1st Offense: $150 2nd Offense: $300 3rd & subsequent offenses: $700
Selling, offering for sale, giving, furnishing, delivering or consuming alcohol on premises during hours of closure	5.08.080(C)	No	$300
Allowing person to consume alcohol on premises during hours of closure	5.08.080(D)	No	$300
Allowing consumption on premises in violation of license	5.08.090	No	$500
Selling or dispensing alcohol prior to	5.08.100(A)	Yes	$1,000

Offense	BMC Section	Mandatory Court Appearance	Penalty Amount
successful completion of a liquor server awareness training program			
Allowing employee to sell or dispense alcohol prior to their successful completion of a liquor server awareness training program	5.08.100(A)	Yes	$1,000
Failure to show proof of successful completion of a liquor server awareness training program	5.08.100(B)	Correctable	$300
Violation of happy hour rules	5.08.110(B)(1)	No	$300
Failure to provide access to means of public transportation to patrons or to arrange for transportation off premises	5.08.110(B)(2)	No	$500
Failure to properly post signs	5.08.110(B)(3), (6), (7)	No	$250
Failure to have nonalcoholic drinks available	5.08.110(B)(4)	No	$150
Failure to submit an alcoholic beverage compliance form upon request	5.08.110(B)(5)	No	$300

Offense	BMC Section	Mandatory Court Appearance	Penalty Amount
Failure to check identification of purchaser	5.08.110(C)	Yes	1st offense: $500 2nd offense: $700 3rd & subsequent offenses: $1,000
Acceptance of nonconforming identification for purchase of alcoholic beverage	5.08.110(C)	Yes	1st offense: $150 2nd offense: $300 3rd & subsequent offenses: $700
Failure to have security personnel on premises as required	5.08.110(D)	No	1st offense: $500 2nd offense: $700 3rd & subsequent offenses: $1,000
Failure to install or maintain security equipment	5.08.110(E)	Yes	1st offense: $500 2nd offense: $700 3rd & subsequent offenses: $1,000
Interior camera not positioned to capture sales transactions	5.08.110(E)	Yes	1st offense: $500 2nd offense: $700 3rd & subsequent offenses: $1,000
Failure to clear premises after closing	5.08.110(F)	No	1st offense: $150 2nd offense: $300 3rd & subsequent offenses: $700
Failing to post age limit signs	5.08.110(G)	No	$300
Sale of alcoholic beverages improperly obtained	5.08.120	Yes	$700
Purchase/Sale Restrictions Distilled Spirits	5.08.130	Yes	1st offense: $150 2nd offense: $300 3rd & subsequent offenses: $700

Offense	BMC Section	Mandatory Court Appearance	Penalty Amount
Sale of alcohol to an intoxicated person	5.08.130 **Numbers will be corrected…*	Yes	1st offense: $500 2nd offense: $700 3rd & subsequent offenses: $1,000
Providing alcohol to an intoxicated person	5.08.130	Yes	1st offense: $500 2nd offense: $700 3rd & subsequent offenses: $1,000
Allowing another person to sell or provide alcohol to an intoxicated person	5.08.130(A)(2)	Yes	1st offense: $500 2nd offense: $700 3rd & subsequent offenses: $1,000
Allowing an intoxicated person to enter and remain within licensed premises	5.08.130(A)(3)	Yes	1st offense: $150 2nd offense: $300 3rd & subsequent offenses: $700
Permitting intoxicated person to consume alcoholic beverage within a licensed premises	5.08.130(A)(3)	Yes	1st offense: $500 2nd offense: $700 3rd & subsequent offenses: $1,000
Permitting an intoxicated person to sell or serve an alcoholic beverage	5.08.130(A)(4)	Yes	1st offense: $500 2nd offense: $700 3rd & subsequent offenses: $1,000
Carrying, possessing or consuming an open container in public	5.08.150 (A) (B)	No	1st offense: $150 2nd offense: $300 3rd & subsequent offenses: $700
Transportation of alcohol by common carrier	5.08.160	Yes	1st offense: $500 2nd offense: $700 3rd & subsequent offenses: $1,000
Transportation of alcohol by commercial carrier	5.08.160	Yes	1st offense: $500 2nd offense: $700

Offense	BMC Section	Mandatory Court Appearance	Penalty Amount
			3rd & subsequent offenses: $1,000
Failure to make premises easily accessible for inspection by police officers	5.08.170(A)	Yes	$700
Failing to maintain premises unlocked while patrons are on premises	5.08.180(A)	Yes	$1,000
Failure to permit or aid the entry of law enforcement during hours of operation	5.08.180(B)	Yes	$700
Failure to permit or aid the entry of law enforcement any time there are two (2) or more persons on the premises	5.08.180(B)	Yes	$700

SECTION 3. Effective Date. This ordinance shall become effective on August 1, 2019 upon passage by the Bethel City Council.

ENACTED THIS __ DAY OF JULY 2019 BY A VOTE OF _ IN FAVOR AND _ OPPOSED.

_____
Fred Watson, Mayor

ATTEST:

_____
Lori Strickler, City Clerk

Introduced by: Council Member Albertson
Date: June 25, 2019
Action:
Vote:

CITY OF BETHEL, ALASKA

Resolution #19-07

A RESOLUTION BY THE BETHEL CITY COUNCIL PROTESTING THE TRANSFER OF PACKAGE STORE LICENSE NO. 5533 FROM KUSKO LIQUOR, OWNED BY CEZARY MACZYNSKI TO ACC LIQUOR STORE, OWNED BY THE NORTH WEST COMPANY (INTERNATIONAL) INC. PROPOSING TO OPERATE AT 811 3RD AVENUE

WHEREAS, Cezary Maczynski doing business as Kusko Liquor and Northwest Company International Inc. doing business as ACC Liquor Store submitted an application to the Alaska Alcohol Marijuana Control Office (AMCO) to transfer Package Store License #5533 from Kusko Liquor to ACC Liquor Store;

WHEREAS, the proposed Package Store License Transfer would relocate the operation of the license from 801 Front Street, to 811 3rd Avenue, Bethel, Alaska;

WHEREAS, on February 13, 2018 the City of Bethel City Council adopted Resolution 18-03 Protesting the license renewal for AC Quickstop, located at 131 Akakeek St. owned and operated by the North West Company (International) Inc. citing many issues, one being the lack of control and oversite at the North West Company's business locations;

WHEREAS, this protest resulted in the denial of the AC Quickstop license renewal thereby closing AC Quickstop's operation effective May 23, 2018;

WHEREAS, while AC Quickstop was in operation not only did the total call for services in the community increase substantially but so did the calls for service at the location of their two stores: AC Quickstop, 131 Akakeek and AC Main Store, 135 Ridgecrest Dr.;

WHEREAS, the calls for intoxicated pedestrians at AC Quickstop totaled 51 in 2015, when the store was not operating, in 2017 when the store was in full operation, the call volume increased to 147 , an increase of 188% in just that single location;

WHEREAS, the calls for service for intoxicated pedestrians at the AC Main store totaled 211 in 2015 and 967 for 2017, which represents a 358% increase;

WHEREAS, liquor license holders and the policy standards they follow have significant impacts on reducing nuisances caused by the distribution of alcohol;

WHEREAS, during the time AC Quickstop was licensed, it was the sole package store operating within the City of Bethel;

WHEREAS, currently Caribou Traders is the sole package store in operation within the City of Bethel;

WHEREAS, having just one package store in operation for the months of January to May in 2017, 2018 and 2019 has allowed the City to do a comparison of the average calls for service by operator;

WHEREAS, the comparison clearly shows that for the same time period AC Quickstop the Police, Fire and EMS personnel responded to more calls for service on average per month than the operation period for Caribou Traders;

WHEREAS, the information below is derived from calls for service statistics provided by the Bethel Police and Fire Departments;

WHEREAS, the monthly average reflected for AC Quickstop used the calls for service from January 1, 2017- May 31, 2017 and January 1, 2018 – May 31, 2018;

WHEREAS, the monthly average reflected for Caribou Traders used the calls for service from January 1, 2019 - May 31, 2019 (except for the CFS for ETOH EMT/EMS, Assault and MVI was not available for May of 2019 so those averages are based off of four months);

Police	**AC Quickstop Ave. per Mo.**	**Caribou T. Ave. per Mo.**	**AC Quickstop % Higher than Caribou T.**
Total Calls Police	1598.4	1511.2	6%
Death Investigations	2	0.8	150%
Sexual Assault	3.8	3.6	6%
Assault	41.1	28.4	45%
Domestic Violence	26.3	18.2	45%
Intoxicated Pedestrian	480.7	393.4	22%
EMT/EMS			
Ethical Alcohol EMT/EMS	88	78.5	12%
Assault	13.3	8.5	56%
Motor Vehicle Incident	4.3	3.75	15%
Total Runs EMT/EMS	147.2	120	23%

Introduced by: Council Member Albertson
Date: June 25, 2019
Action:
Vote:

WHEREAS, when comparing the overall calls for service in the community it is clear through the calls for service detail to their business operations and throughout the City, the business practices of the North West Company is damaging to the welfare of the residents of the City and puts a strain on very limited City resources;

NOW, THEREFORE, BE IT RESOLVED with the information provided and all relevant facts considered the Council finds the issuance of a Package Store License to ACC Liquor Store to be a public safety concern due to the lack of security and operational control the Northwest Company (International) Inc. has at their places of business and protests the transfer of package store license No. 5533 from Kusko Liquor to ACC Liquor Store.

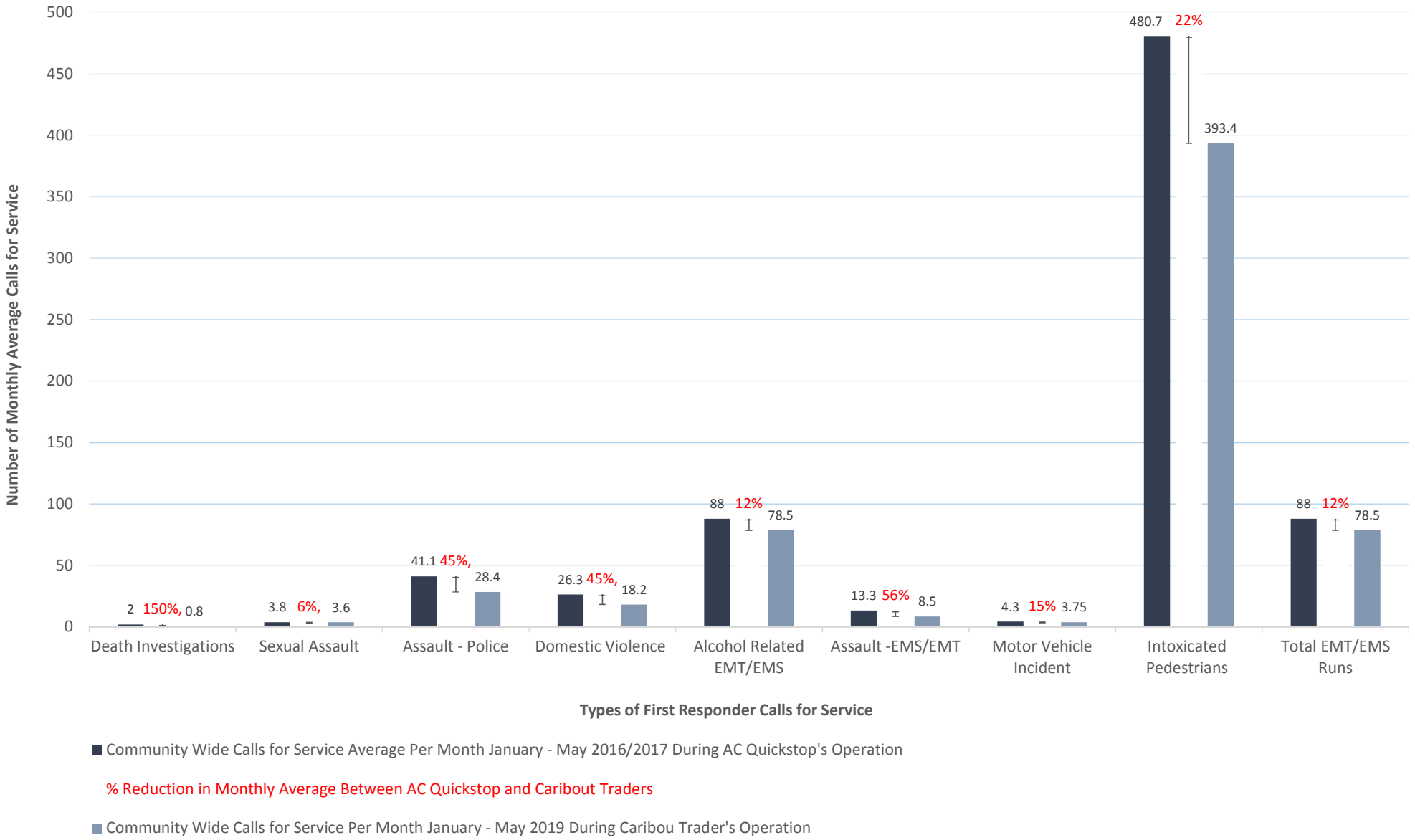
ENACTED THIS 25 DAY OF JUNE 2019 BY A VOTE OF _ IN FAVOR AND _ OPPOSED.

ATTEST:

_____
Fred Watson, Mayor

_____
Lori Strickler, City Clerk

Comparing Community Wide First Responder Calls for Service During the Operational Periods of Two Package Liquor Stores



Calls for Service Comparables AC Quickstop and Caribou Traders

Police and EMS/EMT Calls AC Quickstop

2017	Jan	Feb	Mar	Apr	May	5 Mo. Total	Mo. Ave.
Police Calls							
Total Calls	1507	1317	1490	1840	1790	7944	1588.8
Death Investigation	6	0	0	1	3	10	2
Sexual Assault	6	0	1	4	5	16	3.2
Assault- Police	30	32	28	54	55	199	39.8
Domestic Violence	30	23	38	32	42	165	33
Intox Pedestrian	434	374	434	635	474	2351	470.2
EMS/EMT Calls							
ETOH EMT/EMS	44	49	69	128	70	360	72
Assault- EMT/EMS	7	4	9	7	13	40	8
Motor Vh. Incident	7	3	4	13	0	27	5.4
Total EMT/EMS Runs	132	111	118	212	140	713	142.6
2018	**Jan**	**Feb**	**Mar**	**Apr**	**May**	**5 Mo. Total**	**Mo. Ave.**
Police Calls							
Total Calls	1482	1410	1778	1752	1618	8040	1608
Death Investigation	2	3	2	3	0	10	2
Sexual Assault	4	2	4	6	6	22	4.4
Assault- Police	33	56	39	36	48	212	42.4
Domestic Violence	20	20	19	19	20	98	19.6
Intox Pedestrian	380	403	587	594	492	2456	491.2
EMS/EMT Calls							
ETOH EMT/EMS	95	95	112	116	102	520	104
Assault- EMT/EMS	20	19	19	11	24	93	18.6
Motor Vh. Incident	6	4	1	3	2	16	3.2
Total EMT/EMS Runs	142	142	171	165	139	759	151.8

Police and EMS/EMT Calls Caribou Traders Liquor

2019	Jan	Feb	Mar	Apr	May	5 Mo. Total	Mo. Ave.
Police Calls							
Total Calls	1349	1372	1622	1632	1581	7556	1511.2
Death Investigation	2	0	0	1	1	4	0.8
Sexual Assault	4	4	4	6	0	18	3.6
Assault- Police	29	22	30	27	34	142	28.4
Domestic Violence	16	16	19	24	16	91	18.2
Intox Pedestrian	282	293	408	532	452	1967	393.4
EMS/EMT Calls							
ETOH EMT/EMS	70	64	77	103		314	78.5
Assault- EMT/EMS	11	2	10	11		34	8.5
Motor Vh. Incident	4	3	2	6		15	3.75
Total EMT/EMS Runs	113	104	124	146	113	600	120

AC Quickstop 2017/2018 Totals and Averages

Police	10 Mo. Total	Mo. Ave.
Total Calls	15984	1598.4
Death Investigation	20	2
Sexual Assault	38	3.8
Assault- Police	411	41.1
Domestic Violence	263	26.3
Intox Pedestrian	4807	480.7
EMS/EMT		
ETOH EMT/EMS	880	88
Assault- EMT/EMS	133	13.3
Motor Vh. Incident	43	4.3
Total EMT/EMS Runs	1472	147.2

Comparing Monthly Average During the January - May Operating Period

Police	AC Quickstop Ave. per Mo. 2016/2017	Caribou T. Ave. per Mo. 2019	% Difference
Total Calls	1598.4	1511.2	6%
Death Investigation	2	0.8	150%
Sexual Assault	3.8	3.6	6%
Assault- Police	41.1	28.4	45%
Domestic Violence	26.3	18.2	45%
Intox Pedestrian	480.7	393.4	22%
EMS/EMT			
ETOH EMT/EMS	88	78.5	12%
Assault- EMT/EMS	13.3	8.5	56%
Motor Vh. Incident	4.3	3.75	15%
Total EMT/EMS Runs	147.2	120	23%

THE STATE of ALASKA
GOVERNOR MICHAEL J. DUNLEAVY

Department of Commerce, Community, and Economic Development
ALCOHOL & MARIJUANA CONTROL OFFICE
550 West 7th Avenue, Suite 1600
Anchorage, AK 99501
Main: 907.269.035

May 7, 2019

City of Bethel
Attn: Lori Strickler
VIA Email: lstrickler@cityofbethel.net
Attn: Patty Burley, City Attorney
VIA Email: pburley@cityofbethel.net

License Type:	Package Store	**License Number:**	5533
Licensee:	The North West Company (International) Inc.		
Doing Business As:	ACC Liquor Store		
Premises Address	811 3rd Avenue		

☐ **New Application**
☒ **Transfer of Ownership Application**
☒ **Transfer of Location Application**
☐ **Transfer of Controlling Interest Application**

We have received a completed application for the above listed license (see attached application documents) within your jurisdiction. This is the notice required under AS 04.11.480.

A local governing body may protest the approval of an application(s) pursuant to AS 04.11.480 by furnishing the director **and** the applicant with a clear and concise written statement of reasons for the protest within 60 days of receipt of this notice, and by allowing the applicant a reasonable opportunity to defend the application before a meeting of the local governing body, as required by 3 AAC 304.145(d). If a protest is filed, the board will deny the application unless the board finds that the protest is arbitrary, capricious, and unreasonable. To protest the application referenced above, please submit your protest within 60 days and show proof of service upon the applicant.

AS 04.11.491 – AS 04.11.509 provide that the board will deny a license application if the board finds that the license is prohibited under as a result of an election conducted under AS 04.11.507.

AS 04.11.420 provides that the board will not issue a license when a local governing body protests an application on the grounds that the applicant's proposed licensed premises are located in a place within the local government where a local zoning ordinance prohibits the alcohol establishment, unless the local government has approved a variance from the local ordinance.

Sincerely,

Erika McConnell

Erika McConnell, Director
amco.localgovernmentonly@alaska.gov

Alcohol and Marijuana Control Office
550 W 7th Avenue, Suite 1600
Anchorage, AK 99501
alcohol.licensing@alaska.gov
https://www.commerce.alaska.gov/web/amco
Phone: 907.269.0350

Alaska Alcoholic Beverage Control Board

Form AB-01: Transfer License Application

What is this form?

This transfer license application form is required for all individuals or entities seeking to apply for the transfer of ownership and/or location of an existing liquor license. Applicants should review **Title 04** of **Alaska Statutes** and **Chapter 304** of the **Alaska Administrative Code**. All fields of this form must be completed, per AS 04.11.260, AS 04.11.280, AS 04.11.290, and 3 AAC 304.105.

This form must be completed and submitted to AMCO's main office, along with all other required forms and documents, before any license application will be considered complete.

Section 1 – Transferor Information

Enter information for the ***current*** licensee and licensed establishment.

Licensee:	Cezary Maczynski		**License #:**		5533
License Type:	Package Store		**Statutory Reference:**		04.11.150
Doing Business As:	Kusko Liquor				
Premises Address:	801 Front Street				
City:	Bethel	**State:**	Alaska	**ZIP:**	99559
Local Governing Body:	Bethel City Council				

Transfer Type:

- [x] Regular transfer
- [ ] Transfer with security interest
- [ ] Involuntary retransfer

OFFICE USE ONLY			
Complete Date:		***Transaction #:***	1045479
Board Meeting Date:		***License Years:***	~~19/20~~ 2018–2019
Issue Date:		***BRE:***	TJ2

AMCO

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Alcohol and Marijuana Control Office
550 W 7th Avenue, Suite 1600
Anchorage, AK 99501
alcohol.licensing@alaska.gov
https://www.commerce.alaska.gov/web/amco
Phone: 907.269.0350

Alaska Alcoholic Beverage Control Board

Form AB-01: Transfer License Application

Section 2 – Transferee Information

Enter information for the ***new*** applicant and/or location seeking to be licensed.

Licensee:	The North West Company (International) Inc.				
Doing Business As:	ACC Liquor Store				
Premises Address:	811 3rd Avenue				
City:	Bethel	**State:**	Alaska	**ZIP:**	99559
Community Council:					

Mailing Address:	77 Main Street				
City:	Winnipeg	**State:**	Manitoba	**ZIP:**	R3C 1A3

Designated Licensee:	Walter Pickett		
Contact Phone:	907-273-4642	**Business Phone:**	907-273-4600
Contact Email:	wpickett@northwest.ca		

Seasonal License? Yes ☐ No ☑ **If "Yes", write your six-month operating period:** _____

Section 3 – Premises Information

Premises to be licensed is:

☑ an existing facility ☐ a new building ☐ a proposed building

The next two questions must be completed by beverage dispensary (including tourism) and package store applicants only:

What is the distance of the shortest pedestrian route from the public entrance of the building of your proposed premises to the outer boundaries of the nearest school grounds? Include the unit of measurement in your answer.

Kuskokwim Campus - University of Alaska Fairbanks 0.7 miles

What is the distance of the shortest pedestrian route from the public entrance of the building of your proposed premises to the public entrance of the nearest church building? Include the unit of measurement in your answer.

Bethel Moravian Church 0.4 miles

AMCO Received 4/23/2019

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Alaska Alcoholic Beverage Control Board

Form AB-01: Transfer License Application

Section 4 – Sole Proprietor Ownership Information

This section must be completed by any sole proprietor who is applying for a license. Entities should skip to Section 5.
If more space is needed, please attach a separate sheet with the required information.
The following information must be completed for each licensee and each affiliate (spouse).

This individual is an: ☐ applicant ☐ affiliate

Name:					
Address:					
City:		**State:**		**ZIP:**	

This individual is an: ☐ applicant ☐ affiliate

Name:					
Address:					
City:		**State:**		**ZIP:**	

Section 5 – Entity Ownership Information

This section must be completed by any entity, including a corporation, limited liability company (LLC), partnership, or limited partnership, that is applying for a license. Sole proprietors should skip to Section 6.
If more space is needed, please attach a separate sheet with the required information.

- If the applicant is a **corporation**, the following information must be completed for each ***stockholder who owns 10% or more*** of the stock in the corporation, and for each ***president, vice-president, secretary,*** and ***managing officer***.
- If the applicant is a **limited liability organization**, the following information must be completed for each ***member with an ownership interest of 10% or more***, and for each ***manager***.
- If the applicant is a **partnership**, including a **limited partnership**, the following information must be completed for each ***partner with an interest of 10% or more***, and for each ***general partner***.

