



**Municipality of Anchorage
CONTRACT / CONTRACT AMENDMENT / CHANGE ORDER
TRANSMITTAL FORM**

INITIATING DEPARTMENT: Community Development

Contractor / Party Name: Dowl Purchase Order #: _____

Contract Subject / Grant# / Project#: Block 41

Step 1: After contracts are prepared, MAKE AT LEAST THREE ORIGINALS (purchasing, originating department, contractor) FOR TRANSMITTAL (or more depending on requirements).

| | | | |
|-------------------------------|---|---|--|
| Budget Unit: _____ | Date: _____ | | |
| Assembly Approval Date: _____ | Documents: AM-_____ AR-_____ AO-_____ AIM-_____ | (Attach copies of all Assembly documents) | |

Step 2: Send **all** originals for signature in sequence to (mark any additional departments which apply):

| | Initial | Date |
|--|---------|----------------|
| <input type="checkbox"/> Contractor | _____ | _____ |
| <input checked="" type="checkbox"/> Department Director | | <u>5-17-22</u> |
| <input type="checkbox"/> Executive Director | _____ | _____ |
| <input type="checkbox"/> Finance | _____ | _____ |
| <input type="checkbox"/> Purchasing | _____ | _____ |
| <input checked="" type="checkbox"/> Risk Management (if transmitted document involves insurance) | | <u>5/17/22</u> |
| <input checked="" type="checkbox"/> Department of Law | | <u>5/17/22</u> |
| <input checked="" type="checkbox"/> Municipality Manager | | _____ |

Step 3: Construction contracts and amendments are completed by Purchasing and a Purchase Order is added to the document package.

Step 4a: Distribution of originals IF IT IS A STATE OR FEDERAL CONTRACT, and the Municipality is required to sign first:

- **ALL COPIES** are returned to the originating department and that department is responsible for returning one original to Purchasing when all parties have signed.

Step 4b: Distribution of originals when not a state or federal contract:

- a. Purchasing retains one original
- b. Purchasing sends one original to contractor
- c. **All other originals, the Purchase Order and this Transmittal Form** are returned to the originating department for copy distribution and administrative records filing

| | |
|--|----------------------|
| Department: <u>Development, Trombley</u> | Date: <u>5.17.22</u> |
| Attention: <u>Lauren Hughes</u> | Phone: <u>7120</u> |



TRANSMITTAL

PROJECT: 1132.63131.01
SUBJECT: Block 41
PURPOSE: Development Agreement

DATE: 05.17.22
TRANSMITTAL ID:
VIA:

FROM:

| NAME | COMPANY | EMAIL | PHONE |
|---------------------|---------|--|----------|
| LaQuita Chmielowski | DOWL | lchmielowski@dowl.com | 562-2000 |
| | | | |

TO:

| NAME | COMPANY | EMAIL | PHONE |
|---------------|------------------------------------|-------|----------|
| Adam Trombley | MOA, Building Dept. 4700 Elmore | | 444-1925 |
| | | | |

COPIED TO:

| |
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REMARKS:

DESCRIPTION OF CONTENTS:

| QUANTITY | DATED | TITLE | NOTES |
|----------|---------|-----------------------|--|
| 1 | 5/13/22 | Development Agreement | 2 signature pages with original signatures |

MASTER DEVELOPMENT AGREEMENT

This Master Development Agreement (“Agreement”) dated as of May 19, 2022 is between the Municipality of Anchorage (“MOA”) and Peach Holdings, LLC and 601 Fifth Ave, LLC (hereinafter “Peach”), the current owner of Block 41, Anchorage Original Townsite (excluding Lot 1 and the eastern ten (10) feet of Lot 2), for the purpose of satisfying the following requirements of Section 8 of AO 2015-49:

. . . During the CFO’s review process, the property owners shall negotiate and enter into a memorandum of agreement with the Municipality to identify the elements of a development agreement to be entered into between the property owners and the Municipality before construction commences. The development agreement will address topics including the following: (i) public site plan process before the Planning and Zoning Commission, (ii) the Anchorage History (sic) Preservation Commission’s role consistent with AMC 4.60.030, (iii) preservation/restoration/recreation of economically feasible elements of the 4th Avenue Theatre building into the project, and (iv) methods to incorporate public spaces, including airspace, into the project.

