

SB

226

<TARGET><BILL>SB 226</BILL><SUBJECT>SB
226</SUBJECT><COMM>SFIN27</COMM></TARGET>

SENATE FINANCE COMMITTEE REPORT First Committee of Referral

DATE: 3/16/12

FURTHER:

Date of 5-Day Notice: _____
(in accordance with Uniform Rule 23)

DATE TURNED
IN TO OFFICE: _____

Finance Committee considered SENATE BILL NO. 226

SB 226-PURCHASE & LEASE OF NOME OFFICE BUILDING

"An Act relating to the purchase by the Alaska Housing Finance Corporation of an office building in Nome; approving the issuance of bonds for the purchase of the office building; providing notice of, and authorizing the commissioner of administration to enter into, a lease-purchase agreement with the Alaska Housing Finance Corporation for the office building; and providing for an effective date."

and recommends:

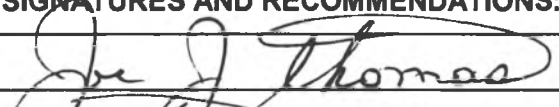




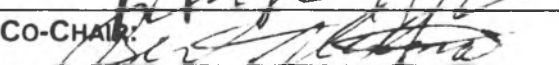

- be replaced with CS SB 226 (FIN) [] Same Title New Title
- [] adopt previous CS _____ (_____) [] Same Title [] New Title
- [] attached amendment(s)
- [] adopt _____ Letter of Intent
- [] further referral to _____ Committee

Dept Abbr.	
ADM	LEG
CED	LAW
COR	LWF
CRT	MVA
EED	DNR
DEC	DPS
DFG	REV
GOV	DOT
DHS	UA

NEW FISCAL NOTE(S)				
Dept.	Fiscal	Indet.	Zero	FN #
ADM	X			
REV	X			2

PREVIOUS FISCAL NOTE(S)				
Dept.	Fiscal	Indet.	Zero	FN #

[] APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	PRINTED LAST NAME	DO PASS	DO NOT PASS	NO REC	AMEND
	THOMAS	✓			
	EGAN	✓			
	McGuire	✓			
	Nelson	✓			
	ELLIS	X			
CO-CHAIR: 	Hoffman	✓			
CO-CHAIR: 	Stedman	✓			

FISCAL NOTE

STATE OF ALASKA
2012 LEGISLATIVE SESSION

Bill Version SB226
Fiscal Note Number _____
() Publish Date _____

Identifier (file name) SB226CS(FIN)-DOA-FAC-4-2-12 Dept. Affected Administration
Title Purchase and Lease of Nome Office Building Appropriation General Services
Allocation Facilities
Sponsor Senate Community and Regional Affairs
Requester Senate Finance OMB Component Number 2429

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	FY13 Appropriation Requested	Included in Governor's FY13 Request	Out-Year Cost Estimates					
			FY13	FY14	FY15	FY16	FY17	FY18
OPERATING EXPENDITURES								
Personal Services	101.5		101.5	101.5	101.5	101.5	101.5	101.5
Travel								
Services	704.6		571.3	588.4	606.1	624.3	643.0	
Commodities								
Capital Outlay	2,504.0		2,504.0	2,504.0	2,504.0	2,504.0	2,504.0	
Grants, Benefits								
Miscellaneous								
TOTAL OPERATING	3,310.1	0.0	3,176.8	3,193.9	3,211.6	3,229.8	3,248.5	

FUND SOURCE		(Thousands of Dollars)						
1002	Federal Receipts							
1003	GF Match							
1004	GF	2,504.0	2,504.0	2,504.0	2,504.0	2,504.0	2,504.0	
1005	GF/Prgm (DGF)							
1007	I/A Rcpts (Other)	806.1	672.8	689.9	707.6	725.8	744.5	
1178	temp code (UGF)							
TOTAL		3,310.1	0.0	3,176.8	3,193.9	3,211.6	3,229.8	3,248.5

POSITIONS							
Full-time	1		1	1	1	1	1
Part-time							
Temporary							

CHANGE IN REVENUES

Estimated SUPPLEMENTAL (FY12) operating costs 0.0 (separate supplemental appropriation required)
(discuss reasons and fund source(s) in analysis section)

Estimated CAPITAL (FY13) costs 0.0 (separate capital appropriation required)
(discuss reasons and fund source(s) in analysis section)

Why this fiscal note differs from previous version (if initial version, please note as such)

The language in the committee substitute for SB226 now requires AHFC to finance the purchase of an office building in Nome and require the Department of Administration to enter into a lease purchase agreement for the building, whereas the previous language was permissive and not mandatory.

Prepared by Vern Jones
Division General Services
Approved by John Cramer, Deputy Commissioner
Department of Administration

Phone 465-5684
Date/Time 4/2/12 3:45 PM
Date 4/2/2012

FISCAL NOTE

**STATE OF ALASKA
2012 LEGISLATIVE SESSION**

BILL NO. SB226 _____

Analysis

The bill directs the Alaska Housing Finance Corporation (AHFC) to finance construction and purchase of a new office building in Nome to house state agency offices, financed by AHFC, then placed in service as an asset of the Alaska Public Building Fund (APBF) managed by the Department of Administration (DOA). The APBF would collect rents for the building to cover lease costs, maintenance and operations costs, and all other costs embedded in the APBF rates. Fund, DOA/DGS will charge tenant agencies an estimated rate beginning at \$2.42 sq ft per month in FY2013, increasing to an estimated \$2.81 sq ft per month beginning in FY2018.

FY2013 costs are \$704.6. Calculation: \$2.42 sq ft x 19,100 sq ft x 12 months = \$554.6+\$150.0 (a one-time item for the architect in year one) FY2014 through FY2018 represents the cost for tenant agencies reflecting an anticipated increases in PBF rates.

The bill anticipates construction of a building by a private developer, for a purchase price of \$38 million AHFC would finance the project with 21-year bonds; the state would require operating appropriations in order to pay the debt service to AHFC estimated to be \$2,504.0 per year. If the funding required to service the debt is not appropriated separately, debt retirement costs would have to be embedded in the per square foot rate per month set for agencies occupying the building, thereby increasing the proposed rent per square foot rate accordingly. For the purposes of this fiscal note, facilities rents collected from tenant agencies are shown as interagency receipts, but will ultimately be recorded in the Alaska Public Building Fund once received.

This fiscal note is prepared to illustrate operating costs for the proposed building, allowing for backfilling existing space leased from the private sector in Nome.

Assumptions:

- 1) The proposed building will be constructed from bond proceeds as a justice center that measures 19,100 usf. Debt retirement will be on a 21-year timeframe.
- 2) If the existing Nome SOB will be demolished--demo costs are not in DOA's fiscal note as demolition/disposal costs will be borne by DOT/PF.
- 3) The proposed building will be financed from AHFC bond proceeds on 21-year term. Estimated debt retirement cost is \$2,504.0 annually beginning in FY2013. Tenant agencies must budget separately for the facilities rent charges they will be billed for occupying space in the proposed building.
- 4) DOA would require one additional permanent, full-time contracting officer position in Anchorage for administration of the proposed building. Salary and benefits costs for the new position comprise personal services costs shown on the fiscal note.
- 5) DOA would also require the services of a licensed architect for the first year to assist in the monitoring of the design document and construction process. An estimate of \$150.0 for year 1 is included in this fiscal note.