Entity Official:	NWC (U.S.) Holdings Inc.				
Title(s):	Shareholder	**Phone:**	204-934-1756	**% Owned:**	100
Address:	77 Main Street				
City:	Winnipeg	**State:**	Manitoba	**ZIP:**	R3C 1A3

AMCO
APR – 9 2019

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Alaska Alcoholic Beverage Control Board

Form AB-01: Transfer License Application

Entity Official:	Rex Wilhelm				
Title(s):	Director, President	**Phone:**	907-273-4662	**% Owned:**	
Address:	6800 Crooked Tree Circle				
City:	Anchorage	**State:**	Alaska	**ZIP:**	99507-7005

Entity Official:	Walter Pickett				
Title(s):	Director, Vice President	**Phone:**	907-273-4642	**% Owned:**	
Address:	19211 Upper Skyline Drive				
City:	Eagle River	**State:**	Alaska	**ZIP:**	99577-7936

Entity Official:	Edward Kennedy				
Title(s):	Director	**Phone:**	204-934-1482	**% Owned:**	
Address:	111 Shoreline Drive				
City:	Winnipeg	**State:**	Manitoba	**ZIP:**	R3P 2E9

This subsection must be completed by any applicant that is a corporation or LLC. Corporations and LLCs are required to be in good standing with the Alaska Division of Corporations (DOC) and have a registered agent who is an individual resident of the state of Alaska.

DOC Entity #:	120143	**AK Formed Date:**	12/18/2008	**Home State:**	Delaware
Registered Agent:	Walter Pickett		**Agent's Phone:**	907-273-4642	
Agent's Mailing Address:	3830 Old International Airport Road, Suite 200				
City:	Anchorage	**State:**	Alaska	**ZIP:**	99502-0901

Residency of Agent: Yes No

Is your corporation or LLC's registered agent an individual resident of the state of Alaska? ☑ ☐

Alcohol and Marijuana Control Office
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Anchorage, AK 99501
alcohol.licensing@alaska.gov
https://www.commerce.alaska.gov/web/amco
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Alaska Alcoholic Beverage Control Board

Form AB-01: Transfer License Application

Entity Official:	John King				
Title(s):	Treasurer, Vice President	**Phone:**	204-934-1397	**% Owned:**	
Address:	11 Yager Cove				
City:	Winnipeg	**State:**	Manitoba	**ZIP:**	R3R 3S8

Entity Official:	Amanda Sutton				
Title(s):	Secretary, Vice President	**Phone:**	204-934-1756	**% Owned:**	
Address:	216-902 Headmaster Row				
City:	Winnipeg	**State:**	Manitoba	**ZIP:**	R2G 4K6

Entity Official:					
Title(s):		**Phone:**		**% Owned:**	
Address:					
City:		**State:**		**ZIP:**	

This subsection must be completed by any applicant that is a corporation or LLC. Corporations and LLCs are required to be in good standing with the Alaska Division of Corporations (DOC) and have a registered agent who is an individual resident of the state of Alaska.

DOC Entity #:	120143	**AK Formed Date:**	12/18/2008	**Home State:**	Delaware
Registered Agent:	Walter Pickett		**Agent's Phone:**	907-273-4642	
Agent's Mailing Address:	3830 Old International Airport Road, Suite 200				
City:	Anchorage	**State:**	Alaska	**ZIP:**	99502-0901

Residency of Agent: Yes No

Is your corporation or LLC's registered agent an individual resident of the state of Alaska? ☑ ☐

AMCO Received 4/23/2019

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Alaska Alcoholic Beverage Control Board

Form AB-01: Transfer License Application

Section 6 – Other Licenses

Ownership and financial interest in other alcoholic beverage businesses: Yes No

Does any representative or owner named as a transferee in this application have any direct or indirect financial interest in any other alcoholic beverage business that does business in or is licensed in Alaska? ☑ ☐

If "Yes", disclose which individual(s) has the financial interest, what the type of business is, and if licensed in Alaska, which license number(s) and license type(s):

1. The North West Company (International) Inc.; Commercial Retail; Lic. No. 8; Package Store.
2. The North West Company (International) Inc.; Commercial Retail; Lic. No. 775; Package Store.
3. The North West Company (International) Inc.; Commercial Retail; Lic. No. 1248; Package Store.
4. The North West Company (International) Inc.; Commercial Retail; Lic. No. 1463; Package Store.
5. The North West Company (International) Inc.; Commercial Retail; Lic. No. 1948; Package Store.
6. The North West Company (International) Inc.; Commercial Retail; Lic. No. 3410; Package Store.
7. The North West Company (International) Inc.; Commercial Retail; Lic. No. 3537; Package Store.
8. The North West Company (International) Inc.; Commercial Retail; Lic. No. 164; Package Store.

Section 7 – Authorization

Communication with AMCO staff: Yes No

Does any person other than a licensee named in this application have authority to discuss this license with AMCO staff? ☑ ☐

If "Yes", disclose the name of the individual and the reason for this authorization:

Josilda Rodrigues E: jrodrigues@northwest.ca T: (204) 934-1705

AMCO
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Alaska Alcoholic Beverage Control Board

Form AB-01: Transfer License Application

Section 8 – Transferor Certifications

Additional copies of this page may be attached, as needed, for the controlling interest of the current licensee to be represented.

I declare under penalty of perjury that the undersigned represents a **controlling interest** of the current licensee. I additionally certify that I, as the current licensee (either the sole proprietor or the controlling interest of the currently licensed entity) have examined this application, approve of the transfer of this license, and find the information on this application to be true, correct, and complete.

Signature of transferor

CEZARY MACZYNSKI
Printed name of transferor

Subscribed and sworn to before me this 14th day of March, 2019.

JASON BROWN
My Commission Expires
NOTARY PUBLIC
Sep. 18, 2020
STATE OF ALASKA

Signature of Notary Public

Notary Public in and for the State of Alaska.

My commission expires: 09/16/2020

Signature of transferor

Printed name of transferor

Subscribed and sworn to before me this _____ day of _____, 20____.

Signature of Notary Public

Notary Public in and for the State of _____.

My commission expires: _____

AMCO
APR – 9 2019

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Alaska Alcoholic Beverage Control Board

Form AB-01: Transfer License Application

Section 9 – Transferee Certifications

Read each line below, and then sign your initials in the box to the right of each statement:	Initials
I certify that all proposed licensees (as defined in AS 04.11.260) and affiliates have been listed on this application.	
I certify that all proposed licensees have been listed with the Division of Corporations.	
I certify that I understand that providing a false statement on this form or any other form provided by AMCO is grounds for rejection or denial of this application or revocation of any license issued.	
I certify that all licensees, agents, and employees who sell or serve alcoholic beverages or check the identification of a patron will complete an approved alcohol server education course, if required by AS 04.21.025, and, while selling or serving alcoholic beverages, will carry or have available to show a current course card or a photocopy of the card certifying completion of approved alcohol server education course, if required by 3 AAC 304.465.	
I agree to provide all information required by the Alcoholic Beverage Control Board in support of this application.	

As an applicant for a liquor license, I declare under penalty of perjury that I have read and am familiar with AS 04 and 3 AAC 304, and that this application, including all accompanying schedules and statements, is true, correct, and complete.

Signature of transferee

WALTER PICKETT
Printed name

Subscribed and sworn to before me this 18 day of MARCH, 2019.

Signature of Notary Public

NOTARY PUBLIC
JAMIE COLE
STATE OF ALASKA
My Commission Expires September 25, 2021

Notary Public in and for the State of ALASKA.

My commission expires: 9/25/2021

AMCO
APR – 9 2019

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Alaska Alcoholic Beverage Control Board

Form AB-02: Premises Diagram

What is this form?

A detailed diagram of the proposed licensed premises is required for all liquor license applications, per AS 04.11.260 and 3 AAC 304.185. Your diagram must include dimensions and must show all entrances and boundaries of the premises, walls, bars, fixtures, and areas of storage, service, consumption, and manufacturing. If your proposed premises is located within a building or building complex that contains multiple businesses and/or tenants, please provide an additional page that clearly shows the location of your proposed premises within the building or building complex, along with the addresses and/or suite numbers of the other businesses and/or tenants within the building or building complex.

The second page of this form is not required. Blueprints, CAD drawings, or other clearly drawn and marked diagrams may be submitted in lieu of the second page of this form. The first page must still be completed, attached to, and submitted with any supplemental diagrams. An AMCO employee may require you to complete the second page of this form if additional documentation for your premises diagram is needed.

This form must be completed and submitted to AMCO's main office before any license application will be considered complete.

	Yes	No
I have attached blueprints, CAD drawings, or other supporting documents in addition to, or in lieu of, the second page of this form.	☑	☐

Section 1 – Establishment Information

Enter information for the business seeking to be licensed, as identified on the license application.

Licensee:	The North West Company (International) Inc.	**License Number:**			
License Type:	Package Store				
Doing Business As:	ACC Liquor Store				
Premises Address:	811 3rd Avenue				
City:	Bethel	**State:**	AK	**ZIP:**	99559

AMCO Received 4/23/2019

Alcohol and Marijuana Control Office
550 W 7th Avenue, Suite 1600
Anchorage, AK 99501
alcohol.licensing@alaska.gov
https://www.commerce.alaska.gov/web/amco
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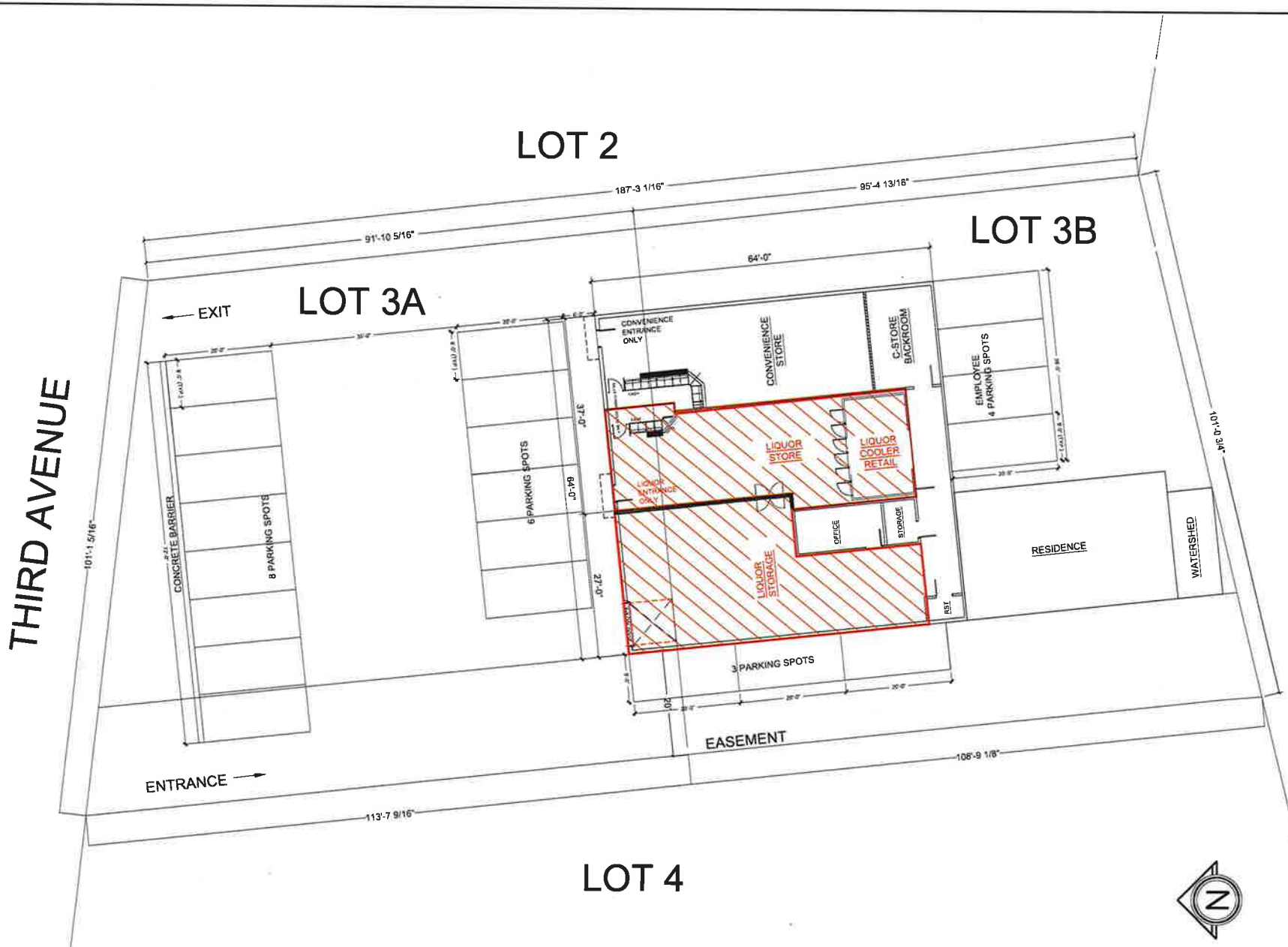
Alaska Alcoholic Beverage Control Board

Form AB-02: Premises Diagram

Section 2 – Detailed Premises Diagram

Clearly indicate the boundaries of the premises and the proposed licensed area within that property. Clearly indicate the interior layout of any enclosed areas on the proposed premises. Clearly identify all entrances and exits, walls, bars, and fixtures, and outline in red the perimeter of the areas designated for alcohol storage, service, consumption, and manufacturing. Include dimensions, cross-streets, and points of reference in your drawing. You may attach blueprints or other detailed drawings that meet the requirements of this form.



GENERAL NOTES

Revision

Do not scale this drawing. All discrepancies in dimension and detail must be reported immediately to The North West Company, Facilities Management department. No variations or modifications to work shown on this drawing are to be carried out without written approval from The North West Company, Facilities Management department. This drawing is the exclusive property of The North West Company and may not be reproduced or distributed without permission from The North West Company.

THE NORTH WEST COMPANY

77 Main Street
Winnipeg, Manitoba Canada
Facilities Management
Telephone: (204) 934-1633
Fax: (204) 934-1355

Project Title
ACC Liquor Store
811 Third Avenue
BETHEL ALASKA
NEW STORE

Drawing Title
Drawn By CJLIAN
Date 03/15/2019
Scale: 1/8" = 1'-0"
Area: +/-4,086 SQ FT
SHEET NO.
ID-0.0
SITE PLAN

AMCO Received 4/23/2019

City of Bethel

Administration
P.O. Box 1388 Bethel, Alaska 99559
Phone # 907-543-1371
Fax # 907-543-4171

May 24, 2019

Bethel City Council
P.O. Box 1388
300 state highway
Bethel, AK 99559

Mayor, Vice-Mayor and Members of City Council;

In the matter of the transfer of Kusko Liquor, liquor license, located in Bethel, AK 99559; Lic.#5533 to ACC Liquor proposed location at; 811 Third Avenue., Bethel AK, 99559.

Bethel Municipal Code (BMC) 5.08.020(d) requires the City Manager provide a written report to City Council, with a copy to the applicant, listing any objections to the Board issuance of the application.

According to BMC 5.08.020 (c) City Planner, City Finance Director, City Fire Chief and Police chief shall forward written statements to the City Manager outlining their findings:

a) Finance Director- AC Company has paid all sales taxes due. They do not have a license for this location at the time of this report.

b) Planning Director- Conditional Use Permit (CUP) has not been issued. The Planning commission voted to continue the CUP meeting/review at their June 13 meeting.

c) Police Chief- There is no data to report at this address.

d) Fire Chief- There were 4 calls for service near this location in the last 12 months. The department requires a full fire and life safety plan review prior to remodeling/opening and compliance with all IFC AHJ Chapter 5 requirements including; access roads, address signs and key entry boxes.

City Manager- Due to the lack of a business license, approved conditional use permit and the need for Fire Marshall Plan review I recommend the City Council protest the transfer of the Kusko Liquor. liquor license #5533 to ACC liquor.

Bill Howell

Acting City Manager, City of Bethel

Police Department

Review	Status	N/A
Excess calls for service at the location. N/A	Number of Calls in calendar year N/A	
Excess numbers of convictions or arrests for unlawful activities at the location. N/A	Number of Calls in calendar year N/A	

Additional Comments:

The license being transfered has not previously been used and the location proposed for the transfered license has not been used for alcohol sales previously. There is no police related data related to this license or this location.

Chief of Police's Signature: BL

LIQUOR LICENSE TRANSFER

Finance Department

Review	Status	N/A
Sales Tax Filings	Over 90 Days Due - Amount Due: 0 No. of times account was over 90 days due: 0	
Utility Billing	Over 90 Days Due - Amount Due: 0 No. of times account was over 90 days due:	
City Business License	License Year: 2020 Date Applied: 12/12/18	
State of Alaska Business License	License Year: 2020 Date Applied: 12/22/14	

Additional Comments:

all taxes have been timely filed and are current.

Asst. Finance Directors Signature: Cynthia Sharp

Planning Department

Review 5-24-19	Status still pending	N/A
Conditional Use Permit	Approved by the Planning Commission neither approved/nor disapproved by Planning Comm.	
	Conditions on Approval were:	
Parking at the facility yes	There are 22 parking spaces.	
Adequate ingress to and Egress from location yes		

Additional Comments: During the May 9, 2019 Planning Commission meeting with the ACC Conditional Use Permit hearing agenda topic, the Planning Commissioner's voted unanimously to continue the hearing during the next Planning Commission hearing, scheduled for June 13 in order to collect more information.
No approvals/or dis-approvals at this time for a Conditional Use Permit for ACC Liquor Store.

Planning Director's Signature:

Fire Department

Review	Status	N/A
Excess calls for service at the location.	Number of Calls in calendar year 2018	EMS: 4 Fire: 0
Excess numbers of convictions or arrests for unlawful activities at the location.	Number of Calls in calendar year 2018	N/A

Additional Comments:

The call volume reported is only for the 811 Third Avenue (old Sammy's Market building) address. Although the numbers reported are low, they are only for that specific building, not for the surrounding areas. EMS incidents occur frequently in the surrounding area (i.e. - Third Avenue, Jacob's Way, Main Street, Front Street, East Avenue, etc.).
In addition, the Bethel Fire Department will require the property to meet the requirements set forth in Chapter 5 Fire Service Features, 2012 International Fire Code. This will include an approved fire access road around the property, installing a KNOX security box for after-hours emergency access, installing a reflective address sign that meets City of Bethel requirements, and emergency exits marked with illuminated signs and clear of obstructions.

Fire Chief's Signature:

June 3, 2019

Dear City Council Members,

Please accept this letter as a supplement to our application to operate a package liquor store at 811 Third Avenue.

We wish to present you the following voluntary conditions we are willing to do in order to alleviate any concerns and to show that we want to be a good business partner in Bethel. We would also like to emphasize that our business is legal and provides benefits to the community in the form of tax revenue, jobs, and opportunities for advancement within the company. The first 14 points below were given as a supplement to the Planning Commission regarding our C.U.P. Below these points are additional items specifically for your consideration.

- Fencing (6' or max height per code) will be on 3 sides of the property to enhance security for businesses adjacent to our store and safety due to the lake behind the property
- Exterior lighting will be added to the front and sides of the business, to light the exterior of the property 24 hours per day
- Upgraded security camera system to be installed – including multiple exterior cameras
- Security personnel will be on site all hours of operation to patrol the property, monitor the door and review the security cameras
- We feel this location on Third Avenue is better suited than our competitor's location and other granted licensee location due to parking and proximity to river
- Ingress / Egress to the building is controlled from street and parking lot
- Hours of operation will be Noon – 8 pm; Monday through Saturday (Closed Sunday)
- We will limit purchase of hard spirits to two bottles per day per individual – currently one fewer than the competition
- The smallest container size of hard spirits stocked will be 750 ml. – this size is much harder to conceal and transport than the smaller sizes
- Our company policy is to require 100% of customers (as well as individuals accompanying the customers) present valid state issued identification before they can purchase alcoholic beverages
- ACC has a TAPS trainer in house at our Anchorage headquarters
- 100% of our Bethel liquor store staff will be TAPS trained, and will have regular opportunities to update their training
- We plan on addressing litter in the following ways:
    - No plastic bags used at this location
    - Several trash receptacles on the exterior, emptied daily

- Employees will conduct daily litter collection on property and roadway near the property
- ACC will donate money to non-profits who are willing to do litter patrols

- We plan on an enhanced donation program at this location, earmarked for non-profit organizations impacted by alcohol. Beginning budget will be 1% of total alcohol sales.

City Council additional items:

- AC will operate a computerized daily "sell to" list of customers purchasing hard spirits. The Driver's License number will be entered prohibiting them from purchasing multiple times in a day.
- AC will keep a "banned" list consisting of individuals who have created a nuisance, stolen, been verbally abusive etc. We will also place people on this list when requested by local authorities. We are willing to share this list with the competitor.

Sincerely,

Jeff Cichosz
Director Sales and Operations
Alaska Commercial Co.
907.273.4679 w / 632-5166 c

April 23, 2019

To whom it may concern,

I am writing this letter to express opposition to the transfer of the package liquor license from Cezary Maczynski's Kusko Liquor store to the North West Company, doing business as Alaska Commercial (AC) Company in Bethel Alaska.

AC has already been given an opportunity to sell alcohol in this community and proved that they were unable to do so in a responsible manner. The opening of that liquor store had an enormously negative impact on the community of Bethel. Since the opening of the original AC liquor store numerous community members have spoken before Bethel City Council and the Alcoholic Beverage Control Board to express the ways in which the liquor store negatively impacted our community. Nothing I could write in this letter could adequately capture all of the hurt, frustration, and anger shared by community members witnessing the negative impacts of the AC liquor store firsthand. However, I would like to address two of the concerns that were repeatedly raised about the original AC liquor store. First was that the location of the original store was poorly chosen and second was that the AC staff were not enforcing policies congruent with safe alcohol sales.

The location of the original AC liquor store was the subject of many discussions. The original location was criticized for being close to people's homes and several schools. This led to increased foot track and public intoxication in this area, disrupting people's lives. Moving the liquor store to a new location, which is still close to people's homes, does not solve the issue, it simply moves it to a new location. As someone who lives within 500 feet of the proposed new location I am in strong opposition to the liquor store opening here. This area already has a lot of foot traffic as it is on one of the main roads in town. Individuals walk through this area to get into town from slough and the boat harbor. Now that there is another liquor store on Front Street we are seeing increased foot traffic from that store as well. All winter long people cut through my backyard to get from Front Street to 3rd ave heading towards Jacob's Way or the center of town. Oftentimes the individuals passing by are intoxicated. I have lived in this location less than a year and have already made multiple reports to the police department over intoxicated individuals becoming violent with others, being passed out on the side of the road, and staggering into oncoming traffic. Adding another liquor store into the mix is only going to exacerbate this problem and lead to increased public intoxication and violence, requiring additional public safety resources.

Additionally, AC liquor store proved that they were not willing to make decisions that would help lessen the negative effects of their store. Regardless of where the store is set up, if AC continues to focus on profit over the welfare of this community then the negative effects of the liquor store will continue to be felt regardless of where the store is set up. I do not have any trust in AC stepping up and making management decisions to lessen the impact of their alcohol sales on this community. Their actions in their original store suggest that they do not care about this community or working with the city of Bethel to lessen the negative impact of their alcohol sales. If they were capable of selling alcohol in a safe manner they never would have lost their license in the first place. They continuously talked about making changes in their store that would help lessen the effects of the liquor sales without ever making any progress in doing so. Please do not give AC another chance to hold a liquor license in this town after they proved time and again in the original store that they cannot be trusted.

