

Sponsored by: Council Member David Pruhs
Introduced: April 20, 2015

ORDINANCE NO. 5976

**AN ORDINANCE AUTHORIZING THE ENGINEERING DEPARTMENT
TO ENTER INTO A DEVELOPER'S AGREEMENT FOR THE
CONSTRUCTION OF THE BENTLEY RETAIL AREA LOOP ROAD
AND FOR THE PUBLIC WORKS DEPARTMENT TO TAKE ON
ADDITIONAL ROAD MAINTENANCE RESPONSIBILITY IN THE
BENTLEY RETAIL AREA**

WHEREAS, the City Public Works Department is currently providing for full maintenance of the Bentley Trust Road and Helmericks Avenue, including two roundabouts (see attached figure); and

WHEREAS, the City is constructing a new roundabout in the Helmericks Avenue right-of-way located northwest of Cold Spot Feeds retail facility (see figure) that the City will maintain; and

WHEREAS, private developers are entering into a Developer's Agreement with the City to construct a Loop Road with pedestrian facilities extending west from this new roundabout, through the undeveloped retail area, and connecting to the existing Merhar Avenue located directly south of the Pier 1 retail facility (see figure), with the intent to improve vehicular travel and access in this undeveloped area and encourage retail development; and

WHEREAS, the new Loop Road will be constructed to City Standards per the Developer's Agreement, under the City Engineering Department's design review and construction inspection, and will be maintained by the City Public Works Department; and

WHEREAS, the new Loop Road will be located in the highest-concentrated retail shopping/visitation area in the Fairbanks City Limits; and

WHEREAS, this developed area brings in the highest annual tax base income to the City of Fairbanks; and

WHEREAS, full retail build-out of this currently undeveloped area will generate an estimated \$150,000 in annual tax base revenue for the City of Fairbanks; and

WHEREAS, this is the only development in the City of Fairbanks for which the City is not responsible for maintenance; and

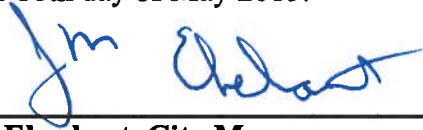
WHEREAS, this new section of road will be approximately 1,525 linear feet and will be connected with existing City of Fairbanks road maintenance areas.

NOW, THEREFORE, BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF FAIRBANKS, ALASKA, as follows:

Section 1. The City Engineering Department is authorized to enter into a Developer's Agreement for the construction of the Bentley Retail Area Loop Road.

Section 2. The City Public Works Department is authorized to take over maintenance of the newly constructed Loop Road up to Merhar Avenue.

Section 3. The effective date of this Ordinance will be the 16th day of May 2015.

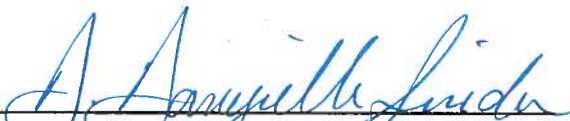


John Eberhart, City Mayor

AYES: Pruhs, Gatewood, Staley, Matherly, Walley
NAYS: Cleworth
ABSENT: None
ADOPTED: May 11, 2015

ATTEST:

APPROVED AS TO FORM:



D. Danyielle Snider, CMC, City Clerk



Paul J. Ewers, City Attorney

ATTACHMENT TO ORDINANCE No. 5976
DEVELOPMENT
AGREEMENT

FOR THE

HELMERICKS AVENUE EXTENSION &
BENTLEY TRUST ROAD UPGRADE
CITY OF FAIRBANKS and ADOT P&F
Project FB-12-22/63624 ROUNDABOUT
Addendum

&

LOOP EXTENSION ROAD
J & J Development, LLC



By and Between the

CITY OF FAIRBANKS, ALASKA

And

J & J DEVELOPMENT, LLC

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Exhibit "1" - City / ADOT Improvements.....	

Attachments by Reference:

The following construction guidelines are incorporated into this Agreement as though set out in full:

Design and Construction Guidelines for the City of Fairbanks Street and Drainage System	29 Pages
Design and Construction Guidelines for the City of Fairbanks Street Lighting System.....	21 Pages
City of Fairbanks Permanent Traffic Signing Guidelines.....	1 Page

**Project FB-12-22/63624
ROUNDBOUT &
LOOP EXTENSION ROAD**

THIS AGREEMENT, made this ____ day of _____ 2015, between the CITY OF FAIRBANKS, 800 Cushman Street, Fairbanks, Alaska, 99701-4615, a municipal corporation of the State of Alaska, hereinafter referred to as the "City", and J & J DEVELOPMENT, LLC, P.O. Box 72578, Fairbanks, Alaska, 99707, their heirs and assigns, hereinafter referred to as the "DEVELOPER."

