

BLOCK 70 PARKING GARAGE DEVELOPMENT AGREEMENT

THIS AGREEMENT made effective this 31st day of August, 2006, is between the Municipality of Anchorage, a municipal corporation and its assigns ("MOA") and the Alaska Center for Convention & Trade, LLC, an Alaska limited liability company ("ACCT").

Recitals

- A. MOA has undertaken the development of a new Anchorage civic and convention center through design build procurement RFP 24-P009, to be built on Block 80 in downtown Anchorage. At the time of procurement, the Alaska Housing Finance Corporation ("AHFC") owned Block 80 and used it for parking for Atwood Building tenants. One element of RFP 24-P009 required proposers to recommend changes for the coordination and relocation of parking from Block 80 to other locations and to address the lack of adequate parking in downtown Anchorage. ACCT was the successful proposer for RFP 24-P009. It recommended and provided initial designs for the construction of a new parking garage in a location approximate to the Atwood Office Building and the new convention center.
- B. In consummation of the procurement, the MOA, through its successor-in-interest CivicVentures, entered a Development Agreement, dated November 10, 2004 and an Amended and Restated Development Agreement, dated effective December 31, 2006 (collectively "Convention Center Development Agreements"), with ACCT. The Convention Center Development Agreements require the MOA and ACCT to work cooperatively to explore options for maximizing parking available for the civic and convention center, including the construction of a new parking facility on a site agreeable to the MOA and ACCT. The Amended and Restated Development Agreement further provides the MOA with the right to elect to construct a parking garage with or through ACCT, so long as such election is made prior to substantial completion of the convention center.
- C. To provide for the siting of the convention center on Block 80, the MOA, through the Anchorage Community Development Authority, entered into the Property Exchange Agreement and the Agreement Conveying Parking Rights, both dated April 12, 2006, (collectively, the "Parking Agreements") with AHFC. The Parking Agreements established the terms of the MOA acquisition of Block 80 for use for the convention center and, among other covenants, required the MOA and

AHFC to work toward long-term solutions for substitute parking for the Atwood Building.

- D. Under the terms of the Parking Agreements, the MOA transferred title to the south half of Block 70 to AHFC to provide for a location for substitute parking for the Atwood Building. The Parking Agreements further contemplated the possibility of funding for a parking garage on the south half of Block 70, which would better serve the needs of the State of Alaska as well as the needs of MOA in the development of downtown Anchorage and the new civic and convention center.
- E. Following execution of the Parking Agreements, AHFC sought and received legislative authorization under Chapter 47 of the Session Laws of Alaska 2006 to finance the purchase of a parking garage from the MOA or other potential sellers or developers. AHFC is willing to purchase a parking garage from the MOA if the MOA, using its contractual rights under its procurement process and the Convention Center Development Agreements, would agree to construct a parking garage on Block 70.
- F. The MOA is willing to cooperate with AHFC to develop and sell a parking garage to AHFC. To achieve this aim, the MOA, through this Agreement, which shall be binding upon the MOA only after approval of this Agreement by the Anchorage Assembly, exercises its rights under the Amended and Restated Development Agreement to elect to construct a parking garage through ACCT. The MOA desires to have the development of the parking garage occur contemporaneously with the development of the new civic and convention center and the adjacent improvements to various streets.
- G. ACCT is willing to proceed with a development of a parking garage. Relying in part on its prior work done on developing a parking solution and to further facilitate the project by developing certain baseline information in order for AHFC and the MOA to reach agreement, ACCT has undertaken numerous predevelopment activities without promise of compensation, including, but not limited to, preparing a preliminary project narrative, a preliminary construction budget, 10 percent design drawings, and a preliminary construction schedule. ACCT has also addressed and identified concerns relating to impacts to traffic, financing requirements, public hearings, and sales price.
- H. Based upon the MOA's desire to sell a parking garage to AHFC and based upon ACCT's initial work of identifying development costs and needs for the parking garage, ACCT and the MOA wish to enter into this Development Agreement to

set forth the contractual obligations of each party as the parking garage project progresses. Because AHFC is the ultimate purchaser of the parking garage and the garage must meet the needs of AHFC and the tenants of the Atwood Office Building, it is intended, unless otherwise stated herein or unless expressly reserved by the MOA in its separate written agreement with AHFC, that where approvals are required by the MOA of design, schedules, deliverables or other performances by ACCT, that responsibility for such approvals will be transferred and assigned to AHFC under the terms of the Agreement to License, Assign, Construct, and Purchase the Block 70 Parking Garage entered into contemporaneously with this Block 70 Parking Garage Development Agreement.

In recognition of the recitals, which are material to this Agreement, the parties hereby agree as follows:

1. Definitions.

1.1. Additional Defined Terms. Capitalized words used in this Agreement that are not defined in Section 1 shall have the same meaning as the capitalized words under the Design Build Contract attached as Exhibit E to this Agreement. Words of technical usage, even if not capitalized, including but not limited to "substantial completion," "hazardous materials," "design-builder," "stipulated sum," or "change orders" shall have a common meaning in both this Agreement and the Design-Build Contract. However, the reference to "Owner" in the Design-Build Contract shall mean ACCT until the date of Acknowledgement of Substantial Completion, after which it shall mean the MOA or its assigns. The MOA will be an additional and required signatory to the Acknowledgement of Substantial Completion.

1.2. "Agreement" means this Block 70 Parking Garage Development Agreement.

1.3. "Block 70 Parking Garage" means the garage to be developed and constructed under this Agreement.

1.4. "Design-Build Contract" means the agreement between ACCT and its design-builder for the Project, which shall be substantially in the form of AIA Form 141 "Standard Form of Agreements between Owner and Design/Builder" (2004 ed.) and Exhibits A and C thereto, the form of which is attached as Exhibit "E" to this Agreement.

