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FAX TRANSMITTAL COVER PAGE

DATE: 12/10/03

JOB NO: #4461-Emmonak

TO: Cindy Roberts

FIRM: Denali Commission

FAX NUMBER: 907-271-1415

FROM: Jim Voigts

TOTAL PAGES: 7 (INCLUDING COVER PAGE)

IF YOU DO NOT RECEIVE ALL THE PAGES, PLEASE CALL: **(907) 339-6572**

FAX OPERATOR/CONTACT PERSON: Jim Voigts

WE ARE TRANSMITTING FROM: **(907) 339-5328 or 5329: ASCG, Inc. Engineering**

MESSAGE:
Cindy:

Here is the letter I spoke of that was not originally copied to you.

I received the excel labor form and will investigate the response.

If you have questions or comments, please call 907-339-6572 or mobile at 907-227-3023.
Thanks, Jim.

301 Arctic Slope Avenue, Anchorage, Alaska 99518-3035
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November 12, 2003

Martin B. Moore, City Administrator
City of Emmonak
P.O. Box 9
Emmonak, AK 99581

Re: City of Emmonak Washeteria – Project Concerns

Dear Mr. Moore:

The purpose of this letter is to formally respond to concerns that you brought forth in various phone conversations with ASCG staff and me on Friday, October 31, 2003, as well as other concerns we have regarding the completion and closure of this important project. As you and I had discussed that day, this was the first time that I or my staff have had heard of any discontent from you regarding ASCG's professional services. As a result, I have taken the time to research the progress of this project and offer the following discussion with regard to: ASCG's scope of work and fee, additional effort and fee as a result of unforeseen circumstances, comparison of fee to comparable work, and willingness to perform additional work.

ASCG's Scope of Work

In reviewing the "Contract Agreement" approved August 9, 2002, ASCG was hired to provide *"business management, construction management, design changes and requests for verification, inspections(s) and final inspection(s), on-site supervision of the construction activities and project closeout"* to assist the City of Emmonak in the construction of the new washeteria facility. It is our understanding that a substantial portion of the project funding for this facility was provided by a $1.0 million grant through the Denali Commission. Typically a community must demonstrate to a granting agency that it has the capability to manage projects funds and also show that it has the experience to construct the project through force account means or through hiring a contractor.

There are obvious benefits for the City of Emmonak to construct the washeteria project through force account method since it would provide more local control of the work, including the employment of local people and utilization of village equipment. Also, since the City would be operating as a "Contractor," it would receive the benefit of any project profit provided that it could manage and construct the project efficiently. However, it would be required to coordinate and manage all the construction activities, or delegate that responsibility on to a construction manager. Since the City of Emmonak preferred to utilize the force account method for construction, but lacked the necessary experience, it selected ASCG Incorporated to provide the required technical and professional resources to accomplish this construction effort.

In the agreement with the City of Emmonak, ASCG agreed to a fee of $170,500 to cover engineering design, construction administration (inspection) and construction management. A substantial portion of the fee was for the construction management effort, where ASCG provided assistance and resources to the City to operate as a "Contractor." This construction management effort included, but was not limited to:

- Development of submittals
- Ordering construction material
- Arrangement of shipping
- Providing on-site training and supervision of local employees
- Providing project office
- On-site technical review and inspection of work
- Providing progress report to the City of Emmonak
- Providing record drawings of completed work'
- Assisting in project closeout and final audit of project funds.