The City and the Developer, in consideration of their mutual covenants herein, make this agreement which concerns:

- A. The public improvements which are to be constructed by the Developer for the City and to be conveyed to the City, hereinafter referred to as the "Loop Extension Road" which improvements shall comply with City Codes, including Fire Codes, and Engineering Specifications, as shown on the attached drawing(s).

AND

- B. The public improvements which are to be designed and constructed by the City in association with ADOTPF hereinafter, referred to as the "Roundabout", as shown on the attached drawing (s);

SECTION 1. THE DEVELOPER: LOOP EXTENSION ROAD

1.1 The Developer shall design and install the proposed improvements as herein described, in conformance with the Fairbanks General Code of Ordinances, Chapters 58, Public Improvements, and all requirements and specifications of the Design and Construction Guidelines for the City of Fairbanks' Street and Drainage System, the Design and Construction Guidelines For The City of Fairbanks' Street Lighting System, and City of Fairbanks Permanent Traffic Signing Guidelines. All three documents are attached to this Agreement and incorporated as part of the Agreement.

1.2 The Developer shall provide one hundred percent of the funding for the design and construction of all improvements required by this Agreement.

1.3 The Developer shall pay the City one hundred percent for all of the associated expenses incurred by the City, including costs for preparation of this

developer's agreement, and review, plan check, testing, administration, and inspection of these improvements. City labor/administration costs are estimated to be an amount not to exceed \$40,000.00 (included in the bond amount under Section 1.5 below) and will be billed at a rate based on Alaska Department of Transportation and Public Facilities audited and direct cost rate, which is currently the hourly wage rate times 2.8821. This rate is adjusted annually starting July 1 of each year. The billings will start within 30 days. All these costs must be paid promptly upon billing and by December 31 of the year in which accrued and before acceptance of the improvements by the City. City billings are anticipated to be on a quarterly basis.

1.4 The Developer will be responsible for the street and drainage system until acceptance tests are satisfactorily completed and written approval is given by the City Engineer.

1.5 The Developer, through its contractor Great Northwest, Inc., shall furnish, in the name of the City, a bond in the amount of \$525,000.00, the estimated total cost of the public improvements, as established by the City Engineer, including review, plan check, testing, administration, and inspection to guarantee the improvements will be completed to the satisfaction of the City Engineer. The bond will be released upon satisfactory completion of the improvements and acceptance by City Council resolution.

1.6 The Developer shall, within 30 days of _____ submit to the City three complete copies of all engineering reports, plans, specifications and materials lists including design assumptions and calculations. A deposit of \$10,000.00 for the cost to the City for administrating (including reviewing, plan checking, testing and inspecting) the project shall be paid by the Developer at this time. This deposit is not to be construed as an estimate. The Developer will be billed for costs associated with this project per Section 1.3.

1.7 Construction of the public improvements shall not begin until the overall engineering report for all improvements, public and non-public, and the final plans

and specifications have been reviewed and approved in writing by the City Engineer or his designee. The Developer shall submit, for the City Engineer's approval, a complete plan review outlining a proposed schedule of requirements for plan review and approval. All proposed changes to approved engineering reports, plans, specifications and materials lists shall be submitted a reasonable length of time prior to starting construction of the affected portion of the project. Construction of any changes shall not commence until approval is given in writing. Subsequent to approval, all changes will be incorporated into the As-built drawings.

1.8 The Developer hereby agrees to grant to the City access to all portions of the property specified in Appendix 'A' or private easement, permit area, etc. which is necessary to accomplish any inspections, surveillance, testing, or any other work to be performed by the City. The actual work schedule will be provided to the City by the Developer. Any changes in the schedule require at least 48 hours advance notification to the City. A minimum of seven days written notice is required for any connections to the City's existing facilities.

1.9 All necessary permits, licenses and reservations or easements shall be acquired by the Developer. Drainage reservations or easements will be acquired in the name of the City of Fairbanks or in a manner that assigns the reservations or easements to the City of Fairbanks before acceptance of the improvements by the City. Such reservations or easements shall include permit(s) from appropriate governmental authorities to cover all improvements on government land or within their jurisdiction.

