



Haines Borough Administration
Robert Venables, Manager
(907)766-2231 • Fax(907)766-2716
rvenables@haines.ak.us

Report

October 24, 2006

School Progress

Dawson has made very good progress in getting the concrete poured and steel beams erected. The roof on "C" Block should be in place by November 20th. Their updated timetable is attached. There will be a Design committee meeting on Nov. 7 or 8 to discuss exterior colors and interior cabinets.

McGraw Appeal

The assembly's memorandum of decision has been filed with the Superior Court (attached). McGraw's response is likely 30 days away, then the borough has another 30 days to respond to that and then McGraw will have 2 weeks to respond further. Absent any continuance requests from McGraw, the judge could make his ruling by the end of this year (depending on his trial schedule)

Chilkoot River Corridor

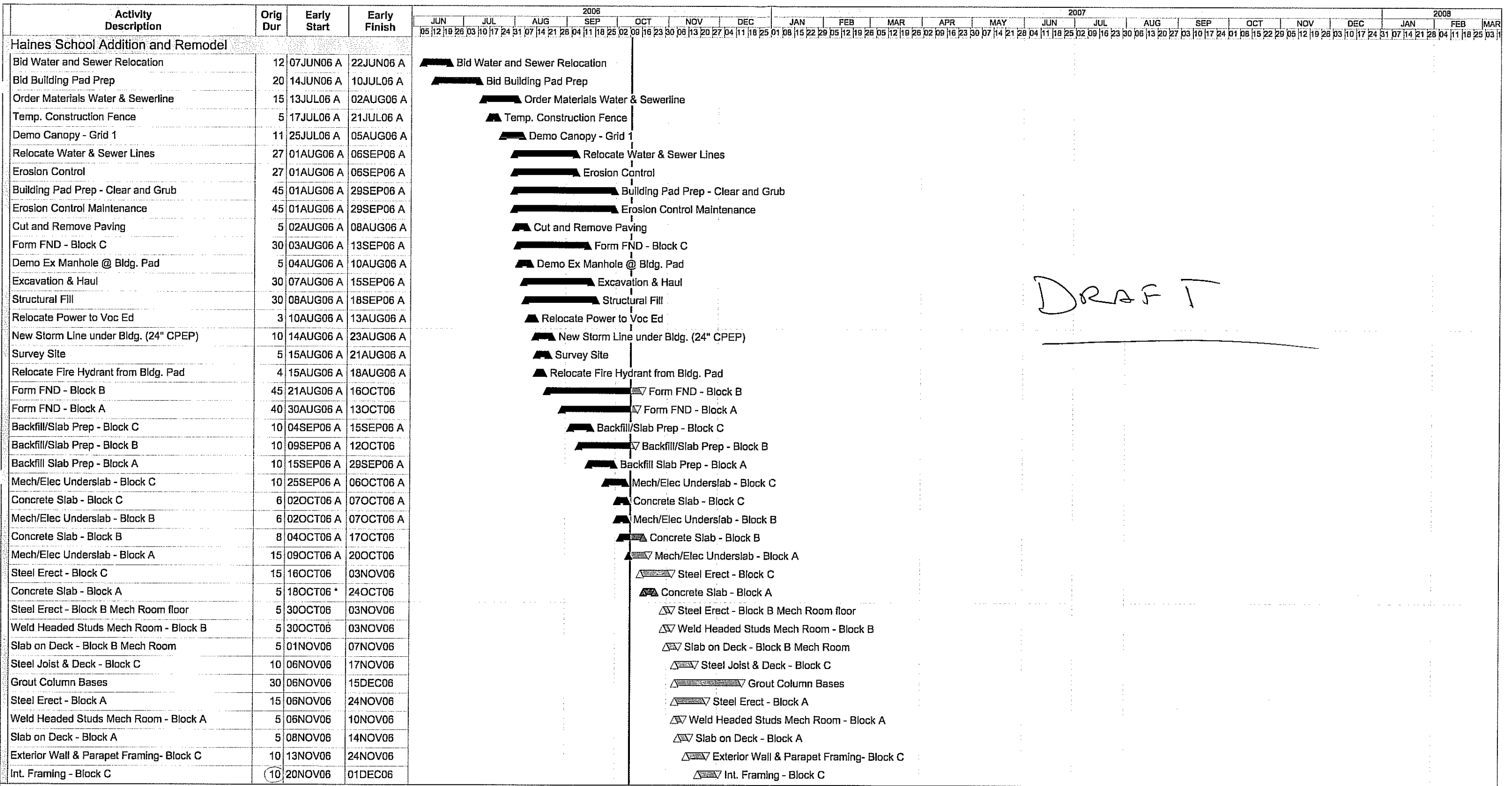
The Chilkoot River Corridor has been a recent topic of discussion between the state agencies of DNR, D.O.T. and Fish and Game. They propose a strategic planning effort to address the issues of concern. This could be good timing with the change of administrations approaching. Their letter is attached.