Proposed Occupants:

Agency	Projected Space Need in proposed building
Alaska Court System	12,000
Public Safety	3,000
Administration/Public Defender	1,500
Corrections	800
Law	<u>1,800</u>
Total	19,100

FISCAL NOTE

STATE OF ALASKA
2012 LEGISLATIVE SESSION

Bill Version CS SB226
 Fiscal Note Number 2
 () Publish Date _____

Identifier (file name) SB226CS-DOR-AHFC-04-02-12 Dept. Affected Revenue
 Title Purchase & Lease of Nome Office Building Appropriation Alaska Housing Finance Corporation
 Allocation AHFC Operations
 Sponsor Senate Community & Regional Affairs
 Requester Senate Finance OMB Component Number 110

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	FY13 Appropriation Requested	Included in Governor's FY13 Request	Out-Year Cost Estimates					
			FY13	FY14	FY15	FY16	FY17	FY18
OPERATING EXPENDITURES								
Personal Services	58.1		56.1					
Travel	19.3		6.4					
Services	474.7		158.2					
Commodities	0.7		0.3					
Capital Outlay								
Grants, Benefits								
Miscellaneous	2,964.0		2,964.0	2,964.0	2,964.0	2,964.0	2,964.0	2,964.0
TOTAL OPERATING	3,516.8	0.0	3,185.0	2,964.0	2,964.0	2,964.0	2,964.0	2,964.0

FUND SOURCE		(Thousands of Dollars)						
1002	Federal Receipts							
1003	GF Match							
1004	GF	2,964.0	2,964.0	2,964.0	2,964.0	2,964.0	2,964.0	2,964.0
1005	GF/Prgm (DGF)	552.8	221.0					
1037	GF/MH (UGF)							
1178	temp code (UGF)							
TOTAL		3,516.8	0.0	3,185.0	2,964.0	2,964.0	2,964.0	2,964.0

POSITIONS							
Full-time							
Part-time							
Temporary							

CHANGE IN REVENUES							

Estimated SUPPLEMENTAL (FY12) operating costs _____ (separate supplemental appropriation required)
 (discuss reasons and fund source(s) in analysis section)

Estimated CAPITAL (FY13) costs _____ (separate capital appropriation required)
 (discuss reasons and fund source(s) in analysis section)

Why this fiscal note differs from previous version (if initial version, please note as such)

The CS for SB 226 directs Alaska Housing Finance Corporation (AHFC) to finance the purchase of an office building in Nome from the City of Nome. As part of its due diligence, AHFC will engage in a process to identify useable space requirements and tenant needs. As such, AHFC is presenting ranges for the cost of the project up to \$38,000,000 as specified in the bill.

Prepared by Cary Bolling, Officer Governmental Relations & Public Affairs
 Division Alaska Housing Finance Corporation
 Approved by Mike Buller, Deputy Executive Director
Alaska Housing Finance Corporation

Phone 907-350-2479
 Date/Time 4/2/12 12:00 AM
 Date 4/2/2012

FISCAL NOTE

STATE OF ALASKA
2012 LEGISLATIVE SESSION

BILL NO. CS SB226

Analysis

CS for SB 226 directs Alaska Housing Finance Corporation (AHFC) to finance with bond proceeds the purchase of an office building in Nome to provide space for state agency occupancy and use. It further directs the commissioner of the Department of Administration to enter into a lease with AHFC for the purchased building.

Section 2 specifies, the term of the bonds may not exceed 21 years. The bill also specifies an anticipated annual rental obligation of \$2,504,000 with total lease payments for the full term of the lease-purchase agreement anticipated to be \$52,548,000. The Act would take effect immediately under AS 01.10.070 (c).

AHFC analysis:

Consistent with language included in Sec. 2 of the bill, AHFC estimates total project cost at \$38,000,000 which AHFC believes could support a new office building up to 54,000 sq. ft. In contrast, a smaller building at 30,000 sq. ft, is projected to cost \$27,675,000.

Based on a reasonable set of assumptions, annual debt service on these projects would range from \$2,964,000 to \$2,221,000, respectively . Total bond payments over 21-years on these projects would range from \$62,241,250 to \$44,416,500.

Finally, using these scenarios, operational expenses for AHFC would range in total from \$773,854 to \$590,400 in FY 13 and FY 14. This fiscal note projects the larger 54,000 sq. ft. building will be constructed; should a small building be selected, actual costs will be less than those presented.

CS FOR SENATE BILL NO. 226(FIN)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SEVENTH LEGISLATURE - SECOND SESSION

BY THE SENATE FINANCE COMMITTEE

Offered:

Referred:

Sponsor(s): SENATE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to the purchase by the Alaska Housing Finance Corporation of an**
 2 **office building in Nome from the City of Nome; approving the issuance of bonds for the**
 3 **purchase of the office building; providing notice of, and directing the commissioner of**
 4 **administration to enter into, a lease-purchase agreement with the Alaska Housing**
 5 **Finance Corporation for the office building; and providing for an effective date."**

6 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

7 *** Section 1.** The uncodified law of the State of Alaska is amended by adding a new section
 8 to read:

9 FINDINGS AND PURPOSE. (a) The Department of Administration has identified a
 10 need for office space in the City of Nome for state agency use. The purchase of an office
 11 building in Nome from the City of Nome to provide space for state agency occupancy and use
 12 would serve a public purpose.

13 (b) The purpose of this Act is to

L

1 (1) direct the Alaska Housing Finance Corporation to finance the purchase of
2 an office building in Nome from the City of Nome to provide space for state agency
3 occupancy and use; and

4 (2) provide notice of, and direct the commissioner of administration to enter
5 into, a lease with the Alaska Housing Finance Corporation for the office building authorized
6 in sec. 2 of this Act.

7 * **Sec. 2.** The uncodified law of the State of Alaska is amended by adding a new section to
8 read:

9 LEGISLATIVE AUTHORIZATION FOR PURCHASE AND BONDS. (a) The
10 Alaska Housing Finance Corporation shall finance under AS 18.55.010 - 18.55.290 with bond
11 proceeds the purchase of an office building in Nome from the City of Nome to be leased to
12 the Department of Administration to provide space for state agency occupancy and use. The
13 purchase price of the office building may not exceed \$38,000,000, including the costs of
14 purchasing the office building and issuing the bonds for the purchase.

15 (b) The Alaska Housing Finance Corporation may issue bonds under
16 AS 18.55.100(a)(15) and (d) for the purchase of the office building described in (a) of this
17 section. The term of the bonds may not exceed 21 years.

18 * **Sec. 3.** The uncodified law of the State of Alaska is amended by adding a new section to
19 read:

20 LEGISLATIVE NOTICE OF AND AUTHORIZATION FOR LEASE-PURCHASE
21 AGREEMENT. Subject to annual appropriation, the commissioner of administration shall
22 enter into a lease-purchase agreement for the office building described in sec. 2 of this Act.
23 The anticipated total cost of the project is \$38,000,000. The anticipated annual amount of the
24 rental obligation is \$2,504,000. The total lease payments for the full term of the lease-
25 purchase agreement are anticipated to be \$52,548,000. The term of the lease-purchase
26 agreement may not exceed the maximum term of the bonds authorized under sec. 2 of this
27 Act.

28 * **Sec. 4.** The uncodified law of the State of Alaska is amended by adding a new section to
29 read:

30 APPROVAL OF FINANCING AND AGREEMENT. (a) Section 2 of this Act
31 constitutes the approval required by AS 18.55.100(d) for the financing of the office building

1 described in sec. 2 of this Act.

2 (b) Section 3 of this Act constitutes the notice and approval required by AS 36.30.085
3 for the lease-purchase agreement described in sec. 3 of this Act.

4 * **Sec. 5.** This Act takes effect immediately under AS 01.10.070(c).



ALASKA STATE LEGISLATURE

SENATOR DONALD C. OLSON

Session

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Northern Waters Task Force
Education Funding District Cost Factor
Finance Subcommittee Chair
Fish & Game
Health & Social Services
Public Safety
Finance Subcommittee Member
Environmental Conservation

Senator_Donny_Olson@legis.state.ak.us

SB 226 - PURCHASE & LEASE OF NOME STATE OFFICE BUILDING Sectional Analysis

SECTION 1 Findings & Purpose.

SECTION 2 Directs AHFC to finance the purchase of an office building in Nome, from Nome.