Thank you for taking the time to read this letter. I appreciate the opportunity to speak on this matter as it is one that is very important to me and this community. I sincerely request that you do not approve the transfer of this license.

Amber Jones
PO Box 2176
Bethel AK 99559
907-545-9099

4/11/19
ABC Board
550 W. 7th Ave, Suite 1600
Anchorage, AK. 99501

My name is Imogene Samuelson and I am writing this letter to plead and respectfully request that you do not approve the the sale and transfer of the package liquor license to the North West Co, d/ba the Alaska Commercial Company liquor store in Bethel, Alaska.

Myself and other family live directly across from the proposed location that would be the future store and their second attempt at operating a liquor store, the first of which they completely failed at miserably! The two previous businesses that operated there have been good neighbors with no complaints, but the A.C. Co., no matter how much they promise to do better will not happen.

We will be forced to deal with the expected loiterers and riff raff that will no doubt drift right across the road to us. This will happen no matter what their proposed changes are to the City of Bethel citizens. They do not deserve another license. Their problems will be ours also. Our homes and maybe our lives will be endangered from the inevitable unpredictable behavior from the out of control drunks. Our homes will be trespassed into, our vehicles, boats and motors, sheds, snowmachines, etc. will be tampered with and damaged. We will be innocent victims of crimes, personally and property. We will have to face the negative impacts. The liquor store is not welcome in our quiet neighborhood! We do not want nor should we have

to suffer from the inevitable trouble the liquor store will bring. I personally heard from a former A.C.Co. employee at the Atsaq Street location that an A.C.Co. manager instructed a security guard to not make his security rounds around the property and being a subordinate employee, he complied so the employees are part of the problem. I guarantee there will be groups of loiterers around the store being nuisances and causing problems. A.C. will skimp on their employees allowing this to happen. Just remember at how they operated their failed liquor store. They moved in and the whole area changed for the worse.

The Alaska Commercial Company does not deserve another chance to operate a package liquor store. I respectfully request that you do not approve the sale and transfer to them.

Thank you for giving me the opportunity to speak on this personal and important issue to me and my family members.

Imogene Samuelsen
P.O. Box 342
Bethel, AK. 99559 (907) 545-3306

cc: Walter Pickett, NorthWest Co, dba Alaska Commercial Company via U.S. mail and email @ wpickett@northwest.ca
Lori Strickler, City Clerk, City of Bethel

May 7, 2019

City of Bethel

P.O. Box 388

Bethel, Alaska 99559

Attn: Honorable Mayor Fred Watson

Acting City Manager Bill Howell

City Planner

Planning Commission Members

City Council Members

RE: Letter of Protest of Conditional Use Permit For AC Company

Dear Sir(s) and Madam(s):

The City Planner, Betsy Jumper, recently finalized her Conditional Use Permit review for AC Company and recommended that it be denied. The City Planner stated her personal opinions in Section 1., page 1, of the Conditional Use Permit regarding health and safety. This refers to intoxication of certain people who purchase alcohol and this placed an extra burden on first responders. Denying the Conditional Use Permit is contrary to the majority of the voters who voted for the legal operation of liquor stores in Bethel. The Conditional Use Permit is not the platform for her personal opinions. The City expected that there would be some additional problems from abusers and the city taxes generated by the legal sale of alcohol would cover additional first responder staff, vehicles, and equipment.

I feel that AC Company was diligent in their security and controlled customers and others within the boundaries of their business. It is up to the local law enforcement to provide security on public areas. The liquor license that was revoked by the Alcohol and Marijuana Control Board from Alaska Commercial Company was not revoked for security or health reasons. AC Company did not violate the law relating to the sale of Alcohol and followed the letter of the law.

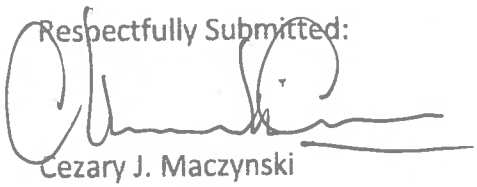
Currently the City and or State have an "Open Container" law that prohibits people from consuming alcohol in public places. It does not appear that this law is being enforced. Some communities have "Public Intoxication" laws and because they are enforced by the law there are fewer problems. If the City of Bethel enforced the open container law and created a public intoxication law the problems would be considerably less.

In relation to business, the City should be aware of a monopoly, and this stifles business in that the monopoly can charge whatever they want. The majority of the voters should not be denied fair business that would bring the costs down due to healthy competition. The City of Bethel should not support the operation of only one business resulting in a monopoly. The city has a municipal code relating to liquor licenses and AC Company's application satisfies all aspects of the application without any violation or deviation whatsoever.

Section 10. of the Conditional Use Permit relating to "flood Hazard Areas" conclusion is incorrect. The building has always had the same footprint and the usage has always been "RETAIL," therefore allowing it to be grandfathered. The building was first an automotive parts RETAIL store. Then it was a case lot RETAIL store and was grandfathered in. The liquor store will be a RETAIL store and must not be discriminated against. Customers will still be making RETAIL purchases as they always have in the last 20+ years. The usage has not and will not change.

I protest Section 1 and Section 10 of the Conditional Use Permit results and respectfully request that the City Planner and the Planning Commission carefully review their findings and make amendments. According to the policies and municipal code prescribed by the City of Bethel, the location at the previous "Sammy's Market" is the best location as it does not violate any of the codes. The wishes of the majority of the voting citizens of Bethel should be considered fairly and the Conditional Use Permit be approved. The voters of Bethel have already spoken.

Respectfully Submitted:



Cezary J. Maczynski

P.O. Box 1805

Bethel, Alaska 99559

(907)545-4241

Staff Findings

1. The proposed conditional use will not be detrimental to the general public health, safety or welfare or to the environment.

Chapter 5.08.030 (J) of the Bethel Municipal Code refers to the proximity of liquor sales to certain establishments such as a school or alcohol inpatient or outpatient treatment facility. . The location of the proposed facility does not fall within 200 feet of a school, inpatient or outpatient facility. Despite the location, this writer believes the proposed CUP will be detrimental to the public health due to public intoxication causing overtaxing of the first responders. ACC previously had a license to sell alcohol and did a poor job of providing adequate security in and around the premises. Additionally, ACC's business policy of selling large quantities of alcohol to the same individuals placed a heavy burden on both the police and EMS as those daily visitors to the ACC store were often intoxicated and in need of aid by the City. Already with the current alcohol store the City is again experiencing complaints by residents and businesses near the alcohol store. Daily repeat customers are purchasing quantities that are large enough to create public intoxication issues and that are causing issues in the nearby dry communities. Unless and until the stores are willing to do more self-policing, their current model of profits first with little to no security is placing a large amount of litter on the City streets and in the Kuskokwim River, is leading to a significant rise in the number of intoxicated pedestrians which need assistance from City first responders and has led to increased alcohol related deaths.

2. The conditional use meets the standards otherwise applicable to a use in the applicable land use district.

ACC Liquor Store would be located in a central location of the General Use District. ***(See attached Bethel Zoning Map)***. This district is intended to allow a mix of compatible residential and commercial uses. The current structure on the land has been used previously as a grocery store, and before that, an auto parts retail store.

3. There are adequate existing or proposed sewage capacity, transportation facilities, parking area, drainage facilities and water supply to serve the proposed conditional use without causing a substantial negative impact on the existing level of services provided by such public facilities.

The proposed liquor store will experience short-term parking as customers will make purchases and then leave the premises. Access to and from the property would be on Third Avenue. There is not any known traffic problems in the immediate vicinity. It is anticipated that there would be an increase in traffic upon business operation.

Per BMC 18.48.160 D, there is a "Retail Sales and Service" parking requirement of one space per 300 feet of gross floor area. This amounts to a requirement of 14 parking spaces.

ACC proposes to remodel the interior for a package liquor store in one portion (total 1556 square feet) and the remainder for a convenience store and storage/shipping receiving. Total gross square footage is 4096. ***(see attached floor plans sheet number 1.0)***

Under the Land Use Compatibility section *(see page 4-11 of the attached section of the Bethel Comprehensive Plan),* Goal #3 provides for compatibility among adjoining land uses so that future development maintains or improves the quality of life or land value of surrounding uses". The associated Map 4.4 (***Future Land Use Plan Map - see page 4-10 of the attached section of the Bethel Comprehensive Plan***) is a long-term vision of how and where the city will grow and change over the next 20 years to accommodate expected population and job growth (versus the current City's Zoning Map which designates how land can be used and what can be built on any given property **today**). The Future Land Use Map indicates no change from the current General Use District (mix of compatible residential and commercial uses).

7. The proposed use will not subject surrounding properties nor vehicles and pedestrians using nearby streets and ways to hazardous or substantially increased traffic conditions.
This same structure has been used as a retail facility for many years, with cars coming to and from the property. The building sits back on lot 3B, with parking on lot 3A. Given that the use will not change from a retail store to a retail store, it is not anticipated that the traffic, both vehicular and/or pedestrian would change noticeably.

8. There is a demonstrated need for the conditional use limited primarily to the area proposed, or, if the use will generally serve a larger area, then a demonstration that the use is essential to the city generally, and because of a feature of the property, the general need can be met by the property, but cannot be met as a principal permitted use on other property in the city.
The planned location of Alaska Commercial Liquor is in the General Use District (mix of commercial and residential). The site is surrounded by other commercial establishments. It is anticipated that customers coming to the store would come from all over the city.

9. The use, under the conditions proposed, will be compatible with existing and principal uses authorized and will not cause negative impacts on nearby property, including impacts from drainage, that exceed the impacts that would ordinarily be expected from principal *permitted uses of the property that is the subject of the application.*
The planned location for AC Liquor is in a general use zone, surrounded by a variety of commercial activities with nearby residences. There will be no impact on drainage from the business.

10. If any part of the project is located in a flood hazard area or in an area where the project may adversely affect drainage or floods in a flood hazard area, the conditions proposed adequately address the relevant matters and standards covered by BMC 15.08.160 through 15.08.180. [Ord. *01-05 § 8.*]
The proposed site of AC Liquor is located in a floodplain, and the same building has been there for the past 20+ years. The footprint is not changing. The proposed premises appear to be in a flood hazard area and because of the change in use, the premises are not grandfathered. As a result, it is recommend that the applicant obtain an elevation certificate issued by a certified engineer as well as an engineer report that addresses whether or not there is a potential for any

adverse drainage or flood hazard issues on the premises. If the results of the engineer report indicate issues, those issues will need to be addressed.

Recommendation

Based on the findings above, it is my recommendation that the CUP be denied.

Not a recommendation from the Commission or the Council. A recommendation only from the Planner. This is a violation of Municipal Code and her professional duties.

By: Planning Commission
Public Hearing: May 9, 2019
June 13, 2019
Adopted: June 13, 2019

A RESOLUTION 2019-07 OF THE BETHEL PLANNING COMMISSION APPROVING A CONDITIONAL USE PERMIT FOR A PACKAGE STORE OPERATED BY THE NORTH WEST COMPANY (INTERNATIONAL), INC. FOR PROPERTY LOCATED AT 811 THIRD AVENUE

WHEREAS, the Northwest Company, doing business as Alaska Commercial Company, submitted a Conditional Use Application to the City of Bethel's Planning Department in order to open a retail package liquor store; and

WHEREAS, notice of Public Hearing was mailed to all property owners within 600 feet of the exterior boundary of the proposed liquor store on May 2, 2019; and

WHEREAS, notice of the Planning Commission public hearing and review of the Conditional Use application was published in the Delta Discovery Newspaper on May 1 and May 8, 2019; and

WHEREAS, the Planning Commission held a public hearing on the Conditional Use Permit request on May 9, 2019; and

WHEREAS, the Commission was provided copies of section 18.60 of the Bethel Municipal Code (BMC) regarding conditional use permits, Section 16.04.010 of the BMC, a copy of the Conditional Use Application, and a copy of the Site Plan Drawings; and

WHEREAS, at the May 9, 2019 meeting the Commissioners unanimously voted to postpone the consideration of the Conditional Use Permit Application until the June 13, 2019 regular Planning Commission meeting in order to obtain additional information; and

WHEREAS, the Bethel Planning Commission adopts the following Findings of Fact:

18.60.060A The Planning Commission may approve a request for a conditional use permit only if it makes findings, supported by the record, as set out in BMC 18.60.040 (B) 1 - 10.

18.60.040B The land use administrator may make a recommendation for approval only when the proposed use and conditions clearly support the following conclusions:

(B)(1) *The proposed conditional use will not be detrimental to the general public health, safety, or welfare to the environment.*

Finding: The proposed conditional use will not be detrimental because the operator has proposed, and the Commission hereby applies, conditions to mitigate expected nuisances associated with the sale of alcohol, see conditions.

The proposed use will not create a need for essential municipal services which cannot be reasonably met.

There are no known hazardous materials on site or expected in the standard operation of the package store which would indicate an environmental concern.

After careful review of the applicant's statements, the testimony of the public, and the report of the Planner, the Planning Commission finds that the proposed conditional use will not be detrimental to the general public health, safety, or welfare of the environment.

(B)(2) *The Conditional Use meets the standards otherwise applicable to use in the applicable land use district.*

Finding: The proposed use will be located in the General Use Zone which permits alcoholic beverages to be sold and or served with a conditional use permit and would be subject to regulation under Bethel Municipal Code Chapter 5.08, Alcoholic Beverages.

The proposed use would be located in an existing building, and is in conformance with the General Use District requirements that allows for a mix of compatible residential and commercial uses.

BMC 18.36.020 authorizes commercial uses and structures in a General Use Zone provided the minimum lot size is 7,000 square feet. Here, the lot sizes combined are a total of 20,169 square feet.

Additionally, the zoning requirements call for minimum setbacks of 15 feet in the front of the lot; 10 feet on each side of the lot; 10 feet in the rear of the lot; and 25 feet from the mean high water mark of any drainage or lake. A review of the site plan provided by the applicant demonstrates that each of the setback's listed above are complied with however due to the use being in a wetlands location the Commission will apply a condition to require an Elevation Certificate be obtained from a certified engineer as well as an engineer report that addresses whether or not there is a potential for any adverse drainage or flood hazard issues.

(B)(3) *There are adequate existing or proposed sewage capacity, transportation facilities, parking area, drainage facilities and water supply to serve the proposed*

conditional use without causing a substantial negative impact on the existing level of services provided by such public facilities.

Finding: The structure will be on the hauled utility system an evaluation of the accessibility to the hauled water and sewer holding tanks by utility drivers has been reviewed and approved. The location of the commercial dumpster has also been reviewed and determined accessible by city staff.

The property is situated on Third Avenue, one of the City's main thoroughfares making it easily accessible by foot traffic, personal vehicles and by taxicab.

Drainage on the property has had no known negative impacts to the site or the surrounding areas. Any changes to the land such as infill or excavation, would trigger a site plan review by the planning department to evaluate the impacts of draining.

The proposed use would experience short-term parking. The ingress and egress will be from Third Avenue where there are no known traffic issues. The property was previously occupied as a bulk item and general store. There is anticipated similar or slightly higher traffic flow at time however there are no expected impacts to traffic flow in the area.

Bethel Municipal Code § 18.48.4160 D requires once space per 300 feet of gross floor space. The total gross square footage for the operation is 4,096 with 1,556 of retail space which results in a need of 14 parking spaces. The presented schematics from the operator indicate 21 parking spaces exceeding the minimum requirements.

(B)(4) *The conditional use conforms to the intent and purposes of the land use code that are set out in BMC 16.04.010.*

Finding: After carefully reviewing all of the factors set out in BMC 16.04.010, as well as statements from all interested parties and the public, the Planning Commission finds that the conditional use conforms to the intents and purposes set out therein.

- An additional site for alcohol purchasing will provide residents alternative options for shopping experience and will likely reduce congestion at the alternative package store which promotes a logical growth pattern within the City and minimizes the concentration of liquor licenses;
- Because the proposed use is in a General Use Zone and is utilizing a space previously used as a retail establishment, the use is meeting the standard of appropriate use of land;

- Applicant's redesign and adequate signage of the entry and exit, as well as the additional parking spots will likely reduce congestion in the streets and access points;
- Their appears to be adequate space for the use of the property which does not indicate an overcrowding of the land use;
- The intended use provides no evidence to infer an undue concentration of population would be present with this use;
- Liquor establishment properties within Bethel have historically seen a significant increase in the calls for service from first responders. In 2018 the Bethel City Council protested the Northwest Company's Application for a Package Store Renewal (Resolution 18-03) citing the exorbitant levels of first responder calls at the two (2) properties Northwest Company Stores: AC Main grocery store and AC Quickstop Liquor Store. The Resolution compared the 2015 and 2017 calls for service numbers, which reflected a 188% increase in the calls for service at the AC Quickstop and a 358% increase in the calls for service at the AC main store. The promotion of public health, safety and welfare has long been a concern when considering conditional use permits for liquor establishments. The Commission has adopted conditions to address the nuisances related to use of the property, incorporated later in these findings, After weighing the information carefully, the Commission finds that the safety features proposed by Applicant as well as the conditions adopted herein are sufficient to protect the public health, safety and welfare of the property and surrounding neighborhood.

(B)(5) *The land use and structures proposed are of an appropriate character and scale for the neighborhood in which the project will be located, including parts of the neighborhood that may lie outside that land use district within which the parcel is located.*

Finding: The land is in a General Use Zone allows a mix of both commercial and residential uses, this land use and the use of the structure are of appropriate character and scale for the neighborhood.

(B)(6) *The conditional use is in accordance and further the goals and policies of the comprehensive plan.*

Finding: This is in compliance with the BMC and Chapter 4 of the Bethel Comprehensive Plan, (Land Use, Housing, and the Environment – "Growth Patterns" and Land Use) in that it promotes growth patterns near existing employment centers and public services, it also promotes infill and development by the proposed use of the existing structure. Finally, the Future Land Use map indicates no change from the current General Use Zone at this site.

(B)(7) *The proposed use will not subject surrounding properties nor vehicles and pedestrians using nearby streets and ways to hazardous or substantially increased traffic patterns.*

Finding: This same location has been used many years as a retail store. While the current entrance is being modified, the Applicant has exceeded the minimum parking requirements and has eliminated the need for patrons to back in and out of the property onto the main street in a competing fashion. Applicant's modification to the ingress and egress to the premises ensures that surrounding properties, vehicles and pedestrians using nearby streets and ways are not subject to hazardous and substantially increased traffic patterns.

(B)(8) *There is a demonstrated need for the conditional use limited primarily to the area proposed, or, if the use will generally serve a larger area, than a demonstration that the use is essential to the city generally, and because of the a feature of the property, the general need can be met by the property, but cannot be met as a principal permitted use on other property in the city.*

Finding: A conditional use allows a City to consider special uses for land as required or needed by a community. The Bethel City Council declared that due to the many issues surrounding alcohol establishments within the City of Bethel and their impacts on the general welfare of the residents of the City, all establishments proposing to sell alcoholic beverages must obtain a conditional use permit (CUP). The imposition of the CUP ensures compatibility with surrounding land uses

(B)(9) *The use, under the conditions proposed, will be compatible with existing and principal uses authorized and will not cause negative impacts on nearby property, including impacts from drainage, that exceed the impacts that would ordinarily be expected from principal permitted uses of the property that is the subject of the application.*

Finding: The proposed use is in a general use area, surrounded by many other commercial businesses.

(B)(10) *If any part of the project is located in a flood hazard area or in an area where the project may adversely affect drainage or floods in a flood hazard area, the conditions proposed adequately address the relevant matters and standards covered by BMC 15.08.160 through 15.08.180.*

Finding: The site is located in a flood hazard area. The Commission will apply a condition to require an Elevation Certificate be obtained from a certified engineer as well as an engineer report that addresses whether or not there is a potential for any adverse drainage or flood hazard issues.

NOW THEREFORE BE IT RESOLVED, the Bethel Planning Commission approves the Conditional Use Permit with the following conditions:

1. The Conditional Use Permit shall expire on May 10, 2022. Applicant shall have the option to renew the CUP prior to its expiration.
2. The Northwest Company shall obtain an Elevation Certificate from a certified engineer and shall ensure that any potential adverse drainage or flood hazard issues identified by the engineers, if any, are timely addressed.

Additionally, the assurances set out by the Northwest Company in its letter to the City of Bethel dated June 3, 2019 are adopted and adopted as additional conditions of this Conditional Use Permit. Those additional requirements are as follows:

a. Northwest Company shall install and maintain fencing on three (3) sides of the property with fencing of six (6') feet or higher;
b. The operator shall submit a security camera system design plan with proposed locations to the Chief of Police for approval. All footage shall be kept on file for a minimum of 30 days and be available to the City upon request. Signage shall also be placed in the parking lot indicating security cameras are in use.
c. The exterior of the premises, including adjacent public right of ways and the parking lot shall be illuminated during all hours of darkness in a manner so that persons standing in those areas are identifiable by law enforcement personnel. To ensure efficient lighting, the lighting plan shall be submitted to the Chief of Police for approval.
d. Uniformed and trained security personnel will be onsite during all hours of operation and will actively patrol and monitor the property and all entryways as well as reviewing the security cameras;
e. Hours and days of operation will be limited to Monday through Saturday from 12:00 pm to 8:00 pm.
f. The sale of hard spirits will be limited to two (2) bottles of hard spirits per individual per day, 1500ml total. Compliance with this limit will be assured by the Northwest Company's operation of a computerized daily "sell to" list of customers purchasing hard spirits;
g. Hard Spirits will only be stocked in containers of 750 ml or greater;
h. All customers and persons accompanying the customer will be required to present a valid State issued identification before being sold alcoholic beverages. Sales will not occur if even one (1) member of the group has an alcohol restriction on their State issued identification.
i. One hundred (100%) percent of Northwest Company's liquor store staff will be TAPS trained;
j. Northwest Company will reduce its environmental impact by disallowing the use of plastic bags at its location and by maintaining a clean space in and around the property;
k. Northwest Company will maintain and enforce a do not sell list for individuals prohibited from purchasing alcohol. Individuals may only be placed on this list by the Northwest Company as a result of being trespassed from any of Northwest Company's establishments or by the Chief of Police due to a high number of Protective Custody calls.

PASSED AND APPROVED BY THE BETHEL PLANNING COMMISSION by a duly constituted quorum on this 13th Day of June, 2019.

City of Bethel Planning Commission Action: 6 In Favor 0 Opposed 0 Abstained

ATTEST:

Kathy Hanson, Chairman
City of Bethel Planning Commission

Pauline Boratko, Recorder
City of Bethel Planning Commission

Bethel Recording District
After Recording please return to:
City of Bethel – Planning Dept.
P.O. Box 1388
Bethel, AK. 99559-1388

City of Bethel Action Memorandum

Action memorandum No.	19-36		
Date action introduced:	June 25, 2019	Introduced by:	Acting City Manager Howell
Date action taken:		Approved	Denied
Confirmed by:			

Action Title: Authorize and approve City Administration to issue checks totaling $11,000 to Year 2, Quarter 2 Community Action Grant awardees based on the Community Action Grant Technical Review Board's (CAGTRB) work on scoring applications and deciding how much to award each applicant.

Attachment(s): None.