Project Updates

- The pool repairs should be scheduled in the next 30 days. We are waiting for their proposed timetable.
- The harbor fuel line repairs are tentatively scheduled to begin next week.
- Wescold has agreed to delay start-up of the ice house until April - and that will be the starting date of the one-year warranty.
- American Marine has requested a delay in the PC Dock anode project until April. We are waiting their formal request but are inclined to grant it with substantial penalties for further delays.
- We are working with DOT in coordinating the 3rd avenue reconstruction project with the Union Street project. It is anticipated to go to bid in December. We are also requesting certain utility upgrades along Union Street and are developing the scope of work and associated costs.
- The new Public Works shop building should arrive next month and will be erected next spring.

Manager's Schedule

I will be in Ketchikan this week for the harbormaster's annual conference. Next week, I am taking personal leave and will return to the office on the following Monday afternoon, November 6th. I can be reached via email or through the clerk.



DRAFT

Start date	07JUN06
Finish date	17DEC07
Data date	10OCT06
Run date	18OCT06
Page number	1A

Dawson Construction, Inc.
Haines School Addition and Remodel

- △ Early start point
- ▽ Early finish point
- ▨ Early bar
- ▩ Progress bar
- Critical bar
- Summary bar
- ▲ Progress point
- ▲ Critical point
- ◆ Summary point
- ◆ Start milestone point
- ◆ Finish milestone point

STATE OF ALASKA

DEPARTMENT OF FISH AND GAME

FRANK MURKOWSKI, GOVERNOR

P.O. Box 110024
Douglas, AK 99811-0024
PHONE: (907) 465-4266
FAX: (907) 465-4272
e-mail: doug_larsen@fishgame.state.ak.us
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e-mail: scott_kelley@fishgame.state.ak.us

October 9, 2006

Mr. Mike Eberhardt, Park Superintendent
Department of Natural Resources
Division of Parks & Outdoor Recreation
P. O. Box 111071
Juneau, AK 99811

Dear Mike:

The Alaska Department of Fish and Game has concerns about bear/human interactions along the Chilkoot River corridor, and would welcome an opportunity to work with you and your staff to address them. Following is our assessment of the problem, the issues and concerns, and possible remedial actions.

Background and Problem: The Chilkoot River, located near Haines, Alaska, provides important travel, spawning, and rearing habitat for pink, chum, red, and silver salmon (*Onchorhynchus* spp). Brown bears (*Ursus arctos*) feed on these fish as well as on the estuarine grasses and sedges at the mouth of the river. Chilkoot Indians historically lived along the banks, and there are several Native allotments in the area. The Alaska Department of Fish and Game's (ADF&G) Commercial Fish Division maintains a weir on the river and the river is heavily fished by anglers, particularly residents of Haines and from Whitehorse, in the Yukon Territory. Local tour guides transport cruise ship passengers and other visitors along the road adjacent to the river to watch bears, fish, or kayak on Chilkoot Lake. Independent travelers frequently visit this site as well.

