

### Access, Indemnity, and Insurance Agreement

This Access, Indemnity, and Insurance Agreement (the "Agreement") is made as of the date of the last signature hereto, by and between 716 West Fourth Avenue, LLC ("716"), an Alaska limited liability company, whose address is 737 W. 5<sup>th</sup> Ave., Anchorage, Alaska 99501, and Alaska Building, Inc. ("ABI"), an Alaska corporation, whose address is 406 G Street, Suite 206, Anchorage, Alaska (each a "Party" and, together, the "Parties").

#### RECITALS

WHEREAS ABI owns certain real property located at the intersection of 4<sup>th</sup> Avenue and G Street in Anchorage, fully described as:

Lot One (1), and the East 10 1/2 feet of Lot Two (2), Block Forty (40) of ORIGINAL TOWNSITE OF ANCHORAGE, in the Anchorage Recording District, Third Judicial District, State of Alaska (the "ABI Property")

and the building constructed on such property (herein, the "Alaska Building"); and

WHEREAS 716 owns certain real property located adjacent to the Alaska Building on 4<sup>th</sup> Avenue in Anchorage, fully described as:

The West 39 and 1/2 feet of Lot Two (2), Block Forty (40) of ORIGINAL TOWNSITE OF ANCHORAGE, in the Anchorage Recording District, Third Judicial District, State of Alaska (the "716 Property")

and the building constructed on such property (herein, the "Empress Theater"); and

WHEREAS the Alaska Building and the Empress Theater were constructed sharing a party wall, described and pursuant to the terms of certain documents recorded at Book 3, Page 293 on January 22, 1917, at Book 5, Page 300, on August 21, 1918, and at Book 10, Page 83 on July 13, 1923, all in the Anchorage Precinct, Territory of Alaska (such wall, the "Party Wall," and such documents, the "Party Wall Agreement"); and

WHEREAS 716 intends to demolish the Empress Theater and to construct a new building on the 716 Property (such construction, the "Project" and such new structure, the "New Building"); and

WHEREAS pursuant to the Party Wall Agreement and common law regarding party walls 716 and ABI each have the shared duty to repair and preserve the Party Wall, during the demolition of the Empress Theater and otherwise; and

WHEREAS the owners of ABI have a large amount of family history associated with the Alaska Building and are committed to preserving the building as long as possible, acknowledging that the Alaska Building is one of the oldest structures in Anchorage, being first constructed on or around 1917, and of historical importance; and

WHEREAS ABI has hired BBFM Engineers, Inc. ("BBFM") to be its representative regarding engineering questions and issues during the Project; and

WHEREAS as a precautionary measure, ABI is arranging to have its computer servers "mirrored" off-site;

WHEREAS ABI and 716 share a commitment to ensure that the Project is completed safely and without impairment of the party wall; and

WHEREAS 716 acknowledges that the Project may impact the use and enjoyment of the Alaska Building by its tenants and occupants during certain stages of the Project and although such impacts may not be actionable, 716 stands ready to make the following commitments to ameliorate such impact and ABI is willing to accept such commitments as a reasonable accommodation of its concerns; and

WHEREAS the Parties desire to make certain specific mutual commitments regarding the Project, to avoid conflict during the Project.

NOW THEREFORE in consideration for the mutual commitments contained herein, the Parties agree as follows:

**1. Reimbursement for Professional Fees:**

In consideration for the professional time required to address preparation for the Project, within five (5) business days of execution of this Agreement 716 shall remit a one-time, lump sum payment in the amount of Fifteen Thousand and 00/100 Dollars (\$15,000.00) to ABI. This payment shall be in full satisfaction of any action, cause of action, suit, controversy, claim, damage, and demand of every kind and nature, mature or to mature in the future, for professional fees related to the Project, including but not limited to legal fees, appraisal fees, fees for other representation, and engineering fees, with the exception of such fees incurred in addressing a Catastrophic Event, as such term is defined below. 716 shall not reimburse or otherwise pay for professional fees incurred by ABI or its affiliates, including but not limited to BBFM, during the course of the Project or related to the Project, except as awarded by a court of competent jurisdiction.

**2. Reimbursement for Server Mirroring:**



In consideration for the back-up server mirroring work which will be completed to assure the availability and safety of electronic information for ABI and Alaska Building tenants during the Project, 716 agrees to reimburse in full the costs of such work as invoiced to ABI by a consultant of ABI's choosing, up to a maximum reimbursement amount of Ten Thousand and 00/100 Dollars (\$10,000.00). This payment shall be in full satisfaction of any action, cause of action, suit, controversy, claim, damage, and demand of every kind and nature, mature or to mature in the future, rising out of or relating to issues with ABI's computer servers or electronic information during or otherwise related to the Project. ABI represents and warrants that this waiver shall extend to any and all entities with an interest in the server in the Alaska Building, including but not limited to Touch N' Go Systems, Inc., and ABI shall save and indemnify 716 from any and all complaints or claims by such entities.

**3. Reimbursement for Rent Abatement:**

In consideration for the potential disruption to tenant activity in the Alaska Building during the Project, and for the waiver of any future claims related to such disruption, as set forth herein, within five (5) business days of execution of waiver agreements by the tenants as set forth herein 716 shall offer to remit to ABI's tenants one-time, lump sum rent abatement payments in the following amounts: Two Thousand Dollars and 00/100 (\$2,000.00) for Jim Gottstein, Two Thousand Nine Hundred and Fifty and 00/100 Dollars (\$2,950.00) for Alaska Center for the Environment, One Thousand Three Hundred Seventy Five and 00/100 Dollars (\$1,375.00) for Partners for Progress, and One Thousand Two Hundred and 00/100 Dollars (\$1,200.00) for Blu Menswear. Should the tenant(s) accept, this payment shall be in full satisfaction of any action, cause of action, suit, controversy, claim, damage, and demand of every kind and nature, mature or to mature in the future, rising out of or relating to disruption of tenant activity in the Alaska Building during the duration of the Project for such tenant(s), both by ABI and by any and all tenants leasing space in the Alaska Building; and each tenant shall execute a waiver in the form attached as Attachment C prior to receipt of a rent abatement payment. Upon execution of this Agreement ABI shall notify the tenants of this rent abatement offer, which shall remain open to each tenant until January 5, 2014. Interested tenants shall contact Shea Simasko (646-4644; SSimasko@PfefferDevelopment.com) directly to arrange the transaction details of their abatement payment.

**4. Lease of Blu Menswear Space:**

Commencing on January 1, 2014, the Parties agree that Criterion General shall lease the ground floor space in the Alaska Building currently occupied by Blu Menswear, with a street address of 706 W. 4<sup>th</sup> Avenue, for a project office for a term of one (1) year at \$1,200 per month. Such lease shall be in the form attached to this Agreement as Attachment B.

**5. Access; Reimbursement for Use of Parking:**

716 shall maintain safe, secure, and clean pedestrian access to the Alaska Building at all times during the Project. ABI leases its alley parking spaces located adjacent to the Alaska Building for any purpose related to the Project in return for a monthly rental of Three Hundred Dollars and 00/100 (\$300.00) per month for each month until the end of the month following the month 716 gives notice that it no longer needs such spaces and that they are available for use and open for access by ABI. This payment shall be in full satisfaction of any action, cause of action, suit, controversy, claim, damage, and demand of every kind and nature, mature or to mature in the future, rising out of or relating to 716's use of these parking spaces.

**6. License:**

Subject to the terms of this Agreement, ABI grants to 716 and its agents, employees, contractors, and subcontractors a limited license to all reasonably required access to the ABI Property and the Alaska Building, with reasonable notice to ABI and at reasonable times, for the purpose of planning and implementing the Project, and of minimizing any impacts of the Project on the Alaska Building.

**7. Party Wall:**

Upon execution of this Agreement, 716 shall arrange for the installation of survey points on the Party Wall for the purpose of monitoring any movement of the Party Wall during the Project as set forth in Attachment D. 716 shall arrange for monitoring of these survey points on a weekly basis for the duration of the Project. All monitoring information shall be equally available to and accessible by representatives of 716 and ABI, including but not limited to BBFM.

716 shall exercise due care consistent with its obligations under the Party Wall Agreement and common law to preserve the Party Wall during the Project. The Party Wall will remain governed by the Party Wall Agreement. Portions of the eastern wall of the Empress Theater not shared by the Empress Theater and the Alaska Building and not included within the scope of the Party Wall Agreement may be removed during the Project in 716's discretion.

**8. Walkway and Generator Easements:**

The walkway and generator easement as recorded at Book 10, Page 83, on July 13, 1923, and at Book 42, Page 66, on July 28, 1944 shall not be affected by this Agreement.

**9. Coordination with BBFM:**

Throughout the duration of the Project, 716 shall apprise BBFM of planned elements of the Project which will impact the Party Wall. 716 shall endeavor to give BBFM reasonable advance notice of any and all such work and shall provide BBFM with the opportunity to observe such work as requested.

**10. Indemnity:**

The contractor employed by 716 to complete the Project, Criterion General, Inc. located at 2820 Commercial Drive Anchorage, Alaska 99501 (the "Contractor"), shall defend, indemnify and hold harmless ABI and its, tenants, agents and employees from and against all claims, damages, losses and expenses including interest, costs and attorneys' fees arising out of or resulting from the performance of any work on the ABI Property or on the Party Wall, provided that any such claim, damage, loss or expense is caused in whole or in part by any negligent act or omission of the contractor, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder. The contractor need not indemnify ABI for ABI's sole negligence; however, this indemnification shall apply to circumstances of combined fault.

In any and all claims against ABI or any of their agents or employees by any employee of the Contractor, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under this section shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or any subcontractor under workmen's compensation acts, disability benefit acts or other employee benefit acts.

Contractor will maintain the insurance coverages as attached in Attachment A.

**11. Use of Hazardous Materials on the Project:**

Compliance with Environmental Laws: Contractor covenants full compliance with any applicable federal, state, or local environmental statute, regulation, or ordinance presently in effect or that may be amended or effective in the future regarding the handling of hazardous materials.

Contractor shall not cause or permit any hazardous material to be brought upon, kept, or used in or about the 716 Property or the ABI Property (collectively, the "Properties") by Contractor, or its authorized representatives or invitees, except for such hazardous material as is necessary or useful to Contractor's work on the Project and handled in accordance with applicable law..

Any hazardous material permitted on the Properties as provided in this paragraph, and all containers therefore, shall be used, kept, stored, and disposed of in a

manner that complies with all laws or regulations applicable to any such hazardous material.

Contractor shall not discharge, leak or emit, or permit to be discharged, leaked, or emitted, any material into the atmosphere, ground, sewer system, or any body of water if such material (as reasonably determined by the Parties or any governmental authority) does or may pollute or contaminate the same, or may adversely affect (1) the health, welfare, or safety of persons, whether located on the project or elsewhere, or (2) the condition, use, or enjoyment of the Properties or any other real or personal property.

Contractor specifically agrees to report all releases, threatened releases, discharges, spills, or disposal of hazardous substances, in whatever quantity, immediately to the appropriate regulatory authorities and simultaneously to the Parties, and to keep the Parties fully informed of any communication between Contractor and any person or agency concerning potential environmental contamination and hazardous substances.

Contractor hereby agrees that it shall be fully liable for all costs and expenses related to the use, storage, and disposal of hazardous material kept on the Properties by Contractor, or its authorized representatives and invitees.

**12. Catastrophic Event(s):**

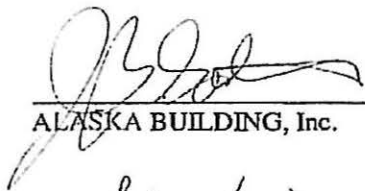
A "Catastrophic Event" shall be any of the following: (i) an event of structural or physical damage to the Alaska Building, alleged to be caused in part or entirely by the actions and or omissions of 716, its contractors, employees or agents during the Project or as a result of acts or omissions that took place during the Project but manifested themselves after the Project; (ii) impacts to the use or occupancy of the Alaska Building as a result of any structural or physical damage to the Alaska Building; or (iii) any claim which would be covered by insurance carried by 716, its contractors, employees and agents.


**13. General Provisions:**

Time is of the essence with regard to each and every provision hereof. The captions to the sections of this Agreement are solely for convenience of reference and shall not in any way limit, amplify, or modify the provisions hereof. The invalidity or un-enforceability of any particular provision of this Agreement shall not affect the other provisions hereof, and such provision shall be construed to most closely match the intent of such provision that is valid and enforceable. Each Party has had the opportunity to have this Agreement reviewed by counsel and the rule of construction or interpretation that ambiguities, if any, in a writing be construed against the drafter shall not apply to this Agreement. This is the entire agreement of the Parties pertaining to the subject matter hereof and

supersedes all or any other prior agreements and understandings between the Parties. No change or modification of this Agreement shall be valid unless the same be in writing and signed by both Parties.

AGREED TO THE FOREGOING THIS 14<sup>th</sup> DAY OF DECEMBER, 2013.

  
\_\_\_\_\_  
ALASKA BUILDING, Inc.  
President  
\_\_\_\_\_  
TITLE  
12/4/2013  
\_\_\_\_\_  
DATE

\_\_\_\_\_  
716 WEST FOURTH AVENUE, LLC  
  
\_\_\_\_\_  
TITLE  
12/5/13  
\_\_\_\_\_  
DATE

## Attachment A

### Insurance

1. The CONTRACTOR is to provide the Alaska Building with a certificate of insurance prior to commencement of construction. All insurance policies shall contain a provision that the coverages afforded thereunder shall not be cancelled or not renewed, nor restrictive modifications added, until at least thirty (30) calendar days' prior written notice has been given to the Certificate Holder. The certificate shall include items A-F as noted below.

- A. General Liability
- |                               |             |
|-------------------------------|-------------|
| General Aggregate             | \$2,000,000 |
| Products/Completed Operations | \$1,000,000 |
| Personal/Advertising          | \$1,000,000 |
| Each Occurrence               | \$1,000,000 |
| Damage to Owner's Premises    | \$100,000   |
| Medical Expense               | \$5,000     |
| Umbrella Coverage             | \$3,000,000 |
- B. Automobile
- |                       |             |
|-----------------------|-------------|
| Combined Single Limit | \$1,000,000 |
|-----------------------|-------------|
- C. Workers' Compensation
- |                             |           |
|-----------------------------|-----------|
| Workers' Compensation       | Statutory |
| EL - Each Accident          | \$500,000 |
| EL - Disease, Policy Limit  | \$500,000 |
| EL - Disease, each Employee | \$500,000 |
- D. Alaska Building, Inc. shall be added as an additional insured under the insurance (except Workers' Compensation) and all named as certificate holders.
- E. Provide a Waiver of Subrogation provision on the Workers' Compensation. (If applicable)
- F. Auto insurance should apply to owned, non-owned and hired auto exposure of the contractor and subcontractors working on the project.

## Attachment C

### Tenant Acknowledgement and Waiver

This Acknowledgement and Waiver (the "Agreement") is made effective this 6<sup>th</sup> day of December, 2013 by Lea 6 feet of Joseph, 61111 a sole proprietorship ("Tenant") in favor of 716 West Fourth Avenue, LLC ("716"), an Alaska limited liability company, whose address is 737 W. 5<sup>th</sup> Ave., Anchorage, Alaska 99501.

#### RECITALS

WHEREAS Tenant leases certain space (the "Space") designated space # 206 in the building commonly referred to as the "Alaska Building," located at the intersection of 4<sup>th</sup> Avenue and G Street in Anchorage, on the property fully described as:

Lot One (1), and the East 10 1/2 feet of Lot Two (2), Block Forty (40) of ORIGINAL TOWNSITE OF ANCHORAGE, in the Anchorage Recording District, Third Judicial District, State of Alaska (the "ABI Property"); and

WHEREAS 716 West Fourth Avenue, LLC ("716") is the owner of that property located adjacent to the Alaska Building on 4<sup>th</sup> Avenue in Anchorage, and fully described as:

The West 39 and 1/2 feet of Lot Two (2), Block Forty (40) of ORIGINAL TOWNSITE OF ANCHORAGE, in the Anchorage Recording District, Third Judicial District, State of Alaska (the "716 Property"); and

WHEREAS 716 will undertake a comprehensive reconstruction of the structure on the 716 Property, with such work slated to commence in November, 2013 (such reconstruction work, the "Project"); and

WHEREAS 716 has agreed to provide funds for preemptive rent abatement to Tenant, regardless of the actual degree of disturbance Tenant experiences during the Project; and

WHEREAS in consideration for this preemptive rent abatement, Tenant desires to grant certain waivers to 716.