Department/Individual:	**Initials:**	**Remarks:**
Administration / William Howell, III	WH	
Finance / Christine Blake	CB	

Amount of fiscal impact:		**Account information:**
	No fiscal impact at this time.	
	Requires funding in FY 2019 Budget.	
$11,000	Funds in FY 2020 Budget	10-72-760

Summary Statement

The City of Bethel established the Community Action Grant Program (CAG) to allow community and individuals to request financial support for programs or events that contribute to the health, welfare, and overall quality of life for residents of Bethel, especially its most vulnerable populations. Funding for the program comes from 20% of the Alcohol Tax collected by the City. The Community Action Grant Technical Review Board was created to develop a process to solicit grant applications, review them, and recommend funding selections to City Council.

The Committee accepted and scored two applications received during the open application period: May 1, 2019 to May 30, 2019. The Committee met on June 4, 2019 and June 12, 2019 to score the applications and make funding recommendations. The total funding recommendation amount is in the FY 2019 Budget and available for distribution. The Committee's recommendation is shown below.

Applicant Rank and Project Summary	**Requested**	**Recommended Award**
1. Bethel Wrestling Club **Avg. score: 149** Costs associated with holding a wrestling summer camp in 2019.	$4,500	$5,000
2. Summer Reading Program 2019 **Avg. score: 120** Programming costs associated with STEM (Science, Technology, Engineering, Match) programming and book give-aways.	$14,000	$6,000
	Total	$11,000

The Board recommended an increase of $500 to the Bethel Wrestling Club to fund scholarships and increase attendance. The Board chose to reduce the amount of funding for books to be given away as part of the Summer Reading Program 2019 from $8,000 to $4,000.

City of Bethel Action Memorandum

Action memorandum No.	19-37		
Date action introduced:	06/25/2019	Introduced by:	Bill Howell, Acting City Manager
Date action taken:		☐ Approved ☐ Denied	
Confirmed by:			

Action Title: Authorize the City Manager to negotiate and execute a contract for Lift Station Control Improvements with the only responsive bidder.

Attachment(s): Draft Contract for Lift Station Control Improvements

Department/Individual:	Initials:	Remarks:
Bill Howell, Acting City Manager	WFH	
Bo Foley, Purchasing Agent	BF	Only one responsive bidder
Patty Burley, City Attorney	PB	RFB process complied with the BMC & Alaska Statutes

Amount of fiscal impact:		Account information:
	No fiscal impact at this time.	
$568,967	Funds in City Budget.	
	Funds not in City Budget.	

Summary Statement

The City of Bethel issued an Invitation to Bid for Lift Station Control Improvements on May 7, 2019. The final date to receive bids was originally May 24, 2019.

The purchasing agent noticed a few logistical errors in the dates that the ITB was ending and the deadline for questions which resulted in an addendum, drafted by Dowl, to be posted. This altered the questions deadline from May 20, 2019 to May 16, 2019 to account for the five-business days necessary between the questions deadline and the close of the ITB.

On May 10, 2019, a second addendum, drafted by Dowl, was issued that gave notice to all interested bidders that they could only be considered as responsive if they attended a mandatory walk-through of the facilities in question on May 14, 2019.

On May 20, 2019, a third addendum, drafted by Dowl, was issued that addressed a long list of questions we had received from interested bidders. Because of the timing of the answers being posted and due to the fact that we implemented a mandatory walk-through that one bidder wasn't able to make due to short notice, we had to revise the closing date to May 31, 2019 and offer more time for a bidder to make it into Bethel.

Finally, on May 31, 2019 one official bid was received. The bidder was formally notified on June 4, 2019 of the Intent to Award. By June 17, 2019, there was no problems with the proposed contract and no others had protested the Intent to Award.

A draft of the contract is enclosed with this action memorandum.

SECTION 00 52 13

AGREEMENT
BETWEEN OWNER AND CONTRACTOR
FOR CONSTRUCTION CONTRACT (STIPULATED PRICE)

THIS AGREEMENT is by and between **City of Bethel P.O. Box 1388 Bethel, AK 99559** ("Owner") and

("Contractor").

Owner and Contractor hereby agree as follows:

ARTICLE 1 – WORK

1.01 Contractor shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:

ARTICLE 2 – THE PROJECT

2.01 *The Project, of which the Work under the Contract Documents is a part, is generally described as follows: All materials, equipment, labor, and related services to complete the Lift Station Controls Improvement project.* **This project scope includes replacement of five (5) control panels at the following lift stations: Bethel Heights East, Bethel Heights West, Bethel Heights Main, Kilbuck, and FAA. The work also includes replacement of the internal components of the Bethel Heights Main Lift Stations, which includes the pumps, davit crane, rails, and force main piping.**

ARTICLE 3 – ENGINEER

3.01 The Project has been designed by DOWL 4041 B Street, Anchorage, AK 99503

3.02 The Owner has retained DOWL ("Engineer") to act as Owner's representative, assume all duties and responsibilities, and have the rights and authority assigned to Engineer in the Contract Documents in connection with the completion of the Work in accordance with the Contract Documents.

ARTICLE 4 – CONTRACT TIMES

4.01 *Time of the Essence*

A. All time limits for Milestones, if any, Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.

4.02 *Contract Times: Dates*

A. The Work will be substantially completed on or before September 30, 2019, and completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions on or before December 31, 2019.

4.03 *Liquidated Damages*

A. Contractor and Owner recognize that time is of the essence as stated in Paragraph 4.01 above and that Owner will suffer financial and other losses if the Work is not completed and Milestones not

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achieved within the times specified in Paragraph 4.02 above, plus any extensions thereof allowed in accordance with the Contract. The parties also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty):

1. Substantial Completion: Contractor shall pay Owner $ 1,500 for each day that expires after the time (as duly adjusted pursuant to the Contract) specified in Paragraph 4.02.A above for Substantial Completion until the Work is substantially complete.

2. Completion of Remaining Work: After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Time (as duly adjusted pursuant to the Contract) for completion and readiness for final payment, Contractor shall pay Owner $ 500 for each day that expires after such time until the Work is completed and ready for final payment.

3. Liquidated damages for failing to timely attain Substantial Completion and final completion are not additive and will not be imposed concurrently.

~~4. Milestones: Contractor shall pay Owner $_____ for each day that expires after the time (as duly adjusted pursuant to the Contract) specified above for achievement of Milestone 1, until Milestone 1 is achieved.~~

~~B. *Bonus*: Contractor and Owner further recognize the Owner will realize financial and other benefits if the Work is completed prior to the time specified for Substantial Completion. Accordingly, Owner and Contractor agree that as a bonus for early completion, Owner shall pay Contractor $_____ for each day prior to the time specified in Paragraph 4.02 for Substantial Completion (as duly adjusted pursuant to the Contract) that the Work is substantially complete. The maximum value of the bonus shall be limited to $_____.~~

ARTICLE 5 – CONTRACT PRICE

5.01 Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents the amounts that follow, subject to adjustment under the Contract:

A. For all Work, at the prices stated in Contractor's Bid, attached hereto as an exhibit.

ARTICLE 6 – PAYMENT PROCEDURES

6.01 *Submittal and Processing of Payments*

A. Contractor shall submit Applications for Payment in accordance with Article 15 of the General Conditions. Applications for Payment will be processed by Engineer as provided in the General Conditions.

6.02 *Progress Payments; Retainage*

A. Owner shall make progress payments on account of the Contract Price on the basis of Contractor's Applications for Payment on or about the 1st (first) day of each month during performance of the Work as provided in Paragraph 6.02.A.1 below, provided that such Applications for Payment have been submitted in a timely manner and otherwise meet the requirements of the Contract. All such payments will be measured by the Schedule of Values established as provided in the

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General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no Schedule of Values, as provided elsewhere in the Contract.

1. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amounts as Owner may withhold, including but not limited to liquidated damages, in accordance with the Contract

   a. Ninety (90) percent of Work completed (with the balance being retainage), and

   b. Ninety (90) percent of cost of materials and equipment not incorporated in the Work (with the balance being retainage).

B. Upon Substantial Completion of the entire Work to be provided under the Contact Documents, Owner shall pay an amount sufficient to increase total payments to Contractor to **Ninety-eight (98)** percent of the Work completed, less such amounts set off by Owner pursuant to Paragraph 15.01.E of the General Conditions, and less **Two Hundred (200)** percent of Engineer's estimate of the value of Work to be completed or corrected as shown on the punch list of items to be completed or corrected prior to final payment.

6.03 *Final Payment*

A. Upon final completion and acceptance of the Work in accordance with Paragraph 15.06 of the General Conditions, Owner shall pay the remainder of the Contract Price as recommended by Engineer as provided in said Paragraph 15.06.

ARTICLE 7 – INTEREST

7.01 All amounts not paid when due shall bear interest at the rate of **Eight (8)** percent per annum.

ARTICLE 8 – CONTRACTOR'S REPRESENTATIONS

8.01 In order to induce Owner to enter into this Contract, Contractor makes the following representations:

A. Contractor has examined and carefully studied the Contract Documents, and any data and reference items identified in the Contract Documents.

B. Contractor has visited the Site, conducted a thorough, alert visual examination of the Site and adjacent areas, and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.

C. Contractor is familiar with and is satisfied as to all Laws and Regulations that may affect cost, progress, and performance of the Work.

D. Contractor has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or adjacent to the Site and all drawings of physical conditions relating to existing surface or subsurface structures at the Site that have been identified in the Supplementary Conditions, especially with respect to Technical Data in such reports and drawings, and (2) reports and drawings relating to Hazardous Environmental Conditions, if any, at or adjacent to the Site that have been identified in the Supplementary Conditions, especially with respect to Technical Data in such reports and drawings.

E. Contractor has considered the information known to Contractor itself; information commonly known to contractors doing business in the locality of the Site; information and observations

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obtained from visits to the Site; the Contract Documents; and the Site-related reports and drawings identified in the Contract Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor; and (3) Contractor's safety precautions and programs.

F. Based on the information and observations referred to in the preceding paragraph, Contractor agrees that no further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract.

G. Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.

H. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.

I. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

J. Contractor's entry into this Contract constitutes an incontrovertible representation by Contractor that without exception all prices in the Agreement are premised upon performing and furnishing the Work required by the Contract Documents.

ARTICLE 9 – CONTRACT DOCUMENTS

9.01 *Contents*

A. The Contract Documents consist of the following:

1. This Agreement (EJCDC C-520 pages 1 to _7___, inclusive).
2. Performance bond (EJCDC C-610 pages __1__ to __3__, inclusive).
3. Payment bond (EJCDC C-615 pages __1__ to _3___, inclusive).
4. Other bonds.
   a. __ _ (pages __ _ to __ _, inclusive).
5. General Conditions (EJCDC C-700 pages __1__ to _75__, inclusive).
6. Supplementary Conditions (EJCDC C-800 pages __1__ to __7_, inclusive).
7. Specifications as listed in the table of contents of the Project Manual.
8. Drawings (not attached but incorporated by reference) consisting of _26__ sheets with each sheet bearing the following general title: _Lift Station Controls Improvement Project___
9. Addenda (numbers ____ to ____, inclusive).
10. Exhibits to this Agreement (enumerated as follows):
    a. Contractor's Bid (pages ____ to ____, inclusive).
11. The following which may be delivered or issued on or after the Effective Date of the Contract and are not attached hereto:

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a. Notice to Proceed.

b. Work Change Directives.

c. Change Orders.

d. Field Orders.

B. The documents listed in Paragraph 9.01.A are attached to this Agreement (except as expressly noted otherwise above).

C. There are no Contract Documents other than those listed above in this Article 9.

D. The Contract Documents may only be amended, modified, or supplemented as provided in the General Conditions.

ARTICLE 10 – MISCELLANEOUS

10.01 *Terms*

A. Terms used in this Agreement will have the meanings stated in the General Conditions and the Supplementary Conditions.

10.02 *Assignment of Contract*

A. Unless expressly agreed to elsewhere in the Contract, no assignment by a party hereto of any rights under or interests in the Contract will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, money that may become due and money that is due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

10.03 *Successors and Assigns*

A. Owner and Contractor each binds itself, its successors, assigns, and legal representatives to the other party hereto, its successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

10.04 *Severability*

A. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Contractor, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

10.05 *Contractor's Certifications*

A. Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. For the purposes of this Paragraph 10.05:

1. "corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the bidding process or in the Contract execution;

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2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the Contract to the detriment of Owner, (b) to establish Bid or Contract prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;

3. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish Bid prices at artificial, non-competitive levels; and

4. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

10.06 *Other Provisions*

A. Owner stipulates that if the General Conditions that are made a part of this Contract are based on EJCDC® C-700, Standard General Conditions for the Construction Contract, published by the Engineers Joint Contract Documents Committee®, and if Owner is the party that has furnished said General Conditions, then Owner has plainly shown all modifications to the standard wording of such published document to the Contractor, through a process such as highlighting or "track changes" (redline/strikeout), or in the Supplementary Conditions.

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IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement.

This Agreement will be effective on _____ (which is the Effective Date of the Contract).

OWNER:	CONTRACTOR:
City of Bethel	
By:	By:
Title:	Title:
	(If Contractor is a corporation, a partnership, or a joint venture, attaches evidence of authority to sign.)
Attest:	Attest:
Title:	Title:
Address for giving notices:	Address for giving notices:
	License or Registration No.: *(where applicable)*

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This document has important legal consequences; consultation with an attorney is encouraged with respect to its use or modification. This document should be adapted to the particular circumstances of the contemplated Project and the controlling Laws and Regulations.

SECTION 00 72 13

STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

Prepared by

Issued and Published Jointly by

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To prepare supplementary conditions that are coordinated with the General Conditions, use EJCDC's Guide to the Preparation of Supplementary Conditions (EJCDC® C-800, 2013 Edition). The full EJCDC Construction series of documents is discussed in the Commentary on the 2013 EJCDC Construction Documents (EJCDC® C-001, 2013 Edition).

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STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

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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

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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.

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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.

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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

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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.

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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:

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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

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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

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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:

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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.

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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

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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.

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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

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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

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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.

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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**

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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~~ and resulted in delay, disruption, or interference, ~~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

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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

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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

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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.

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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.

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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.

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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

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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.

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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

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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

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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 unless permitted by the Owner. Contractor may perform Work outside regular working hours

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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

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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.

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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.

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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.

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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

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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

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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

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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 Contactor 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.

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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.

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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.

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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

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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.

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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

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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

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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.

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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.

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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,

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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

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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

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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.

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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

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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.

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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

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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**

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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, expediters, 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

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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

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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

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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.

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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.

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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

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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.l 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:

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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

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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.

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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

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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.

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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.

   f. **Record documents; and**

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

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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).

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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.

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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

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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.

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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.

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

~~**For work performed in monopolistic states, stop-gap liability coverage shall be endorsed to either the worker's compensation or commercial general liability policy with a minimum limit of:**~~ ~~**$1,000,000**~~

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

General Aggregate	**$2,000,000**
Products - Completed Operations Aggregate	**$1,000,000**
Personal and Advertising Injury	**$1,000,000**
Each Occurrence (Bodily Injury and Property Damage)	**$1,000,000**

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	**$3,000,000**
General Aggregate	**$3,000,000**

5. **Contractor's Pollution Liability:**

Each Occurrence	**$500,000**
General Aggregate	**$500,000**

☐ **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. City of Bethel

   b. DOWL

7. **Contractor's Professional Liability:**

Each Claim	**$2,000,000**
Annual Aggregate	**$2,000,000**

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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 8 – ENGINEER'S STATUS DURING CONSTRUCTION

SC-8.03 Project Representative

A. The Resident Project Representative (RPR) will be Engineer's representative at the Site, will act as directed by and under the supervision of Engineer, and will confer with Engineer regarding RPR's actions.

1. General: RPR's dealings in matters pertaining to the Work in general shall be with Engineer and Contractor. RPR's dealings with Subcontractors shall only be through or with the full knowledge and approval of Contractor. RPR shall generally communicate with Owner only with the knowledge of and under the direction of Engineer.

2. Schedules: Review the progress schedule, schedule of Shop Drawing and Sample submittals, and Schedule of Values prepared by Contractor and consult with Engineer concerning acceptability.

3. Conferences and Meetings: Attend meetings with Contractor, such as preconstruction conferences, progress meetings, job conferences, and other Project-related meetings, and prepare and circulate copies of minutes thereof.

4. Liaison:

a. Serve as Engineer's liaison with Contractor. Working principally through Contractor's authorized representative or designee, assist in providing information regarding the provisions and intent of the Contract Documents.

b. Assist Engineer in serving as Owner's liaison with Contractor when Contractor's operations affect Owner's on-Site operations.

c. Assist in obtaining from Owner additional details or information, when required for proper execution of the Work.

5. Interpretation of Contract Documents: Report to Engineer when clarifications and interpretations of the Contract Documents are needed and transmit to Contractor clarifications and interpretations as issued by Engineer.

6. Shop Drawings and Samples:

a. **Record date of receipt of Samples and Contractor-approved Shop Drawings.**

b. Receive Samples which are furnished at the Site by Contractor, and notify Engineer of availability of Samples for examination.

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c. **Advise Engineer and Contractor of the commencement of any portion of the Work requiring a Shop Drawing or Sample submittal for which RPR believes that the submittal has not been approved by Engineer.**

7. **Modifications: Consider and evaluate Contractor's suggestions for modifications in Drawings or Specifications and report such suggestions, together with RPR's recommendations, if any, to Engineer. Transmit to Contractor in writing decisions as issued by Engineer.**

8. **Review of Work and Rejection of Defective Work:**

   a. **Conduct on-Site observations of Contractor's work in progress to assist Engineer in determining if the Work is in general proceeding in accordance with the Contract Documents.**

   b. **Report to Engineer whenever RPR believes that any part of Contractor's work in progress is defective, will not produce a completed Project that conforms generally to the Contract Documents, or will imperil the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents, or has been damaged, or does not meet the requirements of any inspection, test or approval required to be made; and advise Engineer of that part of work in progress that RPR believes should be corrected or rejected or should be uncovered for observation, or requires special testing, inspection or approval.**

9. **Inspections, Tests, and System Start-ups:**

   a. **Verify that tests, equipment, and systems start-ups and operating and maintenance training are conducted in the presence of appropriate Owner's personnel, and that Contractor maintains adequate records thereof.**

   b. **Observe, record, and report to Engineer appropriate details relative to the test procedures and systems start-ups.**

10. **Reports:**

    a. **Furnish to Engineer periodic reports as required of progress of the Work and of Contractor's compliance with the Progress Schedule and schedule of Shop Drawing and Sample submittals.**

    b. **Draft and recommend to Engineer proposed Change Orders, Work Change Directives, and Field Orders. Obtain backup material from Contractor.**

    c. **Immediately notify Engineer of the occurrence of any Site accidents, emergencies, acts of God endangering the Work, force majeure or delay events, damage to property by fire or other causes, or the discovery of any Constituent of Concern or Hazardous Environmental Condition.**

11. **Payment Requests: Review applications for payment with Contractor for compliance with the established procedure for their submission and forward with recommendations to Engineer, noting particularly the relationship of the payment requested to the Schedule of Values, Work completed, and materials and equipment delivered at the Site but not incorporated in the Work.**

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12. **Certificates, Operation and Maintenance Manuals: During the course of the Work, verify that materials and equipment certificates, operation and maintenance manuals and other data required by the Contract Documents to be assembled and furnished by Contractor are applicable to the items actually installed and in accordance with the Contract Documents, and have these documents delivered to Engineer for review and forwarding to Owner prior to payment for that part of the Work.**

13. **Completion:**

    a. **Participate in Engineer's visits to the Site to determine Substantial Completion, assist in the determination of Substantial Completion and the preparation of a punch list of items to be completed or corrected.**

    b. **Participate in Engineer's final visit to the Site to determine completion of the Work, in the company of Owner and Contractor, and prepare a final punch list of items to be completed and deficiencies to be remedied.**

    c. **Observe whether all items on the final list have been completed or corrected and make recommendations to Engineer concerning acceptance and issuance of the notice of acceptability of the work.**

C. The RPR shall not:

1. **Authorize any deviation from the Contract Documents or substitution of materials or equipment (including "or-equal" items).**
2. **Exceed limitations of Engineer's authority as set forth in the Contract Documents.**
3. **Undertake any of the responsibilities of Contractor, Subcontractors, or Suppliers.**
4. **Advise on, issue directions relative to, or assume control over any aspect of the means, methods, techniques, sequences or procedures of Contractor's work.**
5. **Advise on, issue directions regarding, or assume control over security or safety practices, precautions, and programs in connection with the activities or operations of Owner or Contractor.**
6. **Participate in specialized field or laboratory tests or inspections conducted off-site by others except as specifically authorized by Engineer.**
7. **Accept Shop Drawing or Sample submittals from anyone other than Contractor.**
8. **Authorize Owner to occupy the Project in whole or in part.**

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.

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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.

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CITY OF BETHEL
Managers Office

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bhowell@cityofbethel.net

Celebrating 50 Years of Service

DATE: June 18, 2019

TO: Fred Watson, Mayor

FROM: Bill Howell, Acting Manager

SUBJECT: Manager's Report – June, 04 through June 18, 2019

Current Events

- I would like to thank the Council, and city employees for the hard work and effort put into the FY 20 budget process. The final meeting on June 13 was a great example of how city employees and the Council can work together effectively. It was nice to see everyone lean in at the end to get the budget balanced.

- Administration is reviewing a letter and packet sent by the Department of the Army regarding demolition, disposal and re-purposing of the BIA site. This packet was sent to the council by the Clerk.

- A preliminary meeting was held with the Public Works Director to begin the planning and RFB process for the city office roof project.

- Public works is planning on demolition and removal of the old police annex in the next 10 days.

- Bethel's old laundromat building is schedule for demolition in January/February of 2020. Public works advised administration that frozen ground is needed to operate heavy equipment behind the building. This plan is the safest way to avoid contact with power lines or the city generator at that location.

- On June 17, administration attended both the Transportation Advisory Committee (TAC) meeting and the Long Range Transportation Plan (LRTP) meetings. Representatives from the State, ONC, BNC, AVCP and the City of Bethel were present at the TAC meeting. Several council

members, LKSD and members of the public attended the open house. A link to the interactive LRTP map should be up on the City Facebook page and the website soon. Members of the public can click on spots on the map and add comments about problems, concerns and/or solutions they may have.

- Admin and the Finance director are reviewing a preliminary draft Audit report.

- On June 5, administration met with the Mayor, Department of the interior and Calista representatives regarding barriers to economic development. A report will be generated by the Department of the Interior and shared with the City.

- I reviewed and offered comment for the Preliminary Engineering Report for the ASHA heights/Martina Oscar water project.

- On June 12, I met with AVCP environmental department and Delta Backhaul regarding recycling programs in the Delta. The City is ready and willing to assist this program.

- We are preparing an RFB for paving of the City Office parking lot and resurfacing of the Fire Department's apparatus ramp.

Ongoing Business

- A $10,000 check was prepared and sent to the Alaska Fire Chiefs Assn. to support their GEMT enrollment process.

- The DOT hired a contractor to remove the beaver damming at the Ridgecrest Drive slough culverts.

- We are working with FNBA for financing of the Avenue's Water Project. Once the meeting minutes for the June 11 meeting are approved, administration can move forward with the process.

- June 12, Administration and Grants met with ONC regarding the Pinkie's Park lighting project.

- A letter was sent to the DEC regarding disposal requirements of Asbestos containing material (ACM) in the Bethel landfill. LKSD has requested use of the Bethel landfill for the Kilbuck fire debris

- A meeting with city union leadership was held on Jun 5, 2019. Meeting topics included: meeting their team and discussions about personnel files and union membership

Departments

- A department head meeting was held on June 6, 2019. The next meeting is scheduled for June 20, at 10 A.M.