In 2000, there were over 25,000 visitors to the area, with bear viewing and fishing being the main attractions. The general perception is that more brown bears use the area today than they did in previous decades, possibly in response to increased numbers of salmon, or because of increased numbers of bears.

The large numbers of visitors has led to concerns by members of the public, tour guides, local Native groups, the Department of Natural Resources/Division of Parks and Recreation, and ADF&G about degradation of the biological, cultural, and aesthetic resources of the area. It has also led to concerns about bear/human interactions and possible conflicts. To address these concerns, the Chilkoot River Cooperative Working Group (CRCWG) was formed in winter 2000-2001. The group's stakeholders included Lutak Subdivision residents, commercial operators, at-large members, and agency personnel. The group met several times and developed a management plan for the Chilkoot River corridor. That plan included hiring a monitor to oversee activities in the area, and especially to monitor and address bear/human interactions and issues. A monitor was first placed onsite in 2002.

By all reports, the monitor proved helpful in addressing human behaviors and minimizing undesired conflicts between bears and people. However, the steady and unrestricted flow of people and their vehicles, the confined nature of the geographic setting, the mosaic nature of land ownership in the corridor, and most notably the paucity of enforcement capabilities of the monitor, have clearly expanded the scope of issues beyond simply

hiring a technician or two to monitor the area and encourage people to follow recommended protocols. High numbers of visitors and bears in close proximity to one another necessitates further actions.

Issues and concerns: Among the most notable issues and concerns identified to date fall into three main categories: bear viewing, fishing, and miscellaneous.

Bear viewing:

- ◆ Bear watching is increasing, along with associated bear/human concerns.
- ◆ Tour operators have inconsistent practices and allowances that are often contrary to responsible wildlife viewing. Bears and humans in close proximity to one another need consistency and predictability in order to avoid surprises and associated potential conflicts.
- ◆ People regularly pursue bears for photographs and get closer to them than is wise or responsible, thereby increasing the potential for habituation, food conditioning, or physical injury.
- ◆ Rather than grouping together in designated, predictable locations, people and their vehicles line up along the narrow road corridor to view bears, often cutting off escape routes for bears.

Fishing:

- ◆ Many anglers are regular visitors to the Chilkoot River and are unwilling to change their practices to avoid or lessen potential conflicts with brown bears.
- ◆ Fishing can be fast and furious, with anglers reluctant to leave the river to stow fish as they're caught.
- ◆ Some anglers leave food on shore, which allows bears to be rewarded for coming in close proximity to people. This leads to undesired conditioning.
- ◆ Fish entrails are left in shallow water or on shore, further rewarding bears and teaching them to associate people with easy food.
- ◆ Anglers fish early and late hours, which overlaps with brown bear use of the river and puts bears and humans in direct contact with one another.
- ◆ Anglers continue to fish as bears approach, resulting in potentially dangerous situations.

Miscellaneous:

- ◆ Patchwork land ownership has complicated management.
- ◆ The hired monitor lacks enforcement authority outside campgrounds and has had little backup for enforcement or emergency situations.
- ◆ Lack of agreement on some guidelines has led to disrespect to the monitor.
- ◆ The fish weir is a bear attractant and good for bear viewing, but creates traffic problems.

Possible actions: In settings like the Chilkoot River corridor, where bears and humans are restricted to small overlapping areas, it makes most sense to create an environment that is consistent and predictable for both bears and people. This has successfully been done at bear viewing areas throughout the region, including Pack Creek on Admiralty Island, Margaret Lake on Revilla Island, Anan Creek near the Bradfield Canal, and Fish Creek near Hyder. All of these areas have designated viewing areas, including platforms, and all have staffs that oversee and enforce rules. The Fish Creek site, which is most similar to the Chilkoot River corridor, also has designated parking areas along with an enforcement presence.