1.10 The Developer shall comply with all applicable statutes, ordinances, rules and regulations of federal, state and governmental agencies. Copies of all pertinent approval letters, permits, licenses and rights of way shall be transferred to the City upon acceptance of the public improvements by the City.

1.11 The Developer will also provide copies of proposed utility plans. Utility

facilities will be located to the satisfaction of the City. Each utility is subject to a City right of way permit.

1.12 Before acceptance by the City, the Developer shall furnish to the City a one-year warranty bond or other approved guarantee equal to five percent of the public improvement which the Developer desires the City to accept. The City Engineer shall not recommend acceptance of the public improvements by the City Council until all deficiencies have been corrected to his satisfaction and all outstanding liens or claims of laborers, materials suppliers, subcontractors, or others arising out of the performance of these improvements have been satisfied.

1.13 The Developer must complete all improvements required by this Agreement within two years from the date of execution of this Agreement, with the exception of the required sidewalks, which must be completed within five years. The City Engineer may at his discretion allow extensions for up to a total maximum of one year. Acts of God, inclement weather, governmental regulations, labor disputes, fires, required extra work, or any delay totally beyond the control of the Developer may justify an extension of time. All time extensions requested by the Developer shall be made to the City in writing on or before the tenth day following the day in which the alleged delay is said to have occurred. The City shall not be liable for costs incurred by these delays.

1.14 The Developer shall guarantee the design, construction and materials used in all improvements outlined in this Agreement for one year from the date of acceptance of the improvements by City Council Resolution. The Developer shall remedy at its own expense any failure or defect in the work or any failure of any improvement to properly function which is due to design deficiencies, construction deficiencies, faulty materials or workmanship.

1.15 Correction of the deficiencies must be completed to the City's satisfaction within 30 days of written notification by the City. The warranty bond will be released upon satisfactory correction of all deficiencies of the City's year end warranty inspection if any

security remains from default to warranty obligations. Emergency repairs may be completed by City forces, and the cost shall be borne by the Developer.

1.16 The Developer shall hold the City harmless and defend the City from any and all claims arising out of or incidental to the design, construction, or operation by the Developer contemplated by terms of this Agreement. The Developer shall not be liable for acts of the City. This section does not create any third party rights, and any immunity or defense the City is entitled to shall be available to the Developer in any suit brought by third parties which in any way involve the Development Agreement.

1.17 The Developer shall retain a qualified engineer, licensed by the State of Alaska, to design and review the construction of said improvements including approving any changes and modifications of the design. "As-Built" drawings stamped and signed by a professional engineer and professional land surveyor will be provided to and approved by the City prior to acceptance. It is understood and agreed said engineer and surveyor are agents of and solely responsible to the Developer and are in no sense whatsoever the agents of the City.

1.18 Conveyance: The Developer shall convey the ownership of the public improvements, described in Appendix 'B', to the City of Fairbanks upon acceptance. The form of the conveyance shall be as approved by the City Attorney. Only these improvements, if accepted by the City, shall be maintained by the City.

1.19 Easements: The Developer, not later than time of conveyance of the public improvements, shall:

- A. Grant a public facilities easement to the City comprising 30 feet on each side of the centerline of the Loop Road,
- B. Grant an easement for drainage and snow storage 20 feet in width lying easterly of and coincident with the public facilities easement for the Loop Road.

- C. Grant a public facilities easement for the Roundabout as required by the City Engineer.

Should the Developer fail to comply with its obligation to construct the Loop Extension Road, it must grant to the City, at no charge, all easements necessary for construction and maintenance of the project.

SECTION 2. CITY SERVICES and ADMINISTRATION:

2.1 The City shall review and approve (when acceptable) the submitted engineering reports, plans, specifications and materials lists prior to construction and inspection of the project. Final approval is required by City Engineer prior to Notice to Proceed.

2.2 This Agreement does not obligate the City to finance any portion of the Loop Extension Road improvements nor accept, operate or maintain any public improvements not constructed or inspected to City Standards.

2.3 Upon acceptance of the public improvements by the City Council, the City will take over ownership and operation of the public improvements detailed in this Agreement. City maintenance of these improvements will not begin until this time. The final acceptance inspection by the City of the public improvements detailed in this agreement will be conducted by the City Engineer, the Department of Public Works, and representatives from other government agencies and the City as appropriate.