SECTION 3 Directs DOA to enter into a lease-purchase agreement for the building.

SECTION 4 Legislative approvals of financing & lease-purchase agreement.

SECTION 5 Effective date.

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 I, 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 provides 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.

5.5.4 **Site Control.** The ^{develop}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

**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)

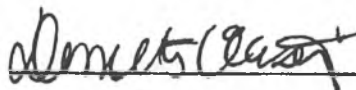
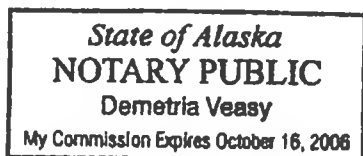
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) ss.

THIRD JUDICIAL DISTRICT)

)

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

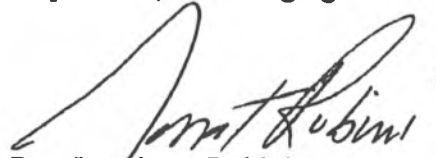


Notary Public in and for Alaska

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



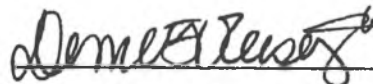
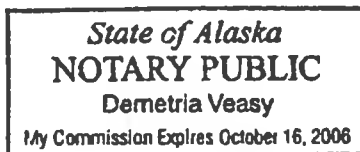
By: Jonathan Rubini
Its: Member _____

STATE OF ALASKA

)
) ss.
)

THIRD JUDICIAL DISTRICT

The foregoing instrument was acknowledged before me this 14th 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

AGREEMENT TO LICENSE, ASSIGN, CONSTRUCT, AND PURCHASE THE BLOCK 70 PARKING GARAGE

This Agreement to License, Assign, Construct, and Purchase the Block 70 Parking Garage is made this 31st day of August 2006, between the Municipality of Anchorage ("MOA") and the Alaska Housing Finance Corporation ("AHFC").

RECITALS

- A.** Under Chapter 47 of the Session Laws of Alaska 2006, the Alaska State Legislature found there is insufficient parking available for the Atwood Office Building in downtown Anchorage and the purchase of a new garage to provide parking for the Atwood Office Building tenants, who include numerous Alaska state departments and agencies, would serve a public purpose. By this legislation, AHFC is authorized to finance and purchase a parking garage, the price for which may not exceed \$44,000,000, including the costs of purchasing and issuing bonds for the facility.
- B.** AHFC is the fee-simple title owner of the south half of Block 70, an area of land on the north side of Seventh Avenue, across the street from the Atwood Office Building.
- C.** Until April 12, 2006, AHFC was the owner of Block 80, a parcel of real property adjacent to and used for parking for the Atwood Office Building. MOA has undertaken the development of a new Anchorage civic and convention center on Block 80 through a design-build procurement. One element of that procurement required recommendations for the coordination and relocation of parking in downtown Anchorage and foresaw the need for the design and construction of a new parking garage to serve the Atwood Office Building, the convention center, and the public at large.
- D.** The Alaska Center for Convention & Trade, LLC ("ACCT") was the successful proposer on MOA's request for proposal for the convention center project. In consummation of this proposal, MOA, through its successor-in-interest CivicVentures, entered into a development agreement with ACCT on November 10, 2004 and into the Amended and Restated Development Agreement on January 19, 2006. In addition to providing for the design and construction of the convention center, the Amended and Restated Development Agreement permitted MOA to further contract with ACCT for the design and construction of a new parking garage.

- E. Contemporaneous with the execution of this Agreement, MOA is entering into the Block 70 Parking Garage Development Agreement with ACCT for the design and construction of the parking garage permitted under the Amended and Restated Development Agreement for the convention center.
- F. AHFC believes that the Block 70 Parking Garage as set forth and described under the Block 70 Parking Garage Development Agreement will serve the parking needs contemplated under the legislative authorization. So long as the Block 70 Parking Garage substantially meets the design guidelines set forth under this Agreement, MOA desires to assign some of its rights and responsibilities under the Block 70 Parking Garage Development Agreement to AHFC and to sell the completed garage to AHFC.
- G. Therefore, AHFC and MOA desire to work together to see the design and construction of the Block 70 Parking Garage come to completion. To achieve this aim, the Parties for their mutual and best interests, enter into this Agreement to License, Assign, Construct, and Purchase the Block 70 Parking Garage.

1. **DEFINITIONS**

- 1.1. **"Agreement"** means this Agreement to License, Assign, Construct, and Purchase the Block 70 Parking Garage.
- 1.2. **"Block 70 Parking Garage"** means the garage to be constructed under the Block 70 Parking Garage Development Agreement.
- 1.3. **"Block 70 Parking Garage Development Agreement"** means the agreement between MOA and ACCT for the design and construction of the Block 70 Parking Garage that is effective as of August 31, 2006.
- 1.4. **"Effective Date"** means August 31, 2006.
- 1.5. **"Parties"** means AHFC and MOA.
- 1.6. **"Property"** means that half of Block 70, more particularly described as:

Tract 1, Block 70, Anchorage Original Townsite, according to Plat No. _____ situated in the Anchorage Recording District, Third Judicial District, State of Alaska.

- 1.7. **Additional Defined Terms.** Additional capitalized words used in this Agreement shall have the same meaning as the capitalized words under the Block 70 Parking Garage Development Agreement. Words of technical

usage such as "substantial completion" or "final completion" shall have a common meaning under both this Agreement and the Block 70 Parking Garage Development Agreement.

2. LICENSE TO DEVELOP PROPERTY

2.1 License. As of the Effective Date, AHFC grants to MOA a non-exclusive license to enter upon and develop the Property for the design and construction of the Block 70 Parking Garage and for any other purpose incidental or relevant to such design and construction.

2.1.1 Assignment of License. MOA shall assign its license to enter upon and develop the Property to ACCT. Notwithstanding this assignment to ACCT, MOA reserves for itself the right to enter upon the Property so that it may monitor and protect its interests related to environmental indemnification as set forth in Section 5.5.7.5 of the Block 70 Parking Garage Development Agreement. When entering upon the Property, however, MOA shall first notify ACCT of its intended entry, comply with all necessary job-site safety rules imposed by ACCT or its contractor while present on the Property during construction, and not interfere with ACCT's use of the Property or construction of the Block 70 Parking Garage.

2.1.2 Access and Site Control. The Parties hereby incorporate the provisions of Section 5.5.4 of the Block 70 Parking Garage Development Agreement regarding access and site control into this Agreement.

2.2 Reserved Rights. Notwithstanding Section 2.1, AHFC reserves for itself, its representatives, and its assigns the right to enter upon the Property at any time and for any purpose, so long as AHFC shall notify ACCT and does not interfere with ACCT's use of the Property or construction of the Block 70 Parking Garage. AHFC shall comply with all necessary job-site safety rules imposed by ACCT or its contractor while present on the Property during construction.

2.3 Termination of License. Unless otherwise extended by mutual agreement, MOA's license to enter upon and develop the Property terminates upon any of the following events:

2.3.1 AHFC's election under Section 4.4 of the Block 70 Parking Garage Development Agreement not to proceed to Phase II.

3.2, MOA assigns to AHFC all of its rights, duties, and responsibilities under the Block 70 Parking Garage Development Agreement.

3.2 Reservation of Assignment. MOA reserves for itself the following rights, duties, and responsibilities under the Block 70 Parking Garage Development Agreement.