Among the actions worth considering for the Chilkoot River corridor would be to establish a designated viewing platform or platforms, and create designated parking. Rules would need to be developed and it would be important to have onsite staff with enforcement authority to enforce those rules. Given the popularity of angling in the area, it would be useful to suggest fishing behaviors that avoid or minimize issues with bears obtaining anglers' fish or fish scraps, and that establish appropriate behaviors for fishers in close proximity to bears. These issues, and others related to access and access management, would clearly benefit from a strategic planning effort that involves DOT, DNR, ADF&G, local government, and other affected interests, as identified.

Also, given the relationship between habitats and bear distribution and movements within them, it would be important to include potential development activities scheduled for the east side of the Chilkoot River corridor in such a planning effort. And finally, as an immediate, albeit short-term help, it would seem prudent to hire staff with law enforcement authority to patrol the corridor during the busy summer months when bears, fish, and people are most active.

Please let us know if and when you would like to meet to further discuss these issues and ideas. We are hopeful that by working together we can avoid undesired problems for bears or humans in this popular river corridor.

Sincerely,

Rocky Holmes
SE Regional Supervisor
Division of Sport Fish

Scott Kelley
SE Regional Supervisor
Division of Commercial Fish

Doug Larsen
SE Regional Supervisor
Division of Wildlife Conservation

cc: Kelly Hepler
Denby Lloyd
Matt Robus

1 Stephen L. Nourse
2 Alaska Bar No. 0602003
3 CARNEY BADLEY SPELLMAN, P.S.
4 701 Fifth Avenue, Suite 3600
5 Seattle, WA 98104
6 (206) 622-8020 Fax: (206) 467-8215
7 nourse@carneylaw.com
8 Attorneys for Defendant Haines Borough

FILED IN C.
STATE OF ALASKA
FIRST JUDICIAL DISTRICT
AT JUNEAU
10-19-06

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
FIRST JUDICIAL DISTRICT AT JUNEAU

McGRAW'S CUSTOM
CONSTRUCTION, INC.,

Appellant.

v.

HAINES BOROUGH,

Appellee.

Case No. 1JU-06-00740 Civil

ORDER GRANTING SUPPLEMENT TO THE
AGENCY'S RECORD ON APPEAL

Appellee, Haines Borough, having moved to supplement its record on appeal,
there being no opposition thereto, and no briefs have been filed to date,

IT IS ORDERED that Appellee Haines Borough shall supplement its Record on
Appeal by adding its Memorandum of Decision (a copy of which is attached hereto).

ORDER GRANTING SUPPLEMENT TO
THE AGENCY'S RECORD ON APPEAL-- 1
*McGraw's Custom Construction, Inc. v. Haines
Borough Case No. 1JU-06-00740 Civil*

CARNEY
BADLEY
SPELLMAN

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A PROFESSIONAL SERVICE CORPORATION
701 FIFTH AVENUE, #3600
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FAX (206) 467-8215
TEL (206) 622-8020

FILED BY: [Signature]
DATE: 10/17/06

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DATED this 19 day of October, 2006.

By Larry R. Weeks
Honorable Larry R. Weeks

CERTIFICATION

Copies Distributed

Date Oct 19, 2006

To J. Bergovin → FAX
S. Nourse

By LR

ORDER GRANTING SUPPLEMENT TO
THE AGENCY'S RECORD ON APPEAL- 2
McGraw's Custom Construction, Inc. v. Haines
Borough Case No. 1JU-06-00740 Civil

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TRANSMITTAL OF SUPPLEMENT TO AGENCY RECORD

TO: Superior Court Clerk
First Judicial District at Juneau
123 4th Street
Juneau, AK 99801

Date: October 19, 2006

FROM: Haines Borough
c/o Stephen L. Nourse
Attorney for Haines Borough
Carney Badley Spellman, P.S.
701 5th Avenue, Suite 3600
Seattle, WA 98104
206-622-8020