RECITALS

- A. **Whereas**, the MOA and Peach negotiated but never entered into the memorandum of agreement described in Section 8 of AO 2015-49 during the period of time that the MOA’s Chief Fiscal Officer was reviewing the property owners’ application for tax incentives under AMC 12.35 in 2015-2016 because the property owners’ application was denied in 2016 before the memorandum of agreement could be finalized.
- B. **Whereas**, construction has occurred on a portion of Lot 9A, which area is not deemed historically significant but has not occurred on the portions of Block 41 on Fourth Avenue deemed to have historic significance that received deteriorated area status under AO 2015-49, and in light of the information set forth in the recitals below regarding the condition of these improvements, the MOA and Peach agree in it is in their mutual best interests for construction to begin as soon as possible.
- C. **Whereas**, the MOA’s Comprehensive and Land Use Plans (the 2020 Comprehensive Plan and the 2040 Land Use Plan) emphasize “Winter City” design principles with overhead and underground linkages and connections, new and infill development and redevelopment of downtown that promotes a more vital and active downtown by encouraging projects that provide Class A office space which meets standards for federal, state, or municipal offices, employment, housing; cultural programs, entertainment, service (e.g. groceries, medical, pharmacy, etc.), and tourism venues and support services opportunities.
- D. **Whereas**, Peach or its affiliates have acquired and now own Block 41, Anchorage Original Townsite (excluding Lot 1 and the east 10 feet of Lot 2), a key location in downtown Anchorage, the redevelopment of which will have a significant and positive impact on the viability of downtown, including being directly adjacent to public facilities, such as the Performing Arts Center, Egan Center, Town Square Park, Old City Hall, Visitors Log Cabin, as well as other important public facilities located within two to three blocks, such as the State Court House,

Dena'ina Convention Center, State Office Building, National Park Service, and the Anchorage Museum.

- E. **Whereas**, the entire portion of Block 41 owned by Peach or its affiliate has been designated by the Municipal Assembly as a Deteriorated Area as such term is defined in AMC 12.35 in AO 2015-49 or AO 2020-47; in addition, the abutting right-of-way (“ROW”) described as the alley, portions of 4th Avenue, portions of Fifth Avenue, portions of G Street and portions of F Street were designated as such in AO 2015-49 or AO 2020-47 (collectively, the area upon which Peach constructs its development is hereafter referred to the “Project Site” and the improvements are referred to as the “Project”).
- F. **Whereas**, materials Peach provided to the MOA in connection with AO 2015-49 and AO 2020-47 evidenced the presence of hazardous construction materials on Block 41 including but not limited to asbestos, lead paint, and PCBs.
- G. **Whereas**, when complete, Block 41 is anticipated to include retail, market stalls, restaurants, parking garage, hotel and residential phases, pedestrian amenities, the office space located at 601 West Fifth Avenue, and additional office space, all of which uses are encouraged in the MOA’s Comprehensive and Land Use Plans.
- H. **Whereas**, the existing dedicated alley between F Street and G Street physically bifurcates Block 41 and currently restricts consideration of design solutions that would otherwise allow for the larger building floor plates needed for the Project to be viable.
- I. **Whereas**, similar to the alley, the existing dedicated ROW for F Street, between 4th Avenue and 5th Avenue, offers additional opportunities for creative design, such as direct overhead and underground pedestrian linkages to the Egan Center and skybridge to the Performing Arts Center such that accommodation of construction of a structure at an appropriate height over the roadway creates potentially added value by increasing gross floor area of the Project, allows for an active, well lit, covered pedestrian and vehicular drop off area for the Egan Center and Performing Arts Center, and assists in creating a more financially feasible Project.
- J. **Whereas**, due to the age of lighting and other infrastructure in 4th Avenue, the MOA is currently working on the 4th Avenue Signals and Lighting Upgrade project (“Lighting Project”) from E Street to A Street. As part of the next phase of the Lighting Project, the MOA is planning full reconstruction of lighting, signals, roadway, sidewalks, and storm drain system from E Street to G Street, which will include the portion of 4th Avenue between F Street and G Street that is adjacent to Block 41 and the Project Site.
- K. **Whereas**, the 4th Avenue Theater was constructed such that a portion of the basement substantially encroaches into the 4th Avenue ROW.