NOW THEREFORE Tenant agrees as follows:



Tenant hereby waives any action, cause of action, suit, controversy, claim, damage, and demand of every kind and nature, mature or to mature in the future, rising out of or relating to disruption of Tenant activity in the Alaska Building during the duration of the Project as against 716, with the exception of any such claim arising out of a Catastrophic Event directly impacting the Tenant's leased space within the Alaska Building. A "Catastrophic Event" shall be any of the following: (i) an event of structural or physical damage to the Alaska Building, alleged to be caused in part or entirely by the actions and or omissions of 716, its contractors, employees or agents during the Project or as a result of acts or omissions that took place during the Project but manifested itself after the Project; (ii) impacts to the use or occupancy of the Alaska Building as a result of any structural or physical damage to the Alaska Building; or (iii) any claim which would be covered by insurance carried by 716, its contractors, employees and agents.

AGREED TO THE FOREGOING THIS \_\_\_\_ DAY OF DECEMBER, 2013.



\_\_\_\_\_  
[TENANT]

*Owner*

\_\_\_\_\_  
TITLE

*12/6/2013*

\_\_\_\_\_  
DATE

## Attachment C

### Tenant Acknowledgement and Waiver

This Acknowledgement and Waiver (the "Agreement") is made effective this <sup>2014</sup> 6<sup>th</sup> day of January 2013 by Partners for Progress a non-profit corporation ("Tenant") in favor of 716 West Fourth Avenue, LLC ("716"), an Alaska limited liability company, whose address is 737 W. 5<sup>th</sup> Ave., Anchorage, Alaska 99501.

#### RECITALS

WHEREAS Tenant leases certain space (the "Space") designated space # Ste. 302 in the building commonly referred to as the "Alaska Building," located at the intersection of 4<sup>th</sup> Avenue and G Street in Anchorage, on the property fully described as:

Lot One (1), and the East 10 1/2 feet of Lot Two (2), Block Forty (40) of ORIGINAL TOWNSITE OF ANCHORAGE, in the Anchorage Recording District, Third Judicial District, State of Alaska (the "ABI Property"); and

WHEREAS 716 West Fourth Avenue, LLC ("716") is the owner of that property located adjacent to the Alaska Building on 4<sup>th</sup> Avenue in Anchorage, and fully described as:

The West 39 and 1/2 feet of Lot Two (2), Block Forty (40) of ORIGINAL TOWNSITE OF ANCHORAGE, in the Anchorage Recording District, Third Judicial District, State of Alaska (the "716 Property"); and

WHEREAS 716 will undertake a comprehensive reconstruction of the structure on the 716 Property, with such work slated to commence in November, 2013 (such reconstruction work, the "Project"); and

WHEREAS 716 has agreed to provide funds for preemptive rent abatement to Tenant, regardless of the actual degree of disturbance Tenant experiences during the Project; and

WHEREAS in consideration for this preemptive rent abatement, Tenant desires to grant certain waivers to 716.

NOW THEREFORE Tenant agrees as follows:

Tenant hereby waives any action, cause of action, suit, controversy, claim, damage, and demand of every kind and nature, mature or to mature in the future, rising out of or relating to disruption of Tenant activity in the Alaska Building during the duration of the Project as against 716, with the exception of any such claim arising out of a Catastrophic Event directly impacting the Tenant's leased space within the Alaska Building. A "Catastrophic Event" shall be any of the following: (i) an event of structural or physical damage to the Alaska Building, alleged to be caused in part or entirely by the actions and or omissions of 716, its contractors, employees or agents during the Project or as a result of acts or omissions that took place during the Project but manifested itself after the Project; (ii) impacts to the use or occupancy of the Alaska Building as a result of any structural or physical damage to the Alaska Building; or (iii) any claim which would be covered by insurance carried by 716, its contractors, employees and agents.

AGREED TO THE FOREGOING THIS <sup>JANUARY 2014</sup> ~~6th~~ DAY OF DECEMBER, 2013.

PARTNERS FOR PROGRESS, Glenn Weddow  
[TENANT]

CLARE WEDDOW, EXEC. DIRECTOR.  
TITLE

1/6/2014.  
DATE

**716 WEST FOURTH AVENUE, LLC**425 G ST. STE 210  
ANCHORAGE, AK 99501  
(907)646-4644WELLS FARGO BANK, N.A.  
ANCHORAGE, ALASKA  
89-5-1252

1/9/2014

PAY TO THE  
ORDER OF Partners for Progress

\$\*\*1,375.00

One Thousand Three Hundred Seventy-Five and 00/100\*\*\*\*\*

DOLLARS

Partners for Progress  
406 G Street #302  
Anchorage AK 99501

MEMO

Rent Abatement

AUTHORIZED SIGNATURE

⑈001029⑈ ⑈125200057⑈5793249904⑈

**716 WEST FOURTH AVENUE, LLC**

1029

Date	Type	Reference	Original Amt.	Balance Due	1/9/2014 Discount	Payment
1/9/2014	Bill		1,375.00	1,375.00		1,375.00
					Check Amount	1,375.00

Wells Fargo 5793249 Rent Abatement

1,375.00

**.6 WEST FOURTH AVENUE, LLC**

1029

Date	Type	Reference	Original Amt.	Balance Due	1/9/2014 Discount	Payment
1/9/2014	Bill		1,375.00	1,375.00		1,375.00
					Check Amount	1,375.00

Wells Fargo 5793249 Rent Abatement

1,375.00

DELUXE CORP 1-800-328-0304 www.deluxeforms.com

## Attachment C

### Tenant Acknowledgement and Waiver

This Acknowledgement and Waiver (the "Agreement") is made effective this 6 day of January, 2014 by Alaska Center for Environmental  
Impact 501c3 ("Tenant") in favor of 716 West Fourth Avenue, LLC  
("716"), an Alaska limited liability company, whose address is 737 W. 5<sup>th</sup> Ave.,  
Anchorage, Alaska 99501.

#### RECITALS

WHEREAS Tenant leases certain space (the "Space") designated space # 212 in the building commonly referred to as the "Alaska Building," located at the intersection of 4<sup>th</sup> Avenue and G Street in Anchorage, on the property fully described as:

Lot One (1), and the East 10 1/2 feet of Lot Two (2), Block Forty (40) of ORIGINAL TOWNSITE OF ANCHORAGE, in the Anchorage Recording District, Third Judicial District, State of Alaska (the "ABI Property"); and

WHEREAS 716 West Fourth Avenue, LLC ("716") is the owner of that property located adjacent to the Alaska Building on 4<sup>th</sup> Avenue in Anchorage, and fully described as:

The West 39 and 1/2 feet of Lot Two (2), Block Forty (40) of ORIGINAL TOWNSITE OF ANCHORAGE, in the Anchorage Recording District, Third Judicial District, State of Alaska (the "716 Property"); and

WHEREAS 716 will undertake a comprehensive reconstruction of the structure on the 716 Property, with such work slated to commence in November, 2013 (such reconstruction work, the "Project"); and

WHEREAS 716 has agreed to provide funds for preemptive rent abatement to Tenant, regardless of the actual degree of disturbance Tenant experiences during the Project; and

WHEREAS in consideration for this preemptive rent abatement, Tenant desires to grant certain waivers to 716.

NOW THEREFORE Tenant agrees as follows:

Tenant hereby waives any action, cause of action, suit, controversy, claim, damage, and demand of every kind and nature, mature or to mature in the future, rising out of or relating to disruption of Tenant activity in the Alaska Building during the duration of the Project as against 716, with the exception of any such claim arising out of a Catastrophic Event directly impacting the Tenant's leased space within the Alaska Building. A "Catastrophic Event" shall be any of the following: (i) an event of structural or physical damage to the Alaska Building, alleged to be caused in part or entirely by the actions and or omissions of 716, its contractors, employees or agents during the Project or as a result of acts or omissions that took place during the Project but manifested itself after the Project; (ii) impacts to the use or occupancy of the Alaska Building as a result of any structural or physical damage to the Alaska Building; or (iii) any claim which would be covered by insurance carried by 716, its contractors, employees and agents.

AGREED TO THE FOREGOING THIS 6 DAY OF ~~DECEMBER~~, 2013.

January 2014

Pull a

[TENANT]

Executive Director, Alaska Center for the Environment

TITLE

1/7/14

DATE



## Attachment C

### Tenant Acknowledgement and Waiver

This Acknowledgement and Waiver (the "Agreement") is made effective this <sup>2014</sup> ~~6<sup>th</sup>~~ day of ~~January~~ <sup>February</sup> 2013 by ~~Partners for Progress~~ a ~~non-profit corporation~~ ("Tenant") in favor of 716 West Fourth Avenue, LLC ("716"), an Alaska limited liability company, whose address is 737 W. 5<sup>th</sup> Ave., Anchorage, Alaska 99501.

#### RECITALS

WHEREAS Tenant leases certain space (the "Space") designated space # Ste. 302 in the building commonly referred to as the "Alaska Building," located at the intersection of 4<sup>th</sup> Avenue and G Street in Anchorage, on the property fully described as:

Lot One (1), and the East 10 1/2 feet of Lot Two (2), Block Forty (40) of ORIGINAL TOWNSITE OF ANCHORAGE, in the Anchorage Recording District, Third Judicial District, State of Alaska (the "ABI Property"); and

WHEREAS 716 West Fourth Avenue, LLC ("716") is the owner of that property located adjacent to the Alaska Building on 4<sup>th</sup> Avenue in Anchorage, and fully described as:

The West 39 and 1/2 feet of Lot Two (2), Block Forty (40) of ORIGINAL TOWNSITE OF ANCHORAGE, in the Anchorage Recording District, Third Judicial District, State of Alaska (the "716 Property"); and

WHEREAS 716 will undertake a comprehensive reconstruction of the structure on the 716 Property, with such work slated to commence in November, 2013 (such reconstruction work, the "Project"); and

WHEREAS 716 has agreed to provide funds for preemptive rent abatement to Tenant, regardless of the actual degree of disturbance Tenant experiences during the Project; and

WHEREAS in consideration for this preemptive rent abatement, Tenant desires to grant certain waivers to 716.

NOW THEREFORE Tenant agrees as follows:



Tenant hereby waives any action, cause of action, suit, controversy, claim, damage, and demand of every kind and nature, mature or to mature in the future, rising out of or relating to disruption of Tenant activity in the Alaska Building during the duration of the Project as against 716, with the exception of any such claim arising out of a Catastrophic Event directly impacting the Tenant's leased space within the Alaska Building. A "Catastrophic Event" shall be any of the following: (i) an event of structural or physical damage to the Alaska Building, alleged to be caused in part or entirely by the actions and or omissions of 716, its contractors, employees or agents during the Project or as a result of acts or omissions that took place during the Project but manifested itself after the Project; (ii) impacts to the use or occupancy of the Alaska Building as a result of any structural or physical damage to the Alaska Building; or (iii) any claim which would be covered by insurance carried by 716, its contractors, employees and agents.

AGREED TO THE FOREGOING THIS <sup>JANUARY 2014</sup> ~~6th~~ DAY OF DECEMBER, 2013.

Partners For Progress, Glenn / Wadsworth  
[TENANT]

Glenn Wadsworth, Exec Director  
TITLE

1/6/2014  
DATE

Attachment C

Tenant Acknowledgement and Waiver

This Acknowledgement and Waiver (the "Agreement") is made effective this 6 day of January, 2014, by Alaska Center for Environmental Non Profit 501c3 ("Tenant") in favor of 716 West Fourth Avenue, LLC ("716"), an Alaska limited liability company, whose address is 737 W. 5<sup>th</sup> Ave., Anchorage, Alaska 99501.

RECITALS

WHEREAS Tenant leases certain space (the "Space") designated space # 212 in the building commonly referred to as the "Alaska Building," located at the intersection of 4<sup>th</sup> Avenue and G Street in Anchorage, on the property fully described as:

Lot One (1), and the East 10 1/2 feet of Lot Two (2), Block Forty (40) of ORIGINAL TOWNSITE OF ANCHORAGE, in the Anchorage Recording District, Third Judicial District, State of Alaska (the "ABI Property"); and

WHEREAS 716 West Fourth Avenue, LLC ("716") is the owner of that property located adjacent to the Alaska Building on 4<sup>th</sup> Avenue in Anchorage, and fully described as:

The West 39 and 1/2 feet of Lot Two (2), Block Forty (40) of ORIGINAL TOWNSITE OF ANCHORAGE, in the Anchorage Recording District, Third Judicial District, State of Alaska (the "716 Property"); and

WHEREAS 716 will undertake a comprehensive reconstruction of the structure on the 716 Property, with such work slated to commence in November, 2013 (such reconstruction work, the "Project"); and

WHEREAS 716 has agreed to provide funds for preemptive rent abatement to Tenant, regardless of the actual degree of disturbance Tenant experiences during the Project; and

WHEREAS in consideration for this preemptive rent abatement, Tenant desires to grant certain waivers to 716.

NOW THEREFORE Tenant agrees as follows:

Tenant hereby waives any action, cause of action, suit, controversy, claim, damage, and demand of every kind and nature, mature or to mature in the future, rising out of or relating to disruption of Tenant activity in the Alaska Building during the duration of the Project as against 716, with the exception of any such claim arising out of a Catastrophic Event directly impacting the Tenant's leased space within the Alaska Building. A "Catastrophic Event" shall be any of the following: (i) an event of structural or physical damage to the Alaska Building, alleged to be caused in part or entirely by the actions and or omissions of 716, its contractors, employees or agents during the Project or as a result of acts or omissions that took place during the Project but manifested itself after the Project; (ii) impacts to the use or occupancy of the Alaska Building as a result of any structural or physical damage to the Alaska Building; or (iii) any claim which would be covered by insurance carried by 716, its contractors, employees and agents.

AGREED TO THE FOREGOING THIS 6 DAY OF DECEMBER, 2013.

January 2014

*Paul A.*

[TENANT]

*Executive Director, Alaska Center for the Environment*

TITLE

*1/7/14*

DATE

1021

**716 WEST FOURTH AVENUE, LLC**425 G ST. STE 210  
ANCHORAGE, AK 99501  
(907)646-4644WELLS FARGO BANK, N.A.  
ANCHORAGE, ALASKA  
89-5-1252

1/9/2014

PAY TO THE  
ORDER OF Alaska Center for Environment

\$\*\*2,950.00

Two Thousand Nine Hundred Fifty and 00/100\*\*\*\*\* DOLLARS

Alaska Center for Environment  
921 W 6th Ave #200  
Anchorage Ak 99501  
AUTHORIZED SIGNATURE

MEMO

Rent Abatement

⑈001027⑈ ⑆125200057⑆5793249904⑈

**716 WEST FOURTH AVENUE, LLC**

1027

Alaska Center for Environment				1/9/2014	
Date	Type	Reference	Original Amt.	Balance Due	Discount
1/9/2014	Bill		2,950.00	2,950.00	
				Check Amount	Payment
					2,950.00
					2,950.00

Wells Fargo 5793249 Rent Abatement

2,950.00

**6 WEST FOURTH AVENUE, LLC**

1027

Alaska Center for Environment				1/9/2014	
Date	Type	Reference	Original Amt.	Balance Due	Discount
1/9/2014	Bill		2,950.00	2,950.00	
				Check Amount	Payment
					2,950.00
					2,950.00

Wells Fargo 5793249 Rent Abatement

2,950.00

DELUXE COPY 1-800-328-0304 www.deluxeforms.com

0009

716-000020

## Development Agreement

THIS AGREEMENT made effective this 17th day of December, 2013, is between 716 West Fourth Avenue, LLC ("Client") and Pfeffer Development, LLC, an Alaska limited liability company ("PD" or Developer").

### Recitals

- A. Client is the owner of the property legally described as "All Space within the office building, all space within the parking garage, and all real property located at 716 West 4th Avenue in Anchorage, Alaska further described as Lot 3A, Block 40, of the Original Townsite of Anchorage, according to the official plat thereof, Third Judicial District, State of Alaska; and all space located within the building and all real property located at 712 West 4<sup>th</sup> Avenue in Anchorage, Alaska further described as Lot 2 W 39.5' Block 40 Original Townsite of Anchorage, (the "Office Space")."
- B. Client has engaged Developer to provide project management and development services for the Project. PD will provide project management services, contracting for design and construction services, construction management, and providing due diligence efforts for the Client as further set forth in this Agreement.
- C. Such services shall be compensated for with agreed upon fees and such services and compensation shall not depend upon any role Developer or its affiliates may have as a member of Client. This Agreement is not intended to cover property management services to be provided after the completion of the Project and the acceptance of the office space by the LAA Agency.