Additional Effort and Fee

Once the agreement was executed and project coordination initiated, it become immediately apparent that there may be potential contractual problems with the building supplier. The contractual relationship between the City of Emmonak and Independent Lumber Inc. (ILI) for the design and supply of all building materials for the washeteria facility was executed prior to the City's selection of ASCG for construction management services. Early indications that there may be problems with ILI fulfillment of contractual requirements included:

- Procrastination and delay in the submittal of design drawings
- Delay in providing stamped construction drawings
- Inexperience of mechanical engineer in preparation of plumbing schematic drawings
- Mechanical engineer was not licensed to practice in the State of Alaska
- Incomplete electrical drawings
- Inability to coordinate or obtain the State of Alaska Fire Marshal's approval of construction documents
- Lack of complete Bill of Materials prior to barge shipment
- Incomplete inventory of materials at dock in Seattle
- Overall lack of response to notification letters regarding contractual performance requirements

As the City of Emmonak's technical resource, ASCG spent more time and effort than expected to manage, coordinate and resolve the problems with the building supplier. ASCG kept the City of Emmonak appraised of the issues through verbal and written communication and provided recommendations for ways to resolve the problems and delays that ILI created. ASCG received acknowledgment, concurrence and support from you as City Administrator in recognizing the contractual performance problems with ILI and in resolving them. At no time did we ever receive any indication that you or the City of Emmonak were unhappy with our services or assistance.

We always strive to be an advocate for our rural clients. There are many unscrupulous people who will take advantage of those less experienced in contracting or construction, so we uphold a professional ethic to develop a trust and honest relationship with our clients. Our disclosure and concerns about the project delays and excessive costs as a result of ILI non-performance were received with concurrence and subsequent requests for additional assistance to help ensure that the project would be completed within schedule. Consequently, ASCG agreed to expend additional labor and expenses to keep the project moving forward and minimize delays. Additional labor and expenses incurred by ASCG include, but are not limited to:

- Documentation and communication of contractual performance problems with ILI
- Travel to Seattle to inventory ILI supply of building materials
- Purchase of building materials that were to be provided by ILI, but never delivered

In addition, ASCG expended additional effort in other out-of scope work related to changes to the interior of the building, as well as additional coordination and to secure other local contracting work and sales of excess gravel materials to earn revenue to cover washeteria project overruns. It was also anticipated that the washeteria project would be complete by September 30, 2003, but productivity by the village work force decreased towards the end of the project, which extended the completion date and required more effort by our superintendent than originally anticipated. Therefore, we incurred more effort as a result of unforeseen circumstances through the requests for additional assistance that the City of Emmonak called for to ensure the project would be completed.

During August, 2003 ASCG realized and communicated with you that the project might incur a cost overrun. With your concurrence, ASCG submitted a competitive bid proposal on the behalf of the City of Emmonak to the State of Alaska, Department of Fish and Game to construct a building pad using the excess gravel from the washeteria project. Through our efforts, we were successful in winning this proposal. Subsequently, ASCG again provided on-site supervision and management to ensure successful completion of that project. The City was able to recognize supplemental revenue and profit on this project.

On September 27, 2003, Jim Voigts invited you to lunch while you were in Anchorage to discuss the status of the washeteria project, the recognition of revenues earned from the Fish & Game Project, and to discuss another project you had identified for the sale of the remainder of the surplus gravel. During this meeting, Mr. Voigts presented you with several spreadsheets concerning the potential revenues earned through the sale of surplus gravel. The discussion also included the fact that the washeteria project was taking longer to complete due to delays and lack of performance by ILI. As a result of the delays attributable to ILI, ASCG's involvement on the project would take longer than expected. Consequently, it was agreed that ASCG would forward a request for additional funding, which was estimated at that time to be approximately $20,000. This estimated figure was based upon a project completion date of October 15. During that meeting you did not object to utilizing the additional revenue that the City of Emmonak earned from the Fish and Game Project, nor did you state your objection to the additional cost to complete the washeteria project.

A request for Contract Amendment No. 1, in the amount of $40,000, was formally submitted on October 13, 2003. The amount was increased to account for the completion date being extended an additional two weeks as a result of decreased work productivity by local employees. Again, we received no objection or indication that this change order request was inappropriate, especially given the fact that ASCG had been responsive in accepting the challenge and responsibility to ensure that the project would be completed by the winter of 2003. For the best interest of the community, ASCG accepted the risk in extending financial credit to procure materials, equipment, and freight and to provide the necessary managerial and supervisory labor to see this project through completion. We felt the risk was acceptable, once we found ways to assist the City in earning supplemental revenue in cover our additional effort, as well as other project overruns.