- L. **Whereas**, the iconic elements of the façade of the Fourth Avenue Theatre (the canopy, marquee/sign, and most of the façade itself) were constructed in a manner that constitutes an aerial encroachment of the ROW.
- M. **Whereas**, the MOA has directed Peach to remove portions of the 4th Avenue Theatre basement that encroach into 4th Avenue ROW because upon demolition of the 4th Avenue Theatre, the basement is no longer needed, and, if not fully or partially removed, will interfere with the MOA's Lighting Project and future operation and management of 4th Avenue and the associated ROW.
- N. **Whereas**, the basement encroachment is integrally tied in to the structural frame of the 4th Avenue Theatre, is providing structurally-essential lateral support to the 4th Avenue Theatre, and removal of the basement encroachment could trigger cost prohibitive structural work because there are no known structural as-builts that identify footing depths/sizes, concrete strength, rebar sizing/spacing, etc. meaning that the possibility of retaining any of these elements as supports for the existing façade in a manner consistent with current building codes could be economically unfeasible.
- O. **Whereas**, Peach has provided the MOA with conceptual renderings of the Project that show the manner in which it proposes to recreate the historic feel and look of Fourth Avenue through recreation of four building facades using high definition three dimensional scans done with the input of the National Park Service ("NPS") and placing them on the portions of Lots 2-6, Block 41 that Peach owns which means such recreations will not encroach into the Fourth Avenue ROW, will improve the thermal envelope, enhance acoustics, and will become part of the NPS record for this building.
- P. **Whereas**, the marquee sign is not compliant with local building or electrical codes for electrical signs, uses excessive energy in comparison to LED fixtures, and can be re-created to eliminate these concerns in a manner which is energy efficient, environmentally friendly and replicates the look, feel and purpose of the old sign.
- Q. **Whereas**, direct vehicular access to and from the future development is critical to the Project, and most of the ROW within and around the Project Site is within the jurisdiction of the MOA, including F Street, G Street, 4th Avenue, and the alley bisecting Block 41.
- R. **Whereas**, the MOA recognizes that construction in downtown Anchorage is complicated by limited space for laydown and work areas.
- S. **Whereas**, due to the complexity of the development proposed on the Project Site and the potential phasing of the development, the timing of permitting and approvals could significantly impact the overall development.
- T. **Whereas**, the MOA has issued a demolition permit to Peach for the properties owned by Peach at the Project Site (excluding 601 West Fifth Avenue), and Peach is ready to move forward with demolition of existing improvements and construction of the Project.

- U. **Whereas**, the MOA recognizes that the complexities of a multi-phase project and an ownership structure authorized under AS 34.08 for vertical delineation of ownership are not clearly accommodated in currently codified approaches to incentivizing redevelopment in deteriorated areas.

AGREEMENT

The MOA and Peach agree to proactively work together to implement the phased development of a major multi-use development at the Project Site under the terms and conditions of this Development Agreement as follows:

1. **INCORPORATION OF RECITALS.** Peach and the MOA agree that the above recitals are true and correct to the best of their respective knowledge as of the date of execution of this Agreement by each such party and are incorporated herein by this reference.
2. **SECTION 8(i) OF AO 2015-49.** The parties agree as follows regarding the public site plan process before the Planning and Zoning Commission ("P&Z"):
 - a. Peach shall submit an application for a replat of Block 41 using the fragment lot process which (i) identifies the footprint of the structure located at 601 West Fifth Avenue, including the pedestrian area located at the northwest corner of Fifth Avenue and F Street, as a separate lot, (ii) requests fragment lot status for the remainder of Block 41 that Peach owns, (iii) creates a public use easement as described in 5.a, below, and (iv) creates a second public use easement as described in 5.b, below.
 - b. Due to the age and location of utility infrastructure in the alley and F Street, it may be necessary and/or appropriate to upgrade, replace, upsize or relocate some or all of the utility infrastructure currently located in the alley and F Street with the potential to relocate some of the utilities to 4th Avenue. Subject to Assembly appropriation of funding, the MOA will begin the Concept Design related to the MOA 4th Avenue Lighting and Sidewalk Upgrade project and will coordinate with Peach to identify the needed utility upgrades, including placement of transformers and other infrastructure and potential utility connections that are needed from the utilities located in the alley and/or beyond the alley. In coordination with owning utilities, the MOA will evaluate the age and condition of existing utility infrastructure. The MOA and Peach will jointly and cooperatively identify elements that need replacing, upgrading, upsizing or relocation. Costs for replacing, upgrading, upsizing, or relocating utilities, that are directly a result of the Peach project shall be borne solely by Peach..
 - c. The MOA will evaluate the relocation or removal of the transit stop along the 5th Avenue portion of the Block 41 Project Site. The MOA will evaluate the possibility to (i) relocate the bus stop to the easternmost portion of the block adjacent to the west side of F Street; (ii) maintain the existing curbside space to support vehicles entering the Project Site from 5th Avenue while decreasing impacts to the flow of 5th Avenue traffic; (iii) assign an east-to-west direction to the alley from F Street to G Street; (iv) work with the Anchorage Community Development Authority (ACDA) to remove a portion of on-street parking meters adjacent to Block 41; and (v) support potential passenger drop-off and loading zones on G Street, F street, and 4th Avenue depending upon proposed designs submitted by Peach.

d. Peach and the MOA acknowledge bulk regulations related to building heights for an overall development that is bounded by multiple ROWs can be challenging with this type of development, and the MOA agrees that it will proactively work with Peach to determine if bulk regulations or bulk variances and, if so, which bulk regulations or bulk variances would be appropriate for the development of the Project Site as a whole. The MOA cannot guarantee that bulk regulations or bulk variances are appropriate prior to progress through the Code defined process. Nothing in this section shall abridge or abrogate any aspect of the MOA Planning & Zoning Process.

3. SECTION 8(ii) OF AO 2015-49. The parties agree as follows regarding the Anchorage Historic Preservation Commission's ("AHPC") role consistent with AMC 4.60.030:

- a. Subsection A. Not applicable. Sets forth purpose of AHPC.
- b. Subsection B. Not applicable. Sets forth composition and terms of members of AHPC.
- c. Subsection C. Not applicable. Identifies three ex-officio members of AHPC.
- d. Subsection D. Not applicable. Sets forth the qualifications of voting members of AHPC.
- e. Subsection E.
 - (1) Not applicable. Identifies AHPC's obligation to submit regulations related to AHPC's operations to the Assembly for approval;
 - (2) Not applicable. Relates to AHPC's obligation to prepare and maintain a comprehensive inventory of historic and cultural resources;
 - (3) Not applicable. Relates to AHPC's obligation to create procedures for approval by the Assembly, the Mayor and the P&Z to identify historic resources;
 - (4) Not applicable. Relates to AHPC's obligation to formulate an Historic Preservation Plan for inclusion in the 2020 Comprehensive Plan;
 - (5) Not applicable. Relates to AHPC's obligation to review applications for designation of Historic resources and the right to nominate municipal properties;
 - (6) Not applicable. Relates to AHPC's relationship with state and federal historic agencies;
 - (7) Applicable. Peach and AHPC will work cooperatively to identify resources and potential incentives to aid Peach in the preservation, restoration, rehabilitation, recreation and repair of historic property consistent with Section 4 of this Agreement, including but not limited to property tax incentives under AMC 12.35;
 - (8) Not applicable. Relates to advice AHPC may give to the Assembly and the P&Z regarding historic preservation planning and implementation;
 - (9) Not applicable. Relates to recommendations AHPC may make to the Assembly and P&Z regarding municipally owned buildings;
 - (10) Not applicable. Relates to recommendations AHPC may make to the Mayor and Assembly;
 - (11) Applicable. Peach's architects will review all pamphlets and newsletters provided to it by AHPC prior to commencement of construction and at least one representative from Peach will attend one workshop on methods to incorporate the history of the 4th Avenue Theatre into a permanent display on Block 41;
 - (12) Potentially applicable. If AHPC officially recognizes excellence in the Project, Peach will display a plaque (not to exceed 12" x 24") in the Project to be installed after completion of construction of the Project at an appropriate location selected by Peach.

- f. Subsection F. Not applicable. Relates to role of Historic Preservation Officer.
- g. Subsection G. Not applicable. Relates to voluntary program that property owners may, but are not required to, be a part of.
- h. Subsection H. Not applicable. Related to non-application of sunset provisions of AMC 4.05.150.

4. SECTION 8(iii) OF AO 2015-49. The parties agree as follows regarding the preservation/restoration/recreation of economically feasible elements of the 4th Avenue Theatre Building:

- a. Peach will remove, restore and reinstall the existing interior murals. If requested, the MOA will assist Peach in efforts to store the preserved and restored murals, including but not limited to providing an appropriate location to store these murals during construction.
- b. Because of existing encroachments by the one or more buildings into Fourth Avenue and the MOA's planned improvements for Fourth Avenue as part of the Lighting Project, Peach agrees to remove and recreate the facades of the four buildings on Fourth Avenue with sufficient setbacks to eliminate the encroachments to the extent possible.
- c. Peach agrees to recreate the marquee sign and install the recreated sign in a code compliant location on the new façade of the Fourth Avenue Theatre. The MOA agrees to consider appropriate encroachment permits if requested by Peach.

5. SECTION 8(iv) OF AO 2015-49. The parties agree as follows regarding the incorporation of public spaces, including airspace, into the Project:

- a. During the platting process, the MOA will consider vacating the dedicated ROW of the alley adjacent to the properties owned by Peach and replacement with a Public Use Easement, that would be limited in height and of the minimum size necessary to access and maintain utilities and provide necessary fire and emergency services access, thus allowing construction of buildings above the height of and spanning over this Public Use Easement.
- b. During the platting process, the MOA will consider vacating the ROW of F Street from 5th Avenue to the north end of the alley and replacement with a Public Use Easement, that would be limited in height and of the minimum size necessary to access and maintain utilities and provide necessary emergency services access, thus allowing construction of buildings above the height of and spanning over this Public Use Easement.
- c. MOA will support and, where appropriate, approve alternate light fixtures within the 4th Avenue, F Street, G Street and 5th Avenue ROW adjacent to Block 41, selected by Peach to complement the Project, provided that the fixtures and plan Peach selects otherwise meet MOA lighting level requirements. Peach will provide the necessary lighting calculations to MOA as part of its submittal for alternative lighting fixtures to MOA. MOA will cooperate with Peach as Peach seeks any required approvals from the State of Alaska, Department of Transportation and Public Facilities ("AKDOT"), for this work. Peach will provide all necessary supplies, equipment, and all long-term responsibility for maintenance, repair, and replacement of street light fixtures and related equipment if Peach uses non-standard light poles and equipment as determined by MOA's sole discretion.

d. The MOA will generally support and facilitate Peach's aerial design elements and pedestrian improvements within the MOA's ROWs adjacent to the Project Site, recognizing that even items incentivized by bonus points for construction may be complicated by the permitting process, including but not limited to heated sidewalks, snow melt system maintenance agreements and ROW encroachment permits.

e. Because the relative timing of Peach's construction of the Project and the MOA's Lighting Project may overlap, Peach and the MOA Project Management and Engineering ("PM&E") project team will coordinate with each other. Though Peach may begin demolition activities within or adjacent to the 4th Avenue ROW prior to PM&E's project, PM&E will remain responsible for the final design and construction of the improvements associated with the PM&E project, with the exception of street lighting, heated sidewalk infrastructure, and other pedestrian improvements within the 4th Avenue ROW that Peach may pursue. The Parties acknowledge that MOA's Lighting Project is subject to appropriation of funds by the Assembly.

f. The MOA will work proactively with Peach to obtain the necessary driveway permits for the parking garage and ROW encroachment permits for items such as heated sidewalks, planters, sidewalk and building signage, and overhead canopies, including coordination with AKDOT. The Parties recognize that management of the 5th Avenue ROW, including approval of driveway permits and encroachment permits, is the responsibility of AKDOT.

g. The MOA will assist Peach in securing necessary permits to allow for lane and road closures needed during construction of the Project. Permitting fees associated with the closures during construction, entitlements, or building permits may be waived to incentivize the overall development. No fee waivers are guaranteed by the language of this Agreement.

h. The MOA will support lane and road closures on 5th, 4th, F St., G St., and the alley to facilitate construction on the Project Site during active construction or demolition. The MOA Traffic Department will consider overall impacts to adjacent businesses and the travelling public when evaluating lane and road closures. Concurrent closures of multiple lanes or roads may not be allowed, depending on such impacts.

6. GENERAL.

a. The MOA will make reasonable efforts to review and issue decisions or review comments in a timely manner.

b. Due to the specific lack of detail in the current provisions of AMC 12.35, the MOA will consider revisions to AMC 12.35 designed to allow its use for multi-phased projects and projects with bifurcated ownership structures allowed under AS 34.08. The Parties recognize that AMC 12.35 is restricted under AS 29.45.050.

c. The MOA will coordinate with Peach in order to understand the details of the formal request. Peach shall work cooperatively with the MOA to respond to questions, provide additional information, and ask questions of its own regarding the process under AMC 12.35 or any other applicable property tax exemption or MOA incentives that might be available for the Project.

d. The parties hereto confirm that due to the multi-phased nature of this Project, the MOA and Peach, if mutually desired, may enter into additional Development Agreements necessary for additional development of Block 41 including portions which may have vertical ownership elements.

e. No provision of this Agreement can be waived or amended in favor of any party except by written consent of the other party, which consent shall specifically refer to such provision and explicitly make such waiver or amendment. No failure or delay by any party in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or future exercise thereof or the exercise of any other right, power or privilege hereunder.

f. In the event of litigation relating to this Agreement, if a court or arbitrator having jurisdiction over the matters that are the subject of this Agreement determines that any party has breached this Agreement, then the party which is determined to have so breached shall be liable and pay to the non-breaching party the reasonable legal fees and costs incurred by the non-breaching party in connection with such litigation, including any appeal therefrom.

g. This Agreement is for the benefit of each party hereto and shall be governed by and construed in accordance with the laws of the State of Alaska applicable to agreements made and to be performed entirely within such State. Each party hereby irrevocably consents to the exclusive jurisdiction of the state and federal courts located in Anchorage, Alaska in any action arising out of or relating to this Agreement and waives any other venue to which it may be entitled by domicile or otherwise.

h. If any term, provision, covenant or restriction contained in this Agreement is held by any court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the terms, provisions, covenants or restrictions contained in this Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated, and if a covenant or provision is determined to be unenforceable by reason of its extent, duration, scope or otherwise, then the Parties intend and hereby request that the court or other authority making that determination shall only modify such extent, duration, scope or other provision to the extent necessary to make it enforceable and enforce them in their modified form for all purposes of this Agreement.

i. The Parties have participated jointly in the negotiation and drafting of this Agreement. If an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties and no presumption or burden of proof shall arise favoring or disfavoring either party by virtue of the authorship of any of the provisions of this Agreement.


j. Any notice required or permitted by this Agreement will be in writing and will be delivered as follows, with notice deemed given as indicated: (a) by personal delivery, when actually delivered; (b) by overnight courier, upon written verification of receipt; (c) by emailed PDF, upon acknowledgment of receipt of electronic transmission; or (d) by certified or registered mail, return receipt requested, upon verification of receipt. Notice will be sent to the addresses set forth in the signature blocks below or to such other address as any party may provide in writing.

k. This Agreement contains the entire agreement between the parties regarding the subject matter hereof and supersedes all prior agreements, understandings, arrangements and discussions between the parties regarding such subject matter.


l. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. This Agreement may also be executed and signatures may be delivered by facsimile or electronic mail, in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

[signatures on next page]


MUNICIPALITY OF ANCHORAGE

By: 
Name: Amy Demboski
Title: municipal manager

PEACH HOLDINGS, LLC

By: 
Name: Maria Fang
Title: Manager

601 FIFTH AVE, LLC

By: 
Name: Joseph Fang
Title: Manager