<u>Mayor</u>

James Kallander

Council Members

Tim Joyce James Kacsh David Allison Bret Bradford

REGULAR COUNCIL MEETING MARCH 06, 2013 @ 7:30 PM LIBRARY MEETING ROOM



AGENDA

EJ Cheshier David Reggiani

A. CALL TO ORDER

Robert Beedle

Interim City Manager B. INVOCATION AND PLEDGE OF ALLEGIANCE

Donald Moore
City Clerk

I pledge allegiance to the Flag of the United States of America, and to the republic for which it stands, one Nation under God, indivisible with liberty and justice for all.

Susan Bourgeois

Deputy Clerk C. ROLL CALL

Tina Hammer Student Council

Mayor James Kallander, Council members Tim Joyce, James Kacsh, David Allison,

Bret Bradford, EJ Cheshier, David Reggiani and Robert Beedle

Sarah Hoepfner Gabrielle Brown

D. APPROVAL OF REGULAR AGENDA..... (voice vote)

E. DISCLOSURES OF CONFLICTS OF INTEREST

F. COMMUNICATIONS BY AND PETITIONS FROM VISITORS

1. Guest Speakers – None

3. Chairpersons and Representatives of Boards and Commissions (Harbor, HSB, Parks & Rec, P&Z, School Board)

4. Superintendent's Report

5. Student Council Representative's Report

G. APPROVAL OF CONSENT CALENDAR.....(roll call vote)

H. APPROVAL OF MINUTES

I. CONSIDERATION OF BIDS

J. REPORTS OF OFFICERS

9. Mayor's Report

12. Staff Reports

a. Finance Report......(page 10)

K. CORRESPONDENCE

13. Letter from Schultz in re Mobile Grid Lease 02-20-13. (page 14)

16. Letter from Senator Begich to Mayor Kallander 02-06-13......(page 17)

L. ORDINANCES AND RESOLUTIONS

A resolution of the City Council of the City of Cordova, authorizing the city manager to enter into a 2 year lease of property legally described as Lot 2, Block 7, North Fill Development Park with Ric and Osa Schultz (dba Mobile Grid Trailers, Inc.)

8. Resolution 03-13-10
M. UNFINISHED BUSINESS
9. Council decision regarding Lot 3A Block 8 North Fill (voice vote)(page 38)
0. Council's quarterly discussion/decision to amend the CIP list (voice vote)(page 48)
N. NEW & MISCELLANEOUS BUSINESS
1. Contract Approval with Dawson Construction for Cordova Center Phase II (voice vote)(page 49)
2. Cordova Center Summary Business Plan and Integrated Schedule (page 127)
3. Mikunda Cottrell arrangement letter
4. Pending Agenda and Calendar
D. AUDIENCE PARTICIPATION

P. COUNCIL COMMENTS

25. Council Comments

Q. EXECUTIVE SESSION

26. Cordova Center Phase I Attorney advice

R. ADJOURNMENT

Executive Sessions: Subjects which may be discussed are: (1) Matters the immediate knowledge of which would clearly have an adverse effect upon the finances of the government; (2) Subjects that tend to prejudice the reputation and character of any person; provided that the person may request a public discussion; (3) Matters which by law, municipal charter or code are required to be confidential; (4) Matters involving consideration of governmental records that by law are not subject to public disclosure.

CITY OF CORDOVA, ALASKA PROCLAMATION

PROCLAMATION NAMING FEBRUARY 2013 AS SCHOOL BOARD RECOGNITION MONTH

I, Mayor James Kallander, do hereby issue this Proclamation Naming February 2013 as School Board Recognition Month in Cordova, Alaska

WHEREAS, the mission of public schools is to meet the diverse educational needs of all children and to empower them to become competent, productive contributors to a democratic society and an ever-changing world; and

WHEREAS, local school board members are committed to children and believe that all children can be successful learners and that the best education is tailored to the individual needs of the child; and

WHEREAS, local school board members work closely with parents, educational professionals, and other community members to create the educational vision we want for our students; and

WHEREAS, local school board members are responsible for ensuring the structure that provides a solid foundation for our school system; and

WHEREAS, local school board members assure the assessment of students, school staff, and educational programs and are accountable to the community; and

WHEREAS, local school board members are strong advocates for public education and are responsible for communicating the needs of the school district to the public and the public's expectations to the district.

NOW, THEREFORE, BE IT PROCLAMED that the Mayor and City Council members of Cordova do hereby express sincere appreciation to the **School Board of the Cordova School District**.

BE IT FURTHER PROCLAIMED THAT, I urge all citizens to join me in recognizing the dedication and hard work of **the Cordova School District's** school board members and in working with them to mold an education system that meets the needs of both today's and tomorrow's children.

SIGNED THIS 6th DAY OF MARCH, 2013

James Kallander, Mayor	

CITY COUNCIL PUBLIC HEARING FEBRUARY 20, 2013 @ 7:15 PM LIBRARY MEETING ROOM MINUTES

A. CALL TO ORDER

Mayor James Kallander called the Council public hearing to order at 7:18 pm on February 20, 2013, in the Library Meeting Room.

B. ROLL CALL

Present for roll call were *Mayor James Kallander* and Council members *Tim Joyce*, *James Kacsh*, *David Allison*, *Bret Bradford*, *EJ Cheshier*, *David Reggiani* and *Robert Beedle*. Also present were Interim City Manager *Don Moore* and City Clerk *Susan Bourgeois*.

C. PUBLIC HEARING

- 1. Ordinance 1104 An ordinance of the City of Cordova, Alaska, exempting Lot 5, Block 5, Odiak Subdivision, from property taxation and any special assessments so long as a payment in lieu of taxes is paid by the Native Village of Eyak on the property and the property is used by the Native Village of Eyak as low-income housing
- **2**. Ordinance 1105 An ordinance of the City of Cordova, Alaska, authorizing the city administration to enter into a cooperation agreement with the Native Village of Eyak for payment in lieu of taxes on Lot 5, Block 5, Odiak Subdivision, so long as the property is used for low-income housing
- **3**. Ordinance 1106 An ordinance of the City Council of the City of Cordova, Alaska, repealing Cordova Municipal Code Chapter 14.28 entitled "hospital" and adopting Title 15 entitled "city owned medical facilities" which incorporates the provisions of Chapter 14.28 but requires the City Council to sit as the Hospital Service Board and updates the obligations of the medical staff and hospital administrator to reflect the City's use of a hospital management company to administer City owned medical facilities

Mayor James Kallander opened the meeting up for public comment – there was no public comment

Council recessed the public hearing at 7:20 pm; then reconvened at 7:28 pm at which time *Mayor James Kallander* reopened the meeting for public comment – there was still no public comment

D. ADJOURNMENT

M/ Bradford S/Joyce to adjourn the Public Hearing Hearing no objection, the Public Hearing was adjourned at 7:29 pm.

Approv	ved: March 6, 2013
Attest:	
	Susan Bourgeois, City Clerk

CITY COUNCIL REGULAR MEETING FEBRUARY 20, 2013 @ 7:30 PM LIBRARY MEETING ROOM MINUTES

A. CALL TO ORDER

Mayor James Kallander called the Council Regular Meeting to order at 7:30 pm on February 20, 2013, in the Library Meeting Room.

B. INVOCATION AND PLEDGE OF ALLEGIANCE

Mayor James Kallander led the audience in the Pledge of Allegiance.

C. ROLL CALL

Present for roll call were *Mayor James Kallander* and Council members *Tim Joyce*, *James Kacsh*, *David Allison*, *Bret Bradford*, *EJ Cheshier*, *David Reggiani* and *Robert Beedle*. Also present were Interim City Manager *Don Moore*, City Clerk *Susan Bourgeois* and Student Council representatives *Sarah Hoepfner* and *Gabrielle Brown*.

D. APPROVAL OF REGULAR AGENDA

M/Reggiani S/Bradford to approve the Regular Agenda.

Don Moore asked Council to remove agenda item 18 as he hadn't had time to review it yet.

M/Joyce S/Bradford to amend the regular agenda by removing agenda item 18 from tonight's meeting.

Kacsh asked *Moore* if there was a problem and *Moore* said no, that he just hadn't reviewed the lease. He said it runs until April 20 and he hopes to have it back to Council before then.

Vote on amendment: 7 yeas, 0 nays. Motion passes. Vote on main motion: 7 yeas, 0 nays. Motion passes.

E. DISCLOSURES OF CONFLICTS OF INTEREST

Allison declared a conflict on agenda item 21 due to his employment by Eagle Contracting. Mayor Kallander agreed that he should recuse himself from that item.

F. COMMUNICATIONS BY AND PETITIONS FROM VISITORS

- 1. Guest Speaker none
- 2. Audience comments regarding agenda items

Osa Schultz 109 Council said the item she wanted to speak to was removed from the agenda. She handed the Clerk a letter that she asked be included in the packet when the item comes back before Council.

Tom Bailer 304 Orca Inlet said he had questions about props 3 & 4. On page 23 of the packet he thought \$145,900 seemed high for "Community Conservation Education Program" and on page 25 he thought the \$650,000 for "building shell, insulation, roof" seemed high as well. Also, he wanted to know what would happen to any extra money in this project if it was leftover. He said private business would take any excess amount right back to the bank but government tends to say, what else can we spend the money on. He just wondered if these projects would be held to their costs.

3. Chairpersons and Representatives of Boards and Commissions

Harbor Commission representative Beedle reported they had a meeting last Wednesday there was good attendance – the City Manager was there and Karen Swartzbart gave a report about the Clean Harbors. He handed out a North Fill plan/map that Harbor Commission had been asked to give to Council. Planner Sam Greenwood reminded Council that they had referred a North Fill purchase request to staff in order to have Harbor Commission get back with Council concerning a plan for the North Fill. Council said they would now like to see the Lot 3A North Fill agenda item on the next meeting. Beedle also mentioned that the Commission conducted the annual review of the master plan and looked at fees.

HSB representative **Allison** reported that they had a special meeting tonight and they credentialed two doctors.

P&R representative **Kacsh** reported that they met last night. They discussed Odiak Camper Park and planning for the area near the burn pile and whether it is worth looking into putting utilities in there. They also discussed community outreach and the need to get more kids into Bidarki. The Commission looked at their 10 year master plan as well. **Bradford** asked **Kacsh** to bring up the BMX track that is intended for around the park by the sandlot at the next commission meeting.

P&Z representative **Reggiani** reported that there were three items on the agenda last week; request for an access easement adjacent to Fleming Spit area, update on SRTS – sidewalk up Third St. and they reviewed a lease application for space inside the high school.

School Board representative **Bradford** said he was not in attendance at the last School Board meeting.

- **4**. Superintendent's Report *Theresa Keel* was not in attendance.
- 5. Student Council Representative's Report

Hoepfner and **Brown** reported that Student Council elected new officers recently and **Carl Ranney** is the new President – all of the executive board was elected. The biggest occurrence presently is Homecoming which is this coming weekend and the theme is Candyland. This week was spirit week and there will be a pep assembly on Friday. Senior Appreciation night is Friday and the coronation and floats will be on Saturday both of these are during the ball games. Then there will be the homecoming dance Saturday night. The girls mentioned that they thank Council for allowing them to be Student Council reps to the City Council because they hear that elsewhere that isn't the case. They are lucky to get to brag about this at their annual student government conferences.

G. APPROVAL OF CONSENT CALENDAR

Mayor James Kallander informed Council that the consent calendar was before them.

- **6**. Resolution 02-13-08 A resolution of the City Council of the City of Cordova, Alaska, authorizing creation of a city manager assessment committee to assist with the selection process of a new city manager and to make recommendations to the City Council on final interviewees
- 7. Resolution 02-13-09 A resolution of the City Council of the City of Cordova, Alaska, opposing the U.S. Food and Drug Administration's preliminary finding of no significant effect on the quality of the human environment in the United States with approval of Aquabounty Technologies, Inc.'s application to market genetically modified Atlantic salmon in the United States
- **8**. Council concurrence of Mayor's appointment of Election Board for 2013

Vote on Consent Calendar: 7yeas, 0 nays. Cheshier-yes; Bradford-yes; Beedle-yes; Joyce-yes; Kacsh-yes; Allison-yes; Reggiani-yes. Motion passes.

H. APPROVAL OF MINUTES

M/Cheshier S/Bradford to approve the minutes.

9. Minutes of 02-06-13 City Council Regular Meeting

Vote on motion: 7 yeas, 0 nays. Motion passes.

I. CONSIDERATION OF BIDS - None.

J. REPORTS OF OFFICERS

10. Mayor's Report

Mayor Kallander reported that there's a lot going on in Juneau – the majority caucus has split into two. He has had quite a few meetings with the City Manager. He's been reviewing budgets in preparation for the EVOS teleconference tomorrow morning. He met with *Bitney*, *Stavig*, *Cathy* and *Moore*. He also attended a construction meeting and he encourages Council to do so as well.

11. Manager's Report

Don Moore informed council that he included a write up on Props 3 & 4 in his written report in the packet hoping that information would be useful for Council members. Moore reported that a refuse foreman has been hired, **Brandon Dahl**. Don also reported that **George Wintle** has been offered the job and has accepted

the job of Police Chief. *Moore* mentioned that he attached an active list on City construction projects and said that the list demonstrates that our Construction Management resources are saturated. *Moore* had a meeting with the CRWP and CCMC concerning protecting Odiak Lake and need for snow removal. He identified some major revenue receipts that we have received the last couple of weeks which amounts to \$1,896,000. Also, today he was noticed that we received a \$642,000 school bond payment. He handed out bound budget books as well as a detailed expenditures report that the Finance Director has been working on and he expects Council should get one like this at least monthly – but asked for their opinion on what they wanted. The museum artifacts got moved timely from CEC to the Hospital – there was a great deal of help that was appreciated. Moore will be out of the office February 22 – 26 – heading to Anchorage for meetings on Monday and Tuesday – *Cathy Sherman* will be Acting Manager.

Mayor Kallander asked Council what they wanted for the financial reports. After each weighed in the Mayor summarized and got a concurrence from Council that they would like to see a one page summary report monthly including some language that speaks to how things are going. They also thought that quarterly reports with the detail would be appropriate.

12. City Clerk's Report

Bourgeois reported that she was hoping to schedule training as soon as possible for newly elected Council members after the Election. She would ask for feedback next time. **Beedle** asked the Clerk if a School Board candidate had pulled out of the race. She said that Ron Horton is the Junior High wrestling coach and cannot be elected to school board and remain the coach so he decided to pull his name.

13. Staff Reports

a. Buck Adams, UBS Financial, City Investments – said that the City has about \$14.4M under management at this time. The combined net return of all City funds last year was 4.32%. When he wrote this letter there was a \$500K balance on the line of credit but he said it has subsequently been paid off. He said the line of credit has been an important tool; has helped with the snow emergency as well as with the Cordova Center. It has allowed us to not sell and reinvest at perhaps an inopportune time. Overall Buck is very satisfied with the return on investments for Cordova (4.32%) – the average hedge fund saw a 5.15% rate of return.

Reggiani thanked **Buck** for putting the report together and for his hard work. He said that this has worked out better than he ever expected when Council opted to invest with UBS three years ago. Every investment dollar earned is less that needs to be raised in taxes so that hits home for him.

b. Moe Zamarron, Public Works Director – he said he could answer any questions regarding propositions 3 & 4. *Joyce* asked if *Zamarron* could respond to what *Tom Bailer* had commented on during audience comments. He said that the numbers presented are not completely nailed down and they do appear inflated now. *Zamarron* said that if it all comes in less, of course we will not spend the money. We will only use what we need. He said he will put a lot of information out there (i.e. education of the public) on these projects. As far as the baler project, the building shell number may be high but he wants to cover his bases – it's an old building that's really coming apart.

K. CORRESPONDENCE

14. US Dept of Transportation EAS to Alaska Air Letter 02-10-13

L. ORDINANCES AND RESOLUTIONS

15. Ordinance 1104 an ordinance of the City of Cordova, Alaska, exempting Lot 5, Block 5, Odiak Subdivision, from property taxation and any special assessments so long as a payment in lieu of taxes is paid by the Native Village of Eyak on the property and the property is used by the Native Village of Eyak as low-income housing

M/Reggiani S/Joyce to adopt Ordinance 1104 an ordinance of the City of Cordova, Alaska, exempting Lot 5, Block 5, Odiak Subdivision, from property taxation and any special assessments so long as a payment in lieu

of taxes is paid by the Native Village of Eyak on the property and the property is used by the Native Village of Eyak as low-income housing

Vote on motion: 7yeas, 0 nays. Joyce-yes; Beedle-yes; Cheshier-yes; Reggiani-yes Kacsh-yes; Bradford-yes and Allison-yes. Motion passes.

16. Ordinance 1105 an ordinance of the City of Cordova, Alaska, authorizing the city administration to enter into a cooperation agreement with the Native Village of Eyak for payment in lieu of taxes on Lot 5, Block 5, Odiak Subdivision, so long as the property is used for low-income housing

M/Bradford S/Kacsh to adopt an ordinance of the City of Cordova, Alaska, authorizing the city administration to enter into a cooperation agreement with the Native Village of Eyak for payment in lieu of taxes on Lot 5, Block 5, Odiak Subdivision, so long as the property is used for low-income housing

Vote on motion: 7yeas, 0 nays. Cheshier-yes; Joyce-yes; Bradford-yes; Beedle-yes; Kacsh-yes; Allison-yes and Reggiani-yes. Motion passes.

17. Ordinance 1106 an ordinance of the City Council of the City of Cordova, Alaska, repealing Cordova Municipal Code Chapter 14.28 entitled "hospital" and adopting Title 15 entitled "city owned medical facilities" which incorporates the provisions of Chapter 14.28 but requires the City Council to sit as the Hospital Service Board and updates the obligations of the medical staff and hospital administrator to reflect the City's use of a hospital management company to administer City owned medical facilities

M/Cheshier S/ Bradford to adopt Ordinance 1106 an ordinance of the City Council of the City of Cordova, Alaska, repealing Cordova Municipal Code Chapter 14.28 entitled "hospital" and adopting Title 15 entitled "city owned medical facilities" which incorporates the provisions of Chapter 14.28 but requires the City Council to sit as the Hospital Service Board and updates the obligations of the medical staff and hospital administrator to reflect the City's use of a hospital management company to administer City owned medical facilities

M/Allison S/Bradford to amend the ordinance on page 81, 15.20.010 F. delete "on the first Monday" and replace it with "in concurrence with the first Council meeting".

Vote on amendment: 7 yeas, 0 nays. Motion passes.

Vote on main motion: 7yeas, 0 nays. Kacsh-yes; Bradford-yes; Joyce-yes; Cheshier-yes; Beedle-yes; Reggiani-yes and Allison-yes. Motion passes.

18. Resolution 02-13-07 a resolution of the City Council of the City of Cordova, authorizing the city manager to enter into a 2 year lease of property legally described as Lot 2, Block 7, North Fill Development Park with Ric and Osa Schultz (dba Mobile Grid Trailers, Inc.)

M. UNFINISHED BUSINESS - None

N. NEW & MISCELLANEOUS BUSINESS

19. Request for lease of City land: portion of High School Bldg. (USS 2637)

M/Allison S/Cheshier that the City dispose of 1203 square feet of classroom and office space at the High School Building (USS 2637) for not less than fair market value as outlined in chapter 5.22.060A 1. (by negotiating an agreement with the person who applied to lease or purchase the property).

Reggiani asked a question about the term of this lease. **Greenwood** said this was a proposed lease and now it would be seen by the Attorneys for finalization. **Greenwood** reminded Council that there is a 30 day termination clause.

Vote on motion: 7 yeas, 0 nays. Motion passes.

20. Council concurrence of Mayor's appointments to the City Manager Assessment Committee *M/Cheshier S/Bradford* to approve Mayor Kallander's appointments of Cindy Bradford, Mark Frohnapfel, Don Sjostedt, Kelly Weaverling, EJ Cheshier, James Kacsh and Dave Reggiani to the City Manager Assessment Committee to serve until the committee is deemed no longer necessary.

Vote on motion: 7 yeas, 0 nays. Motion passes.

21. Contract Approval with Eagle Contracting for Eyak Lake WTP Chemical Mezzanine Structural Repairs *M/Bradford S/Joyce* to direct the City Manager to enter into a contract with Eagle Contracting Corporation, to perform structural repairs to the Eyak Lake Water Treatment Plant Chemical Mezzanine and associated work for a sum of Thirty Six Thousand Four Hundred and Twenty Five dollars and seventy cents (\$36,425.70).

Joyce asked how many bids were received. **Moore** said this was the only one? Vote on motion: 6 yeas, 0 nays, 1 conflict of interest (Allison). Motion passes.

22. Pending Agenda and Calendar

There were no additions or deletions to the calendar. The Clerk reminded Council of a work session Thursday evening February 23 at 7pm. The Clerk also reminded the audience that absentee voting in person was occurring at City Hall from 8am – 5pm M-F until Monday March 4, 2013. *Kacsh* said that Parks and Rec had a special meeting scheduled for Monday March 12 at the City Hall Conference Room.

O. AUDIENCE PARTICIPATION

Tom Bailer 304 Orca Inlet said that if the Harbor plan talks about moving roads, then it really should come to P&Z. He thanked staff for answering his concerns about the costs associated with props 3 & 4. He also wondered if **Reggiani** could clarify what he had spoken about regarding the City investments (i.e. what we were getting and what we are getting now). He asked whoever the School Board rep is if they could push the SRTS thing because it's been languishing.

P. COUNCIL COMMENTS

23. Council Comments

Cheshier thanked *Kacsh* for changing his wife's tire this morning so she could get to work on time.

Reggiani answered Bailer's question by saying that prior to soliciting for professional investment services, the City had its money invested in AMLIP (Alaska municipal league investment pool) which was getting a rate of return of ½ %. We have done very well with UBS (approx. 2.4% since inception). \$289,000 in cash last year – a total gain of \$700K last year (including dividends and capital appreciation).

Cheshier wanted to pat *Reggiani* on the back about that because it was his idea to invest City funds with a professional investment firm – has been good for the City.

Bradford gave kudos to Moe about finding the water leaks and he said that he will mention SRTS at the next School Board meeting for sure.

Joyce said that there is a potential for a run-off election and Council might want to revisit the Election code on that – maybe absentee balloting needs to be look into – as to most effective way to address absentee voting with a run-off scenario.

Kacsh good short meeting and he welcome the new Chief of Police.

Mayor Kallander also welcomed the Chief and thanked the staff at the hospital for getting the Clinic doors open so quickly and efficiently.

Q. EXECUTIVE SESSION - None

R. ADJOURNMENT

M/Kacsh S/Bradford to adjourn the regular meeting at 8:50 pm Vote on motion: 7 yeas, 0 nays. Motion passes.

Appro	oved: March 06, 2013
Attest	:
	Susan Bourgeois, City Clerk



CITY OF CORDOVA

Office of City Manager

To: Mayor and City Council

From: Donald L. Moore, Interim City Manager Subject: Manager's Report-March 6, 2013

Date: February 28, 2013

<u>Cordova Community Center:</u> I have enclosed correspondence from the City Attorney and a separate letter from me to the project Architect related to the status of the City's defense of the Request for Equitable Adjustment (REA) filed by the phase 1 contractor, AMI.

Because the REA defense is a legal matter that affects the City's finances I have provided the correspondence under separate cover to be discussed in Executive Session.

<u>PERS Audit Response:</u> I met with the Attorney to work on a response to the draft PERS Audit that was received by the City on January 22nd. This report is preparing four findings involving eight current or former city employees and contract workers. The report does not identify the remedy or the costs of any adverse findings, which is one of our comments in the response document.

We have already noted several errors or misinterpretations in the draft findings that will be addressed, such as the inclusion of School District employees as City Employees. We will forward a copy of the response and the final audit to the Council.

Mikunda Cotrell & Co. (City External Auditors): I met with the auditors preliminary to the 2012 year end audit which is scheduled for April.

Several specific issues were identified, mostly related to the CCMC reorganization, which requires additional material prior to the audit.

We also discussed the Cordova Center construction project financing and issues related to the REA.

Although I delivered the engagement letter to this firm for the 2012 audit, the Mayor has brought to my attention that these services have not been circulated for competitive proposals for several years.

If the Council wishes to solicit proposals I recommend you should do so promptly after receiving the current firm completes the 2012 audit.



City of Cordova, Office of the City Clerk Cordova, AK 99574 602 Railroad Avenue * PO Box 1210 Phone: 907.424.6248 Fax: 907.424.6000 Cell: 907.253.6248

E-mail: cityclerk@cityofcordova.net

CITY CLERK'S REPORT TO COUNCIL

March 06, 2013 Regular Council Meeting

Date of Report: February 21- March 1, 2013

Things I need feedback on or am reporting back to Council on:

 DCCED, DCRA (department of community and regional affairs) run by previous Cordova Clerk, Elizabeth Manfred offers free local government assistance in the form of training for newly elected or appointed board/commission/council members. I would like her to come soon after the election. I will keep you informed

Things the Clerk's Office has been working on:

- Signed paychecks/other AP checks
- Prepared agendas and packets for work session on 02-21-13 and regular mtg on 03-06-13
- Deputy Clerk continues toward finalization of the 2013 property tax roll; assessment notices out
 March 8, then a one month appeal period followed by Board of Equalization on April 15
- Tina also working on delinquencies and will begin preparing for the foreclosure notice to be published in Cordova Times March 1, 8, 15, 22
- Election Day: Tuesday March 5, 2013; created ballots and prepared for absentee in person and began mailing absentee by mail ballots per applications received; applications for absentee by mail accepted until February 26
- Absentee by mail ended and there were 35 sent another 35 or so have voted in person and that continues until March 4 at 5PM
- Held training session/meeting of Election Board on Tuesday February 26
- Sent Frankenfish resolution to FDA as a comment through their website after passage by Council
 on February 20, 2013
- Prepared advertisement for Cordova Times with names of all who signed the Trapping Petition
- Attended staff meeting on Thursday February 28
- Teleconference with Caselle including Deputy Clerk and Finance staff in re new property tax software – should be up and running in time for tax bills and collection later in summer
- Conferred with attorney in re APOC rules re campaigning and spoke with two candidates regarding APOC
- Assisted Mayor with letter to DoT commissioner Kemp in packet under correspondence
- Completed minutes of Regular Meeting February 20, 2013

MEMO, City of Cordova

To: Mayor and City Council

Through: Donald L. Moore, Interim City Manager

From: Jon K. Stavig, Finance Director

Date: February 26, 2013

RE: Finance Department Report

Following are the monthly financial reports for the first two months of 2013.

The report consists of two parts. The first part of report includes a fund summary for the general fund only. The period actual column only includes activity for the first two months of the 1st quarter, the ytd column includes all activity for the same period of time ended 2-26-13 and budget and variance columns are self-explanatory.

The second part of the report includes all funds including the enterprise funds. The format is the same as above. The period actual column includes activity for the first two months of the 1st quarter; the ytd actual column includes all activity for the same period of time ended 02-26-13 and budget and variance columns.

Most notable figures within the reports are the revenues from the City's National Forest Receipts, School Debt Reimbursement from the State, grant funds reimbursement (harbor) and quarterly sales tax receipts. The finance department has processed through February 26, 2013, 246 tax returns for \$524,071 in tax revenue. Last years' totals the same time frame are 255 returns for \$514,198 in tax revenue.

We pushed out the 2013 Operating Budget Booklet this past week and are currently gathering items for the audit preparation package to be delivered to the City's auditors.

All to report from the Finance Department.