2.4 The City shall neither own nor maintain any utility service lines within the right of way.

SECTION 3. ROUNDABOUT:

3.1 During the 2015 construction season, the City, in association with ADOTPF, shall design and construct a Roundabout under a certain Addendum to the CITY OF FAIRBANKS and ADOTPF Project FB-12-22/63624 ROUNDABOUT during the 2015 construction season, as depicted in Attachment _____.

SECTION 4. APPENDICES:

4.1 This Agreement shall include all appendices and attachments referenced and such are incorporated herein as though fully set out herein. This Agreement is composed of the Development Agreement, attachments, and the following appendices:

APPENDIX 'A' Legal Description

APPENDIX 'B' Public Improvements to be conveyed to the City

SECTION 5. GENERAL:

5.1. This Agreement shall not diminish the requirements of the Fairbanks North Star Borough (FNSB) or non-city, governmental agencies.

5.2. If the Developer should fail to repair property or facilities owned by the City which were damaged by the Developer, or his/her agents, or if the Developer makes changes in construction covered by this Agreement without approval by the City, the City, after three days written notice to the Developer, can make such repairs or remove such changes at the expense of the Developer.

5.3 If the City determines the construction of an improvement does not comply with the plans and specifications as approved by the City, the City shall issue a written notice to the Developer specifying the deficiencies and may stop all further construction involving the work found to be non-complying. This stop work order shall remain in effect until the Developer has made all necessary arrangements to remedy the non-compliance and to provide assurances such non-compliance shall not again occur. All damages, loss, expense incurred by any party as the result of a stop order imposed by the City shall not be the responsibility of the City.

5.4. The City Engineer may authorize representatives (hereafter referred to as the Representative) to inspect all work done and all materials furnished for all improvements

specified in this Agreement. The Representative shall have authority to reject materials or work, but the City Engineer shall have final authority for deciding if the Developer's work and materials are acceptable. The Representative is not authorized to revoke, alter, enlarge, relax, or release any requirements of the plans and specifications, nor to approve or accept any portion of the work, nor to issue instructions contrary to the Agreement, nor act as supervisor for the Developer. The presence or absence of the Representative does not relieve the Developer from its obligation to perform all contract requirements and work shall not be deemed acceptable just by the reason of the presence of the Representative.

IN WITNESS WHEREOF, this Agreement made and entered into on the day and year first written above:

CITY OF FAIRBANKS:

By: John Eberhart

Title: Mayor

Date: _____

City of Fairbanks Acknowledgment

State of Alaska)
) ss ACKNOWLEDGMENT
Fourth Judicial District)

THIS IS TO CERTIFY that on this _____ day of _____ 2015 before me, the undersigned, a NOTARY PUBLIC in and for the State of Alaska, personally appeared John Eberhart, the Mayor of the City of Fairbanks, the he acknowledged before me that he executed the same on behalf of said municipal corporation. IN WITNESS WHEREOF, my hand and official seal.

NOTARY PUBLIC: Amber B. Courtney

Commission Expires:

J & J Development, LLC

By: Jerry Sadler

Title: Sole Member

Date: _____

J & J Development Acknowledgment

State of Alaska)

) ss

ACKNOWLEDGMENT

Fourth Judicial District)

THIS IS TO CERTIFY that on this _____ day of _____, 2015 before me, the undersigned, a NOTARY PUBLIC in and for the State of _____, personally appeared Jerry Sadler of J & J Development and that he acknowledged before me that he executed the same on behalf of said entity, with authority to do so. IN WITNESS WHEREOF, my hand and official seal.

NOTARY PUBLIC:
Commission Expires:

APPENDIX 'A'

THE PROPERTY: The land owned by the Developer which is the subject of this agreement for purposes of this project is described below.