In recognition of the recitals, which are material to this Agreement, the parties hereby agree as follows:

#### 1. Definitions.

- 1.1. **Additional Defined Terms.** Words of technical usage, even if not capitalized, including but not limited to "substantial completion," "hazardous materials," "stipulated sum," or "change orders" shall have a common meaning in both this Agreement and the Construction Contract.
- 1.2. "**Agreement**" means this Development Agreement.
- 1.3. "**Approval Plans**" shall mean the set of design plans prepared by the Architect and accepted by the LAA as well as the Client that is used for the Stipulated Sum Proposal by the General Contractor.

- 1.4. **"Construction Contract"** means the agreement between Client and the General Contractor for the Project, which shall be substantially in the form of AIA Form A141-2004 ("Standard form of Agreement Between Owner and Design Builder).
- 1.5. **"Effective Date"** means the date of signature. However, this Agreement covers services performed by PD prior to the date of this Agreement ~~including negotiating the Lease.~~
- 1.6. **"General Contractor"** shall mean Criterion General, Inc. or such other contractor as Client, with the advice of PD, may hire to undertake the Project.
- 1.7. **"Lease"** means that Lease dated September 19, 2013, entered into between Client and the LAA.
- 1.8. **"Notice to Proceed"** means the written notice from the Client through PD to the General Contractor directing it to proceed with construction of the Project improvements.
- 1.9. **"Parties"** for the purpose of this Agreement (but not the Construction Contract) mean PD and the Client.
- 1.10. **"Project"** means the design and construction of all of the phases of the expansion and remodeling work in the Building as contemplated by the Lease up to the point of beneficial occupancy of the building by the LAA and the issuance of the certificate of final completion.
- 1.11. **"Property"** means the Property as described in Recital "A."
- 1.12. **"Work"** means the work to be undertaken under the Approval Plans. Work shall not include LAA furnished equipment that is not to be installed by the General Contractor and other FF&E that the LAA elects to install with other contractors or suppliers.
- 1.13. **Exhibits**

Exhibit A -- Budget

## 2. The Deliverables by PD.

2.1 **Scope of Work.** PD on behalf of the Client has coordinated with the LAA to a level of design drawings and specifications sufficient for PD to prepare a Construction Contract between Client and the General Contractor for a stipulated sum, to identify the development costs for the Project and to present the total development budget, and delivery plan to the Client. PD has delivered to Client the following deliverables: a set of Approval Plans accepted by the LAA, a Budget, a Schedule, the Construction Contract, and copies of all other agreements necessary to be executed by Client for the design and construction of the Project.



**2.1.1 The Approval Plans.** The Approval Plans are intended to be coordinated with the requirements of the Lease which describes the scope of the Project.

**2.1.2 Budget.** PD has developed the Budget dated November 3, 2013, as attached as Exhibit "A", which presents the draw schedule based upon the budget entered into in connection with the Lease. The Budget sets forth all fixed cost components and allowance components, including but not limited to the developer fees, project management fees, contingency amounts, and the Stipulated Sum for the construction of the Work, and all other fees and costs of Client and its consultants required for completion of the Work. The amount set for "Existing Property and Property Acquisition" is a fixed line item. "Construction & A/E Services" is based upon a Stipulated Sum bid by the General Contractor, but may vary for change orders as allowed under both the Lease and the Construction Contract. The Construction Management Fee is also sometime referred to as the "Development Fee" although the Client will separately compensate its Manager for separate development services and fees as further set forth in the Operating Agreement for the Client. The Construction Management fees may adjust by change order if allowed by an amendment to the Lease and upon agreement of the parties. The other expense items will be incurred in terms of their actual costs and may be less than or exceed the Budget. PD will notify Client if budget line item overruns and change orders under the Construction Contract will result in equitable adjustments to the Budget and the Schedule.

**2.1.2.1 Risk Allocation.** Actual cost variations to the Budget, both savings and overruns will be allocated to Client as follows. First, any savings to any line item of the Budget shall act as an additional contingency to be drawn upon for any cost overrun under any other line item. Second, any overruns on any line item, including cost overruns for "Construction & A/E Services," not offset by any other savings on any other line item on the Budget will be paid for first from the Contingency line item and upon its depletion then funded in cash by the Client. To the extent any of the Contingency funds and any other line item savings remain following completion of the Project after the date of the issuance of the certificate of occupancy by the Municipality of Anchorage, the remaining funds shall be paid to Client. The final allocation and distribution of any remaining contingency funds shall occur within thirty (30) days after the date of issuance of the certificate of occupancy for the Project.

**2.1.3 Schedule.** PD has developed and provided a schedule for design and construction of the Project consistent with the schedule required under the Lease.

**2.1.4 Construction Contract.** The Construction Contract sets forth the obligations of the General Contractor to undertake the Work and will be executed by the Client. At a minimum, the Construction Contract shall: identify the Stipulated Sum for the Work payable to the General Contractor, be consistent



with the Approval Plans, set forth the Project Schedule, and set forth the requirements necessary to complete the Work including design, permitting and governmental approval.

**2.1.5 Financing.** It is the Client's responsibility, not PD's, to provide full funding for the Project. Client appoints PD as its authorized agent to process payment invoices from the General Contractor and to pay the invoices from the General Contractor and PD with draws from the construction loan(s) secured by the Client, in accordance with the draw schedules, and as approved by the lender. PD will only process payments as approved pursuant to Section 4.1.

### **3. Construction and Management.**

**3.1 Scope of Work.** PD will be responsible for securing Client and LAA approval of the Approval Plans, preparing the Construction Contract and negotiating with the General Contractor, procuring and reviewing design services, the construction and final completion of the Work, and receipt of all necessary land use and occupancy permits and approvals. Satisfactory delivery of the Work shall be set by and determined under the terms of the Construction Contract.

**3.2 PD obligations as agent of the Owner.** PD's work under this Agreement is in its capacity as agent of the Client. PD's obligations to the Client are to discharge its duties in accordance with the standard of care applicable to project managers; however, PD will not be separately or vicariously responsible for any breaches by the architect, the General Contractor, or other consultants and vendors supplying work and materials to the Project. PD will be responsible to assist Client in ensuring that the architect, designers, vendors, consultants and the General Contractor perform their obligations in accordance with their contracts and will assist Client to assert its rights to receive the contractual benefits of such contracts for the delivery of the Project on the schedule and terms consistent with the Lease. PD shall be the point of contact between the General Contractor and the Client during the duration of the Project.

**3.3.** Intentionally deleted.

**3.4 Other Terms.** The following terms and covenants apply to the Work.

**3.4.1 Payment and Performance Bonds.** Should Client elect to pay for payment and performance bonds, then PD will coordinate with the General Contractor to secure such bonds. The Client will be named as obligee under the payment and performance bonds to be provided by the General Contractor under the Construction Contract.

**3.4.2 Client Third Party Beneficiary.** The Client shall be a third-party beneficiary of any contracts between PD and any entity who perform work on the Project.

- 3.4.3 Standard of Work/Contractors.** All work performed by the General Contractor shall be performed in accordance with the professional standards applicable to general contractors undertaking projects in Anchorage, Alaska of similar complexity, quality and scope as the Project.
- 3.4.4 Site Control.** The Client shall provide timely access to the Building and Property for the construction of the Project. The Client reserves for itself, its representatives, and its assigns, the right to enter upon the Property so long as such entry is coordinated with and through PD, at any time and for any purpose, so long as Client shall notify PD and does not interfere with the General Contractor's use of the Property or construction of the Project. The Client and its assigns shall comply with all necessary job-site safety rules imposed by PD or the General Contractor while present on the Property during construction.
- 3.4.5 Contingency; Disposition of Contingency upon Substantial Completion.** Allowances under Exhibit A include a "Contingency" that shall be under the control of PD to pay for Client initiated change orders, and to pay for certain risks and cost overruns allocated to the Client under the Construction Contract. The use and disposition of the Contingency line item shall be as set forth in Subsection 2.1.2.1.
- 3.4.6 Changes.** Client shall have the right to initiate Change Order requests for the Project. Change Order requests will be processed in accordance with the procedures set forth in the Construction Contract. The Client's Change Order request shall be submitted through PD and the Client will sign the Change Order and authorize the change in the Budget and Schedule.
- 3.4.7 Changes under the Construction Contract.** Changes under the Construction Contract that are approved by Client and result in a change to the Stipulated Sum not paid for by a Lease amendment will be paid from the Contingency line item in the Budget prior to being charged to the Client in accordance with Subsection 2.1.2.1.

#### **4. Payment**

**4.1 Work; Construction Management.** Work under this Agreement and the Construction Contract will be billed to the Client in monthly billings based upon the percentage of work complete as reasonably determined by the time and hours undertaken to complete the Work and the requirements specified in the Construction Contract, and shall be paid within the times set forth therein. The monthly billings will be submitted to PD by the Construction Contractor and other

third parties then reviewed and approved for payment by PD and lender's independent qualified professional. The Construction Management Fee in the amount of \$905,433 as identified in the Budget earned during the Work shall be earned as a percentage of work completed under the Work in accordance with the Construction Contract and paid in accordance with Payment provisions of the Construction Contract and the draw schedule in the Budget. PD shall be entitled to stop work in the event of a failure to timely pay, except for matters submitted to the dispute resolution process as set forth in **Section 10** of this Agreement and except as provided in Section 4.1.2, unless the failure to pay prevents it from requiring its General Contractor to proceed with construction under the Construction Contract, in which case it may suspend work pending resolution of the dispute. PD's construction management services shall continue after substantial completion of the work, through completion of any punchlist items, notwithstanding that its full construction management fee may be paid prior to completion of such items.

5. **Consent to Assignment.** The obligations under this Agreement require in the case of both parties certain capabilities and characteristics that would make dealing with a different party a substantial change in the risks and desirability of the Project. Therefore any request for an assignment or delegation of rights under this Agreement shall be subject to the prior written review and approval of the other party, such approval not to be unreasonably delayed or withheld.
6. **Mutual Obligations.** Each party covenants and agrees that the other party has relied in material ways on the expectation and belief that the other party will continue to proceed with the Project with the other party consistent with the covenant of good faith and fair dealing. Client recognizes that the development services identified above are complex and time intensive and will require PD to engage other professionals as allowed under the Budget in order to deliver the scope of services with enough accuracy and detail necessary to submit an application for financing and information to Client to make an informed decision. Client agrees to work solely and in cooperation with PD.
7. **Ownership of Documents.** The General Contractor will maintain the redline drawings during the construction of the Project and one set shall be delivered to PD. PD will have the architect of record deliver to the Client two (2) hard copies and an e-version of as-built incorporating contractor red-lines. Any other reproductions and other hard copies will be delivered on a reimbursable basis outside of the Budget. The Client's right to the design documents shall be as set forth in the Construction Contract and the contract with the architect. The Client shall have full license rights to use such plans for its future work, remodeling and renovation work of the Project without any further consent from PD, the General Contractor, or the architect of record, subject to the provisions of the Construction Contract and the contract with the architect.

8. **Records.** PD shall keep all of its records and accounts of the Project as is usual and customary in the construction industry for not less than five (5) years after substantial completion. Upon written request from Client, such records shall be available to Client or its appointed accounting or auditing representatives for inspection and copying. PD shall not destroy or dispose of such records, but instead shall deliver the records to Client.

9. **Termination and Default.** This Agreement may be terminated by mutual agreement of the Parties, for convenience, or for default as set forth below.

**9.1 PD Right of Termination for Cause.** PD may terminate this Agreement upon thirty (30) days written notice upon a material default by the Client, unless during such notice period, the default is cured, or if the default is such that it may not be cured reasonably within thirty (30) days, then Client has begun the cure and is diligently prosecuting the cure until its completion. A material default shall not exist as to funds not paid, pursuant to the offset provisions of Section 4.1.2. A material default also shall not exist as to funds not paid that are in dispute under the Disputes Clause of this Agreement, until after the funds are found due after exhaustion of the Disputes Clause, however, such non-payment shall provide a basis for stopping work, without liability, if the dispute is not resolved within thirty (30) days after notice from PD making specific demand for funds it claims have not been paid. Nothing herein shall be construed to limit Client's right to pay any funds under a reservation of its rights under the Dispute Clause and to reimbursement if it prevails, in which case there shall be no basis for stopping work.

**9.2 Client Right of Termination for Cause.** Client may terminate this Agreement upon thirty (30) days written notice upon a material default by PD, unless during such notice period, the default is cured, or if the default is such that it may not be cured reasonably within thirty (30) days, then PD has begun the cure and is diligently prosecuting the cure until its completion, or if the default is in dispute, then until resolved under the Disputes Clause of this Agreement. Notwithstanding the proceeding, the Client shall also have the rights to take over the work under the terms and conditions and with the obligations as set forth in the Construction Contract; however, if the dispute resolution determination is that PD was not in default, or that its non-performance was excused, then PD shall be entitled to payment of its Developer Fee and the General Contractor shall be entitled to payment of its lost profits and unabsorbed overhead to the extent provided for in the Construction Contract.

**9.3 Waiver of Consequential Damages.** Upon any default, each party may seek its actual damages; however, both Parties waive as against the other the right to seek consequential damages as further defined by the Construction Contract and/or punitive damages arising from such breach.

10. **Disputes between Client and PD.** In the event of any dispute arising between the Client and the PD regarding any part of this Agreement or the Parties'

obligations or performance hereunder, either Party may institute the dispute resolution procedures set forth herein. The Parties shall continue performance of their respective obligations hereunder notwithstanding the existence of a dispute, except only for the failure to pay for work. PD will include this Disputes Clause in lieu of the disputes clause set forth in the Construction Contract.

**10.1 Initial Meeting to Resolve Disputes.** Any party may from time to time call a special meeting for the resolution of disputes that would have a material impact on the cost or progress of the Project. Such meeting shall be held at the PD's offices in Anchorage, Alaska,<sup>70</sup> within three (3) working days of written request therefore, which request shall specify in reasonable detail the nature of the dispute. The Client's Authorized Representative, PD's Authorized Representative, a representative from the General Contractor, if the issue concerns a matter relating to the Construction Contract, and any other person who may be affected in any material respect by the resolution of such dispute shall attend the meeting. Such Authorized Representative shall have authority to settle the dispute and shall attempt in good faith to resolve the dispute.

**10.2 Mediation/Arbitration.** If the dispute has not been resolved within five (5) working days after the special meeting has been held, a mediator, mutually acceptable to the Parties and experienced in design and construction matters shall be appointed. The Parties shall share the cost of the mediator. If the parties cannot agree on the selection of a mediator within ten (10) days of the decision to proceed to mediation, then either party may request that the American Arbitration Association will select a mediator to serve as a mediator for the Parties. The mediator shall be a lawyer competent in the subject matter of the dispute. The mediator shall be given any written statements of the Parties and may review the Property and any relevant documents. The mediator shall call a meeting of the Parties within ten (10) working days after his/her appointment, which meeting shall be attended by the Client's Authorized Representative, PD's Authorized Representative and any other person who may be affected in any material respect by the resolution of such dispute. Such Authorized Representatives shall have authority to settle the dispute and shall attempt in good faith to resolve the dispute. During such ten (10) day period, the mediator may meet with the Parties separately.

**10.2.1 Mediation.** No minutes shall be kept with respect to any mediation proceedings, and the comments and/or findings of the mediator, together with any written statements prepared, shall be non-binding, confidential and without prejudice to the rights and remedies of any Party. The entire mediation process shall be completed within twenty (20) working days of the date upon which the initial special meeting is held, unless the Parties agree otherwise in writing. If the dispute is settled through the mediation process, the decision will be implemented by written agreement signed by the Parties.

**10.2.2 Arbitration.** If the dispute is not resolved by mediation, it shall be resolved by arbitration in the Municipality of Anchorage, in accordance with the Uniform Arbitration Law of Alaska. Any award made in such arbitration proceeding shall be final, binding and conclusive on the parties hereto for all purposes, and judgment may be entered thereon in any court having jurisdiction thereof. In the event mediation is unsuccessful, then any party may demand arbitration by submitting notice to the other party hereto and to the mediator. If the parties cannot agree upon an arbitrator or on a panel of arbitrators, then on ten (10) days' notice each party shall nominate one arbitrator and the mediator, once informed of the choices of the parties, shall appoint the third arbitrator within ten (10) days of notice. The panel of arbitrators shall have the power to award costs and fees to the prevailing party, but each party shall submit one half of the estimated fees of the arbitrators to the arbitrators in advance of the proceeding.

**10.3 Other contracts.** All contracts that the Client or PD enter into with third parties that implement design or construction of the Project shall be required to include as a term a dispute resolution procedure in substantial compliance with the terms of Section 10 of this Agreement.

**10.4 Authorized Representative.** Each Party agrees, within ten (10) days of the delivery of a mutual executed copy of this Agreement, to notify the other party who its Authorized Representative is, including mailing address, phone numbers, fax numbers, and e-mail address.

**10.5 Notice.** All notices sent pursuant to this Agreement shall be in writing and sent by regular, registered or certified mail, postage prepaid, or by hand-delivery to the parties as follows below:

To PD:

Pfeffer Development, LLC  
425 G Street, Suite 210  
Anchorage, AK 99501  
Attn: Mark Pfeffer

With a copy to:

Ashburn & Mason  
1227 W. 9th Avenue Suite 200  
Anchorage, AK 99501  
Attn: Donald McClintock

To CLIENT:

716 West Fourth Avenue, LLC  
c/o Bob Acree



PO Box 241826  
Anchorage, Alaska 99524

With a copy to:  
McKenna Long & Aldridge LLP  
One Market Plaza,  
Spear Tower, 24<sup>th</sup> Floor  
San Francisco, CA 94105  
Attn: David Franklin

Either party may change these persons or addresses by giving notice as provided above. Notice shall be considered given and received on the latest original delivery or attempted delivery date as indicated on the postage or service receipt(s) of all persons and addresses to which notice is to be given. In the event of notice by regular mail, notice shall be deemed received on the fourth business day after posting.

11. **Insurance.** PD shall require its General Contractor to carry the insurance as set forth in the Construction Contract. Client shall carry such coverage as will meet lender requirements. PD will also require the General Contractor to add Client as an additional insured under the General Contractor's policies.
12. **Coordination with Construction Contract.** The Construction Contract shall define the obligations and performances of the General Contractor to Client.

**12.1 Delay.** In the event the General Contractor shall be entitled to an equitable adjustment of time under the Construction Contract due to changes, force majeure, or other reasons as set forth in the Construction Contract, then PD shall be allowed an equal time extension under this Agreement.

**12.2 Warranties.** The warranties to be provided after substantial completion and acceptance of the Project shall be an obligation owed directly by the General Contractor to the Client and its assigns and no other warranty shall be provided nor implied by PD under this Agreement. PD's performance shall be complete upon final completion of the Project and issuance of the Certificate of Final Completion and occupancy by the LAA, whichever is later.

**12.3 Conflicts with form agreements.** In the event of a conflict between this Agreement and the Construction Contract, the terms of this Agreement shall control over any printed portions of the Construction Contract, and the typed or revised provisions of the Construction Contract that have been approved by the Client and PD shall control over this Agreement.

**12.4 Amendment.** This Agreement, including but not limited to the Budget, may not be amended or supplemented in any manner except by mutual agreement of the parties and as set forth in a writing signed by the parties hereto or their respective successors in interest.



**13. General Provisions.** The following general provisions shall apply to this Agreement.

**13.1** Except where a party is entitled explicitly by this Agreement to make a decision in its sole discretion, whenever consent or approval of either party is required, that party shall not unreasonably withhold such consent or approval;

**13.2** This Agreement shall be binding upon and inure to the benefit of the parties and their successors;

**13.3** This Agreement shall be construed and interpreted in accordance with the laws of the State of Alaska and venue for dispute resolution shall be Anchorage, Alaska;

**13.4** Headings and captions shall have no effect on its interpretation;

**13.5** When required by this Agreement, the singular shall include the plural and the neuter shall include the masculine and the feminine;

**13.6** The unenforceability, invalidity, or illegality of any provision of this Agreement shall not render the other provisions of this Agreement unenforceable, invalid, or illegal; and,


**13.7** Each party has negotiated this Agreement with the assistance of counsel and any ambiguity in the Agreement shall not be construed against either party for having provided the language in question.

Signatures on following page

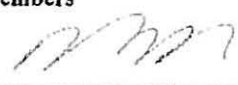
**CLIENT:**

**716 West Fourth Avenue, LLC**

**By its Manager:**


  
\_\_\_\_\_  
Mark E. Pfeffer

**By its Members**

By:   
\_\_\_\_\_  
Robert B. Acree, Member


By: Mount Trident, LLC, Member

**By its Manager:**

  
\_\_\_\_\_  
Mark E. Pfeffer

**PFEFFER DEVELOPMENT, LLC**

Dated: 12/17/13

By:   
\_\_\_\_\_  
Mark E. Pfeffer

Its: Manager

	December	January	February	March	April	May	June	July	August	September	October	November	December	January		Date from Original Budget
W	Draw 1	Draw 2	Draw 3	Draw 4	Draw 5	Draw 6	Draw 7	Draw 8	Draw 9	Draw 10	Draw 11	Draw 12	Draw 13	Draw 14	Total	
1)	(\$2,420,845)														(\$2,420,845)	
2)	(\$5,000,000)														(\$5,000,000)	
1,000	\$5,000,000														\$5,000,000	
1,000	\$3,150,000		(\$260,000)											\$10,000	\$2,890,000	\$40,000 OVER BUDGET
1,000	\$50,000	\$10,000	\$20,000											\$10,000	\$70,000	\$10,000 UNDER BUDGET
1,000	\$4,636		\$20,636											\$46,364	\$10,000	(\$10,000) UNDER BUDGET
1,000		\$10,000												\$10,000	\$10,000	\$25,000 UNDER BUDGET
1,000				\$0,000	\$0,000	\$0,000								\$20,000	\$150,000	(\$50,000) UNDER BUDGET
1,000	\$10,000	\$10,000	\$10,000	\$10,000	\$10,000	\$10,000	\$10,000	\$10,000	\$10,000	\$10,000	\$10,000	\$10,000	\$10,000	\$20,000	\$25,000	\$5,000 OVER BUDGET
1,000	\$5,000							\$25,000		\$25,000					\$25,000	(\$5,000) UNDER BUDGET
1,000	\$7,000		\$10,000												\$25,000	(\$5,000) UNDER BUDGET
1,000	\$17,549		\$7,454												\$25,000	(\$5,000) UNDER BUDGET
1,000		\$5,000													\$5,000	(\$25,000) UNDER BUDGET
1,000	\$9,244,182	\$35,000	(\$184,549)	\$10,000	\$10,000	\$10,000	\$10,000	\$38,000	\$10,000	\$38,000	\$10,000	\$10,000	\$10,000	\$86,364	\$4,388,000	(\$130,000) UNDER BUDGET
1,055	\$919,055	\$1,500,000	\$2,000,000	\$2,500,000	\$2,500,000	\$2,500,000	\$1,500,000	\$3,500,000	\$3,000,000	\$2,500,000	\$2,000,000	\$1,750,000	\$1,250,000	\$750,000	\$30,169,055	BALANCE
1,055							(\$1,000,000)	(\$1,000,000)	(\$1,000,000)	(\$1,000,000)	(\$1,000,000)	(\$1,000,000)	(\$1,000,000)	(\$750,000)	(\$750,000)	BALANCE
1,055	\$919,055	\$1,500,000	\$2,000,000	\$2,500,000	\$2,500,000	\$2,500,000	\$2,500,000	\$2,500,000	\$2,000,000	\$1,600,000	\$1,000,000	\$750,000	\$500,000		\$22,609,055	BALANCE
1,000	\$449,549															
1,000	\$17,203	\$30,793	\$20,703	\$27,703	\$27,703	\$35,203	\$35,203	\$35,203	\$35,203	\$35,203	\$35,203	\$35,203	\$35,203	\$35,203	\$35,203	Assumes New Rent Start
1,000	(\$20,803)	(\$56,803)	(\$16,803)	(\$56,803)	(\$56,803)	(\$58,803)	(\$58,803)	(\$58,803)	(\$58,803)	(\$58,803)	(\$58,803)	(\$58,803)	(\$58,803)	(\$58,803)	(\$201,803)	(\$301,344) UNDER BUDGET
1,000	\$430,377	(\$24,070)	(\$20,160)	(\$29,180)	(\$29,160)	(\$21,600)	(\$21,600)	(\$21,600)	(\$21,600)	(\$21,600)	(\$21,600)	(\$21,600)	(\$21,600)	(\$246,375)	(\$101,344)	(\$1,571,722) UNDER BUDGET
1,722																
1,000		\$11,000	\$17,500	\$25,500	\$30,000	\$47,000	\$50,000	\$60,500	\$70,500	\$80,500	\$95,500	\$100,000	\$103,500	\$106,500	\$937,000	(\$220,388) Assumes new debt service
1,000	\$253,220	\$3,000	\$3,000	\$3,000	\$3,000	\$3,000	\$3,000	\$3,000	\$3,000	\$3,000	\$3,000	\$3,000	\$3,000	\$141,110	\$430,338	(\$239,684)
1,308	\$253,220	\$14,000	\$20,500	\$20,500	\$30,000	\$50,000	\$61,000	\$71,500	\$82,500	\$91,500	\$98,500	\$103,000	\$106,500	\$247,610	\$1,287,336	(\$699,032) UNDER BUDGET
1,433	\$200,000	\$94,000	\$55,000	\$53,200	\$53,200	\$69,700	\$69,700	\$61,000	\$44,200	\$30,100	\$31,000	\$31,000	\$33,200	\$71,133	\$905,433	
1,433	\$200,000	\$94,000	\$56,800	\$53,200	\$53,200	\$69,700	\$69,700	\$61,000	\$44,200	\$30,100	\$31,000	\$31,000	\$33,200	\$71,133	\$905,433	
1,651	\$2,566,595	\$1,819,830	\$1,861,294	\$2,570,540	\$2,581,040	\$2,517,100	\$2,610,100	\$2,646,500	\$2,115,100	\$1,641,000	\$1,110,500	\$872,700	\$628,100	\$157,732	\$75,804,535	(\$2,810,118) UNDER BUDGET
1,651																
1,651	\$2,558,895	\$4,175,725	\$6,037,119	\$8,607,660	\$11,188,700	\$13,805,801	\$16,424,801	\$19,071,401	\$21,186,502	\$22,827,502	\$23,948,002	\$24,618,703	\$25,446,803	\$25,604,535		
1,651	\$10,050	\$17,300	\$25,155	\$35,865	\$48,620	\$57,524	\$68,437	\$79,404	\$89,277	\$95,115	\$99,775	\$103,411	\$106,026	\$106,688		
1,651	\$11,000	\$17,500	\$25,500	\$30,000	\$47,000	\$50,000	\$60,500	\$70,500	\$80,500	\$95,500	\$100,000	\$103,500	\$106,500	\$107,500		

SPACE LEASE

Alaska Building

AGREEMENT made as of the 5 day of DECEMBER 2013, between ALASKA BUILDING, INC., an Alaska corporation, hereinafter called "Landlord" with a mailing address of 406 G Street, Suite 206, Anchorage, Alaska, 99501 and Criterion General, Inc., an Alaska Corporation, with a mailing address of 2820 Commercial Drive, Anchorage, Alaska 99501, hereinafter called "Tenant".

W I T N E S S E T H

That Landlord has agreed to let, and hereby does let and demise to the Tenant, and the Tenant has agreed to take, and does hereby take from the Landlord the portion of the ALASKA BUILDING situate on the 1st floor, whose address is 706 W 4<sup>th</sup> Avenue containing an area of approximately 700 square feet, as depicted in the attached drawing.

THIS LEASE is granted and accepted upon the following covenants and conditions and subject to the following restrictions, to all and every one of which the parties consent; and each of the parties hereby expressly covenants and agrees to keep, perform and observe all the terms, covenants and conditions herein contained on its part to be kept, performed and observed.

FIRST: TERM OF LEASE

The term of this lease shall be for One (1) Year.

SECOND: COMMENCEMENT OF TERM

The term of this lease shall commence January 1, 2014, and shall terminate December 31, 2014.

Notwithstanding said commencement date, if for any reason Landlord cannot deliver possession of the premises to Tenant on said date, Landlord shall not be subject to any liability therefore. In such event, Tenant may, at Tenant's option, by notice in writing to Landlord, cancel this Lease and both parties shall be discharged from all obligations hereunder. Otherwise, rent shall commence as of the date of occupancy. If Tenant occupies the premises prior to said commencement date, such occupancy shall be subject to all provisions hereof, such occupancy shall not advance the termination date, and Tenant shall pay rent for such period at the monthly rates set forth below.

THIRD. APPORTIONMENT OF RENT

If the term herein demised commences on any day other than the first day of any calendar month, then the Tenant shall, on demand, pay to Landlord such proportion of the first monthly installment of the annual rent as the number of days in said month, to the extent and purpose that all subsequent installments of the annual rent herein reserved to the Landlord shall become due and payable in advance on the first day of each and every calendar month, as first above provided.

FOURTH. POSSESSION PRIOR TO TERM OF LEASE

If permission be given by the Landlord to the Tenant to enter into possession of the demised premises, or to occupy premises other than the demised premises, prior to the date herein fixed for the commencement of the demised term, such occupancy by Tenant shall be deemed to be that of a tenant under all the terms, covenants and conditions of this Lease except as to the covenant to pay rent.

FIFTH. RENT

Tenant shall pay to Landlord for each and every lease year of the lease term therefore, and without any deduction or set off whatsoever, rent in the amount of \$1,200 per month.



The payment of said rent shall begin on the commencement date of the Lease as specified in Section Two. In the event this shall be a day other than the first day of a month, Tenant shall pay rent for the fractional month on a per diem basis (calculated on the basis of the number of days in that month) until the first day of the month following such date (but the percentage rent shall be paid in accordance with Section Three hereof). Said rent shall be paid at the office of the Landlord located at 406 G Street, Anchorage, Alaska 99501, or at such other place as may be designated in writing from time to time by Landlord.

Simultaneously with the execution of this Lease, Tenant has paid to Landlord the first month's rent of \$1,200 and the last month's rent of \$1,200, receipt whereof, if by check, subject to collection, is hereby acknowledged.

#### SIXTH. SERVICES

Landlord shall furnish to Tenant, without additional charge, the services for which the building containing the demised premises is equipped to the extent that the existing facilities for such services permit, except that Landlord need furnish heat only when in Landlord's judgment the state of the weather requires it. The Landlord reserves the right to suspend any service for the purpose of inspection, repair or any other cause beyond Landlord's control.

#### SEVENTH. UTILITIES

Tenant shall pay for the cost of telephone, as well as any internet and janitorial costs (if any). Landlord shall pay all other utility costs.

#### EIGHTH. USE OF PREMISES

The demised premises shall be used or occupied for the purpose of coordinating construction work on the adjoining property, and any and all other functions related thereto.

#### NINTH. COVENANT TO COMPLY WITH ALL GOVERNMENTAL REQUIREMENTS

Tenant agrees, at Tenant's own cost and expense, to observe and comply with all laws, rules and regulations and orders of any duly constituted authority.

#### TENTH. COVENANT TO MAINTAIN AND REPAIR

(a) Tenant shall during the term of this lease and any renewal or extension thereof, at its sole expense, keep the interior of the leased premises in as good order and repair as it is at the date of commencement of this lease, reasonable wear and tear and damage by accidental fire or other casualty excepted. Without limiting the generality of the foregoing language, Tenant is to be solely responsible for interior decorating and any and all street-floor glass forming part of the exterior walls of such premises. Tenant additionally shall keep the sidewalk and curb, if any, adjoining the demised premises free from snow and ice. If Landlord arranges to have the sidewalk and curb cleaned for the entire building, such charges shall be passed on to Tenant on a pro-rata basis, based on store frontage.

(b) Landlord during the term of this lease and any renewal or extension thereof shall keep the structural supports and exterior walls of the premises (except street-floor glass windows) in good order and repair. Landlord shall maintain and repair all plumbing, lines and equipment installed for the general supply of hot and cold water, heat, ventilating and electricity, except that Tenant shall be responsible for any and all repairs attributable to obstructions or objects deliberately or inadvertently introduced or placed in the fixtures of lines leading thereto, by Tenant, its employees, servants, agents, licensees, invitees or other representatives.

#### ELEVENTH. ALTERATIONS, ETC.

The Tenant:

(1) shall not cut or drill or otherwise deface or injure the building;

(2) shall not place or permit any awnings, sign, advertisement, illumination or projection on the outside of the building or in or upon any window of the demised premises, including the sills or ledges thereof, unless the same shall first have been approved in writing by the Landlord;

(3) shall not obstruct, or permit the obstruction of any light or skylight in or upon the building, or the adjoining sidewalk or street, or the entrance, or any other part of the building to the exclusive use of which the Tenant is not entitled.

(4) shall, within ten (10) days after the Landlord's demand therefore, pay to the Landlord, as additional rent hereunder, an amount equal to the increase, if any, in the amount of the fire insurance premium applicable to the building containing the demised premises in an amount proportional to the other space in the building exclusive use of which the Tenant is not entitled;

(5) shall, within ten (10) days after the Landlord's demand therefore, pay to the Landlord, as additional rent hereunder an amount equal to the increase, if any, in the amount of the fire insurance premium applicable to the building containing the demised premises, and to the contents of said building for and during the demised term, resulting from the Tenant's use and occupancy of the demised premises, or from the Tenant's failure to comply with any requirements of law or the recommendation of any insurance carrier. This provision shall apply regardless of the use to which the balance of the space in the building of which the demised premises are a part, is put;

(6) shall comply with all reasonable regulations and orders of the Landlord designed to promote the safety or good order of the building, as to the placing of safes, machinery or other heavy material, or otherwise;

(7) shall not without the Landlord's prior written consent first obtained in each instance, make any alterations, decorations or improvements in or about the demised premises;

(8) shall not without the Landlord's prior written consent first obtained in each instance make any alterations or additions to the electric wiring, equipment or appliances, including without limitation any heating, ventilating system, water system, or gas pipe system, or tap any mains or pipes to supply water for refrigeration or ventilating apparatus;

All alterations, additions or improvements made to the premises by either party including decorations, paneling and similar items, unless the Landlord shall otherwise elect in writing, shall become the property of the Landlord and be surrendered as part of the demised premises at the end of the term hereof.

#### TWELFTH. COVENANT TO SURRENDER AND REMOVAL OF PERSONAL PROPERTY

On the last day of the term demised, or on the sooner termination thereof, the Tenant shall peaceably and quietly leave, surrender and yield up unto the Landlord all and singular the demised premises, broom clean, in good order and repair, ordinary wear and tear excepted, together with all alterations, additions and improvements which may have been made upon the premises, except movable furniture or movable trade fixtures put in at the expense of the Tenant. If the last day of the term of this Lease falls on Sunday, this Lease shall expire on the business day immediately preceding it. The Tenant, on or before said date, shall remove all property from the demised premises, and all property not so removed shall be deemed abandoned by the Tenant. If said premises be not surrendered at the end of the term, the Tenant shall immediately indemnify the Landlord against loss or liability resulting from delay by the Tenant in so surrendering the premises, including without limitations, any claims made by any succeeding Tenant founded on such delay.



THIRTEENTH. COVENANT AGAINST ASSIGNMENT AND SUBLETTING

Without the previous written consent of the Landlord, neither the Tenant nor the Tenant's legal representatives or successors in interest, by operation of law or otherwise, shall assign or mortgage this lease or sublet the whole or any part of the demised premises or permit the demised premises or any part thereof to be used by others. Any consent by the Landlord to any act of assignment or subletting shall be held to apply only to the specific transaction thereby authorized. Such consent shall not be construed as a waiver of the duty of the Tenant, or the legal representative or assigns of the Tenant, to obtain from the Landlord consent to any other subsequent assignment or subletting, or as modifying or limiting the rights of the Landlord under the foregoing covenant by the Tenant not to assign or sublet without such consent. Any violation of any provisions of this Lease, whether by act or omission, by any assignee, subtenant, or under-tenant or occupancy shall be deemed a violation of such provision by the Tenant; it being the intention and meaning of the parties hereto that the Tenant shall assume and be liable to the Landlord for any and all acts and omissions of any and all assignees, sub-tenants, under-tenants and occupants. If this lease be assigned, the Landlord may and is hereby empowered to collect rent from the assignee; if the demised premises or any part thereof be underlet or occupied by any person other than the Tenant, the Landlord, in the event of the Tenant's default, may and is hereby empowered to collect rent from the under-tenant or occupant. In either of such events, the Landlord may apply the net amount received by it to the rent herein reserved, and no such collection shall be deemed a waiver of the covenant herein against assignment and under-letting, or the acceptance of the assignee, under-tenant or occupant as tenant, or a release of the Tenant from the further performance of the covenants herein contained on the part of the Tenant.

If the Tenant assigns or subleases the premises or any part thereof for all or part of the lease term at a rental rate per square foot which is greater than that stated in Section Five, the benefit of the higher payment shall accrue to the Landlord and shall be paid by Tenant to the Landlord. Tenant's responsibility under Section 5 shall not be reduced by any assignment or sublease at a lesser rental rate per square foot than that contained in Section Five.

FOURTEENTH. MECHANICS LIENS

Tenant shall not do or suffer anything to be done causing the demised premises to be encumbered by any mechanic's lien, and shall, whenever and as often as any mechanic's lien is filed against said property, purporting to be for labor or materials furnished or to be furnished to the Tenant, discharge the same of record within ten (10) days after the date of filing. Notice is hereby given: that the Landlord shall not be liable for any labor or materials furnished or to be furnished to the Tenant upon credit, and that no mechanic's or other lien for any such labor or materials shall attach to or affect the reservation or other estate of the Landlord in and to the premises herein demised.

FIFTEENTH. COVENANT TO PAY PERSONAL PROPERTY TAXES

Tenant shall comply promptly with all reporting and payment requirements of the statutes, rules and regulations of the taxing authorities as they relate to personal property of the Tenant in and on the demised premises, and to all payroll taxes.

SIXTEENTH. RIGHT OF ENTRY BY LANDLORD

Tenant, at any time during the term of this Lease, shall permit inspection of the demised premises during reasonable hours by the Landlord, or the Landlord's agents or representatives, and by or on behalf of prospective purchasers, and during the six (6) months next preceding the expiration of this Lease, shall permit inspection thereof by or on behalf of Tenants. Landlord shall have the right to change the arrangement and/or location of entrance or passageways, doors and doorways, corridors, stairs, toilets, or any other public parts of the building containing the demised premises or of the parking area adjacent to the building containing the demised premises.

SEVENTEENTH. CONDITION OF PREMISES

Tenant has leased the demised premises after an examination of the same, and except as herein expressly provided, without any representation on the part of the Landlord.

EIGHTEENTH. COVENANT OF QUIET ENJOYMENT

If, and as long as, the Tenant pays the rent and the additional rent reserved by this Lease, and performs and observes all of the covenants and conditions hereof, the Tenant shall quietly enjoy the demised premises, subject, however, to the terms of this Lease.

NINETEENTH. DESTRUCTION BY FIRE, ETC.

In case of damage to the demised premises by fire, enemy action or other casualty, the Landlord, unless it shall otherwise elect, as herein after provided, shall repair the same with reasonable dispatch after written notice of the damage. If the demised premises, or any part hereof, are damaged by fire, enemy action, or other casualty to such an extent as to be rendered untenable, then the rent shall be abated to an extent corresponding with the part untenable and for a period corresponding with the period during which such untenability exists. If such repairs, however, are delayed because of the Tenant's failure to adjust Tenant's own insurance claim, no reduction shall be made before a reasonable time allowed for such adjustment, and if the fire or damage to said premise be caused by carelessness or negligence or improper conduct on the part of the Tenant, then notwithstanding such damage or destruction, the Tenant shall be liable for the rent during the unexpired period of the demised term, without abatement, unless the Landlord elects to terminate this Lease, which right of termination in such contingency is hereby reserved to the Landlord. If the Landlord, in its sole discretion, shall decide, within a reasonable time after the occurrence of any such fire, enemy action or other casualty (even though the premises herein demised may not have been affected by such fire, enemy action or casualty) to demolish, rebuild or reconstruct the building containing the demised premises, then upon written notice given by the Landlord to the Tenant, this Lease shall terminate on a date to be specified in such notice as if that date has been originally fixed as the expiration date of the term herein demised, and the rent shall be adjusted as of the date of the occurrence of any such fire, enemy action, or other casualty. Unless the Landlord shall have repaired such damage within ninety (90) days, this Lease shall terminate upon written notice given by the Tenant to the Landlord that this Lease shall terminate on the date to be specified in such notice as if that date had been originally fixed as the expiration date of the term herein demised. Tenant shall give immediate notice to the Landlord in case of fire or in the event of accidents to or defects in any fixtures or equipment of the building.

TWENTIETH. CONDEMNATION

If the whole or a substantial part of the building containing the demised premises shall be taken for any public or quasi-public use, under any statute, or by right of eminent domain, or private purchase in lieu thereof by a public body vested with the power of eminent domain, then, when possession shall be taken thereunder of the demised premises, or any part thereof, the term herein demised and all rights of the Tenant shall immediately cease and terminate, and the rent shall be adjusted in the event of such occurrence. Nothing herein contained shall be deemed or construed to prevent the Tenant from interposing or prosecuting in any condemnation proceedings a claim for the value of any fixtures or improvements installed in or made to the demised premises.

TWENTY-FIRST. NOTICES

Any notice or demand which, under the terms of this Lease or any statute may or must be given or made by the parties hereto, must be in writing and may be given or made by mailing the same by registered mail, addressed to the other party at the address hereinabove mentioned. Either party may, however, designate in writing such new or other address to which such notice or demand shall thereafter be so given, made or mailed. Any notice given hereunder by mail shall be deemed delivered when deposited in a United States general or branch post office, enclosed in a registered or certified prepaid wrapper addressed as hereinbefore provided.



TWENTY-SECOND. LANDLORD RELEASED FROM LIABILITY IN CERTAIN EVENTS

Except as expressly otherwise provided in Section Nineteen of this Lease, the Landlord shall not be responsible at any time or in any event for any latent defect, deterioration or change in the conditions of the demised premises, nor for damage to the same, or to any property contained therein, nor for any injury to person or persons, whether caused by or resulting from falling plaster, dampness, any overflow or leakage upon or into the demised premises of water, rain, snow, steam, gas or electricity, or by any breakage in pipes, nor for damage from any other such source, nor for loss of property by theft or because entrusted to employees of the building, nor for the interferences with lights or other incorporated hereditaments unless the said damage, loss or injury shall be caused by or due to the negligence of the Landlord. In the event that the demised premises, or any part thereof, are rendered untenable, or the Tenant is deprived of the use of the demised premises by any cause whatsoever, or the Tenant claims that there is any defect in the demised premises or in any of the fixtures or any article of equipment therein or in the building containing the demised premises caused by the negligence of the Landlord, or otherwise, the Tenant shall give prompt written notice to the Landlord and a reasonable opportunity shall be given to the Landlord to remedy the condition set forth in the said notice. Failure to give such notice shall be construed as a waiver of such condition or defect and of any and all claims to the effect that the Tenant has been evicted, wholly, partly or constructively, from the demised premises. The provisions contained in this Section Twenty-Two are not to be construed as an increase of the Landlord's obligations hereunder.

TWENTY-THIRD. LANDLORD RELEASED FROM LIABILITY IF UNABLE TO PERFORM

In case the Landlord is prevented from making any repairs, improvements, decorations or alterations, or installing any fixtures or articles of equipment, furnishing any services or performing any other covenant or duty, whether expressed herein or implied, to be performed on the Landlord's part, due to the Landlord's inability to obtain, or its difficulty in obtaining labor or materials reasonably necessary therefor, or due to any other cause beyond the Landlord's control, the Landlord shall not be liable to the Tenant for damages resulting therefrom, nor except as expressly otherwise provided in Section Nineteen of this Lease, shall the Tenant be entitled to any abatement or reduction of rent by reason thereof, nor shall the same give rise to a claim in the Tenant's favor that such failure constitutes actual or constructive, partial or total, eviction from the premises.

TWENTY-FOURTH. LANDLORD MAY CURE DEFAULTS

In the event of any breach hereunder by the Tenant, the Landlord may, on reasonable notice to the Tenant, cure such breach for its account and at the expense of the Tenant. If the Landlord, at any time, by reason of such breach, is compelled to pay or elects to pay any sums of money, or do any act which will require the payment of any sum of money, or is compelled so to do, then any expense, including a reasonable attorney's fee, instituting, prosecuting and/or defending any action or proceeding to enforce the Landlord's rights hereunder, or otherwise, the sum or sums so paid by the Landlord, with all interest, costs and damages, shall be deemed to be additional rent hereunder and shall be due from the Tenant to the Landlord on the first day of the month following the incurring of such respective expenses.

TWENTY-FIFTH. SUBORDINATION CLAUSE

The Tenant accepts this Lease subject and subordinate to all the underlying leases, leasehold mortgages, deeds of trust or other mortgages now or hereafter a lien upon or affecting the land and building of which the demised premises are a part. The Tenant shall, at any time hereafter, on demand, execute any instruments, releases or other documents that may be required by any beneficiary, mortgagee or mortgagee or over-landlord for the purpose of subjecting and subordinating this Lease to the lien of any such deed of trust, mortgage or mortgages or underlying lease, and the failure of the Tenant to execute any such instruments, releases or documents shall constitute a default hereunder.

In case of the failure of the Tenant to execute said papers on demand, the Landlord is hereby authorized, as the attorney and agent of the Tenant, to execute

such releases, instruments or other documents, and in such event the Tenant hereby confirms and ratifies any such instruments so executed by virtue of this power of attorney.

TWENTY-SIXTH. EFFECT OF CONVEYANCE

The term "Landlord" as used in this Lease means only the owner for the time being of the land and building containing the demised premises so that in the event of any sale of said land and building, or in the event of any lease of said building, the Landlord shall be and hereby is entirely freed and relieved of all covenants and obligations of the Landlord hereunder, and it shall be deemed and construed, without further agreement between the parties or between the parties and the purchaser at any such sale or the Tenant of the building, that the purchaser or the Tenant of the building has assumed and agreed to carry out any and all covenants and obligations of the Landlord hereunder.

TWENTY-SEVENTH. DEFAULT CLAUSE

Each of the following shall be deemed a default by the Tenant and a breach of this Lease:

1. A default in the payment of the rent reserved, or any part thereof, for a period of ten (10) days.
2. A default in the performance of any other covenant or condition on the part of the Tenant to be performed for a period of ten (10) days after service of the notice thereof by Landlord on Tenant, provided however, that no default on the part of the Tenant in the performance of work required to be performed or acts to be done or conditions to be modified shall be deemed to exist if steps shall have in good faith been commenced promptly by the Tenant to rectify the same and shall be prosecuted to completion with diligence and continuity.
3. The filing of a petition by or against the Tenant for adjudication as a bankrupt under the Bankruptcy laws, as now or hereafter amended or supplemented, or for reorganization within the meaning of Chapter X of said Bankruptcy laws, or for arrangement within the meaning of Chapter XI of said Bankruptcy laws, or the filing of any petition by or against the Tenant under any future bankruptcy act for the same or similar relief.
4. The dissolution or the commencement of any action or proceeding for the dissolution or liquidation of the Tenant, whether instituted by or against the Tenant or for the appointment of a receiver or trustee of the property of the Tenant.
5. The taking possession of the property of the Tenant by any governmental officer or agency pursuant to statutory authority of the dissolution or liquidation of the Tenant.
6. The making by the Tenant of an assignment for the benefit of creditors.
7. Tenant vacates or abandons the premises.
8. Tenant permits the premises to remain vacant or unoccupied for a period of thirty (30) days.

TWENTY-EIGHTH. LANDLORD'S REMEDIES IN EVENT OF DEFAULT

In the event of any default of the Tenant as recited in Section Twenty-Seven above, the Landlord will have the following rights or remedies - all in addition to any rights or remedies that may be given to the Landlord by statute, common law or otherwise.

1. Re-enter the premises and take possession thereof; and



2. Re-let the demised premises in whole or in part for any period equal to or greater, or less, than the remainder of the original term of this Lease, for any sum which may be deemed reasonable; and

3. Declare the demised term ended; and

4. Distrain for rent due; and

5. Recover from the Tenant damages from the date of such breach to the date of expiration of the original term hereby demised attributable to the default of the Tenant.

Re entry or re-letting of part or all of the premises is not to be deemed a termination of this Lease, unless expressly declared to be so by the Landlord. However, if this Lease be deemed terminated, the Tenant's liability shall survive and Tenant shall be liable for damages for the remainder of the term existing at said termination date. The enumeration of the default rights of the Tenant above are not intended to imply that they are mutually exclusive nor that they are in lieu of any or all statutory or other rights.

#### TWENTY-NINTH. COVENANT OF INDEMNITY AND INSURANCE COVERAGE

Tenant shall indemnify the Landlord against any expense, loss or liability paid, suffered or incurred as the result of any breach by the Tenant, Tenant's agents, servants, employees, visitors or licensees of any covenant or condition of this Lease, or as the result of Tenant's use or occupancy of the demised premise, or the carelessness, negligence or improper conduct of the Tenant, Tenant's agents, servants, employees, visitors or licensees. The Tenant's liability under this Lease extends to the acts and omissions of the Tenant and his agents, servants, employees, licensees or invitees of Tenant.

Tenant shall effect and maintain liability coverage to assure Landlord of such indemnity, with minimum limits of liability for injuries, including accidental death, of Five Hundred Thousand Dollars (\$500,000.00) for any one person, and subject to the same limit for each person, One Million Dollars (\$1,000,000.00) for any one accident involving one or more persons, plus Fifty Thousand Dollars (\$50,000.00) property damage limit, if they be so required.

#### THIRTIETH. RIGHTS OF SUCCESSORS AND ASSIGNS

The covenants and agreements contained within the Lease shall apply to, inure to the benefit of, and be binding upon the parties hereto and upon their respective successors in interest and legal representatives.

#### THIRTY-FIRST. REMEDIES CUMULATIVE

The rights given to the Landlord herein are in addition to any right that may be given to the Landlord by any statute or otherwise.

#### THIRTY-SECOND. ENTIRE AGREEMENT - CHANGES, WAIVERS

This agreement supersedes all or any other prior agreements and understandings between the parties and may not be changed or terminated orally; and no change, termination or attempted waiver of any of the provisions hereof shall be binding unless in writing and signed by the parties against whom the same is sought.

#### THIRTY-THIRD. CONSTRUCTION OF LEASE

Words of any gender used in this Lease shall be held to include any other gender and words in the singular number shall be held to include the plural, when the sense requires.

#### THIRTY-FOURTH. INTEREST ON UNPAID RENT

Landlord may declare due and payable a late charge, not to exceed Four (\$0.04) per one Dollar (\$1.00), due for any periodic rent(s) not received at the designated place of payment within ten (10) days of its due date.

In addition, rent(s) not paid when due by Tenant shall bear interest at the lower of:

(a) Eighteen percent (18%) per annum, or

(b) the highest interest rate permissible under the laws of the State of Alaska as presently enacted or hereafter amended from time to time, until paid.

THIRTY-FIFTH. MISCELLANEOUS

If any provision of this Lease be declared invalid or unenforceable, the remainder of this Lease shall continue in full force and effect.

THIRTY-SIXTH. LANDLORD'S RIGHT TO TERMINATE FOR REPAIR OR RENOVATION

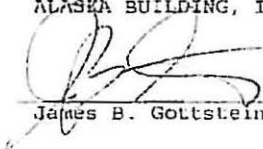
Notwithstanding Landlord's obligation to maintain and repair the mechanical systems within the Alaska Building, Section Ten in the Space Lease, if the major mechanical systems in the building, including but not limited to the plumbing, electrical and heating systems, fail during the term hereof, Landlord, at its sole option, may elect to terminate this Lease upon thirty (30) days written notice to Tenant rather than to repair or replace said mechanical systems. If Landlord determines in its business judgment to renovate or demolish the Alaska Building, Landlord, at its sole option, and upon six (6) months prior written notice to Tenant, may elect to terminate this Lease in order to perform such renovations or demolishing of the Premises.

IN WITNESS WHEREOF, the parties hereto have executed this Lease the day and year noted below as set opposite their respective signatures.

LANDLORD: ALASKA BUILDING, INC.

Date: 12/6/2013

By:

  
James B. Gottstein

TENANT: Criterion General, Inc.

Date: 12/5/13

By:





**License to Enter**  
**Indemnity and Insurance Agreement**

**1. License:**

Owner grants to Contractor a limited license to enter upon the Property (the buildings located on a portion of Lot 2 and Lot 1, Block 40 Original Townsite of Anchorage) for the purpose of relocating the meter gas service and gas lines to the Property, and to the extent required for safety, to shut down and restart the boilers. Such license shall expire on November 22, 2013 unless extended by Owner.

**2. Indemnity:**

The Contractor, Criterion General, Inc. located at 2820 Commercial Drive Anchorage, Alaska 99501, shall defend, indemnify and hold harmless the Owner, Alaska Building, Inc. and their agents and employees from and against all claims, damages, losses and expenses including interest, costs and attorneys' fees arising out of or resulting from the performance of the project to re-locate the gas service from the service behind the property owned by 716 West Fourth Avenue, LLC, adjacent to the property owned by Alaska Building, Inc., to a new meter to be installed behind the property owned by Alaska Building, Inc., provided that any such claim, damage, loss or expense is caused in whole or in part by any negligent act or omission of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder. The Contractor need not indemnify Owner for the Owner's sole negligence; however, this indemnification shall apply to circumstances of combined fault.

In any and all claims against the Owner, Alaska Building, Inc. or any of their agents or employees by any employee of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under this section shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or any Subcontractor under workmen's compensation acts, disability benefit acts or other employee benefit acts.

Contractor will maintain the insurance coverages as attached.

**3. Use of Hazardous Materials on the Project:**

Compliance with Environmental Laws: Contractor covenants full compliance with any applicable federal, state, or local environmental statute, regulation, or ordinance presently in effect or that may be amended or effective in the future regarding the handling of hazardous materials.

Contractor shall not cause or permit any hazardous material to be brought upon, kept, or used in or about the project by Contractor, or its authorized representatives or invitees, except for such hazardous material as is necessary or useful to Contractor's work on the project.

Any hazardous material permitted on the Project as provided in this paragraph, and all containers therefore, shall be used, kept, stored, and disposed of in a manner that complies with all laws or regulations applicable to any such hazardous material.

Contractor shall not discharge, leak or emit, or permit to be discharged, leaked, or emitted, any material into the atmosphere, ground, sewer system, or any body of water if such material (as reasonably determined by Owner or any governmental authority) does or may pollute or contaminate the same, or may adversely affect (1) the health, welfare, or safety of persons, whether located on the project or elsewhere, or (2) the condition, use, or enjoyment of the project or any other real or personal property.

Contractor specifically agrees to report all releases, threatened releases, discharges, spills, or disposal of hazardous substances, in whatever quantity, immediately to the appropriate regulatory authorities and simultaneously to Owner, and to keep Owner fully informed of any communication between Contractor and any person or agency concerning potential environmental contamination and hazardous substances. Contractor hereby agrees that it shall be fully liable for all costs and expenses related to the use, storage, and disposal of hazardous material kept on the project by Contractor, or its authorized representatives and invitees.

AGREED TO THE FOREGOING THIS 30 DAY OF October 2013.

**James**

ALASKA BUILDING

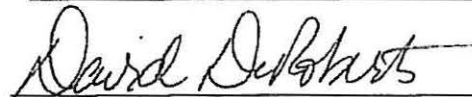
**B.**

**Gottstein**

DATE

**n**

Digitally signed by  
James B. Gottstein  
DN: cn=James B.  
Gottstein, o=Alaska  
Building, Inc., ou=  
email=jg@touchng  
o.com, c=US  
Date: 2013.10.30  
16:03:07 -08'00'



Criterion General, Inc.  
CONTRACTOR

Vice President

TITLE

October 30, 2013

DATE

**Attachment to License to Enter and Indemnity and Insurance Agreement**

**Insurance & License Requirements**

1. The CONTRACTOR is to provide the Alaska Building with a certificate of insurance prior to commencement of construction. All insurance policies shall contain a provision that the coverages afforded thereunder shall not be cancelled or not renewed, nor restrictive modifications added, until at least thirty (30) calendar days' prior written notice has been given to the Certificate Holder. The certificate shall include items A-F as noted below.

- A. General Liability
- |                               |             |
|-------------------------------|-------------|
| General Aggregate             | \$2,000,000 |
| Products/Completed Operations | \$1,000,000 |
| Personal/Advertising          | \$1,000,000 |
| Each Occurrence               | \$1,000,000 |
| Damage to Owner's Premises    | \$100,000   |
| Medical Expense               | \$5,000     |
- B. Automobile
- |                       |             |
|-----------------------|-------------|
| Combined Single Limit | \$1,000,000 |
|-----------------------|-------------|
- C. Workers' Compensation
- |                             |           |
|-----------------------------|-----------|
| Workers' Compensation       | Statutory |
| EL - Each Accident          | \$500,000 |
| EL - Disease, Policy Limit  | \$500,000 |
| EL - Disease, each Employee | \$500,000 |
- D. Alaska Building, Inc. shall be added as an additional insured under the insurance (except Workers' Compensation) and all named as certificate holders.
- E. Provide a Waiver of Subrogation provision on the Workers' Compensation. (If applicable)
- F. Auto insurance should apply to owned, non-owned and hired auto exposure of the contractor and subcontractors working on the project.





# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
10/30/2013

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> Alaska USA Insurance Brokers P.O. Box 196530  Anchorage AK 99519		<b>CONTACT</b> NAME: Brenda Nolin, CIC, CISR PHONE (A/C, No. Ext): (907) 561-1250 FAX (A/C, No): (907) 561-4315 E-MAIL: b.nolin@alaskausainurance.com ADDRESS: 00052773 PRODUCER CUSTOMER ID#	
<b>INSURED</b>  Criterion General, Inc. 2820 Commercial Drive  Anchorage AK 99501-3015		<b>INSURER(S) AFFORDING COVERAGE</b>  INSURER A: Navigators Specialty Insurance NAIC # 36056 INSURER B: American Fire & Casualty INSURER C: Liberty Northwest INSURER D: Colony Insurance Company 39993 INSURER E: INSURER F:	

COVERAGES		CERTIFICATE NUMBER: 13-14 Master COI		REVISION NUMBER:			
THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.							
INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY			LA13CGL01914500	1/1/2013	1/1/2014	EACH OCCURRENCE \$ 1,000,000
	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY						DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000
	<input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR						MED EXP (Any one person) \$ EXCLUDED
	<input checked="" type="checkbox"/> Surplus Lines Policy						PERSONAL & ADV INJURY \$ 1,000,000
GEN'L AGGREGATE LIMIT APPLIES PER:				Worldwide Facilities Inc.			GENERAL AGGREGATE \$ 2,000,000
<input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC							PRODUCTS - COMP/OP AGG \$ 2,000,000
B	AUTOMOBILE LIABILITY			BAA1455340530	1/1/2013	1/1/2014	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000
	<input checked="" type="checkbox"/> ANY AUTO						BODILY INJURY (Per person) \$
	<input type="checkbox"/> ALL OWNED AUTOS						BODILY INJURY (Per accident) \$
	<input type="checkbox"/> SCHEDULED AUTOS						PROPERTY DAMAGE (Per accident) \$
<input checked="" type="checkbox"/> HIRED AUTOS			Medical payments \$ 5,000				
<input checked="" type="checkbox"/> NON-OWNED AUTOS			Uninsured motorist combined \$ 1,000,000				
A	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR			Surplus Lines Policy	1/1/2013	1/1/2014	EACH OCCURRENCE \$ 4,000,000
	<input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE						AGGREGATE \$ 4,000,000
	<input type="checkbox"/> DEDUCTIBLE						Products-Comp Ops Aggregate \$ 4,000,000
	<input type="checkbox"/> RETENTION \$						
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY			WC41NC014537013	1/1/2013	1/1/2014	<input checked="" type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)	<input checked="" type="checkbox"/> Y <input type="checkbox"/> N	N/A				E.L. EACH ACCIDENT \$ 1,000,000
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - EA EMPLOYEE \$ 1,000,000
							E.L. DISEASE - POLICY LIMIT \$ 1,000,000
D	Pollution Liability			PKC300494	1/1/2013	1/1/2014	\$1M Ea Occ Pol/\$2M Aggregate Ded: \$50,000
	Professional Liability						Surplus Lines Policy-WWF

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

Re: 716 W 4th Avenue, Anchorage, AK

Alaska Building, Inc. is an Additional Insured on all referenced policies excluding Workers' Compensation, but only with respect to work done by or on behalf of the Named Insured for the project referenced. Subject to policy terms, conditions & exclusions. Alaska Building, Inc. is granted Waiver of Subrogation on the Workers' Compensation policy

## CERTIFICATE HOLDER

jg@touchngo.com

Alaska Building, Inc.  
Home of the AlaskaCam (r)  
Jim Gottstein, President  
406 G Street, Suite 206  
Anchorage, AK 99501

## CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

B Nolin, CIC, CISR/BR Brenda L. Nolin

ACORD 25 (2009/09)  
INS025 (200909)© 1988-2009 ACORD CORPORATION. All rights reserved.  
The ACORD name and logo are registered marks of ACORD

716-000046

## COMMENTS/REMARKS

as respects the referenced project subject to the policy terms, conditions and exclusions.

### CANCELLATION AS PER ALASKA STATUTE AS 21.36.220

At least 10 days' notice of cancellation is required if cancellation is for conviction of the insured of a crime having as one of its necessary elements an act increasing a hazard insured against, or for discovery of fraud or material misrepresentation made by the insured or a representative of the insured in obtaining the insurance or by the insured in pursuing a claim under the policy.

At least 20 days' notice is required for nonpayment of premium or for failure or refusal of the insured to provide the information necessary to confirm exposure or necessary to determine the policy premium.

At least 60 days' notice is required if cancellation is for any reason except as previously noted.

### Advance Notice Required for Nonrenewal

Except in case of nonpayment of premium for the expiring policy, or if the insured fails to pay the premium as required by the insurer for renewal, an insurer may not fail to renew a policy unless a written notice of nonrenewal is mailed at least 45 days before the expiration date of the policy or of the anniversary date of a policy written for a term longer than 1 year or with no fixed expiration date.

If notice of nonrenewal is not given as required, the existing policy shall continue until the insurer provides notice for the time period required by this section for that policy. This section does not apply if the insurer has in good faith manifested its willingness to renew.

[AS 21.36.240]

### Advance Notice Required for Premium or Coverage Changes

Written notice shall be mailed to the insured and to the agent or broker of record at least 45 days before expiration:

- \*if renewal premium is increased more than 10 percent for a reason other than an increase in coverage or exposure base, or
- \*if after renewal there will be a material restriction or reduction in coverage not specifically requested by the insured.

If notice before expiration of the policy is not given as required by this section, the existing policy shall continue until the insurer provides notice for the time period required for that policy. This section does not apply to workers compensation insurance.

## COMMENTS/REMARKS

ALASKA SURPLUS LINES WORDING APPLIES TO GENERAL LIABILITY, EXCESS LIABILITY, CONTRACTORS POLLUTION AND PROFESSIONAL LIABILITY POLICIES:

"This is evidence of insurance procured and developed under the Alaska Surplus Lines Law AS21.34. It is not covered by the Alaska Insurance Guarantee Association Act, AS21.80. This insurer does not hold a certificate of authority with Alaska, and is not subject to supervision by the Alaska Department of Insurance"  
Worldwide Facilities, Inc. - License #9718

OFREMARK

COPYRIGHT 2000, AMS SERVICES INC.

716-000048



**License to Enter**  
**Indemnity and Insurance Agreement**

**1. License:**

Owner grants to Contractor a limited license to enter upon the Property (the buildings located on a portion of Lot 2 and Lot 1, Block 40 Original Townsite of Anchorage) for the purpose of relocating the meter gas service and gas lines to the Property, and to the extent required for safety, to shut down and restart the boilers. Such license shall expire on November 22, 2013 unless extended by Owner.

**2. Indemnity:**

The Contractor, Criterion General, Inc. located at 2820 Commercial Drive Anchorage, Alaska 99501, shall defend, indemnify and hold harmless the Owner, Alaska Building, Inc. and their agents and employees from and against all claims, damages, losses and expenses including interest, costs and attorneys' fees arising out of or resulting from the performance of the project to re-locate the gas service from the service behind the property owned by 716 West Fourth Avenue, LLC, adjacent to the property owned by Alaska Building, Inc., to a new meter to be installed behind the property owned by Alaska Building, Inc., provided that any such claim, damage, loss or expense is caused in whole or in part by any negligent act or omission of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder. The Contractor need not indemnify Owner for the Owner's sole negligence; however, this indemnification shall apply to circumstances of combined fault.

In any and all claims against the Owner, Alaska Building, Inc. or any of their agents or employees by any employee of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under this section shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or any Subcontractor under workmen's compensation acts, disability benefit acts or other employee benefit acts.

Contractor will maintain the insurance coverages as attached.

**3. Use of Hazardous Materials on the Project:**

Compliance with Environmental Laws: Contractor covenants full compliance with any applicable federal, state, or local environmental statute, regulation, or ordinance presently in effect or that may be amended or effective in the future regarding the handling of hazardous materials.

Contractor shall not cause or permit any hazardous material to be brought upon, kept, or used in or about the project by Contractor, or its authorized representatives or invitees, except for such hazardous material as is necessary or useful to Contractor's work on the project.

Any hazardous material permitted on the Project as provided in this paragraph, and all containers therefore, shall be used, kept, stored, and disposed of in a manner that complies with all laws or regulations applicable to any such hazardous material.

Contractor shall not discharge, leak or emit, or permit to be discharged, leaked, or emitted, any material into the atmosphere, ground, sewer system, or any body of water if such material (as reasonably determined by Owner or any governmental authority) does or may pollute or contaminate the same, or may adversely affect (1) the health, welfare, or safety of persons, whether located on the project or elsewhere, or (2) the condition, use, or enjoyment of the project or any other real or personal property.

Contractor specifically agrees to report all releases, threatened releases, discharges, spills, or disposal of hazardous substances, in whatever quantity, immediately to the appropriate regulatory authorities and simultaneously to Owner, and to keep Owner fully informed of any communication between Contractor and any person or agency concerning potential environmental contamination and hazardous substances. Contractor hereby agrees that it shall be fully liable for all costs and expenses related to the use, storage, and disposal of hazardous material kept on the project by Contractor, or its authorized representatives and invitees.

AGREED TO THE FOREGOING THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2013.

**James B. Gottstein**  
ALASKA BUILDING, Inc.  
Digitally signed by James B. Gottstein  
DN: cn=James B. Gottstein, o=Alaska Building, Inc., ou=, email=jg@touchng o.com, c=US  
Date: 2013.10.30 16:03:07 -08'00'

Criterion General, Inc.  
CONTRACTOR

TITLE

DATE

{10708-050-00157724;3}

716-000050

**Attachment to License to Enter and Indemnity and Insurance Agreement**

**Insurance & License Requirements**

1. The CONTRACTOR is to provide the Alaska Building with a certificate of insurance **prior** to commencement of construction. *All insurance policies shall contain a provision that the coverages afforded thereunder shall not be cancelled or not renewed, nor restrictive modifications added, until at least thirty (30) calendar days' prior written notice has been given to the Certificate Holder.* The certificate shall include items A-F as noted below.

- A. General Liability

General Aggregate	\$2,000,000
Products/Completed Operations	\$1,000,000
Personal/Advertising	\$1,000,000
Each Occurrence	\$1,000,000
Damage to Owner's Premises	\$100,000
Medical Expense	\$5,000
- B. Automobile

Combined Single Limit	\$1,000,000
-----------------------	-------------
- C. Workers' Compensation

Workers' Compensation	Statutory
EL - Each Accident	\$500,000
EL - Disease, Policy Limit	\$500,000
EL - Disease, each Employee	\$500,000
- D. Alaska Building, Inc. shall be added as an additional insured under the insurance (except Workers' Compensation) and all named as certificate holders.
- E. Provide a Waiver of Subrogation provision on the Workers' Compensation. (If applicable)
- F. Auto insurance should apply to owned, non-owned and hired auto exposure of the contractor and subcontractors working on the project.



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L  
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S  
K  
A

**2007-077937-0**

Recording Dist: 301 - Anchorage  
12/18/2007 10:56 AM Pages: 1 of 3



STWT 68997 DG

cc

**DOCUMENT TITLE: Warranty Deed**

**DOCUMENT DATE: November 17, 2007**

**PROPERTY DESCRIPTION:**

**The West 39 and ½ feet of Lot Two (2), Block Forty (40),  
ORIGINAL TOWNSITE OF ANCHORAGE**

**\*\*This document is being re-recorded to add the stamp of  
the second Notary.**

**THIS COVER SHEET HAS BEEN ADDED TO THIS  
DOCUMENT TO PROVIDE SPACE FOR  
RECORDING DATA. THIS COVER SHEET APPEARS  
AS THE FIRST PAGE OF THE DOCUMENT IN THE  
OFFICIAL PUBLIC RECORD AND IS TO BE  
CONSIDERED PART OF THE OFFICIAL  
DOCUMENT.**

**DO NOT DETACH**

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2006-078621-0

Recording Dist: 301 - Anchorage  
11/20/2006 2:11 PM Pages: 1 of 2

STEWART

68997

\*STATUTORY WARRANTY DEED

COE

The Grantors, TOM CHEN and MING TZE CHEN, husband and wife,  
of 706 W. 4th Ave, Anchorage, 99501  
pursuant to \*Sec. 34.15.030, Alaska Statutes, for and  
in consideration of the sum of Ten Dollars (\$10.00), lawful  
money of the United States of America, and other valuable con-  
sideration in hand paid, the receipt and sufficiency of which  
is hereby acknowledged, do hereby grant, convey and warrant to  
Grantee, GRAHAM PROPERTIES, LLC, an Alaska Limited Liability  
Company, of 3780 Lincoln Ellsworth Circle Anchorage  
AK 99517, the following described real property, together  
with all tenements, hereditaments and appurtenances located in  
the Anchorage Recording District, Third Judicial District, State  
of Alaska:

The West 39 and 1/2 feet of Lot Two (2),  
Block Forty (40), ORIGINAL TOWNSITE OF  
ANCHORAGE, in the records of the Anchorage  
Recording District, Third Judicial District,  
State of Alaska, EXCEPTING THEREFROM the  
North 10 feet taken by the City of Anchorage  
for street and sidewalk purposes.

SUBJECT to reservations and exceptions as  
contained in U.S. Patent and/or in Acts  
authorizing the issuance thereof, recorded in  
Deed Book 206 at Page 236; real property  
taxes, if any due; easements of record;  
Agreement recorded July 13, 1982, in City  
Book 10 at Page 83; possible Party Wall  
Agreement with regard to the west line of the  
subject property and the east line of Lot 3A,  
Block 40, Anchorage Townsite (Plat 94-58)  
adjoining to the west; and Notice of Zoning  
Action, including the terms and provisions  
thereof, as executed by Municipality of  
Anchorage on behalf of the Zoning Board of  
Examiners and Appeals, recorded March 22,  
1996, in Book 2902 at Page 402; and

FURTHER SUBJECT to that certain Resolution  
No. AR NO 88-234 (Anchorage, Alaska), levying  
assessments for the payment of Paving and  
Street Lighting Special Assessments District  
2P87-Fourth Avenue Pedestrian Amenities -  
Phase III, recorded September 27, 1989, in  
Book 1950 at Page 527 (provides for a  
continuing obligation for possible future  
work), the obligations of which the Grantee

Page 1 of 2

FRANCIS I. NUSSER, JR., A Professional Corporation  
810 N Street, Suite 100, Anchorage, Alaska 99501  
(907) 274-2421



2 of 3

2007-077937-0

716-000053

herein expressly ASSUMES and AGREES to PAY  
and perform according to its terms, when  
levied.

DATED this 17<sup>th</sup> day of November, 2006.



Tom Chen  
TOM CHEN

Ming Tze Chen  
MING TZE CHEN

GRAHAM PROPERTIES, LLC

By Joseph E. Hill  
Title \_\_\_\_\_

STATE OF ALASKA )  
THIRD JUDICIAL DISTRICT ) ss.

The foregoing instrument was acknowledged before me this 17<sup>th</sup>  
day of November, 2006, by TOM CHEN and MING TZE CHEN.

Heather L. Randall  
Notary Public in and for Alaska  
My Commission expires: 08/20/07

STATE OF ALASKA )  
THIRD JUDICIAL DISTRICT ) ss.

The foregoing instrument was acknowledged before me this 17  
day of November, 2006, by Deanna Guich Joseph  
Graham of GRAHAM PROPERTIES, LLC.



Deanna Guich Joseph  
Notary Public in and for Alaska  
My Commission expires: 11/20/2008

AFTER RECORDING RETURN TO:  
Joseph Graham  
2780 Lincoln St. North CA  
LA Anch AK 99577

Page 2 of 2



716-000054



#3

3

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the Territory of Alaska, duly commissioned and sworn, personally came Otto Noll, who is to me known to be the identical individual described in and who executed the within instrument, and he acknowledged to me that he is the same.

(Seal)

Notary Public in and for  
the Territory of Alaska, residing at  
Anchorage. Commission expires  
June 1st 1918.

This above instrument was filed for record at the request of Leon W. Hartley at 1:30 P. M. January 20th 1917.

*Leon W. Hartley*  
Recorder

Quit-Claim Deed.

THIS INSTRUMENT, made this 20th day of January, 1917, between AUSTIN E. LATHROP, party of the first part, and J. H. Smith, of Anchorage, party of the second part:

WITNESSETH: That for and in consideration of the sum of One Dollar (\$1.00) lawful money of the United States, in hand paid by the party of the second part, the receipt whereof is hereby acknowledged, the party of the first part does hereby grant, sell, convey and forever quit-claim unto the party of the second part, his heirs and assigns, the following described property, to-wit:

An undivided, absolute and indefeasible interest in and to the following described portion of the East wall of that certain building known as the "EMPIRE THEATRE" situated on Lot Two (2) in Block Forty (40), plat of the Townsite of Anchorage, in Anchorage, Alaska; Beginning at the North Lower corner of said wall, and thence running South Fifty (50) feet, thence vertically a distance of 25 feet to the top of the building owned by the grantee herein, thence north along the top line of said building to the North end of said wall; thence vertically downward to the place of beginning; the purpose of this conveyance being to grant to said J. H. Smith a party interest in said wall for the use and support of his present building, and that only and for no other purpose.

TO HAVE AND TO HOLD, unto the said party of the second part, his heirs and assigns forever.

IN WITNESS WHEREOF, the party of the first part has hereunto affixed his signature this 20th day of January, 1917.

Witnessed by:  
J. L. Waller  
Mrs. Ethel Vint

Austin E. Lathrop (Seal)

TERRITORY OF ALASKA )  
KNIK DISTRICT ) ss.

THIS IS TO CERTIFY, That on this 20th day of January, 1917, before me, the undersigned, a Notary Public personally appeared Austin E. Lathrop, to me known to be the person described in and who executed the above and foregoing deed, and he acknowledged to me that he executed the same as his free and voluntary act and deed for the uses and purposes therein mentioned.

294

3

WITNESS my hand and official seal this 20th day of January, 1917.

(Seal)

J. L. Waller  
Notary Public, Territory of Alaska. My commission  
expires Nov. 16, 1919.

The above instrument was filed for record at the request of  
J. A. Miller at 2:15 P. M. January 22nd 1917.

*L. J. Smith*  
District Recorder



## QUIT CLAIM DEED.

This Indenture, Made this 5th day of May in the year of our Lord one thousand nine hundred and seventeen Between Homer T. Fowler, of Anchorage, Alaska, the party of the first part, and J. H. Smith of the same place, the party of the second part:

WITNESSETH: That the said party of the first part, for and in consideration of the sum of One Dollars, lawful money of the United States of America, to him in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, does by these presents remise, release and forever quitclaim unto the said party of the second part and to his heirs and assigns the following described tract, lot, or parcel of land, situate, lying and being in the townsite of Anchorage, Territory of Alaska, particularly bounded and described as follows, to-wit:

An undivided absolute and indefeasible interest in and to the following described portion of the west wall of that certain building known as the Alaska Building, situated on lot one (1), in Block forty (40), plat of Anchorage, Alaska, beginning at the north corner of said wall, thence south 40 feet; and vertically to the top of said wall, a distance of about 25 feet, the purpose of this conveyance being to grant to said J. H. Smith, a party interest in said wall for the use and support of his building,

TO HAVE AND TO HOLD, all and singular, the said premises, together with the appurtenances, unto said party of the second part, and to his heirs and assigns forever.

IN WITNESS WHEREOF, the said party of the first part has hereunto set his hand and seal the day and year first above written.

Signed, Sealed and Delivered

in presence of:

Mrs. J. H. Smith  
J. L. Waller.

Homer T. Fowler (Seal)

United States of America }  
Territory of Alaska. } ss.

THIS IS TO CERTIFY, That on this 5th day of May, A. D. 1917, before me, the undersigned, a Notary Public in and for the Territory of Alaska, duly commissioned and sworn, personally came Homer T. Fowler, who is to me known to be the identical individual described in and who executed the within instrument, and he acknowledged to me that he signed the same.

Witness my hand and official seal the day and year in this certificate first above written.

(Seal)

J. L. Waller

Notary Public in and for the Territory of Alaska, residing at Anchorage.  
My commission expires Nov. 18, 1919.

The above instrument filed for record on the 21st day of August 1918 at 9 A.M. by B. S. Bartholf.

District Recorder.



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Defendants, and directed to me, the said United States Marshal for the Territory of Alaska; I did on the said 7th day of July, 1923, at the action of said Plaintiff attach the following described real property belonging to the Defendant, B. L. Rueth to-wit:

All of Lot number eight (8) in Block number twenty-two (22) situate in the Town of Anchorage, Anchorage Recording Precinct, Territory of Alaska, Third Division, together with the improvements thereon.

IN WITNESS WHEREOF, I have hereunto set my hand this the 9th day of July, 1923.

H. P. Sullivan  
U. S. Marshal  
By H. I. Stacer  
Deputy

The foregoing instrument was filed for record July 11, 1923, at 2:30 o'clock P. M., at the request of Arthur Frame.

W. H. Rager  
District Recorder

**B A S E M E N T**

WHEREAS, on the sixth day of December, 1916, a certain Warranty Deed was executed by Homer T. Fowler, of Everett, Washington, Grantor, to Austin E. Lathrop, of Anchorage, Alaska, Grantee, covering the following described lot or parcel of ground:

West thirty-nine and one-half (39½) feet of Lot two (2) Block forty (40) except a strip of five (5) feet wide, paralleling along Fourth Street, which is reserved for the widening of Fourth Street in the Town of Anchorage, Alaska;

AND WHEREAS, at the time of execution of said Warranty Deed, certain verbal agreements were made by and between Grantor and Grantee, which it is now their intent to put into writing, for entry upon the records of Knik Precinct and Recording District, Territory of Alaska,

NOW THEREFORE, the said Homer T. Fowler, Grantor, hereby grants unto the said Austin E. Lathrop, Grantee, the following BASEMENT, to-wit:

From the Southwest corner of Lot two (2) Block forty (40) thirty-nine and one-half (39½) feet East to the place of beginning; thence North thirty (30) feet along the line of property decided by this Grantor to said Grantee; thence East ten (10) feet; thence South thirty (30) feet; thence West ten (10) feet to the place of beginning;

FOR USE of said Grantee, his heirs and assigns forever, for



a perpetual underground power and lighting plant, and for a four foot stairway along the wall as entrance thereto, said power and lighting plant to be installed a sufficient depth, and roof thereof kept in repair to enable the Grantor, his heirs and assigns to pass over the premises with teams.

And Grantee is further granted EASEMENT for Sewer and Water pipes and wires, Telephone and Power wires, over or under the South eighty (80) feet of the Easterly ten and one-half (10 1/2) feet of said Lot two (2) Block forty (40) Town of Anchorage, as a perpetual easement, with liberty to make necessary repairs; it being understood that the same privilege is enjoyed by others.

It is mutually agreed between said Grantor and said Grantee that the East face of the East wall of the Empress Theatre Building now located on Lot two (2) Block forty (40) Town of Anchorage, shall be and is considered the dividing line between the property of said Grantor and Grantee, their heirs, successors and assigns.

And the said Grantee hereby grants unto said Grantor, his heirs, successors and assigns, the right to use the east wall of said Empress Theatre Building, as now in use by said Grantor.

Said Grantor and said Grantee each hereby acknowledge the receipt of one Dollar and other valuable considerations to him in hand paid by the other, as a consideration of the within agreement.

IN WITNESS WHEREOF, the said parties hereto have hereunto set their hands and seals, the 12th day of July, A. D., 1923.

\_\_\_\_\_  
Homer T. Fowler Grantor  
\_\_\_\_\_  
Austin E. Lathrop Grantee

United States of America, )  
Territory of Alaska. ) ss.

THIS IS TO CERTIFY That on this 12th day of July, 1923, before me, a Notary Public in and for Alaska, duly commissioned, and sworn, personally appeared Homer T. Fowler and Austin E. Lathrop to me known to be the individuals described in and who executed the foregoing instrument, and acknowledged to me that they signed and sealed the same as their free and voluntary act and deed, for the uses and purposes therein mentioned.

WITNESS my hand and official seal, the day and year first in this Certificate written.

(Notary Seal)

H. L. De Graff  
Notary Public for Alaska.  
My Commission expires Jan. 25, 1924.

The foregoing instrument was filed for record July 12, 1923, at 4:20 o'clock P. M., at the request of H. L. De Graff.

W. H. Rogers  
District Recorder



Bk 10  
Pg 83

*deplumb*

(#5)

**WARRANT**

WHEREAS, on the sixth day of December, 1911, a certain Warranty Deed was executed by Homer T. Fowler, of Everett, Washington, Grantor, to Austin E. Lathrop, of Anchorage, Alaska, Grantee, covering the following described lot or parcel of ground:

West thirty-nine and one-half (39½) feet of Lot two (2) Block forty (40) except a strip of five (5) feet wide, paralleling along Fourth Street, which is reserved for the widening of Fourth Street in the Townships of Anchorage, Alaska;

AND WHEREAS, at the time of execution of said Warranty Deed, certain verbal agreements were made by and between Grantor and Grantee, which it is now their intent to put into writing, for entry upon the records of said Precinct and Recording District, Territory of Alaska,

NOW THEREFORE, the said Homer T. Fowler, Grantor, hereby grants unto the said Austin E. Lathrop, Grantee, the following EASEMENT, to-wit:

From the Southwest corner of lot two (2) Block forty (40) thirty-nine and one-half (39½) feet East to the place of beginning; thence North thirty (30) feet along the line of property deeded by this Grantor to said Grantee; thence East ten (10) feet; thence South thirty (30) feet; thence West ten (10) feet to the place of beginning;

FOR USE of said Grantee, his heirs and assigns forever, for



a perpetual underground power and lighting plant, and for a four foot stairway along the wall as entrance thereto, said power and lighting plant to be installed a sufficient depth, and roof thereof kept in repair to enable the grantor, his heirs and assigns to pass over the premises with teams.

And Grantee is further granted EASEMENT for Sewer and Water pipes and wires, Telephone and Power wires, over or under the South eighty (80) feet of the Easement ten and one-half (10 1/2) feet of said lot two (2) Block forty (40) Town of Anchorage, as a perpetual easement, with right to make necessary repairs; it being understood that the same privilege is enjoyed by others.

It is mutually agreed between said Grantor and said Grantee that the East face of the East wall of the Express Theatre Building now located on lot two (2) Block forty (40) Town of Anchorage, shall be and is considered the dividing line between the property of said Grantor and Grantee, their heirs, successors and assigns.

And the said Grantee hereby grants unto said Grantor, his heirs, successors and assigns, the right to use the east wall of said Express Theatre Building, as now in use by said Grantor.

Said Grantor and said Grantee does each hereby acknowledge the receipt of one dollar and other valuable considerations to him in hand paid by the other, as a consideration of the within agreement.

IN WITNESS WHEREOF, the said parties hereto have hereunto set their hands and seals, the 15th day of July, A. D., 1925.

\_\_\_\_\_  
Homer T. Fowler Grantor  
\_\_\_\_\_  
Austin E. Lathrop Grantee

United States of America, )  
Territory of Alaska. ) ss.

THIS IS TO CERTIFY That on this 15th day of July, 1925, before me, a Notary Public in and for Alaska, duly commissioned and sworn, personally appeared Homer T. Fowler and Austin E. Lathrop to be known to be the individuals described in and who executed the foregoing instrument, and acknowledged to me that they signed and assented the same as their free and voluntary act and deed, for the uses and purposes therein mentioned.

WITNESS my hand and official seal, the day and year first in this Certificate written.

(Notary seal) R. L. De Graff  
Notary Public for Alaska.  
My Commission expires Jan. 22, 1926.

The foregoing instrument was filed for record July 15, 1925, at 4:30 o'clock P. M., at the request of R. L. De Graff.

\_\_\_\_\_  
District Recorder



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DEED

THIS INSTRUMENT made and entered into this 22nd day of July, 1944, by and between AUSTIN E. LATHROP, of Fairbanks, Alaska, hereinafter called the Grantor, and The Lathrop Co., an Alaska corporation with its principal place of business at Anchorage, Alaska, hereinafter called the Grantee, WITNESSETH:

That the said Grantor for and in consideration of the sum of one dollar (\$1.00) and other good and valuable considerations to him, in hand paid by the said Grantee, receipt whereof is hereby acknowledged, does hereby remise, release, and forever quitclaim unto the said Grantee, its successors and assigns forever, the following described real estate situated in the town of Anchorage, Third Judicial Division of the Territory of Alaska, to-wit:

The following Easement, to-wit: From the southwest corner of Lot Two (2) Block Forty (40) Anchorage, Alaska, thirty-nine and one-half feet (39½) East to the place of beginning; Running North thirty (30) feet along the line of West thirty-nine and one-half feet (39½) of said Lot Two (2), thence by Homer T. Fowler to this Grantor; thence East ten (10) feet; thence south thirty (30) feet; thence West (10) feet to the place of beginning; For use of said Grantee, its successors, and assigns forever, for a perpetual underground power and lighting plant, and for a four foot stairway along the wall as extreme thereto. And Grantee is further granted Easement for sewer and water pipes and wires, telephone and power wires, over or under the South eighty (80) feet of the Easterly ten and one-half (10½) feet of said Lot Two (2) Block Forty (40) Town of Anchorage, as a perpetual easement, with liberty to make necessary repairs.

Being the same property and easements, conveyed to this Grantee by said Homer T. Fowler by deed, dated July 12, 1923, recorded July 13, 1923 in the office of the U.S. Commissioner and ex officio Recorder for the Anchorage Precinct, Third Judicial Division of the Territory of Alaska, at Anchorage, Alaska, in book 10 of city of records at page 83.

TO HAVE AND TO HOLD the same unto the said Grantee, its successors and assigns forever.

Witnesses:

/s/ Austin E. Lathrop (Seal)  
AUSTIN E. LATHROP

Gladys Sams /s/  
Edward F. Medley /s/

UNITED STATES OF AMERICA }  
TERRITORY OF ALASKA } SS.

THIS IS TO CERTIFY, that on this 22nd day of July, 1944, before me, the undersigned, a Notary Public in and for the Territory of Alaska, duly commissioned and sworn, personally appeared AUSTIN E. LATHROP, to me known to be the individual described in, and who executed the foregoing instrument, and acknowledged to me that he signed and sealed the same as his free and voluntary act and deed for the uses and purposes therein mentioned.

IN WITNESS WHEREOF I have hereunto set my hand and affixed my official seal on the day and year in this certificate first above written.

(SEAL)

/s/ Gladys Sams  
Notary Public for Alaska. My  
commission expires May 5, 1948.

The foregoing instrument was filed for record at 1:50 o'clock P.M. July 28, 1944 at the request of Lathrop Company.

*[Signature]*  
U.S. Commissioner

# AIA® Document A141™ – 2004

## Standard Form of Agreement Between Owner and Design-Builder

**AGREEMENT** made as of the 28<sup>th</sup> day of November in the year 2013  
(In words, indicate day, month and year.)

**BETWEEN** the Owner:  
(Name, legal status, address and other information)

716 WEST FORTH AVENUE, LLC  
425 G Street, Suite 210  
Anchorage, AK 99501

and the Design-Builder:  
(Name, legal status, address and other information)

Criterion General, INC.  
2820 Commercial Drive  
Anchorage, Alaska 99501

for the following Project:  
(Name, location and detailed description)

LIO Building Remodel  
716 West 4th Avenue  
Anchorage, AK 99501

The Owner and Design-Builder agree as follows.

### ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Consultation with an attorney is also encouraged with respect to professional licensing requirements in the jurisdiction where the Project is located.

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## TABLE OF ARTICLES

- 1 THE DESIGN-BUILD DOCUMENTS
- 2 WORK OF THIS AGREEMENT
- 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION
- 4 CONTRACT SUM
- 5 PAYMENTS
- 6 DISPUTE RESOLUTION
- 7 MISCELLANEOUS PROVISIONS
- 8 ENUMERATION OF THE DESIGN-BUILD DOCUMENTS

## TABLE OF EXHIBITS

- A TERMS AND CONDITIONS
- B DETERMINATION OF THE COST OF THE WORK
- C INSURANCE AND BONDS

### ARTICLE 1 THE DESIGN-BUILD DOCUMENTS

§ 1.1 The Design-Build Documents form the Design-Build Contract. The Design-Build Documents consist of this Agreement between Owner and Design-Builder (hereinafter, the "Agreement") and its attached Exhibits; Supplementary and other Conditions; Addenda issued prior to execution of the Agreement; the Project Criteria, including changes to the Project Criteria proposed by the Design-Builder and accepted by the Owner, if any; the Design-Builder's Proposal and written modifications to the Proposal accepted by the Owner, if any; other documents listed in this Agreement; and Modifications issued after execution of this Agreement. The Design-Build Documents shall not be construed to create a contractual relationship of any kind (1) between the Architect and Owner, (2) between the Owner and a Contractor or Subcontractor, or (3) between any persons or entities other than the Owner and Design-Builder, including but not limited to any consultant retained by the Owner to prepare or review the Project Criteria. An enumeration of the Design-Build Documents, other than Modifications, appears in Article 8.

§ 1.2 The Design-Build Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral.

§ 1.3 The Design-Build Contract may be amended or modified only by a Modification. A Modification is (1) a written amendment to the Design-Build Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Owner.

### ARTICLE 2 THE WORK OF THE DESIGN-BUILD CONTRACT

§ 2.1 The Design-Builder shall fully execute the Work described in the Design-Build Documents, except to the extent specifically indicated in the Design-Build Documents to be the responsibility of others.

### ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 3.1 The date of commencement of the Work shall be the date of this Agreement unless a different date is stated below or provision is made for the date to be fixed in a notice issued by the Owner.

*(Insert the date of commencement if it differs from the date of this Agreement or, if applicable, state that the date will be fixed in a notice to proceed.)*

**CLOSE OF FINANCIAL WITH WRITTEN NTP.**

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If, prior to the commencement of Work, the Owner requires time to file mortgages, documents related to mechanic's liens and other security interests, the Owner's time requirement shall be as follows:  
(Insert Owner's time requirements.)

N/A

§ 3.2 The Contract Time shall be measured from the date of commencement, subject to adjustments of this Contract Time as provided in the Design-Build Documents.  
(Insert provisions, if any, for liquidated damages relating to failure to complete on time or for bonus payments for early completion of the Work.)

§ 3.3 The Design-Builder shall achieve Substantial Completion of the Work not later than days from the date of commencement, or as follows:  
(Insert number of calendar days. Alternatively, a calendar date may be used when coordinated with the date of commencement. Unless stated elsewhere in the Design-Build Documents, insert any requirements for earlier Substantial Completion of certain portions of the Work.)

December 17, 2014

Portion of Work  
All

Substantial Completion Date  
December 17, 2014

#### ARTICLE 4 CONTRACT SUM

§ 4.1 The Owner shall pay the Design-Builder the Contract Sum in current funds for the Design-Builder's performance of the Design-Build Contract. The Contract Sum shall be one of the following:  
(Check the appropriate box.)

- ☒ Stipulated Sum in accordance with Section 4.2 below;
- ☐ Cost of the Work Plus Design-Builder's Fee in accordance with Section 4.3 below;
- ☐ Cost of the Work Plus Design-Builder's Fee with a Guaranteed Maximum Price in accordance with Section 4.4 below.

(Based on the selection above, complete either Section 4.2, 4.3 or 4.4 below.)

#### § 4.2 STIPULATED SUM

§ 4.2.1 The Stipulated Sum shall be Thirty Million One Hundred and Sixty-Nine thousand and Fifty-Five Dollars and no cents (\$30,169,055 ), subject to additions and deductions as provided in the Design-Build Documents.

§ 4.2.2 The Stipulated Sum is based upon the following alternates, if any, which are described in the Design-Build Documents and are hereby accepted by the Owner:

N/A

§ 4.2.3 Unit prices, if any, are as follows:

Description	Units	Price (\$0.00)
N/A		

§ 4.2.4 Allowances, if any, are as follows:  
(Identify and state the amounts of any allowances, and state whether they include labor, materials, or both)

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Allowance	Amount (\$0.00)	Included Items
N/A		

§ 4.2.5 Assumptions or qualifications, if any, on which the Stipulated Sum is based, are as follows:

Per Pricing Proposal dated August 27, 2013

#### § 4.3 COST OF THE WORK PLUS DESIGN-BUILDER'S FEE

§ 4.3.1 The Cost of the Work is as defined in Exhibit B.

§ 4.3.2 The Design-Builder's Fee is:

*(State a lump sum, percentage of Cost of the Work or other provision for determining the Design-Builder's Fee and the method of adjustment to the Fee for changes in the Work.)*

N/A

#### § 4.4 COST OF THE WORK PLUS DESIGN-BUILDER'S FEE WITH A GUARANTEED MAXIMUM PRICE

§ 4.4.1 The Cost of the Work is as defined in Exhibit B, plus the Design-Builder's Fee.

§ 4.4.2 The Design-Builder's Fee is:

*(State a lump sum, percentage of Cost of the Work or other provision for determining the Design-Builder's Fee and the method of adjustment to the Fee for changes in the Work.)*

N/A

#### § 4.4.3 GUARANTEED MAXIMUM PRICE

§ 4.4.3.1 The sum of the Cost of the Work and the Design-Builder's Fee is guaranteed by the Design-Builder not to exceed (\$ ), subject to additions and deductions by changes in the Work as provided in the Design-Build Documents. Such maximum sum is referred to in the Design-Build Documents as the Guaranteed Maximum Price. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Design-Builder without reimbursement by the Owner.

*(Insert specific provisions if the Design-Builder is to participate in any savings.)*

N/A

§ 4.4.3.2 The Guaranteed Maximum Price is based on the following alternates, if any, which are described in the Design-Build Documents and are hereby accepted by the Owner:

N/A

§ 4.4.3.3 Unit Prices, if any, are as follows:

Description	Units	Price (\$0.00)
N/A		

§ 4.4.3.4 Allowances, if any, are as follows:

*(Identify and state the amounts of any allowances, and state whether they include labor, materials, or both.)*

Allowance	Amount (\$0.00)	Included Items
N/A		

§ 4.4.3.5 Assumptions, if any, on which the Guaranteed Maximum Price is based, are as follows:

*(Identify the assumptions on which the Guaranteed Maximum Price is based.)*

N/A

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#### § 4.5 CHANGES IN THE WORK

§ 4.5.1 Adjustments of the Contract Sum on account of changes in the Work may be determined by any of the methods listed in Article A.7 of Exhibit A, Terms and Conditions.

§ 4.5.2 Where the Contract Sum is the Cost of the Work, with or without a Guaranteed Maximum Price, and no specific provision is made in Sections 4.3.2 or 4.4.2 for adjustment of the Design-Builder's Fee in the case of Changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment will cause substantial inequity to the Owner or Design-Builder, the Design-Builder's Fee shall be equitably adjusted on the basis of the Fee established for the original Work, and the Contract Sum shall be adjusted accordingly.

#### ARTICLE 5 PAYMENTS

##### § 5.1 PROGRESS PAYMENTS

§ 5.1.1 Based upon Applications for Payment submitted to the Owner by the Design-Builder, the Owner shall make progress payments on account of the Contract Sum to the Design-Builder as provided below and elsewhere in the Design-Build Documents.

§ 5.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

N/A

§ 5.1.3 Provided that an Application for Payment is received not later than the 1st day of month, the Owner shall make payment to the Design-Builder not later than the 30 day of the same month. If an Application for Payment is received by the Owner after the application date fixed above, payment shall be made by the Owner not later than Thirty ( 30 ) days after the Owner receives the Application for Payment.

§ 5.1.4 With each Application for Payment where the Contract Sum is based upon the Cost of the Work, or the Cost of the Work with a Guaranteed Maximum Price, the Design-Builder shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner to demonstrate that cash disbursements already made by the Design-Builder on account of the Cost of the Work equal or exceed (1) progress payments already received by the Design-Builder, less (2) that portion of those payments attributable to the Design-Builder's Fee; plus (3) payrolls for the period covered by the present Application for Payment.

§ 5.1.5 With each Application for Payment where the Contract Sum is based upon a Stipulated Sum or Cost of the Work with a Guaranteed Maximum Price, the Design-Builder shall submit the most recent schedule of values in accordance with the Design-Build Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. Compensation for design services shall be shown separately. Where the Contract Sum is based on the Cost of the Work with a Guaranteed Maximum Price, the Design-Builder's Fee shall be shown separately. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Owner may require. This schedule of values, unless objected to by the Owner, shall be used as a basis for reviewing the Design-Builder's Applications for Payment.

§ 5.1.6 In taking action on the Design-Builder's Applications for Payment, the Owner shall be entitled to rely on the accuracy and completeness of the information furnished by the Design-Builder and shall not be deemed to have made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Sections 5.1.4 or 5.1.5, or other supporting data; to have made exhaustive or continuous on-site inspections; or to have made examinations to ascertain how or for what purposes the Design-Builder has used amounts previously paid on account of the Agreement. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's accountants acting in the sole interest of the Owner.

§ 5.1.7 Except with the Owner's prior approval, the Design-Builder shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

##### § 5.2 PROGRESS PAYMENTS - STIPULATED SUM

§ 5.2.1 Applications for Payment where the Contract Sum is based upon a Stipulated Sum shall indicate the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

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§ 5.2.2 Subject to other provisions of the Design-Build Documents, the amount of each progress payment shall be computed as follows:

- .1 Take that portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Contract Sum allocated to that portion of the Work in the schedule of values, less retainage of Zero percent ( 0 %) on the Work, other than services provided by design professionals and other consultants retained directly by the Design-Builder. Pending final determination of cost to the Owner of Changes in the Work, amounts not in dispute shall be included as provided in Section A.7.3.8 of Exhibit A, