

CITY OF UNALASKA
UNALASKA, ALASKA

RESOLUTION 2019-38

A RESOLUTION OF THE UNALASKA CITY COUNCIL AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH HENNING CONSTRUCTION COMPANY TO PERFORM THE HENRY SWANSON HOUSE REHABILITATION PROJECT FOR \$85,000

WHEREAS, the Henry Swanson House Rehabilitation Project has been identified as necessary for the preservation of Unalaska's historic structures; and

WHEREAS, the City of Unalaska has approved funding for the construction of this Project; and

WHEREAS, Staff solicited quotes to perform the construction of the Project and received no bids for the work; and

WHEREAS, Staff negotiated a price for the work with Henning Construction Company, an experienced local contractor, which is fair and reasonable; and

WHEREAS, funding is available in the Project's budget to award the work.

NOW THEREFORE BE IT RESOLVED that the Unalaska City Council authorizes the City Manager to enter into an Agreement with Henning Construction Company to perform the Henry Swanson House Rehabilitation Project in the amount of \$85,000.

PASSED AND ADOPTED by a duly constituted quorum of the Unalaska City Council on July 23, 2019.



David Gregory
Mayor Pro Tem

ATTEST:



Marjie Veeder
City Clerk



MEMORANDUM TO COUNCIL

To: Mayor and City Council Members
From: Tom Cohenour, Director, Department of Public Works
Through: Erin Reinders, City Manager
Date: July 23, 2019
Re: Resolution 2019-38: Authorizing the City Manager to enter into an agreement with Henning Construction Company to perform the Henry Swanson House Rehabilitation Project for \$85,000

SUMMARY: Resolution 2019-38 will award the Henry Swanson House Rehabilitation Project (MUNIS Project PW20B) to Henning Construction Company for \$85,000. The FY2020 CMMP includes this project which was funded by the General Fund and contains \$119,340 to support this Award. Inspection and contract administration will be performed in-house by the Department of Public Works. Staff recommends approval.

PREVIOUS COUNCIL ACTION: The FY2020 Capital Budget Ordinance No. 2019-18, approved and adopted on April 23, 2019, transferred \$119,340 from the General Fund into the Project's Budget.

BACKGROUND: The Henry Swanson House is listed on the City of Unalaska Historic Preservation Commission's Inventory of Historic Sites, which was adopted by the Planning Commission and approved by the City Council in 2003, and is also listed in the Alaska Heritage Resource Survey for its historically significant architecture and relevance. The Unalaska Comprehensive Plan, approved and adopted by the Planning Commission and the City Council on February 22, 2011, calls for the placement of interpretive signing and advocates for cost effective preservation, rehabilitation and adaptive reuse of this historic home.

DISCUSSION: The CMMP approved scope of work needed to keep the building in good repair includes lifting the entire building approximately 30" off the ground and constructing a solid perimeter foundation, and bringing the electric up to code as well as ensuring a reliable heat source to control humidity. The structure, including the roof, is in overall good condition and testing found no mold issues.

In May 2018, Department of Public Works staff requested quotes from three local contractors to perform rehabilitation work: Joe Henning Construction, Industrial Resources, Inc. and Northern Mechanical/Northern Alaska Contractors. None of the firms elected to provide a quote. Staff then approached Howard Henning of Henning Construction Company, who stated he would perform the work for \$85,000. Staff then brought forward the CMMP nomination for the Project, which was approved.

ALTERNATIVES: Council could choose to not award the work at this time and issue another Request for Quotes. Staff believes it is in the best interest of the City of Unalaska to award the work now in order to ensure preservation of the structure. The award amount is fair and reasonable, and postponing the work would most likely result in increased costs.

FINANCIAL IMPLICATIONS: The Project's budget is able to support this construction contract award.

LEGAL: N/A

STAFF RECOMMENDATION: Staff recommends awarding the work to Henning Construction Company. Howard Henning is a known local residential contractor and has performed similar work in Unalaska many times.

PROPOSED MOTION: I move to approve Resolution 2019-38.

CITY MANAGER COMMENTS: The Henry Swanson House Rehabilitation project is in keeping with the Comprehensive Plan, is on the CMMP, and is included in the Capital Budget. I support moving forward with this project.

ATTACHMENTS:

- Attachment A: Proposal from Henning Construction Company
- Attachment B: Form of Agreement
- Attachment C: Supporting Statement from Ray Hudson

City of Unalaska

Subject-Henry Swanson house ,Scoop of work, New foundation

1. Excavate to install beams to raise house 3 ft
2. Excavate to disconnect utilities
3. Excavate for footing
4. Grade and compact for footing D-1 furnished by the city
5. Install forms for footing 10"x16"
6. Install steel $\frac{5}{8}$ rebor
7. Pour concrete, Install Anchor Bolts and strap tiedown to code
8. Strip Forms
9. Install treated ground penetration 2"x6" plates and studs 16" on center sheeted with $\frac{3}{4}$ inch treated plywood.
10. Install foundations walls with 2 inch styrofoam.
11. Install ground vapor barrier 6 mill under house
12. Rehook Sewer and water
13. Electrical hookup by city
14. Backfill grade and plant grass
15. Install landing and steps with treated wood.
16. Any floor joist rotten repair

Any unknown rotten repair on floor joist or plates will be at extra cost.

Bid 85,000.00

Howard D. Henning - 5-21-19

CONTRACT FOR CONSTRUCTION OF A SMALL PROJECT

This Contract is by and between City of Unalaska (Owner) and
Henning Construction Company (Contractor).

Owner and Contractor hereby agree as follows:

ARTICLE 1 - THE WORK

1.01 Work

- A. Work includes all labor, materials, equipment, services, staging areas, and documentation necessary to construct the Project defined herein. The Work may include related services such as testing, start-up, and commissioning, all as required by the Contract Documents.
- B. The Contractor shall complete all Work as specified or indicated in the Contract Documents. The Project is generally described as follows:
 1. Henry Swanson House Rehabilitation Project which includes a new foundation and associated work as described in Attachment A.
 2. The Site of the Work includes property, easements, and designated work areas described in greater detail in the Contract Documents but generally located at Lot 8, Block 2, USS 1992, Tax Lot ID 03-07-312, 149 Broadway Avenue, Unalaska, Alaska.

ARTICLE 2 - CONTRACT DOCUMENTS

2.01 Intent of Contract Documents

- A. It is the intent of the Contract Documents to describe a functionally complete project. The Contract Documents do not indicate or describe all of the Work required to complete the Project. Additional details required for the correct installation of selected products are to be provided by the Contractor and coordinated with the Owner and Engineer. This Contract supersedes prior negotiations, representations, and agreements, whether written or oral. The Contract Documents are complementary; what is required by one part of the Contract Documents is as binding as if required by other parts of the Contract Documents.
- B. During the performance of the Work and until final payment, Contractor and Owner shall submit all matters in question concerning the requirements of the Contract Documents, or relating to the acceptability of the Work under the Contract Documents to the Engineer. Engineer will be the initial interpreter of the requirements of the Contract Documents, and judge of the acceptability of the Work thereunder.
- C. Engineer will render a written clarification, interpretation, or decision on the issue submitted, or initiate a modification to the Contract Documents.
- D. Contractor, and its subcontractors and suppliers, shall not have or acquire any title to or ownership rights to any of the Drawings, Specifications, or other documents (including copies or electronic media editions) prepared by Engineer or its consultants.

2.02 Contract Documents Defined

- A. The Contract Documents consist of the following documents:
 - 1. This Contract.
 - 2. Performance and Payment Bonds (if the Proposal exceeds \$50,000).
 - 3. Plans, Specifications and Other Supplemental Information.
 - 4. Price Proposal.
 - 5. The following which may be delivered or issued on or after the Effective Date of the Contract:
 - a. Work Change Directives.
 - b. Change Orders.
 - c. Field Orders.

ARTICLE 3 - ENGINEER

3.01 Engineer

- A. The Engineer for this Project is **City of Unalaska Department of Public Works**

ARTICLE 4 - CONTRACT TIMES

4.01 Contract Times

- A. The Work will be substantially completed on or before **September 15, 2019** and completed and ready for final payment on or before **September 30, 2019**.

4.02 Liquidated Damages

- A. Contractor and Owner recognize that time is of the essence in the performance of the Contract, and that Owner will incur damages if Contractor does not complete the Work according to the requirements of Paragraph 4.01. Because such damages for delay would be difficult and costly to determine, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty) Contractor shall pay Owner **\$100** for each day that expires after the Contract Time for substantial completion.

4.03 Delays in Contractor's Progress

- A. The right of the Contractor to proceed shall not be terminated nor the Contractor charged with liquidated or actual damages because of any delays to the completion of the Work due to unforeseeable causes beyond the control and without the fault or negligence of the Contractor including, but not restricted to the following: acts of God or of the public enemy, acts of the Owner in contractual capacity, acts of another contractor in the performance of a contract with the Owner, floods, fires, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather and delays of Subcontractors or Suppliers due to such causes. Any delay in receipt of materials on the site, caused by other than one of the specifically mentioned occurrences above, does not of itself justify a time extension. Provided, that the Contractor shall within twenty four (24) hours from the beginning of any such delay (unless the Engineer shall grant a further period of the time

prior to the date of final settlement of the Contract) notify the Engineer in writing of the cause of delay. The Engineer shall ascertain the facts and the extent of the delay and extend the time for completing the Work when the findings of fact justify such an extension.

- B. Normal weather in Unalaska shall not be cause for time extension and the Contractor shall allow ample time in his schedule to accommodate normal weather delays.

4.04 Progress Schedules

- A. Contractor shall develop a progress schedule and submit to the Engineer for review and comment before starting Work on the Site. The Contractor shall modify the schedule in accordance with the comments provided by the Engineer.
- B. The Contractor shall update and submit the progress schedule to the Engineer each month. The Owner may withhold payment if the Contractor fails to submit the schedule.

ARTICLE 5 - CONTRACT PRICE

5.01 Payment

- A. The Owner shall pay the Contractor for completion of the Work, in accordance with the this Contract, an amount equal to the sum of the established unit prices for each separately identified item of unit price work multiplied by the measured quantity of actual work completed plus the sum of the lump sum prices for each separately identified and selected lump sum item on the Price Proposal Form. Actual quantities installed will be determined by the Engineer. The Contract Sum of **\$85,000** is based upon the Price Proposal items set forth in this Contract which are hereby accepted by the Owner.

ARTICLE 6 - INSURANCE

6.01 Insurance

- A. Contractor shall provide insurance coverage for not less than the following amounts, or greater where required by Laws and Regulations:
 - 1. **Commercial General Liability Insurance:** \$1,000,000 per occurrence with a \$2,000,000 aggregate, including completed products and operations and personal liability insurance.
 - 2. **Automobile Liability Insurance:** \$1,000,000 Combined Single Limit Including owned, hired, and non-owned coverage.
 - 3. **Statutory Workers' Compensation and Employer's Liability Insurance:** \$1,000,000 Each Accident/Each Employee/Policy Limit.
 - 4. **A Waiver of Subrogation on the Commercial General Liability Insurance, Automobile Liability Insurance, Statutory Workers Compensation and Employers Liability Insurance, Insurance:** Contractor will hold the city harmless and provide a Waiver of Subrogation in favor of the Owner.
- B. Additional Coverages are required if they are within the scope of the Work:
 - 1. **Asbestos/Lead Abatement Insurance Coverage:** If a Contractor is contracting for asbestos and/or lead abatement work. Insurance with coverage for the services

rendered for the City including, but not limited to removal, replacement enclosure, encapsulation, and/or disposal of asbestos, or any other hazardous material, along with any related pollution events, including coverage for third-party liability claims for bodily injury, property damage, and clean-up costs.

2. **Environmental/Pollution Liability Coverage:** If Automobiles Are to Be Used for Transporting Hazardous Material: Pollution liability broadened coverage (ISO endorsement CA 9948) and proof of MCS 90. Other environmental hazards associated with the scope of work.
 3. **Property:** For New Construction or Installation Projects All risk coverage using an Installation Floater or Builders Risk form with a total value of the construction cost. Name the city as Loss Payee. Provide Transit coverage in the amount of the value of the load. Property at Temporary Location in the amount of property at the temporary location, if applicable.
- C. The Contractor is required to provide the Owner with a Certificate of Insurance naming the Owner as Additional Insured prior to the commencement of any Work or use of Owner facilities. The failure to object to contents of the Certificate of Insurance or the absence of same shall not be deemed a waiver of any and all rights held by the Owner. Additional Insured status on the Commercial General Liability shall be through ISO Additional Insured Endorsement CG2010 11/04 or equivalent.
 - D. In the event the Contractor utilizes a Subcontractor for any portion of the services outlined within the scope of its activities, the Subcontractor shall provide insurance of the same type or types and to the same extent of coverage as that provided by the Contractor. All insurance required of the Subcontractor shall also name the Owner as an Additional Insured for all those activities performed within its contracted activities for the contract executed.
 - E. The Contractor acknowledges that failure to obtain such insurance on behalf of the City constitutes a material breach of Contract and subjects it to liability for damages, indemnification, and all other legal remedies available to the Owner.

ARTICLE 7 - CONTRACTOR'S RESPONSIBILITIES

7.01 Supervision and Superintendence

- A. Contractor shall supervise and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. Contractor shall be solely responsible for the means, methods, techniques, sequences, safety, and procedures of construction.
- B. Contractor shall assign a competent resident superintendent who is to be present at all times during the execution of the Work. This resident superintendent shall not be replaced without written notice to and approval by the Owner and Engineer except under extraordinary circumstances.
- C. Contractor shall at all times maintain good discipline and order at the Site.

7.02 Other Work at the Site

- A. In addition to and apart from the Work of the Contractor, other work may occur at or adjacent to the Site. Contractor shall take reasonable and customary measures to avoid

damaging, delaying, disrupting, or interfering with the work of Owner, any other contractor, or any utility owner performing other work at or adjacent to the Site.

7.03 Services, Materials, and Equipment

- A. Unless otherwise specified in the Contract Documents, Contractor shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, testing, start up, and completion of the Work, whether or not such items are specifically called for in the Contract Documents.
- B. All materials and equipment incorporated into the Work shall be new, of good quality and shall be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable supplier, except as otherwise provided in the Contract Documents.

7.04 Subcontractors and Suppliers

- A. Contractor may retain subcontractors and suppliers for the performance of parts of the Work. Such subcontractors and suppliers must be acceptable to Owner.

7.05 Quality Management

- A. Contractor is fully responsible for the managing quality to ensure Work is completed in accordance with the Contract Documents.

7.06 Licenses, Fees and Permits

- A. Contractor shall pay all license fees and royalties and assume all costs incident to performing the Work or the incorporation in the Work of any invention, design, process, product, or device which is the subject of patent rights or copyrights held by others.
- B. Contractor shall obtain and pay for all construction permits and licenses unless otherwise provided in the Contract Documents.

7.07 Laws and Regulations; Taxes

- A. Contractor shall give all notices required by and shall comply with all local, state, and federal Laws and Regulations applicable to the performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, neither Owner nor Engineer shall be responsible for monitoring Contractor's compliance with any Laws or Regulations.
- B. Contractor shall bear all resulting costs and losses, and shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages if Contractor performs any Work or takes any other action knowing or having reason to know that it is contrary to Laws or Regulations.
- C. Contractor shall pay all applicable sales, consumer, use, and other similar taxes Contractor is required to pay in accordance with Laws and Regulations.

7.08 Record Documents

- A. Contractor shall maintain one printed record copy of all Drawings, Specifications, Addenda, Change Orders, Work Change Directives, Field Orders, written interpretations and

clarifications, and approved shop drawings in a safe place at the Site. Contractor shall annotate them to show changes made during construction. Contractor shall deliver these record documents to Engineer prior to final payment for the Work.

7.09 Safety and Protection

- A. Contractor shall be solely responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work in accordance with Federal and State Departments of Labor Occupational Safety and Health Act (OSHA) and other local, state, and federal regulations.
- B. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury, or loss to:
 - 1. All persons on the Site or adjacent to the Site who may be affected by the Work;
 - 2. All the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and
 - 3. Other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, other work in progress, utilities, and underground facilities not designated for removal, relocation, or replacement in the course of construction.
- C. All damage, injury, or loss to any property caused, directly or indirectly, in whole or in part, by Contractor, or anyone for whose acts the Contractor may be liable, shall be remedied by Contractor at its expense (except damage or loss attributable to the fault of Contract Documents or to the acts or omissions of Owner or Engineer and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of Contractor).
- D. Contractor shall be responsible for coordinating any exchange of material safety data sheets or other hazard communication information required to be made available to or exchanged between or among employers at the Site in accordance with Laws or Regulations.
- E. In emergencies affecting the safety or protection of persons or the Work or property at the Site or adjacent thereto, Contractor shall act to prevent threatened damage, injury, or loss. Contractor shall give Engineer prompt written notice if Contractor believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby or are required as a result thereof. If Engineer determines that a change in the Contract Documents is required because of the action taken by Contractor in response to such an emergency, a Work Change Directive or Change Order will be issued.

7.10 Shop Drawings, Samples, and Other Submittals

- A. Contractor shall review and coordinate the shop drawing and samples with the requirements of the Work and the Contract Documents and shall verify all related field measurements, quantities, dimensions, specified performance and design criteria, installation requirements, materials, catalog numbers, and similar information.
- B. Each submittal shall bear a stamp or specific written certification that Contractor has satisfied Contractor's obligations under the Contract Documents with respect to Contractor's review of that submittal, and that Contractor approves the submittal.

- C. With each submittal, Contractor shall give Engineer specific written notice, in a communication separate from the submittal, of any variations that the shop drawing or sample may have from the requirements of the Contract Documents.
- D. Engineer will provide timely review of shop drawings and samples.
- E. Engineer's review and approval will not extend to means, methods, techniques, sequences, or procedures of construction or to safety precautions or programs.
- F. Engineer's review and approval of a separate item does not indicate approval of the assembly in which the item functions.
- G. Contractor shall make corrections required by Engineer and shall return the required number of corrected copies of shop drawings and submit, as required, new samples for review and approval. Contractor shall direct specific attention in writing to revisions other than the corrections called for by Engineer on previous submittals.
- H. Shop drawings are not Contract Documents.

7.11 Warranties and Guarantees

- A. Contractor warrants and guarantees to Owner that all Work will be in accordance with the Contract Documents and will not be defective. Engineer and its officers, directors, members, partners, employees, agents, consultants, and subcontractors shall be entitled to rely on Contractor's warranty and guarantee.

7.12 Correction Period

- A. If within one year after the date of substantial completion, any Work is found to be defective, or if the repair of any damages to the Site, adjacent areas that Contractor has arranged to use through construction easements or otherwise, and other adjacent areas used by Contractor as permitted by Laws and Regulations, is found to be defective, then Contractor shall promptly and without cost to Owner, correct such defective Work.

7.13 Indemnification

- A. To the fullest extent permitted by Laws and Regulations, and in addition to any other obligations of Contractor under the Contract or otherwise, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the performance of the Work, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom but only to the extent caused by any negligent act or omission of Contractor, any subcontractor, any supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work or anyone for whose acts they may be liable.

ARTICLE 8 - OWNER'S RESPONSIBILITIES

8.01 Owner's Responsibilities

- A. Except as otherwise provided in the Contract Documents, Owner shall issue all communications to Contractor through Engineer.
- B. Owner shall make payments to Contractor as provided in this Contract.
- C. Owner shall provide Site and easements required to construct the Project.
- D. If Owner intends to contract with others for the performance of other work at or adjacent to the Site, unless stated elsewhere in the Contract Documents, Owner shall have sole authority and responsibility for such coordination.
- E. The Owner shall be responsible for performing inspections and tests required by applicable codes.
- F. The Owner shall not supervise, direct, or have control or authority over, nor be responsible for, Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs, or for any failure of Contractor to comply with Laws and Regulations and Codes applicable to the performance of the Work. Owner will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.
- G. While at the Site, Owner's employees and representatives shall comply with the specific applicable requirements of Contractor's safety programs of which Owner has been informed.
- H. Owner shall furnish copies of any applicable Owner safety programs to Contractor.

ARTICLE 9 - ENGINEER'S STATUS DURING CONSTRUCTION

9.01 Engineer's Status

- A. Engineer will be Owner's representative during construction. The duties and responsibilities and the limitations of authority of Engineer as Owner's representative during construction are set forth in this Contract.
- B. Neither Engineer's authority or responsibility under this Article 9 or under any other provision of the Contract, nor any decision made by Engineer in good faith either to exercise or not exercise such authority or responsibility or the undertaking, exercise, or performance of any authority or responsibility by Engineer, shall create, impose, or give rise to any duty in contract, tort, or otherwise owed by Engineer to Contractor, any subcontractor, any supplier, any other individual or entity, or to any surety for or employee or agent of any of them.
- C. Engineer will make visits to the Site at intervals appropriate to the various stages of construction. Engineer will not be required to make exhaustive or continuous inspections on the Site to check the quality or quantity of the Work.
- D. Engineer has the authority to reject Work if Contractor fails to perform Work in accordance with the Contract Documents.

- E. Engineer will render decisions regarding the requirements of the Contract Documents, and judge the acceptability of the Work.
- F. Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Engineer will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.

ARTICLE 10 - CHANGES IN THE WORK

10.01 Authority to Change the Work

- A. Without invalidating the Contract and without notice to any surety, Owner may, at any time or from time to time, order additions, deletions, or revisions in the Work.

10.02 Change Orders

- A. Owner and Contractor shall execute appropriate Change Orders covering:
 1. Changes in the Contract Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in accordance with a Work Change Directive;
 2. Changes in the Work which are: (a) ordered by Owner or (b) agreed to by the parties or (c) resulting from the Engineer's decision, subject to the need for Engineer's recommendation if the change in the Work involves the design (as set forth in the Drawings, Specifications, or otherwise), or other engineering or technical matters; and
 3. Changes in the Contract Price or Contract Times or other changes which embody the substance of any final binding results under Article 12.
- B. If the provisions of any bond require notice to be given to a surety of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Contract Price or Contract Times), the giving of any such notice will be Contractor's responsibility. The amount of each applicable bond will be adjusted to reflect the effect of any such change.

ARTICLE 11 - DIFFERING SUBSURFACE OR PHYSICAL CONDITIONS

11.01 Differing Conditions Process

- A. If Contractor believes that any subsurface or physical condition including but not limited to utilities or other underground facilities that are uncovered or revealed at the Site either differs materially from that shown or indicated in the Contract Documents or is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in Work of the character provided for in the Contract Documents then Contractor shall, promptly after becoming aware thereof and before further disturbing the subsurface or physical conditions or performing any Work in connection therewith (except in an emergency), notify Owner and Engineer in writing about such condition. Contractor shall not further disturb such condition or perform any Work in connection therewith (except with respect to an emergency) until receipt of a written statement permitting Contractor to do so.

- B. After receipt of written notice, Engineer will promptly:
 - 1. Review the subsurface or physical condition in question;
 - 2. Determine necessity for Owner obtaining additional exploration or tests with respect to the condition;
 - 3. Determine whether the condition falls within the differing site condition as stated herein;
 - 4. Obtain any pertinent cost or schedule information from Contractor;
 - 5. Prepare recommendations to Owner regarding the Contractor's resumption of Work in connection with the subsurface or physical condition in question and the need for any change in the Drawings or Specifications; and
 - 6. Advise Owner in writing of Engineer's findings, conclusions, and recommendations.
- C. After receipt of Engineer's written findings, conclusions, and recommendations, Owner shall issue a written statement to Contractor regarding the subsurface or physical condition in question, addressing the resumption of Work in connection with such condition, indicating whether any change in the Drawings or Specifications will be made, and adopting or rejecting Engineer's written findings, conclusions, and recommendations, in whole or in part.

ARTICLE 12 - CLAIMS AND DISPUTE RESOLUTION

12.01 Claims Process

- A. The party submitting a claim shall deliver it directly to the other party to the Contract and the Engineer promptly (but in no event later than 10 days) after the start of the event giving rise thereto.
- B. The party receiving a claim shall review it thoroughly, giving full consideration to its merits. The two parties shall seek to resolve the claim through the exchange of information and direct negotiations. All actions taken on a claim shall be stated in writing and submitted to the other party.
- C. If efforts to resolve a claim are not successful, the party receiving the claim may deny it by giving written notice of denial to the other party. If the receiving party does not take action on the claim within 45 days, the claim is deemed denied.
- D. If the dispute is not resolved to the satisfaction of the parties, Owner or Contractor shall give written notice to the other party of the intent to submit the dispute to a court of competent jurisdiction unless the Owner and Contractor both agree to an alternative dispute resolution process.

ARTICLE 13 - TESTS AND INSPECTIONS; CORRECTION OF DEFECTIVE WORK

13.01 Tests and Inspections

- A. Owner and Engineer will have access to the Site and the Work at reasonable times for their observation, inspection, and testing. Contractor shall provide them proper and safe conditions for such access.

- B. Contractor shall give Engineer timely notice of readiness of the Work for all required inspections and tests, and shall cooperate with inspection and testing personnel to facilitate required inspections and tests.
- C. If any Work that is to be inspected, tested, or approved is covered by Contractor without written concurrence of Engineer, Contractor shall, if requested by Engineer, uncover such Work for observation. Such uncovering shall be at Contractor's expense.

13.02 Defective Work

- A. Contractor shall ensure that the Work is not defective.
- B. Engineer has the authority to determine whether Work is defective, and to reject defective Work.
- C. Prompt notice of all defective Work of which Owner or Engineer has actual knowledge will be given to Contractor.
- D. The Contractor shall promptly correct all such defective Work.
- E. When correcting defective Work, Contractor shall take no action that would void or otherwise impair Owner's special warranty and guarantee, if any, on said Work.
- F. If the Work is defective or Contractor fails to supply sufficient skilled workers or suitable materials or equipment, or fails to perform the Work in such a way that the completed Work will conform to the Contract Documents, then Owner may order Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated.

ARTICLE 14 - PAYMENTS TO CONTRACTOR

14.01 Progress Payments

- A. The Contractor shall prepare a schedule of values that will serve as the basis for progress payments. The schedule of values will be in a form of application for payment acceptable to Engineer. The unit price breakdown submitted with the Price Proposal will be used for unit price work. Break lump sum items into units that will allow for measurement of Work in progress.

14.02 Applications for Payments:

- A. Contractor shall submit an application for payment in a form acceptable to the Engineer, no more frequently than monthly, to Engineer. Applications for payment will be prepared and signed by Contractor. Contractor shall provide supporting documentation required by the Contract Documents. Payment will be paid for Work completed as of the date of the application for payment.
- B. Beginning with the second application for payment, each application shall include an affidavit of Contractor stating that all previous progress payments received on account of the Work have been applied on account to discharge Contractor's legitimate obligations associated with prior applications for payment.
- C. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below less any withholdings.
 - 1. Prior to Substantial Completion, in an amount sufficient to increase total payments to CONTRACTOR to 90 percent of the Contract Price, less such amounts as the OWNER

shall determine, or the OWNER may withhold, in accordance with the Contract Documents.

2. Upon Substantial Completion, in an amount sufficient to increase total payments to CONTRACTOR to 95 percent of the Contract Price, less such amounts as the OWNER shall determine, or the OWNER may withhold, in accordance with the Contract Documents.

14.03 Retainage

- A. The Owner may retain up to 10% of progress payments until the Work is substantially complete.
- B. All retainage shall bear interest at the rate required by AS 36.90.250 if applicable under AS 36.90.265.

14.04 Review of Applications for Payment

- A. Within 10 days after receipt of each application for payment, the Engineer will either indicate in writing a recommendation for payment and present the application for payment to Owner or return the application for payment to Contractor indicating in writing Engineer's reasons for refusing to recommend payment. The Contractor will make the necessary corrections and resubmit the application for payment.
- B. Engineer will recommend reductions in payment (set-offs) which, in the opinion of the Engineer, are necessary to protect Owner from loss because the Work is defective and requires correction or replacement.
- C. The Owner is entitled to impose set-offs against payment based on any claims that have been made against Owner on account of Contractor's conduct in the performance of the Work, incurred costs, losses, or damages on account of Contractor's conduct in the performance of the Work, or liquidated damages that have accrued as a result of Contractor's failure to complete the Work.

14.05 Contractor's Warranty of Title

- A. Contractor warrants and guarantees that title to all Work, materials, and equipment furnished under the Contract will pass to Owner free and clear of (1) all liens and other title defects, and (2) all patent, licensing, copyright, or royalty obligations, no later than seven days after the time of payment by Owner.

14.06 Substantial Completion

- A. The Contractor shall notify Owner and Engineer in writing that the Work is substantially complete and request the Engineer issue a certificate of substantial completion when Contractor considers the Work ready for its intended use. Contractor shall at the same time submit to Owner and Engineer an initial draft of punch list items to be completed or corrected before final payment.
- B. Engineer will make an inspection of the Work with the Owner and Contractor to determine the status of completion. If Engineer does not consider the Work substantially complete, Engineer will notify Contractor and Owner in writing giving the reasons therefor.

- C. If Engineer considers the Work substantially complete or upon resolution of all reasons for non-issuance of a certificate identified in 14.06.B, Engineer will deliver to Owner a certificate of substantial completion which shall fix the date of substantial completion and include a punch list of items to be completed or corrected before final payment.

14.07 Final Inspection

- A. Upon written notice from Contractor that the entire Work is complete, Engineer will promptly make a final inspection with Owner and Contractor and will notify Contractor in writing of all particulars in which this inspection reveals that the Work, or agreed portion thereof, is incomplete or defective. Contractor shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.

14.08 Final Payment

- A. Contractor may make application for final payment after Contractor has satisfactorily completed all Work defined in the Contract, including providing all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance, certificates of inspection, annotated record documents and other documents.
- B. The final application for payment shall be accompanied (except as previously delivered) by:
 - 1. All documentation called for in the Contract Documents;
 - 2. Consent of the surety to final payment;
 - 3. Satisfactory evidence that all title issues have been resolved such that title to all Work, materials, and equipment has passed to Owner free and clear of any liens or other title defects, or will so pass upon final payment;
 - 4. A list of all disputes that Contractor believes are unsettled; and
 - 5. Complete and legally effective releases or waivers (satisfactory to Owner) of all lien rights arising out of the Work, and of liens filed in connection with the Work.
- C. The Work is complete (subject to surviving obligations) when it is ready for final payment as established by the Engineer's written recommendation of final payment.

14.09 Waiver of Claims

- A. The making of final payment will not constitute a waiver by Owner of claims or rights against Contractor.
- B. The acceptance of final payment by Contractor will constitute a waiver by Contractor of all claims and rights against Owner other than those pending matters that have been duly submitted.

ARTICLE 15 - SUSPENSION OF WORK AND TERMINATION

15.01 Owner May Suspend Work

- A. At any time and without cause, Owner may suspend the Work or any portion thereof for a period of not more than 60 consecutive days by written notice to Contractor and Engineer. Such notice will fix the date on which Work will be resumed. Contractor shall resume the Work on the date so fixed. Contractor shall be entitled to an adjustment in the Contract

Price or an extension of the Contract Times, or both, directly attributable to any such suspension.

15.02 Owner May Terminate for Cause

- A. Contractor's failure to perform the Work in accordance with the Contract Documents or other failure to comply with a material term of the Contract Documents will constitute a default by Contractor and justify termination for cause.
- B. If Contractor defaults in its obligations, then after giving Contractor and any surety ten days written notice that Owner is considering a declaration that Contractor is in default and termination of the Contract, Owner may proceed to:
 - 1. Declare Contractor to be in default, and give Contractor and any surety notice that the Contract is terminated; and
 - 2. Enforce the rights available to Owner under any applicable performance bond.
- C. Owner may not proceed with termination of the Contract under Paragraph 15.02.B if Contractor within seven days of receipt of notice of intent to terminate begins to correct its failure to perform and proceeds diligently to cure such failure.
- D. Subject to the terms and operation of any applicable performance bond, if Owner has terminated the Contract for cause, Owner may exclude Contractor from the Site, take possession of the Work, incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere, and complete the Work as Owner may deem expedient.
- E. In the case of a termination for cause, if the cost to complete the Work, including related claims, costs, losses, and damages, exceeds the unpaid contract balance, Contractor shall pay the difference to Owner.

15.03 Owner May Terminate for Convenience

- A. Upon seven days written notice to Contractor, Owner may, without cause and without prejudice to any other right or remedy of Owner, terminate the Contract. In such case, Contractor shall be paid for, without duplication of any items:
 - 1. Completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;
 - 2. Expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses; and
 - 3. Other reasonable expenses directly attributable to termination, including costs incurred to prepare a termination for convenience cost proposal.
- B. Contractor shall not be paid on account of loss of anticipated overhead, profits, or revenue, or other economic loss arising out of or resulting from such termination.

15.04 Contractor May Stop Work or Terminate

- A. If, through no act or fault of Contractor, (1) the Work is suspended for more than 90 consecutive days by Owner or under an order of court or other public authority, or (2)

Owner fails for 30 days to pay Contractor any sum finally determined to be due, then Contractor may, upon seven days written notice to Owner, and provided Owner does not remedy such suspension or failure within that time, either stop the Work until payment is received, or terminate the Contract and recover payment from the Owner.

ARTICLE 16 - CONTRACTOR'S REPRESENTATIONS

16.01 Contractor Representations

A. Contractor makes the following representations when entering into this Contract:

1. Contractor has examined and carefully studied the Contract Documents, and any data and reference items identified in the Contract Documents.
2. Contractor has visited the Site, conducted a thorough visual examination of the Site and adjacent areas, and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
3. Contractor is familiar with and is satisfied as to all Laws and Regulations that may affect cost, progress, and performance of the Work.
4. Contractor has considered the information known to Contractor itself; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and the Site-related reports and drawings identified in the Contract Documents, with respect to the effect of such information, observations, and documents on:
 - a. The cost, progress, and performance of the Work;
 - b. The means, methods, techniques, sequences, and procedures of construction to be employed by Contractor; and
 - c. Contractor's safety precautions and programs.
5. Based on the information and observations referred to in the preceding paragraph, Contractor agrees that no further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract.
6. Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.
7. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.
8. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
9. Contractor's entry into this Contract constitutes an incontrovertible representation by Contractor that, without exception, all prices in the Contract are premised upon performing and furnishing the Work required by the Contract Documents.

ARTICLE 17 - MISCELLANEOUS

17.01 Cumulative Remedies

- A. The duties and obligations imposed by this Contract and the rights and remedies available hereunder to the parties hereto are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by Laws or Regulations, by special warranty or guarantee, or by other provisions of the Contract. The provisions of this paragraph will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right, and remedy to which they apply.

17.02 Limitation of Damages

- A. Neither Owner, Engineer, nor any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, shall be liable to Contractor for any claims, costs, losses, or damages sustained by Contractor on or in connection with any other project or anticipated project.

17.03 No Waiver

- A. A party's non-enforcement of any provision shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Contract.

17.04 Survival of Obligations

- A. All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with the Contract, as well as all continuing obligations indicated in the Contract, will survive final payment, completion, and acceptance of the Work or termination or completion of the Contract or termination of the services of Contractor.

17.05 Contractor's Certifications

- A. Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract.

17.06 Controlling Law

- A. This Contract is to be governed by the law of the state in which the Project is located.

CITY OF UNALASKA.:

BY: _____

BY: _____
Erin Reinders, City Manager

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me on the ___ day of _____, 2019, by _____, the _____, of _____, on behalf of the corporation.

The foregoing instrument was acknowledged before me on the ___ day of _____, 2019, by Erin Reinders, the City Manager of the City of Unalaska, Alaska, a First Class Alaska Municipal Corporation, on behalf of the City of Unalaska.

Notary Public, State of _____
My Commission Expires: _____

Notary Public, State of Alaska
My Commission Expires: _____

Hi, Tom —
a bit of
info for your files —
Ray

6/5/2018

Attachment C
Resolution 2019-38
Supporting Statement from Ray Hudson

Supporting Statement
Nomination of the Henry Swanson House
Unalaska, Alaska,
to the National Register of Historic Places,
National Park Service

The House on Block 2, Lot 8, U.S. Survey No. 1992, Unalaska, Alaska

Henry told the Alaska Native Review Commission in 1984 that he bought his property in the 1930s from “a Norwegian fisherman fishing in Bristol Bay.” He explained that until 1938 there were few deeds within the town. “Even if you lived here for a hundred years,” he said, “you still didn’t own the land you lived on.” Property lines were set by fences. In 1938 “they gave deeds to the people. Whoever happened to be living on that piece of land, they got a deed to that lot. And Natives got restricted deeds to their lots.”¹

In 1942 the newly incorporated City of Unalaska had a tax assessment made by J. Dean King, a resident Methodist minister. Henry’s lot was valued at \$700. He had two houses on the lot, together valued at \$300. His houses were exempt from tax, but for the real estate he was assessed \$10.50. On June 26, 1942, his personal property was valued at \$145.00 (stove, \$40; furniture, \$25; radio, \$40; miscellaneous, \$20.00)² It is interesting that at the outbreak of the war in the Aleutians, Henry’s most valuable possessions were a stove and a radio.

Shortly after the conclusion of World War II, the present house replaced an earlier dwelling that had deteriorated during the war. Whether part of the original structure was incorporated into the present house remains to be determined. Certainly, the types of furnishings (wood or oil range, simple cupboards, table, and bed) reflect Henry’s lifestyle from the 1930s.

Historical Significance of Henry Swanson

Henry Swanson’s long life enabled him to participate in every important economic and social event in the Aleutians from the end of sea otter hunting, through World War II, and into the development of a strong Aleut community following the Alaska Native Claims Settlement Act. As the owner of two vessels in the 1920s and 1930s he became intimately familiar with the islands and waters of the Chain. Of particular significance was his willingness to share his knowledge. His extraordinary and accurate recall brought anyone doing research on the history, economics, or natural history of the islands to him. *The Unknown Islands: Life and Tales of Henry Swanson* (1982) excerpted passages from recorded interviews. A complete transcript of his talks and interviews is in process and will be an invaluable resource for future researchers. The value of Swanson’s oral histories are heightened because of the loss of so much

documentary material during the Aleut evacuation of World War II. Few paper documents survived the occupation of villages and the destruction of homes. The vast reservoir of his recorded interviews, coupled with their accuracy, makes him the most important figure in the preservation of 20th century Aleutian history.

Early Years

Henry Swanson was born in 1895. His father was an immigrant from Sweden after whom Swanson Lagoon on the north side of Unimak Island is named. His mother, Sophia Reinkin, was the daughter of a German immigrant, Adolph Reinkin, and Evdokia Shaiashnikov, a daughter of the great Aleut Orthodox priest Innokentii Shaiashnikov. Henry's first memories were of the arrival of miners on their way to the Klondike and Nome gold rushes. Following his father's drowning, Sophia Swanson was left with three children. During the measles epidemic of 1900 the Swanson family took shelter in the Jesse Lee Home, a Methodist-Episcopal orphanage. Sophia herself had been one of the first students to live at the Home in the early 1890s while her father and stepmother were living at Chernofski Village. Henry and his sisters continued to live at the Home until Sophia married the noted arctic captain Christian Pedersen.

Henry's school years shed light on the introduction of public education to the Aleutians. He attended the Bureau of Indian Affairs school as a resident of the Jesse Lee Home. He was "indentured" to the Home and his return to his mother's household resulted in significant correspondence involving the school, the deputy U.S. Commissioner, the Jesse Lee Home director, and Department of Interior officials. His subsequent four years at the Chemawa Indian School in Oregon provide an insight into both that institution and the status of Aleut children during the period 1910-1915.

In 1910 Henry was aboard the *Elvira* for several months on a sea otter hunt. The next year sea otter hunting closed for good. Henry's recollections of that event are very important, economically and ethnographically. Here, as elsewhere, the accuracy of his information has been confirmed by archival sources.

About a dozen Aleuts took part in World War One. Henry's service in the U.S. Navy included raising the first submarine in Hawaii, an early tour of duty in Panama, service on a transport across the Atlantic and on a destroyer in the North Atlantic. Again, his recollections of those years provide a unique addition to Alaskan history and illuminate the role of Alaskan Natives in the wider history of the nation.

Adult Years 1920 – 1940

Following his return from World War One, Henry became an active participant in the blue fox business. During his career, he (with various partners) leased several islands including Adak and Amatignak. In addition, he trapped on West Unalga, Kavalga, Great Sitkin, Samalga, and Uliaga. During these years he owned the *Alasco-4* and the *Kanaga Native*. Using these

vessels he dropped trappers off at various islands and picked them up. He became more familiar with Aleutian waters than probably anyone else alive. In 1940 he began breeding fox at Morris Cove on Unalaska Island. (See "Henry Swanson's Fox Farm" in Charles M. Mobley, *An Archaeological Study at Morris Cove, Unalaska Island, Alaska*. Charles M. Mobley & Associates, Anchorage. 1993: 25-28)

Henry's exceptional knowledge of all aspects of the Aleutian fox business, its repercussions on traditional Aleut villages and on the growing town of Unalaska (including the ways Aleut culture changed during these years), make it impossible to overvalue his contributions to our knowledge of this period. During the 1930s he also took part in government studies on the return of the sea otter.

(For examples of how Swanson material has contributed see *Introduction of Foxes to Aleutian Islands — History, Effects on Avifauna, and Eradication*, Edgar P. Bailey. United States Department of the Interior, Fish and Wildlife Service, Resource Publication 193, Washington, D.C. 1993; and, "Fox Trapping in the Aleutians", Henry Swanson and Raymond Hudson, in *The Aleutians*, Lael Morgan, editor, Alaska Geographic, Vol. 7, No. 3, 1980:123-129.)

World War Two

Although too old to enlist for military service, Henry's knowledge of the Aleutians soon allowed him to contribute to the defense of Alaska in World War Two. Among his first jobs for the military was to pilot a mapping vessel around the eastern Aleutians, specifically Unalaska Island. He witnessed the Japanese attack on Unalaska Island. He supplied outposts around the island and later did the same for outposts in the Adak area.

It was Henry Swanson who taught Carl "Squeaky" Anderson, the famous port commander, what he knew about the Aleutians.

He was present during the Battle of Attu and its aftermath. And, he was part of the decommissioning of military holdings at Unalaska.

Of particular importance to Swanson's World War recollections (and they are voluminous) is the fact that he was a civilian, an Aleut, a life-long resident of the Chain, and someone who lived through the long period of post-war recovery. Because of these factors, his observations provide a perspective on the events frequently missing from military history.

Post World War II

Although the village of Unalaska had incorporated as a first class city shortly after the outbreak of the war, a severe economic depression set in immediately after the withdrawal of troops and the return of Aleut civilians from their evacuation camps in Southeast Alaska. Henry was an early participant in the governmental affairs of the city and continued this participation well into the 1960s. Henry played an important role as a member of city government during the recovery from the war and the establishment of a firm economic base for the town. The details of his contribution have yet to be studied.

In 1971 Henry Swanson was one of three elders named in an injunction stopping the government sale of property at Unalaska. This action assured that following the passage of the Alaska Native Claims Settlement Act most if not all of the property would pass to the local Native corporation, the Ounalashka Corporation. This in turn assured the healthy development of the corporation. One result has been to guarantee a significant contribution by Aleut residents in the development of the community after a series of economic booms significantly altered the population of the town.

Conclusion

The preservation of the "Swanson House" will provide visitors and residents with a physical reminder of the transformative years 1930 to 1950. These were years in which the lives of Aleut people changed dramatically and during which the islands played a significant role in the nation's history. Henry Swanson's participation in the events of those years made him important to a generation. His recorded interviews, publications, and work with historians and scientists will continue his legacy into the future. The house where he lived and where so many of these interviews occurred is an important structure in our history.

Ray Hudson

15 South Gorham Lane

Middlebury, Vermont 05753

February 20, 2006

¹ *Transcript of Proceedings, Village Meeting, volume 36, Unalaska, September 18, 1984.* Accu-Type Depositions, Inc. Anchorage, Alaska. 1984:32

² June 1942 City of Unalaska Assessment sheets. Copies in possession of Ray Hudson