- 1.5. **"Effective Date"** means August 31, 2006.
- 1.6. **"Notice To Proceed"** means the written notice from the MOA to ACCT directing it to proceed with the Phase II work and identifying the Design Build Documents and the Phase I deliverables that form the basis for the Phase II work, including any negotiated modifications to such deliverables.
- 1.7. **"Parties"** means ACCT and the MOA and its assigns.
- 1.8. **"Phase I"** means the period of time from the Effective Date of this Agreement until the Notice to Proceed to Phase II work, or notice of termination.
- 1.9. **"Phase II"** means the period of time from the issuance of the Notice to Proceed for Phase II work until the date of MOA's acceptance of final completion as set forth in article A.9.10 in Exhibit A to the Design Build Contract.
- 1.10. **"Pricing Documents"** means that level of design plans and specifications sufficient for the design-builder to provide a stipulated sum price for the completion of all design and construction necessary to complete the Project under the terms and conditions of the Design Build Contract.
- 1.11. **"Project"** means the design and construction of the Block 70 Parking Garage from the beginning of Pre-development through MOA's acceptance of final completion as set forth in Article A.9.10 in Exhibit A to the Design Build Contract.
- 1.12. **"Property"** means that half of Block 70 more particularly described as Tract 1, Block 70, Anchorage Original Townsite, according to Plat No. _____, situated in Anchorage Recording District, Third Judicial District, State of Alaska.
- 1.13. **"Purchase and Sale Agreement"** means that Agreement to License, Assign, Construct, and Purchase the Block 70 Parking Garage entered into between the MOA and AHFC contemporaneously with this Agreement.
2. **Development Phases.** Obligations to be performed prior to or under this Agreement shall be divided into the Predevelopment Phase, Phase I, and Phase II.
3. **Predevelopment Phase. 10% Plans and Phase Approval.**
- 3.1 **Scope of Work.** The scope of work for Predevelopment Phase shall include development and completion of Predevelopment Phase deliverables. Predevelopment Phase deliverables shall include a Project

narrative, a preliminary Project budget, 10% design level drawings, a preliminary Project schedule, and a final budget for Phase I deliverables all as further identified in this Section.

3.1.1 Preliminary Project Narrative. ACCT shall develop a preliminary Project narrative, to be incorporated as **Exhibit A** to this Agreement. The preliminary Project narrative will identify salient design objectives and functional goals of the Project and will provide an objective description of how the Project will appear and function at completion. The Project narrative shall guide the preparation of the Project design and preliminary Project budget. ACCT and the MOA will work collaboratively on the narrative before it is finalized as part of the Phase I deliverables.

3.1.2 Preliminary Project Budget. ACCT shall prepare a preliminary Project budget, to be incorporated as **Exhibit B** to this Agreement. The preliminary Project budget provides a preliminary analysis of the viability of the Project. Excluding the cost of Block 70, the preliminary Project budget, shall be comprehensive by category as to all Project expenses, including, but not limited to: preliminary consultant expenses of both ACCT and MOA; recoverable expenses incurred by ACCT or its consultants during the Predevelopment Phase; developer fees; contingency amounts and categories; financing costs; and the cost of design and construction. Notwithstanding the above, however, the Project budget shall not be construed to be a guaranteed maximum price, nor will it be representative of the final budget. All line items are subject to change in the final Project budget as the risks of the Project are better ascertained, including the developer fee and contingency amounts and categories.

3.1.3 10% Design Level Drawings. ACCT shall prepare 10% design level drawings for the Block 70 Parking Garage that reflect the features identified in the Project narrative, including site placement and general plan view of the parking structure. The 10% design level drawings shall be incorporated as **Exhibit C** to this Agreement. **Exhibit C**

contains the current preliminary plans as of the date this Agreement is signed by the Parties.

3.1.4 Preliminary Project Schedule. ACCT shall furnish a preliminary Project schedule to be incorporated as **Exhibit D** to this Agreement. The preliminary Project schedule shall identify milestones for the design and construction of the Project, including a construction start date, a substantial completion date, and anticipated dates for required approvals of Phase I and Phase II work in order for the Project to proceed on a timely basis.

3.1.5 Final Budget for Phase I Deliverables. Notwithstanding Section 3.1.2, ACCT shall prepare a final budget for Phase I deliverables, which shall be incorporated as a line item to Exhibit B to this Agreement. The budget shall identify fees and costs of ACCT and its consultants for Phase I deliverables that shall be paid according to the terms of Section 6 of this Agreement.

3.1.6 MOA Required Design Items. Certain design features are identified in the Purchase and Sale Agreement at section 4.2.1 that will remain part of the Project and not to be changed without written consent of the mayor of the MOA, even after assignment. The required design of the elevator stair tower and the design of the building skin are attached hereto as **Exhibit G** and **Exhibit H** respectively.

3.2 Coordination. The Parties shall consult and coordinate with AHFC for the development of all Predevelopment Phase deliverables. Neither ACCT nor MOA warrants or represents that concurrence will be reached on all issues. However, ACCT will endeavor to assist with due diligence to achieve concurrence on all material Project elements.

3.3 Payment. ACCT fees for Predevelopment Phase deliverables shall be determined under Section 6 of this Agreement.

3.4 Execution of Agreement and Binding Effect. Execution of this Agreement by the MOA shall constitute the MOA's acceptance of the Pre-Development Phase deliverables. However, the MOA shall not execute this

Agreement until AHFC has signed the Purchase and Sale Agreement. Written notice to proceed for the Phase I work based upon the deliverables set forth in section 3.1 shall be deemed given upon execution of the Purchase and Sale Agreement. This Agreement shall not be binding upon, or give rise to any obligations of the MOA until this Agreement and the Purchase and Sale Agreement have been approved by the Anchorage Assembly.

4. Phase I. The Development of the Stipulated Sum and the Pricing Documents.

4.1 Scope of Work. During Phase I of the Project, ACCT will complete the design and development of the Project to a level of design drawings and specifications sufficient for ACCT to propose to the MOA a lump sum to complete the design and construction of the Project. The scope of work for Phase I shall include provision by ACCT of the following deliverables: the final Project narrative, a final Project budget, the Pricing Documents, a Project schedule, the Design Build Contract, and copies of all other agreements between ACCT and its other consultants for the design and construction of the Project. The time for delivery of the Phase I deliverables will be established as part of the Pre-Development Phase Schedule attached as Exhibit D to this Agreement. Any delay in any party's failure to meet a deadline set by the preliminary Schedule shall extend the time for the other party's performance by an equal number of days for the performance of Phase I work and the deadline to issue the Notice to Proceed to Phase II. Notwithstanding an assignment by MOA of its rights under this Agreement to AHFC, ACCT shall also provide a copy of the deliverables to MOA at the same time it provides a copy to AHFC.