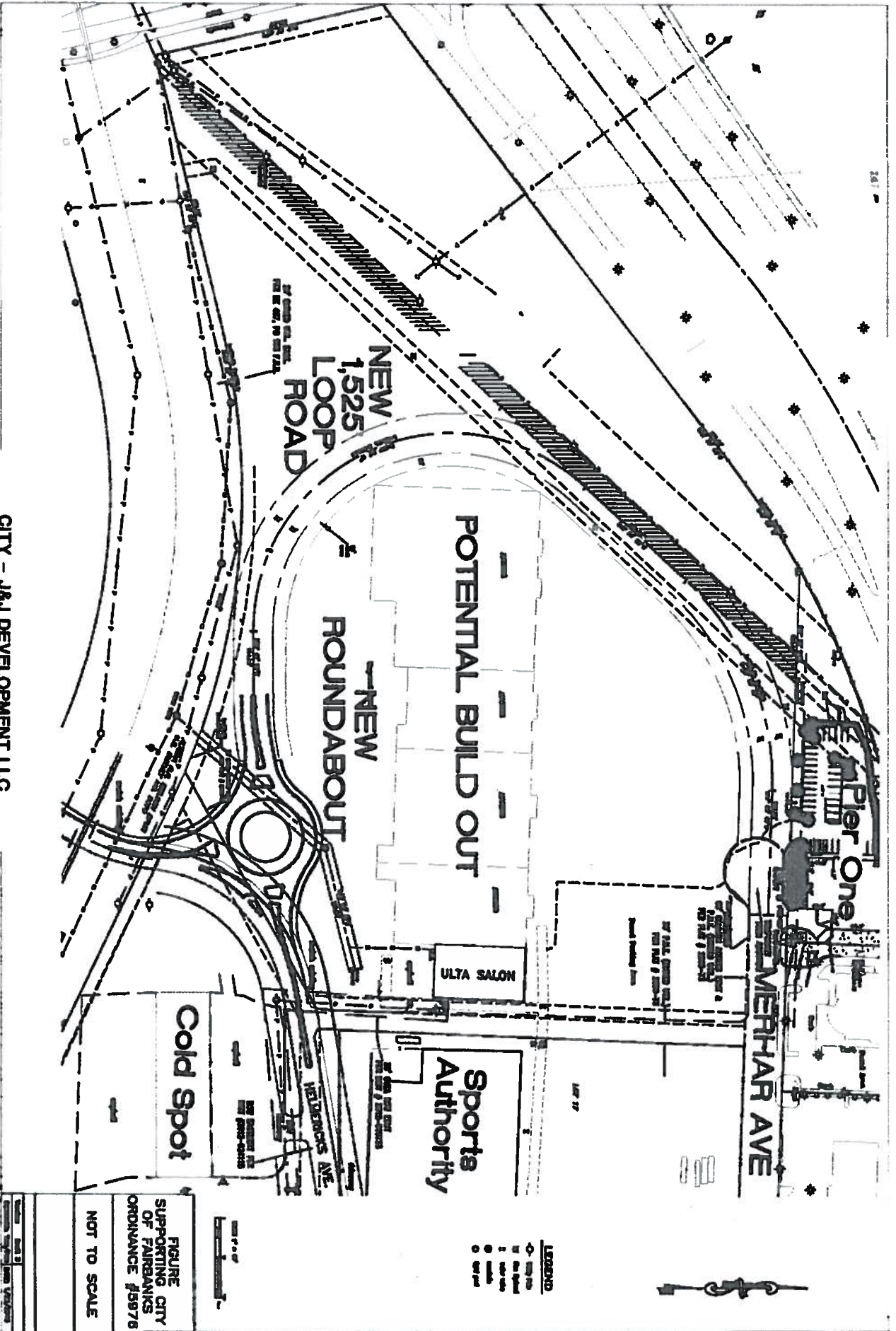
Tract A of BENTLEY BROTHERS SUBDIVISION, 4TH ADDITION,
according to the plat filed April 28, 2006 as Plat No. 2006-73, Records of
the Fairbanks Recording District, Fourth Judicial District, State of Alaska.

APPENDIX 'B'

COMPLETION SCHEDULE

The improvements shall be designed and constructed according to the following tentative schedule:

1. Preliminary Design Report, Plans and Specifications to the City for approval: June 20, 2015
2. Final Design Report, Plans and Specifications to the City for approval: July 20, 2015
3. Pre-construction Conference with all key Developer representatives and contractors, City representatives and Utility representatives: August 1, 2015.
4. Notice to Proceed: August 5, 2015
5. Public Improvement Construction Completion: October 15, 2015.
6. "As-Built" Drawings: As-built survey and drawings will be completed by completed by Northland Surveying and Consulting, Inc., 326 Driveway Street, Fairbanks, Alaska by December 31, 2016.
7. Final Conveyance, payments, certificate of release, etc.: January 15, 2016.
8. Final Acceptance: January 31, 2016.



CITY - J&J DEVELOPMENT LLC
AGREEMENT 'EXHIBIT A'