- 3.2.1 Those rights, duties, and responsibilities occurring during the Pre-development Phase as described in Section 3 of the Block 70 Parking Garage Development Agreement, excluding the obligation to make payment set forth in Section 3.3 of such agreement.
- 3.2.2 Those rights, duties, and responsibilities set forth in Section 5.5.7.4 (COST OVERRUNS) (Changes to Municipal code or regulations) of the Block 70 Parking Garage Development Agreement.
- 3.2.3 Those rights, duties, and responsibilities set forth in Section 5.5.7.5 (COST OVERRUNS) (Environmental) of the Block 70 Parking Garage Development Agreement.
- 3.2.4 MOA shall receive a copy of the deliverables described in section 4.1 of the Block 70 Parking Garage Development Agreement at the same time the deliverables are given to AHFC.
- 3.2.5 MOA shall have the right to participate in all negotiations between AHFC or its consultants and ACCT or its consultants described and set forth in Section 4.4 of the Block 70 Parking Garage Development Agreement where such negotiations are relevant to the design features described in Section 4.2 of this Agreement.
Notwithstanding this provision, AHFC shall have exclusive right to determine in its sole discretion whether to proceed to Phase II pursuant to Sections 4.4 and 5.4 of the Block 70 Parking Garage Development Agreement.

- 3.2.6 MOA shall have the right provided in section 5.5.4 of the Block 70 Parking Garage Development Agreement to visit and inspect the site from time to time at its sole discretion for the purpose of evaluating and monitoring environmental activities for which MOA has potential indemnification responsibility, so long as MOA complies with the access and entry provisions set forth in Section 2.1.1 of this Agreement.
- 3.2.7 All non-financial obligations imposed by Anchorage Municipal Code 07.40.010 - 07.40.080 relating to funds for work of art in public facilities. AHFC shall be responsible for payment to MOA for the costs of implementing the one percent for the Art program per the requirements of Section 4.3.
- 3.3 AHFC's Acceptance of Assignment.** AHFC accepts the assignment of rights and assumes the duties and responsibilities under the Block 70 Parking Garage Development Agreement from MOA as set forth in Section 3.1 and limited by Section 3.2 of this Agreement.
- 3.4 Cooperation.** MOA and AHFC agree they will cooperate in good faith to facilitate AHFC's assumption and implementation of AHFC's assigned rights and responsibilities.
- 3.5 Indemnification.** Subject to a specific appropriation by the legislature for this purpose, AHFC agrees to indemnify MOA against all claims arising out of or asserted against MOA as a result of performance of those rights, duties, and responsibilities assigned to AHFC under Section 3.1 of this Agreement; however such obligation does not extend to claims arising out of or asserted against MOA as a result of performance of those rights, duties, and responsibilities reserved to MOA by Section 3.2 of this Agreement or extend to damages caused by MOA's own negligence. All Parties to this Agreement recognize and agree that AHFC has no appropriation currently available to it to indemnify MOA under this section and that enactment of an appropriation in the future to fund a payment under this section remains in the sole discretion of the legislature. The legislature's failure to make such an appropriation fully rescinds any liability on the part of AHFC under this Section and creates no further liability or obligation of AHFC for indemnification or other action.

4. DESIGN AND CONSTRUCTION OF THE BLOCK 70 PARKING GARAGE

4.1 Predevelopment and Phase I Activities. AHFC agrees that until such time as AHFC, as the assignee of the MOA, elects to proceed to Phase II under Sections 4.4 and 5.4 of the Block 70 Parking Garage Development Agreement, AHFC will keep MOA informed of all meetings, events, and decisions concerning design, schedule, budget, or cost of the Block 70 Parking Garage and that MOA will be permitted to send a representative to all meetings between AHFC or its consultants and ACCT or its consultants or between ACCT and its contractors or consultants.

4.2 Design Features.

4.2.1 Design Features. If AHFC elects to proceed to Phase II under Section 5.4 of the Block 70 Parking Garage Development Agreement, the Block 70 Parking Garage shall be designed and constructed to contain the following design features:

4.2.1.1 The garage shall be located at the northern property line of the Property so that the width of the sidewalks along 7th Avenue is maximized.

4.2.1.2 The first floor of the structure shall contain commercial or retail space along E Street, F Street, and Seventh Avenue.

4.2.1.3 The sidewalks on the E Street, F Street, and Seventh Avenue sides of the garage shall be heated from the outside face of the commercial or retail space storefront to the back of the curb.

4.2.1.3.1 MOA and AHFC agree that should AHFC elect to proceed to Phase II and the Block 70 Parking Garage be constructed, AHFC shall be responsible for any maintenance of the sidewalks around the garage. However, should the MOA undertake any activities within its right-of-way, MOA shall be responsible for any damage to or impacts upon the heating system caused by those activities.

4.2.1.4 No vehicle entry or exit shall be designed or constructed on the F Street side of the garage.

- 4.2.1.5 The garage shall be designed and constructed to provide for two lanes of access to the garage to or from E Street. The E Street access shall not diminish the twenty-nine (29) feet of sidewalk measured from the outside face of the commercial or retail storefront (nineteen (19) feet from the face of the structure) to the back of curb.
- 4.2.1.6 The garage shall be designed and constructed with an exterior skin as such skin is described and depicted in Exhibits A and H to the Block 70 Parking Garage Development Agreement. Any change to the exterior skin that does not conform to Exhibits A and H must be approved in writing by the mayor of the MOA.
- 4.2.1.7 The garage shall be designed and constructed to include a stair-elevator tower and pedestrian plaza that conforms with the tower and pedestrian plaza described and depicted in Exhibits A and G to the Block 70 Parking Garage Development Agreement. Any change to the tower and plaza that does not conform to Exhibits A and G must be approved in writing by the mayor of the MOA.
- 4.3 One Percent for Art.** MOA shall undertake and perform all legal responsibilities imposed by Anchorage Municipal Code 07.40.010 - 07.40.080 regarding funds for works of art in public facilities and shall be responsible for administering such program for the Block 70 Parking Garage. Appointments to the committee or jury for art collection shall be structured so that AHFC and ACCT representatives compose the majority of members. As such, the five-person committee or jury for selecting art shall be appointed as follows: two members by AHFC; two members by MOA; and one member by ACCT. AHFC funds allocated to the one percent for the arts shall be used to cover the cost of the art, the costs of installing the art on or at the Block 70 Parking Garage, and the MOA administrative fee described in this Section. The MOA administrative fee shall equal ten percent of the one percent for art budget. One half of such fee shall be paid within 30 days after the selection committee is appointed and the remainder of such fee shall be paid after all of the artwork has been selected and contracts awarded to the artists. As to payment for the art, MOA shall notify AHFC when payment to the selected artist or artist is due not later than 35 days prior to the due date, and AHFC shall provide the funding for one-percent for art directly to MOA not less than five business days prior to the date upon which payment to the artists is due.

4.4 Assembly Approval. MOA shall submit to the Anchorage Assembly and use its best efforts to obtain passage of a municipal ordinance concerning public facility site review for the Project. The submitted ordinance shall provide for the Anchorage Assembly to follow substantially similar expedited procedures for approvals of site review and public hearings used for the Anchorage convention center.

5. PURCHASE AND SALE OF THE BLOCK 70 PARKING GARAGE

5.1 Purchase Price. The purchase price for the Block 70 Parking Garage shall equal the amount payable to ACCT for design and construction of the Project as set forth in the Block 70 Parking Garage Development Agreement, plus the administrative fee payable to MOA under Section 5.2 of this Agreement. The purchase price shall not exceed Forty-Four Million Dollars (\$44,000,000) less AHFC's costs for bonding and purchasing the garage. Cost overruns for bonding and purchasing the garage in excess of those amounts set forth in Exhibit B-1 to the Block 70 Parking Garage Development Agreement shall be borne by AHFC. If AHFC does not elect under Sections 4.4 and 5.4 of the Block 70 Parking Garage Development Agreement to proceed to Phase II, the purchase price shall not be owed, but the payments required under Section 6 of the Block 70 Parking Garage Development Agreement shall be made by AHFC directly to ACCT.

5.2 MOA Administrative Fee. As part of the purchase price, AHFC shall pay an administrative fee directly to MOA of Two Hundred Twenty Thousand Dollars and no cents (\$220,000). Payment of such fee beyond the initial payment shall be made only if AHFC elects under Section 4.4 and 5.4 of the Block 70 Parking Garage Development Agreement to proceed to Phase II. Payment of the fee shall be made in installments as follows:

5.2.1 One hundred and Ten Thousand Dollars (\$110,000.00) -- Thirty days following the Effective Date

5.2.2 Fifty Five Thousand Dollars (\$55,000.00) -- Thirty days following the signing of the Notice to Proceed described under Section 5.4 of the Block 70 Parking Garage Development Agreement.

5.2.3 Fifty Five Thousand Dollars (\$55,000.00) -- Upon beginning of construction.

5.3 Installment Payments of Purchase Price. If AHFC elects under Sections 4.4 and 5.4 of the Block 70 Parking Garage Development

Agreement to proceed to Phase II, AHFC shall pay the balance of the purchase price in excess of the administrative fee provided for under Section 5.2 of this Agreement in installments paid directly to ACCT as provided in Section 6 of the Block 70 Parking Garage Development Agreement. AHFC shall provide MOA with documentation showing that such payments have been made within fifteen (15) days of the date such payments are made.

5.4 Warranties. Except as provided in Sections 5.4.1 and 5.4.2 of this Agreement, MOA does not warrant, in any manner whatsoever, title to the Property or the quality, condition, or fitness of the Property for use of the Block 70 Parking Garage.

5.4.1 Nothing contained in Section 5.4 shall be construed to limit any warranties assigned by MOA to AHFC pursuant to Section 3 of this Agreement.

5.4.2 Nothing contained in Section 5.4 shall be construed to limit the limited warranty provided by MOA as described in Section 5.5 and Exhibit A to this Agreement.

5.5 Closing. The closing for AHFC's acquisition of the Block 70 Parking Garage shall be contemporaneous with AHFC's acceptance of substantial completion of the Block 70 Parking Garage. At such time, MOA shall furnish AHFC with a quitclaim deed with one limited warranty. The quitclaim deed with one limited warranty shall be in substantial compliance with Exhibit A to this Agreement.

6. ADDITIONAL PROVISIONS

6.1. Termination of Agreement. Termination. This Agreement may be terminated by any of the following events:

6.1.1 AHFC's election under Section 4.4 of the Block 70 Parking Garage Development Agreement not to proceed to Phase II.

6.1.2 Termination of the Block 70 Parking Garage Development Agreement.

6.1.3 Upon mutual agreement of the Parties.

6.1.4 Upon AHFC's acceptance of final completion of the Block 70 Parking Garage.

6.2 **Effect of Termination.** In the event of termination, this Agreement shall be of the following force and effect.

6.2.1 If AHFC does not elect to proceed to Phase II construction and management under Section 4.4 of the Block 70 Parking Garage Development Agreement, this Agreement shall be without further force and effect. However, this clause shall not be interpreted to dispense with AHFC's obligations to make the payments to ACCT required by Section 6 of the Block 70 Parking Garage Development Agreement or to limit AHFC's ownership of the Phase I deliverables as governed by Section 9 of the Block 70 Parking Garage Development Agreement.

6.2.2 If the Agreement is terminated pursuant to Section 6.1.2 of this Agreement, MOA shall immediately transfer ownership of the Block 70 Parking Garage to AHFC in whatever state of completion by provision of the quitclaim deed with one limited warranty in substantial compliance with Exhibit A to this Agreement. With the exception of the following listed provisions of this Agreement, the remainder of this Agreement shall be without force and effect.

6.2.2.1 Section 3 (ASSIGNMENT OF DEVELOPMENT AGREEMENT), including AHFC's ability to exercise remedies for default under the Block 70 Parking Garage Development Agreement.

6.2.2.2 Section 4.1 (DESIGN AND CONSTRUCTION OF DOWNTOWN PARKING GARAGE -- Predevelopment and Phase I Activities).

6.2.2.3 Section 5.2 (PURCHASE AND SALE OF THE BLOCK 70 PARKING GARAGE-MOA Administrative Fee).

6.2.2.4 Section 5.4 (PURCHASE AND SALE OF THE BLOCK 70 PARKING GARAGE --Warranties).

6.2.2.5 Section 6 (ADDITIONAL PROVISIONS).

6.3 Loss or Damage. In the event of loss or damage to the Property as a result of flood, fire, earthquake, or other casualty, risk of loss shall be as set forth in the Block 70 Parking Garage Development Agreement.

6.4 Notices. All notices, demands, and requests which may be or are required to be given by either party to the other shall be in writing and shall be personally served, delivered by express courier, or sent by facsimile transmission (if sent by facsimile transmission a duplicate copy shall be sent by mail) to the individuals identified below:

If to MOA:

Municipal Manager
Municipality of Anchorage
632 W. Sixth Ave., Ste. 830
Anchorage, Alaska 99501
(907) 343-7110
Fax: (907) 343-7140

And

Municipal Attorney
632 W. Sixth Ave.,
Suite 730
Anchorage, Alaska 99501
(907) 343-4545
Fax: (907) 343-4550

If to AHFC:

Executive Director
Alaska Housing Finance
Corporation
4300 Boniface Parkway
Anchorage, Alaska 99504
(907) 330-8452
Fax: (907) 338-9218

And

Department of Administration
Division of General Services
Attn: Tanci Mintz
550 W. Seventh Ave., Suite 1970
Anchorage, Alaska 99501
(907) 269-0300
Fax: (907) 269-0308

6.5 Consultation. MOA and AHFC independently represent that each has had an adequate opportunity to consult with its own tax, legal, and other advisor prior to executing this Agreement. This Agreement when executed shall represent the agreement of the Parties and the rule of construction that ambiguities are construed against the drafter shall not apply.

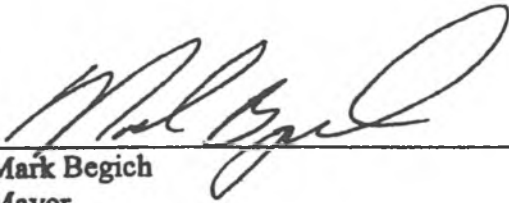
6.6 No Third Party Beneficiaries. With the exception of Section 6.6.1, this Agreement creates no third party beneficiaries and no private rights of action that can be exercised by anyone other than the Parties to this Agreement, their successors, or assigns.

- 6.6.1 ACCT is a third-party beneficiary of Section 5.1 of this Agreement in the limited and only circumstance as follows: ACCT is a third-party beneficiary and may bring a private cause of action to enforce the obligations of AHFC set forth in Section 5.1 of this Agreement for payment of Pre-development and Phase I fees as such payment is required by and described in Section 6 of the Block 70 Parking Garage Development Agreement. AHFC agrees that ACCT may proceed in reliance upon this covenant, even if the Assembly does not approve the Block 70 Parking Garage Development Agreement and this Agreement, provided only that ACCT complies with its obligation to license its Phase 1 deliverables to AHFC upon such payment.
- 6.7 **Binding Effect.** This Agreement is binding on and shall inure to the benefit of the Parties and their respective legal representatives, successors, and assigns.
- 6.8 **Governing Law; Jurisdiction.** This Agreement shall be construed and interpreted and the rights of the Parties determined in accordance with the laws of the State of Alaska. Should any legal proceeding be necessary under this Agreement, the same shall be commenced in the Superior Court of the State of Alaska, Third Judicial District at Anchorage, Alaska. MOA and AHFC agree specifically that venue and jurisdiction in that court are proper and further agree to submit themselves to the jurisdiction of that court as a result of any matter arising under this Agreement.
- 6.9 **Headings and Subheadings.** Headings and subheadings are provided for descriptive purposes only and shall not be interpreted as obligations of this Agreement.
- 6.10 **Enforceability of Agreement.** Invalidity or unenforceability of any provision of this Agreement shall not affect the remainder.
- 6.11 **Waiver.** No waiver of any provision of this Agreement shall be effective unless in writing and signed by the Party who is bound to perform under the waived provision.
- 6.12 **Integration; Amendment.** This Agreement is the entire agreement of the Parties relating to the Property and it supersedes all prior agreements, understandings, representations, and negotiations. This Agreement may not be amended verbally or by any course of dealing, but only in writing signed by both parties.