HR

- We are recruiting for the planner position.
- HR has been directed to review, suggest and implement policies and procedures for the HR position

Finance

- Finance filled the GL position
- I am reviewing the preliminary draft audit findings.
- Admin is reviewing all large purchases received for compliance with city purchasing code.

Public Works

- Public works is investigating the feasibility of credit card acceptors at the public fill points. We are also discussing the viability of a public fill at the City Sub treatment plant.
- Public works is researching “mile markers” for boardwalks in Pinkie’s park. The idea is from recommendation received through the public safety commission.
- Property maintenance is participating in the boardwalk lighting project and has submitted many useful ideas.

PD

- We are working with PD regarding fire investigation procedures.

Planning

- Administration and the City attorney are working closely with the planning Admin. Assistant to continue to issue site plans and review conditional use permits while we search for a new planner.

- Review and approval of the various Subdivision plans and agreements is ongoing with the City's Engineer Dowl, the City Planner, and City Attorney.

IT/Purchasing agent

- Week of the 17th the Grants Manager and IT Director are at the State of Alaska Department of administration procurement training level 1,2,3

- A plan for computer purchases in the FY 20 budget was approved and submitted to council for approval.

- An AM and contract are in the June 26 packet for approval regarding sewer lift station controls.

Port

- I am working with the Port director to remove all brush on city property that constitutes a fire hazard, hinders access to the seawall for maintenance or decreases visibility/safety for visitors.

- The Port has been directed to place additional life rings around the harbor and additional contact information for port employees.

Fire

- Fire Fighter 2 class has been postponed due to a lack of students and schedule conflicts

- The department is working to complete reporting and cleanup for two city spills.

Budget/Financial

- Budget is passed. Assisting all departments with year-end purchases

Grants

- Week of the 17th the Grants Manager and IT Director are at the State of Alaska Department of administration procurement training level 1,2,3.

- The Grants Manager is working on establishing a federal indirect rate for cost recovery on federals grants. Once approved the City will be able to recover costs associated with grant writing and management.

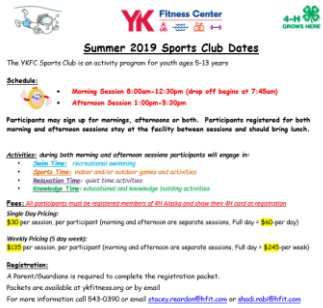
Schedule, Events and Programs

- Regularly Sponsored Discounts for pool admissions:
  - Free Teen Night: Every Wednesday from 4-8pm the Drew Foundation Sponsors Free pool admissions for teens age 13-17.
  - Half Price Saturdays: Every Saturday the Lifesavers Foundation sponsors half price pool admissions for all ages.
  - Free Saturdays: The last Saturday of every month Angstman Law Offices Sponsors free pool admissions from 12pm-8pm for youth under the age of 12.

May

- May Mini Session of swim lessons and instructional programs begins April 29th and runs through May 26th
- Smart Fit Girls Graduation and Community Workout, May 8th at 5:30pm

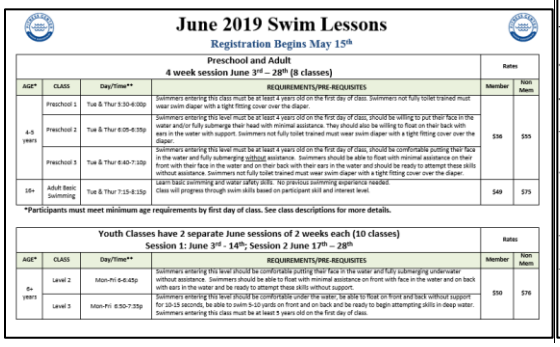
- The Facility will be open 2pm-9pm on Memorial Day, May 27th. The Lifesavers Foundation is sponsoring half price pool admissions for all ages.



- Summer Sport Club Starts May 23rd and runs through August.

June

- June Group Fitness Classes run June 1- June 30.
- June Swim Lessons begin June 3rd. Registration Begins May 15th
- Summer Instructional Classes Run June 11th – July 31st



June 2019 Swim Lessons

Registration Begins May 15th

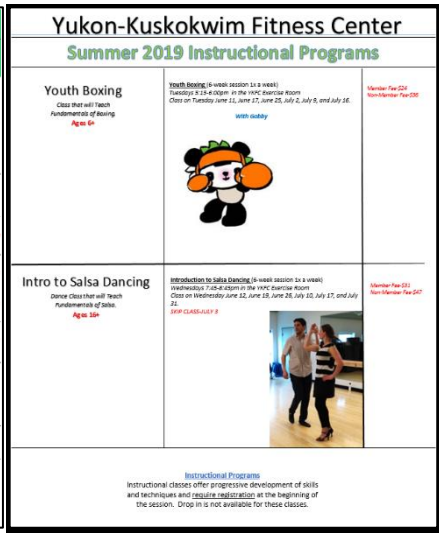
Preschool and Adult
4 week session June 3rd – 28th (8 classes)

AGE*	CLASS	Day/Time**	REQUIREMENTS/PRE-REQUISITES	Rates: Member	Rates: Non Mem
4-5 years	Preschool 1	Tue & Thur 5:30-6:00p	Swimmers entering this class must be at least 4 years old on the first day of class. Swimmers not fully toilet trained must wear swim diaper with a tight fitting cover over the diaper.	$36	$55
	Preschool 2	Tue & Thur 6:05-6:35p	Swimmers entering this level must be at least 4 years old on the first day of class, should be willing to put their face in the water and/or fully submerge their head with minimal assistance. They should also be willing to float on their back with ears in the water with support. Swimmers not fully toilet trained must wear swim diaper with a tight fitting cover over the diaper.		
	Preschool 3	Tue & Thur 6:40-7:10p	Swimmers entering this level must be at least 4 years old on the first day of class, should be comfortable putting their face in the water and fully submerging without assistance. Swimmers should be able to float with minimal assistance on their front with their face in the water and on their back with their ears in the water and should be ready to attempt these skills without assistance. Swimmers not fully toilet trained must wear swim diaper with a tight fitting cover over the diaper.		
16+	Adult Basic Swimming	Tue & Thur 7:15-8:15p	Learn basic swimming and water safety skills. No previous swimming experience needed. Class will progress through swim skills based on participant skill and interest level.	$49	$75

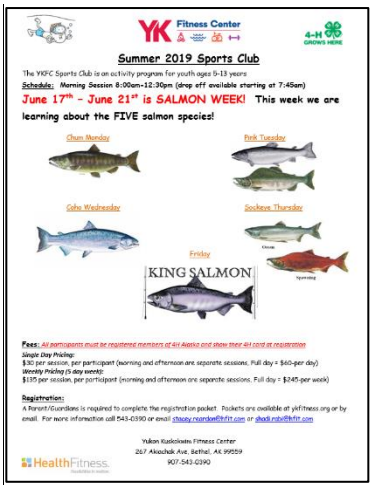
*Participants must meet minimum age requirements by first day of class. See class descriptions for more details.

Youth Classes have 2 separate June sessions of 2 weeks each (10 classes)
Session 1: June 3rd - 14th; Session 2 June 17th – 28th

AGE*	CLASS	Day/Time**	REQUIREMENTS/PRE-REQUISITES	Rates: Member	Rates: Non Mem
6+ years	Level 2	Mon-Fri 6-6:45p	Swimmers entering this level should be comfortable putting their face in the water and fully submerging underwater without assistance. Swimmers should be able to float with minimal assistance on front with face in the water and on back with ears in the water and be ready to attempt these skills without support.	$50	$76
	Level 3	Mon-Fri 6:50-7:35p	Swimmers entering this level should be comfortable under the water, be able to float on front and back without support for 10-15 seconds, be able to swim 5-10 yards on front and on back and be ready to begin attempting skills in deep water. Swimmers entering this class must be at least 5 years old on the first day of class.		



- June Sport Club Themes include Large Mammal Week, Salmon Week, Bird Week and more



July

- July Group Fitness Classes Run July 1 – July 31
- The Fitness Center is open from 2-9pm on July 4th
- July/Aug Swim Lessons Run July 8th – Aug 11th, Registration opens June 24th
- Swim Instructor Training starts July 12th

Staffing

Operational Staff:

Now Hiring:

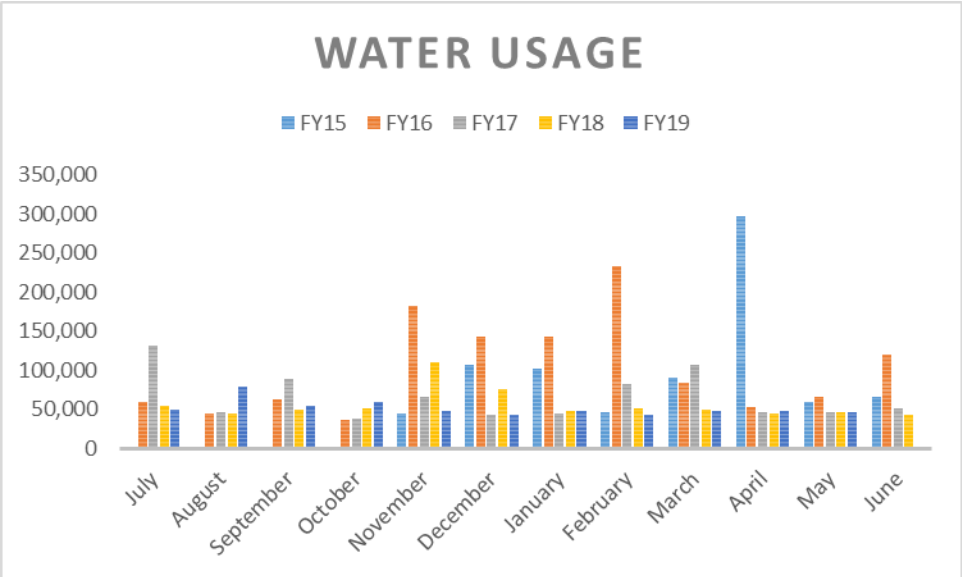
- Certified Lifeguards
  - visit ykfitness.org to view pre-requisites
- Operations Staff
  - Facility Attendant

Programming Staff: We are looking for programming staff to fill the below roles:

- Youth Programming Staff for our Summer Sport Club
- Full Time Aquatic Coordinator
- Swim Instructors
- Instructors for youth classes, particularly dance and tumbling
- Fitness Instructors and Certified Personal Trainers
- Instructors for any activity, craft or music patrons might be interested in learning.

Anyone interested in working at the YK Fitness Center can call 543-0390 or visit ykfitness.org for information and links to our applications.

Facility Maintenance



*Note: Facility opened in November of 2014 (FY15)

Facility Maintenance

Maintenance:

- City of Bethel replaced corroded discharge pipe on facility lift station.
- Replaced flame rods on Boiler #2
- Replaced worn out drive belts and tracks on pool vacuum.

Previously reported maintenance still pending:

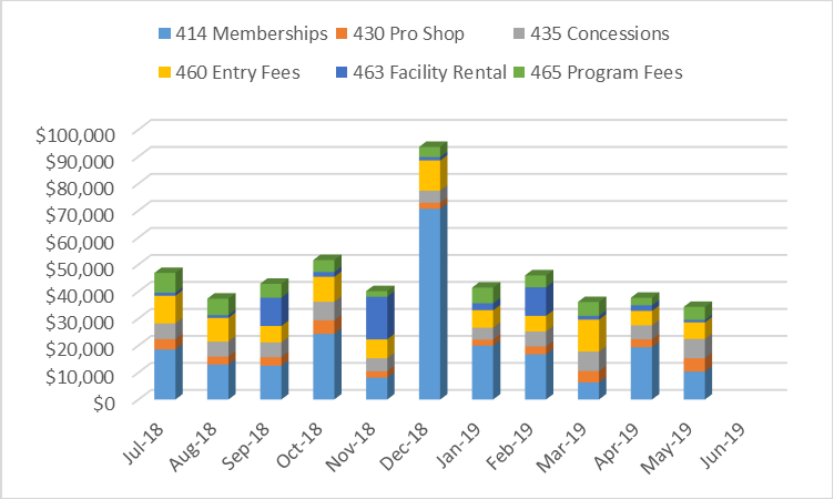
- Efforts were made to clean up a spill of Muriatic Acid in the facility connex. In the course of cleanup it was found that the spill was more extensive than initially thought and assistance was requested from the Fire Department. It was determined that additional protective equipment is needed to clean up the spill and the connnex has been closed off pending procurement of the additional protective equipment.
- Main drain at bottom of pool – looking at replacement drain covers and processes for installation.
- Lamps for UV system are nearing the end of their use life and will need to be replaced. Due to the delicate and highly technical nature of the work it may be necessary to bring in a contractor. We are looking at options. Update August 2018: Two possible vendors for bulb replacement have been identified and quotes are being sought for parts and service.
- Overhead fans in pool area need maintenance. Working with City Facilities Department to develop a plan for safe access to trouble shoot the fans. Jan 2018: City of Bethel is looking into purchasing a lift that will allow access to the fans as well as other maintenance areas in the pool. Update 3/18/18 a scissor lift has been identified and purchasing is being reviewed. 5/15/18 scissor lift scheduled to arrive on first barge. 6/19/18 still waiting on lift. August 2018 Scissor lift has been received and we are scheduling with property maintenance to inspect the fans and determine next steps. September 2018 waiting for replacement fan. October 2018 Fan has been received, waiting on electrician to install.

Revenue

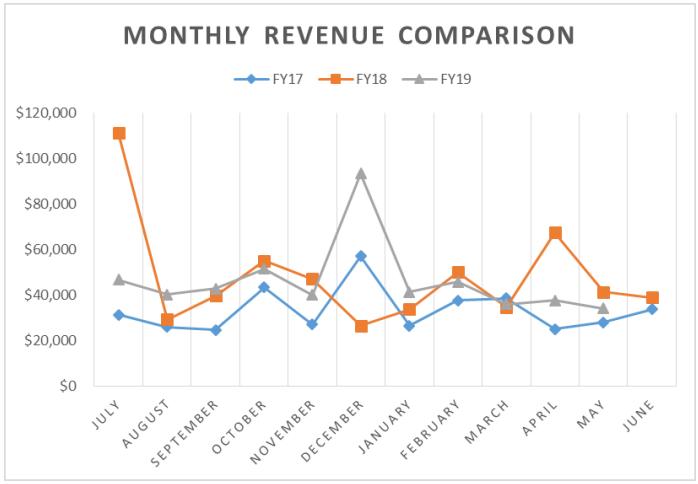
FY19 Revenue

Code	Facility Revenue	Jul-18	Aug-18	Sep-18	Oct-18	Nov-18	Dec-18	Jan-19	Feb-19	Mar-19	Apr-19	May-19	Jun-19	Total	FY19 Budge	%attained
414	Memberships	$18,548	$12,929	$12,522	$24,316	$8,088	$70,674	$19,940	$16,731	$6,331	$19,382	$10,367		$219,827	$383,160	57.37%
430	Pro Shop	$3,850	$2,960	$3,166	$5,011	$2,384	$2,224	$2,265	$2,918	$4,215	$2,949	$4,901		$36,841	$42,000	87.72%
435	Concessions	$5,759	$5,585	$5,444	$6,878	$4,812	$4,470	$4,387	$5,547	$7,196	$5,109	$7,133		$62,320	$55,000	113.31%
460	Entry Fees	$10,272	$8,751	$6,111	$9,252	$7,011	$11,195	$6,495	$5,822	$11,868	$5,399	$6,175		$88,350	$81,500	108.41%
463	Facility Rental	$1,130	$1,040	$10,476	$1,743	$15,772	$1,252	$2,558	$10,547	$1,392	$2,040	$907		$48,856	$12,750	383.18%
465	Program Fees	$7,327	$6,101	$5,155	$4,462	$2,081	$3,742	$5,800	$4,427	$5,115	$2,813	$4,833		$51,856	$80,500	64.42%
Community Action Grant														$0	$767	0.00%
WomenInPhilanthropy Grant			$3,016											$3,016	$4,681	64.42%
	Facility Revenue Total	$46,885	$40,381	$42,874	$51,662	$40,147	$93,557	$41,445	$45,990	$36,116	$37,691	$34,317	$0	$511,066	$660,358	77.39%

The below chart represents the portion of the total revenue that each revenue category represents.



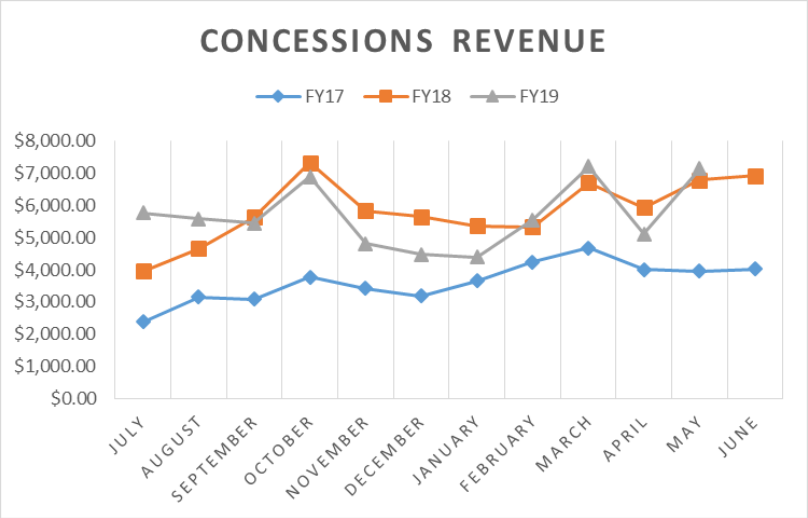
Revenue Comparisons



Monthly Revenue Totals	July	August	September	October	November	December	January	February	March	April	May	June	Total
FY17	$31,433	$26,142	$24,867	$43,503	$27,134	$57,131	$26,567	$37,829	$38,636	$25,144	$28,177	$33,913	$400,478
FY18	$111,356	$29,355	$39,850	$55,131	$47,120	$26,685	$33,914	$50,253	$34,808	$67,517	$41,521	$38,990	$576,500
FY19	$46,885	$40,381	$42,874	$51,662	$40,147	$93,557	$41,445	$45,990	$36,116	$37,691	$34,317		$511,066

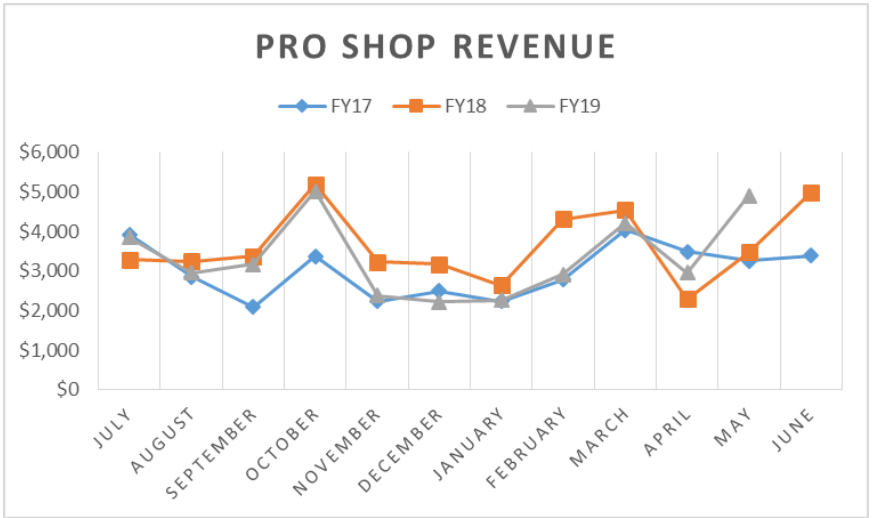
Revenue

Concessions Comprisons



Concessions Sales Totals	July	August	September	October	November	December	January	February	March	April	May	June	Total
FY17	$2,384.89	$3,157.11	$3,092.41	$3,769.41	$3,426.47	$3,185.55	$3,648.41	$4,247.30	$4,669.61	$4,009.62	$3,958.30	$4,024.27	$43,573.35
FY18	$3,954.28	$4,650.93	$5,633.56	$7,320.72	$5,834.03	$5,642.99	$5,366.89	$5,321.23	$6,690.87	$5,921.68	$6,781.51	$6,906.37	$70,025.06
FY19	$5,759.05	$5,585.25	$5,443.53	$6,878.43	$4,811.83	$4,470.20	$4,386.93	$5,546.69	$7,195.91	$5,108.61	$7,133.42		$62,319.85

Pro Shop Comprisons

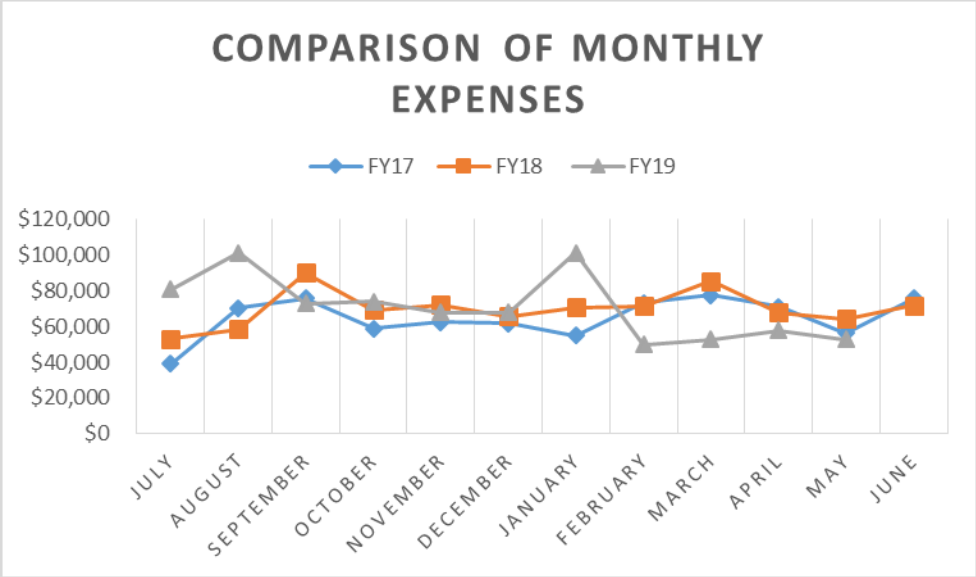


Pro Shop Sales Totals	July	August	September	October	November	December	January	February	March	April	May	June	Total
FY17	$3,913	$2,851	$2,093	$3,366	$2,231	$2,491	$2,240	$2,778	$4,033	$3,484	$3,254	$3,382	$36,114
FY18	$3,290	$3,248	$3,366	$5,195	$3,231	$3,172	$2,643	$4,315	$4,537	$2,289	$3,467	$4,987	$43,739
FY19	$3,850	$2,960	$3,166	$5,011	$2,384	$2,224	$2,265	$2,918	$4,215	$2,949	$4,901		$36,841