Respectfully submitted,

Jon K. Stavig

CITY OF CORDOVA FUND SUMMARY FOR THE 2 MONTHS ENDING FEBRUARY 28, 2013

GENERAL FUND

	PERIOD ACTUAL	YTD ACTUAL	BUDGET -	VARIANCE	PCNT
REVENUE					
TAXES	447,498.32	447,498.32	5,718,500.00	5,271,001.68	7.8
LICENSES & PERMITS	235.00	235.00	16,300.00	16,065.00	1.4
OTHER GOVERNMENTAL	951,549.68	951,549.68	3,066,537.64	2,114,987.96	31.0
LEASES & RENTS	14,559.75	14,559.75	171,020.00	156,460.25	8.5
LAW ENFORCEMENT	79,393.85	79,393.85	333,900.00	254,506.15	23.8
D. M. V.	20,849.60	20,849.60	92,500.00	71,650.40	22.5
PLANNING DEPARTMENT REVENUE	290.00	290.00	29,000.00	28,710.00	1.0
RECREATION DEPT REVENUE	6,447.50	6,447.50	77,000.00	70,552.50	8.4
POOL REVENUE	3,958.50	3,958.50	34,200.00	30,241.50	11.6
SALE OF PROPERTY	.00	.00	6,500.00	6,500.00	.0
INTERFUND TRANSFERS IN	41,003.65	41,003.65	492,043.75	451,040.10	8.3
OTHER REVENUE	3,003.22	3,003.22	225,000.00	221,996.78	1.3
STATE DEBT SERVICE REIMBURSME	642,773.00	642,773.00	976,276.00	333,503.00	65.8
	2,211,562.07	2,211,562.07	11,238,777.39	9,027,215.32	19.7
EXPENDITURES					
CITY COUNCIL	3,028.93	3,028.93	23,000.00	19,971.07	13.2
CITY CLERK	29,663.46	29,663.46	240,999.77	211,336.31	12.3
CITY MANAGER	37,681.39	37,681.39	399,368.41	361,687.02	9.4
FINANCE	72,381.00	72,381.00	423,517.81	351,136.81	17.1
PLANNING DEPARTMENT EXPENSE	18,864.23	18,864.23	212,763.46	193,899.23	8.9
PLANNING COMMISSION	58.42	58.42	6,500.00	6,441.58	.9
DEPTARTMENT OF MOTOR VEHICLE	8,332.37	8,332.37	76,825.96	68,493.59	10.9
LAW ENFORCEMENT	90,091.74	90,091.74	892,295.09	802,203.35	10.1
JAIL OPERATIONS	23,669.01	23,669.01	231,298.95	207,629.94	10.2
FIRE & EMS	43,564.10	43,564.10	320,000.18	276,436.08	13.6
DISASTER MANAGEMENT DEPT.	.00	.00	7,500.00	7,500.00	.0
INFORMATION SERVICES	46,195.60	46,195.60	472,652.75	426,457.15	9.8
FACILITY UTILITIES	26,878.34	26,878.34	156,300.00	129,421.66	17.2
PW ADMINISTRATION	13,913.03	13,913.03	122,272.32	108,359.29	11.4
FACILITY MAINTENANCE	26,770.12	26,770.12	211,713.28	184,943.16	12.6
STREET MAINTENANCE	50,293.20	50,293.20	619,784.04	569,490.84	8.1
SNOW REMOVAL	305.66	305.66	79,650.00	79,344.34	.4
EQUIPMENT MAINTENANCE	33,086.21	33,086.21	299,779.39	266,693.18	11.0
PARKS MAINTENANCE	6,240.35	6,240.35	103,904.25	97,663.90	6.0
CEMETERY MAINTENANCE DEPT.	.00	.00	8,275.00	8,275.00	.0
RECREATION - BIDARKI	43,463.14	43,463.14	406,073.52	362,610.38	10.7
POOL	36,511.52	36,511.52	284,467.98	247,956.46	12.8
SKI HILL	15,258.44	15,258.44	58,400.00	43,141.56	26.1
NON-DEPARTMENTAL	24,266.53	24,266.53	337,145.00	312,878.47	7.2 59.7
LONG TERM DEBT SERVICE	997,980.58	997,980.58	1,699,924.00	701,943.42	58.7
INTERFUND TRANSFERS OUT TRANSFERS TO OTHER ENTITIES	978,592.00 318,592.15	978,592.00 318,592.15	978,592.07 3,101,983.16	.07 2,783,391.01	100.0 10.3

CITY OF CORDOVA FUND SUMMARY FOR THE 2 MONTHS ENDING FEBRUARY 28, 2013

GENERAL FUND

PERIOD ACTUAL		YTD ACTUAL		BUDGET	VARIANCE	PCNT
			-			
	2,945,681.52	2,945,681.52	_	11,774,986.39	8,829,304.87	25.0
(734,119.45)	(734,119.45)	(536,209.00)	197,910.45	(136.9)

CITY OF CORDOVA FUND SUMMARY FOR THE 2 MONTHS ENDING FEBRUARY 28, 2013

		PERIOD ACTUAL	YTD ACTUAL	BUDGET		VARIANCE	PCNT
	REVENUE						
101	OFNIFDAL FLIND	0.044.500.07	0.044.500.07	44 000 777 00		0.007.045.00	40.7
101	GENERAL FUND	2,211,562.07	2,211,562.07	11,238,777.39		9,027,215.32	19.7
104	CITY PERMANENT FUND	1,050,221.59	1,050,221.59	1,210,007.93		159,786.34	86.8
203 205	FIRE DEPT. VEHICLE ACQUISITION VEHICLE REMOVAL/IMPOUND FUND	.00	.00	10,000.00 33,000.00		10,000.00	.0
401	GENERAL PROJ & GRANT ADMN	33,000.00 622,583.25	33,000.00 622,583.25	*		.00 232,386.75	100.0 72.8
410	CHIP SEAL C.I.P.	50,000.00	50,000.00	854,970.00 50,000.00		.00	100.0
435	HOSPITAL REPAIR PROJECT	339,139.37	339,139.37	1,028,155.00		689,015.63	33.0
	HARBOR ENTERPRISE FUND	50,773.94	50,773.94	1,037,570.41		986,796.47	4.9
502	SEWER ENTERPRISE FUND	49,752.36	49,752.36	731,830.00		682,077.64	6.8
504	WATER ENTERPRISE FUND	45,755.79	45,755.79	735,270.00		689,514.21	6.2
505	REFUSE ENTERPRISE FUND	57,228.50	57,228.50	942,625.00		885,396.50	6.1
506	ODIAK CAMPER PARK	1,429.04	1,429.04	61,167.25		59,738.21	2.3
	HARBOR & PORT PROJECTS	869,754.34	869,754.34	103,235.00	(766,519.34)	842.5
603	SEWER PROJECTS	104,857.00	104,857.00	709,857.00	(605,000.00	14.8
605	SOLID WASTE PROJECTS	284,000.00	284,000.00	1,506,000.00		1,222,000.00	18.9
654	LT2 COMPLIANCE PROJECT	.00	.00	3,605,000.00		3,605,000.00	.0
	HARBOR FUND DEP'N RESERVE	75,000.00	75,000.00	75,000.00		.00	100.0
703	SEWER FUND DEP'N RESERVE	100,000.00	100,000.00	100,000.00		.00	100.0
	WATER FUND DEP'N RESERVE	100,000.00	100,000.00	100,000.00		.00	100.0
705	REFUSE FUND DEP'N RESERVE FUN	75,000.00	75,000.00	75,000.00		.00	100.0
805	LANDFILL FUND	50,000.00	50,000.00	25,000.00	(25,000.00)	200.0
		6,170,057.25	6,170,057.25	24,232,464.98		18,062,407.73	25.5
	EXPENDITURES						
101	GENERAL FUND	2,945,681.52	2,945,681.52	11,774,986.39		8,829,304.87	25.0
104	CITY PERMANENT FUND	466,787.93	466,787.93	466,787.93		.00	100.0
401	GENERAL PROJ & GRANT ADMN	26,335.82	26,335.82	945,925.50		919,589.68	2.8
410	CHIP SEAL C.I.P.	.00	.00	50,000.00		50,000.00	.0
435	HOSPITAL REPAIR PROJECT	64,478.13	64,478.13	1,028,155.00		963,676.87	6.3
502	HARBOR ENTERPRISE FUND	197,591.75	197,591.75	1,037,570.41		839,978.66	19.0
503	SEWER ENTERPRISE FUND	179,472.27	179,472.27	731,830.00		552,357.73	24.5
504	WATER ENTERPRISE FUND	176,011.46	176,011.46	735,270.00		559,258.54	23.9
505	REFUSE ENTERPRISE FUND	233,040.51	233,040.51	942,625.00		709,584.49	24.7
506	ODIAK CAMPER PARK	4,176.51	4,176.51	57,255.25		53,078.74	7.3
602	HARBOR & PORT PROJECTS	154,217.00	154,217.00	103,235.00	(50,982.00)	149.4
603	SEWER PROJECTS	.00	.00	709,857.00		709,857.00	.0
605	SOLID WASTE PROJECTS	18,312.01	18,312.01	1,506,000.00		1,487,687.99	1.2
654	LT2 COMPLIANCE PROJECT	8,504.28	8,504.28	3,605,000.00		3,596,495.72	.2
702	HARBOR FUND DEP'N RESERVE	103,235.00	103,235.00	103,235.00		.00	100.0
703	SEWER FUND DEP'N RESERVE	104,857.00	104,857.00	104,857.00		.00	100.0
705	REFUSE FUND DEP'N RESERVE FUN	284,000.00	284,000.00	284,000.00		.00	100.0
		4,966,701.19	4,966,701.19	24,186,589.48	_	19,219,888.29	20.5
		1,203,356.06	1,203,356.06	45,875.50	(1,157,480.56)	2623.1

Re: Agenda Item - Resolution 02-13-07 North Fill Property Lease February 20, 2013

MOBILE GRID TRAILERS, INC.

Owners: Ric & Osa Schultz

1985 - Started ~ In Business for 28 Years

1989 - Set up Operations at Bayside Storage on North Fill

2000 - Leased - Lot 2, Block 7, North Fill from City of Cordova

City Sales Tax collected in the last 4 years - \$10,300

Business Activities:

- Boat Trailering and Equipment Towing Service
- Boat Blocking and Storage
- Trailer Manufacture and Repairs
- Retail Sales of Trailers, Parts and Equipment
- Auto Towing

Over the 13 years we have leased this city lot it has been essential for the operation of our business. It provides space for staging and storage of our trailer fleet, commercial vessels and equipment.

In the last 4 years, approximately 1/3 of the lot has been rented to customers

for storage of their boats, trailers and equipment.

Over the years, we often anticipated the purchase of this property; however, the requirement for proposing a building interfered with our need for maneuverability on the lot for our trailer fleet and equipment storage.

In the last 2 years, with more fishermen owning their own trailers, we have reduced our fleet and have made it a future goal to pursue the development of this property. We have been researching appropriate structures, site plan and financing options.

Therefore, we encourage you to approve the renewal of this property lease so that we can continue to be a productive industry in this community as well as allow us adequate time to develop a business plan to present to the Cordova Planning Commission.

CITY_OF_CORDOVA



February 22, 2013

Pat Kemp, Commissioner Alaska Department of Transportation & Public Facilities PO Box 112500 Juneau, Alaska 99811

Dear Commissioner Kemp:

First, thank you for taking time out of your busy day to meet with me in your Juneau office on January 25th.

In addition to expressing my appreciation for your time, it's important that I also acknowledge the recent efforts of Captain John Falvey to keep the ferry service running in Prince William Sound. Scheduling issues for maintenance and repairs to the vessels Chenega and Aurora raised the potential for a significant break in service to the community of Cordova. Captain Falvey was forthcoming with city officials about the situation, gave us an honest assessment, and then was successfully able to manage the situation without any major service disruptions.

All too often communications in government are about problems and concerns. It is important once in a while to speak up when someone does a good job.

It was a pleasure meeting with you, and I appreciate the frank discussion about how we can work together to maintain and build our transportation system. Our community is filled with very active and concerned citizens - particularly in regard to transportation issues. Whether it's the boat harbor, marine highway system, Copper River Highway, the airport - your department at the State level is critical to Cordova.

Sincerely,

Jim Kallander, Mayor City of Cordova

Exxon Valdez Oil Spill Trustee Council

4210 University Drive • Anchorage, AK 99508-4626 • (907) 278-8012 • fax (907) 276-7178



February 22, 2013

Jim Kallander, Mayor City of Cordova P.O. Box 1210 Cordova, Alaska 99574

Dear Mayor Kallander:

Thank you for your participation in the Trustee Council's meeting yesterday. The Trustee Council approved up to an additional \$1.3 million dollars, adjusted for general administration costs, toward construction costs for the Cordova Center.

This additional amount is conditioned upon the same terms outlined for the original funding in Resolution 11-02, including a demonstration that the City has firm commitments for the funding of all the anticipated costs of construction of the Cordova Center. As with all funding decisions by the Council, this approval is not final until a resolution is signed by each Trustee confirming their approval and any conditions.

We hope to finalize that Resolution in the next week or so and will forward a copy to you. We look forward to working with you toward the completion of the Cordova Center.

Best regards,

Elise Hsieh

Executive Director

HOMELAND SECURITY AND

MARK BEGICH ALASKA

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

CHAIRMAN, SUBCOMMITTEE ON OCEANS. ATMOSPHERE, FISHERIES AND COAST GUARD

COMMITTEE ON VETERANS' AFFAIRS

United States Senate

GOVERNMENTAL AFFAIRS COMMITTEE ON INDIAN AFFAIRS

WASHINGTON, DC 20510

February 6, 2013

The Honorable Jim Kallander, Mayor City of Cordova PO Box 1210 Cordova, AK 99574-1210

Dear Mayor Kallander:

Thank you for contacting me about the Secure Rural Schools program, the Copper River Highway Bridge 339, and the Cordova Center. I regret I was not able to meet with you when you were in D.C., and I appreciate that you took the time to follow up. I am sorry for the delay in my response.

I know how important the Secure Rural Schools program is for Alaska's kids. As you know, I supported an amendment to the surface transportation reauthorization bill which extended Secure Rural Schools funding for one year. This bill was signed into law in June of last year.

During the last Congress, I introduced S. 1692, the County Payments Reauthorization Act of 2011, which would extend Secure Rural Schools funding through Fiscal Year 2016. Unfortunately, this bill never received a vote before the full Senate. I know that Secure Rural Schools funding is a lifeline for many Alaska communities, helping finance schools, educational programs, teachers, and road repair. I will continue fighting for Secure Rural Schools funding and Alaska's rural communities and school districts.

As I am sure you know in 2009, despite my objections, Congress implemented a moratorium on earmark spending and senators are no longer able to direct funding to specific projects in their states. This has made it impossible to bring money directly to Alaska-specific projects such as the Copper River Highway Bridge. That being said, I understand the merits of this project. I recently secured spot on the Appropriations Committee, and where I look forward to working for Alaska priorities.

You had mentioned to Stef that at some point in the future you would appreciate a letter of support to the Exxon Valdez Oil Trustee Council on behalf of the Cordova Center. Please feel free to reach out to my transportation aide James

Kallander 2/5/2013 Page 2

Feldman on this or any other matter. You can reach him at james feldman@begich.senate.gov or at (202) 224-3004.

Please let me know if there is any other way in which I can assist you in the future. Thank you again for contacting me on these important matters. Please feel free to contact me on any other subject in the future.

Sincerely,

Mark Begich

United States Senator

Memorandum

To: Mayor and City Council

From: Donald L. Moore, Interim City Manager

Date: 3/1/2013

Re: Mobile Grid Lease

PART I. GENERAL INFORMATION:

File No.: 02-060-136-1

Requested Action: Approval of Resolution 02-13-07

Survey: Lot 2, Block 7, North Fill Development Park

PART II. BACKGROUND:

After discussing and reviewing the land disposal procedure, the City Council should consider the option of an 18 month lease is recommended for the reason below. There has been interest for land in the industrial zone. The last lot disposed of in this area had a total of three proposals; one would be applicable to this lot. One of the proposals for the lot 6 on the south fill would also meet the zoning codes for this area and I have received inquiries from two additional entities about the availability of property in this area. Also Mobile Grid has a vested interest in this lot.

The expiration of this lease is right at the start of the fishing season and a very busy time for Mobile Grid as well as other business and people in the community. If Council is considering making this lot available, an 18 month lease to Mobile Grid would provide for a time frame when Mobile Grid, as well as others, could research and develop their proposals in the off season.

I have roughed out a time frame below to demonstrate the timing of an 18 month lease.

- Lease brought before council August 2014 for review; City Council makes available and puts out for proposal
- September/October Request for proposals out to public for 30 days.
- Lease expires October 20th 2014 goes into hold over clause until proposal period is complete
- November 2014 30 day proposal period ends, proposal goes to P&Z
- November/December 2014 City council reviews recommendation and proposals and awards lot
- If Mobile Grid is awarded purchase hold over continues until closing; if not time frame for clearing the lot will be determined

- January 2015 -purchase agreements, performance deed of trust and ordinance 1st reading and second reading
- February 2015-30 day wait for ordinance
- March 2015-60 days to closing

The Manager recommends Council authorize the city manager to enter into an 18 month lease of property legally described as Lot 2, block 7, North Fill Development Park with Ric and Osa Shultz (dba Mobile Grid Trailers, Inc.)

Memorandum

To: City Council and City Manager

From: Planning Department staff

Date: 3/1/2013

Re: Mobile Grid Lease

PART I. GENERAL INFORMATION:

File No.: 02-060-136-1

Requested Action: Approval of Resolution 02-13-07

Survey: Lot 2, Block 7, North Fill Development Park

PART II. BACKGROUND:

Ric and Osa Schultz dba Mobile Grid Trailers, Inc. have been leasing Lot 2, Block 7, North Fill Development Park since 2003. The taxes and lease payments have been timely for the duration of the last lease.

The allowed uses for this lease are

4. <u>USES AND CONDITION OF PREMISES</u>

A. Authorized Uses. Use of the Premises shall be limited to haul out facilities, boat and trailer storage, and towing facilities, operated by Lessee, and the leased premises shall not, without prior written consent of the Lessor, be used for any other purposes. Lessor expressly reserves the right to terminate this lease in the event Lessee fails to operate said use for a period of eighteen consecutive months.

The tenants have maintained the uses and conditions as described during the lease. The term of this lease will be two years, commencing on April 20, 2013 and expiring on April 20, 2015.

PART III. SUGGESTED MOTION

"I move to approve Resolution 02-13-07."

CITY OF CORDOVA, ALASKA RESOLUTION 02-13-07

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CORDOVA, AUTHORIZING THE CITY MANAGER TO ENTER INTO A 2 YEAR LEASE OF PROPERTY LEGALLY DESCRIBED AS LOT 2, BLOCK 7, NORTH FILL DEVELOPMENT PARK WITH RIC AND OSA SCHULTZ (DBA MOBILE GRID TRAILERS, INC.)

WHEREAS, the lease term with the Ric and Osa Schultz (dba Mobile Grid Trailers, Inc.). will commence on April 20th, 2013, the lease would carry their tenancy through April 20th, 2015; and

WHEREAS, the lease with the Ric and Osa Schultz (dba Mobile Grid Trailers, Inc.) is generally described as Lot 2, Block 7, North Fill Development Park, Plat 86-6, located within Cordova Recording District, Cordova Alaska; and

WHEREAS, the annual rental rate will be Seven thousand five hundred eighty-four dollars and eight cents (\$7,584.08); and

WHEREAS, the City Administration proposes entering into the lease so long as the terms of the original lease remain in force; and

WHEREAS, the lease between the City of Cordova and the Ric and Osa Schultz (dba Mobile Grid Trailers, Inc.) is hereto attached as Attachment A.

NOW, THEREFORE BE IT RESOLVED THAT the City Council of the City of Cordova hereby authorizes and directs the City Manager to renew the lease on the property to the Ric and Osa Schultz (dba Mobile Grid Trailers, Inc.) in accordance with the terms in the Lease. The form and content of the Lease now before this meeting is in all respects authorized, approved and confirmed by this resolution, and the City Manager hereby is authorized, empowered and directed to execute and deliver the Lease reflecting the terms in the Lease on behalf of the City, in substantially the form and content now before this meeting but with such changes, modifications, additions and deletions therein as he shall deem necessary, desirable or appropriate, the execution thereof to constitute conclusive evidence of approval of any and all changes, modifications, additions or deletions therein from the form and content of said documents now before this meeting, and from and after the execution and delivery of said documents, the City Manager hereby is authorized, empowered and directed to do all acts and things and to execute all documents as may be necessary to carry out and comply with the provisions of the Lease.

PASSED AND APPROVED THIS 6th DAY OF MARCH, 2013.

	James Kallander, Mayor
Attest:	
	Susan Bourgeois, City Clerk

CITY OF CORDOVA Cordova, Alaska

GROUND LEASE

THIS LEASE ("Lease") by and between the CITY OF CORDOVA, a municipal corporation organized and existing under the laws of the State of Alaska (the "City"), and Ric and Osa Schultz (dba Mobile Grid Trailers, Inc.) doing business in Cordova, Alaska ("Lessee").

RECITALS

WHEREAS, the City owns that certain unimproved parcel of land in Cordova, Alaska generally described as Lot 2, Block 7, North Fill Development Park, Plat 86-6, located within Cordova Recording District, Cordova Alaska, (referred to hereinafter as the "Premises"); and

WHEREAS, Lessee desires to lease the Premises from the City, and Lessor desires to lease the Premises to Lessee, on the terms and conditions set forth herein; and

WHEREAS, the Cordova City Council ("Council") has approved the lease of the Premises from the City to Lessee in accordance with the Cordova City Charter §5-17 and Chapter 5.22 of the Cordova Municipal Code (hereinafter referred to as the "Code" or "CMC").

NOW, THEREFORE, in consideration of the premises and the mutual covenants of the parties hereto, it is agreed as follows:

1. LEASE OF PREMISES

Subject to the terms and conditions set forth herein, the City hereby leases to Lessee and Lessee hereby leases from the City, the Premises.

2. LEASE TERM

The term of this Lease shall be two (2) year, commencing on **April 20, 2013**.

The "Commencement Date") and expiring two (2) years later, on **April 20, 2015**, unless earlier terminated in accordance with the terms of this Lease.

3. <u>RENT</u>

- A. Base Rent. The rent during the term of this Lease shall be Seven thousand five hundred and eighty-four dollars and eight cents (\$7584.08) or Six Hundred Thirty Two Dollars (\$632.00) in twelve monthly installments (the "Base Rent"), which shall be due and payable in advance on the Commencement Date of this agreement. Base Rent shall be paid to the City in lawful money of the United States without abatement, deduction or set-off for any reason whatsoever, at the address provided for notice to the City set forth in Section 20.E of this Lease, or at any other place that the City may from time to time direct in writing. Base Rent shall be paid promptly when due without notice or demand therefor. The parties intend the Base Rent to be absolutely net to the City. All costs, expenses and obligations of every kind and nature whatsoever in connection with or relating to the Premises shall be the obligation of, and shall be paid by, Lessee. As required by the CMC Section 5.22.040(C), any lease having a term of more than two (2) years shall be subject to a rental adjustment to fair market value at intervals of no more than two (2) years, but no adjustment shall result in a reduction of rent.
- **B. Additional Charges.** In addition to the Base Rent, Lessee acknowledges and agrees that Lessee is obligated to pay and shall pay, before delinquency and without reimbursement, all costs,

expenses and obligations of every kind and nature whatsoever in connection with or relating to the Premises or the activities conducted on the Premises, including without limitation those costs, expenses and obligations identified in Section 7 and all other sums, costs, expenses, taxes (including 6% sales tax, which shall be paid by Lessee monthly at the same time Lessee makes its monthly payments of Base Rent to the City) and other payments that Lessee assumes or agrees to pay under the provisions of this Lease (the "Additional Charges").

Without limiting in any way Lessee's payment obligations, the City shall have the right, but not the obligation, at all times during the Lease term, to pay any charges levied or imposed upon the Premises that remain unpaid after the same have become due and payable, and the amount paid, plus the City's reasonable expenses, shall be additional rent due from Lessee to the City, with interest thereon at the rate of ten percent (10%) per annum from the date of payment thereof by the City until repayment thereof by Lessee.

- **C.** Late Penalty Provision. Rent not paid within ten (10) days of the due date shall be assessed a late charge of ten percent (10%) of the delinquent amount; such charge shall be considered liquidated damages and shall be due and payable as additional rent. In the event the late charge assessment above exceeds the maximum amount allowable by law, the amount assessed will be adjusted to the maximum amount allowable by law.
- **D. Security Deposit.** Upon execution of this Lease, the City may require Lessee to deposit with the City an amount equal to two months' rent (the "Security Deposit"). The Security Deposit shall be held by the City as security for the faithful performance by Lessee of all of Lessee's obligations under this Lease. If Lessee fails to pay the Base Rent, or a portion thereof, or otherwise defaults with respect to any provision of this Lease, after notice and beyond the expiration of any applicable cure period the City may use, apply or retain all or any portion of the Security Deposit for:
 - (i) the payment of any rent or other sum in default;
- (ii) the payment of any other sum to which the City may become obligated by reason of Lessee's default; or
- (iii) to compensate the City for any loss or damage which the City may suffer thereby, including, but not limited to, any costs associated with moving and storage of Lessee's personal property (if any) remaining on the Premises beyond termination of the Lease. The City shall be free to commingle the Security Deposit with funds held in the City's own accounts, including accounts in which the City keeps other security deposits. If Lessee performs all of its obligations under this Lease, the Security Deposit, or so much thereof as has not been used, applied or retained by the City in accordance with this Section, shall be returned to Lessee, at the expiration of the term, and subject to Lessee relinquishing possession of the Premises, without payment of interest or other increment for its use, within 30 days of Lessee's vacation of the Premises.

4. USES AND CONDITION OF PREMISES

- **A. Authorized Uses.** Use of the Premises shall be limited to haul out facilities, boat and trailer storage, and towing facilities, operated by Lessee, and the leased premises shall not, without prior written consent of the Lessor, be used for any other purposes. Lessor expressly reserves the right to terminate this lease in the event Lessee fails to operate said use for a period of eighteen consecutive months.
- **B.** Inspections. The City and its authorized representatives and agents shall have the right, but not the obligation, to enter the Premises at all reasonable times to inspect the use and condition of the Premises; to serve, post or keep posted any notices required or allowed under the provisions of this Lease, including notices of non-responsibility for liens; and to do any act or thing necessary for the safety or preservation of the Premises. The City shall not be liable in any manner for any inconvenience, disturbance, loss of business, nuisance or other damage arising out of the City's entry onto the Premises, except for damage resulting directly from the acts of the City or its authorized representatives or agents.

- **C. Compliance with Laws.** Lessee shall maintain and repair the Premises in compliance with all applicable laws, regulations, ordinances, rules, orders, permits, licenses and other authorizations. Lessee shall not use or permit the use of the Premises for any purpose prohibited by law or which would cause a cancellation of any insurance policy covering the Premises. Lessee shall not leave the Premises unoccupied or vacant without the City's prior written consent. Lessee shall not cause or permit any Hazardous Material (as defined in Section 9.B of this Lease) to be brought upon, kept, or used in, on or about the Premises except for such Hazardous Material as is necessary to conduct Lessee's authorized uses of the Premises. Any such Hazardous Material brought upon, kept, or used in, on or about the Premises shall be used, kept, stored, and disposed of in a manner that complies with all environmental laws and regulations applicable to Hazardous Material. Lessee shall not cause or allow the release or discharge of any other materials or substances that are known to pose a hazard to the environment or human health.
- **D.** Lessee's Acceptance of Premises. Lessee has inspected the Premises to its complete satisfaction and is familiar with its condition, and the City makes no representations or warranties with respect thereto, including but not limited to the condition of the Premises or its suitability or fitness for any use Lessee may make of the Premises. Lessee accepts the Premises AS IS, WHERE IS, WITH ALL FAULTS. No action or inaction by the Council, the City Manager, or any other officer, agent or employee of the City relating to or in furtherance of the lease of the Premises shall be deemed to constitute an express or implied representation or warranty that the Premises, or any part thereof, is suitable or usable or any specific purpose whatsoever. Any such action or inaction shall be deemed to be and constitute performance of a discretionary policy and planning function only, and shall be immune and give no right of action as provided in Alaska Statute §9.65.070, or any amendment thereto.
- **E.** The City many terminate this Lease for any or no reason upon thirty (30) days' written notice to Lessee.

5. REPRESENTATIONS AND WARRANTIES

Lessee represents and warrants to the City that Lessee is not delinquent in the payment of any obligation to the City, and Lessee has not previously breached or defaulted in the performance of a material contractual or legal obligation to the City, which breach or default has not been remedied or cured.

6. ASSIGNMENTS AND SUBLETTING; SUBORDINATION

Lessee shall not assign or otherwise transfer this Lease or any interest herein or sublet the Premises or any portion thereof, or permit the occupancy of any part of the Premises by any other person or entity, without the prior written consent of the City, which consent the City may withhold in its absolute discretion. The City shall not be required to subordinate this Lease or the City's interest in the Premises to the interest of any other person or entity.

7. OPERATIONS, MAINTENANCE, UTILITIES, TAXES AND ASSESSMENTS

Lessee shall, at Lessee's sole cost and expense, be solely responsible for: (1) the maintenance and repair of the Premises and shall not commit or allow any waste upon the Premises; (2) obtaining any and all permits and approvals necessary for Lessee's use of the Premises; (3) all utilities and services needed for Lessee's use of the Premises; (4) all taxes and assessments levied against the Premises, and Lessee agrees to pay all such taxes and assessments as and when they become due, including but not limited to all utility bills and special assessments levied and unpaid as of the date of this Lease or hereafter levied for public improvements; (5) all licenses, excise fees, and occupation taxes with respect to the business and activities conducted on the Premises; (6) all real property taxes, personal property taxes, and sales taxes related to the Premises or Lessee's use or occupancy thereof; and (7) any taxes on the leasehold interest created under this Lease.

8. <u>LIENS</u>

Lessee will suffer no lien or other encumbrance to attach to the Premises, including without limitation mechanic's or materialman's liens, sales tax liens under CMC §5.40.125, or property tax liens under CMC §5.36.260. If the City posts any notice of non-responsibility on the Premises, Lessee will ensure that the notice is maintained in a conspicuous place.

9. INDEMNIFICATION

- **A. General Indemnification.** Lessee shall defend, indemnify and hold the City and its authorized representatives, agents, officers, and employees harmless from and against any and all actions, suits, claims, demands, penalties, fines, judgments, liabilities, settlements, damages, or other costs or expenses (including, without limitation, attorney's fees, court costs, litigation expenses, and consultant and expert fees) resulting from, arising out of, or related to Lessee's occupation or use of the Premises or the occupation or use of the Premises by Lessee's employees, agents, servants, customers, contractors, subcontractors, sub-lessees or invitees, including but not limited to all claims and demands arising out of any labor performed, materials furnished, or obligations incurred in connection with any improvements, repairs, or alterations constructed or made on the Premises and the cost of defending against such claims, including reasonable attorney fees. In the event that such a lien is recorded against the Premises, Lessee shall, at Lessee's sole expense within ninety (90) days after being served with written notice thereof, protect the City against said lien by filing a lien release bond or causing the release of such lien.
- Environmental Indemnification. Lessee has had full opportunity to examine the В. Premises for the presence of any Hazardous Material (as hereafter defined) and accepts the Premises AS IS, WHERE IS, WITH ALL FAULTS. Lessee releases the City and its authorized representatives. agents, officers, and employees from any and all actions, suits, claims, demands, penalties, fines, judgments, liabilities, settlements, damages, or other costs or expenses (including, without limitation, attorney's fees, court costs, litigation expenses, and consultant and expert fees) arising during or after the term of this Lease, that result from the use, keeping, storage, or disposal of Hazardous Material in, on or about the Premises by Lessee, or that arise out of or result from Lessee's occupancy or use of the Premises or the use or occupancy of the Premises by Lessee's employees, agents, servants, customers, contractors, subcontractors, sub-lessees, invitees or authorized representatives. This release includes, without limitation, any and all costs incurred due to any investigation of the Premises or any cleanup, removal, or restoration mandated by a federal, state, or local agency or political subdivision, or by law or regulation. Lessee agrees that it shall be fully liable for all costs and expenses related to the use, storage, and disposal of Hazardous Material generated, kept or brought on the Premises by Lessee, its employees, agents, servants, customers, contractors, subcontractors, sub-lessees, invitees or authorized representatives.

Lessee shall defend, indemnify, and hold the City and its authorized representatives, agents, officers, and employees harmless from and against any claims, demands, penalties, fines, judgments, liabilities, settlements, damages, costs, or expenses (including, without limitation, attorney's fees, court costs, litigation expenses, and consultant and expert fees) of whatever kind or nature, known or unknown, contingent or otherwise, arising in whole or in part from or in any way related to (i) the presence, disposal, release, or threatened release of any such Hazardous Material which is on or from the Premises, soil, water, ground water, vegetation, buildings, personal property, persons, animals, or otherwise; (ii) any personal injury or property damage arising out of or related to such Hazardous Material; (iii) any lawsuit brought or threatened, settlement reached, or government order relating to such Hazardous Material; and (iv) any violation of any laws applicable to such Hazardous Material; provided, however, that the acts giving rise to the claims, demands, penalties, fines, judgments, liabilities, settlements, damages, costs, or expenses arise in whole or in part from the use of, operations on, or activities on the Premises by Lessee or its employees, agents, servants, customers, contractors, subcontractors, sub-lessees, invitees, or authorized representatives.

As used in this Lease, "Hazardous Material" means any substance which is toxic, ignitable, reactive, or corrosive or which is regulated by any federal, state or local law or regulation, as now in force or as may be amended from time to time, relating to the protection of human health or the environment, as well as any judgments, orders, injunctions, awards, decrees, covenants, conditions, or other restrictions or standards relating to the same. "Hazardous Material" includes any and all material or substances that are defined as "hazardous waste," "extremely hazardous waste," or a "hazardous substance" under any such law or regulation.

10. INSURANCE

Lessee shall procure and maintain, at Lessee's sole cost and expense, the following policies of insurance with a reputable insurance company or companies satisfactory to the City:

- (1) Commercial general liability insurance in respect of the Premises and the conduct of Lessee's business and operations, naming the City as an additional insured, with minimum limits of liability of Ten Million dollars (\$10,000,000.00) per accident or occurrence for bodily injury and death, and property damage for each occurrence;
- (2) Property insurance, insuring against loss or damage by fire and such other risks as are customarily included in the broad form of extended coverage, in an amount of coverage not less than the replacement value of the improvements on the Premises, if any, and on such terms as are satisfactory to the City;
- (3) Personal property insurance covering Lessee's trade fixtures, furnishings, equipment, and other items of personal property of Lessee located on the Premises; and
- (4) Workers compensation insurance, and such other insurance as is required by law. All insurance required under this Lease shall contain an endorsement requiring thirty (30) days' advance written notice to the City before cancellation or change in the coverage, scope, or amount of any policy. Prior to commencement of the Lease term, Lessee shall provide the City with proof of the insurance required by this Section 10.

11. REMOVAL OF PROPERTY

Upon expiration or earlier termination of this Lease, at the option of the City, Lessee shall remove from the Premises, at Lessee's sole expense, all property Lessee has placed or caused to be placed on the Premises. Lessee shall repair any damage to the Premises caused by such removal and return the Premises as near as possible to its original condition as existed on the Commencement Date. All property which is not promptly removed by Lessee pursuant to the City's request and in any event within thirty (30) days of the date of expiration or termination of this Lease may be removed, sold, destroyed or otherwise disposed of in any manner deemed appropriate by the City, all at Lessee's sole expense, and Lessee hereby agrees to pay the City for such expenses. Notwithstanding any provision to the contrary in this Lease, all petroleum, fuel, or chemical storage tanks installed in or on the Premises during the term of this Lease shall remain the property of the Lessee and, upon expiration or earlier termination of the Lease and upon request of the City, Lessee shall remove any and all such tanks and any and all contaminated soil and other materials from the Premises, all at Lessee's sole expense.

12. DEFAULT AND REMEDIES

- **A. Default.** The occurrence of any of the following shall constitute a default and a breach of this Lease by the Lessee:
- (i) The failure to make payment when due of any installment of rent, Additional Charges or of any other sum herein specified to be paid by the Lessee;
- (ii) The failure to pay any taxes or assessments due from the Lessee to the City and in any way related to this Lease, the Premises, any improvements, or the Lessee's activities or business conducted thereon, including but not limited to any real property, personal property or sales taxes;

- (iii) An assignment for the benefit of Lessee's creditors or the filing of a voluntary or involuntary petition by or against Lessee under any law for the purpose of adjudicating Lessee a bankrupt, or for extending the time for payment, adjustment, or satisfaction of Lessee's liabilities, or for reorganization, dissolution, or arrangement on account of or to prevent bankruptcy or insolvency, unless the assignment or proceeding, and all consequent orders, adjudications, custodies, and supervision are dismissed, vacated or otherwise permanently stated or terminated within thirty (30) days after the assignment, filing or other initial event;
- (iv) The appointment of a receiver or a debtor-in-possession to take possession of the Premises (or any portion thereof) or of Lessee's interest in the leasehold estate (or any portion thereof) or of Lessee's operations on the Premises (or any portion thereof) by reason of Lessee's insolvency;
 - (v) The abandonment or vacation of the Premises or any portion thereof;
- (vi) Execution, levy or attachment on Lessee's interest in this Lease or the Premises, or any portion thereof;
- (vii) The breach or violation of any statutes, laws, regulations, rules or ordinances of any kind applicable to Lessee's use or occupancy of the Premises; or
- (viii) The failure to observe or perform any covenant, promise, agreement, obligation or condition set forth in this Lease, other than the payment of rent, if such failure shall not be cured within ten (10) days after written notice has been given to Lessee. Notices given under this subsection shall specify the alleged breach and the applicable Lease provision and demand that the Lessee perform according to the terms of the Lease. No such notice shall be deemed a forfeiture or termination of this Lease unless the City expressly makes such election in the notice.
- **B. Remedies.** If the Lessee breaches any provision of this Lease, in addition to all other rights and remedies the City has at law or in equity, the City may do one or more of the following:
- (i) Distrain for rent due any of Lessee's personal property which comes into the City's possession. This remedy shall include the right of the City to dispose of Lessee's personal property in a commercially reasonable manner. Lessee agrees that compliance with the procedures set forth in the Alaska Uniform Commercial Code with respect to the sale of property shall be a commercially reasonable disposal.
- (ii) Re-enter the Premises, take possession thereof, and remove all property from the Premises. The property may be removed and stored at Lessee's expense, all without service of notice or resort to legal process, which Lessee waives, and without the City becoming liable for any damage that may result unless the loss or damage is caused by the City's negligence in the removal or storage of the property. No re-entry by the City shall be deemed an acceptance of surrender of this Lease. No provision of this Lease shall be construed as an assumption by the City of a duty to re-enter and re-let the Premises upon Lessee's default. If Lessee does not immediately surrender possession of the Premises after termination by the City and upon demand by the City, the City may forthwith enter into and upon and repossess the Premises and expel Lessee without being deemed guilty in any manner of trespass and without prejudice to any remedies which might otherwise be used for arrears of rent or breach of covenant:
 - (iii) Declare this Lease terminated;
- (iv) Recover, whether this Lease is terminated or not, reasonable attorney's fees and all other expenses incurred by the City by reason of the default or breach by Lessee;
- (v) Recover an amount to be due immediately upon breach equal to the sum of all rent, Additional Charges and other payments for which Lessee is obligated under the Lease;

- (vi) Recover the costs of performing any duty of Lessee in this Lease;
- (vii) Collect any and all rents due or to become due from subtenants or other occupants of the Premises.

13. SUBSIDENCE

The City shall not be responsible for any washout, subsidence, avulsion, settling or reliction to the Premises, nor for any injury caused thereby to the property of the Lessee or any sub-lessee, or that of any other person. The City is not obligated to replace, refill, or improve any part of the Premises during Lessee's occupancy in the event of such washout, subsidence, avulsion, settling, or reliction.

14. VACATION BY LESSEE

Upon the expiration or sooner termination of this Lease, Lessee shall peaceably vacate the Premises and the Premises shall be returned to the City by Lessee together with any alterations, additions or improvements made after the Commencement Date, unless the City requests that they be removed from the Premises. Upon such vacation, Lessee shall remove from the Premises any items of personal property brought on to the Premises. Any such property not removed from the Premises within thirty (30) days of the expiration or termination of this Lease shall become the property of the City at no cost or charge to the City, and may be removed, sold, destroyed or otherwise disposed of in any manner deemed appropriate by the City, all at Lessee's sole expense, and Lessee hereby agrees to pay the City for such expenses.

15. RESERVATION OF RIGHTS

The City reserves the right to designate and grant rights-of-way and utility easements across the Premises without compensation to Lessee or any other party, including the right of ingress and egress to and from the Premises for the construction, operation and maintenance of utilities and access, provided that Lessee shall be compensated for the taking or destruction of any improvements on the Premises. Lessee shall be responsible for requesting a rental adjustment to reflect any reduction in the value of the Premises.

16. <u>SIGNS</u>

No signs or other advertising symbols, canopies, or awnings shall be attached to or painted on or within the Premises without approval of the City Manager first being obtained; provided, however, that this prohibition shall not apply to standard, directional, informational and identification signs of two square feet or less in size. At the termination of this Lease, or sooner, all such signs, advertising matter, symbols, canopies or awnings, attached or painted by Lessee shall be removed from the Premises by Lessee at its own expense, and Lessee shall repair any damage or injury to the Premises, and correct any unsightly conditions caused by the maintenance or removal of said signs.

17. HOLDING OVER

If Lessee with the City's written consent remains in possession of the Premises after the expiration or termination of the Lease term for any cause, or after the date in any notice given by the City to Lessee terminating this Lease, such holding over shall be deemed a tenancy from month to month at the same rental amount applicable immediately prior to such expiration or termination, subject to adjustment in accordance with CMC § 5.22.040(c) or such successor provision of the code then in effect, and shall be terminable on 30 days' written notice given at any time by either party. All other provisions of this Lease except those pertaining to term and rent shall apply to the month-to-month tenancy. If Lessee holds over without the City's express written consent, Lessee is deemed to be a tenant at sufferance and may be removed through a forcible entry and detainer proceeding without service on Lessee of a notice to quit.

18. <u>EMINENT DOMAIN</u>

If the whole or any part of the Premises shall be taken for any public or quasi-public use, under any statute or by right of eminent domain or private purchase in lieu thereof by a public body vested with the power of eminent domain, then the following provisions shall be operative.

- **A. Total Taking**. If the Premises are totally taken by condemnation, this Lease shall terminate.
- **B. Partial Taking**. If the Premises are partially taken by condemnation, then this Lease shall continue and the rent as specified in Section 3 above shall be abated in a proportion equal to the ratio that the portion of the Premises taken bears to the total Premises leased hereunder.
- **C. Award.** Upon condemnation, the parties shall share in the award to the extent that their interests, respectively, are depreciated, damaged, or destroyed by the condemnation.

19. COSTS

Lessee shall be liable to and shall pay the City for the fees and costs incurred by the City in connection with the preparation, operation and enforcement of this Lease.

20. MISCELLANEOUS

- A. Time Is of the Essence. Time is of the essence of this Lease and of each provision hereof.
- **B.** Entire Agreement. This Lease represents the entire agreement between the parties with respect to the subject matter hereof, and may not be amended except in writing executed by the City and Lessee.
- **C.** Governing Law and Venue. This Lease shall be subject to the provisions of the Code now or hereafter in effect. This Lease shall be governed by and construed in accordance with Alaska law and any action arising under this Lease shall be brought in a court of competent jurisdiction in Cordova, Alaska.
- **D. Relationship of Parties.** Nothing in this Lease shall be deemed or construed to create the relationship of principal and agent, or of partnership, or of joint venture, or of any association between Lessee and the City. Neither the method of computation of rent, nor any other provisions contained in this Lease, nor any acts of the parties shall be deemed to create any relationship between the City and Lessee other than the relationship of lessee and lessor.
- **E. Notice.** All notices hereunder may be hand-delivered or mailed. If mailed, they shall be sent by certified or registered mail to the following respective addresses:

TO CITY:

TO LESSEE:

City of Cordova Attn: City Manager P.O. Box 1210 Cordova, Alaska 99574 Mobile Grid Trailers, Inc. Attn: Ric & Osa Schultz P.O. Box 1291 Cordova, AK 99574

or to such other respective addresses as either party hereto may hereafter from time to time designate in advance in writing to the other party. Notices sent by mail shall be deemed to have been given when properly mailed, and the postmark affixed by the U.S. Post Office shall be conclusive evidence of the date of mailing. If hand-delivered, notice shall be deemed to have been made at the time of delivery.

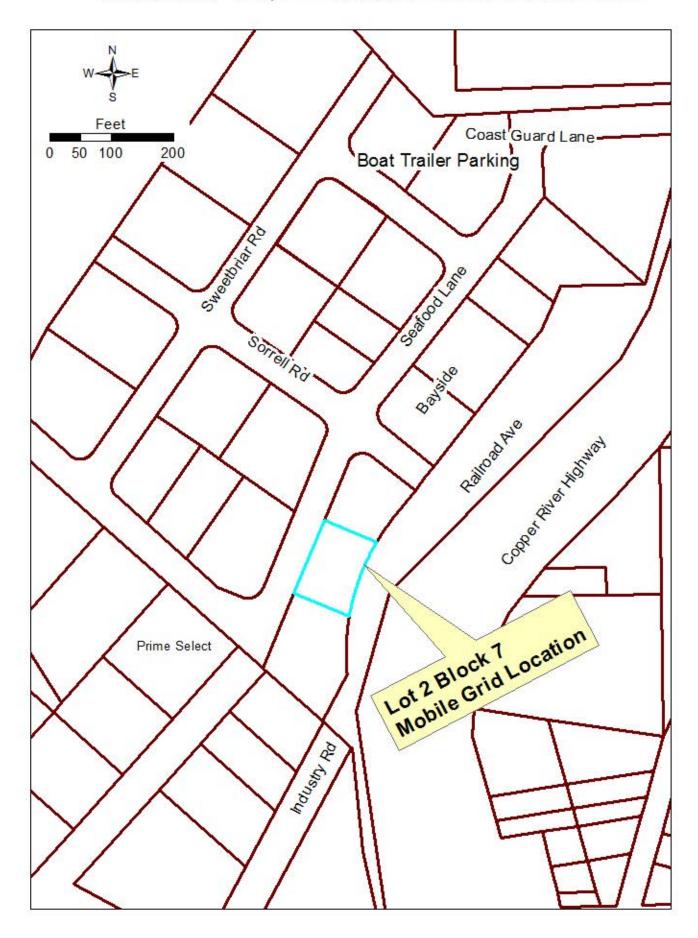
- **F. Captions.** Captions herein are for convenience and reference and shall not be used in construing the provisions of this Lease.
- **G. No Waiver of Breach.** No failure by the City to insist upon the strict performance of any term, covenant or condition of this Lease, or to exercise any right or remedy upon a breach thereof, shall constitute a waiver of any such breach or of such term, covenant or condition. No waiver of any breach shall effect or alter this Lease, but each and every term, covenant and condition of this Lease shall continue in full force and effect with respect to any other existing or subsequent breach.
- **H. Survival.** No expiration or termination of this Lease shall expire or terminate any liability or obligation to perform which arose prior to the termination or expiration.
- **I.** Late Payment. In the event that any rent or other payment due under this Lease is not received by the City when due, a late fee of five percent (5%) per month of the principal amount due shall be due and payable until the full amount of rent or other payment is received by the City.
- **J. Partial Invalidity.** If any provision of this Lease is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions shall remain in full force and effect and shall in no way be affected, impaired, or invalidated.
- **K.** Successors and Assigns. The terms, covenants and conditions in this Lease shall inure to the benefit of and shall be binding upon the successors and permitted assigns of the City and Lessee.
- **L. Estoppel Certificates.** Either party shall at any time and from time to time, upon not less than 10 days' prior written request by the other party, execute, acknowledge, and deliver to such party a statement certifying that this Lease is unamended and in full force and effect (or, if there has been any amendment, that the same is in full force and effect as amended and stating the amendments); that there are no defaults existing (or, if there is any claimed default, stating the nature and extent thereof); and stating the dates to which the rent and other charges have been paid in advance.
- **M. Recordation of Lease.** The parties agree that this Lease shall not be recorded, but upon the request of either party, the other party will join the requesting party in executing a memorandum of lease in a form suitable for recording, and each party agrees that such memorandum shall be prepared and recorded at the requesting party's expense.
- **N.** Authority. Lessee represents that Lessee is a for-profit corporation duly organized, validly existing, and in good standing under the laws of the State of Washington, and is duly authorized by the State of Alaska to do business as a foreign corporation in the State of Alaska, and that Lessee has all necessary power and is duly authorized to enter into this Lease and to carry out the obligations of Lessee hereunder. Prior to executing this Lease, Lessee shall provide the City with a certificate of authority issued by the State of Alaska, and shall provide the City with a resolution of Lessee's Board of Directors authorizing Lessee to enter into this Lease and to carry out its obligations hereunder as set forth above, and authorizing and directing the officer of Lessee whose name and signature appear at the end of this Lease to execute this Lease on Lessee's behalf.
 - O. Exhibits. Exhibit A to this Lease is hereby specifically incorporated into this Lease.
- **P. No Third Party Beneficiaries.** Nothing in this Lease shall be interpreted or construed to create any rights or benefits to any parties not signatories or successors or permitted assigns of signatories to this Lease.
- **Q. Interpretation.** The language in all parts of this Lease shall in all cases be simply construed according to its fair meaning and not for or against the City or Lessee as both City and Lessee have had the assistance of attorneys in drafting and reviewing this Lease.
 - R. Counterparts. This Lease may be executed in counterparts, each of which when so

executed and delivered shall be deemed to be an original and all of which taken together shall constitute one and the same instrument.

S. Attorney's Fees. In the event that the City shall bring any suit or action to enforce this Lease or any term or provision hereof, and shall prevail in such suit or action, Lessee agrees that Lessee shall pay the City's attorney's fees, costs and expenses incurred in connection with such suit or action.

IN WITNESS WHEREOF, the parties have caused this Lease to be executed on the dates set opposite their respective signatures below.

CITY:		CITY OF CORDOVA	
Dated:	Ву:		
		City Manager	
Attest:			
Attest:Cit	ty Clerk		
LESSEE:			
Dated		D.	
Dated:		By:	
		Its:	





CITY OF CORDOVA

Office of City Manager

Memo to City Council

Re: Cordova Center Budget Phase II

February 27, 2013

Before you is the Cordova Center Phase II budget in the amount of \$12,321,517 million (Twelve million, three hundred twenty-one thousand, five hundred and seventeen dollars.) Antic ip a ted funds are as follows:

GOVERNMENT green is secured funding

Fe	deral	
4	EVOSTC	\$ 7,000,000
4	Congressional Appropriations secured	\$ 2,488,100
4	EVOSTC	\$ 1,300,000
4	IMLS (Museum, exhibit design, etc.)	\$ 150,000
4	National Endowment for the Humanities	\$ 400,000
	Federal secured total	\$ 9,488,100
	Federal potential total	\$ 1,850,000
Sta	ate	
4	Legislative Appropriations – secured	\$ 5,525,000
4	Governor Discretionary Funds secured	\$ 1,000,000
4	Grants-in-Aid (State Museum)	\$ 10,000
4	Legislative Appropriation	\$ 4,000,000
	State secured total	<i>\$ 6,525,000</i>
	State potential total	\$ 4,010,000
	ınicipal	
	City—Land Acquisition	\$ 362,000
	City—Funding	\$ 1,500,000
	City—Match to EDA	\$ 85,000
4	City – In-Kind to Date	\$ 475,000
	Municipal secured total less in-kind	\$ 1,947,000
FOUN	DATIONS	
4	Rasmuson Foundation	\$ 1,000,000
4	Murdock Charitable Trust	\$ 350,000
4	Paul G. Allen Foundations	\$ 40,000
4	Gates Foundation	\$ 40,000 \$ 50,000 \$ 100,000
4	Annenberg Foundation	\$ 100,000
4	Others	\$ 30,000
	Total Foundations	\$ 1,570,000

CORPORATIONS

Corporations—local, region	al and state <i>Total Corporate</i>	-	650,000 6 50,000
LOCAL FUNDRAISING			
Local businesses		\$	50,000
Boards and staffs of partner nonprofits		\$	15,000
Individual donors		\$	75,000
Secured		\$	9,823
Fundraising events and items for sale		\$	25,000
 Secured 		\$	13,289
In-kind donations		\$	175,000
	Local Secured Total	\$	23,112
	Total Local less In-kind	\$	165,000

RECAP

↓ Municipal	
Secured funding	\$ 1,947,000
♣ Federal & State	
Secured funding	\$16,013,100
Potential sources	\$ 5,860,000
Foundations	\$ 1,570,000
♣ Corporate	\$ 650,000
Local donations/fundraisers	
Secured funding	\$ 23,112
Projected	\$ 165,000
In-kind donations	\$ 175,000

TOTAL Secured \$ 17,983,212 TOTAL Projected (Less In-Kind) \$ 8,245,000

Recommended action: Voice Vote.

Imove to approve Resolution 03-13-10

Donald Moore City Manager

City of Cordova 602 Railroad Ave. P.O. Box 1210 Cordova, Alaska 99574

Cordova, Alaska 99574 Phone: (907) 424-6200

Fax: (907) 424-6000

Email: <u>citymanager@cityofcordova.net</u>
Web: <u>www.cityofcordova.net</u>

CITY OF CORDOVA, ALASKA RESOLUTION 03-13-10

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CORDOVA, ALASKA, ADOPTING A CORDOVA CENTER PHASE II PROJECT BUDGET AS SUMMARIZED PURSUANT TO THE FOLLOWING TABLE.

•		
Phase II		
426-402-70110	Project Administration	\$187,600.00
426-40270130	Construction	
	Phase 2A	\$1,848,566.00
	Phase 2B	\$2,438,857.00
	Phase 2C	\$4,226,115.00
	Phase 2D	\$866,479.00
426-402-70140	Project Consultation and Management	\$187,600.00
426-402-70150	Administrative Contingency	\$375,300.00
426-402-70160	Furnishings	\$375,300.00
426-402-70170	Legal	\$140,700.00
426-402-70180	1% for Art	\$250,000.00
426-402-70190	Design/Landscape/SW Stair	\$75,000.00
426-402-70200	Museum Exhibit Design/Installation	\$500,000.00
426-402-70210	Museum Collections Storage	\$200,000.00
426-402-70220	Theater Extras	\$350,000.00
426-402-70230	Emergency Generator	\$250,000.00
426-402-70240	Fuel Tank	\$25,000.00
426-402-70250	Security Cameras	\$25,000.00
		\$12,321,517.00

WHEREAS, the City Manager submitted his proposed FY13 Operating Budget; and,

WHEREAS, the Cordova Center Phase II Project Budget was not complete at that time and City Council has conducted a work session reviewing the proposed Cordova Center project budget; and

WHEREAS, the capital campaign for the Cordova Center Project Phase II is currently and continually underway;

NOW, THEREFORE BE IT RESOLVED THAT the City Council of the City of Cordova, Alaska, hereby adopts the Cordova Center Phase II Project Budget and

BE IT FURTHER RESOLVED that all Phases of the Cordova Center Project Phase II will be brought forward to City Council for approval of appropriation before proceeding.

PASSED AND APPROVED THIS 6th DAY OF MARCH, 2013.

James Kallander, Mayor	
ATTEST:	
Susan Bourgeois City Clerk	

Memorandum

To: Mayor and City Council

Through: Donald L. Moore, Interim City Manager

From: Anthony J Schinella, Harbormaster

Date: February 27, 2013

Re: North Fill boat launch use plan, including Lot 3A

PART I. GENERAL INFORMATION:

The timeline of the disposal of Lot 3A, Block 8, North Fill Development Park

- 1. 07/10/2012 P&Z meeting –Planning and Zoning referred back to staff and Harbor Commission to determine if the lot was available for disposal.
- 2. 09/17/2012 Harbor Commission Meeting met and recommend that Lot 3A, Block 8, North Fill Development Park remain as unavailable.
- 3. 10/09/2012 P&Z recommend that Lot 3A, Block 8, North Fill Development Park remain unavailable
- 4. 11/17/2012 City Council Meeting Council referred back to Harbor Commission to develop a use plan for the city property near the North fill boat launch including Lot 3A.
- 5. 01/09/13 Harbor Commission Regular Meeting. HC discussed new ideas approved a rough draft of the North Ramp use plan to include Lot 3A, block 8.
- 6. 02/13/13 Harbor Commission Regular Meeting. HC approved final draft of North Fill boat launch use plan to include Lot 3A, Block 8.
- 7. 2/20/2012 the use plan was brought up and discussed in Commissioner reports. Council clarified that the land use plan was to help decide on the land disposal request for Lot 3A and should be an agenda item.

At this time I am attaching a drawing of the use plan that was approved by the Harbor Commission on 02/13/13. I respectfully request City Council review the North Fill boat launch use plan and determine the status of Lot 3A Block 8 North Fill Development Park.



Memorandum

To: Mayor and City Council

Through: Donald L. Moore, Interim City Manager

From: Samantha Greenwood, City Planner

Date: February 25, 2013

Re: Lot 3A land disposal recommendation

PART I. GENERAL INFORMATION:

The timeline of the disposal of Lot 3A, Block 8, North Fill Development Park

- 1. 07/10/2012 P&Z meeting –Planning and Zoning referred back to staff and Harbor Commission to determine if the lot was available for disposal.
- 2. 09/17/2012 Harbor Commission Meeting met and recommend that Lot 3A, Block 8, North Fill Development Park remind as unavailable
- 3. 10/09/2012 P&Z recommend that Lot 3A, Block 8, North Fill Development Park remain unavailable
- 4. 11/07/2012 City Council Meeting Council referred back to Harbor Commission to develop a use plan for the city property near the North fill boat launch including Lot 3A.
- 5. 2/20/2012 the use plan was brought up and discussed in Commissioner reports. Council clarified that the land use plan was to help decided on the land disposal request for Lot 3A and should be an agenda item.

As City Council considers the choice of making this lot available or not available staff would like to provide these additional points.

- 1. Adding an additional 20 feet from the city Lot 4 to Lot 3A provides the additional square footage and width to meet the zoning requirements for this area thus making it available to everyone.
- 2. Or Eliminating the substandard lot could also be accomplished by merging the lot lines of lot 3A and the adjoining city lot
- 3. "if the remnant parcel were attached to the adjacent property and returned income to the City at the same rate (\$ per sq.ft.) as the adjacent parcel, the gross annual revenue to the City would be approximately \$3600."

At this time I am attaching the original memo that I forwarded to City Council on 11/07/2012 and ask that City Council review and determine the status of Lot 3A Block 8 North Fill Development Park.

Memorandum

To: City Council

Thru: Samantha Greenwood, City Planner

Date: October 10, 2012

Re: Lot 3A, Block 8, North Fill Development Park

PART I. GENERAL INFORMATION:

The timeline of the disposal of Lot 3A, Block 8, North Fill Development Park

- 1. 07/10/2012 P&Z meeting –Planning and Zoning referred back to staff and Harbor Commission to determine if the lot was available for disposal.
- 2. 09/17/2012 Harbor Commission Meeting met and recommend that Lot 3A, Block 8, North Fill Development Park remind as unavailable
- 3. 10/09/2012 P&Z meet and recommend that of Lot 3A, Block 8, North Fill Development Park remain unavailable

A letter of interest was received by the City Manager and brought forward at the July 10, 2012 Planning Commission meeting for Lot 3A, Block 8, North Fill Development Park, which is currently identified as unavailable on the land disposal maps. The Planning Commission referred the item back to staff pending input from the Harbor Commission identifying if the lot was available for disposal.

Harbor Commission

At the September 17, 2012 Harbor Commission Meeting the Commission voted unanimously against recommending to the Planning Commission to dispose of Lot 3A, Block 8, North Fill Development Park giving the following reasons:

- 1. Last winter the Harbor Commission voted to turn this lot and part of the adjoining land into a boat maintenance area, similar to the space available behind the Harbor Master building. Water and electrical services were in the process of being installed when the letter of interest was received and put the improvements on hold. It is the Harbor Commission's desire to complete their original plan.
- 2. The Harbor Commission believes the trailer traffic at the three stage dock to be excessive and potentially dangerous. By developing this lot they hope to shift part of that traffic to the North Fill launch ramp and provide a safer situation for the community.
- 3. The North Fill launch ramp float system has been funded and is in the process of being built. When this facility is in place there will be a need for more trailer parking and support facilities in this area. The Harbor Commission hopes that this lot will provide the services necessary so that the trailer traffic throughout town will be minimized.

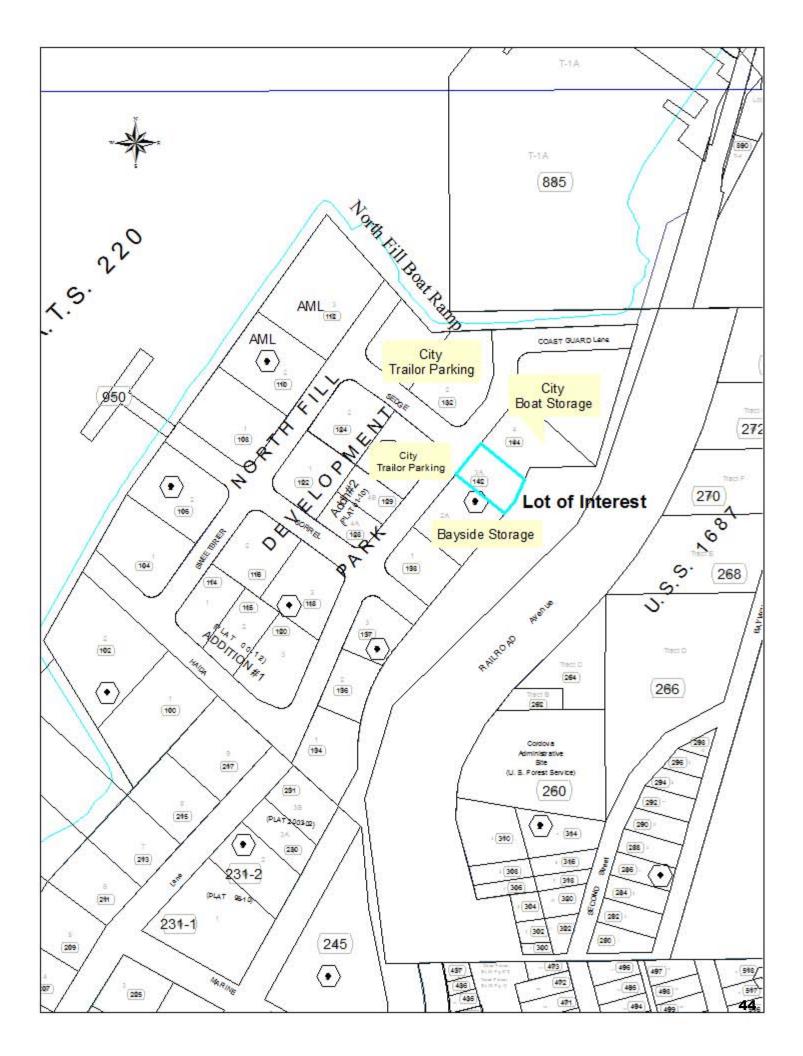
- 4. The adjacent land is currently being used to store SERVS barges and as boat storage. Due to the excessive snow last winter and subsequent structural damage to several warehouses, there has been an increased demand on boat storage. This lot provides a needed service to our fleet and collects revenue for the Harbor.
- 5. The Harbor Commission sees itself foremost as an advocate for the Harbor and its future development. The Harbor has minimal land at its disposal for future development and the Commission feels losing any land at this point would be a detriment to the Harbor.

Planning Commission

At the October 9, 2012 Planning and Zoning the Commission concurred with the Harbor Commissions recommendation of not disposing of Lot 3A, Block 8, North Fill Development Park and recommended that Lot 3A, Block 8, North Fill Development Park remain not available on the land disposal maps.

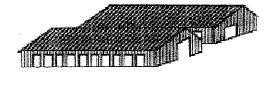
PART II. STAFF SUGGESTED MOTION:

"I move to agree with the Harbor Commission and Planning and Zoning recommendation to leave to Lot 3A, Block 8, North Fill Development Park as not available on the Land disposal maps."



BAYSIDE STORAGE

350 Seafood Lane Box 265 Cordova, AK 99574 (907)424-3109



July 4, 2012

Dear Commissioners and City Planner,

Bayside Storage respectfully requests the Commission consider selling the remainder of Lot 3 Block 8 (now called Lot 3A) North Landfill Containment so that we might compete to purchase this lot and expand our business.

Bayside Storage already owns 1/3 of this lot and could share a common property line with our existing building #2 thereby maximizing the use of lot 3 which is under the required 10k square foot lot size.