6.13 Disputes. The Parties agree to apply the alternative disputes resolution procedures set forth in section 13.1 and 13.2 of the Block 70 Parking Garage Development Agreement to disputes between MOA and AHFC regarding this Agreement or the Parties' obligations or performance hereunder. Notwithstanding this provision, the alternative disputes resolutions procedures of Section 13.1 and 13.2 of the Block 70 Parking Garage Development Agreement shall not be applicable to any of the following: those matters set forth under this Agreement as being under the exclusive authority or sole discretion of either MOA or the AHFC; those matters which would subject AHFC to cost overruns under Section 5.5.7 of the Block 70 Parking Garage Development Agreement; or those matters, if any, subject to AHFC's administrative claims procedures.


DATED this 11th day of September, 2006.

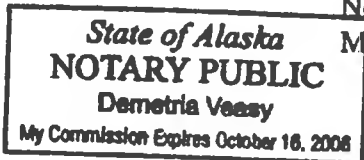
MUNICIPALITY OF ANCHORAGE
A municipal corporation

By: 
Mark Begich
Its: Mayor

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

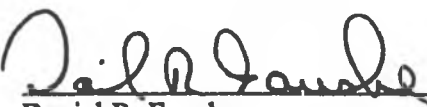
The foregoing instrument was acknowledged before me this 11th day of September, 2006, by Mark Begich, (title) Mayor of the City of Anchorage.


Notary Public in and for Alaska
My commission expires: 10/16/06



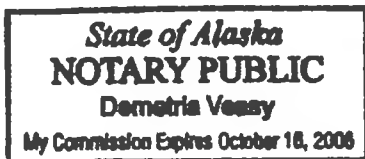
DATED this 11th day of September, 2006.

ALASKA HOUSING FINANCE CORPORATION

By: 
Daniel R. Fauske
Its: Chief Executive Officer/Executive Director

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me this 11th day of September, 2006, by Daniel Fauske, (title) CEO/Exec Director of the Alaska Housing Fin. Corp.



Demetria Vessey
Notary Public in and for Alaska
My commission expires: 10/16/06

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

Notary Public in and for Alaska
My Commission expires:_____



LAWS OF ALASKA

2006

Source
SB 317

Chapter No.

AN ACT

Relating to the purchase by the Alaska Housing Finance Corporation of a parking garage in Anchorage, Alaska and approving the issuance of bonds for the purchase of that parking garage; providing notice of, and authorizing the commissioner of the Department of Administration to enter into, a lease-purchase agreement with the Alaska Housing Finance Corporation for that parking garage; and providing for an effective date.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

THE ACT FOLLOWS ON PAGE 1

AN ACT

1 Relating to the purchase by the Alaska Housing Finance Corporation of a parking garage in
2 Anchorage, Alaska and approving the issuance of bonds for the purchase of that parking
3 garage; providing notice of, and authorizing the commissioner of the Department of
4 Administration to enter into, a lease-purchase agreement with the Alaska Housing Finance
5 Corporation for that parking garage; and providing for an effective date.

6

7 * **Section 1.** The uncodified law of the State of Alaska is amended by adding a new section
8 to read:

9 FINDINGS AND PURPOSE. (a) There is insufficient parking available for the
10 Atwood Office Building in downtown Anchorage, Alaska, and the purchase of a new parking
11 garage to provide parking for the Atwood Office Building would serve a public purpose.

12 (b) The purpose of this Act is to

1 (1) authorize the Alaska Housing Finance Corporation to finance the purchase
2 of a parking garage for the Atwood Office Building; and

3 (2) provide notice of, and authorize the commissioner of administration to
4 enter into, a lease with the Alaska Housing Finance Corporation for that parking garage.

5 * **Sec. 2.** The uncodified law of the State of Alaska is amended by adding a new section to
6 read:

7 LEGISLATIVE AUTHORIZATION FOR PURCHASE AND BONDS. (a) The
8 Alaska Housing Finance Corporation is authorized to finance under AS 18.55.010 -
9 18.55.290, with bond proceeds, the purchase of a parking garage in Anchorage, Alaska, to be
10 leased to the state to provide parking for the Atwood Office Building. The maximum amount
11 of the purchase price of the parking garage may not exceed \$44,000,000, including the costs
12 of purchasing the facility and issuing the bonds for the purchase.

13 (b) The Alaska Housing Finance Corporation is authorized to issue bonds under
14 AS 18.55.100(a)(15) and (d) for the purchase of the parking garage described in (a) of this
15 section. The bonds may have a term not to exceed 21 years.

16 * **Sec. 3.** The uncodified law of the State of Alaska is amended by adding a new section to
17 read:

18 LEGISLATIVE NOTICE OF AND AUTHORIZATION FOR LEASE-PURCHASE
19 AGREEMENT. Subject to annual appropriation, the commissioner of administration is
20 authorized to enter into a lease-purchase agreement for the parking garage described in sec. 2
21 of this Act. The anticipated total cost of the project is \$44,000,000. The anticipated annual
22 amount of the rental obligation is \$3,700,000. The total lease payments for the full term of the
23 lease-purchase agreement is anticipated to be \$77,700,000.

24 * **Sec. 4.** The uncodified law of the State of Alaska is amended by adding a new section to
25 read:

26 APPROVAL OF FINANCING AND AGREEMENT. (a) Section 2 of this Act
27 constitutes the approval for the financing of the public building project described in sec. 2 of
28 this Act required by AS 18.55.100(d).

29 (b) Section 3 of this Act constitutes the notice and approval of the lease-purchase
30 agreement described in sec. 3 of this Act required by AS 36.30.085.

31 * **Sec. 5.** This Act takes effect immediately under AS 01.10.070(c).

FISCAL NOTE

STATE OF ALASKA
2006 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: SB 317
 (S) Publish Date: 4/27/06

Revision Date/Time (Note if correction): 4/27/06 8:10 a.m. Dept. Affected: Administration
 Title An Act relating to the purchase by AHFC RDU State Owned Facilities
of an Anchorage Parking Garage Component Facilities
 Sponsor Rules Committee
 Requester Governor Component No. 2429

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Personal Services						
Travel						
Contractual		3,700.0	3,700.0	3,700.0	3,700.0	3,700.0
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	3,700.0	3,700.0	3,700.0	3,700.0	3,700.0

CAPITAL EXPENDITURES						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
-------------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

FUND SOURCE	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
1002 Federal Receipts						
1003 GF Match						
1004 GF		3,700.0	3,700.0	3,700.0	3,700.0	3,700.0
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	3,700.0	3,700.0	3,700.0	3,700.0	3,700.0

Estimate of any current year (FY2006) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2007 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

The Alaska Housing Finance Corporation will finance, with bond proceeds, the purchase of a parking garage in Anchorage which will be leased to the state to provide parking for the Atwood Office Building. The maximum purchase price of the parking garage may not exceed \$44,000,000, including the cost of purchasing the facility and issuing the bonds for purchase. Subject to an annual appropriation, the Commissioner of Administration is authorized to enter into a lease-purchase for the parking garage. The anticipated total cost of the project is \$44,000,000 and the anticipated annual amount of the rental obligation is \$3,700,000. This fiscal note represents the amount necessary to satisfy the required annual lease payment of \$3,700,000.

Prepared by: Remond Henderson, Deputy Director
 Division: General Services
 Approved by: Michael Tibbles, Deputy Commissioner
 Agency: Administration

Phone 465-5687
 Date/Time 4/27/2006 8:10 a.m.
 Date 4/27/2006

HOUSE FINANCE COMMITTEE
May 3, 2006
8:51 a.m.