FY19 Expenses

	Expenses	Jul-18	Aug-18	Sep-18	Oct-18	Nov-18	Dec-18	Jan-19	Feb-19	Mar-19	Apr-19	May-19	Jun-19	Total	Budgeted	% used
	Wages	$36,428	$55,950	$35,994	$36,176	$34,862	$35,698	$55,053	$34,157	$34,792	$36,265	$35,258		$430,633	$581,604	74.04%
	Benefits	$8,923	$13,288	$8,404	$8,463	$8,373	$8,635	$13,408	$7,949	$7,829	$8,371	$8,206		$101,849	$120,200	84.73%
520	Housing	$3,090	$3,090	$3,090	$3,090	$3,090	$3,090	$3,090	$3,090	$3,090	$3,090	$3,090		$33,990	$37,080	91.67%
545	Travel/Training	$0	$82	$0	$0	$821	$0	$239	$0	$1,440	$76	$0	$0	$2,659	$5,731	46.39%
561	Supplies	$12,789	$3,747	$3,431	$8,657	$4,992	$4,967	$5,709	$2,986	$4,330	$6,146	$4,451	$0	$62,205	$99,176	62.72%
580	Boiler	$0	$0	$0	$0	$0	$0	$5	$0	$0	$0	$0	$0	$5	$5,250	0.10%
661	Vehicle Maintenance/Repair	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$500	0.00%
663	Janitorial Supplies/Services	$316	$151	$7,560	$274	$701	$898	$81	$10	$1,178	$467	$51	$0	$11,687	$18,000	64.93%
668	Software Licenses	$899	$427	$447	$547	$418	$966	$434	$477	$413	$392	$364	$0	$5,783	$6,869	84.19%
669	Other Purchased Services	$0	$0	$0	$0	$0	$0	$9,706	$0	$0	$2,067	$0	$0	$11,773	$25,160	46.79%
683	Minor Equipment	$1,579	$3,013	$0	$589	$1,588	$1,248	$0	$0	$0	$0	$0	$0	$8,018	$10,500	76.36%
684	Donations and Awards	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$500	0.00%
724	Dues/Subscriptions	$169	$179	$179	$179	$369	$369	$379	$179	$179	$179	$179	$0	$2,539	$2,000	126.93%
727	Advertising	$186	$0	$0	$1,820	$0	$211	$0	$0	$0	$0	$0	$0	$2,217	$9,000	24.63%
733	Postage	$3	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$3	$400	0.63%
736	Bank Charges	$1,134	$947	$884	$1,374	$783	$774	$951	$1,011	$933	$791	$992	$0	$10,573	$14,500	72.92%
790	Allowance for Special Events	$0	$0	$0	$227	$34	$0	$0	$0	$0	$0	$0	$0	$261	$800	32.67%
799	Miscellaneous	$0	$7,643	$0	$817	$0	$0	$0	$0	$0	$0	$0	$0	$8,460	$5,500	153.82%
	Community Action Grant	$160	$184	$0	$0	$0	$0	$0	$0					$344	$767	44.85%
	Women In Philanthropy Grant	$270	$311	$0	$0	$0	$0	$0	$0					$581	$4,681	12.40%
	TOTAL	**$65,946**	**$89,012**	**$59,989**	**$62,214**	**$56,031**	**$56,856**	**$89,055**	**$49,858**	**$54,184**	**$57,844**	**$52,590**	**$0**	**$693,579**	**$948,218**	73.15%

Comparison of Monthly Expenses

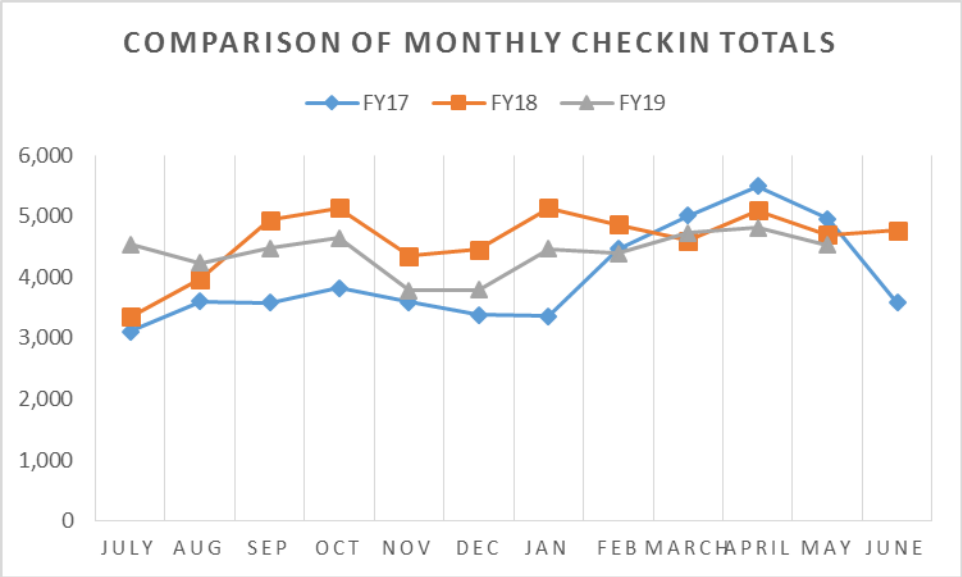


Monthly Expenses	July	August	September	October	November	December	January	February	March	April	May	June	Total
FY17	$39,145	$70,114	$75,717	$58,716	$62,335	$61,668	$54,949	$72,965	$77,475	$70,907	$56,290	$75,502	$775,784
FY18	$53,231	$58,448	$89,960	$69,086	$71,974	$65,596	$70,546	$71,272	$85,390	$67,745	$64,074	$71,669	$838,989
FY19	$80,783	$101,028	$72,822	$73,683	$67,629	$67,907	$101,072	$49,858	$52,838	$57,844	$52,590		$778,056

Facility Utilization

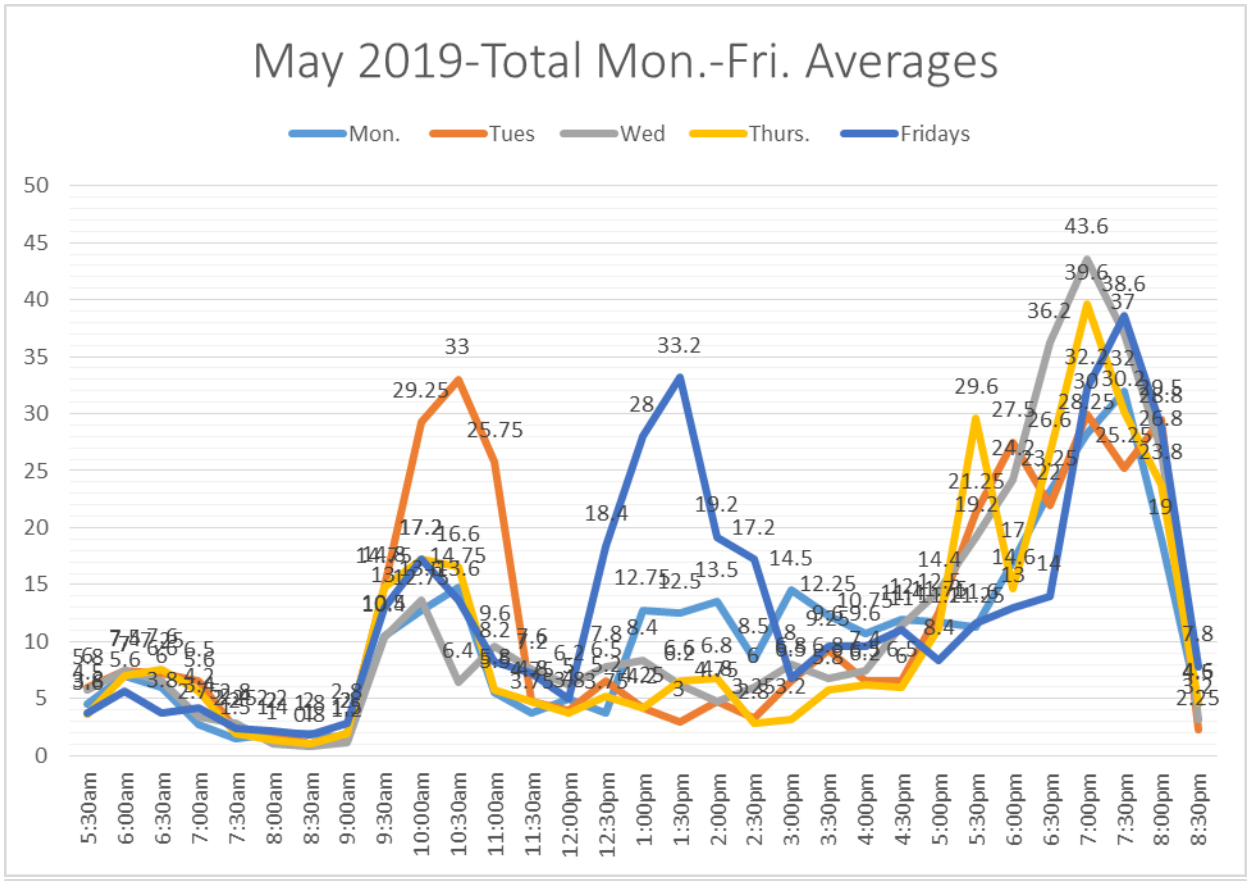
Facility Check-In: Facility Check-In numbers represent the total number of patrons who visited the facility and are based on a compilation of the number of members who checked-in, the number of daily passes sold and the number of participants in programs, activities, rentals and special events. These numbers represent facility visits, not individuals as most individuals visit the facility multiple times over the course of the month.

Facility Check-In	Jul-18	Aug-18	Sep-18	Oct-18	Nov-18	Dec-18	Jan-19	Feb-19	Mar-19	Apr-19	May-19	Jun-19	Total
Member Checkins	2,771	2,563	1,712	1962	1,901	1,620	2,195	2,003	1,942	1,798	1,634		22,101
Daily Admissions	1,482	1,533	1,734	1448	1,238	1,557	1,648	1,672	2,128	2,116	2,386		18,942
Rentals	32	120	771	920	350	383	206	300	250	442	171		3,945
Fitness Programming	45	5	140	216	247	173	277	275	282	319	221		2,200
Aquatics Programming	34	88	97	90	44	43	103	132	82	123	62		898
Youth Programs	176	47	19	8	0	17	32	8	41	9	52		409
Monthly Totals	4,540	4,356	4,473	4,644	3,780	3,793	4,461	4,390	4,725	4,807	4,526	0	48,495



Facility Check-In	July	Aug	Sep	Oct	Nov	Dec	Jan	Feb	March	April	May	June	Total
FY17	3,108	3,596	3,579	3,820	3,594	3,378	3,355	4,465	5,006	5,491	4,960	3,584	47,936
FY18	3,348	3,973	4,936	5,139	4,351	4,453	5,139	4,864	4,594	5,097	4,695	4,766	55,355
FY19	4,540	4,236	4,473	4,644	3,780	3,793	4,461	4,390	4,725	4,807	4,526		48,375

Area Usage: Count of the number of individuals in each area at the top and bottom of each hour. Showing trends and patterns of area usage, these numbers are not an accurate reporting of the overall number of patrons using the facility as patrons who remain in any area for more than 30 minutes are counted more than once. The below charts show average number of users for each area, by day of the week, per 30 minute period and are used from programming and operational hours planning.


May 2019-Total Mon.-Fri. Averages
Mon.
Tues
Wed
Thurs.
Fridays
50
45
40
35
30
25
20
15
10
5
0
5:30am
6:00am
6:30am
7:00am
7:30am
8:00am
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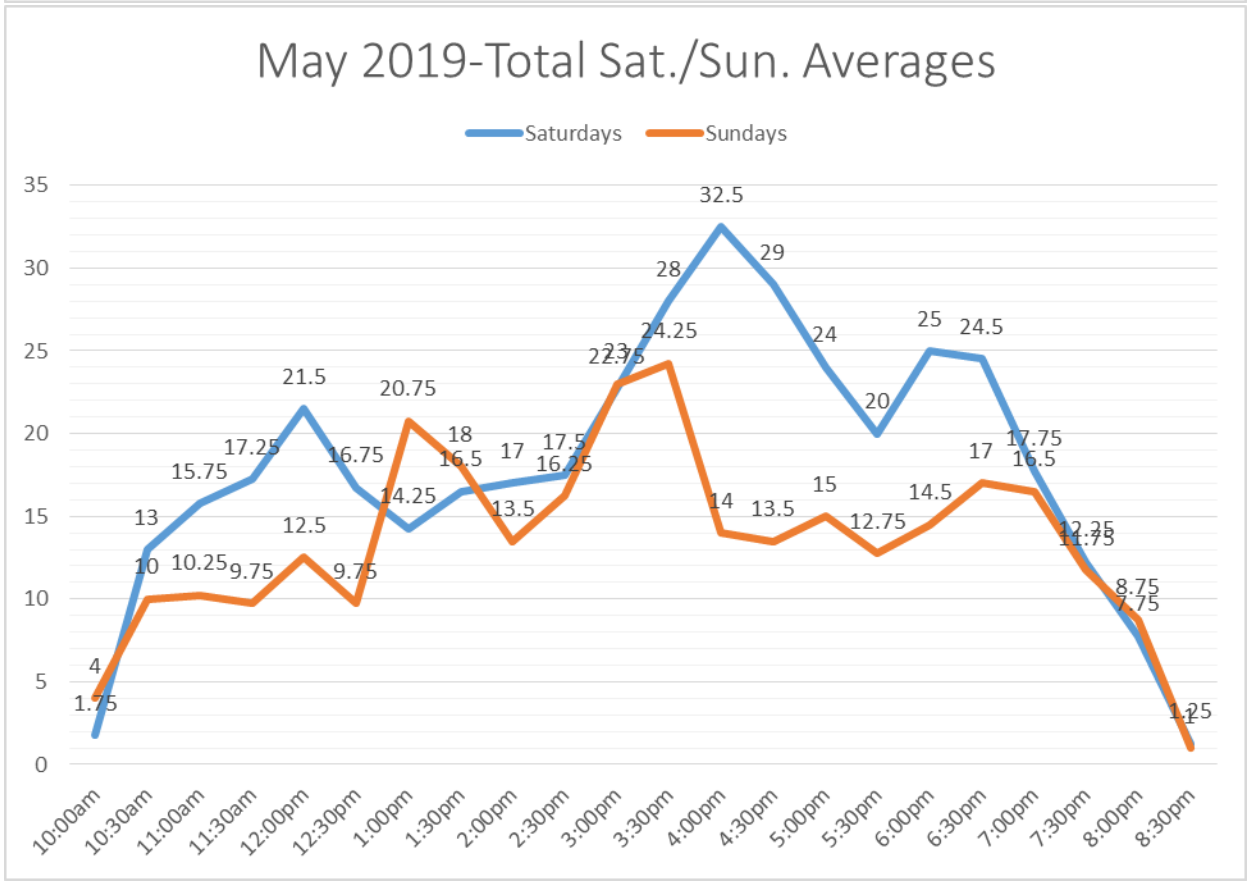
May 2019-Total Sat./Sun. Averages
Saturdays
Sundays
35
30
25
20
15
10
5
0
10:00am
10:30am
11:00am
11:30am
12:00pm
12:30pm
1:00pm
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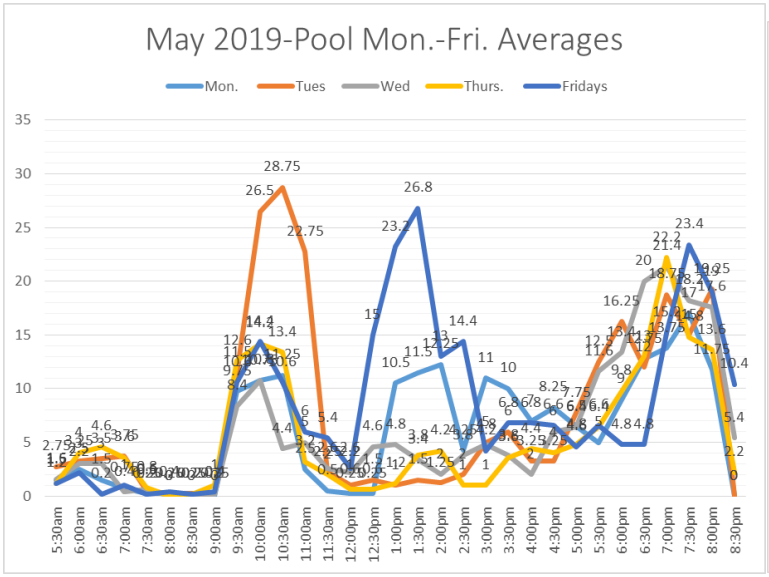
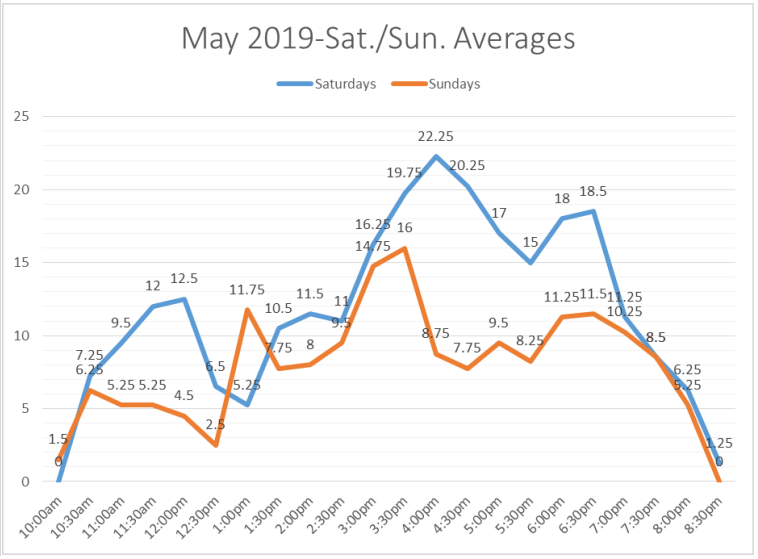
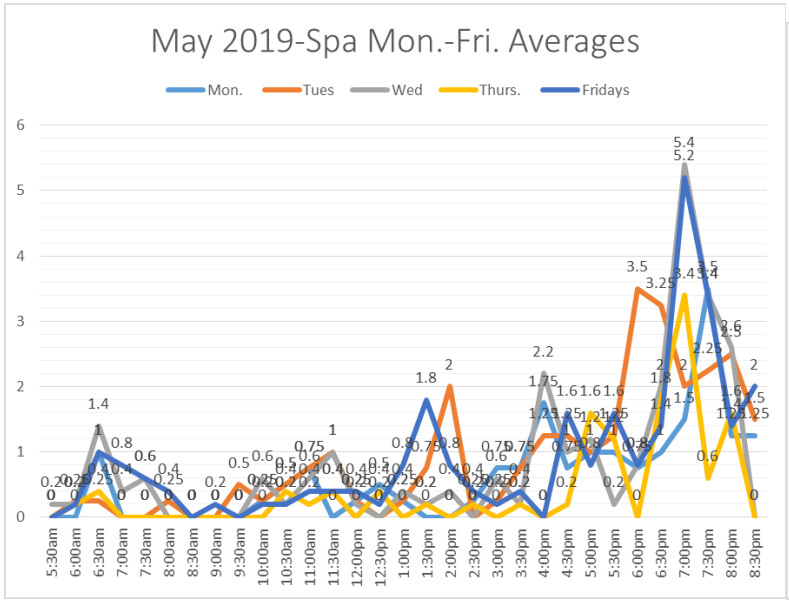
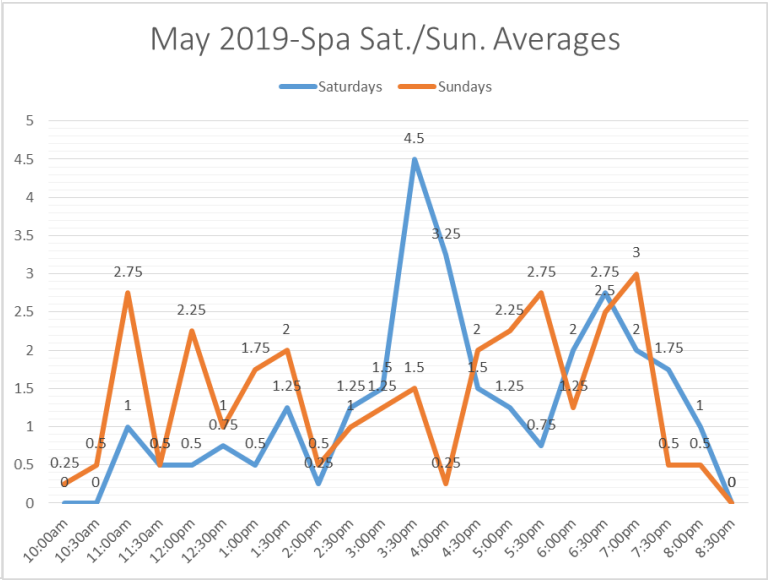
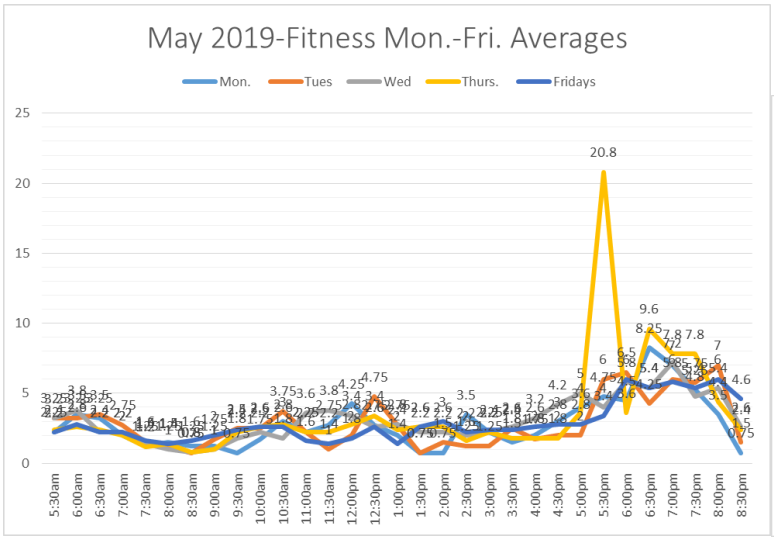
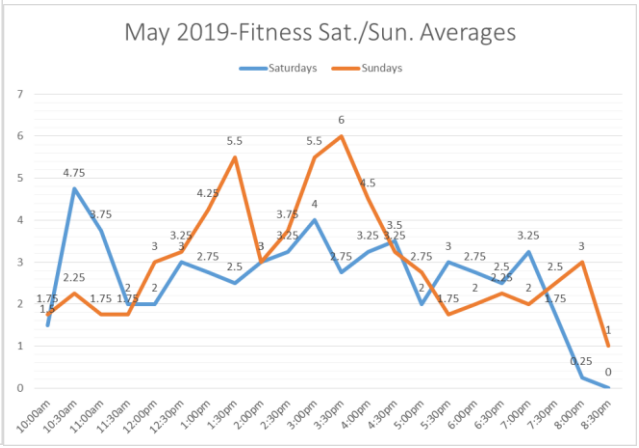