Comparison of Fee to Comparable Work

One of the concerns that you expressed in our phone conversation of October 31, 2003 was that you felt ASCG was paid a lot of money, yet you can not see the benefit of this effort. The example that you provided was that with the $180,000 contract with ILI, you could at least put you hand on the finished building, but you could not do the same for the $170,500 ASCG contract. The difference in your example is recognition of tangible and intangible value. While it is true that the (incomplete) building that ILI provided is something tangible or something that you can physically touch, the effort and financing that ASCG provided actually helped to convert a pile of building materials into a complete and functional facility. While this effort is something that is considered intangible, it still has recognizable value because without it the City of Emmonak would only have building materials.

As stated earlier, a substantial portion of ASCG's fee was for the construction management effort, where ASCG provided assistance and resources to the City to operate as a "Contractor." If a construction contractor were hired, the City of Emmonak would have paid a similar amount plus more for the contractor's efforts. Because the City of Emmonak elected to work with ASCG as the "Contractor," they were able to recognize additional benefit in more local control of work, retain more of the economic benefit within the community and have the potential to earn revenue and profit on the project. ASCG, as a technical resource to the City, only requested to be paid for its time and effort and would help the City to earn as much revenue and profit as possible, for the benefit of the community.

When the overall Project Budget is broken into the various components of administration, design, construction and construction administration, ASCG's fee falls within the typical percentages that is standard throughout the industry. Based on construction cost estimates, the normal breakdown for other project disciplines are as follows:

- 3% administration
- 8% engineering design
- 5% construction administration

Attachment A provides a breakdown of the project budget, based on only the $1.0 million grant from the Denali Commission and does not include the in-kind contribution by the City of Emmonak. This spreadsheet is based on actual documentation of all project costs through

October 31, 2003 and was developed to aid in the final audit report of project costs for the Denali Commission. From this spreadsheet, it is seen that 78% of the total fee for ASCG is contained within the construction line item, where ASCG is assisting the City of Emmonak to operate as the "Contractor" for this project.

Willingness to Perform Additional Work

ASCG has enjoyed the opportunity to work with you and the City of Emmonak on this important community project. We share in the goal to expedite the completion of this washeteria facility so that the community can begin to benefit from its intended operation. We felt that we had earned the trust and confidence from the City of Emmonak through our efforts and ethics toward community respect and professionalism.

However, in light of recent comments and concerns from you regarding ASCG's fee and the possibility that we may or may not be compensated for additional efforts to complete this project, we are hesitant to incur additional costs for which we may not recover. Since our phone conversation of October 31, 2003, I understand that you have requested further assistance from our superintendent and project manager for additional help in closing the project and preparing for project audit. While we would like to be of assistance, we will require some assurances that we will be paid for our past efforts and any future efforts that you may require. I have notified staff that no further work is to be undertaken until we receive the executed contract amendment or other formal assurance that we will be paid for our labor and expenses.

One means to accomplish this is to transfer the necessary funding to the project accounting firm to provide the security we need to verify that funding is available and will be expended with proper invoicing and documentation of labor and expenses for the project.

Summary

It is unfortunate that we have reached this awkward moment in the project. We feel that we have always been open and honest in our communications with you and that our staff had discussed concerns about project overruns with you as so as they became evident. We concur that perhaps the best way to resolve this issue is to request a formal audit of the project through the Denali Commission and have them form an opinion on the utilization of their funds on the project. We will be happy to provide the Denali Commission with all our project documentation and records, so we await your decision on whether you or we will initiate contact with the Denali Commission Project Manager.

Respectfully,

Richard S. Reich, P.E.
SVP Community Development Services

Cc: Bob Poe, ASCG, SVP Alaska Operations
Jim Voigts, Associate VP, Construction Services Department

ASCG