RE: Case Name: McGraw's Custom Construction, Inc., v. Haines Borough
Appeal Case Number: 1JU-06-00740 CI
Agency Case Number: N/A

Pagination of the agency file has been completed. In accordance with Appellate Rule 604(b)(1)(B)(ii) and (ii), the following items are being forwarded to you:

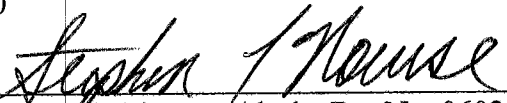
<input checked="" type="checkbox"/>	volumes of agency file (a copy) The file is numbered from Pages <u>985</u> to <u>989</u> .	<input type="checkbox"/>	list of exhibits being forwarded (List only those not included in the agency file.)
<input type="checkbox"/>	volumes of transcript (original)	<input type="checkbox"/>	envelopes/boxes containing exhibits
<input type="checkbox"/>	volumes of depositions (copies)	<input type="checkbox"/>	list of exhibits retained by agency other: _____

If the court needs any of the exhibits being retained by the agency, the court must contact the following person:

Name: Stephen L. Nourse
Title: Attorney for Haines Borough
Phone No.: 206-622-8020

October 19, 2006

Date


Stephen L. Nourse, Alaska Bar No. 0602003
Attorney for Haines Borough
Carney Badley Spellman, P.S.
701 5th Avenue, Suite 3600
Seattle, WA 98104
206-622-8020

HAINES BOROUGH

MEMORANDUM OF DECISION

WHEREAS, in March 2006, the Haines Borough (the "Borough") issued a "Request for Proposal for Construction Manager/General Contractor Services" ("RFP") for the replacement and/or renovation of the Haines Primary School, Elementary/Middle School and High School (the "Project"); and

WHEREAS, paragraph II of the RFP set forth, among other things, the various preconstruction services for which the Borough sought proposals as follows:

1. Participate as a member of the design team to advise, assist and provide construction and constructability advice and recommendations in the design of the work.
2. Advise the team on design concepts and schedules.
3. Provide information, estimates, schemes, and advice. Advice will influence decisions on construction phasing, temporary facilities, and temporary access routes and detours with the goal of minimizing disruption to the staff and students of the Haines Borough school system.
4. Develop information and advice regarding value engineering considerations. Provide information on construction materials, methods, systems, phasing, and costs to assist in determinations aimed at providing the Haines Borough with the highest quality facility consistent with the budget and design intent.
5. Provide input regarding current construction industry practices, labor market, and material availability.
6. Review in-progress design documents and provide advice with respect to completeness, clarity, construction feasibility, alternative materials/methods, and long-lead material procurements.
7. Recommend a strategy that identifies the division of the work to facilitate bidding and award of trade contracts, considering such factors as the sequence of construction, minimizing disruption of existing facilities, improving or accelerating construction completion, and other related issues. This may include pre-purchasing and expediting recommendations for long-lead materials in order to meet necessary delivery dates and avoid construction delays.

8. Monitor the project schedule and recommend adjustments to ensure completion of the project within the approved construction schedule, consistent with the need to minimize disruptions to the staff and students of the Haines Borough school system.
9. Cost management. Prepare construction cost estimates for the project throughout the design phases of the work. Help the Haines Borough and design team aggressively manage the project costs. If the estimate exceeds the construct budget, the CM/GC will make recommendations to reduce the estimated costs to within the budget. As the project progresses through Construction Drawings (CD), the CM/GC shall continue to review the cost jointly with the design team, with the objective of maintaining the cost estimate within the budget through exploring alternatives and options. The Haines Borough will continue to employ an independent Cost Consultant to review and participate in cost projections and determinations. This role is filled [sic] HMS, Inc. of Anchorage, under contract to Bettisworth + Northwind LLC Architects.
10. Prepare a detailed Construction Schedule for monitoring progress and managing the work. This includes developing construction phasing diagrams for work in the existing High School. The construction phasing plan must accommodate the work for the proposed addition, all renovation work, and maintenance of all critical mechanical and electrical systems and appropriate access during Haines Borough school operations.
11. Help establish procedures for expediting and processing all shop drawings, Submittals, Requests for Information (RFI's) and other documents.
12. Prepare safety and quality control programs, including means of implementing.

and

WHEREAS, paragraph IV of the RFP requested a guaranteed maximum price for the preconstruction services set forth in paragraph II; and

WHEREAS, regarding the guaranteed maximum price for preconstruction services, paragraph IV further stated:

. . . This amount is based on projected hours for employees proposed to work on preconstruction services multiplied by fully burdened hourly rates for each employee plus estimated reimbursable costs. Proposers should include a schedule showing projected number of hours for each individual employee and the corresponding fully burdened hourly rate for that employee. Expected minimum amount \$12,000 . . .

and

WHEREAS, paragraph IV further provided as follows:

The owner expects responsible proposals to fall within reasonable ranges. The expected range for each cost category is listed with that category. Proposers that propose fees or amounts below the expected ranges may be asked to provide examples where they have provided similar services for the reduced fee proposed.

and

WHEREAS, paragraph IX of the RFP provided that proposals would be reviewed by the Borough Selection Committee ("Selection Committee") established for the Project and that the Borough would issue an intent to award letter to all proposers; and

WHEREAS, following a 10-day protest period, the Selection Committee was to seek approval of its selected proposer from the Borough Assembly; and

WHEREAS, paragraph X(3) of the RFP required the Borough to provide for an administrative review of any complaint filed by an aggrieved proposer, which included allowing the proposer to file a protest and request a hearing; and

WHEREAS, under paragraph X(3) of the RFP, the Borough was to issue a written response to the protest; and

WHEREAS, five proposals were submitted to the Borough in response to the Borough's RFP; and

WHEREAS, three of the five proposals contained fee proposals that were not within the expected ranges for a responsible proposal under the terms of the RFP; and

WHEREAS, the proposals of McGraw's Custom Construction ("MCC"), Dawson Construction, Inc. ("Dawson") and Neeser Construction, Inc. ("Neeser") were those that were not within the expected ranges for a responsible proposal under the terms of the RFP; and

WHEREAS, MCC proposed \$0.01 to perform the preconstruction services set forth in paragraph II of the RFP; and

WHEREAS, as reflected below, MCC provided an estimate of hours for each employee to perform the preconstruction services, but did not base its proposed cost on the estimate of hours times each employee's fully burdened rate as required under paragraph IV of the RFP:

C. Guaranteed Maximum Price for Preconstruction Services

MCC's Guaranteed Maximum Price for Item C: \$0.01

Estimated Hours: Chuck McGraw – 120 Hrs @ \$0 per hour = \$0
 Chris McGraw – 80 Hrs @ \$0 per hour = \$0
 Chad McGraw – 40 Hrs @ \$0 per hour = \$0
 Bill Goodale – 40 Hrs @ \$0 per hour = \$0
 Ken Helem – 40 Hrs @ \$0 per hour = \$0
 Roger Schnabel – 20 Hrs @ \$0 per hour = \$0
 Markup = \$0.01

and

WHEREAS, pursuant to the terms of the RFP, additional information was requested from the three proposers whose proposals were not within the expected ranges for a responsible proposal; and

WHEREAS, following receipt and consideration of the requested additional information, the Selection Committee determined that MCC's proposal was non-responsive; and

WHEREAS, MCC was informed of the Selection Committee's determination of the non-responsiveness of MCC and its intent to award to Dawson on April 7, 2006; and

WHEREAS, on or about April 17, 2006, and subsequent to requesting and receiving all documentation related to the Selection Committee's review of the proposals, MCC filed with the Borough (through its counsel) a protest of the non-responsive finding by the Selection Committee; and

WHEREAS, the Borough responded to MCC's protest on April 26, 2006, setting forth the specific bases for finding MCC's proposal non-responsive; and

WHEREAS, pursuant to MCC's request and the terms of the RFP, a hearing on MCC's protest was held before the Borough Assembly on May 3, 2006; and

WHEREAS, representatives for MCC and the Borough (including members of the Selection Committee), as well as Dawson, spoke regarding MCC's protest and the proposed award to Dawson; and

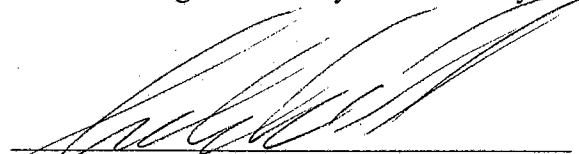
WHEREAS, the Borough Assembly voted to deny MCC's protest and to award the contract to Dawson;

NOW, THEREFORE BE IT RESOLVED by the Haines Borough Assembly that MCC's proposal is non-responsive due to MCC's failure to comply with the RFP in bidding \$0.01 for the requested preconstruction services rather than the amount of the estimated hours to perform such services multiplied by the fully burdened hourly rates; and

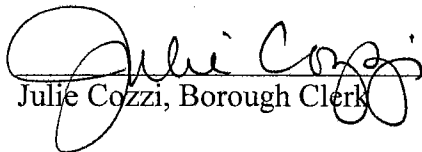
BE IT FURTHER RESOLVED that it is within the discretion of the Borough Assembly to reject MCC's proposal as non-responsive (*Laidlaw Transit, Inc. v. Anchorage Sch. Dist.*, 118 P.3d 1018 (2005); *Fairbanks North Star Borough Sch. Dist. v. Bowers Office Products, Inc.*, 851 P.2d 56 (1992); *State v. Bowers Office Products, Inc.*, 621 P.2d 11 (1980); *King v. Alaska State Housing Authority*, 512 P.2d 887 (Alaska 1973)); and

BE IT FURTHER RESOLVED that, given MCC's failure to comply with the RFP, it is unfair to other proposers to allow MCC's protest and to award the contract to MCC.

ADOPTED by a duly constituted quorum of the Haines Borough Assembly this 10th day of October, 2006


Fred Shields, Borough Mayor

Attest:


Julie Cozzi, Borough Clerk



1
2 IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
3 FIRST JUDICIAL DISTRICT AT JUNEAU

4 McGRAW'S CUSTOM
5 CONSTRUCTION, INC.,

6 Appellant.

7 v.

8 HAINES BOROUGH,

9 Appellee.

Case No. 1JU-06-00740 Civil

10 Certificate of Service

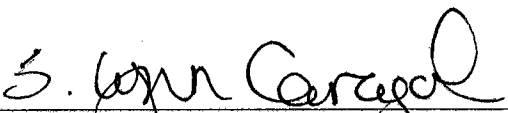
11 This certifies that I am an authorized agent of Carney Badley Spellman, P.S.,
12 for service of papers pursuant to Civil Rule 5 and 5.1, *et seq.*, and that on the 19th day
13 of October, 2006, I caused true and correct copies of :

14 **Transmittal of Supplement to Agency Record**

15 to be served via facsimile for a total of 8 pages including the cover page and United
16 States Postal Service, postage prepaid to the following:

17 Clerk of Court
18 Superior Court for the State of Alaska
19 First Judicial District at Juneau
20 123 4th Street
21 Juneau, AK 99801
Facsimile No.: (907) 463-3788

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1407 West 31st Avenue, 7th Floor
Anchorage, AK 99503-3678
Facsimile No. (907) 276-2919
Attorneys for Appellant McGraw's
Custom Construction, Inc.

22 
23 S. Lynn Caragol, Legal Assistant

24 **CERTIFICATE OF SERVICE – 1**
25 *McGraw's Custom Construction, Inc. v. Haines*
26 *Borough* Case No. 1JU-06-00740 Civil

27 **CARNEY**
28 **BADLEY**
29 **SPELLMAN**

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