May 2019-Pool Mon.-Fri. Averages
Mon.
Tues
Wed
Thurs.
Fridays

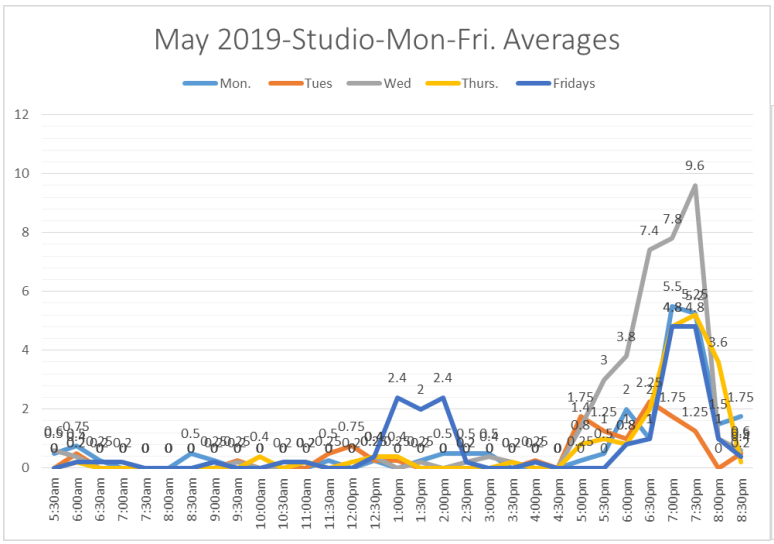

May 2019-Sat./Sun. Averages
Saturdays
Sundays


May 2019-Spa Mon.-Fri. Averages
Mon.
Tues
Wed
Thurs.
Fridays


May 2019-Spa Sat./Sun. Averages
Saturdays
Sundays


May 2019-Fitness Mon.-Fri. Averages
Mon.
Tues
Wed
Thurs.
Fridays


May 2019-Fitness Sat./Sun. Averages
Saturdays
Sundays


May 2019-Studio-Mon-Fri. Averages
Mon.
Tues
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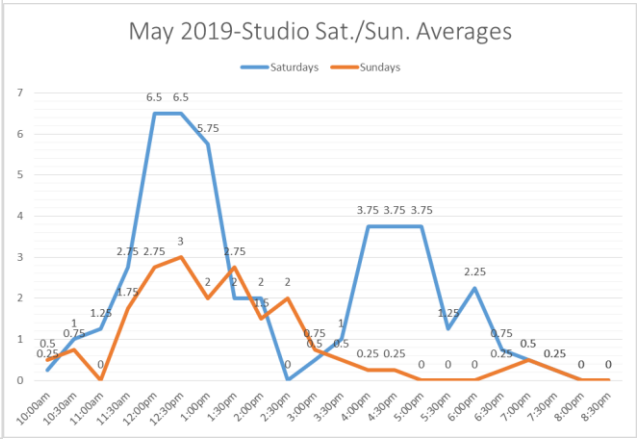
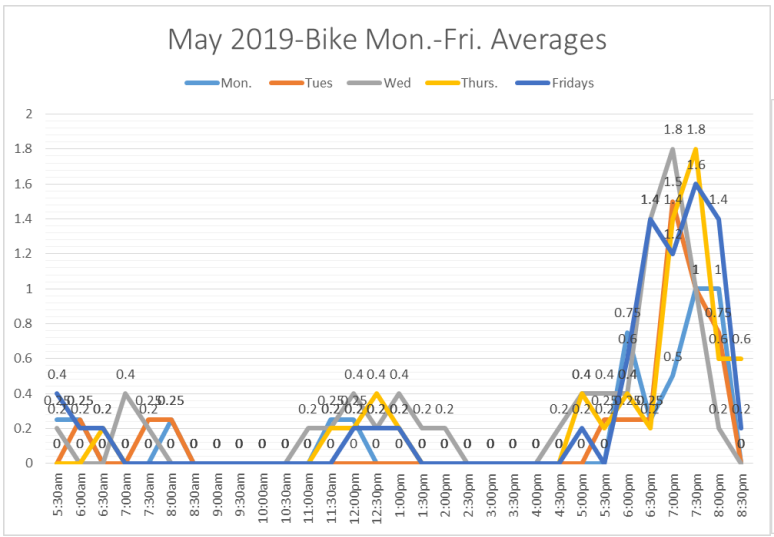
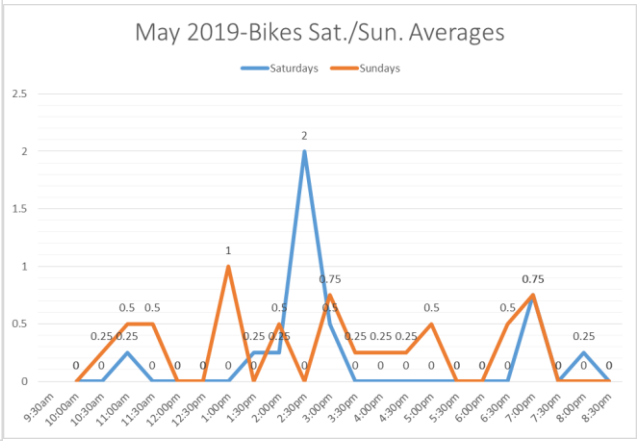
Thurs.
Fridays


May 2019-Studio Sat./Sun. Averages
Saturdays
Sundays


May 2019-Bike Mon.-Fri. Averages
Mon.
Tues
Wed
Thurs.
Fridays


May 2019-Bikes Sat./Sun. Averages
Saturdays
Sundays

City of Bethel
Long Range Transportation Plan
An Element of the Comprehensive Plan

Transportation Advisory Committee
October 1, 2018
Meeting Notes

Attendees:

1. Adison Spafford – DOWL
2. Jovie Garcia – DOWL
3. Pete Williams – City of Bethel
4. Scott Thomas – DOT&PF
5. Todd Vanhove – DOT&PF
6. Rick Garcia – AVCP
7. Pat Samson – ONC
8. Ana Hoffman – BNC
9. Mike Orr – BNC
10. Peter Evon – ONC

Meeting start: 1:15 PM

Welcome: Adison Spafford and Pete Williams

Background:

The Alaska DOT&PF, through the Y-K Transportation Plan has been looking at the region, started 4-years ago, working with Scott and Todd and other key stakeholders; the City of Bethel LRTP has been a focus for some time. The City of Bethel would like to take a different approach after reviewing the previous LRTP developed in the past 20-years, only 2-3 have come to fruition.

Introductions and Agenda: Adison Spafford

- What is the City of Bethel's Long Range Transportation Plan (LRTP)
- The Transportation Advisory Committee (TAC) Roles and Responsibilities
- LRTP Schedule
- Vision Statement
- What We Have Heard So Far
- LRTP Vision/Goals/Needs Work Session
- Maintenance Plan
- How to Stay Involved
- LRTP Interactive Map

(12 mins) Michael Orr: In this process, will there be a recap meeting? Will we have an opportunity to give continual feedback, not like a Corps process?
Yes.

(14 mins) Scott Thomas: The State law says we need to check for consistency in community planning and its helpful when you show plans – they are all seeing the same things.

What is the STIP? The Alaska Statewide Transportation Improvement Program (STIP) is the state's four-year program for transportation system preservation and development. It includes interstate, state and some local highways, bridges, ferries and public transportation, but does not include airports or non-ferry-related ports and harbors. It covers all system improvements for which partial or full federal funding is approved and that are expected to take place during the four-year duration of the STIP.

(15 mins) Todd VanHove: The STIP is the document we use to fund all the FHWA funded projects. There's different areas in the STIP, like NHS (National Highway System) – Chief Eddie is part of NHS and applies to that. Most communities are interested in the portion of the STIP is the CTP – Community Transportation Programs – for projects that serve local transportation needs. For us to nominate projects on the NHS we do that internally using own scoring criteria, developed recently.

The way the STIP has run in the past is changing. We used to put out a STIP every three-years and try to manage it with the project coming through and do an update whenever we've reached the FHWA thresholds – which is inefficient. Now, what we are working towards with the new criteria, is to prepare a STIP amendment/major amendment every quarter – that way we can keep it up-to-date and once the project changes (addition or deletion), the STIP changed dramatically. We can keep our hands and fiscal constraints controlled.

The CTP – Projects are nominated and evaluated regionally. We'll go out to the communities – call for projects, we'll work with the communities and area planners who are in contact with the communities to find out what projects are needed. We will develop them as they come, and the Board will meet and score the projects and fall under the funding program. It's more of a public process participation and much more transparent than the NHS process. There's a long list of projects we have not been able to get too. The 2018-21 STIP continues to fund a backlog of previously scored projects.

The Annual Federal Highways Program for the state of Alaska is $5 million per year.

(18 mins) Michael Orr: What proportion, for example, is allocated to support projects in Bethel? There is no regional allocation or community allocations – it's a project-by-project score. There's a 49% maximum allowable percentage for overall program for the CTP program. We are in the process of doing a STIP amendment right now and not sure where the CTP dollars vs. NHS dollars fall now. It's worth noting, for discussion only, the State of Alaska has a special exemption for using the funds on these types of roads (CTP).

Adison & Todd: Getting the projects identified and included into the LRTP will be very beneficial – as well as having a plan and design ready for development completed and ready to go. Implementation is key!!

(22-24 mins) Todd discussed redistribution and reallocation of funding.

Additional information regarding Alaska STIP: http://dot.alaska.gov/stwdplng/cip/stip/index.shtml

(26 mins) Ana Hoffman: Q: Is there a priority for roads that are connecting other communities?

Once the LRTP is completed you can take the plan and present to tribes for additional feedback and request for funding.

(35 mins) Todd: The STIP Amendment 2 (cleanup_ was submitted and currently working on Amendment 3 – anticipate October-November and have it signed February-March 2019. Amendment 3 is our opportunity now for adding projects (not for CTP – call for projects).

(37 mins) Pete: Q: On the CTP, can we request funding for gravel road? A: Yes.

(38 mins) Mike: Q: Is materials/gravel source considered a match? A: Yes. The State does not like to identify gravel/material sources – it will be up to the project.

Vision Statement, 1997: Adison

(42 mins) Mike: Q: What's the distinction between access trails (motorized) vs. pioneer roads? If we prioritize trails, will it put us in a lower ranking?

Action: DOT&PF to report back to the group on pioneer roads as a preferred option. Do roads get higher priority and could the roads be used for emergency access?

Pete: Title 17 has rules and will require study regarding access. Once we've identified the land, we should secure it (ROW).

What We Have Heard So Far: Adison

- Improve traffic flow based on AADT
- Maintenance/Dust control
- Improved lighting
- Safer streets for children walking to and from school
- Boardwalk improvements
- Improve trail connectivity to inter-city trails
- Make paths and sidewalks safer to increase use
- Transit Services
- Reduce cut-through traffic in neighborhoods
- Make connections as direct as possible
- Consider land use and future development
- Port expansion and dock repair
- Erosion control
- Trail markers on river system
- Improve design standards

Transportation Advisory Committee
October 1, 2018
Meeting Notes

LRTP Vision/Goals/Needs Work Session:

- Group 1: Rick Garcia, Pat Samson, Mike Orr, and Todd VanHove
- Group 2: Scott Thomas, Pete Williams, Ana Hoffman and Peter Evon

Vision Statement:

Group 1: The City of Bethel's transportation system will be safe, reliable, accessible and affordable by 2025. We envision that the community will have world-class public transportation system that recognize pedestrian friendly access and use. We also envision a world class airport and support for the entire region and the entire State of Alaska.

Key words used: safe, reliable, accessible, transportation system, affordable, safe for pedestrians, lights. World class – public transportation, pedestrian friendly/walkable, airport, port

Group 2: We value the rights of all Bethel citizens to a safe, affordable, accessible and efficient road transportation system. We envision the design, physical development and expansion of roads. Bethel's transportation system will offer a convenient pedestrian and bicycle system connecting important community facilities, snow machine/ATV road system that provides safe separation between a variety of users and makes inter-city and intra-city travel easier with adequate street lighting, improved road conditions and improve safety and control dust for transportation networks including marine, seasonal and multi-modal access.

Goals and Objectives:

Group 1:

1. Goal: Immediately address the expansion needs of the Port of Bethel
2. Goal: Improve safety for all modes of transportation utilizing a "complete streets" concept.
3. Goal: (old) Make 14-miles of Bethel's existing roads and streets pedestrian friendly. (now) Make a network of 14-miles of pedestrian friendly access that compliments Bethel's roads.
4. Goal: Build the 'donut hole' road and make it pedestrian friendly
5. Goal: Provide safe access across creeks with the City.

There was discussion regarding a park and ride option – park the ATV in an area and ride public transportation to destination. See map.

Maintenance Plan:

Top 5: Maintenance issues:

1. Maintenance of paved roads
2. Maintenance of gravel roads – eliminates dust and locks the road up.
3. Maintenance of existing port maintenance, i.e. erosion
4. Identify drainage issues in all locations
5. Design Standards - identify heavy use vs. regular use (identify truck routes)

ACTION ITEMS

- **Action:** DOWL (Adison) to send out separate email on Maintenance Plan – Maintenance Observation Checklist.
- **Action:** DOWL to send the City of Bethel copy of DOT&PF Maintenance Handbook.
- **Action:** DOWL email DOT&PF copy of City of Bethel Map to markup.

City of Bethel
Long Range Transportation Plan
An Element of the Comprehensive Plan

PUBLIC OPEN HOUSE NO. 2
Monday, June 17, 2019
5:00 - 7:00 PM

Agenda

- Welcome
- What is the City of Bethel's Long Range Transportation Plan (LRTP)?
- The Transportation Advisory Committee (TAC) Roles and Responsibilities
- LRTP Schedule
- Recorded Public Comments and LRTP Interactive Map
- LRTP Vision Statement / Goals Work Session
  - Vision Statement
  - Goals
- Maintenance Issues / Needs
- Recommended Projects
- How to Stay Involved

What is the City of Bethel Long Range Transportation Plan (LRTP)?

The City of Bethel LRTP is a five-year multi-modal community transportation plan, including various vehicle fleets (planes, ATVs, snow machines, barges, skiffs, and automobiles) and modes (aviation, surface, and marine) of transportation. The LRTP is an element of the City of Bethel's Comprehensive Plan.

The City of Bethel is working to identify five high priority transportation projects to include in their LRTP and Capital Improvement Program

City of Bethel Transportation Advisory Committee (TAC)

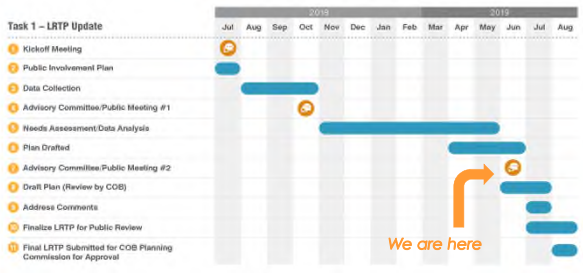
Introduction and Purpose
To guide the City of Bethel and the DOWL Planning Team through the planning process

Role
The City of Bethel TAC will advise the planning team on:

- The Public Involvement Plan (PIP) and transportation planning process
- Vision, Goals and Objectives
- Coordinating with other transportation planning efforts in the region
- Surface, marine and aviation transportation issues and needs
- Project/program recommendations
- Draft transportation plan

Yuut Elitnaurviat
ONC
ORUTSARARMIUT NATIVE COUNCIL
LKSD
Bethel

LRTP Schedule

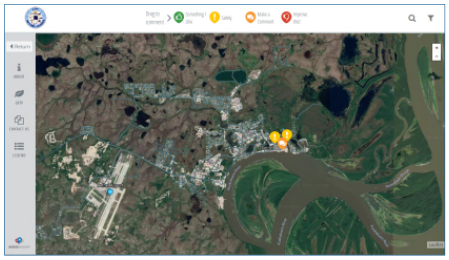


Public Comments from Interactive Map

- Sections of Ptarmigan St is unsafe. The asphalt has heaved and sunk to an extent the road is a hazard to vehicles.
- "Donut Hole" Area – Need a footbridge to get across the stream so the path can be used year-round.
- Mallard Lane – Culvert is required. Constant water run-off across the road, especially in winter, has negatively impacted the road condition.
- Chief Eddie Hoffman Hwy - Hazard due to poor lighting and protection between walkway and roadway. Cones were suggested to improve safety.
- Standard Ave - There is no street lights.
- River St, Tundra St & Chief Eddie Hoffman Hwy - Intersection is confusing when entering and leaving the highway.
- Osage St & Ridgecrest Dr - This is a dangerous intersection in the mornings, especially when the roads are slick.
- More lights are needed all around town, especially in the Chief Eddie Hoffman Hwy/hospital area.
- Browns Slough – The bridge does not have pedestrian facilities.

LRTP Interactive Map

- **Interactive map:** https://dowl.mysocialpinpoint.com/city-of-bethel-lrtp



Vision for the City of Bethel's transportation system – TAC

Group 1: The City of Bethel's transportation system will be safe, reliable, accessible and affordable by 2025. We envision that the community will have world-class public transportation system that recognize pedestrian friendly access and use. We also envision a world class airport and support for the entire region and the entire State of Alaska.

Group 2: We value the rights of all Bethel citizens to a safe, affordable, accessible and efficient road transportation system. We envision the design, physical development and expansion of roads. Bethel's transportation system will offer a convenient pedestrian and bicycle system connecting important community facilities, snow machine/ATV road system that provides safe separation between a variety of users and makes inter-city and intra-city travel easier with adequate street lighting, improved road conditions and improve safety and control dust for transportation networks including marine, seasonal and multi-modal access.

Goals from the 1ST TAC meeting

- Goal: Immediately address the expansion needs of the Port of Bethel.
- Goal: Improve safety for all modes of transportation using a "Complete Streets" concept.
- Goal: (Old) Make 14-miles of Bethel's existing roads and streets pedestrian friendly. (Now) Update the road network to include non-motorized (pedestrian and bicycles) facilities.
- Goal: Construct the 'donut hole' road with facilities for all modes of transportation, including pedestrians and bicycles.
- Goal: Construct additional boardwalks over tundra areas for pedestrian and bicycle access.

Bethel LRTP *DRAFT* 2019 Goals

- *2019* Goal: Incorporate the "complete streets" concept during roadway design or in plat drawings. Suggested features – adding sidewalks or widening roadway shoulders when designing a new or reconstructed road project.
- *2019* Goal: Construct the 'donut hole' road with facilities for all modes of transportation, including pedestrians and bicycles.
- 2019 Goal: Work with DOT&PF to complete the construction of Tundra Ridge Road Realignment project. Insure that it includes lighting and pedestrian and bicycle facilities.
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- *2019* Goal: Continually work with funding partners to complete long-term capital improvement projects and deferred maintenance for the Port of Bethel.
- *2010 Goal: Provide safe and reliable marine access to port facilities and waterfront properties.*

Bethel LRTP *DRAFT* 2019 Goals, continued

- *2010 Goal: Include site development requirements in the zoning or subdivision code to specify ingress and egress (driveways), lighting, parking, and loading and offloading.*
- *1997* Goal: Provide for efficient transport and transfer of airplane passengers.
- *1997* Goal: Provide for efficient transport, transfer, and storage of air and marine cargo.
- *1997* Goal: Promote traffic safety and reduce congestion.
- *1997* Goal: Protect the airport and port from incompatible land use development.
- *1997* Goal: Support and improve access to and within Bethel for various modes of travel including aircraft, barges, small boats, automobile (via traditional and ice roads), snow machines, all-terrain vehicles (ATV), and on foot.

Maintenance Issues/Needs

- Maintenance of paved roads.
- Maintenance of gravel roads – establish a dust control application schedule.
- Maintenance of existing port facilities, i.e. erosion.
- Identify drainage issues along the high use roads.

Recommended Road Projects

- ***Akakeek Street, Delapp Street, and Ptarmigan Street Improvements***
  Rehabilitation of Akakeek Street, Ptarmigan Street from Lulu Heron building to Delapp Drive, and all of Delapp Drive.
- ***Tundra Ridge Road Realignment***
  Construct Tundra Ridge Road along a new alignment or along the current alignment.
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  Phase I – will construct a new road connecting Chief Eddie Hoffman Highway with Akiachak Avenue near the YK Fitness Center.

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- ***Chief Eddie Hoffman Hwy Rehabilitation***
  Full reconstruction of Chief Eddie Hoffman Hwy from the airport to town. This project includes repaving, multi-use path, lighting and improvements to drainage.

Recommended Projects

- ***Transit System Grant Applications ~ yearly***
  Submit yearly grant requests for Public Transit Funding and Human Service with the DOT&PF, Alaska Community Transit Section and FTA
- ***Boardwalk Reconstruction***
  Reconstruct the boardwalk from the University of Alaska Kuskokwim Camps to near the hospital and construct a boardwalk between Mission Drive and Sixth Street. This will provide a safe alternative for pedestrians to avoid a busy stretch of the state highway.
- ***Increase security at the City and Petro Docks***
  Install video surveillance, lighting, alarm system, security gate(s), backup generator, emergency radio/comms equipment.

How to Stay Involved

Website: www.cityofbethel.org

Comment Sheet and sign up for our contact list

Contact the team or for additional information, please contact:
John Sargent, City of Bethel, Grant Manager
P: 907-543-1386
jsargent@cityofbethel.net

Submit a comment or for technical information, please contact:\
Alexa Greene, DOWL Project Manager
P: 907-374-0275
agreene@dowl.com

City of Bethel
Long Range Transportation Plan
An Element of the Comprehensive Plan

TRANSPORTATION ADVISORY COMMITTEE (TAC)
MEETING NO. 2
Monday, June 17, 2019
1:00 – 3:30 PM

Agenda

- Welcome
- What is the City of Bethel's Long Range Transportation Plan (LRTP)?
- The Transportation Advisory Committee (TAC) Roles and Responsibilities
- LRTP Schedule
- Recorded Public Comments and LRTP Interactive Map
- LRTP Vision Statement / Goals Work Session
  - Vision Statement
  - Goals
- Maintenance Issues / Needs
- Recommended Projects
- How to Stay Involved

What is the City of Bethel Long Range Transportation Plan (LRTP)?

The City of Bethel LRTP is a five-year multi-modal community transportation plan, including various vehicle fleets (planes, ATVs, snow machines, barges, skiffs, and automobiles) and modes (aviation, surface, and marine) of transportation. The LRTP is an element of the City of Bethel's Comprehensive Plan.

The City of Bethel is working to identify five high priority transportation projects to include in their LRTP and Capital Improvement Program

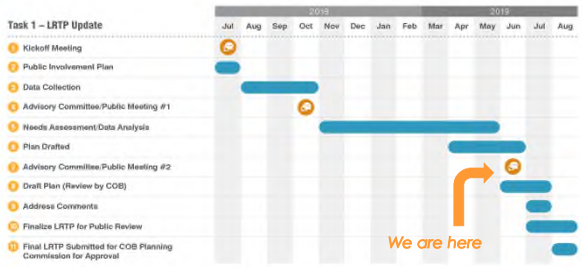
City of Bethel
Transportation Advisory Committee (TAC)

Introduction and Purpose
To guide the City of Bethel and the DOWL Planning Team through the planning process

Role
The City of Bethel TAC will advise the planning team on:

- The Public Involvement Plan (PIP) and transportation planning process
- Vision, Goals and Objectives
- Coordinating with other transportation planning efforts in the region
- Surface, marine and aviation transportation issues and needs
- Project/program recommendations
- Draft transportation plan

LRTP Schedule

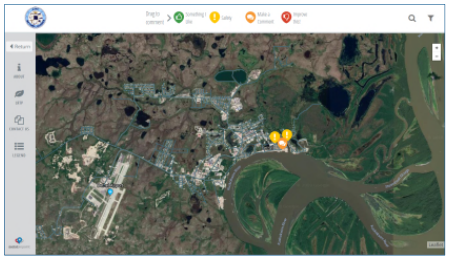


Public Comments from Interactive Map

- Sections of Ptarmigan St is unsafe. The asphalt has heaved and sunk to an extent the road is a hazard to vehicles.
- "Donut Hole" Area – Need a footbridge to get across the stream so the path can be used year-round.
- Mallard Lane – Culvert is required. Constant water run-off across the road, especially in winter, has negatively impacted the road condition.
- Chief Eddie Hoffman Hwy - Hazard due to poor lighting and protection between walkway and roadway. Cones were suggested to improve safety.
- Standard Ave - There is no street lights.
- River St, Tundra St & Chief Eddie Hoffman Hwy - Intersection is confusing when entering and leaving the highway.
- Osage St & Ridgecrest Dr - This is a dangerous intersection in the mornings, especially when the roads are slick.
- More lights are needed all around town, especially in the Chief Eddie Hoffman Hwy/hospital area.
- Browns Slough – The bridge does not have pedestrian facilities.

LRTP Interactive Map

- **Interactive map:** https://dowl.mysocialpinpoint.com/city-of-bethel-lrtp



Bethel LRTP 1997/2010 Vision Statement

"We value the rights of all Bethel citizens to a safe, affordable, accessible, and efficient road and trail transportation system. We envision the physical development and expansion of trails for both summer and winter use by Bethel residents. We recognize that Bethel's continued importance as a regional hub depends on supporting and improving access to Bethel from a variety of modes of travel including air, marine, ice roads, snow machines, ATVs, small boats and skiffs, and pedestrians. Moreover, inter-city travel should be conducive to the needs of visitors and residents. We value the importance of a well-designed and efficient airport and port to the overall economic vitality of Bethel."

Bethel Transportation Vision, *City of Bethel Comprehensive Plan*, 1997

Bethel LRTP 1997/2010 Vision Statement

"By 2020, we envision Bethel's transportation system will offer: a convenient pedestrian and bicycle system connecting important community facilities; a snow machine/ATV trail system that provides safe separation between snow machines/ATVs and cars, between snow machines/ATVs and pedestrians, and makes inter-city and intra-city travel easier, adequate street lighting to improve safety; road paving or resurfacing and maintenance to improve safety and control dust; a transit system, either public or private, to make travel affordable to all residents; adequate winter access from town for vehicles and snow machines using the Kuskokwim River as an ice road; and adequate summer access to get boats to the river or to get the boats secured along the river."

Bethel Transportation Vision, *City of Bethel Comprehensive Plan*, 1997

Vision for the City of Bethel's transportation system – TAC

Group 1: The City of Bethel's transportation system will be safe, reliable, accessible and affordable by 2025. We envision the community will have a world-class public transportation system that recognizes pedestrian friendly access and use. We also envision a world-class airport and support for the entire region and the entire State of Alaska.

Group 2: We value the rights of all Bethel citizens to a safe, affordable, accessible and efficient road transportation system. We envision the design, physical development and expansion of roads. Bethel's transportation system will offer a convenient pedestrian and bicycle system connecting important community facilities, snow machine/ATV road system that provides safe separation between a variety of users and makes inter-city and intra-city travel easier with adequate street lighting, improved road conditions and improved safety and dust control for transportation networks including marine, seasonal and multi-modal access.

Bethel LRTP *DRAFT* 2019 Vision Statement

"We value the rights of all Bethel citizens to a safe, affordable, accessible, and efficient road and trail transportation system. The City of Bethel will provide a safe, affordable, accessible and efficient road transportation system for the traveling public. Bethel's transportation system will offer a convenient pedestrian and bicycle system connecting important community facilities, safe separation between all modes of transportation, adequate street lighting, improved road conditions, improved safety, and dust control methods."

Goals from the first TAC meeting

- Goal: Immediately address the expansion needs of the Port of Bethel.
- Goal: Improve safety for all modes of transportation using a "Complete Streets" concept.
- Goal: (Old) Make 14-miles of Bethel's existing roads and streets pedestrian friendly. (Now) Update the road network to include non-motorized (pedestrian and bicycles) facilities.
- Goal: Construct the 'donut hole' road with facilities for all modes of transportation, including pedestrians and bicycles.
- Goal: Construct additional boardwalks over tundra areas for pedestrian and bicycle access.

Bethel LRTP *DRAFT* 2019 Goals

- *2019* Goal: Incorporate the "complete streets" concept during roadway design or in plat drawings. Suggested features – adding sidewalks or widening roadway shoulders when designing a new or reconstructed road project.
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Bethel LRTP *DRAFT* 2019 Goals, continued

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Recommended Road Projects *DRAFT*

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  Construct Tundra Ridge Road along a new alignment or along the current alignment.
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  Phase I – will construct a new road connecting Chief Eddie Hoffman Highway with Akiachak Avenue near the YK Fitness Center.

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  Full reconstruction of Chief Eddie Hoffman Hwy from the airport to town. This project includes repaving, multi-use path, lighting and improvements to drainage.

Recommended Projects *DRAFT*

- ***Transit System Grant Applications ~ yearly***
  Submit yearly grant requests for Public Transit Funding and Human Service with the DOT&PF, Alaska Community Transit Section and FTA.
- ***Boardwalk Reconstruction***
  Reconstruct the boardwalk from the University of Alaska Kuskokwim Camps to near the hospital and construct a boardwalk between Mission Drive and Sixth Street. This will provide a safe alternative for pedestrians to avoid a busy stretch of the state highway.
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P: 907-543-1386
jsargent@cityofbethel.net

Submit a comment or for technical information, please contact:
Alexa Greene, DOWL Transportation Planner
P: 907-374-0275
agreene@dowl.com

8.0 Transportation Recommendations

This section is intended to help the City prioritize transportation projects, coordinate with other agencies and organizations, and can be used to obtain funding for projects and programs. Through reviewing previous plans, public comments, and input from TAC member, the following prioritized list was assembled.

The table will enable the City to track the progress towards achieving the completion of recommended projects, and the legend uses symbols to indicate the level of property and a planning level cost estimate.

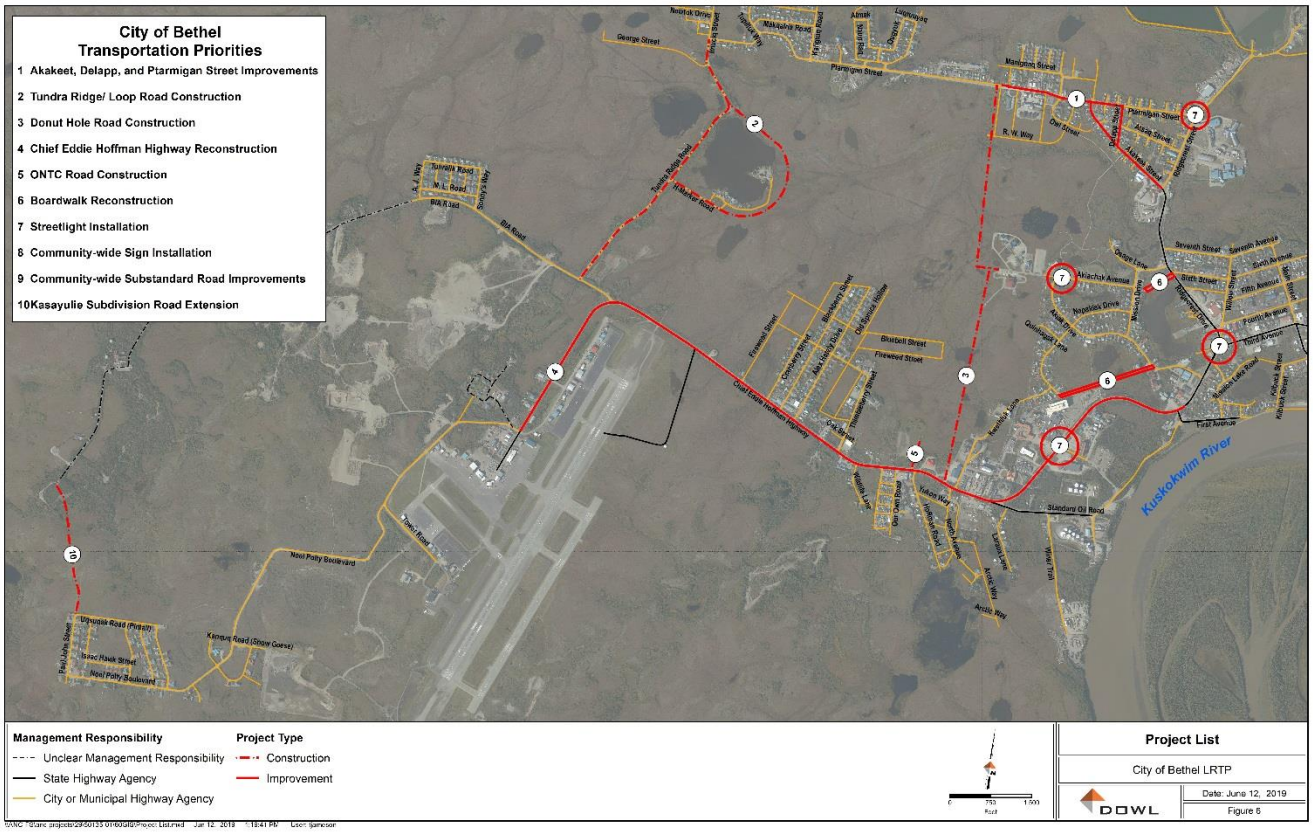

Figure 1: Project List

Legend					
Priority:	***HH*** – Highest Priority (immediate action)	***S*** – Short Term (action within 1-5 years)	***M*** – Medium Term (action within 5-10 years)	***L*** – Long Term (action within 10-20 years)	
Cost:	**$$$$$** >$10,000,000	**$$$$** $5,000,000 – $10,000,000	**$$$** $1,000,000 - $5,000,000	**$$** $500,000 - $1,000,000	**$** <$500,000

8.1 Highest Priority – Immediate Need

*** - if any - ** Will be determined after final TAC and Open House on June 17.*

8.2 Prioritized List of Recommended Projects

8.2.1 Road Priorities

Road Priorities	Priority	Lead	Partner	Cost Estimate	Funding Source
Recommendation 1:	***Akakeet Street, Delapp Street, and Ptarmigan Street Improvements***				
Scope: Rehabilitation of Akakeek Street, Ptarmigan Street from Lulu Heron building to Delapp Drive, and all of Delapp Drive.					
Action: Submit project application during any DOT&PF CTP nomination periods.	S	City	DOT&PF	$$	STIP, City Funds
Action: Partner with ONTC for inclusion into the ONTC TTIP.	S	City, ONTC	City, ONTC	$$	Tribal & City Funds
Recommendation 2:	***Tundra Ridge Road Realignment-Construction***				
Scope: Construct Tundra Ridge Road along a new alignment or along the current alignment. This project should include a multi-use path, lighting and improvements to drainage.					
Action: Continue to assist DOT&PF during project development and construction.	S	DOT&PF	City		STIP
Action: Consider adding a non-motorized pathway and illumination	S	City	DOT&PF		STIP, City Funds

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Road Priorities	Priority	Lead	Partner	Cost Estimate	Funding Source
Recommendation 3: ***Donut Hole Road***					
Scope: Phase I – will construct a new road connecting Chief Eddie Hoffman Highway with Akiachak Avenue near the YK Fitness Center. Phase II – will construction an extension north to Ptarmigan Road. This route is through an area known as the Donut Hole.					
Action: Submit project application during any DOT&PF CTP nomination periods.	M	City	DOT&PF		STIP, City Funds
Action: Partner with ONTC for inclusion into the ONTC TTIP.	M	City, ONTC	City, ONTC		Tribal & City Funds
Recommendation 4: ***Chief Eddie Hoffman Hwy Rehabilitation***					
Scope: Full reconstruction of Chief Eddie Hoffman Hwy from the airport to town. This project includes repaving, multi-use path, lighting and improvements to drainage.					
Action: Submit project application during any DOT&PF CTP nomination periods.	L	City	DOT&PF	$$$$$	STIP, City Funds
Action: Partner with ONTC for inclusion into the ONTC TTIP.	L	City, ONTC	City, ONTC	$$$$$	Tribal & City Funds
Recommendation 5: ***ONTC Road Construction***					
Scope: Construct ONTC road.					
Action: Partner with ONTC for inclusion into the ONTC TTIP.	M	City, ONTC	City, ONTC		Tribal & City Funds
Recommendation 6: ***Boardwalk Reconstruction***					
Scope: Reconstruct the boardwalk from the University of Alaska Kuskokwim Camps to near the hospital and construct a boardwalk between Mission Drive and Sixth Street. This will provide a safe alternative for pedestrians to avoid a busy stretch of the state highway.					
Action: Partner with YKHC for partial funding.	L	City	YKHC		City Funds
Action: Partner with ONTC for inclusion into the ONTC TTIP.	L	City, ONTC	City, ONTC		Tribal & City Funds

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Road Priorities	Priority	Lead	Partner	Cost Estimate	Funding Source
Recommendation 7: ***Community Wide Street Light Installation***					
Scope: Install street lights in around Pinky's Park, at intersections near neighborhood by the AC Store and the intersection near YKHC.					
Action: Install street lights at key areas around Bethel. The improved lighting will increase safety for the traveling public.	S	City	-	$$	City Funds
Recommendation 8: ***Community Wide Sign Installation***					
Scope: Install signs throughout the community – stop, yield, pedestrian crossing, speed limit signs.					
Action: Research signs that can light up, possibly with electrical and solar power.	S	City	-	$$	City Funds
Action: Install pedestrian crossing signs at locations – school, hospital.	S	City	-	$$	City Funds
Recommendation 9: ***Community Wide Substandard Road Improvements***					
Scope: Raise roadbeds above surrounding terrain; add drainage; and dust control on unpaved roads.					
Action: Submit project application during any DOT&PF CTP nomination periods.	M	City	DOT&PF		STIP, City Funds
Action: Consider establishing a municipal paving plan for paving city roads.	M	City	DOT&PF		STIP, City Funds
Action: Partner with ONTC for inclusion into the ONTC TTIP.	M	City, ONTC	City, ONTC		Tribal & City Funds
Recommendation 10: ***Kasayulie Subdivision Extension Road***					
Scope: Connect Paul John Street in the Kasayulie Subdivision to the road to the old white alice facilities.					
Action: Submit project application during any DOT&PF CTP nomination periods.	L	City	DOT&PF		STIP, City Funds
Action: Partner with ONTC for inclusion into the ONTC TTIP.	L	City, ONTC	City, ONTC		Tribal & City Funds

DRAFT

Road Priorities	Priority	Lead	Partner	Cost Estimate	Funding Source
Recommendation 11: ***Dust Control Application Plan***					
Scope: Create a rotating dust control application plan for the road in Bethel, designate a fenced storage area for a stockpile of gravel and dust control products.					
Action: Dedicate a secure area for gravel stockpile and dust control products.	S	City	-		City Funds
Action: Work with public works to determine a rotating application program.	S	City	-		City Funds

8.2.2 Transit Priorities

Transit Priorities	Priority	Lead	Partner	Cost Estimate	Funding Source
Recommendation 1: ***Transit System Grant Applications ~ yearly***					
Scope: Submit yearly grant requests for Public Transit Funding and Human Service with the DOT&PF, Alaska Community Transit Section and FTA.					
Action: Submit grant application to DOT&PF, Program Development, Alaska Community Transit	H	City	DOT&PF		City Funds, Federal
Action: Partner with ONTC for inclusion into the ONTC TTIP.	L	City	ONTC		City Funds
Action: Partner with ONTC to submit a grant application to FTA Tribal Program.	L	City, ONTC	ONTC	$$	City Funds & FTA Tribal
Action: Submit grant application to FTA	L	City	FTA	$$	City Funds & FTA
Recommendation 2: ***Transit System Expansion***					
Scope: Expand the transit system to the airport, un-served subdivisions, and other high traffic areas. Add additional routes for employees during AM and PM for high use employment areas.					
Action: Submit grant application to FTA	L	City	FTA		City Funds, FTA
Action: Partner with ONTC for inclusion into the ONTC TTIP.	L	City	YKHC		City Funds
Action: Partner with ONTC to submit a grant application to FTA Tribal Program.	L	City, ONTC	City, ONTC	$$	City Funds & FTA Tribal

DRAFT

Transit Priorities	Priority	Lead	Partner	Cost Estimate	Funding Source
Recommendation 3: ***Purchase of new transit vehicles (if older than five years)***					
Scope: Purchase new transit vehicle(s), as needed, to replace older vehicles and/or expand the fleet					
Action: Submit grant application to FTA	L	City	FTA		City Funds, FTA
Action: Partner with ONTC to submit a grant application to FTA Tribal Program.	L	City	YKHC		City Funds

8.2.3 Port Priorities

Port Priorities	Priority	Lead	Partner	Cost Estimate	Funding Source
Recommendation 1: ***Small Boat Harbor Improvements***					
Scope: Dredging, inspection by the Corp of Engineers and hydrographic surveys.					
Action: Dredging to be completed every 5-7 years and is inspected by the Corp of Engineers.		City	Corps	$$$$$	City & Federal Funding
Action: Hydrographic surveys are completed every 2/3 years		City	Corps	$$$$$	City & Federal Funding
Recommendation 2: ***Increase security at the City and Petro Docks***					
Scope: Install video surveillance, lighting, alarm system, security gate(s), backup generator, emergency radio/communications equipment.					
Action: Contact Corps to pursue funding		City	Corps		City & Federal Funding
Recommendation 3: ***Brown's Slough Improvements***					
Scope: Dredging and other improvements as needed to the Brown's Slough area.					
Action: Contact Corps to pursue funding		City	Corps	$$$$$	City & Federal Funding
Recommendation 4: ***Port of Bethel Rate Study***					
Scope: Update the rates from the 2010 Port of Bethel Expansion Feasibility Study					
Action: Contact Corps to pursue funding		City	Corps	$$	City & Federal Funding

DRAFT

8.2.4 Other Priorities

Other Priorities	Priority	Lead	Partner	Cost Estimate	Funding Source
Recommendation 1: ***Design Standards***					
Scope: Develop and define. Design Standards - identify heavy use vs. regular use (identify truck routes). Design standards will establish road standards for size, use, and weight. Along with developing driveway access standards (BMC 18.48.200). Develop these guidelines based on functional classification and require all new standards during new or improved site development projects.					
Action: Research and Interview similar sized communities	H	City		$	City Funds
Recommendation 2: ***Memorandum of Understanding between the State of Alaska DOT&PF and City of Bethel related to maintenance of State-owned roads***					
Scope: Develop and define responsibilities for the next five years between DOT&PF and the City of Bethel.					
Action: Contact DOT&PF, Program Development, Anchorage Field Office to begin MOU conversations and negotiations.	H	City	DOT&PF	$	City Funds & DOT&PF
Action: Contact DOT&PF, Central Region Maintenance and Operations to begin MOU conversations and negotiations	H	City	DOT&PF	$	City Funds & DOT&PF
Recommendation 3: ***Memorandum of Agreement between the City of Bethel and ONTC related to the transfer of maintenance funds.***					
Scope: Develop an MOA that defines the method to transfer funds from the ONTC Tribal Transportation Program to the City of Bethel to assist in funding the maintenance program.					
Action: Contact the ONTC Transportation Department to begin conversations and negotiations.	H	City	ONTC Trans. Dept.	$	City Funds & Tribal
Action: Ensure that all City and DOT&PF roads are listed in the ONTC NTTFI inventory.	H	City	ONTC Trans. Dept.	$	City Funds & Tribal

DRAFT

City of Bethel, Alaska

City Clerk's Office

Council Regular Meetings
June 25, 2019 Regular City Council Meeting
July 9, 2019 Regular City Council Meeting

City Manager Recruitment Process
Gov HR will be on site July 8th and 9th to meet with staff and the City Council. The City Clerk's Office will schedule one on one meetings between Gov HR and members /staff as well a collaborative meeting with the Council. More information will be provided by email.

Petitions
The City Clerk's Office has certified two petitions.
Petition Booklets for Alcohol Local Option were issued to petition sponsors June 10, 2019.
The ballot questions being circulated are:

Question 1
Shall the City of Bethel adopt local option (4.11.491 (a) (2) (A)), to prohibit the sale of alcoholic beverages except through a restaurant or eating place license?

☐ Yes ☐ No

IMPARTIAL SUMMARY OF THE CHANGE IN LOCAL OPTION BEING PROPOSED:
A yes vote on this ballot question means you want the community of Bethel to fall under Local Option, preventing the sale of alcoholic beverages in the community of Bethel anywhere other than a restaurant, which would only be licensed to sell beer and wine for onsite consumption.
A no vote on this ballot question means you want the community of Bethel to remain out of local option, allowing for the sale of alcoholic beverages through all license types.

Question 2
If local option (4.11.491 (a) (2) (A)) is adopted, shall the City of Bethel opt to not apply a class C felony to violations of Alaska Statutes 04.16.051, Furnishing or Delivery of Alcoholic Beverages to Persons Under the Age of 21 (AS 04.11.491(g)(3))?

☐ Yes ☐ No

IMPARTIAL SUMMARY OF THE CHANGE IN LOCAL OPTION BEING PROPOSED:
A yes vote on this question means if the community of Bethel adopts Local Option as provided in Question 1, you want the penalties for furnishing or delivery of alcoholic beverages to a person under the age of 21 to be a misdemeanor.
A no vote on this question means if the community of Bethel adopts Local Option as provided in Question 1, you want the penalties for furnishing or delivery of alcoholic beverages to a person under the age of 21 to be a class C felony.

Petition Booklets for Marijuana Local Option will be issued June 19, 2019.

cityclerk@cityofbethel.net
907-543-1384

The ballot question being circulated is:

Question 1

Shall the City of Bethel adopt a local option to prohibit the sale or importation for sale of marijuana and any marijuana product and to prohibit the operation of any marijuana establishment, which includes the following license or endorsement types:

a) A retail marijuana store (both with and without an onsite consumption endorsement);
b) A marijuana cultivation facility;
c) A marijuana manufacturing facility;
d) A marijuana testing facility;

☐ Yes ☐ No

IMPATIAL SUMMARY OF THE BALLOT QUESTION

A yes vote on this ballot question means you DO NOT support the operation of any marijuana businesses within the community of Bethel.
Marijuana businesses are summarized below.

A no vote on this ballot question means you DO support the operation of any marijuana business within the community of Bethel.
Marijuana businesses are summarized below.

Marijuana Businesses Include:

1. Retail Marijuana Store is allowed to sell marijuana and marijuana products which include concentrated marijuana products, marijuana products that contain marijuana and other ingredients and are intended for use or consumption, such as, but not limited to edible products, vaping concentrates, ointments, and tinctures.
2. Marijuana Cultivation Facility is allowed to cultivate, harvest, prepare, cure, package, store, and label marijuana to be sold to retail marijuana stores.
3. Marijuana Product Manufacturing Facility is authorized to manufacture, refine, process, cook, package, label and store marijuana manufacture any product intended for consumption or use on the body that is made up of marijuana and other ingredients including, edible products, ointments, salves, patches, or tinctures.
4. Marijuana Testing Facility is authorized to test and analyze marijuana to certify potency, check for moisture content, pesticides or solvent residue, mold, mildew, bacteria, or other contaminants in marijuana or marijuana products.
5. Retail License with Onsite consumption endorsement authorizes the retail marijuana store to allow their customers to consume marijuana, marijuana edibles products.

Document Preparation

- The office in coordination with the City Attorney prepared the Planning Commission's Conditional Use Permit Resolution for ACC Liquor Store.
- The Office prepared the ACC Liquor License Transfer protest and supporting documents presented in the packet.
- The office prepared the ordinance amending BMC 5.08.
- The office amended Ordinance 19-12 Lease with the DMV.
- A family is interested in transferring family members from the Owl Cemetery to the Memorial Cemetery, the office is detailing the transfer regulations for them in preparation for the disinterment.

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