Purchasing Lot 3 Block 8 was part of our original business plan in 1989. The city accepted our proposal and plans were being made to build when we discovered the city decided to keep the lot for potential future city use. This created a conflict because Bayside 2 had been built within 5' of the property line to Lot 3. To resolve the issue the city decided to sell us a portion of lot 3 so we would have access to the north side of our existing building and to give us an option to purchase Lot 3 Block 7, which we did.

Since 1989 the land we seek has not produced much of any revenue for the city as it is mostly just the driveway to the South end of the boat storage area. Many uses have been considered for this lot over the past 25 years, the boat haul out project was one such potential and the gas expansion another. Both projects have since been developed in other areas. Now we understand the area to the north of our buildings is being cleared for boat and trailer traffic in order to make good use of the North Landfill ramp that will soon be repaired and enhanced. We strongly support those efforts and believe this will be a much better use for this property in the future.

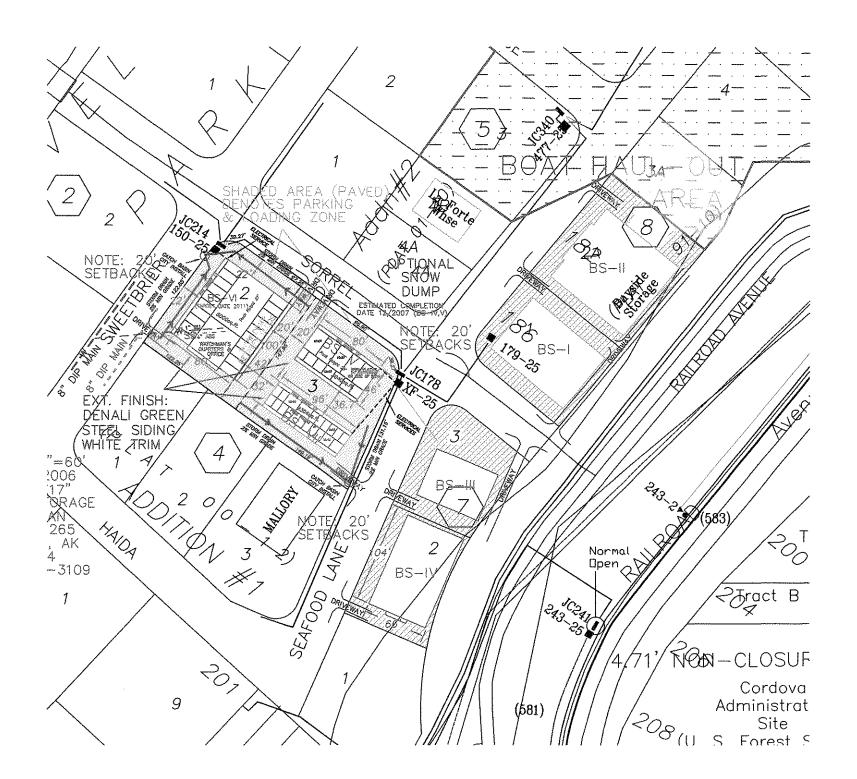
Lot 3 Block 8 is the most logical possibility for the expansion of our business. This building would not inhibit the cities plans; it would instead be a near perfect complement to those plans. It would provide a much needed service to the fishing fleet and increase the tax base for the citizens. It is vital that our buildings be clustered together for security and convenience. We are prepared to build immediately. Our track record speaks for itself and we have no outstanding invoices of any kind with the city. We believe if the city is interested in expanding business opportunities in Cordova, a logical way to do so would be to work with successful existing businesses to achieve growth. We hope you will seriously consider this request.

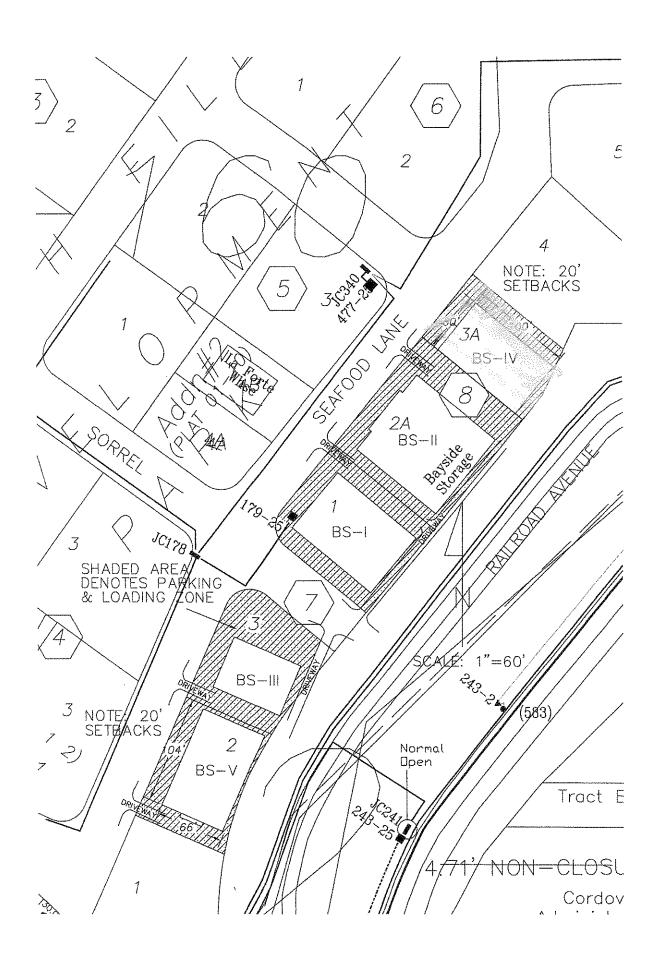
We would appreciate the opportunity to discuss this project with the Commission at your next public meeting. We have attached a small scale site plan (in yellow) for your review. Please note this preliminary plan shows the building to be 10' wider than we intend to build.

Respectfully, Paul and Linda Kelly

Mall Kelly

Paul Hall





CITY OF CORDOVA, ALASKA RESOLUTION 12-12-49

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CORDOVA, ALASKA, DESIGNATING CAPITAL IMPROVEMENT PROJECTS.

WHEREAS, the Cordova City Council has identified several Capital Improvement projects that will benefit the citizens of Cordova, and in several cases the entirety of Prince William Sound; and

WHEREAS, the City Council of the City of Cordova has identified the following Capital Improvement projects as being critical to the future well being and economy of Cordova and the surrounding area:

- Cordova Center
- 2. Shipyard Fill
- 3. G Float Replacement
- 4. Shipyard Building
- 5. Municipal Dock (Ocean Dock) Renovation
- 6. South Fill Sidewalks
- 7. South Fill Expansion & Sawmill Avenue Extension
- 8. Public Safety Building
- 9. Recreation Building
- 10. Ferry Trail

and;

WHEREAS, some or all of these projects will be submitted to State or Federal legislators and agencies as Capital Improvement projects in the City of Cordova, Alaska.

NOW, THEREFORE, BE IT RESOLVED THAT the City Council of the City of Cordova, Alaska, hereby designates the above listed projects as Capital Improvement projects.

PASSED AND APPROVED THIS 19th DAY OF DECEMBER, 2012

ATTEST:

Susan Bourgeois, City Clerk



CITY OF CORDOVA

Office of City Manager

February 27, 2013

Memo to City Council

Re: Dawson Construction Cordova Center Phase II Contract

CMC 5.12.040 "Council approval of contracts" says:

No contract for supplies, se wices or construction which obligates the city to pay more than fifteen thousand dollars may be executed unless the council has approved a memorandum setting forth the following essential terms of the contract:

- A. The identity of the contractor;
- B. The contract price;
- C. The nature and quantity of the performance that the city shall receive under the contract; and
- D. The time for performance under the contract.

I recommend the city enter into a contract with Dawson Construction, Bellingham, Washington to complete construction of the Cordova Center, Phase II 2A.

The contract price is not to exceed a sum of One Million, Eight Hundred Forty Eight Thousand, and Five Hundred and Sixty Six Dollars. (\$1,848,566).

A summary of the nature and quantity of the performance the city shall receive is set forth in the attached contract (Exhibit A).

Recommended action: Voice Vote.

I move to direct the City Manager to enter into a contract with Dawson Construction to complete Phase II 2A construction for a sum of One Million, Eight Hundred Forty Eight Thousand, and Five Hundred and Sixty Six Dollars. (\$1,848,566).

Donald Moore City Manager

City of Cordova 602 Railroad Ave. P.O. Box 1210 Cordova, Alaska 99574

Phone: (907) 424-6200 Fax: (907) 424-6000

Email: citymanager@cityofcordova.net
Web: www.cityofcordova.net



Standard Form of Agreement Between Owner and Construction Manager as

Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price

AGREEMENT made as of the 6th day of March in the year 2013 (In words, indicate day, month and year.)

BETWEEN the Owner:

(Name, legal status and address)

City of Cordova PO Box 1210 Cordova, AK 99574

and the Construction Manager: (Name, legal status and address)

Dawson Construction, Inc. PO Box 30920 Bellingham, WA 98228-2920

for the following Project; (Name and address or location)

Cordova Center Phase II

The Architect: (Name, legal status and address)

MRV Architects 1420 Glacier Ave #101 Juneau, AK 99801

The Owner's Designated Representative: (Name, address and other information)

Don Moore, City Manager The City of Cordova PO Box 1210 Cordova, AK 99574 (907) 424-6200

The Construction Manager's Designated Representative: (Name, address and other information)

Pete Dawson, President Dawson Construction, Inc. PO Box 30920 Bellingham, WA 98228-2920

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An Additions and Deletions Report that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

AIA Document A201™–2007, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

lnit.

The Architect's Designated Representative: (Name, address and other information)

Paul Voelckers MRV Architects 1420 Glacier Ave #101 Juneau, AK 99801

The Owner and Construction Manager agree as follows.

TABLE OF ARTICLES

- GENERAL PROVISIONS
- 2 CONSTRUCTION MANAGER'S RESPONSIBILITIES
- 3 OWNER'S RESPONSIBILITIES
- 4 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES
- 5 COMPENSATION FOR CONSTRUCTION PHASE SERVICES
- 6 COST OF THE WORK FOR CONSTRUCTION PHASE
- 7 PAYMENTS FOR CONSTRUCTION PHASE SERVICES
- 8 INSURANCE AND BONDS
- 9 DISPUTE RESOLUTION
- 10 TERMINATION OR SUSPENSION
- 11 MISCELLANEOUS PROVISIONS
- 12 SCOPE OF THE AGREEMENT

ARTICLE 1 GENERAL PROVISIONS

§ 1.1 The Contract Documents

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to the execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Contract Documents will also include the documents described in Section 2.2.3 and identified in the Guaranteed Maximum Price Amendment and revisions prepared by the Architect and furnished by the Owner as described in Section 2.2.8. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern.

§ 1.2 Relationship of the Parties

The Construction Manager accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Construction Manager's skill and judgment in furthering the interests of the Owner; to furnish efficient construction administration, management services and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish or approve, in a timely manner, information required by the Construction Manager and to make payments to the Construction Manager in accordance with the requirements of the Contract Documents.

§ 1.3 General Conditions

Init.

For the Preconstruction Phase, AIA Document A201TM–2007, General Conditions of the Contract for Construction, shall apply only as specifically provided in this Agreement. For the Construction Phase, the general conditions of the contract shall be as set forth in A201–2007, which document is incorporated herein by reference. The term "Contractor" as used in A201–2007 shall mean the Construction Manager.

ARTICLE 2 CONSTRUCTION MANAGER'S RESPONSIBILITIES

The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 2.1 and 2.2. The Construction Manager's Construction Phase responsibilities are set forth in Section 2.3. The Owner and

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Construction Manager may agree, in consultation with the Architect, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently. The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project.

§ 2.1 Preconstruction Phase

§ 2.1.1 The Construction Manager shall participate as part of the team to provide a preliminary evaluation of the Owner's program, schedule and construction budget requirements, each in terms of the other. The scope for preconstruction services shall include providing two estimates (98% set and GMP), constructability review, meeting attendance not less than once per week during the preconstruction period, schedules, general correspondence and consultation as per the executed response to the Request for Fee, Specified General Conditions and Preconstruction for GCCM Services dated August 3, 2012 and attached to and made a part of this agreement.

§ 2.1.2 Consultation

The Construction Manager shall jointly schedule and conduct meetings with the Architect and Owner to discuss such matters as procedures, progress, coordination, and scheduling of the Work. The Construction Manager shall advise the Owner and the Architect on proposed site use and improvements, selection of materials, and building systems and equipment and phasing of the procurement and construction. The Construction Manager shall also provide recommendations consistent with the Project requirements to the Owner and Architect on constructability; availability of materials and labor; time requirements for procurement, installation and construction; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions.

§ 2.1.3 When Project requirements in Section 3.1.1 have been sufficiently identified, the Construction Manager shall prepare and periodically update a Project schedule for the Architect's review and the Owner's acceptance. The Construction Manager shall obtain the Architect's approval for the portion of the Project schedule relating to the performance of the Architect's services. The Project schedule shall coordinate and integrate the Construction Manager's services, the Architect's services, other Owner consultants' services, and the Owner's responsibilities and identify items that could affect the Project's timely completion. The updated Project schedule shall include the following: submission of the Guaranteed Maximum Price proposal; components of the Work; times of commencement and completion required of each Subcontractor; ordering and delivery of products, including those that must be ordered well in advance of construction; and the occupancy requirements of the Owner.

§ 2.1.4 Phased Construction

The Construction Manager shall provide recommendations with regard to accelerated or fast-track scheduling, procurement, or phased construction. The Construction Manager shall take into consideration cost reductions, cost information, constructability, provisions for temporary facilities and procurement and construction scheduling issues.

§ 2.1.5 Preliminary Cost Estimates

§ 2.1.5.1 Based on the preliminary design and other design criteria prepared by the Architect, the Construction Manager shall prepare preliminary estimates of the Cost of the Work or the cost of program requirements using area, volume or similar conceptual estimating techniques for the Architect's review and Owner's approval. If the Architect or Construction Manager suggest alternative materials and systems, the Construction Manager shall provide cost evaluations of those alternative materials and systems.

§ 2.1.5.2 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall prepare and update, at appropriate intervals agreed to by the Owner, Construction Manager and Architect, estimates of the Cost of the Work of increasing detail and refinement and allowing for the further development of the design until such time as the Owner and Construction Manager agree on a Guaranteed Maximum Price for the Work. Such estimates shall be provided for the Architect's review and the Owner's approval. The Construction Manager shall inform the Owner and Architect when estimates of the Cost of the Work exceed the latest approved Project budget and make recommendations for corrective action.

§ 2.1.6 Subcontractors and Suppliers

The Construction Manager shall develop bidders' interest in the Project. The Construction Manager shall prepare and submit a Subcontracting Plan to the Owner and Architect for approval prior to bidding work. The

Subcontracting Plan shall identify all subcontractor bid packages, scopes of work and timing of solicitation of bids to meet the Owner's objectives and timing.

§ 2.1.7 The Construction Manager shall prepare, for the Architect's review and the Owner's acceptance, a procurement schedule for items that must be ordered well in advance of construction. The procurement schedule shall be updated and submitted monthly. The Construction Manager shall expedite and coordinate the ordering and delivery of materials that must be ordered well in advance of construction. If the Owner agrees to procure any items prior to the establishment of the Guaranteed Maximum Price, the Owner shall procure the items on terms and conditions acceptable to the Construction Manager. Upon the establishment of the Guaranteed Maximum Price, the Owner shall assign all contracts for these items to the Construction Manager and the Construction Manager shall thereafter accept responsibility for them.

§ 2.1.8 Extent of Responsibility

The Construction Manager shall exercise reasonable care in preparing schedules and estimates. The Construction Manager, however, does not warrant or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price. The Construction Manager is not required to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Construction Manager shall promptly report to the Architect and Owner any nonconformity discovered by or made known to the Construction Manager as a request for information in such form as the Architect may require.

The Construction Manager shall review upon receipt the Drawings and Specifications submitted to it. The Construction Manager shall promptly report to the Owner and the Architect any error, inconsistency or omission that the Construction Manager may discover in them and shall recommend changes and alternatives.

§ 2.1.9 Notices and Compliance with Laws

The Construction Manager shall comply with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to its performance under this Contract, and with equal employment opportunity programs, and other programs as may be required by governmental and quasi governmental authorities for inclusion in the Contract Documents.

§ 2.2 Guaranteed Maximum Price Proposal and Contract Time

§ 2.2.1 At a time to be mutually agreed upon by the Owner and the Construction Manager and in consultation with the Architect, the Construction Manager shall prepare a Guaranteed Maximum Price proposal for the Owner's review and acceptance. The Guaranteed Maximum Price in the proposal shall be the sum of the Construction Manager's estimate of the Cost of the Work, including contingencies described in Section 2.2.4, and the Construction Manager's Fee.

§ 2.2.2 To the extent that the Drawings and Specifications are anticipated to require further development by the Architect, the Construction Manager shall provide in the Guaranteed Maximum Price for such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include such things as changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order.

§ 2.2.3 The Construction Manager shall include with the Guaranteed Maximum Price proposal a written statement of its basis, which shall include the following:

- .1 A list of the Drawings and Specifications, including all Addenda thereto, and the Conditions of the Contract;
- .2 A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal, including assumptions under Section 2.2.2, to supplement the information provided by the Owner and contained in the Drawings and Specifications;
- .3 A statement of the proposed Guaranteed Maximum Price, to include:
 - 1. Specified General Conditions
 - 2. Estimated Cost of the Work organized by trade categories or systems
 - 3. Owner approved allowances and contingency, and
 - Construction Manager's Fee;

- The anticipated date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based; and
- .5 A date by which the Owner must accept the Guaranteed Maximum Price.
- 2.2.4 In preparing the Guaranteed Maximum Price (GMP), the Construction Manager shall include its contingency, not to exceed 2% of the GMP for the Construction Manager's exclusive use to cover those costs considered reimbursable as the Cost of the Work, but not included in a Change Order. The Construction Manager may use this contingency to pay for project issues that are within its control such as design issues that a reasonable Construction Manager should have resolved during the Preconstruction Phase, items in drawings but not in the Specification, buyout errors, scope gaps, ambiguities in the construction documents, damaged work, unanticipated general conditions expenses, expediting costs for critical materials and subcontractor performance. The Construction Manager must give the Owner notice and supporting cost backup when applying to use the Construction Manager's Contingency for approval.

(Paragraph deleted)

- § 2.2.5 The Construction Manager shall meet with the Owner and Architect to review the Guaranteed Maximum Price proposal. In the event that the Owner and Architect discover any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Construction Manager, who shall make appropriate adjustments to the Guaranteed Maximum Price proposal, its basis, or both.
- § 2.2.6 If the Owner notifies the Construction Manager that the Owner has accepted the Guaranteed Maximum Price proposal in writing before the date specified in the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price proposal shall be deemed effective without further acceptance from the Construction Manager. Following acceptance of a Guaranteed Maximum Price, the Owner and Construction Manager shall execute the Guaranteed Maximum Price Amendment amending this Agreement, a copy of which the Owner shall provide to the Architect. The Guaranteed Maximum Price Amendment shall set forth the agreed upon Guaranteed Maximum Price with the information and assumptions upon which it is based. The Guaranteed Maximum Price may be phased to meet the Owner's requirements and be set in multiple GMP amendments.
- § 2.2.7 The Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work prior to the commencement of the Construction Phase, unless the Owner provides prior written authorization for such costs.
- § 2.2.8 The Owner may at its sole discretion authorize the Architect to provide the revisions to the Drawings and Specifications to incorporate the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment. The Owner shall promptly furnish those revised Drawings and Specifications to the Construction Manager as they are revised. The Construction Manager shall notify the Owner and Architect of any inconsistencies between the Guaranteed Maximum Price Amendment and the revised Drawings and Specifications.
- § 2.2.9 The Construction Manager shall include in the Guaranteed Maximum Price all sales, consumer, use and similar taxes for the Work provided by the Construction Manager that are legally enacted, whether or not yet effective, at the time the Guaranteed Maximum Price Amendment is executed.

§ 2.3 Construction Phase

§ 2.3.1 General

- § 2:3.1.1 For purposes of Section 8.1.2 of A201–2007, the date of commencement of the Work shall mean the date of commencement of the Construction Phase.
- § 2.3.1.2 The Construction Phase shall commence upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal or the Owner's issuance of a Notice to Proceed, whichever occurs earlier.

§ 2.3.2 Administration

§ 2.3.2.1 Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under subcontracts or by other appropriate agreements with the Construction Manager. The Owner may designate specific persons from whom, or entities from which, the Construction Manager shall obtain bids. The Construction Manager shall obtain bids from Subcontractors and from suppliers of materials or equipment fabricated especially for the Work and shall deliver such bids to the Owner and

Architect. The Owner shall then determine, with the advice of the Construction Manager and the Architect, which bids will be accepted. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection.

- § 2.3.2.2 If the Guaranteed Maximum Price has been established and when a specific bidder (1) is recommended to the Owner by the Construction Manager, (2) is qualified to perform that portion of the Work, and (3) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Construction Manager may require that a Change Order be issued to adjust the Contract Time and the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Construction Manager and the amount and time requirement of the subcontract or other agreement actually signed with the person or entity designated by the Owner.
- § 2.3.2.3 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner. If the Subcontract is awarded on a cost-plus a fee basis, the Construction Manager shall provide in the Subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Construction Manager in Section 6.11 below.
- § 2.3.2.4 If the Construction Manager recommends a specific bidder that may be considered a "related party" according to Section 6.10, then the Construction Manager shall promptly notify the Owner in writing of such relationship and notify the Owner of the specific nature of the contemplated transaction, according to Section 6.10.2.
- § 2.3.2.5 The Construction Manager shall schedule and conduct meetings to discuss such matters as procedures, progress, coordination, scheduling, and status of the Work. The Construction Manager shall prepare and promptly distribute minutes to the Owner and Architect.
- § 2.3.2.6 Upon the execution of the Guaranteed Maximum Price Amendment, the Construction Manager shall prepare and submit to the Owner and Architect a construction schedule for the Work and submittal schedule in accordance with Section 3.10 of A201–2007.
- § 2.3.2.7 The Construction Manager shall record the progress of the Project. On a monthly basis, or otherwise as agreed to by the Owner, the Construction Manager shall submit written progress reports to the Owner and Architect, showing percentages of completion and other information required by the Owner. The Construction Manager shall also keep, and make available to the Owner and Architect, a daily log containing a record for each day of weather, portions of the Work in progress, number of workers on site, identification of equipment on site, problems that might affect progress of the work, accidents, injuries, and other information required by the Owner.
- § 2.3.2.8 The Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and report the variances to the Owner and Architect and shall provide this information in its monthly reports to the Owner and Architect, in accordance with Section 2.3.2.7 above.

§ 2.4 Professional Services

Section 3.12.10 of A201-2007 shall apply to both the Preconstruction and Construction Phases.

§ 2.5 Hazardous Materials

Section 10.3 of A201–2007 shall apply to both the Preconstruction and Construction Phases.

ARTICLE 3 OWNER'S RESPONSIBILITIES

§ 3.1 Information and Services Required of the Owner

§ 3.1.1 The Owner shall provide information with reasonable promptness, regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, constraints, and criteria, including schedule, space requirements and relationships, flexibility and expandability, special equipment, systems sustainability and site requirements.

- § 3.1.2 Prior to the execution of the Guaranteed Maximum Price Amendment, the Construction Manager may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. Thereafter, the Construction Manager may only request such evidence if (1) the Owner fails to make payments to the Construction Manager as the Contract Documents require, (2) a change in the Work materially changes the Contract Sum, or (3) the Construction Manager identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Construction Manager and Architect.
- § 3.1.3 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1.1, (2) the Owner's other costs, and (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Construction Manager and Architect. The Owner and the Architect, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the Project's scope and quality.
- § 3.1.4 Structural and Environmental Tests, Surveys and Reports. During the Preconstruction Phase, the Owner shall furnish the following information or services with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services. The Construction Manager shall be entitled to rely on the accuracy of information and services furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.
- § 3.1.4.1 The Owner shall furnish tests, inspections and reports required by law and as otherwise agreed to by the parties, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.
- § 3.1.4.2 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.
- § 3.1.4.3 The Owner, when such services are requested and upon its approval, shall furnish services of geotechnical engineers, which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.
- § 3.1.4.4 During the Construction Phase, the Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services.

§ 3.2 Owner's Designated Representative

The Owner shall identify a representative authorized to act on behalf of the Owner with respect to the Project. The Owner's representative shall render decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager. Except as otherwise provided in Section 4.2.1 of A201–2007, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

§ 3.2.1 Legal Requirements. The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

§ 3.3 Architect

The Owner may retain an Architect to provide services, duties and responsibilities as described in AIA Document B103TM_2007, Standard Form of Agreement Between Owner and Architect, including any additional services requested by the Construction Manager that are necessary for the Preconstruction and Construction Phase services under this Agreement.

ARTICLE 4 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES § 4.1 Compensation

§ 4.1.1 For the Construction Manager's Preconstruction Phase services, the Owner shall compensate the Construction Manager as follows:

§ 4.1.2 For the Construction Manager's Preconstruction Phase services described in Sections 2.1 and 2.2: (Insert amount of, or basis for, compensation and include a list of reimbursable cost items, as applicable.)

Compensation for the Preconstruction Services shall not exceed \$27,700 and shall be paid on an hourly basis at the rates and for the individuals specified in the Request for Fee, Specified General Conditions and Preconstruction for GCCM Services dated August 3, 2012 and attached to and made a part of this agreement

- § 4.1.3 If the Preconstruction Phase services covered by this Agreement have not been completed within six (6) months of the date of this Agreement, through no fault of the Construction Manager, the Construction Manager's compensation for Preconstruction Phase services shall be equitably adjusted.
- § 4.1.4 Compensation based on Direct Personnel Expense includes the direct salaries of the Construction Manager's personnel providing Preconstruction Phase services on the Project and the Construction Manager's costs for the mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, employee retirement plans and similar contributions.

§ 4.2 Payments

- § 4.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed.
- § 4.2.2 Payments are due and payable upon presentation of the Construction Manager's invoice. Amounts unpaid Thirty (30) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Construction Manager. (Insert rate of monthly or annual interest agreed upon.)
 - % Not to exceed Bank of America prime rate plus 1% per annum.

ARTICLE 5 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

§ 5.1 For the Construction Manager's performance of the Work as described in Section 2.3, the Owner shall pay the Construction Manager the Contract Sum in current funds for the Construction Manager's performance of the Contract. The Contract Sum is the Cost of the Work as defined in Section 6.1.1 plus the Construction Manager's Fee.

§ 5.1.1 The Construction Manager's Fee:

(State a lump sum, percentage of Cost of the Work or other provision for determining the Construction Manager's Fee.)

- 5% of the Cost of the Work
- § 5.1.2 The method of adjustment of the Construction Manager's Fee for changes in the Work:
- For changes in the work that are additive the fee will be 5%. No reduction for deductive changes.
- § 5.1.3 Limitations, if any, on a Subcontractor's overhead and profit for increases in the cost of its portion of the Work:
- Subcontractor mark-up at any tier for changes in the work shall not be more than 15% for overhead and profit

§ 5.1.4 Rental rates for Construction Manager-owned equipment shall not exceed seventy-five percent (75 %) of the standard rate paid at the place of the Project.

§ 5.1.5 Unit prices, if any: None

(Identify and state the unit price; state the quantity limitations, if any, to which the unit price will be applicable.)

Item

Units and Limitations

Price per Unit (\$0.00)

5.1.6 Specified General conditions cost will be figured for each phase based on scope and duration of each phase using the rates that made up the \$459,000 figure submitted in the proposal - Specified General Conditions and Preconstruction for GCCM Services dated August 3, 2012 and attached to and made a part of this agreement

§ 5.2 Guaranteed Maximum Price

§ 5.2.1 The Construction Manager guarantees that the Contract Sum shall not exceed the Guaranteed Maximum Price set forth in the Guaranteed Maximum Price Amendment, as it is amended from time to time. To the extent the Cost of the Work exceeds the Guaranteed Maximum Price, the Construction Manager shall bear such costs in excess of the Guaranteed Maximum Price without reimbursement or additional compensation from the Owner. (Insert specific provisions if the Construction Manager is to participate in any savings.)

100% of savings will accrue to the Owner.

§ 5.2.2 The Guaranteed Maximum Price is subject to additions and deductions by Change Order as provided in the Contract Documents and the Date of Substantial Completion shall be subject to adjustment as provided in the Contract Documents.

§ 5.3 Changes in the Work

- § 5.3.1 The Owner may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Owner shall issue such changes in writing. The Architect may make minor changes in the Work as provided in Section 7.4 of AIA Document A201–2007, General Conditions of the Contract for Construction. The Construction Manager shall be entitled to an equitable adjustment in the Contract Time as a result of changes in the Work.
- § 5.3.2 Adjustments to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of the Guaranteed Maximum Price Amendment may be determined by any of the methods listed in Section 7.3.3 of ATA Document A201–2007, General Conditions of the Contract for Construction.
- § 5.3.3 In calculating adjustments to subcontracts (except those awarded with the Owner's prior consent on the basis of cost plus a fee), the terms "cost" and "fee" as used in Section 7.3.3.3 of AIA Document A201–2007 and the term "costs" as used in Section 7.3.7 of AIA Document A201–2007 shall have the meanings assigned to them in AIA Document A201–2007 and shall not be modified by Sections 5.1 and 5.2, Sections 6.1 through 6.7, and Section 6.8 of this Agreement. Adjustments to subcontracts awarded with the Owner's prior consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.
- § 5.3.4 In calculating adjustments to the Guaranteed Maximum Price, the terms "cost" and "costs" as used in the above-referenced provisions of AIA Document A201–2007 shall mean the Cost of the Work as defined in Sections 6.1 to 6.7 of this Agreement and the term "fee" shall mean the Construction Manager's Fee as defined in Section 5.1 of this Agreement.
- § 5.3.5 If no specific provision is made in Section 5.1.2 for adjustment of the Construction Manager's Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Section 5.1.2 will cause substantial inequity to the Owner or Construction Manager, the Construction Manager's Fee shall be equitably adjusted on the same basis that was used to establish the Fee for the original Work, and the Guaranteed Maximum Price shall be adjusted accordingly.

ARTICLE 6 COST OF THE WORK FOR CONSTRUCTION PHASE

§ 6.1 Costs to Be Reimbursed

§ 6.1.1 The term Cost of the Work shall mean the actual net costs necessarily and reasonably incurred by the Construction Manager in the proper performance of the Work. Such costs shall be at rates not higher than the standard paid at the place of the Project except with prior consent of the Owner. The Cost of the Work shall include only the items set forth in Sections 6.1 through 6.7.

§ 6.1.2 Where any cost is subject to the Owner's prior approval, the Construction Manager shall obtain this approval prior to incurring the cost. The parties shall endeavor to identify any such costs prior to executing Guaranteed Maximum Price Amendment.

§ 6.2 Labor Costs

§ 6.2.1 Wages of construction workers directly employed by the Construction Manager to perform the construction of the Work at the site or, with the Owner's prior approval, at off-site workshops.

§ 6.2.2 Wages or salaries of the Construction Manager's supervisory and administrative personnel are included in the Specified General Conditions and not separately reimbursable.

(If it is intended that the wages or salaries of certain personnel stationed at the Construction Manager's principal or other offices shall be included in the Cost of the Work, identify in Section 11.5, the personnel to be included, whether for all or only part of their time, and the rates at which their time will be charged to the Work.)

- § 6.2.3 Wages and salaries of the Construction Manager's supervisory or administrative personnel engaged at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work are included in the Specified General Conditions and not separately reimbursable.
- § 6.2.4 Costs paid or incurred by the Construction Manager for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections 6.2.1 through 6.2.3.
- § 6.2.5 Bonuses, profit sharing, incentive compensation and any other discretionary payments paid to anyone hired by the Construction Manager or paid to any Subcontractor or vendor are not reimburseable costs of the work.

§ 6.3 Subcontract Costs

Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the subcontracts.

§ 6.4 Costs of Materials and Equipment Incorporated in the Completed Construction

§ 6.4.1 Costs, including transportation and storage, of materials and equipment incorporated or to be incorporated in the completed construction.

§ 6.4.2 Costs of materials described in the preceding Section 6.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Construction Manager. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

§ 6.5 Costs of Other Materials and Equipment, Temporary Facilities and Related Items

§ 6.5.1 Costs of transportation, storage, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment and tools that are not fully consumed shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Construction Manager shall mean fair market value.

- § 6.5.2 Rental charges for temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and costs of transportation, installation, minor repairs, dismantling and removal. The total rental cost of any Construction Manager-owned item may not exceed the purchase price of any comparable item. Rates of Construction Manager-owned equipment and quantities of equipment shall be subject to the Owner's prior approval.
- § 6.5.3 Costs of removal of debris from the site of the Work and its proper and legal disposal.
- § 6.5.4 Costs of document reproductions, facsimile transmissions and long-distance telephone calls, postage and parcel delivery charges, telephone service at the site and reasonable petty cash expenses of the site office are included in the Specified General Conditions and not separately reimbursable
- § 6.5.5 That portion of the reasonable expenses of the Construction Manager's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work are included in the Specified General Conditions and not separately reimbursable
- § 6.5.6 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, subject to the Owner's prior approval.

§ 6.6 Miscellaneous Costs

- § 6.6.1 The actual net costs for Premiums for that portion of Builder's Risk insurance and bonds required by the Contract Documents that can be directly attributed to this Contract. All other premiums or costs are include within the Construction Manager's fee.
- § 6.6.2 Use or similar taxes imposed by a governmental authority that are related to the Work and for which the Construction Manager is liable is included in the fee..
- § 6.6.3 Fees and assessments for the building permit and for other permits, licenses and inspections for which the Construction Manager is required by the Contract Documents to pay.
- § 6.6.4 Fees of laboratories for tests required by the Contract Documents, except those related to defective or nonconforming Work for which reimbursement is excluded by Section 13.5.3 of AIA Document A201–2007 or by other provisions of the Contract Documents, and which do not fall within the scope of Section 6.7.3.
- § 6.6.5 Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents; the cost of defending suits or claims for infringement of patent rights arising from such requirement of the Contract Documents; and payments made in accordance with legal judgments against the Construction Manager resulting from such suits or claims and payments of settlements made with the Owner's consent. However, such costs of legal defenses, judgments and settlements shall not be included in the calculation of the Construction Manager's Fee or subject to the Guaranteed Maximum Price. If such royalties, fees and costs are excluded by the last sentence of Section 3.17 of AIA Document A201–2007 or other provisions of the Contract Documents, then they shall not be included in the Cost of the Work.
- § 6.6.6 Costs for electronic equipment and software, directly related to the Work are included in the Specified General Conditions and not separately reimbursable.
- § 6.6.7 Deposits lost for causes other than the Construction Manager's negligence or failure to fulfill a specific responsibility in the Contract Documents.
- § 6.6.8 Legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Construction Manager, reasonably incurred by the Construction Manager after the execution of this Agreement in the performance of the Work and with the Owner's prior approval, which shall not be unreasonably withheld.
- § 6.6.9 Expenses incurred in accordance with the Construction Manager's standard written personnel policy for relocation and temporary living allowances of the Construction Manager's personnel required for the Work are included in the Specified General Conditions and not separately reimbursable

§ 6.7 Other Costs and Emergencies

§ 6.7.1 Other costs incurred in the performance of the Work if, and to the extent, approved in advance in writing by the Owner.

§ 6.7.2 Costs incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property, as provided in Section 10.4 of AIA Document A201–2007.

§ 6.7.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Construction Manager, Subcontractors or suppliers, provided that such damaged or nonconforming Work was not caused by negligence or failure to fulfill a specific responsibility of the Construction Manager and only to the extent that the cost of repair or correction is not recovered by the Construction Manager from insurance, sureties, Subcontractors, suppliers, or others.

§ 6.7.4 The costs described in Sections 6.1 through 6.7 shall be included in the Cost of the Work, notwithstanding any provision of AIA Document A201–2007 or other Conditions of the Contract which may require the Construction Manager to pay such costs, unless such costs are excluded by the provisions of Section 6.8.

6.7.5 Negotiated Support Services

Negotiated Support Services (NSS) by the Construction Manager may be accomplished and will be reimbursed as Cost of the work within the GMP only as follows:

- Negotiated Support Services described and included in the GMP
- As outlined in the Cost Responsibility Matrix dated 7-24-12 attached to and included in this
 agreement.

6.7.6 Specified General Conditions

Specified General conditions cost will be figured for each phase based on scope and duration of each phase using the rates that made up the \$459,000 figure submitted in the proposal - Specified General Conditions and Preconstruction for GCCM Services dated August 3, 2012 and attached to and made a part of this agreement. While overhead and profit markup is to be applied to the Cost of the Work exclusive of the Specified General Conditions.

§ 6.8 Costs Not To Be Reimbursed

§ 6.8.1 The Cost of the Work shall not include the items listed below:

- A Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the site office, except as specifically provided in Section 6.2, or as may be provided in Article 11;
- .2 Expenses of the Construction Manager's principal office and offices other than the site office;
- .3 Overhead and general expenses, except as may be expressly included in Sections 6.1 to 6.7;
- .4 The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work;
- .5 Except as provided in Section 6.7.3 of this Agreement, costs due to the negligence or failure of the Construction Manager, Subcontractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable to fulfill a specific responsibility of the Contract;
- .6 Any cost not specifically and expressly described in Sections 6.1 to 6.7;
- .7 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded; and
- .8 Costs for services incurred during the Preconstruction Phase.
- .9 Overtime wages unless pre-approved by the Owner
- .10 Data processing, software, hardware or computer-related costs not included in the Specified General Conditions.
- .11 Penalties and fines imposed by government agencies.
- .12 Safety costs not included in the Specified General Conditions.
- .13 Liquidated Damages.

Init.

.14 Legal, consultant, or claims-related expenses.

§ 6.9 Discounts, Rebates and Refunds

§ 6.9.1 Cash discounts obtained on payments made by the Construction Manager shall accrue to the Owner if (1) before making the payment, the Construction Manager included them in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Construction Manager with which to make payments; otherwise, cash discounts shall accrue to the Construction Manager. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Construction Manager shall make provisions so that they can be obtained.

§ 6.9.2 Amounts that accrue to the Owner in accordance with the provisions of Section 6.9.1 shall be credited to the Owner as a deduction from the Cost of the Work.

§ 6.10 Related Party Transactions

§ 6.10.1 For purposes of Section 6.10, the term "related party" shall mean a parent, subsidiary, affiliate or other entity having common ownership or management with the Construction Manager; any entity in which any stockholder in, or management employee of, the Construction Manager owns any interest in excess of ten percent in the aggregate; or any person or entity which has the right to control the business or affairs of the Construction Manager. The term "related party" includes any member of the immediate family of any person identified above.

§ 6.10.2 If any of the costs to be reimbursed arise from a transaction between the Construction Manager and a related party, the Construction Manager shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction, then the cost incurred shall be included as a cost to be reimbursed, and the Construction Manager shall procure the Work, equipment, goods or service from the related party, as a Subcontractor, according to the terms of Sections 2.3.2.1, 2.3.2.2 and 2.3.2.3. If the Owner fails to authorize the transaction, the Construction Manager shall procure the Work, equipment, goods or service from some person or entity other than a related party according to the terms of Sections 2.3.2.1, 2.3.2.2 and 2.3.2.3.

§ 6.11 Accounting Records

The Construction Manager shall keep full and detailed records and accounts related to the cost of the Work and exercise such controls as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Construction Manager's records and accounts, including complete documentation supporting accounting entries, books, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, purchase orders, vouchers, memoranda and other data relating to this Contract. The Construction Manager shall preserve these records for a period of three years after final payment, or for such longer period as may be required by law.

ARTICLE 7 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

§ 7.1 Progress Payments

§ 7.1.1 Based upon Applications for Payment submitted to the Architect by the Construction Manager and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Construction Manager as provided below and elsewhere in the Contract Documents.

§ 7.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

§ 7.1.3 Provided that an Application for Payment is received by the Architect not later than the last day of a month, the Owner shall make payment of the certified amount to the Construction Manager not later than the last day of the following month. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than thirty (30) days after the Architect receives the Application for Payment.

(Federal, state or local laws may require payment within a certain period of time.)

- § 7.1.4 With each Application for Payment, the Construction Manager shall submit lien releases, payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner or Architect to demonstrate that cash disbursements already made by the Construction Manager on account of the Cost of the Work equal or exceed progress payments already received by the Construction Manager, less that portion of those payments attributable to the Construction Manager's Fee, plus payrolls for the period covered by the present Application for Payment.
- § 7.1.5 Each Application for Payment shall be based on the most recent schedule of values submitted by the Construction Manager in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among the various portions of the Work, except that the Construction Manager's Fee shall be shown as a single separate item. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Construction Manager's Applications for Payment.
- § 7.1.6 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed, or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Construction Manager on account of that portion of the Work for which the Construction Manager has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.
- § 7.1.7 Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:
 - .1 Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.9 of AIA Document A201–2007;
 - Add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work, or if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
 - Add the Construction Manager's Fee, The Construction Manager's Fee shall be computed upon the Cost of the Work at the rate stated in Section 5.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, shall be an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work bears to a reasonable estimate of the probable Cost of the Work upon its completion;
 - 4 Subtract retainage of five percent (5 %) from that portion of the Work that the Construction Manager self-performs;
 - .5 Subtract the aggregate of previous payments made by the Owner;
 - Subtract the shortfall, if any, indicated by the Construction Manager in the documentation required by Section 7.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
 - .7 Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of AIA Document A201–2007.
- § 7.1.8 The Owner and Construction Manager shall agree upon (1) a mutually acceptable procedure for review and approval of payments to Subcontractors and (2) the percentage of retainage held on Subcontracts, and the Construction Manager shall execute subcontracts in accordance with those agreements.
- § 7.1.9 Except with the Owner's prior approval, the Construction Manager shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.
- § 7.1.10 In taking action on the Construction Manager's Applications for Payment, the Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Construction Manager and shall not be deemed to represent that the Architect has made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Section 7.1.4 or other supporting data; that the Architect has made

exhaustive or continuous on-site inspections; or that the Architect has made examinations to ascertain how or for what purposes the Construction Manager has used amounts previously paid on account of the Contract. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

§ 7.2 Final Payment

§ 7.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Construction Manager when

- the Construction Manager has fully performed the Contract except for the Construction Manager's responsibility to correct Work as provided in Section 12.2.2 of AIA Document A201-2007, and to satisfy other requirements, if any, which extend beyond final payment;
- the Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for Payment; and
- .3 a final Certificate for Payment has been issued by the Architect.

The Owner's final payment to the Construction Manager shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment, or as follows:

§ 7.2.2 The Owner's auditors will review and report in writing on the Construction Manager's final accounting within 30 days after delivery of the final accounting to the Owner by the Construction Manager. Based upon such Cost of the Work as the Owner's auditors report to be substantiated by the Construction Manager's final accounting, and provided the other conditions of Section 7.2.1 have been met, the Architect will, within seven days after receipt of the written report of the Owner's auditors, either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager, or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding a certificate as provided in Section 9.5.1 of the AIA Document A201-2007. The time periods stated in this Section supersede those stated in Section 9.4.1 of the AIA Document A201-2007. The Architect is not responsible for verifying the accuracy of the Construction Manager's final accounting.

§ 7.2.3 If the Owner's auditors report the Cost of the Work as substantiated by the Construction Manager's final accounting to be less than claimed by the Construction Manager, the Construction Manager shall be entitled to request mediation of the disputed amount without seeking an initial decision pursuant to Section 15.2 of A201-2007. A request for mediation shall be made by the Construction Manager within 30 days after the Construction Manager's receipt of a copy of the Architect's final Certificate for Payment. Failure to request mediation within this 30-day period shall result in the substantiated amount reported by the Owner's auditors becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Architect's final Certificate for Payment.

§ 7.2.4 If, subsequent to final payment and at the Owner's request, the Construction Manager incurs costs described in Section 6.1.1 and not excluded by Section 6.8 to correct defective or nonconforming Work, the Owner shall reimburse the Construction Manager such costs and the Construction Manager's Fee applicable thereto on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price. If the Construction Manager has participated in savings as provided in Section 5.2.1, the amount of such savings shall be recalculated and appropriate credit given to the Owner in determining the net amount to be paid by the Owner to the Construction Manager.

ARTICLE 8 INSURANCE AND BONDS

For all phases of the Project, the Construction Manager and the Owner shall purchase and maintain insurance, and the Construction Manager shall provide bonds as set forth in Article 11 of AIA Document A201-2007. (State bonding requirements, if any, and limits of liability for insurance required in Article 11 of AIA Document A201-2007.)

Type of Insurance or Bond Verify with City of Cordova: Limit of Liability or Bond Amount (\$0.00)

\$1,000,000

Workers Compensation Commercial Liability

\$2,000,000

Automotive Liability Property Insurance Performanc and Payment Bond \$1,000,000 Coverage in amount of GMP Coverage in amount of GMP

ARTICLE 9 DISPUTE RESOLUTION

§.9.1 Any Claim between the Owner and Construction Manager shall be resolved in accordance with the provisions set forth in this Article 9 and Article 15 of A201–2007. However, for Claims arising from or relating to the Construction Manager's Preconstruction Phase services, no decision by the Initial Decision Maker shall be required as a condition precedent to mediation or binding dispute resolution, and Section 9.3 of this Agreement shall not apply.

§ 9.2 For any Claim subject to, but not resolved by mediation pursuant to Section 15.3 of AIA Document A201–2007, the method of binding dispute resolution shall be as follows:

(Check the appropriate box. If the Owner and Construction Manager do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.)

]	Arbitration pursuant to Section 15.4 of AIA Document A201–2007
[X]	Litigation in a court of competent jurisdiction
I.]	Other: (Specify)

§ 9.3 Initial Decision Maker

The Architect will serve as the Initial Decision Maker pursuant to Section 15.2 of AIA Document A201–2007 for Claims arising from or relating to the Construction Manager's Construction Phase services, unless the parties appoint below another individual, not a party to the Agreement, to serve as the Initial Decision Maker. (If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)

ARTICLE 10 TERMINATION OR SUSPENSION

§ 10.1 Termination Prior to Establishment of the Guaranteed Maximum Price

§ 10.1.1 Prior to the execution of the Guaranteed Maximum Price Amendment, the Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager for the Owner's convenience and without cause, and the Construction Manager may terminate this Agreement, upon not less than seven days' written notice to the Owner, for the reasons set forth in Section 14.1.1 of A201–2007. Notwithstanding anything herein to the contrary, the Owner shall maintain the right to terminate for convenience for any reason at any time.

§ 10.1.2 In the event of termination of this Agreement pursuant to Section 10.1.1, the Construction Manager shall be equitably compensated for Preconstruction Phase services performed prior to receipt of a notice of termination. In no event shall the Construction Manager's compensation under this Section exceed the compensation set forth in Section 4.1.

§ 10.1.3 If the Owner terminates the Contract pursuant to Section 10.1.1 after the commencement of the Construction Phase but prior to the execution of the Guaranteed Maximum Price Amendment, the Owner shall pay to the Construction Manager an amount calculated as follows, which amount shall be in addition to any compensation paid to the Construction Manager under Section 10.1.2:

- .1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;
- .2 Add the Construction Manager's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 5.1 or, if the Construction Manager's Fee is stated as a fixed sum in that

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Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion; and

.3 Subtract the aggregate of previous payments made by the Owner for Construction Phase services.

The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager which the Owner elects to retain and which is not otherwise included in the Cost of the Work under Section 10.1.3.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 10, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders. All Subcontracts, purchase orders and rental agreements entered into by the Construction Manager will contain provisions allowing for assignment to the Owner as described above.

If the Owner accepts assignment of subcontracts, purchase orders or rental agreements as described above, the Owner will reimburse or indemnify the Construction Manager for all costs arising under the subcontract, purchase order or rental agreement, if those costs would have been reimbursable as Cost of the Work if the contract had not been terminated. If the Owner chooses not to accept assignment of any subcontract, purchase order or rental agreement that would have constituted a Cost of the Work had this agreement not been terminated, the Construction Manager will terminate the subcontract, purchase order or rental agreement and the Owner will pay the Construction Manager the costs necessarily incurred by the Construction Manager because of such termination.

§ 10.2 Termination Subsequent to Establishing Guaranteed Maximum Price

Following execution of the Guaranteed Maximum Price Amendment and subject to the provisions of Section 10.2.1 and 10.2.2 below, the Contract may be terminated as provided in Article 14 of AIA Document A201–2007.

§ 10.2.1 If the Owner terminates the Contract after execution of the Guaranteed Price Amendment, the amount payable to the Construction Manager pursuant to Sections 14.2 and 14.4 of A201–2007 shall not exceed the amount the Construction Manager would otherwise have received pursuant to Sections 10.1.2 and 10.1.3 of this Agreement.

§ 10.2.2 If the Construction Manager terminates the Contract after execution of the Guaranteed Maximum Price Amendment, the amount payable to the Construction Manager under Section 14.1.3 of A201–2007 shall not exceed the amount the Construction Manager would otherwise have received under Sections 10.1.2 and 10.1.3 above, except that the Construction Manager's Fee shall be calculated as if the Work had been fully completed by the Construction Manager, utilizing as necessary a reasonable estimate of the Cost of the Work for Work not actually completed.

§ 10.3 Suspension

The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2007. In such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Section 14.3.2 of AIA Document A201–2007, except that the term "profit" shall be understood to mean the Construction Manager's Fee as described in Sections 5.1 and 5.3.5 of this Agreement.

ARTICLE 11 MISCELLANEOUS PROVISIONS

§ 11.1 Terms in this Agreement shall have the same meaning as those in A201–2007.

§ 11.2 Ownership and Use of Documents

Section 1.5 of A201-2007 shall apply to both the Preconstruction and Construction Phases.

§ 11.3 Governing Law

Section 13.1 of A201-2007 shall apply to both the Preconstruction and Construction Phases.

§ 11.4 Assignment

The Owner and Construction Manager, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Construction Manager shall assign this Agreement

without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement. Except as provided in Section 13.2.2 of A201–2007, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 11.5 Other provisions:

ARTICLE 12 SCOPE OF THE AGREEMENT

§ 12.1 This Agreement represents the entire and integrated agreement between the Owner and the Construction Manager and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Construction Manager.

§ 12.2 The following documents comprise the Agreement:

- .1 AIA Document A133–2009, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price
- .2 AIA Document A201–2007, General Conditions of the Contract for Construction
- .3
- 4
- .5 Other documents: (List other documents, if any, forming part of the Agreement.)

Request for Fee, Specified General Conditions and Preconstruction for GCCM Services dated August 3, 2011

This Agreement is entered into as of the day and year first written above.

OWNER (Signature)	CONSTRUCTION MANAGER (Signature)
(Printed name and title)	(Printed name and title)

Additions and Deletions Report for

AIA[®] Document A133[™] – 2009

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 11:23:00 on 02/27/2013.

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AGREEMENT made as of the 6th day of March in the year 2013

City of Cordova
PO Box 1210
Cordova, AK 99574

Dawson Construction, Inc. PO Box 30920 Bellingham, WA 98228-2920

Cordova Center Phase II

MRV Architects 1420 Glacier Ave #101 Juneau, AK 99801

Don Moore, City Manager The City of Cordova PO Box 1210 Cordova, AK 99574 (907) 424-6200

Pete Dawson, President
Dawson Construction, Inc.
PO Box 30920
Bellingham, WA 98228-2920

PAGE 2

User Notes:

Paul Voelckers
MRV Architects
1420 Glacier Ave #101
Juneau, AK 99801

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§ 2.1.1 The Construction Manager shall participate as part of the team to provide a preliminary evaluation of the Owner's program, schedule and construction budget requirements, each in terms of the other. The scope for preconstruction services shall include providing two estimates (98% set and GMP), constructability review, meeting attendance not less than once per week during the preconstruction period, schedules, general correspondence and consultation as per the executed response to the Request for Fee, Specified General Conditions and Preconstruction for GCCM Services dated August 3, 2012 and attached to and made a part of this agreement.

The Construction Manager shall jointly schedule and conduct meetings with the Architect and Owner to discuss such matters as procedures, progress, coordination, and scheduling of the Work. The Construction Manager shall advise the Owner and the Architect on proposed site use and improvements, selection of materials, and building systems and equipment and phasing of the procurement and construction. The Construction Manager shall also provide recommendations consistent with the Project requirements to the Owner and Architect on constructability; availability of materials and labor; time requirements for procurement, installation and construction; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions.

§ 2.1.5.f Based on the preliminary design and other design criteria prepared by the Architect, the Construction Manager shall prepare preliminary estimates of the Cost of the Work or the cost of program requirements using area, volume or similar conceptual estimating techniques for the Architect's review and Owner's approval. If the Architect or Construction Manager suggests suggest alternative materials and systems, the Construction Manager shall provide cost evaluations of those alternative materials and systems.

The Construction Manager shall develop bidders' interest in the Project. The Construction Manager shall prepare and submit a Subcontracting Plan to the Owner and Architect for approval prior to bidding work. The Subcontracting Plan shall identify all subcontractor bid packages, scopes of work and timing of solicitation of bids to meet the Owner's objectives and timing.

§ 2.1.7 The Construction Manager shall prepare, for the Architect's review and the Owner's acceptance, a procurement schedule for items that must be ordered well in advance of construction. The <u>procurement schedule shall be updated and submitted monthly. The Construction Manager shall expedite and coordinate the ordering and delivery of materials that must be ordered well in advance of construction. If the Owner agrees to procure any items prior to the establishment of the Guaranteed Maximum Price, the Owner shall procure the items on terms and conditions acceptable to the Construction Manager. Upon the establishment of the Guaranteed Maximum Price, the Owner shall assign all contracts for these items to the Construction Manager and the Construction Manager shall thereafter accept responsibility for them.</u>

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The Construction Manager shall review upon receipt the Drawings and Specifications submitted to it. The Construction Manager shall promptly report to the Owner and the Architect any error, inconsistency or omission that the Construction Manager may discover in them and shall recommend changes and alternatives.

- .3 A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated to include:
 - 1. Specified General Conditions
 - Estimated Cost of the Work organized by trade categories or systems, allowances, contingency, and the systems
 - 3. Owner approved allowances and contingency, and
 - 4. Construction Manager's Fee;

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- .5 A date by which the Owner must accept the Guaranteed Maximum Price.
- 2.2.4 In preparing the Guaranteed Maximum Price (GMP), the Construction Manager shall include its contingency, not to exceed 2% of the GMP for the Construction Manager's exclusive use to cover those costs considered reimbursable as the Cost of the Work, but not included in a Change Order. The Construction Manager may use this contingency to pay for project issues that are within its control such as design issues that a reasonable Construction Manager should have resolved during the Preconstruction Phase, items in drawings but not in the Specification, buyout errors, scope gaps, ambiguities in the construction documents, damaged work, unanticipated general conditions expenses, expediting costs for critical materials and subcontractor performance. The Construction Manager must give the Owner notice and supporting cost backup when applying to use the Construction Manager's Contingency for approval.
- § 2.2.4 In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include its contingency for the Construction Manager's exclusive use to cover those costs considered reimbursable as the Cost of the Work but not included in a Change Order.
- § 2.2.6 If the Owner notifies the Construction Manager that the Owner has accepted the Guaranteed Maximum Price proposal in writing before the date specified in the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price proposal shall be deemed effective without further acceptance from the Construction Manager. Following acceptance of a Guaranteed Maximum Price, the Owner and Construction Manager shall execute the Guaranteed Maximum Price Amendment amending this Agreement, a copy of which the Owner shall provide to the Architect. The Guaranteed Maximum Price Amendment shall set forth the agreed upon Guaranteed Maximum Price with the information and assumptions upon which it is based. The Guaranteed Maximum Price may be phased to meet the Owner's requirements and be set in multiple GMP amendments.
- § 2.2.8 The Owner shall may at its sole discretion authorize the Architect to provide the revisions to the Drawings and Specifications to incorporate the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment. The Owner shall promptly furnish those revised Drawings and Specifications to the Construction Manager as they are revised. The Construction Manager shall notify the Owner and Architect of any inconsistencies between the Guaranteed Maximum Price Amendment and the revised Drawings and Specifications.
- § 2.3.2.1 Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under subcontracts or by other appropriate agreements with the Construction Manager. The Owner may designate specific persons from whom, or entities from which, the Construction Manager shall obtain bids. The Construction Manager shall obtain bids from Subcontractors and from suppliers of materials or equipment fabricated especially for the Work and shall deliver such bids to the Owner and Architect. The Owner shall then determine, with the advice of the Construction Manager and the Architect, which

bids will be accepted. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection.

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§ 3.1.4.3 The Owner, when such services are requested, requested and upon its approval, shall furnish services of geotechnical engineers, which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

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The Owner shall-may retain an Architect to provide services, duties and responsibilities as described in AIA Document B103TM–2007, Standard Form of Agreement Between Owner and Architect, including any additional services requested by the Construction Manager that are necessary for the Preconstruction and Construction Phase services under this Agreement. The Owner shall provide the Construction Manager a copy of the executed agreement between the Owner and the Architect, and any further modifications to the agreement. Agreement.

Compensation for the Preconstruction Services shall not exceed \$27,700 and shall be paid on an hourly basis at the rates and for the individuals specified in the Request for Fee, Specified General Conditions and Preconstruction for GCCM Services dated August 3, 2012 and attached to and made a part of this agreement

§ 4.1.3 If the Preconstruction Phase services covered by this Agreement have not been completed within six (6) months of the date of this Agreement, through no fault of the Construction Manager, the Construction Manager's compensation for Preconstruction Phase services shall be equitably adjusted.

§ 4.2.2 Payments are due and payable upon presentation of the Construction Manager's invoice. Amounts unpaid <u>Thirty</u> (30) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Construction Manager.

% Not to exceed Bank of America prime rate plus 1% per annum.

§ 5.1 For the Construction Manager's performance of the Work as described in Section 2.3, the Owner shall pay the Construction Manager the Contract Sum in current funds. funds for the Construction Manager's performance of the Contract. The Contract Sum is the Cost of the Work as defined in Section 6.1.1 plus the Construction Manager's Fee.

5% of the Cost of the Work

For changes in the work that are additive the fee will be 5%. No reduction for deductive changes.

Subcontractor mark-up at any tier for changes in the work shall not be more than 15% for overhead and profit

§ 5.1.4 Rental rates for Construction Manager-owned equipment shall not exceed seventy-five percent (75 %) of the standard rate paid at the place of the Project.

§ 5.1.5 Unit prices, if any: None

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5-1.6 Specified General conditions cost will be figured for each phase based on scope and duration of each phase using the rates that made up the \$459,000 figure submitted in the proposal - Specified General Conditions and Preconstruction for GCCM Services dated August 3, 2012 and attached to and made a part of this agreement

100% of savings will accrue to the Owner.

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§ 6.1.1 The term Cost of the Work shall mean the actual net costs necessarily and reasonably incurred by the Construction Manager in the proper performance of the Work. Such costs shall be at rates not higher than the standard paid at the place of the Project except with prior consent of the Owner. The Cost of the Work shall include only the items set forth in Sections 6.1 through 6.7.

§ 6.2.2 Wages or salaries of the Construction Manager's supervisory and administrative personnel when stationed at the site with the Owner's prior approval are included in the Specified General Conditions and not separately reimbursable.

§ 6.2.3 Wages and salaries of the Construction Manager's supervisory or administrative personnel engaged at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work. Work are included in the Specified General Conditions and not separately reimbursable.

§ 6.2.5 Bonuses, profit sharing, incentive compensation and any other discretionary payments paid to anyone hired by the Construction Manager or paid to any Subcontractor or vendor, with the Owner's prior approval vendor are not reimburseable costs of the work.

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§ 6.5.4 Costs of document reproductions, facsimile transmissions and long-distance telephone calls, postage and parcel delivery charges, telephone service at the site and reasonable petty cash expenses of the site office are included in the Specified General Conditions and not separately reimbursable

§ 6.5.5 That portion of the reasonable expenses of the Construction Manager's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work-Work are included in the Specified General Conditions and not separately reimbursable

§ 6.6.1 The actual net costs for Premiums for that portion of Builder's Risk insurance and bonds required by the Contract Documents that can be directly attributed to this Contract. Self-insurance for either full or partial amounts

of the coverages required by the Contract Documents, with the Owner's prior approval. All other premiums or costs are include within the Construction Manager's fee..

§ 6.6.2 Sales, use <u>Use</u> or similar taxes imposed by a governmental authority that are related to the Work and for which the Construction Manager is <u>liable</u> is <u>liable</u> is included in the fee.

§ 6.6.6 Costs for electronic equipment and software, directly related to the Work with the Owner's prior approval-are included in the Specified General Conditions and not separately reimbursable.

§ 6.6.9 Subject to the Owner's prior approval, expenses Expenses incurred in accordance with the Construction Manager's standard written personnel policy for relocation and temporary living allowances of the Construction Manager's personnel required for the Work. Work are included in the Specified General Conditions and not separately reimbursable

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6.7.5 Negotiated Support Services

Negotiated Support Services (NSS) by the Construction Manager may be accomplished and will be reimbursed as Cost of the work within the GMP only as follows:

- Negotiated Support Services described and included in the GMP
- As outlined in the Cost Responsibility Matrix dated 7-24-12 attached to and included in this
 agreement.

6.7.6 Specified General Conditions

Specified General conditions cost will be figured for each phase based on scope and duration of each phase using the rates that made up the \$459,000 figure submitted in the proposal - Specified General Conditions and Preconstruction for GCCM Services dated August 3, 2012 and attached to and made a part of this agreement. While overhead and profit markup is to be applied to the Cost of the Work exclusive of the Specified General Conditions.

- .9 Overtime wages unless pre-approved by the Owner
- .10 Data processing, software, hardware or computer-related costs not included in the Specified General Conditions.
- .11 Penalties and fines imposed by government agencies.
- .12 Safety costs not included in the Specified General Conditions.
- .13 Liquidated Damages.
- 14 Legal, consultant, or claims-related expenses.

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§ 7.1.3 Provided that an Application for Payment is received by the Architect not later than the <u>last</u> day of a month, the Owner shall make payment of the certified amount to the Construction Manager not later than the <u>last</u> day of the <u>following</u> month. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than <u>thirty</u> (<u>30</u>) days after the Architect receives the Application for Payment.

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§ 7.1.4 With each Application for Payment, the Construction Manager shall submit <u>lien releases</u>, payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner or Architect to demonstrate that cash disbursements already made by the Construction Manager on account

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of the Cost of the Work equal or exceed progress payments already received by the Construction Manager, less that portion of those payments attributable to the Construction Manager's Fee, plus payrolls for the period covered by the present Application for Payment.

- Add the Construction Manager's Fee, less retainage of percent (-%). Fee,. The Construction Manager's Fee shall be computed upon the Cost of the Work at the rate stated in Section 5.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, shall be an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- Subtract retainage of five percent (5 %) from that portion of the Work that the Construction Manager self-performs;

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§ 7.2.2 The Owner's auditors will review and report in writing on the Construction Manager's final accounting within 30 days after delivery of the final accounting to the Architect-Owner by the Construction Manager, Based upon such Cost of the Work as the Owner's auditors report to be substantiated by the Construction Manager's final accounting, and provided the other conditions of Section 7.2.1 have been met, the Architect will, within seven days after receipt of the written report of the Owner's auditors, either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager, or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding a certificate as provided in Section 9.5.1 of the AIA Document A201-2007. The time periods stated in this Section supersede those stated in Section 9.4.1 of the AIA Document A201-2007. The Architect is not responsible for verifying the accuracy of the Construction Manager's final accounting.

Verify with City of Cordova:

, cras, men car, or cordorar	
Workers Compensation	\$1,000,000
Commercial Liability	\$2,000,000
Automotive Liability	\$1,000,000
Property Insurance	Coverage in amou

unt of GMP Performanc and Payment Bond Coverage in amount of GMP

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[X] Litigation in a court of competent jurisdiction

§ 10.1.1 Prior to the execution of the Guaranteed Maximum Price Amendment, the Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager for the Owner's convenience and without cause, and the Construction Manager may terminate this Agreement, upon not less than seven days' written notice to the Owner, for the reasons set forth in Section 14.1.1 of A201–2007. Notwithstanding anything herein to the contrary, the Owner shall maintain the right to terminate for convenience for any reason at any time.

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§ 10.2.1 If the Owner terminates the Contract after execution of the Guaranteed Maximum-Price Amendment, the amount payable to the Construction Manager pursuant to Sections 14.2 and 14.4 of A201-2007 shall not exceed the amount the Construction Manager would otherwise have received pursuant to Sections 10.1.2 and 10.1.3 of this Agreement.

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.3 AIA Document E201TM 2007, Digital Data Protocol Exhibit, if completed, or the following::

AIA Document E202TM 2008, Building Information Modeling Protocol Exhibit, if completed, or the following::

Request for Fee, Specified General Conditions and Preconstruction for GCCM Services dated August 3, 2011

Certification of Document's Authenticity

AIA® Document D401™ - 2003

I, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 11:23:00 on 02/27/2013 under Order No. 8930051986_1 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A133TM -2009, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

(Signed)					
•	٠				
		:			
(Title)				 	
	٠				
(Dated)	-		 	 ALIEN RAJES PANYAS ES DEAMAS EAS EASTERAS E	



General Conditions of the Contract for Construction

for the following PROJECT:

(Name and location or address) Cordova Center Phase II

THE OWNER:

(Name, legal status and address) City of Cordova PO Box 1210 Cordova, AK 99574

THE ARCHITECT:

(Name, legal status and address) MRV Architects 1420 Glacier Ave #101 Juneau, AK 99801

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- 7 CHANGES IN THE WORK
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- 12 UNCOVERING AND CORRECTION OF WORK
- 13 MISCELLANEOUS PROVISIONS
- 14 TERMINATION OR SUSPENSION OF THE CONTRACT
- 15 CLAIMS AND DISPUTES

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An Additions and Deletions Report that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

(Topics and numbers in bold are section headings.) Acceptance of Nonconforming Work 9.6.6, 9.9.3, 12.3 Acceptance of Work 9.6.6, 9.8.2, 9.9.3, 9.10.1, 9.10.3, 12.3 Access to Work **3.16**, 6.2.1, 12.1 Accident Prevention Acts and Omissions 3.2, 3.3.2, 3.12, 8, 3.18, 4.2.3, 8.3.1, 9.5.1, 10.2.5, 10.2.8, 13,4.2, 13.7, 14.1, 15.2 Addenda 1.1.1, 3.11.1 Additional Costs, Claims for 3.7.4, 3.7.5, 6.1.1, 7.3.7.5, 10.3, 15.1.4 Additional Inspections and Testing 9.4.2, 9.8.3, 12.2.1, 13.5 Additional Insured 11.1.4 Additional Time, Claims for 3.2.4, 3.7.4, 3.7.5, 3.10.2, 8.3.2, **15.1.5 Administration of the Contract** 3.1.3, 4.2, 9.4, 9.5 Advertisement or Invitation to Bid 1.1.1 Aesthetic Effect 4.2.13 Allowances **3.8**, 7.3.8 All-risk Insurance 11.3.1, 11.3.1.1 **Applications for Payment** 4.2.5, 7.3.9, 9.2, **9.3**, 9.4, 9.5.1, 9.6.3, 9.7, 9.10, 11.1.3Approvals 2.1.1, 2.2.2, 2.4, 3.1.3, 3.10.2, 3.12.8, 3.12.9, 3.12.10, 4.2.7, 9.3.2, 13.5.1 Arbitration 8.3.1, 11.3.10, 13.1.1, 15.3.2, **15.4** ARCHITECT Architect, Definition of Architect, Extent of Authority 2.4.1, 3.12.7, 4.1, 4.2, 5.2, 6.3, 7.1.2, 7.3.7, 7.4, 9.2, 9.3.1, 9.4, 9.5, 9.6.3, 9.8, 9.10.1, 9.10.3, 12.1, 12.2.1, 13.5.1, 13.5.2, 14.2.2, 14.2.4, 15.1.3, 15.2.1 Architect, Limitations of Authority and

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lnit.

Responsibility

User Notes:

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 BASIC DEFINITIONS

§ 1.1.1 THE CONTRACT DOCUMENTS

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding requirements.

§ 1.1.2 THE CONTRACT

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect or the Architect's consultants or (4) between any persons or entities other than the Owner and the Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties.

§ 1.1.3 THE WORK

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

§ 1.1.4 THE PROJECT

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner and by separate contractors.

§ 1.1.5 THE DRAWINGS

The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams.

§ 1.1.6 THE SPECIFICATIONS

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

§ 1.1.7 INSTRUMENTS OF SERVICE

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

§ 1.1.8 INITIAL DECISION MAKER

The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2 and certify termination of the Agreement under Section 14.2.2.

§ 1.2 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

- § 1.2.2 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.
- § 1.23 Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

§ 1.3 CAPITALIZATION

Terms capitalized in these General Conditions include those that are (1) specifically defined, (2) the titles of numbered articles or (3) the titles of other documents published by the American Institute of Architects.

§ 1.4 INTERPRETATION

In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

§ 1.5 OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND OTHER INSTRUMENTS OF SERVICE

- § 1.5.1 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and will retain all common law, statutory and other reserved rights, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights.
- § 1.5.2 The Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers are authorized to use and reproduce the Instruments of Service provided to them solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractors, Sub-subcontractors, and material or equipment suppliers may not use the Instruments of Service on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner, Architect and the Architect's consultants.

§ 1.6 TRANSMISSION OF DATA IN DIGITAL FORM

If the parties intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions, unless otherwise already provided in the Agreement or the Contract Documents.

ARTICLE 2 OWNER

§ 2.1 GENERAL

- § 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.
- § 2.1.2 The Owner shall furnish to the Contractor within fifteen days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.

§ 2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

§ 2.2.1 Prior to commencement of the Work, the Contractor may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. Thereafter, the Contractor may only request such evidence if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) a change in the Work materially changes the Contract Sum; or (3) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or

the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.

- § 2.2.2 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.
- § 2.2.3 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.
- § 2.2.4 The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services.
- § 2.25 Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2.

§ 2.3 OWNER'S RIGHT TO STOP THE WORK

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1,3.

§ 2.4 OWNER'S RIGHT TO CARRY OUT THE WORK

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect or failure. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

ARTICLE 3 CONTRACTOR

§ 3.1 GENERAL

- § 3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.
- § 3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents.
- § 3.1.3 The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

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§ 3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.2.3, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

§ 3.2.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require.

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall make Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

§ 3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Contractor determines that such means, methods, techniques, sequences may not be safe, the Contractor shall give timely written notice to the Owner and Architect and shall not proceed with that portion of the Work without further written instructions from the Architect. If the Contractor is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Contractor, the Owner shall be solely responsible for any loss or damage arising solely from those Owner-required means, methods, techniques, sequences or procedures.

§ 3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of the Contractor or any of its Subcontractors.

§ 3.3.3 The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

§ 3.4 LABOR AND MATERIALS

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other

facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

§ 3.4.2 Except in the case of minor changes in the Work authorized by the Architect in accordance with Sections 3.12.8 or 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive.

§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

§ 3.5 WARRANTY

The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ 3.6 TAXES

The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

§ 3.7 PERMITS, FEES, NOTICES AND COMPLIANCE WITH LAWS

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded.

§ 3.7.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work.

§ 3.7.3 If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

§ 3.7.4 Concealed or Unknown Conditions. If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor in writing, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may proceed as provided in Article 15.

§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume

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the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

§ 3.8 ALLOWANCES

§ 3.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

- § 3.8.2 Unless otherwise provided in the Contract Documents,
 - 1 Allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
 - Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and
 - 3 Whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.
- § 3.8.3 Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness.

§ 3.9 SUPERINTENDENT

- § 3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor.
- § 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the name and qualifications of a proposed superintendent. The Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to the proposed superintendent or (2) that the Architect requires additional time to review. Failure of the Architect to reply within the 14 day period shall constitute notice of no reasonable objection.
- § 3.9.3 The Contractor shall not employ a proposed superintendent to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed.

§ 3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES

- § 3.10.1 The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work.
- § 3.10.2 The Contractor shall prepare a submittal schedule, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, and shall submit the schedule(s) for the Architect's approval. The Architect's approval shall not unreasonably be delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.
- § 3.10.3 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Architect.

§ 3.11 DOCUMENTS AND SAMPLES AT THE SITE

The Contractor shall maintain at the site for the Owner one copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be available to the Architect and shall be delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

§ 3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

- § 3.12.1 Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.
- § 3.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.
- § 3.12.3 Samples are physical examples that illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.
- § 3.12.4 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. Their purpose is to demonstrate the way by which the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect is subject to the limitations of Section 4.2.7. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Architect without action.
- § 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve and submit to the Architect Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors.
- § 3.12.6 By submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.
- § 3.12.7 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been approved by the Architect.
- § 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the Architect in writing of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the Architect's approval thereof.
- § 3.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by the Architect on previous submittals. In the absence of such written notice, the Architect's approval of a resubmission shall not apply to such revisions.
- § 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. The Contractor shall not be

required to provide professional services in violation of applicable law. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings 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 the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor all performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review, approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Contractor shall not be responsible for the adequacy of the performance and design criteria specified in the Contract Documents.

§ 3.13 USE OF SITE

The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

§ 3.14 CUTTING AND PATCHING

§ 3.14.1 The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting and patching shall be restored to the condition existing prior to the cutting, fitting and patching, unless otherwise required by the Contract Documents.

§ 3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or separate contractors by cutting, patching or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter such construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the Owner or a separate contractor the Contractor's consent to cutting or otherwise altering the Work.

§ 3.15 CLEANING UP

§ 3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials from and about the Project.

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and Owner shall be entitled to reimbursement from the Contractor.

§ 3.16 ACCESS TO WORK

The Contractor shall provide the Owner and Architect access to the Work in preparation and progress wherever located.

§ 3.17 ROYALTIES, PATENTS AND COPYRIGHTS

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications or other documents prepared by the Owner or Architect. However, if the Contractor has reason to believe that the required design, process or product is an infringement of a copyright or a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Architect.

§ 3.18 INDEMNIFICATION

§ 3.18.1 To the fullest extent permitted by law the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Section 3.18.

§ 3.18.2 In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

ARTICLE 4 ARCHITECT § 4.1 GENERAL

- § 4.1.1 The Owner shall retain an architect lawfully licensed to practice architecture or an entity lawfully practicing architecture in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number.
- § 4.1.2 Duties, responsibilities and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified or extended without written consent of the Owner, Contractor and Architect. Consent shall not be unreasonably withheld.
- § 4.1.3 If the employment of the Architect is terminated, the Owner shall employ a successor architect as to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Architect.

§ 4.2 ADMINISTRATION OF THE CONTRACT

- § 4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction until the date the Architect issues the final Certificate for Payment. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.
- § 4.2.2 The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents, except as provided in Section 3.3.1.
- § 4.2.3 On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

User Notes:

§ 4.2.4 COMMUNICATIONS FACILITATING CONTRACT ADMINISTRATION

Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor shall endeavor to communicate with each other through the Architect about matters arising out of or relating to the Contract. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the Owner.

- § 4.2.5 Based on the Architect's evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.
- § 4.2.6 The Architect has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.5.2 and 13.5.3, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.
- § 4.2.7 The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5 and 3.12. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.
- § 4.2.8 The Architect will prepare Change Orders and Construction Change Directives, and may authorize minor changes in the Work as provided in Section 7.4. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.
- § 4.2.9 The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.
- § 4.2.10 If the Owner and Architect agree, the Architect will provide one or more project representatives to assist in carrying out the Architect's responsibilities at the site. The duties, responsibilities and limitations of authority of such project representatives shall be as set forth in an exhibit to be incorporated in the Contract Documents.
- § 4.2.11 The Architect will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.
- § 4.2.12 Interpretations and decisions of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either and will not be liable for results of interpretations or decisions rendered in good faith.
- § 4.2.13 The Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

§ 4.2.14 The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

ARTICLE 5 SUBCONTRACTORS

§ 5.1 DEFINITIONS

§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contractor or subcontractors of a separate contractor.

§ 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

§ 5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

§ 5.2.1 Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to any such proposed person or entity or (2) that the Architect requires additional time for review. Failure of the Owner or Architect to reply within the 14 day period shall constitute notice of no reasonable objection.

§ 5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 5.2.3 If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

§ 5.2.4 The Contractor shall not substitute a Subcontractor, person or entity previously selected if the Owner or Architect makes reasonable objection to such substitution.

§ 5.3 SUBCONTRACTUAL RELATIONS

By appropriate agreement, written where legally required for validity, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by these Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may

be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

§ 5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

§ 5.4.1 Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that

- .1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor in writing; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract.

- § 5.4.2 Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension.
- § 5.4.3 Upon such assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity. If the Owner assigns the subcontract to a successor contractor or other entity, the Owner shall nevertheless remain legally responsible for all of the successor contractor's obligations under the subcontract.

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS § 6.1 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

- § 6.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Article 15.
- § 6.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.
- § 6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each separate contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with other separate contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, separate contractors and the Owner until subsequently revised.
- § 6.1.4 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces, the Owner shall be deemed to be subject to the same obligations and to have the same rights that apply to the Contractor under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6 and Articles 10, 11 and 12.

§ 6.2 MUTUAL RESPONSIBILITY

- § 6.2.1 The Contractor shall afford the Owner and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.
- § 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Architect apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor so to report shall constitute an acknowledgment that

the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.

- § 6.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a separate contractor because of the Contractor's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of a separate contractor's delays, improperly timed activities, damage to the Work or defective construction.
- § 6.2.4 The Contractor shall promptly remedy damage the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or separate contractors as provided in Section 10.2.5.
- **§ 6.2.5** The Owner and each separate contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

§ 6.3 OWNER'S RIGHT TO CLEAN UP

If a dispute arises among the Contractor, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Architect will allocate the cost among those responsible.

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 GENERAL

- § 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.
- § 7.1.2 A Change Order shall be based upon agreement among the Owner, Contractor and Architect; a Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor; an order for a minor change in the Work may be issued by the Architect alone.
- § 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order, Construction Change Directive or order for a minor change in the Work.

Except as permitted in Section 7.3 and Section 9.7.2, a change in the Contract Sum or the Contract Time shall be accomplished only by Change Order. Accordingly, no course of conduct or dealings between the parties, nor express or implied acceptance of alterations or additions to the Work, and no claim that Owner has been unjustly enriched by any alteration of or addition to the work, whether or not there is, in fact, any unjust enrichment to the Work, shall be the basis of any claim to an increase in any amounts due under the Contract Documents or a change in any time period provided for in the Contract Documents

§ 7.2 CHANGE ORDERS

- § 7.2.1 A Change Order is a written instrument prepared by the Architect and signed by the Owner, Contractor and Architect stating their agreement upon all of the following:
 - 1 The change in the Work;
 - The amount of the adjustment, if any, in the Contract Sum; and
 - .3 The extent of the adjustment, if any, in the Contract Time.
- 7.2.2. Agreement on any Change Order shall constitute a final settlement of all matters relating to the change in the Work that is the subject of the Change Order, including, but not limited to, all direct and indirect costs and consequential damages associated with such change and any and all adjustments to the Contract Sum and the construction schedule.

§ 7.3 CONSTRUCTION CHANGE DIRECTIVES

§ 7.3.1 A Construction Change Directive is a written order prepared by the Architect and signed by the Owner and Architect, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract

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Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

- § 7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.
- § 7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:
 - .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
 - .2 Unit prices stated in the Contract Documents or subsequently agreed upon;
 - .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
 - .4 As provided in Section 7.3.7.
- § 7.3.4 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Construction Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.
- § 7.3.5 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.
- § 7.3.6 A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.
- § 7.3.7 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.7 shall be limited to the following:
 - .1 Costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;
 - .2 Costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
 - .3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
 - .4. Costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and
 - .5 Additional costs of supervision and field office personnel directly attributable to the change.
- § 7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Architect. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.
- § 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be

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reasonably justified. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

§7.3.10 When the Owner and Contractor agree with a determination made by the Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Architect will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

§ 7.4 MINOR CHANGES IN THE WORK

The Architect has authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes will be effected by written order signed by the Architect and shall be binding on the Owner and Contractor.

ARTICLE 8 TIME

§ 8.1 DEFINITIONS

- § 8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.
- § 8.1.2 The date of commencement of the Work is the date established in the Agreement.
- § 8:1.3 The date of Substantial Completion is the date certified by the Architect in accordance with Section 9.8.
- § 8.1.4 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

§ 8.2 PROGRESS AND COMPLETION

- § 8.2.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement the Contract or confirms that the Contract Time is a reasonable period for performing the Work.
- § 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Contractor and Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance.
- § 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

§ 8.3 DELAYS AND EXTENSIONS OF TIME

- § 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or Architect, or of an employee of either, or of a separate contractor employed by the Owner; or by changes ordered in the Work; or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor's control; or by delay authorized by the Owner pending mediation and arbitration; or by other causes that the Architect determines may justify delay, then the Contract Time shall be extended by Change Order to the extent such delay will prevent the Contractor from achieving Substantial Completion within the Contract Time and if the performance of the Work is not, was not, or would not have been delayed by any other case for which the Contractor is not entitled to an extension in the Contract Time under the Contract Documents. The Contractor further acknowledges and agrees that adjustments in the Contract Time will be permitted for a delay only to the extent such delay (i) is not caused, or could not have been anticipated, by the Contractor; (ii) could not be limited or avoided by the Contractor's timely notice to the Owner of the delay or reasonable likelihood that a delay will occur; and (iii) is of a duration not less than one (1) day.
- §8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15.
- § 8.3.3 This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.

ARTICLE 9 PAYMENTS AND COMPLETION § 9.1 CONTRACT SUM

The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

§ 9.2 SCHEDULE OF VALUES

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit to the Architect, before the first Application for Payment, a schedule of values allocating the entire Contract Sum to the various portions of the Work and prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 9.3 APPLICATIONS FOR PAYMENT

§ 9.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. Such application shall be notarized, if required, and supported by such data substantiating the Contractor's right to payment as the Owner or Architect may require, such as copies of requisitions from Subcontractors and material suppliers, and shall reflect retainage if provided for in the Contract Documents.

§ 9.3.1.1 As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, but not yet included in Change Orders.

§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or material supplier, unless such Work has been performed by others whom the Contractor intends to pay.

9.3.1.3. Each Application for Payment shall be accompanied by the following, all in form and substance satisfactory to the Owner: (i) a current Contractor's lien waiver and duly-executed and acknowledged sworn statement showing all Subcontractors and material suppliers with whom the Contractor has entered into subcontracts, the amount of each such subcontract, the amount requested for any Subcontractor and material supplier in the requested progress payment, and the amount to be paid to the Contractor from such progress payment, together with similar sworn statements from all such Subcontractors and material suppliers; (ii) duly-executed waivers of mechanics' and material suppliers' liens from all Subcontractors and, when appropriate, from material suppliers and lower tier Subcontractors establishing payment or satisfaction of payment of all amounts requested by the Contractor on behalf of such entities or persons in any previous Application for Payment; and (iii) all information and materials required to comply with the requirements of the Contract Documents or reasonably requested by the Owner or the Architect. If required by the Owner's title insurer, if any, the Contractor shall execute a personal gap undertaking in form and substance satisfactory to such title insurer.

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

§ 9.4 CERTIFICATES FOR PAYMENT

§ 9.4.1 The Architect will, within seven days after receipt of the Contractor's Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the Architect determines is properly due, or notify the Contractor and Owner in writing of the Architect's reasons for withholding certification in whole or in part as provided in Section 9.5.1.

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner. based on the Architect's evaluation of the Work and the data comprising the Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Architect. The issuance of a Certificate for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous onsite inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 9.5 DECISIONS TO WITHHOLD CERTIFICATION

§ 9.5.1 The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of

- defective Work not remedied;
- third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor;
- failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;
- reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum:
- damage to the Owner or a separate contractor:
- reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;
- repeated failure to carry out the Work in accordance with the Contract Documents.

§ 9.5.2 When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.

§ 9.5.3 If the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or material or equipment suppliers to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Architect will reflect such payment on the next Certificate for Payment.

§ 9.6 PROGRESS PAYMENTS

§ 9.6.1 After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect.

§ 9.6.2 The Contractor shall pay each Subcontractor no later than seven days after receipt of payment from the Owner the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to

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the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

- § 9.6.3 The Architect will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Architect and Owner on account of portions of the Work done by such Subcontractor.
- § 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and material and equipment suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay or to see to the payment of money to a Subcontractor, except as may otherwise be required by law.
- § 9.6.5 Contractor payments to material and equipment suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.
- § 9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.
- § 9.6.7 Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors and suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, shall create any fiduciary liability or tort liability on the part of the Contractor for breach of trust or shall entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

(Paragraphs deleted)

§ 9.7.1 FAILURE OF PAYMENT

If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents the amount certified by the Architect or awarded by binding dispute resolution, then the Contractor may, upon seven additional days' written notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided for in the Contract Documents.

9.7.2. If the Owner is entitled to reimbursement or payment from the Contractor under or pursuant to the Contract Documents, such payment shall be made promptly upon demand by the Owner. Notwithstanding anything contained in the Contract Documents to the contrary, if the Contractor fails to promptly make any payment due the Owner, or if the Owner incurs any cost and expenses to cure any default of the Contractor or to correct defective Work, the Owner shall have an absolute right to offset such amount against the Contract Sum and may, in the Owner's sole discretion, elect either to (i) deduct an amount equal to that which the Owner is entitled from any payment then or thereafter due the Contractor from the Owner; or (ii) issue a written notice to the Contractor reducing the Contract Sum by an amount equal to that which the Owner is entitled.

§ 9.8 SUBSTANTIAL COMPLETION

- § 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use.
- § 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list of

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items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

- § 9.8.3 Upon receipt of the Contractor's list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion.
 - § 9.8.4 When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.
 - § 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in such Certificate. Upon such acceptance and consent of surety, if any, the Owner shall make payment of retainage applying to such Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

§ 9.9 PARTIAL OCCUPANCY OR USE

- § 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer as required under Section 11.3.1.5 and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.
- § 9.9.2 Immediately prior to such partial occupancy or use, the Owner, Contractor and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the
- § 9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

§ 9.10 FINAL COMPLETION AND FINAL PAYMENT

- § 9.10.1 Upon receipt of the Contractor's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection and, when the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.
- § 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts

withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment and (5), if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

§ 9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from

- 1 liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents; or
- .3 terms of special warranties required by the Contract Documents.

§ 9.10.5 Acceptance of final payment by the Contractor, a Subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY § 10.1 SAFETY PRECAUTIONS AND PROGRAMS

The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract.

§ 10.2 SAFETY OF PERSONS AND PROPERTY

§ 10.2.1 The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Subsubcontractors; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

§ 10.2.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

§ 10.2.3 The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.

- § 10.2.4 When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.
- § 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3, except damage or loss attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.
- § 10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect.
- § 10.2.7 The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

§ 10.2.8 INJURY OR DAMAGE TO PERSON OR PROPERTY

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ 10.3 HAZARDOUS MATERIALS

- § 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner and Architect in writing.
- § 10.3.2 Upon receipt of the Contractor's written notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Contractor's reasonable additional costs of shut-down, delay and start-up.

(Paragraph deleted)

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- § 10.3.4 The Owner shall not be responsible under this Section 10.3 for materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.
- § 10.3.5 The Contractor shall indemnify the Owner for the cost and expense the Owner incurs (1) for remediation of a material or substance the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to

perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

§ 10.3.6 If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall indemnify the Contractor for all cost and expense thereby incurred.

§ 10.4 EMERGENCIES

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 CONTRACTOR'S LIABILITY INSURANCE

§ 11.1.1 The Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located such insurance as will protect the Contractor from claims set forth below which may arise out of or result from the Contractor's operations and completed operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

- .1 & Claims under workers' compensation, disability benefit and other similar employee benefit acts that
- Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;
- .3 Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;
- 4 Claims for damages insured by usual personal injury liability coverage;
- .5 Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
- .6 Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;
- .7 Claims for bodily injury or property damage arising out of completed operations; and
- .8 Claims involving contractual liability insurance applicable to the Contractor's obligations under Section 3.18.

§ 11.1.2 The insurance required by Section 11.1.1 shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from the date of commencement of the Work until the date of final payment and termination of any coverage required to be maintained after final payment, and, with respect to the Contractor's completed operations coverage, until the expiration of the period for correction of Work or for such other period for maintenance of completed operations coverage as specified in the Contract Documents.

§ 11.1.3 Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance. These certificates and the insurance policies required by this Section 11.1 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section 11.1.2. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness.

§ 11.1.4 The Contractor shall cause the commercial liability coverage required by the Contract Documents to include (1) the Owner, the Architect and the Architect's consultants as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner as an

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additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's completed operations.

§ 11.2 OWNER'S LIABILITY INSURANCE

The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance.

§ 11.3 PROPERTY INSURANCE

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§ 11.3.1 Unless otherwise provided, the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus value of subsequent Contract Modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Section 9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Section 11.3 to be covered, whichever is later. This insurance shall include interests of the Owner, the Contractor, Subcontractors and Subsubcontractors in the Project.

§ 11.3.1.1 Property insurance shall be on an "all-risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Architect's and Contractor's services and expenses required as a result of such insured loss.

§ 11.3.1.2 If the Owner does not intend to purchase such property insurance required by the Contract and with all of the coverages in the amount described above, the Owner shall so inform the Contractor in writing prior to commencement of the Work. The Contractor may then effect insurance that will protect the interests of the Contractor, Subcontractors and Sub-subcontractors in the Work, and by appropriate Change Order the cost thereof shall be charged to the Owner. If the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain insurance as described above, without so notifying the Contractor in writing, then the Owner shall bear all reasonable costs properly attributable thereto.

§ 11.3.1.3 If the property insurance requires deductibles, the Owner shall pay costs not covered because of such deductibles.

§ 11.3.1.4 This property insurance shall cover portions of the Work stored off the site, and also portions of the Work in transit.

§11.3.1.5 Partial occupancy or use in accordance with Section 9.9 shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Contractor shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

§ 11.3.2 BOILER AND MACHINERY INSURANCE

The Owner shall purchase and maintain boiler and machinery insurance required by the Contract Documents or by law, which shall specifically cover such insured objects during installation and until final acceptance by the Owner; this insurance shall include interests of the Owner, Contractor, Subcontractors and Sub-subcontractors in the Work, and the Owner and Contractor shall be named insureds.

§ 11.3.3 LOSS OF USE INSURANCE

The Owner, at the Owner's option, may purchase and maintain such insurance as will insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused. The Owner waives all rights of action against the Contractor for loss of use of the Owner's property, including consequential losses due to fire or other hazards however caused.

§ 11.3.4 If the Contractor requests in writing that insurance for risks other than those described herein or other special causes of loss be included in the property insurance policy, the Owner shall, if possible, include such insurance, and the cost thereof shall be charged to the Contractor by appropriate Change Order.

§ 11.3.5 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner shall waive all rights in accordance with the terms of Section 11.3.7 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.

§ 11.3.6 Before an exposure to loss may occur, the Owner shall file with the Contractor a copy of each policy that includes insurance coverages required by this Section 11.3. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. Each policy shall contain a provision that the policy will not be canceled or allowed to expire, and that its limits will not be reduced, until at least 30 days' prior written notice has been given to the Contractor.

§ 11.3.7 WAIVERS OF SUBROGATION

The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, subsubcontractors, agents and employees, each of the other, and (2) the Architect, Architect's consultants, separate contractors described in Article 6, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Section 11.3 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Owner or Contractor, as appropriate, shall require of the Architect, Architect's consultants, separate contractors described in Article 6, if any, and the subcontractors, subsubcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

§ 11.3.8 A loss insured under the Owner's property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.3.10. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.

§ 11.3.9 If required in writing by a party in interest, the Owner as fiduciary shall, upon occurrence of an insured loss, give bond for proper performance of the Owner's duties. The cost of required bonds shall be charged against proceeds received as fiduciary. The Owner shall deposit in a separate account proceeds so received, which the Owner shall distribute in accordance with such agreement as the parties in interest may reach, or as determined in accordance with the method of binding dispute resolution selected in the Agreement between the Owner and Contractor. If after such loss no other special agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Contractor after notification of a Change in the Work in accordance with Article 7.

§ 11.3.10 The Owner as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of loss to the Owner's exercise of this power; if such objection is made, the dispute shall be resolved in the manner selected by the Owner and Contractor as the method of binding dispute resolution in the Agreement. If the Owner and Contractor have selected arbitration as the method of binding dispute resolution, the Owner as fiduciary shall make settlement with insurers or, in the case of a dispute over distribution of insurance proceeds, in accordance with the directions of the arbitrators.

§ 11.4 PERFORMANCE BOND AND PAYMENT BOND

§ 11.4.1 The Owner shall have the right to require the Contractor to furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder as stipulated in bidding requirements or specifically required in the Contract Documents on the date of execution of the Contract.

§ 11.4.2 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK § 12.1 UNCOVERING OF WORK

§ 12.1.1 If a portion of the Work is covered contrary to the Architect's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Architect, be uncovered for the Architect's examination and be replaced at the Contractor's expense without change in the Contract Time.

§ 12.1.2 If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If such Work is not in accordance with the Contract Documents, such costs and the cost of correction shall be at the Contractor's expense unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs.

§ 12.2 CORRECTION OF WORK

§ 12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION

The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense.

§ 12.2.2 AFTER SUBSTANTIAL COMPLETION

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.4.

§ 12.2.2.2 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

§ 12.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.

§ 12.2.3 The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

§ 12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

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§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

§ 12.3 ACCEPTANCE OF NONCONFORMING WORK

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 GOVERNING LAW

The Contract shall be governed by the law of the place where the Project is located except that, if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4.

§ 13.2 SUCCESSORS AND ASSIGNS

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 13.2.2 The Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate such assignment.

§ 13.3 WRITTEN NOTICE

Written notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity, or to an officer of the corporation for which it was intended; or if delivered at, or sent by registered or certified mail or by courier service providing proof of delivery to, the last business address known to the party giving notice.

§ 13.4 RIGHTS AND REMEDIES

§ 13.4.1 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.

§ 13.4.2 No action or failure to act by the Owner, Architect or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach there under, except as may be specifically agreed in writing.

§ 13.5 TESTS AND INSPECTIONS

§ 13.5.1 Tests, inspections and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of (1) tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded, and (2) tests, inspections or approvals where building codes or applicable laws or regulations prohibit the Owner from delegating their cost to the Contractor.

§ 13.5.2 If the Architect, Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Section 13.5.1, the Architect will, upon written

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authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 13.5.3, shall be at the Owner's expense.

§ 13.5.3 If such procedures for testing, inspection or approval under Sections 13.5.1 and 13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure including those of repeated procedures and compensation for the Architect's services and expenses shall be at the Contractor's expense.

§ 13.5.4 Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Architect.

§ 13.5.5 If the Architect is to observe tests, inspections or approvals required by the Contract Documents, the Architect will do so promptly and, where practicable, at the normal place of testing.

§ 13.5.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

§ 13.6 INTEREST

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at such rate as the parties may agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

§ 13.7 TIME LIMITS ON CLAIMS

The Owner and Contractor shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other arising out of or related to the Contract in accordance with the requirements of the final dispute resolution method selected in the Agreement within the time period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all claims and causes of action not commenced in accordance with this Section 13.7.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT § 14.1 TERMINATION BY THE CONTRACTOR

§14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, for any of the following reasons:

- Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped:
- .2 An act of government, such as a declaration of national emergency that requires all Work to be stopped;
- Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or
- The Owner has failed to furnish to the Contractor promptly, upon the Contractor's request, reasonable evidence as required by Section 2.2.1.

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, repeated suspensions, delays or interruptions of the entire Work by the Owner as described in Section 14.3 constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, including reasonable overhead and profit, costs incurred by reason of such termination, and damages.

§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the Contractor because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' written notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

§ 14.2 TERMINATION BY THE OWNER FOR CAUSE

- § 14.2.1 The Owner may terminate the Contract if the Contractor
 - .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
 - .2 fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;
 - .3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
 - .4 otherwise is guilty of substantial breach of a provision of the Contract Documents.
- §14.2.2 When any of the above reasons exist, the Owner, upon certification by the Initial Decision Maker that sufficient cause exists to justify such action, may without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' written notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:
 - .1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
 - .2 Accept assignment of subcontracts pursuant to Section 5.4; and
 - .3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.
- § 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.
- § 14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Initial Decision Maker, upon application, and this obligation for payment shall survive termination of the Contract.

§ 14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE

- § 14.3.1 The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine.
- § 14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section 14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent
 - .1 that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is responsible; or
 - .2 that an equitable adjustment is made or denied under another provision of the Contract.

§ 14.4 TERMINATION BY THE OWNER FOR CONVENIENCE

- § 14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.
- § 14.4.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Contractor shall
 - .1 cease operations as directed by the Owner in the notice;
 - .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and

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- except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.
- 14.4.3. Upon such termination, the Contractor shall recover as its sole remedy payment for Work properly performed in connection with the terminated portion of the Work prior to the effective date of termination and for items properly and timely fabricated off the Project site, delivered and stored in accordance with the Owner's instructions. The Contractor hereby waives and forfeits all other claims for payment and damages, including, without limitation, anticipated profits. The Owner shall be credited for (i) payments previously made to the Contractor for the terminated portion of the Work; (ii) claims that the Owner has against the Contractor under the Contract; and (iii) the value of the materials, supplies, equipment or other items that are to be disposed of by the Contractor that are part of the Contract Sum.

(Paragraph deleted)

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 CLAIMS

§ 15.1.1 DEFINITION

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim.

§ 15.1.2 NOTICE OF CLAIMS

Claims by either the Owner or Contractor must be initiated by written notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party must be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

§ 15.1.3 CONTINUING CONTRACT PERFORMANCE

Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents. The Architect will prepare Change Orders and issue Certificates for Payment in accordance with the decisions of the Initial Decision Maker.

§ 15.1.4 CLAIMS FOR ADDITIONAL COST

If the Contractor wishes to make a Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

§ 15.1.5 CLAIMS FOR ADDITIONAL TIME

§ 15.1.5.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

§ 15.1.5.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated and had an adverse effect on the scheduled construction.

§ 15.1.6 CLAIMS FOR CONSEQUENTIAL DAMAGES

The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes

damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and

.2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.6 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

§ 15.2 INITIAL DECISION

- § 15.2.1 Claims, excluding those arising under Sections 10.3, 10.4, 11.3.9, and 11.3.10, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Initial Decision Maker with no decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.
- § 15.2.2 The Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.
- § 15.2.3 In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker in rendering a decision. The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner's expense.
- § 15.2.4 If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of such request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.
- § 15.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.
- § 15.2.6 Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1.
- § 15.2.6.1 Either party may, within 30 days from the date of an initial decision, demand in writing that the other party file for mediation within 60 days of the initial decision. If such a demand is made and the party receiving the demand fails to file for mediation within the time required, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.
- § 15.2.7 In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.
- § 15.2.8 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

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§ 15.3 MEDIATION

§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.6 shall be subject to mediation as a condition precedent to binding dispute resolution.

§ 15.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 15.3.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

Section 15.4: is deleted in its entirety due to the parties' selection of "Litigation in a court of competent jurisdiction" at Section 9.2 of AIA Document A133 - 2009, "Standard Form of Agreement Between Owner and Construction Manager as Constructor."

(Paragraphs deleted)

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AIA Document A201™ – 2007

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§ 3.18.1 To the fullest extent permitted by law the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that which would otherwise exist as to a party or person described in this Section 3.18.

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§ 5.2.1 Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to any such proposed person or entity or (2) that the Architect requires additional time for review. Failure of the Owner or Architect to reply within the 14 day 14 day period shall constitute notice of no reasonable objection.

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Except as permitted in Section 7.3 and Section 9.7.2, a change in the Contract Sum or the Contract Time shall be accomplished only by Change Order. Accordingly, no course of conduct or dealings between the parties, nor express or implied acceptance of alterations or additions to the Work, and no claim that Owner has been unjustly enriched by any alteration of or addition to the work, whether or not there is, in fact, any unjust enrichment to the Work, shall be the basis of any claim to an increase in any amounts due under the Contract Documents or a change in any time period provided for in the Contract Documents

7.2.2. Agreement on any Change Order shall constitute a final settlement of all matters relating to the change in the Work that is the subject of the Change Order, including, but not limited to, all direct and indirect costs and consequential damages associated with such change and any and all adjustments to the Contract Sum and the construction schedule.

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§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or Architect, or of an employee of either, or of a separate contractor employed by the Owner; or by changes ordered in the Work; or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor's control; or by delay authorized by the Owner pending mediation and arbitration; or by other causes that the Architect determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Architect may determine. to the extent such delay will prevent the Contractor from achieving Substantial Completion within the Contract Time and if the performance of the Work is not, was not, or would not have been delayed by any other case for which the Contractor is not entitled to an extension in the Contract Time under the Contract Documents. The Contractor further acknowledges and agrees that adjustments in the Contract Time will be permitted for a delay only to the extent such delay (i) is not caused, or could not have been anticipated, by the Contractor; (ii) could not be limited or avoided by the Contractor's timely notice to the Owner of the delay or reasonable likelihood that a delay will occur; and (iii) is of a duration not less than one (1) day..

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9.3.1.3. Each Application for Payment shall be accompanied by the following, all in form and substance satisfactory to the Owner: (i) a current Contractor's lien waiver and duly-executed and acknowledged sworn statement showing all Subcontractors and material suppliers with whom the Contractor has entered into subcontracts, the amount of each such subcontract, the amount requested for any Subcontractor and material supplier in the requested progress payment, and the amount to be paid to the Contractor from such progress payment, together with similar sworn statements from all such Subcontractors and material suppliers; (ii) duly-executed waivers of mechanics' and material suppliers' liens from all Subcontractors and, when appropriate, from material suppliers and lower tier Subcontractors establishing payment or satisfaction of payment of all amounts requested by the Contractor on behalf of such entities or persons in any previous Application for Payment; and (iii) all information and materials required to comply with the requirements of the Contract Documents or reasonably requested by the Owner or the Architect.

If required by the Owner's title insurer, if any, the Contractor shall execute a personal gap undertaking in form and substance satisfactory to such title insurer.

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§ 9.7 FAILURE OF PAYMENT

If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents the amount certified by the Architect or awarded by binding dispute resolution, then the Contractor may, upon seven additional days' written notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided for in the Contract Documents.

§ 9.7.1 FAILURE OF PAYMENT

If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents the amount certified by the Architect or awarded by binding dispute resolution, then the Contractor may, upon seven additional days' written notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided for in the Contract Documents.

9.7.2. If the Owner is entitled to reimbursement or payment from the Contractor under or pursuant to the Contract Documents, such payment shall be made promptly upon demand by the Owner. Notwithstanding anything contained in the Contract Documents to the contrary, if the Contractor fails to promptly make any payment due the Owner, or if the Owner incurs any cost and expenses to cure any default of the Contractor or to correct defective Work, the Owner shall have an absolute right to offset such amount against the Contract Sum and may, in the Owner's sole discretion, elect either to (i) deduct an amount equal to that which the Owner is entitled from any payment then or thereafter due the Contractor from the Owner; or (ii) issue a written notice to the Contractor reducing the Contract Sum by an amount equal to that which the Owner is entitled.

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§ 10.3.3 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss or expense is due to the fault or negligence of the party seeking indemnity.

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14.4.3. Upon such termination, the Contractor shall recover as its sole remedy payment for Work properly performed in connection with the terminated portion of the Work prior to the effective date of termination and for items properly and timely fabricated off the Project site, delivered and stored in accordance with the Owner's instructions. The Contractor hereby waives and forfeits all other claims for payment and damages, including, without limitation, anticipated profits. The Owner shall be credited for (i) payments previously made to the Contractor for the terminated

portion of the Work; (ii) claims that the Owner has against the Contractor under the Contract; and (iii) the value of the materials, supplies, equipment or other items that are to be disposed of by the Contractor that are part of the Contract Sum.

§ 14.4.3 In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed.

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Section 15.4: is deleted in its entirety due to the parties' selection of "Litigation in a court of competent jurisdiction" at Section 9.2 of AIA Document A133 – 2009, "Standard Form of Agreement Between Owner and Construction Manager as Constructor."

§ 15.4 ARBITRATION

§ 15.4.1 If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

§ 15.4.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.

§ 15.4.2 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

§ 15.4.3 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

§ 15.4.4 CONSOLIDATION OR JOINDER

§ 15.4.4.1 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 15.4.4.2 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

§ 15.4.4.3 The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Contractor under this Agreement.

Certification of Document's Authenticity

AIA® Document D401™ - 2003

I, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 11:28:12 on 02/27/2013 under Order No. 8930051986_1 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA Document A201TM - 2007, General Conditions of the Contract for Construction, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

(Signed)	·		
(Title)			

SUPPLEMENTAL GENERAL CONDITIONS

1. GENERAL REQUIREMENTS

These Supplementary General Conditions make additions, deletions, or revisions to the General Conditions as indicated herein.

These Supplemental General Conditions will supplement the drawings & specifications. Terms used in these Supplementary General Conditions which are defined in the General Conditions have the meanings assigned to them in the General Conditions.

These Supplemental General Conditions will supersede the Subcontract General Conditions.

Facsimile or e-mail transmission of any signed original document and retransmission of any signed facsimile or e-mail transmission shall be the same as delivery of an original document.

2. OWNER

Owner to provide information so that the Contractor can confirm the funding for the project has been secured.

Owner to disclose all accounting and/or audit requirements.

Disadvantage Business requirements are not part of this project. Costs are not included.

Native Preference requirements not part of this project. Costs are not included.

TERO requirements not part of this project. Costs are not included.

Buy America requirements not part of this project. Costs are not included.

Buy American requirements not part of this project. Costs are not included.

Permits & Fees

All permits, including plan check fees will be provided by Owner.

Utilities

Owner shall pay all utility connection fees including all private & public utilities including the costs of meters.

Inspection & Testing

Special Inspection and testing costs are By Owner.

Contingency

We expect the Owner to carry the contingency in soft costs to cover unforeseen conditions.

Unforeseen Conditions

When discovered, Contractor will notify Owner and present cost proposal.

3. GENERAL CONTRACTOR AND/OR CONSTRUCTION MANAGER

Upon request Contractor will submit a summary accounting report of actual project costs – see A201 for additional requirements

Self Performed Work – the Contractor may self-perform up to twenty-five (25) percent of the work in any single Contract phase under this agreement; as long as the total value of Self performed Work does not exceed forty (40) percent of the total GMP for all Contract phases of work included in the contract. The Contractor will notify the OWNER in writing of any Contract Work it proposes to self-perform and submit a Cost Proposal for performing the work. The Contractor's cost proposal for Self performed Work shall not include the Contractor's Fixed Fee. Self performed Work is to be included in the GMP as part of the Negotiated Cost of the Work. It will be reimbursed and treated as a subcontract except when otherwise specified in this Contract. The Owner may accept the Contractor's proposal to self-perform work; negotiate a

price acceptable to both parties for performing the work; or require the Contractor to Subcontract the work to others.

Labor & Materials

Wages or salaries of the Contractor's personnel stationed at the Contractor's principal or other offices shall be included in the Specified General Conditions, subject to Owner's Approval with each GMP submission, and will be charges as follows:

Classification	Hourly Rate	Monthly Rate
Sr. Project Manager	\$90.00	\$15,800
Project Manager	\$80.00	\$14,000
Asst. Project Manager	\$70.00	\$12,300
Project Engineer	\$70.00	\$12,300
Office Contract Administrator	\$45.00	\$7,900
On-Site Contract Administrator	\$45.00	\$7,900
Safety Officer	\$90.00	\$15,800
On-Site Safety Officer	\$65.00	\$11,400
Quality Control Manager	\$90.00	\$15,800
On-Site Quality Control Representative	\$65.00	\$11,400

Contractor is required to file a Notice of Work and Notice of Completion with the Alaska Department of Labor. The filing fee is included in our contract price.

AS 36.10 – Preferential Employment – All subcontractors shall comply with all applicable and valid laws and regulations regarding the hiring of Alaska residents now in effect o that might subsequently take effect during the term of this Contract.

Native hiring and reporting is not included.

Schedule

Contractor assumes exterior work that is weather related can be done at the appropriate time of year.

. (see A201)

(see A201)

(see A201)

Safety & Security

The construction site will be fenced but no additional security (cameras, night watch, and automated alarm systems) has been included.

4. SUBCONTRACTOR

(see A201)

5. CHANGES IN WORK

(see A201)

6. TIME

Bid amount assumes a Notice to Proceed date of TBD.

Substantial Completion is TBD or TBD from Notice to Proceed.

The Contractor shall pay Owner \$1,000/calendar day liquidated damages if work is not substantially complete by the dates above – Subject to any adjustments to the contract time allowed by the contract documents.

7. PAYMENTS & COMPLETION

(see A133 and A201)

8. PROTECTION OF PERSON & PROPERTY

Hazardous Substance Abatement and/or Remediation

Costs have not been included for hazardous material (including lead paint) remediation.

9. INSURANCE & BONDS

Payment and Performance Bond are required for this project, costs will be included in the GMP

General Liability & Auto insurance are required for this project; costs will be included in the GMP.

Property Insurance (Builders Risk) is required for this project, costs will be included in the GMP. Builders Risk Insurance will be applicable only on the building during construction.

10. UNCOVERING & CORRECTION OF WORK

Any findings or conditions that are uncovered from previous Contractor's work will be dealt with through the Change Order process.

11. MISCELLANEOUS PROVISIONS

Sustainable Building

LEED certification program is part of our costs.

Code Requirements

Responsibility for all accessibility requirements, including architectural and civil, rests with the project architect.

Closeout

The project will be substantially complete on the date when the Owner is able to use the building. At this time the Owner assumes Builders Risk Insurance and utilities are transferred to the Owner.

One (1) electronic copy & one (1) hard copy of the O&M manual will be provided.

By signing below, Contractor & Owner acknowledgement that they have read agree to the above Supplemental Conditions.

Ву	Dawson Construction, Inc.	Ву		
			Owner	
Ву		Ву		
	Contractor (Authorized Signature)	 -	Owner (Authorized Signature)	
	Michael Bayless, Secretary			
	Contractor (Printed Name)		Owner (Printed Name)	



CORDOVA CENTER PROJECT

BUSINESS PLAN

The community of Cordova is constructing a 33,929 square foot fully ADA accessible facility called the Cordova Center that will include museum, library, performing arts theatre/auditorium, meeting rooms, education areas, administrative offices and associated work space. This project is founded in the collaboration of the City with the Cordova Historical Society, United States Forest Service, Stage of the Tides, Arts and Pageants, Friends of the Library, the Cordova School District, Native Village of Eyak, Prince William Sound Community College, Prince William Sound Science Center, Exxon Valdez Oil Spill Trustee Council, service groups, civic groups and the community.

The Cordova Center project addresses goals stated in the Cordova Community Tourism Plan as well as the City of Cordova's Comprehensive Development Plan. Building a facility that serves local residents and provides an attraction for businesses as well as seasonal visitors is an important contribution to stable and sustainable economic growth. The increase in services,



opportunities will enhance Cordova's status as a desirable place to live and raise a family, attracting new residents who will also stimulate the economy.

The City of Cordova serves the entire population of Cordova (2,454) including its federally recognized Native Tribe (The Native Village of Eyak), visitors from Alaska, elsewhere in the U.S. and abroad. Visitors to Cordova include independent travelers arriving on tour ships, the fast ferry and

PROJECT GOALS

- Create a community center in the heart of the town
- Link the waterfront district and business district through a series of covered walkways.
- Build a state of the art, energy efficient facility, minimizing operating costs for the combined facilities
- Provide ADA accessibility to all government services in the facility
- Provide an environmentally controlled space for museum displays, traveling exhibits and storage, thereby allowing the museum to pursue accreditation
- Develop a warm inviting environment for the delivery of library services
- Provide municipal administration office and meeting space
- Provide a performing arts/film theatre to be used as a small conference venue
- Meet civic needs for meetings, conventions and receptions
- Improve educational opportunities by offering space for science education, workshops, classes and programs for residents of all ages
- Support and strengthen local art programs, promotion and display of contemporary Alaskan art.
- Revitalize the economy through the diverse opportunities provided by the Center

airlines. The Iceworm Festival, Shorebird Festival, First Fish and Copper River Wild Salmon Celebrations attract approximately 1500 attendees each year. Sport fishermen flood the community in mid-August to mid-September, during the silver salmon sport fishing season, adding another 200-300 visitors. The area attracts heli-skiiers totaling 30 - 40 outdoor recreationists who spend a week to ten days each in the community during February, March, and April to enjoy this sport.

Cordova is a rural community accessible only by air or water. Regular jet air service is provided by Alaska Airlines and ERA. The Alaska Marine Highway ferry system provides marine access. Regular ferry service provides access for passengers, vehicles and freight. The addition of the fast ferry M/V Chenega has improved access to the community by shortening travel time and increasing availability of ferry service, thereby improving economic development potential.

Currently the City utilizes two buildings to house its various offices and departments. Neither of these facilities is energy efficient or large enough to provide space for the growing programs housed in it. The Cordova Historical Museum displays exhibits that bring to life the history of the community. Museum staff works closely with the school district to organize K-6 class visits to share the community's story with children once a month from September through May. Museum attendance reached a high of 13,268 visitors in 2006 and has continued to



average over 10,000 each year since. The Cordova Public Library provides services to patrons from the community and surrounding areas, from Icy Bay to hatcheries in remote parts of Prince William Sound. The library provides supplemental services to the elementary school library for 200 pre-kindergarten to sixth grade children. Annual library attendance has increased from 15,447 in 2000 to 26,008 in 2011.

COMMUNITY NEEDS

The Cordova Center meets three different categories of identified community need:

- 1. Efficient and cost-effective delivery of municipal services Current facilities in Cordova for museum, library, municipal offices, performing arts, visitor center services, after-school and science education programs are inefficient and inadequate, resulting in high maintenance and operations costs and unsafe working conditions or noncompliance with building and safety codes in some cases. None of the facilities meet ADA standards, thereby limiting access to disabled members of the public. There is no safe pedestrian link between the city's two commercial areas.
- 2. Economic diversification in the community for sustainability Cordova's dependence on commercial fishing has resulted in an economy that is cyclical in nature and not diverse. This reliance on one industry has led to economic difficulties as fluctuations occur in fishing and fishing related ventures. In addition to the natural cycles, the community of Cordova was heavily impacted by the devastating effects of the 1989 Exxon Valdez oil spill to the economy. The community recognizes a need for economic diversification to promote long-term sustainability.
- 3. Opportunities for future economic growth both locally and regionally The community does not have convention and meeting venue space to accommodate the current demands from businesses, government agencies and non-profit associations. There is no space to address the anticipated growth in demand for conference facilities as the community expands its market share of conventions, symposiums and small meetings.

The firm of Minch Ritter Voelckers, Inc. was retained as project architects in February 2002. The Cordova Center site was purchased by the City for \$140,000 in February, 2005. The facility will be registered and will seek Gold Certification status with the U.S. Green Building Council through the Leadership in Energy and Environmental Design rating system. Energy efficient design will result in lower operation and maintenance costs, helping to assure sustainability.

Total project costs are estimated at \$25,500,000. A public/ private funding strategy has been developed for the capital campaign. Primary funding has come from federal and state appropriations, government agencies, foundations and corporations. Local contributions are also demonstrating project support. To date \$17,983,212 has been secured from a variety of sources for the Center.

The project has been divided into two Phases. Phase I completed in 2012 involved the civil work and construction of the exterior shell of the facility complete with all exterior finishes, doors and windows. Phase II scheduled to begin in 2013 will focus on interior mechanical and electrical services as well as final finishes, framing and lighting.

The construction of the Cordova Center is being overseen by the City of Cordova's Project Manager and the City Council. A Project Manager has been hired to oversee construction of the facility on behalf of the City of Cordova. During its construction phases, the project has and will continue to have a significant economic impact on the local community – creating construction jobs and all the ancillary economic benefits of a major project to the community that is housing and supplying the work force.

The Cordova City Council will provide for management of the Cordova Center through an appointed Cordova Center Advisory Committee, comprised of seven community members, including representatives from the library, museum, city administration, the Prince William Sound Science Center, Chamber of Commerce, Stage of the Tides and the community at large. Guided by their bylaws, the group will work closely with the City Manager and Facility Manager to develop and oversee use policies, fee schedules and security issues. Including the various stakeholders on the committee allows for community concerns regarding costs and rules for use to be addressed by those who are aware of each user group's needs and ability to pay for services.

The City Council has final authority over the recommended policies and fees. The operation and maintenance of the facility will be the responsibility of the City Manager working closely with the Assistant City Manager, Information Services Department, Facility Manager and Director of Public Works to assure that marketing, scheduling, maintenance and janitorial duties are carried out in a timely and efficient manner. The City anticipates adding a part-time Marketing Director, part time meeting coordinator, full time Facility Manager and full time janitorial to be responsible for the operations of the Cordova Center.

Sustainability is a major planning component for the Cordova center focusing on the key areas to ensure that the facility is efficient to operate and maintain over the long-term.

The City of Cordova will own, operate and manage the Cordova Center. Designed to have a long, useful life, the facility will keep operation costs as low as possible by using passive energy sources, conserving water and energy and utilizing extremely efficient utility systems. Fuel efficiency, timed light controls, low water toilets, use of ambient light and high R value insulation will provide savings. Construction materials will be selected with long life cycles and low maintenance in mind. Reduction of duplication of services and administrative costs will improve efficiency and minimize expenses. Cost savings will be achieved through use



SUSTAINABILITY

- Green building design with energy efficient systems
- Selection of systems and materials with long lifecycles and low maintenance costs
- Reduced overhead expenditures (multiple functions sharing one set of systems)
- Shared services, equipment, network access and other administrative costs
- Personnel sharing across programs
- Earned income stream from conference/ meeting use of facility
- Lease fees from Science Discovery Program and kiosk space
- Revenues from current and newly developed festivals
- Affordable fees for local use of performing arts and other spaces for public events
- Rental fees for private use of the facility for weddings, receptions and other celebrations

of shared equipment, technology networks, phone systems, supplies and contract services. Operations and maintenance (O &M) costs for the new facility will be provided by combining O&M budgets for administrative offices, library and museum with income generated from the use of the civic center, theatre and leased space.

Using the project pro forma developed by Alaska Engineering & Energy Consultants, projected annual O &M costs for the Center three years after occupation are \$132,600, as opposed to about \$88,000 for current buildings extrapolated to the same year.

Adding the Facility Manager, maintenance and custodial salaries brings the annual new building cost to \$257,000, about \$169,000 more than current costs. This is offset by the projected \$133,800 in annual revenue the new facility will generate, leaving only \$35,200 in extra annual costs to the city for a new building almost five times the size of combined spaces currently occupied by city services that will be housed in the new Center. This amount can be balanced by potential city income from leasing or selling the building that will be vacated when the library and museum move. In addition, the city will gain economic benefits from the conference market the Center will access, bringing in increased sales tax, lodging tax and car rental tax (all set at 6%) to the city coffers.

The various earned income streams will be based on a competitive fee schedule for conference planners and a sliding fee schedule for local residents, assuring local affordability and high municipal support and use. An aggressive and active marketing campaign will be undertaken to build Cordova's reputation as an attractive, accessible and accommodating conference destination. Successful conferences will result in satisfied attendees who will assist in building Cordova's market by sharing their experiences with others. This will enable the community to attract a growing piece of Alaska's convention market. In addition, due to the vast array of outdoor opportunities available



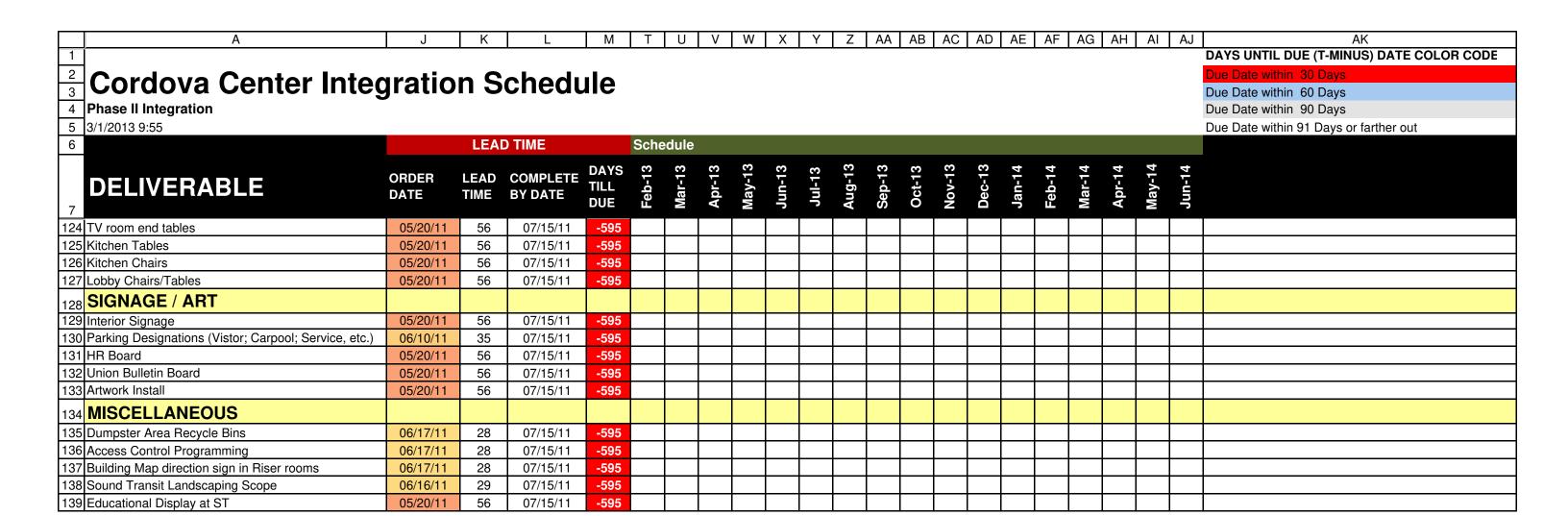
in the area attendees will meet in a state-of-the art convention center surrounded by a worldclass natural environment. Based on an average spending of \$175 per delegate day, an average of 25 small meetings annually with a group size of 25, and two small conferences annually with 75-100 attendees, the projected annual economic impact to Cordova could range between \$337,000 and \$505,000 according to an updated 2009 McDowell report. Cordova is in a competitive position to enter the small convention market. The connections it has to specific interest groups are strong assets. The City will invest professional time and provide financial support to market the community to meeting planners. The Center will be marketed through the Prince William Sound Economic Development Council, a member of the Alaska Regional Development Organization. City Information Services staff will offer direct assistance to meeting planners providing meeting packets information on the Center's capabilities, making suggestions on meeting facilities and accommodations based on the size of the group and the group's needs, and assisting with conference registration. The Cordova Center will be marketed to increase the number of business, professional and independent traveler visits. The Center will be marketed regionally, state-wide and throughout the Pacific Northwest to attract small

set at levels competitive with the other areas providing similar services. Since the Center will stimulate growth for local businesses through success in the convention market, local business support will solidify and expand. Opportunities for event sponsorship will increase, and earned income and city tax income will grow with each new activity and festival. Grant funding will also be sought to increase collaborative programming and economic development opportunities. There will be inter-agency cooperation among government, non-profit, educational and business partners in seeking a variety of grants to build capacity in the community and diversify use of the Cordova Center. This philanthropic component of the sustainability plan will be key to increasing services, enhancing educational and cultural experiences for residents and visitors, and developing model programs that other communities can replicate. Grant funded activities will build local and regional support for the Center, resulting in more charitable giving. The Cordova Center is the centerpiece of the community's goal to increase economic diversification and to stimulate the local economy on a year-round basis. The addition of a wide variety of economic, cultural and educational offerings will improve the quality of life in the community. As the number of visitors increase, jobs will be created and opportunities for small business development will expand. Combined, these assets will encourage entrepreneurs, retirees, and families to move to Cordova, thereby adding to the growing number of beneficiaries of the Cordova Center Project.

U V | W | X | Y | Z | AA | AB | AC | AD | AE | AF | AG | AH | AI | AJ DAYS UNTIL DUE (T-MINUS) DATE COLOR CODE **Cordova Center Integration Schedule** Due Date within 30 Days Due Date within 60 Days 4 Phase II Integration Due Date within 90 Days 5 3/1/2013 9:55 Due Date within 91 Days or farther out **LEAD TIME** Schedule May-13 Jun-13 Aug-13 Sep-13 Nov-13 Oct-13 Dec-13 Jan-14 Feb-14 DAYS Jul-13 LEAD COMPLETE **ORDER DELIVERABLE** TIME BY DATE DATE CITY EVENTS / OPENING Planning Meetings Χ Χ Χ X Χ X Χ Χ Χ Χ X Χ Χ Weekly 10 Construction Complete 240 03/15/14 379 07/18/13 X Opening Ceremony 12/16/13 120 04/15/14 410 120 X 12 Grand Opening: Donors/Funding Agencies 12/23/13 04/22/14 417 **Open House: Community** 01/23/14 90 04/23/14 418 X FAM (Familiarization) Tour: Event Planners 01/05/14 90 04/05/14 400 X 12/16/13 X 180 470 5 First Scheduled Event 06/14/14 16 **PLANNING & ZONING** 17 Plat Survey 03/16/13 30 04/15/13 45 X Χ 45 18 Preliminary Plat Drawn 30 03/16/13 04/15/13 19 P&Z Commission Plat Approval 10 04/30/13 60 Χ 04/20/13 10/02/13 Χ 20 City Council Plat Approval 90 12/31/13 305 21 MARKETING 22 Construction Updates to Event Planner listserv X Χ X Χ X $X \mid X \mid$ X $X \mid X \mid X \mid$ Monthly 23 Cordova Center Marketing Booklet (Chamber) 01/30/13 60 03/31/13 30 X 24 Direct Mail to Event Planners, Agencies, Non-Profi 05/17/13 45 07/01/13 122 X X 25 Brochure with configuration/layout/service options 167 06/16/13 08/15/13 90 184 26 Convention promotion (ATIA, AK Chamber) 06/03/13 09/01/13 X 27 Web Presence on City Site 08/02/13 30 09/01/13 184 X X 28 Press Release re Cordova as Conf Destination 08/05/13 10 08/15/13 167 15 Χ 29 Press Release to identified Media re Opening 12/31/13 01/15/14 320 30 CONFERENCE FACILITY 31 Staff Hired 10/17/13 90 01/15/14 320 X 45 365 X 32 Conference Staff Trained 01/15/14 03/01/14 33 Tables, Chairs, Linens, Skirting 11/02/13 60 306 X 01/01/14 34 Coffee and Water Service Materials 12/17/13 60 02/15/14 351 X 35 Fee Schedule 04/01/13 90 06/30/13 121 X 36 Facility Rental Agreement Approved 30 121 05/31/13 06/30/13 37 Database of Local Food/Beverage Providers 08/17/13 45 10/01/13 214 Χ 38 Extension Cords, Microphone, other 01/16/14 30 02/15/14 351 Χ 39 INFORMATION TECHNOLOGY 40 Network Needs Assessment - Internal Χ 07/18/13 45 09/01/13 184 41 Internet Service Comparison 05/02/13 X 30 06/01/13 92 42 Network Server(s) Configuration 01/31/14 15 02/15/14 351 X 15 X 43 Workstation Upgrades and Configuration 351 01/31/14 02/15/14 44 Server and Workstation Installation 02/15/14 28 379 03/15/14 X

M U | V | W | X | Y | Z | AA | AB | AC | AD | AE | AF | AG | AH | AI | AJ DAYS UNTIL DUE (T-MINUS) DATE COLOR CODE Due Date within 30 Days **Cordova Center Integration Schedule** Due Date within 60 Days 4 Phase II Integration Due Date within 90 Days 5 3/1/2013 9:55 Due Date within 91 Days or farther out **LEAD TIME** Schedule Jun-13 Jul-13 Aug-13 Oct-13 Jan-14 Feb-14 May-13 **ORDER** LEAD COMPLETE **DELIVERABLE** TIME BY DATE DATE 05/26/11 45 Locution System 04/14/11 42 -645 46 Common Area Phones 28 06/17/11 07/15/11 -595 47 Office Phones -595 06/17/11 28 07/15/11 48 Phone Programming 06/17/11 28 07/15/11 -595 49 Pots Lines (FA, Elev Mon, Elev Phone, PSE, Fax) 06/17/11 28 07/15/11 -595 50 Printers 06/17/11 07/15/11 -595 51 Server/Network Gear 05/18/11 28 06/15/11 -625 52 WLAN 05/18/11 28 06/15/11 -625 53 Web Access/password for HVAC Monitoring 05/18/11 28 06/15/11 -625 54 Comcast Fiber and Coax Install 05/14/11 28 06/11/11 -629 55 **RECEPTION** 56 Reception Paper Recycle Bins 07/01/11 07/15/11 -595 14 14 57 Publice service equipment (blood pressure) 07/01/11 07/15/11 58 MAIL / COPY 59 Copy Paper Service 07/01/11 07/15/11 -595 -595 60 Office Supplies Service 07/01/11 14 07/15/11 61 Mailing Services 28 -595 06/17/11 07/15/11 -595 62 Mail Sorter Shelves w/Labels 06/17/11 28 07/15/11 63 Office Supply Shelving 07/08/11 07/15/11 -595 64 Shredders 07/08/11 07/15/11 -595 65 KITCHEN / FOOD SERVICE 66 RefrigeratorSupply & Install 07/01/11 07/15/11 14 -595 67 Soap Dispenser 07/01/11 14 07/15/11 -595 68 Paper Towel Dispensers 14 07/15/11 07/01/11 -595 69 Kitchen Supplies, Utencils, Paper goods etc 07/01/11 14 07/15/11 -595 70 Coffee Supply Stocking (Coffee, Condiments) 14 07/01/11 07/15/11 -595 71 Kitchenette Trash & Recycle Containers 07/01/11 07/15/11 -595 14 72 Coffee Machine 07/01/11 14 07/15/11 -595 73 Microwave Supply & Install 14 07/01/11 07/15/11 -595 74 TRANSPORTATION 75 EV Charging station and training 04/22/11 06/17/11 -623 76 Bike Racks 07/01/11 14 07/15/11 -595 77 **FACILITY MANAGEMENT** 78 Fire Alarm Monitoring Contract 06/15/11 05/25/11 21 -625 79 Security Contract 06/24/11 21 -595 07/15/11 80 Medical Kits 07/08/11 07/15/11 -595 81 Washington State Elevator Operating Permit 05/18/11 28 06/15/11 -625 82 Elevator Monitoring Contract -625 05/25/11 21 06/15/11 83 EMERGENCY RESPONSE PROCEDURES

M U | V | W | X | Y | Z | AA | AB | AC | AD | AE | AF | AG | AH | AI | AJ DAYS UNTIL DUE (T-MINUS) DATE COLOR CODE Due Date within 30 Days **Cordova Center Integration Schedule** Due Date within 60 Days 4 Phase II Integration Due Date within 90 Days 5 3/1/2013 9:55 Due Date within 91 Days or farther out **LEAD TIME** Schedule Aug-13 Sep-13 Oct-13 Nov-13 Jan-14 Feb-14 Apr-13 May-13 Jun-13 Jul-13 LEAD COMPLETE **ORDER DELIVERABLE** TIME BY DATE DATE 05/26/11 84 Design/select assembly areas 05/12/11 -645 85 Assembly area signage 04/21/11 35 05/26/11 -645 86 Elevator Lobby Evacuation Maps (1 per lobby) 04/21/11 35 05/26/11 -645 35 -645 87 Exit Assembly Area Map 04/21/11 05/26/11 88 **BUILDING MAINTENANCE** 89 HVAC Preventative Maintainence 07/01/11 14 07/15/11 -595 90 Facility Training 07/01/11 14 07/15/11 -595 91 Water/Waste Mgmt. Account 06/24/11 21 07/15/11 -595 92 PSE Elec. Bills 06/24/11 21 07/15/11 -595 93 Generator Maintenance Service 07/01/11 14 07/15/11 -595 94 Shower curtains 07/01/11 14 07/15/11 -595 95 Shower Soap disp. 07/01/11 14 07/15/11 -595 96 Trash Bags -595 07/01/11 14 07/15/11 97 Janitorial Supply Shelving 14 -595 07/01/11 07/15/11 98 Keys & Locks 06/17/11 28 07/15/11 -595 99 Trash Cabinets & Containers -595 07/01/11 07/15/11 100 Walk-Off Mats 07/01/11 14 07/15/11 -595 101 Paper Towel Holder 07/01/11 14 07/15/11 -595 102 Toilet Seat cover Holders 07/01/11 14 07/15/11 -595 103 Toilet Paper Holder 07/01/11 14 07/15/11 -595 104 Femine Product dispenser/disposal -595 07/01/11 14 07/15/11 105 MOVE COORDINATION 106 Mover coordination / meeting 06/17/11 28 07/15/11 -595 107 **FURNITURE** 108 Office Space 109 Office Trash Cans 07/01/11 14 07/15/11 -595 110 Workstations/Desk 56 06/04/11 07/30/11 -580 111 Office (task) Chairs 05/20/11 56 07/15/11 -595 112 Conference Rooms 113 Conference Room Tables 05/20/11 56 07/15/11 -595 05/20/11 56 -595 114 Conference Room Chairs 07/15/11 115 Sleeping Rooms 116 Beds 05/20/11 56 07/15/11 -595 05/20/11 56 117 Lamps 07/15/11 -595 118 Lockers 56 -595 05/20/11 07/15/11 119 Desk 56 -595 05/20/11 07/15/11 120 Common Areas 121 Televisions (lobby, exercise, dayroom) 07/01/11 14 07/15/11 -595 122 Exercise Equipment 28 -595 06/17/11 07/15/11 123 La-z-bobs 07/01/11 14 07/15/11 -595





February 4, 2013

Honorable Mayor and City Council City of Cordova P.O. Box 1210 Cordova, AK 99574

The Objective and Scope of the Audit of the Financial Statements

You have requested that we audit the financial statements of City of Cordova, Alaska (the "City"), which comprise governmental activities, business-type activities, aggregate discretely presented component units, each major fund, required budgetary comparison statements and aggregate remaining fund information as of and for the year ended December 31, 2012 which collectively comprise the basic financial statements. We have also been engaged to report on supplementary information that accompanies City of Cordova's financial statements.

The financial statements will include the City of Cordova, the primary government, Cordova Community Medical Center, Cordova School District, and Cordova Volunteer Fire Department. You acknowledge that we are the "group auditor" of the City's basic financial statements as of and for the year ended December 31, 2012. We will not audit the financial statements of Cordova Community Medical Center, a discreet component unit. Those financial statements will be audited by component auditors. Our firm, but a separate audit team, has audited the financial statement of the Cordova School District. In our professional judgment, the financial statements of the Cordova Community Medical Center and the Cordova School District constitute significant components of City of Cordova. Therefore, in connection with our audit, we intend to place reliance on and make reference in our report to financial statements of those components which will be or were audited by other auditors. We will communicate with the component auditors in accordance with professional standards. We deem this the most effective and efficient audit approach for these components.

We are pleased to confirm our acceptance and our understanding of this audit engagement by means of this letter.

Our audit will be conducted with the objective of our expressing an opinion on the financial statements. In addition, we will subject the following supplementary information to the auditing procedures applied in our audit of the financial statements and certain additional procedures, including comparing and reconciling such information directly to the underlying accounting and other records used to prepare the financial statements or to the financial statements themselves, and other additional procedures in accordance with auditing standards generally accepted in the United States of America and will provide an opinion on it in relation to the financial statements as a whole:

3601 "C" Street, Suite 600 * Anchorage, Alaska 99503 * (907) 278-8878 * Fax (907) 278-5779 * www.mcc-cpa.com

- 1. Schedule of Expenditures of Federal Awards.
- 2. Schedule of State Financial Assistance
- 3. Individual nonmajor fund statements and schedules

We will also perform the audit of City of Cordova as of December 31, 2012, so as to satisfy the audit requirements imposed by the Single Audit Act and the U. S. Office of Management and Budget (OMB) Circular No. A-133 and the State Single Audit Regulation 2 AAC 45 and the State of Alaska Audit Guide and Compliance Supplement for State Single Audits (the State Audit Guide).

The Responsibilities of the Auditor

We will conduct our audit in accordance with auditing standards generally accepted in the United States of America (GAAS); "Government Auditing Standards" issued by the Comptroller General of the United States; the provisions of the Single Audit Act, OMB Circular A-133, and OMB's Compliance Supplement; and State Single Audit Regulation 2 AAC 45 and the State Audit Guide. Those standards, circulars, supplements, and guides require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free from material misstatement. An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.

Because of the inherent limitations of an audit, together with the inherent limitations of internal control, an unavoidable risk that some material misstatements may not be detected exists, even though the audit is properly planned and performed in accordance with GAAS. Also, an audit is not designed to detect errors or fraud that are immaterial to the financial statements. The determination of abuse is subjective; therefore, Government Auditing Standards do not expect us to provide reasonable assurance of detecting abuse.

In making our risk assessments, we consider internal control relevant to the City's, preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. However, we will communicate to you in writing concerning any significant deficiencies or material weaknesses in internal control relevant to the audit of the financial statements that we have identified during the audit.

We will also communicate to the City Council (a) any fraud involving senior management and fraud (whether caused by senior management or other employees) that causes a material misstatement of the financial statements that becomes known to us during the audit, and (b) any instances of noncompliance with laws and regulations that we become aware of during the audit (unless they are clearly inconsequential).

Our reports on internal control will include any significant deficiencies and material weaknesses in controls of which we become aware as a result of obtaining an understanding of internal control and

performing tests of internal control consistent with requirements of the standards and circulars identified above. Our reports on compliance matters will address material errors, fraud, abuse, violations of compliance obligations, and other responsibilities imposed by state and federal statutes and regulations or assumed by contracts, and any state or federal grant, entitlement, or loan program questioned costs of which we become aware, consistent with requirements of the standards and circulars identified above.

The Responsibilities of Management and Identification of the Applicable Financial Reporting Framework

Our audit will be conducted on the basis that management and when appropriate, the City Council, acknowledge and understand that they have responsibility:

- a. For the preparation and fair presentation of the financial statements in accordance with accounting principles generally accepted in the United States of America;
- b. For the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error;
- c. For establishing and maintaining effective internal control over financial reporting and for informing us of all significant deficiencies and material weaknesses in the design or operation of such controls of which it has knowledge;
- d. For identifying and ensuring that the entity complies with the laws and regulations applicable to its activities, and for informing us about all known material violations of such laws or regulations. In addition, management is responsible for the design and implementation of programs and controls to prevent and detect fraud, and for informing us about all known or suspected fraud affecting the entity involving management, employees who have significant roles in internal control, and others where the fraud could have a material effect on the financial statements. Management is also responsible for informing us of its knowledge of any allegations of fraud or suspected fraud affecting the entity received in communications from employees, former employees, analysts, regulators, or others;
- e. For (a) making us aware of significant vendor relationships where the vendor is responsible for program compliance, (b) following up and taking corrective action on audit findings, including the preparation of a summary schedule of prior audit findings, and a corrective action plan, and (c) report distribution including submitting the reporting package(s);and

f. To provide us with:

- (1) Access to all information of which management is aware that is relevant to the preparation and fair presentation of the financial statements such as records, documentation, and other matters;
- (2) Additional information that we may request from management for the purpose of the audit;

- (3) Unrestricted access to persons within the entity from whom we determine it necessary to obtain audit evidence;
- (4) When applicable, a summary schedule of prior audit findings for inclusion in the single audit reporting package; and
- (5) If applicable, responses to any findings reported on the schedule of findings and questioned costs.

As part of our audit process, we will request from management and when appropriate, the City Council, written confirmation concerning representations made to us in connection with the audit including among other items:

- a. That management has fulfilled its responsibilities as set out in the terms of this letter; and
- b. That it believes the effects of any uncorrected misstatements aggregated by us during the current engagement and pertaining to the latest period presented are immaterial, both individually and in the aggregate, to the financial statements taken as a whole.

Management is responsible for identifying and ensuring that the City complies with the laws and regulations applicable to its activities, and for informing us about all known material violations of such laws or regulations. In addition, management is responsible for the design and implementation of programs and controls to prevent and detect fraud or abuse, and for informing us about all known or suspected fraud or abuse affecting the entity involving management, employees who have significant roles in internal control, and others where the fraud or abuse could have a material effect on the financial statements or compliance. Management is also responsible for informing us of its knowledge of any allegations of fraud or abuse or suspected fraud or abuse affecting the entity received in communications from employees, former employees, analysts, regulators, short sellers, or others.

Management is responsible for the preparation of the supplementary information in accordance with accounting principles generally accepted in the United States of America. Management agrees to include the auditor's report on the supplementary information in any document that contains the supplementary information and that indicates that the auditor has reported on such supplementary information. Management also agrees to present the supplementary information with the audited financial statements or, if the supplementary information will not be presented with audited financial statements, to make the audited financial statements readily available to the intended users of the supplementary information no later than the date of issuance of the supplementary information and the auditor's report thereon.

The City Council is responsible for informing us of its views about the risks of fraud or abuse within the entity, and its knowledge of any fraud or abuse or suspected fraud or abuse affecting the entity.

The City agrees that it will not associate us with any public or private securities offering without first obtaining our consent. Therefore, the City agrees to contact us before it includes our reports or otherwise makes reference to us, in any public or private securities offering.

Our association with an official statement is a matter for which separate arrangements will be necessary. The City agrees to provide us with printer's proofs or masters of such offering documents for our review and approval before printing and with a copy of the final reproduced material for our approval before it is distributed. In the event our auditor/client relationship has been terminated when the City seeks such consent, we will be under no obligation to grant such consent or approval.

Because Mikunda, Cottrell & Co. will rely on the City and its management and City Council to discharge the foregoing responsibilities, the City holds harmless and releases Mikunda, Cottrell & Co., its partners, and employees from all claims, liabilities, losses, and costs arising in circumstances where there has been a knowing misrepresentation by a member of the City's management which has caused, in any respect, Mikunda, Cottrell's breach of contract or negligence. This provision shall survive the termination of this arrangement for services.

City of Cordova's Records and Assistance

If circumstances arise relating to the condition of the City's records, the availability of appropriate audit evidence, or indications of a significant risk of material misstatement of the financial statements because of error, fraudulent financial reporting, or misappropriation of assets, which in our professional judgment, prevent us from completing the audit or forming an opinion, we retain the unilateral right to take any course of action permitted by professional standards, including declining to express an opinion, issue a report, or withdraw from the engagement.

During the course of our engagement, we may accumulate records containing data that should be reflected in the City's books and records. The City will determine that all such data, if necessary, will be so reflected. Accordingly, the City will not expect us to maintain copies of such records in our possession.

The assistance to be supplied by City personnel, including the preparation of schedules and analyses of accounts, will be discussed and coordinated with Jon Stavig, Finance Director. The timely and accurate completion of this work is an essential condition to our completion of the audit and issuance of our audit report.

In connection with our audit, you have requested us to perform certain non-audit services necessary for the preparation of the financial statements, including:

- Preparation of the financial statements and footnotes
- Preparation of the data collection form
- Assistance with cash to accrual entries

The independence standards of the "Government Auditing Standards" issued by the Comptroller General of the United States *GAS* require that the auditor maintain independence so that opinions, findings, conclusions, judgments, and recommendations will be impartial and viewed as impartial by reasonable and informed third parties. Before we agree to provide a non-audit service to City of Cordova, we determine whether providing such a service would create a significant threat to our independence for GAS audit purposes, either by itself or in aggregate with other non-audit services provided. A critical component of our determination is consideration of management's ability to effectively oversee the non-audit service to be performed. City of Cordova has agreed that Jon Stavig, Finance Director, possesses suitable skill, knowledge, or experience and that the individual

understands the services listed above to be performed sufficiently to oversee them. Accordingly, the management of City of Cordova agrees to the following:

- 1. City of Cordova has designated Jon Stavig, a senior member of management, who possesses suitable skill, knowledge, and experience to oversee the services.
- 2. City of Cordova will assume all management responsibilities for subject matter and scope of the nonaudit services listed above.
- 3. City of Cordova will evaluate the adequacy and results of the services performed.
- 4. City of Cordova accepts responsibility for the results and ultimate use of the services.

GAS further requires we establish an understanding with the management (and those charged with governance) of City of Cordova of the objectives of the non-audit service, the services to be performed, the entity's acceptance of its responsibilities, the auditor's responsibilities, and any limitations of the non-audit service. We believe this letter documents that understanding.

Other Relevant Information

In accordance with Government Auditing Standards, a copy of our most recent peer review report is enclosed, for your information.

Fees, Costs, and Access to Workpapers

Our fees for the audit and accounting services described above are based upon the value of the services performed and the time required by the individuals assigned to the engagement, plus direct expenses. Our fee estimate and completion of our work is based upon the following criteria:

- a. Anticipated cooperation from City personnel
- b. Timely responses to our inquiries
- c. Timely completion and delivery of client assistance requests
- d. Timely communication of all significant accounting and financial reporting matters
- e. The assumption that unexpected circumstances will not be encountered during the engagement

If any of the aforementioned criteria are not met, then fees may increase. Interim billings will be submitted as work progresses and as expenses are incurred. Billings are due upon submission.

Our professional service fee for the audit will not exceed \$45,700, plus out of pocket costs for travel, lodging, typing, printing, etc. unless the scope of the engagement is changed, the assistance which the City has agreed to furnish is not provided, or unexpected conditions are encountered, in which case we will discuss the situation with you before proceeding. For example, a significant increase in the number of major federal or state programs for single audit purposes, and/or ARRA programs, may result in an increase in the fee that cannot be anticipated at this time. Also, in the prior couple of years, we have had to make a significant number of adjusting journal entries, correct the grant analysis worksheets and federal and state grant schedules, and update the depreciation schedules, etc.

The additional time for these services is not included in the above audit fee and if required for the FY 12 audit, will be billed separately. All other provisions of this letter will survive any fee adjustment.

In the event we are requested or authorized by City of Cordova or are required by government regulation, subpoena, or other legal process to produce our documents or our personnel as witnesses with respect to our engagement for City of Cordova, the City will, so long as we are not a party to the proceeding in which the information is sought, reimburse us for our professional time and expenses, as well as the fees and expenses of our counsel, incurred in responding to such requests.

The documentation for this engagement is the property of Mikunda, Cottrell & Co. However, you acknowledge and grant your assent that representatives of the cognizant or oversight agency or their designee, other government audit staffs, and the U.S. Government Accountability Office shall have access to the audit documentation upon their request and that we shall maintain the audit documentation for a period of at least three years after the date of the report, or for a longer period if we are requested to do so by the cognizant or oversight agency. Access to requested documentation will be provided under the supervision of Mikunda, Cottrell & Co. audit personnel and at a location designated by our Firm.

Claim Resolution

City of Cordova and Mikunda, Cottrell & Co. agree that no claim arising out of services rendered pursuant to this agreement shall be filed more than two years after the date of the audit report issued by Mikunda, Cottrell & Co. or the date of this arrangement letter if no report has been issued. City of Cordova waives any claim for punitive damages. Mikunda, Cottrell & Co.'s liability for all claims, damages and costs of City of Cordova arising from this engagement is limited to the amount of fees paid by City of Cordova to Mikunda, Cottrell & Co. for the services rendered under this arrangement letter.

Reporting

We will issue a written report upon completion of our audit of City of Cordova's financial statements. Our report will be addressed to the City Council. We cannot provide assurance that an unmodified opinion will be expressed. Circumstances may arise in which it is necessary for us to modify our opinion, add an emphasis-of-matter or other-matter paragraph(s), or withdraw from the engagement.

In addition to our report on City of Cordova's financial statements, we will also issue the following types of reports:

- Reports on the fairness of the presentation of City of Cordova's schedule of expenditures of federal awards and schedule state financial assistance for the year ending December 31, 2012.
- Reports on internal control related to the financial statements, and major programs. These
 reports will describe the scope of testing of internal control and the results of our tests of
 internal controls.
- Reports on compliance with laws, regulations, and the provisions of contracts or grant agreements. We will report on any noncompliance which could have a material effect on the

financial statements and any noncompliance which could have a material effect, as defined by OMB Circular A-133 and/or the State Audit Guide, on each major program.

• A schedule of findings and questioned costs.

This letter constitutes the complete and exclusive statement of agreement between Mikunda, Cottrell & Co. and City of Cordova, superseding all proposals, oral or written, and all other communications, with respect to the terms of the engagement between the parties.

Please sign and return the attached copy of this letter to indicate your acknowledgment of, and agreement with, the arrangements for our audit of the financial statements including our respective responsibilities.

Michalla Drew	
Michelle Drew, CPA Audit Director, Mikunda, Cottrell & Co.	
Confirmed on behalf of City of Cordova:	
City Council Representative	Date
City Manager	Date
Finance Director	Date



Bellevue Boise Grandview Moses Lake Omak Othello Quincy Spokane Tri-Cities Walla Walla Wenatchee Yakima

To the Shareholders of Mikunda, Cottrell & Co. Inc.

And the Peer Review Committee of the CalCPA Peer Review Program

System Review Report

We have reviewed the system of quality control for the accounting and auditing practice of Mikunda, Cottrell & Co., Inc. (the firm) in effect for the year ended March 31, 2010. Our peer review was conducted in accordance with the Standards for Performing and Reporting on Peer Reviews established by the Peer Review Board of the American Institute of Certified Public Accountants. The firm is responsible for designing a system of quality control and complying with it to provide the firm with reasonable assurance of performing and reporting in conformity with applicable professional standards in all material respects. Our responsibility is to express an opinion on the design of the system of quality control and the firm's compliance therewith based on our review. The nature, objectives, scope, limitations of, and the procedures performed in a System Review are described in the standards at www.aicpa.org/prsummary.

As required by the standards, engagements selected for review included (engagements performed under *Government Auditing Standards* and audits of employee benefit plans).

In our opinion, the system of quality control for the accounting and auditing practice of Mikunda, Cottrell & Co., Inc., in effect for the year ended March 31, 2010, has been suitably designed and complied with to provide the firm with reasonable assurance of performing and reporting in conformity with applicable professional standards in all material respects. Firms can receive a rating of pass, pass with deficiency(ies) or fail. Mikunda, Cottrell & Co., Inc. has received a peer review rating of pass.

July 28, 2010

Bellevue, Washington

Pending agenda:

Capital Priorities List Meeting –March 2013, June 2013, September 2013, December 2013

Committees:

- Cordova Center Committee: Tim Joyce, Sylvia Lange, Dan Logan, Mark Lynch, Sam Greenwood, Moe Zamarron, Dave Reggiani, Cathy Sherman
- Fisheries Advisory Committee: David Reggiani, PWSAC; Ken Roemhildt, Seafood Sales; Jim Holley, AML; Torie Baker, Marine Advisory Program Coordinator; John Bocci; and Jeremy Botz, ADF&G
- Cordova Trails Committee: Elizabeth Senear, VACANCY, Jim Kallander, Toni Godes, and David Zastrow
- **Public Services Building Design Committee**: David Reggiani Chairman, Chief Bob (Griffiths), Martin Moe, Jim Kacsh, Dick Groff, Mike Hicks, Tom Bailer
- *E-911 Committee*: Chief Bob Griffiths Chairman, Bret Bradford, Gray Graham, Dick Groff, Mike Hicks (and/or Paul Trumblee), David Allison, George Covel
- City Manager Assessment Committee: Cindy Bradford, Mark Frohnapfel, Don Sjostedt, Kelly Weaverling, EJ Cheshier, James Kacsh, Dave Reggiani

Calendars:

3 months of calendars are attached hereto March 2013; April 2013; May 2013

March 2013

Sun	Mon	Tue	Wed	Thu	Fri	Sat
Location Legend CH-City Hall Confer- ence Room LMR-Library Mtg Rm	HSL-High School Library				Absentee voting at City Hall	2
3	Absentee voting at City Hall	5 Cordova Regular Election Polls open 7a—8p LMR	6 7:30 reg mtg LMR	7	8	9
10	11 5:30 Parks & Rec LMR	12 6:30 P&Z LMR	13 7:00 Sch Bd HSL 7:00 Hrbr Cms CH	14 7:00 special mtg to certify election	15	16
17	18	19	20 tbd HSB LMR 7:15 pub hrg LMR 7:30 reg mtg LMR	21	22	23
24	25	26	27	28	29	30
31					Location Legend CH-City Hall Confer- ence Room LMR-Library Mtg Rm	HSL-High School Library

April 2013

Sun	Mon	Tue	Wed	Thu	Fri	Sat
Location Legend CH-City Hall Confer- ence Room LMR-Library Mtg Rm HSL-High School Li- brary	I	2	3 tbd HSB LMR 7:15 pub hrg (maybe) LMR 7:30 reg mtg LMR	4	5	6
7	8 5:30 Parks & Rec LMR	9 6:30 P&Z LMR	10 7:00 Sch Bd HSL 7:00 Hrbr Cms CH	11	12	13
14	15 7:00 BoE Hearing	16	7:15 pub hrg (maybe) LMR 7:30 reg mtg LMR	18	19	20
21	22 City's Financial Audit	23	24 City's Financial Audit	25	26 City's Financial Audit	27
28	29	30				Location Legend CH-City Hall Conference Room LMR-Library Mtg Rm HSL-High School Library

May 2013

Sun	Mon	Tue	Wed	Thu	Fri	Sat
Location Legend CH-City Hall Confer- ence Room LMR-Library Mtg Rm HSL-High School Li- brary			tbd HSB LMR 7:15 pub hrg (maybe) LMR 7:30 reg mtg LMR	2	3	4
5	6	7	8 7:00 Sch Bd HSL 7:00 Hrbr Cms CH	9	10	11
12	13 5:30 Parks & Rec LMR	14 6:30 P&Z LMR	15 7:15 pub hrg (maybe) LMR 7:30 reg mtg LMR	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	Location Legend CH-City Hall Conference Room LMR-Library Mtg Rm HSL-High School Library