CALL TO ORDER

Co-Chair Meyer called the House Finance Committee meeting to order at 8:51:12 AM.

MEMBERS PRESENT

Representative Kevin Meyer, Co-Chair
Representative Bill Stoltze, Vice-Chair
Representative Richard Foster
Representative Mike Hawker
Representative Jim Holm
Representative Reggie Joule
Representative Mike Kelly
Representative Beth Kerttula
Representative Carl Moses
Representative Bruce Weyhrauch

MEMBERS ABSENT

Representative Mike Chenault, Co-Chair

ALSO PRESENT

Linda Hall, Director, Division of Insurance, CCED; Scott J. Nordstrand, Commissioner, Department of Administration; Senator Fred Dyson; Senator Donny Olson; John MacKinnon, Deputy Director, Department of Transportation and Public Facilities; Peter Putzier, Senior Assistant Attorney General, Transportation Section, Department of Law; Gary Olson, Chairman, Alaska Moose Federation

PRESENT VIA TELECONFERENCE

Jim McMillian, Deputy Director of Credit & Business Development, Alaska Industrial Development and Export Authority (AIDEA)

SUMMARY

CONFIRMATIONS:

Alaska Mental Health Trust Authority Board Confirmations:
Laraine L. Derr, Juneau
Paula Easley, Anchorage
Roy Huhndorf, Anchorage

State Assessment Review Board:
Mary Keller

CSSB 289 (FIN)

domestic insurers. It changes licensing language to be consistent with state standards, allows for increasing electronic communication, and changes some definitions.

Co-Chair Meyer noted the zero fiscal note. He asked if the Labor and Commerce Committee agrees with the bill. Ms. Hall replied that Labor and Commerce sponsored the bill at her request.

9:02:17 AM

Representative Foster MOVED to REPORT CSSB 289 (FIN) out of Committee with individual recommendations and the accompanying fiscal note. There being NO OBJECTION, it was so ordered.

CSSB 289 (FIN) was REPORTED out of Committee with a "no recommendation" and with zero fiscal note #1 by the Department of Commerce, Community and Economic Development.

9:03:43 AM

SENATE BILL NO. 317

"An Act relating to the purchase by the Alaska Housing Finance Corporation of a parking garage in Anchorage, Alaska and approving the issuance of bonds for the purchase of that parking garage; providing notice of, and authorizing the commissioner of the Department of Administration to enter into, a lease-purchase agreement with the Alaska Housing Finance Corporation for that parking garage; and providing for an effective date."

SCOTT J. NORDSTRAND, COMMISSIONER, DEPARTMENT OF ADMINISTRATION, referred to a handout "Atwood Building Parking Center" (copy on file.) He explained that Anchorage is building a convention center downtown and wants to acquire Block 80, which is valued at \$4.6 million. An agreement was made to swap half of Block 70 for half of Block 80. The state accepted \$2.3 million in cash for the other half of Block 80. That left a shortage of parking in Block 70. The state made an agreement with the municipality for the right to park 149 cars in the JC Penney garage for up to 7 years and for free parking during the construction of a new parking garage. If, at the end of 7 years, the state does not build a parking garage, the municipality has the option to purchase back the property and they would have to build a parking garage. Presently, there is a need for about 1,000 parking spaces.

9:07:37 AM

Mr. Nordstrand referred to page 2 and listed the various parking spaces currently available. The plan is to build a parking garage on Block 70 that would accommodate up to 830 vehicles and with a skyway into the Atwood Building.

Mr. Nordstrand noted on page 5 the configuration of the future parking plan. Alaska Housing Finance Corporation (AHFC) owns the Atwood Building. The developer for the new convention center will also be used for the new parking garage in order to get the best possible price. Construction on the new garage will begin next spring. AHFC would issue debt and purchase from the municipality, and the Department of Administration would lease the parking facility from AHFC. The state will own it at the end of the lease/debt payoff. The Department of Administration will build the cost of the parking into the lease rate that is charged to tenants in the facility.

9:10:41 AM

Mr. Nordstrand related the financial terms on page 7. AHFC will bond up to \$44 million and have a debt service of \$3,700,000 annual lease payments over 21 years. The debt would be issued at the beginning of construction with progress payments thereafter.

Mr. Nordstrand talked about the lease cost analysis on page 8. The new lease rate of \$2.52 per square foot does not reflect offsetting revenues and savings. He explained the revenues and savings on page 9. He estimated that parking costs would increase. The first floor of the facility will be used for retail space and will be a source of income. The convention center cash payment of \$2.3 million is available revenue. After hours parking revenue is estimated to be \$200,000 per year. The total when capitalized is \$23.5 million. Revenues and savings are estimated to reduce the square foot cost for the parking center by half.

9:14:26 AM

Mr. Nordstrand summarized that there is a demand for more parking and future cost and demand impacts are imminent. The Atwood Parking Center would provide safety and convenience for visitors and 1,000 state employees and other tenants.

Representative Foster spoke in support of SB 317. He recalled that a survey in the 80's showed 59 percent of facilities were not taxed so the burden fell on the other 41 percent of the people. When the state owns facilities, others have to pay for maintenance. Co-Chair Meyer recalled when the state bought the Atwood building, which resulted in a loss to the tax rolls. Mr. Nordstrand described this transaction as a win/win situation that has the approval of

the city. Co-Chair Meyer commented that the taxpayers may not be happy.

9:16:24 AM

Representative Kelly asked if there is a charge to park at the lot. Mr. Nordstrand replied that there are so many square feet allowed for state parking. He gave an example of a lease facility with not enough parking. Atwood employees have not been paying for parking. There are 930 free parking places presently.

Representative Kelly asked if that would be an issue in the future. He agreed with the concern brought up by Representative Foster and Co-Chair Meyer. He suggested letting the people pay for it. Mr. Nordstrand said that issue has not been looked at. He could see how it could be a financial problem for employees. The norm is to not pay for parking.

Representative Kelly cautioned that there is unfunded liability. Mr. Nordstrand pointed out that the municipality is planning to build more parking.

9:21:52 AM

Co-Chair Meyer asked if lease payments are shown on the fiscal note. He asked about savings resulting from consolidating parking. Mr. Nordstrand said that expense has not been determined. Co-Chair Meyer asked who would pay for maintenance of the parking garage. Mr. Nordstrand said the Anchorage Parking Authority. He spoke of how security would be handled. Those costs are unknown, but evening and weekend parking could offset those expenses.

Co-Chair Meyer asked if there would be a walkway to the Atwood Building. Mr. Nordstrand replied that the Atwood Building was designed for such a skyway. There may be a skyway to the Convention Center in the future.

9:25:03 AM

Co-Chair Meyer commented that the fiscal note has unknowns.

Representative Foster MOVED to REPORT SB 317 out of Committee with individual recommendations and the accompanying fiscal note. There being NO OBJECTION, it was so ordered.

SB 317 was REPORTED out of Committee with individual recommendations and with fiscal note #1 by the Department of Administration.

9:26:37 AM

MINUTES
SENATE FINANCE COMMITTEE
April 28, 2006
9:13 a.m.

CALL TO ORDER

Co-Chair Lyda Green convened the meeting at approximately 9:13:55 AM.

PRESENT

Senator Lyda Green, Co-Chair
Senator Gary Wilken, Co-Chair
Senator Con Bunde, Vice Chair
Senator Fred Dyson
Senator Bert Stedman
Senator Lyman Hoffman
Senator Donny Olson

Also Attending: SENATOR RALPH SEEKINS; AMY STEITZ, Staff to Senator Tom Wagoner; SCOTT NORDSTRAND, Commissioner, Department of Administration; GREG O'CLARAY, Commissioner, Department of Labor and Workforce Development; TOM MAHER, Staff to Senator Therriault; MIKE ANDREWS, Director, Alaska Works Partnership Inc.; JOHN BITNEY, Lobbyist, Alaska State Homebuilders Association;

[NOTE: Public testimony on SJR 20 was presented in the order depicted in the minutes. In addition, all testimony was presented in Juneau unless otherwise noted.]

Attending via Teleconference: From Anchorage: MARK DAVIS, Director, Division of Banking & Securities, Department of Commerce, Community and Economic Development; ROGER PRINCE, Department of Commerce, Community and Economic Development; JOE BRAMMER, Alaska Association of Mortgage Brokers; JOHN MARTIN; KEN GAIN, Secretary/Treasurer, Independent Lenders of Alaska; JOHN CARMAN, Past President, Alaska Mortgage Bankers Association; MIKE SAMSON, President, Samson Electric; BILL WATTERSON, President, Watterson Construction; JULIE AUNE, Vice President, AAA Fence; REBECCA LOGAN, President, Associated Building and Contractors (ABC) of Alaska; from Fairbanks: DOUG ISAACSON, Past President, Alaska Association of Mortgage

Commissioner O'Claray guaranteed this bill was developed to be non-partisan in regard to the union/non-union issue. He asserted that there are many people to train, and the bill endeavors to encompass as many employees as possible.

Co-Chair Green appreciated Commissioner O'Claray's "positive attitude".

Co-Chair Wilken moved to report the bill from Committee with individual recommendations and accompanying fiscal notes.

There being no objection, CSSB 309(L&C) was REPORTED from Committee with two fiscal notes from the Department of Labor and Workforce Development: fiscal note #1 in the amount of \$5,043,300, and fiscal note #2 for \$247,700.

#sb317
4:33:51 PM

SENATE BILL NO. 317

"An Act relating to the purchase by the Alaska Housing Finance Corporation of a parking garage in Anchorage, Alaska and approving the issuance of bonds for the purchase of that parking garage; providing notice of, and authorizing the commissioner of the Department of Administration to enter into, a lease-purchase agreement with the Alaska Housing Finance Corporation for that parking garage; and providing for an effective date."

This was the first hearing for this bill in the Senate Finance Committee.

SCOTT NORDSTRAND, Commissioner, Department of Administration, introduced the bill, and explained it as a proposal to build a parking garage to serve the Atwood Building in downtown Anchorage.

4:34:45 PM

Commissioner Nordstrand referred to a presentation titled "Atwood Building Parking Center" [copy on file]. He explained that the State purchased the Atwood Building and the adjacent

"Block 80" lot at the same time, and had since used Block 80 as a parking area for State employees working in the Atwood Building. He directed attention to the map on page 3 of the presentation. The Municipality of Anchorage and the State recently concluded negotiations to sell Block 80 to the Municipality for construction of a convention center.

Commissioner Nordstrand continued that the State was compensated in a "block for block" trade, and acquired one half of "Block 70" directly across the street from the Atwood Building, where the Dimond Center parking lot is currently located. In addition, the State was paid market value of \$2.3 million by the Municipality of Anchorage for the other half of Block 80. The State is statutorily required to provide 40 visitor parking places as well as a specified number of handicap parking places within one half block from the door of the Atwood Building, in addition to employee parking, for a total of approximately 930 parking spaces. These parking needs are currently met with multiple parking lots within a 12 square block area.

4:38:54 PM

This bill proposes a long term solution to the Atwood Building's parking issues in the form of a parking structure to be built on the State's portion of Block 70. As part of the negotiated terms between the State and the Municipality, the State committed to build a parking garage within seven years on Block 70, or to allow the Municipality the option to buy back the lot at market value to do so themselves. The erection of a parking structure would enable the State to sell Block 102, currently used for parking and valued at approximately \$4 million, and put those funds into the parking facility.

The parking facility would include a "skybridge" to the Atwood Building, as the building was configured to receive that type of overpass. Per request of the Mayor of Anchorage, the ground level would be available for lease by retail stores, resulting in additional income generated by the parking facility.

Commissioner Nordstrand reported that the Alaska Housing Finance Corporation (AHFC) owns the Atwood Building; the State Department of Administration leases the space from AHFC, and charges the departments that occupy the offices. The Municipality was once planning to build the parking garage themselves, but found it financially burdensome. Under this

proposal, the developer retained by the Municipality of Anchorage would be used by the State to design and construct the facility. The State would engage an independent cost expert to determine a fixed price for the project which would be agreed to by both parties. AHFC would issue the debt for construction of the facility and purchase the completed parking garage from the Municipality, whereby the Department of Administration would lease the structure. Commissioner Nordstrand anticipated the construction bonds would be paid off in 21 years, at which time the deed for the parking garage would be turned over to the State. This bill requested authority to bond for up to \$44 million, although he did not anticipate the cost would be that high. If, however, the project incurred the maximum amount of debt, the annual debt payment would be \$3.7 million for 21 years. The debt would be issued at the beginning of construction to pay for construction expenses.

4:43:12 PM

Commissioner Nordstrand estimated the cost of the project to be approximately \$1.22 per square foot, if the full bond amount was issued. The State currently pays roughly \$1.30 per square foot for the offices in the Atwood Building, bringing the total new lease rate to \$2.52 per square foot. The market rate for this type of office accommodations in Anchorage averages approximately \$2.75.

4:44:12 PM

Commissioner Nordstrand assumed that the cost to lease parking spaces would increase with time. An escalation in parking fees would provide cost avoidance savings to the State, as well as generate additional income by renting spaces in the parking structure for after-hours and weekend parking. In addition to retail lease income and revenues from the sale of surrounding parking areas, including Block 80 and Block 102, he projected the parking facility would generate the equivalent of \$23.5 million. He considered these figures evidence of the State's ability to "buy down the debt".

4:45:59 PM

Commissioner Nordstrand summarized that the demand for parking would remain constant, if not increase, in the future, and the construction of a parking facility would allow the State and the

occupants of the Atwood Building to provide for their own needs rather than paying market price for rented parking.

4:46:21 PM

Commissioner Nordstrand added that the parking structure would provide "safety and convenience" for visitors to the Atwood Building, as well as State employees.

4:46:41 PM

Senator Hoffman asked how Block 102 would be sold.

Commissioner Nordstrand answered that the parcel would be sold "competitively". The lot was appraised for approximately \$3.7 million in January 2006, and he expected the value to increase dramatically with the completion of the nearby convention center.

Senator Hoffman assumed the land would be advertised publicly.

Commissioner Nordstrand affirmed.

4:47:33 PM

Senator Olson asked regarding maintenance and operating costs related to the facility.

Commissioner Nordstrand replied that operating the parking structure would incur costs, such as management of the lease space and employment of a parking attendant, but he was unsure what the total cost would be. He expected the costs would be "minimal", and operations may be handled by the Atwood Building managers or the Anchorage Parking Authority.

4:48:31 PM

Co-Chair Wilken was frustrated with the decision to bond for this project and invest \$30 million in debt services. He pointed to the \$2.5 billion in the Constitutional Budget Reserve (CBR) account and \$2 billion in the Earnings Reserve Account (ERA) as possible revenue sources to pay for the parking facility outright, thus avoiding the \$30 million the State would pay in interest under the current proposal.

4:49:46 PM

DAN FAUSKE, CEO, Alaska Housing Finance Corporation, testified via teleconference from an offnet location. He directed attention to Sec. 2(b) on page 2, line 16, and noted that the terms of the bonds should indicate a 21-year period rather than 20 years.

4:50:16 PM

Commissioner Nordstrand confirmed this.

Co-Chair Green voiced support for the bill.

Co-Chair Wilken moved to report the bill from Committee with individual recommendations and accompanying fiscal notes.

There being no objection, SB 317 was REPORTED from Committee with zero fiscal note #1 from the Department of Administration.

4:51:21 PM

#

ADJOURNMENT

Co-Chair Lyda Green adjourned the meeting at 4:51:42 PM.