4.1.1 Final Project Narrative. ACCT shall develop and provide a final Project narrative. The final Project narrative will identify the structural features and design elements of the Block 70 Parking Garage whose inclusion does not exceed the final Project budget. The MOA covenants and represents that it will accurately advise ACCT of all elements it requires to be in the Project as part of the Phase I process. Should MOA issue the Notice to Proceed under Section 4.4 of this Agreement, the final Project narrative shall be incorporated as part of the Design-Build Documents as set forth in section 1.1 of the Design-Build Contract between ACCT and the design-builder. Should MOA issue the Notice to Proceed under Section 4.4 of this Agreement, the Final Project Narrative, as amended, if applicable, per the terms of Section 4.4 of this Agreement, shall be incorporated as Exhibit A-1 to this Agreement and shall be incorporated by reference into the Notice to Proceed. The final Project

Narrative will include the design elements set forth in the Purchase and Sale Agreement Section 4.2.1, including but not limited to those features shown graphically on Exhibits G and H unless modified by consent of the MOA, in accordance with section 3.2.5 of the Purchase and Sale Agreement.

4.1.2 Final Project Budget. ACCT shall develop and provide a Final Project Budget. The Final Project Budget will set forth all fixed cost components and allowance components, the Phase II developer fees and MOA contingency fees, the Stipulated Sum for the design build construction of the Project, AHFC costs of development and bonding, and all other fees and costs of MOA and its consultants required for completion of the Project. The allowance components are set forth as "soft costs" in the Budget, Exhibit B. The final Project budget shall be in compliance with Chapter 47 of the Session Laws of Alaska 2006. Should MOA issue the Notice to Proceed under Section 4.4 of this Agreement, the final Project budget, as amended, if applicable, per the terms of Section 4.4. of this Agreement, shall be incorporated as Exhibit B-1 to this Agreement and shall be incorporated by reference into the Notice to Proceed. The line items on the budget include items that are under the control and the responsibility of ACCT and its consultants and the design builder and items under the direct control and responsibility of the MOA or its assigns. At the time a Notice to Proceed is executed by the MOA and approved by ACCT, both ACCT and the MOA shall be limited to expenditures on the line items allocated to them under the final Project budget, unless a modification or equitable adjustment is otherwise allowed by this Agreement.

4.1.3 Pricing Documents. ACCT shall develop and provide the Pricing Documents for the Project that reflects the features identified in the final Project narrative and final Project budget. The design will comply with all required and applicable local, state, and national codes and regulations. The drawings will be to a level of design sufficient for ACCT's design-build contractor to give a firm Stipulated Sum to complete the design and provide all labor, and materials to complete construction of the Project. Should the MOA issue the Notice to Proceed under Section 4.4 of this Agreement, the Pricing Documents, as amended, if applicable, per the terms of Section 4.4. of this Agreement, shall be incorporated as Exhibit C-1 to this Agreement, shall be incorporated by reference into the Notice to Proceed, and shall be incorporated as part of the Design-Build Documents

as set forth in section 1.1 of the Design-Build Contract between ACCT and the design-builder.

4.1.3.1 Approval of Drawings. MOA's approval of the drawings and specifications shall be limited to providing a certification that the building design will meet the MOA's Project needs, including such requirements as established under the Purchase and Sale Agreement. The MOA's approval of drawings and specifications shall not constitute a waiver of MOA's expectation that the design complies with any applicable codes, statutes, or regulations applicable to the Project. Such compliance shall be the responsibility of ACCT and its design-builder.

4.1.4 Final Project Schedule. ACCT shall develop and provide a final Project schedule for design and construction of the Project. Should the MOA issue the Notice to Proceed under Section 4.4 of this Agreement, the final Project schedule, as amended, if applicable, per the terms of Section 4.4 of this Agreement, shall be incorporated as Exhibit D-1 to this Agreement, shall be incorporated by reference into the Notice to Proceed, and shall be incorporated as part of the Design-Build Documents as set forth in section 1.1 of the Design-Build Contract between ACCT and the design-builder. The final Project schedule will incorporate the same schedule ACCT uses for its Design-Build Contract with its design-builder.

4.1.5 Design Build Contract. ACCT shall develop and provide a final Design-Build Contract for the Project setting forth the obligations of the design-builder to undertake the work, the obligations of ACCT acting as the "Owner," until the date of Acceptance of Substantial Completion, and the rights and obligations of MOA as "Owner" following the date of Acknowledgment of Substantial Completion. At a minimum, the Design-Build Contract shall: identify the Stipulated Sum for the Project payable to the design-builder, identify Project criteria, set forth the final Project schedule, set forth the requirements necessary to complete the Project including design, permitting and governmental approval, identify that the MOA shall be an additional and required signatory to the Acknowledgment of Substantial Completion, and identify all available remedies to the MOA should it become necessary to remove ACCT and its contractors from the Project. The Design-Build Contract shall be in substantial compliance with Exhibit E to this Agreement and shall be subject to MOA approval.

4.2 MOA Cost Estimate. The MOA may retain a consultant of its own choosing to provide independent third-party construction cost estimating and to verify the reasonableness of ACCT's proposed budget. The MOA shall notify ACCT of the identification of its consultant within fifteen (15) calendar days of the Effective Date of this Agreement. ACCT and MOA's consultant shall engage in a cost reconciliation process following MOA's consultant's review of ACCT's proposed Project budget. Per Section 4.4 of this Agreement, the MOA may elect not to proceed to Phase II, in its sole discretion, if its consultant and ACCT are unable to resolve budget differences after ACCT's delivery of its final and best price.

4.3 Costs and Fees. The lump sum costs and fee for performing the Phase I scope of work (exclusive of the Pre-development costs) shall not exceed ONE MILLION SIX HUNDRED TWENTY SEVEN THOUSAND FIVE HUNDRED and NO 100's DOLLARS (\$1,627,500), inclusive of all third party costs and development fees of ACCT as set forth in Exhibit B to this Agreement. Costs and fees shall be payable in accordance with Section 6.2 of this Agreement.

4.4 Notice To Proceed to Phase II. Upon delivery of the Phase I deliverables identified in Section 4.1 of this Agreement, the MOA shall have the right to review all such documentation and elect in its sole and exclusive discretion, based upon such review, whether to proceed to Phase II of the Project within the time frame set forth in Exhibit D-1 to this Agreement. The MOA may further negotiate the terms of the Pricing Documents, the Final Project Budget, and the final Schedule, and other Phase I deliverables. If the MOA elects not to proceed to Phase II, it shall provide ACCT with written reasons for such election. The provision of written reasons for MOA's election shall be solely for the purpose of facilitating further discussions between the Parties, and shall not be construed as a limitation upon MOA's right to elect not to proceed to Phase II for any reason in its sole and exclusive discretion. The Parties shall confer to attempt to resolve any differences. If the parties are unable to resolve their concerns within ten (10) calendar days from the date of the MOA's election not to proceed, either ACCT or the MOA may terminate this Agreement with written notice to the other. If the Parties agree on a revised set of Phase I deliverables, then the revised deliverables shall be incorporated into this Agreement and the Design-Build Contract and shall be incorporated by reference into the written Notice to Proceed. The issuance of the Notice to Proceed shall be contingent upon satisfaction of the terms of the Purchase and Sale Agreement and Section 5.2 of this Agreement and the Notice to Proceed shall warrant and represent that such conditions have been satisfied by the MOA or its assigns.

5. Phase II Construction and Management.

5.1 Scope of Work. The scope of work for Phase II shall be defined by the Notice to Proceed and shall include: ACCT's entry into the Design-Build Contract with its design-builder, the subsequent design, construction, and final completion of the Project, meeting the conditions set forth by the MOA for MOA's acceptance of final completion of the Project, and receipt of all other necessary land use and occupancy permits and approvals. Satisfactory delivery of the Phase II scope of work shall be set by and determined under the terms as set forth in Article 9 of Exhibit A to the Design Build Contract as attached as Exhibit E to this Agreement.

5.2 Conditions Precedent to Phase II. The Parties shall not proceed to Phase II unless all of the following conditions precedents are satisfied.

5.2.1 The MOA has approved the Phase I deliverables and provided the written Notice to Proceed as described in Section 4.4 of this Agreement.

5.2.2 The MOA and AHFC have executed the Purchase and Sale Agreement.

5.2.3 ACCT and its design builder are able to enter into a Design-Build contract in form and upon terms acceptable to the MOA and ACCT.

5.2.4 The Municipality of Anchorage Assembly has approved this Agreement, and the Purchase and Sale Agreement.

5.2.5 The MOA has secured sufficient funding and financing for the Project.

5.3. Form of ACCT's Design-Build Contract. So long as the conditions precedents are satisfied, ACCT shall enter into the Design-Build Contract with its design-builder. The form of the Design-Build Contract shall be in substantial compliance with **Exhibit E** to this Agreement. For purposes of such contract, ACCT shall be considered the Owner of the Project. Notwithstanding the definition of "Owner", ACCT will be responsible to the MOA for the delivery of the Project on the schedule and terms consistent with the Notice to Proceed.

5.4. Written Notice to Proceed. Upon the satisfaction of all conditions precedent in Section 5.2, with the exception of subsection 5.2.1, the MOA shall give ACCT its written Notice to Proceed with the Project, which will satisfy all conditions precedent to this Agreement and shall incorporate by reference Exhibits A-1, B-1, C-1, and D-1 to this Agreement. ACCT shall deliver to the MOA within ten (10) days of the written Notice to Proceed, an executed copy of the Design Build Contract, the insurance certificates required for the Project and the payment and performance bonds.

5.5 Other Terms. The following terms and covenants apply to the Phase II work.

5.5.1 Payment and Performance Bonds. Both ACCT and the MOA or its assign will be named as co-obligees under the payment and performance bonds to be provided by the design-builder under the Design-Build Contract.

5.5.2 MOA Third Party Beneficiary. The MOA shall be a third-party beneficiary of any contracts between ACCT and other entities who perform work on the Project and any contracts between ACCT's design builder and other entities who perform work on the Project. Notwithstanding the above, these rights shall not be interpreted nor relied upon to permit any direct claims against the MOA by the Design-Builder and its subcontractors and vendors or any of ACCT's other contractors or consultants. Such parties shall seek their relief solely as provided in the Design Build Contract.

5.5.3 Standard of Work/Contractors. All work performed by ACCT and the design builder shall be performed in accordance with the professional standards applicable to the Project consistent with other projects in Anchorage Alaska of similar complexity, quality and scope. ACCT may use or replace, or consent to the use or replacement, of the design-builders, contractors or personnel or re-allocate responsibilities as it deems necessary or appropriate in order to carry out its responsibilities hereunder with any qualified design-builders, contractors or personnel as it deems appropriate in its reasonable judgment. If ACCT seeks to name any design-builder to take over the Project in place of Davis Constructors and Engineers, Inc., the MOA must consent to the named design-builder; however,

the MOA's consent to such named design-builder shall not be unreasonably withheld or delayed. This requirement shall not apply to any surety performing under the payment and performance bonds who shall remain free to select its own contractors without the MOA's consent, but who shall select its own contractors in compliance with its obligations under its bonds and the governing law of surety.

development
5.5.4 Site Control. The MOA shall be solely responsible for providing timely site control and access to the Project site for the construction of the project in accordance with the final schedule that is Exhibit D-1 to this Agreement. The MOA reserves for itself, its representatives, and its or any other assigns, the right to enter upon the Property so long as such entry is coordinated with and through ACCT, at any time and for any purpose, so long as MOA shall notify ACCT and does not interfere with ACCT's or the design-builder's use of the Property or construction of the Block 70 Parking Garage. The MOA and its assigns shall comply with all necessary job-site safety rules imposed by ACCT or its contractor while present on the Property during construction.

5.5.5 Contingency; Disposition of Contingency upon Substantial Completion. Exhibit B-1 will include a "Project contingency" in the amount of ACCT's development fee and an MOA contingency. The Project contingency shall be available to cover cost-overruns allocated to ACCT under this Agreement and the Design-Build Contract. The MOA contingency shall be available to cover cost overruns chargeable to the MOA under this Agreement and chargeable to the MOA, either directly or through ACCT, under the Design-Build Contract.

5.5.5.1 Disposition of Project Contingency. Any sums not expended by ACCT from the Project contingency shall be paid as the Developer's Fee. If the Project contingency is to be paid to ACCT, then 80% of the remaining Project contingency, or a greater amount if mutually agreed upon by the Parties, shall be paid to ACCT at MOA's Acknowledgement of Substantial Completion under the Design-Build Contract; and the remaining 20% of the contingency (or such lesser remaining balance if earlier

withheld as set forth above) shall be paid upon final completion of the Project as set forth in Article 9.10 of the Design Build Contract.

5.5.5.2 Disposition of MOA Contingency. Any sums not expended by the MOA from the MOA contingency upon MOA's Acknowledgement of Substantial Completion of the Project may be allocated or retained as MOA determines within its sole discretion, but in compliance with the Purchase and Sale Agreement.

5.5.6 Changes. MOA shall have the right to initiate Change Order requests for the Project. Change Order requests will be processed in accordance with the procedures set forth in Article A-7 to Exhibit A to the Design-Build Contract. The MOA's Change Order request shall be submitted through ACCT and the MOA will sign the Change Order and authorize the change in final budget and schedule. Payment for cost overruns owing to MOA initiated Change Orders shall be in compliance section 6.3 of this Agreement. After assignment by MOA to AHFC, a Change Order request relating to items described in 4.2.1 of the Purchase and Sale Agreement shall not be effective unless it has been signed by both AHFC and MOA.

5.5.7 Cost Overruns. The design builder, and then ACCT, not the MOA, is at risk for Change Orders initiated by ACCT and/or for cost overruns for construction and design for work performed within the scope of the Design Build Contract, except as set forth in this Section 5.5.7.

5.5.7.1 The MOA shall be responsible for cost overruns that result directly and solely from the MOA's delayed execution of a Notice to Proceed outside the timeframe set forth for issuing the Notice to Proceed in Exhibit D-1 to this Agreement. Any cost overruns resulting from such delay, however, must be approved by the MOA in its Notice to Proceed in order for such overruns to be enforceable against the MOA.

5.5.7.2 The MOA shall be responsible for cost overruns resulting directly and solely from the MOA's failure to

provide timely and exclusive site control per the requirements of Section 5.5.4 of this Agreement.

5.5.7.3 Except for environmental claims, which are governed by Section 5.5.7.5 of this Agreement, and regulatory changes, which are governed by Section 5.5.7.4, the MOA shall be responsible for payment for cost overruns owing to changes in site conditions as set forth in section A.4.1.4 of Exhibit A to the Design-Build Contract. Any such change will be processed as a Change Order under the Design-Build Contract and will result in an equitable adjustment of the final budget and schedule. Changes in the Stipulated Sum owing from cost overruns governed by this Section 5.5.7.3 shall be paid from the MOA's Contingency first and then by the MOA upon exhaustion of the MOA's contingency.

5.5.7.4 The MOA shall be responsible to pay the cost overruns associated with regulatory changes as set forth in Section A.4.1.11 of Exhibit A to the Design-Build Contract that are attributable to changes in municipal code or regulation between the date of record for the Pricing Documents and the date of issuance of the building permits, or which retroactively affect approvals earlier given under the building permits. Any change in regulatory requirements attributable to changes in municipal code or regulation shall be processed as a change order and shall result in an equitable adjustment of the final budget and schedule attached as Exhibit B-1 and D-1 respectively of this Agreement. Change orders under this Section 5.5.7.4 shall be submitted directly to and paid by the MOA.

5.5.7.5 ACCT shall pay the first TWO HUNDRED THOUSAND and no/100 DOLLARS (\$200,000) ("**Environmental Cap**") of cost overruns owing from environmental claims arising under A.4.1.4 and A.10.3 of Exhibit "A" to the Design-Build Contract or other claims or losses incurred because of the presence of hazardous materials on the Project site from the Project Contingency. The MOA shall be responsible for cost overruns in excess of the Environmental Cap. The MOA agrees to indemnify,

defend and hold ACCT harmless from any other costs it incurs in excess of the Environmental Cap required by any Change Orders arising due to environmental claims arising under sections A.4.1.4 and A.10.3 of Exhibit A to the Design-Build Contract or other losses, damages, or claims arising from the presence of hazardous materials on the site as regulated under applicable local, state or federal law.

5.5.7.6 The MOA shall be responsible for cost overruns owing to change orders that change the scope of the Project and deviate from the Project narrative. The MOA shall be responsible for cost overruns for bonding and purchasing the garage in excess of those amounts set forth as finance costs/cost of issuance in Exhibit B-1 to the Block 70 Parking Garage Development Agreement that are not the responsibility of ACCT. Cost overruns owing to Change Orders which are determined to be the responsibility of ACCT to pay under the terms of Design-Build Contract, and not allocated to the MOA under this Agreement shall be paid from the Project contingency and then by ACCT upon exhaustion of the Project contingency.

5.6 Payment for Phase II Scope of Work. Costs and fees for Phase II Scope of Work shall be payable in accordance with Section 6 of this Agreement.

5.7 1% for Art Program. The MOA, in compliance with Anchorage Municipal Code 07.04.010 - 07.04.080, will separately administer a 1% for Art program for the Project. ACCT, through the design builder's architect, will have a representative on the selection committee. The parties will collaborate in finding art that does not increase the cost of construction of the Project. Payment for the 1% for art costs and effort will be paid directly by the MOA, subject to the terms of Section 4.3 of the Purchase and Sale Agreement, and will not be processed as an obligation of ACCT.

6. Payment

6.1 Pre-Development Phase Work Payment. The MOA shall owe ACCT and the consultants and contractors of ACCT no fee for work performed under the Predevelopment Phase scope of work. However, if the Parties

execute this Agreement and proceed to Phase I, Pre-development Phase costs shall be due and payable as set forth in section 6.2.1.

- 6.2 Phase I Work Payment.** Payment for the Phase I work will be billed based upon a lump sum basis for the effort to complete the Phase I work. In no event, absent an MOA directed change in the scope of work, shall the final billing exceed the lump sum set forth in Section 4.3 of this Agreement. Phase I Costs are earned and payable in accordance with Section 6.2.1 of this Agreement regardless of whether the MOA decides to proceed to Phase II. Should the MOA not elect to proceed to Phase II, the MOA shall not owe any additional money for the allowance components (reflected as "soft costs" on Exhibit "B") and shall only owe the Phase I costs as set forth in the Budget and attached as Exhibit B. Should the MOA elect to proceed to Phase II and issue the Notice to Proceed, then the amount paid by MOA for Phase I and Pre-development costs and fees will be credited to the final Project budget. In such case, allowance components for Phase I work that may be in excess of the Phase I costs may be reimbursable under the final Project budget if included in the final Project budget.

6.2.1 Timing of Payments. The Pre-Development Work as shown on Exhibit "B" in the amount of THREE HUNDRED SEVENTY THOUSAND AND NO/100 DOLLARS (\$370,000) shall be due and owing upon execution and paid within ten (10) business days of execution of this Agreement by MOA. The lump sum for the Phase I scope of work as shown on Exhibit "B" in the amount of ONE MILLION SIX HUNDRED TWENTY-SEVEN THOUSAND FIVE HUNDRED AND NO/100 DOLLARS (\$1,627,500) shall be due and owing and paid within ten (10) business days of either the issuance of the Notice to Proceed or the written election of the MOA not to proceed to Phase II. Phase II work shall be paid in accordance with section 6.3.

- 6.3 Phase II Work.** Phase II work will be billed to the MOA in monthly billings based upon the percentage of work complete, the time and hours undertaken to complete the work and the requirements specified in Sections 5.1 and 5.2 of the Design-Build Contract and in the Article A.9 of Exhibit A to the Design-Build Contract, and shall be paid within the times set forth therein. The development fee earned during Phase II work shall be earned as a percentage of work completed under Phase II work in accordance with the Design Build Contract and paid in accordance with section 5.5.5.1 of

this Agreement. ACCT shall be entitled to stop work in the event of a failure to timely pay, except for matters submitted to the dispute resolution process as set forth in Section 13 of this Agreement, unless the failure to pay prevents it from requiring its design-builder to proceed with construction under the Design-Build Contract, in which case it may suspend work pending resolution of the dispute.

6.4 Payment Notwithstanding Contingency. Notwithstanding the condition precedent of Assembly approval as set forth in section 5.2.4, upon the assignment of this Agreement by the MOA to AHFC, the obligation to pay for the Pre-Development Fee and the Phase I Fee shall vest and the cost and fees shall be due and owing by AHFC as assignee until a notice of termination is given. In the event a notice of termination is given during Phase I work, then the amount owed shall be paid on a percentage of completion basis allocated for the time under the Exhibit D-1 from the start of work on Pricing Documents (line 32) until the delivery of the Pricing Documents (line 36).

7. **Consent to Assignment.** In the event that MOA executes the Purchase and Sale Agreement and in so doing assigns its rights, duties, and responsibilities to AHFC, upon AHFC's written assumption of MOA's duties and obligations under this Agreement, ACCT consents to such assignment and agrees ACCT shall look solely to AHFC for payment and releases MOA from any obligations to make payment. ACCT shall include in its Design Build Contract and require the Design Builder to include in its subcontractor agreements this language releasing MOA from obligations to pay for claims relating to the Project. ACCT shall be entitled to take direction from AHFC after assignment on all matters relating to the Project; except sections 3.2.2, 3.2.3 and modification or deletion of any of the design items in section 4.2 of the Purchase and Sale Agreement, as to which ACCT shall be entitled to take sole direction from the MOA. If ACCT is aware that AHFC and the MOA disagree over who has authority to direct ACCT, ACCT will, at a minimum, provide MOA and AHFC with a written statement of such disagreement five calendar days prior to the time required for resolution of the disagreement without cost overrun to the Project. Upon following such procedure for notice, ACCT shall not be responsible to the MOA or its assigns for following the direction of either the MOA or AHFC; nor shall ACCT be responsible for the cost of any changes incurred in following such direction.

8. **Mutual Obligations.** Each party covenants and agrees that the other party has relied in material ways on the expectation and belief that the other party will

continue to proceed with the Project with the other party consistent with the covenant of good faith and fair dealing. MOA recognizes that the development services identified above are complex and time intensive and will require ACCT to engage other professionals in order to deliver the scope of services with enough accuracy and detail necessary to submit an application for financing and information to MOA to make an informed decision. MOA agrees to work solely and in cooperation with ACCT in order to proceed with the Phase I work. Nothing in this Paragraph requires MOA to advance to a subsequent phase of the Project, or prevents MOA, if MOA and ACCT are unable to agree on the terms for proceeding to a subsequent phase, from proceeding in its sole discretion with that phase with a different developer or design builder.

9. **Ownership of Documents.** The design-builder will maintain the redline drawings during the construction of the Project and one set shall be delivered to the MOA within a reasonable time after the date of final completion. ACCT will have the architect of record deliver to the MOA an e-version of the final drawings and specifications, which will be endorsed with the limited license and the MOA's release and waiver as set forth immediately below for any use without the retention of the Architect and ACCT. Any other reproductions and other hard copies will be delivered on a reimbursable basis outside of the final budget. The MOA and its assigns shall have a license to use such plans for its future work, remodeling and renovation work of the Project without any further consent from ACCT, the design-builder, or the architect of record, conditioned upon the implied promise from such use that each such licensee shall release ACCT, the design-builder, the architect of record and their employees and subcontractors from any liability, loss, claim arising therefrom and that each such licensee architect, engineer or contractor who uses the plans and specifications will indemnify, defend and hold harmless ACCT, the design-builder, the architect of record and their employees and subcontractors from any and all liability which may arise from its use of the plans, unless such use is undertaken with prior written consent of ACCT, the architect of record and the design-builder, which consent shall not be unreasonably withheld. If found to be in default, ACCT assigns to MOA all of its rights to the ownership and use of documents as set forth in Design-Build Contract. To the extent not set forth above, the MOA's rights to documents shall be co-equal to ACCT's as set forth in section A.1.6 of Exhibit A to the Design-Build Contract.
10. **Records.** ACCT shall keep all records and accounts of the Project as is usual and customary in the construction industry for not less than five (5) years after substantial completion. Upon written request from MOA, such records shall be

available to MOA or its appointed accounting or auditing representatives for inspection and copying. Prior to destroying or disposing of such records, ACCT shall offer the records to MOA.

11 Termination and Default. This Agreement may be terminated by mutual agreement of the Parties, for convenience, or for default as set forth below.

11.1 ACCT Right of Termination for Cause. ACCT may terminate this Agreement upon thirty (30) days written notice upon a material default by the MOA, unless during such notice period, the default is cured, or if the default is such that it may not be cured reasonably within thirty (30) days, then MOA has begun the cure and is diligently prosecuting the cure until its completion. A material default shall not exist as to funds not paid, but in dispute under the Disputes Clause of this Agreement, until after the funds are found due after exhaustion of the Disputes Clause, however, such non-payment shall provide a basis for stopping work until the dispute is resolved.

11.2 MOA Right of Termination for Cause. MOA may terminate this Agreement upon thirty (30) days written notice upon a material default by ACCT, unless during such notice period, the default is cured, or if the default is such that it may not be cured reasonably within thirty (30) days, then ACCT has begun the cure and is diligently prosecuting the cure until its completion, or if the default is in dispute, then until resolved under the Disputes Clause of this Agreement. Notwithstanding the proceeding, the MOA shall also have the rights to take over the work under the terms and conditions and with the obligations as set forth in section 14.2 of Exhibit A to the Design-Build Contract; however, if the disputes resolution determination is that ACCT was not in default, or that its non performance was excused, then ACCT shall be entitled to payment of its Developer Fee and its design-builder shall be entitled to payment of its lost profits and unallocated overhead to the extent provided for in the Design-Build Contract.

11.3 Waiver of Consequential Damages. Upon any default, except for defaults of time of completion, which are addressed by liquidated damages, each party may seek its actual damages; however, both Parties waive as against the other the right to seek consequential damages as further defined by section A.4.1.10 of Exhibit A to the Design-Build Contract and/or punitive damages arising from such breach.

11.4 Termination for Convenience. MOA shall have the right to terminate this Agreement for convenience under the terms, conditions, and with the obligations

of the Owner under Section A.14.4 of Exhibit A to the Design-Build Contract. ACCT shall be entitled to its development fee in the event of such termination.

12. **Alternative Contractor.** In the event ACCT and MOA are unable to agree on an acceptable final budget to proceed to Phase II, then MOA shall pay to ACCT all sums due and owing for the Phase I work completed as set forth in section 6.2 and 6.4 of this Agreement and reimburse ACCT for any approved expenses advanced on behalf of MOA in anticipation of Phase II work. Approved expenses are expenses described as Phase I on Exhibit A attached hereto, which are approved by MOA upon execution of this Agreement, or expenses for Phase II work that the MOA has authorized in writing to keep the Project on schedule prior to the Notice to Proceed with Phase II work. In the event of termination because of the decision not to proceed with Phase II work with ACCT, then ACCT will grant a license to MOA to use the documents for construction of a parking garage on the Property on the terms set forth in section 9 of this Agreement. MOA acknowledges that the documents are incomplete and waives any claims against ACCT, the design-builder and/or architect of record for any errors or omissions in the documents and the MOA will hold the licensee(s) to the requirements of section 9 of this Agreement.
13. **Disputes between MOA and ACCT.** In the event of any dispute arising between the MOA and the ACCT regarding any part of this Agreement or the Parties' obligations or performance hereunder, either Party may institute the dispute resolution procedures set forth herein. The Parties shall continue performance of their respective obligations hereunder notwithstanding the existence of a dispute, except only for the failure to pay for Phase I or Phase II work. ACCT will include this Disputes Clause in lieu of the disputes clause set forth in Article 6 of the Design-Build Contract and Articles A.4.2 to 4.4.5 of Exhibit A to the Design-Build Contract.

13.1 Initial Meeting to Resolve Disputes. Any party may from time to time call a special meeting for the resolution of disputes that would have a material impact on the cost or progress of the Project. Such meeting shall be held at the MOA offices in Anchorage, Alaska within three (3) working days of written request therefore, which request shall specify in reasonable detail the nature of the dispute. The MOA's Authorized Representative, ACCT's Authorized Representative and any other person who may be affected in any material respect by the resolution of such dispute shall attend the meeting. Such Authorized Representative shall have authority to settle the dispute and shall attempt in good faith to resolve the dispute.

13.2 Mediation. If the dispute has not been resolved within five (5) working days after the special meeting has been held, a mediator, mutually acceptable to the Parties and experienced in design and construction matters shall be appointed. The Parties shall share the cost of the mediator. The mediator shall be given any written statements of the Parties and may review the Site and any relevant documents. The mediator shall call a meeting of the Parties within ten (10) working days after his/her appointment, which meeting shall be attended by the MOA's Authorized Representative, the ACCT's Authorized Representative and any other person who may be affected in any material respect by the resolution of such dispute. Such Authorized Representatives shall have authority to settle the dispute and shall attempt in good faith to resolve the dispute. During such ten (10) day period, the mediator may meet with the Parties separately.

13.2.1 No minutes shall be kept with respect to any mediation proceedings, and the comments and/or findings of the mediator, together with any written statements prepared, shall be non-binding, confidential and without prejudice to the rights and remedies of any Party. The entire mediation process shall be completed within twenty (20) working days of the date upon which the initial special meeting is held, unless the Parties agree otherwise in writing. If the dispute is settled through the mediation process, the decision will be implemented by written agreement signed by the Parties.

13.3 Court. In the event mediation fails, then any party may seek to resolve the dispute in a court of competent jurisdiction located in Anchorage Alaska. The prevailing party in such action shall be entitled to payment of their reasonable Alaska Rule of Civil Procedure 82 fees and court costs incurred in the court action itself and in any action necessary to enforce the judgment.

13.4 Other contracts. All contracts that the MOA or ACCT enter into with third parties that implement design or construction of the Project shall be required to include as a term a dispute resolution procedure in substantial compliance with the terms of Section 13 of this Agreement.

13.5 Authorized Representative/Notice. Each Party agrees, within ten days of the delivery of a mutual executed copy of this Agreement, to notify the other party who its Authorized Representative is, including mailing address, phone numbers, fax numbers, and e-mail address.

13.5.1 Notice. All notices sent pursuant to this Agreement shall be in writing and sent by regular, registered or certified mail, postage prepaid, or by hand-delivery to the parties as follows below:

To ACCT:

Venture Development Group
425 G Street, Suite 210
Anchorage, AK 99501
Attn: Mark Pfeffer

JL Properties
813 D Street, Ste. 200
Anchorage, AK 99501
Attn: Jon Rubini

With a copy to:

Ashburn & Mason
1130 West Sixth Ave., Ste. 100
Anchorage, AK 99501
Attn: Donald W. McClintock, III

To MOA:

Municipal Manager
632 W. 6th Ave., Suite 830
Anchorage, AK 99501

Municipal Attorney
Municipality of Anchorage
Department of Law
632 W. 6th Avenue, Ste. 730
Box 196650
Anchorage, AK 99519-6650

Either party may change these persons or addresses by giving notice as provided above. Notice shall be considered given and received on the latest original

delivery or attempted delivery date as indicated on the postage or service receipt(s) of all persons and addresses to which notice is to be given. In the event of notice by regular mail, notice shall be deemed received on the fourth business day after posting.

14. **Insurance.** ACCT shall require its design-builder to carry the insurance as set forth in **Exhibit "F."** ACCT itself will not carry separate coverages; it will be named as an additional insured under the design-builder's policies.

15. **Coordination with Design-Build Contract.** This Agreement and the Design-Build Contract shall define the obligations and performances of ACCT to the MOA.

15.1 **Delay.** In the event the design-builder shall be entitled to an equitable adjustment of time under the Design-Build Contract due to changes, force majeure, or other reasons as set forth in the Design Build Contract, then ACCT shall be allowed an equal time extension under this Agreement.

15.2 **Liquidated Damages.** In the event of unexcused delay in completion of the project, then ACCT shall collect from its design-builder the liquidated damages provided for under the Design-Build Contract and remit those to the MOA. ACCT shall not be required to pay any additional liquidated damages for such delay under this Agreement. Such liquidated damages shall be the MOA's sole and exclusive remedy for delay.

15.3 **Warranties.** The warranties to be provided after substantial completion and acceptance of the Project shall be an obligation owed directly by the design-builder to the MOA and its assigns and no other warranty provided by ACCT shall be provided nor implied under this Agreement. ACCT performance shall be complete upon final completion of the Project and acceptance of the same by MOA or its assigns. Beneficial occupancy will be delivered at the time of Acceptance of Substantial Completion.

15.4 **Conflicts with form agreements.** In the event of a conflict between this Agreement and the Design-Build Contract, the terms of this Agreement shall control over any printed portions of the Design-Build Contract, and the typed or revised provisions of the Design-Build Contract that have been approved by the MOA shall control over this Agreement.

15.5 Review and Approval of the Design-Build Contract. The MOA shall have the right of review and approval of the form of the Design-Build Contract prior to its execution.

16. General Provisions. The following general provisions shall apply to this Agreement.

16.1 Except where a party is entitled explicitly by this Agreement to make a decision in its sole discretion, whenever consent or approval of either party is required, that party shall not unreasonably withhold such consent or approval;

16.2 This Agreement shall be binding upon and inure to the benefit of the parties and their successors;

16.3 This Agreement shall be construed and interpreted in accordance with the laws of the State of Alaska and venue for dispute resolution shall be Anchorage, Alaska;

16.4 Headings and captions shall have no effect on its interpretation;

16.5 When required by this Agreement, the singular shall include the plural and the neuter shall include the masculine and the feminine;

16.6 The unenforceability, invalidity, or illegality of any provision of this Agreement shall not render the other provisions of this Agreement unenforceable, invalid, or illegal; and,

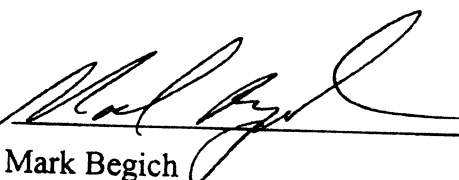
16.7 Each party has negotiated this Agreement with the assistance of counsel and any ambiguity in the Agreement shall not be construed against either party for having provided the language in question.

End of Text

Signatures follow

DATED this 14th day of September, 2006.

MUNICIPALITY OF ANCHORAGE,
A municipal corporation

By: 
Mark Begich

Its: Mayor

STATE OF ALASKA

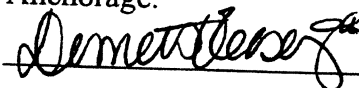
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) ss.

THIRD JUDICIAL DISTRICT

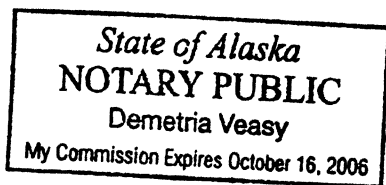
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The foregoing instrument was acknowledged before me this 14th day of September, 2006,
by Mark Begich, Mayor of the Municipality of Anchorage.



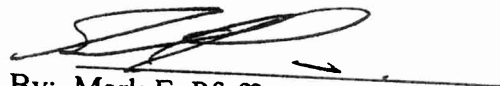
Notary Public in and for Alaska

My commission expires: 10/16/06



ALASKA CENTER FOR CONVENTION
& TRADE, LLC an Alaska limited liability
company

By: VENTURE DEVELOPMENT GROUP,
LLC, an Alaska limited liability company, its
Managing Member



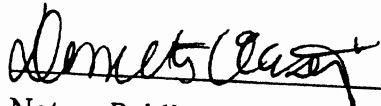
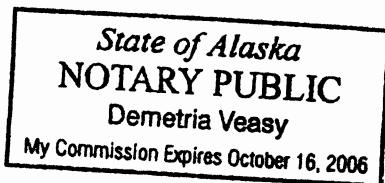
By: Mark E. Pfeffer
Its: Member _____

STATE OF ALASKA

THIRD JUDICIAL DISTRICT

)
) ss.
)

The foregoing instrument was acknowledged before me this 14 day of September, 2006
by Mark E. Pfeffer, Managing Member of Venture Development Group, LLC.



Notary Public in and for Alaska

My commission expires: 10/16/06

**ALASKA CENTER FOR CONVENTION
& TRADE, LLC** an Alaska limited liability
company

By: JL PROPERTIES, INC., an Alaska
corporation, its Managing Member



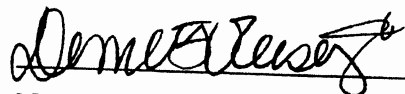
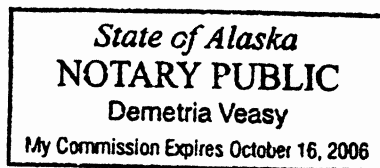
By: Jonathan Rubini
Its: Member _____

STATE OF ALASKA

THIRD JUDICIAL DISTRICT

)
) ss.
)

The foregoing instrument was acknowledged before me this 14 day of September, 2006
by Jonathan Rubini, Managing Member of JL Properties, Inc.



Notary Public in and for Alaska

My commission expires: 10/16/06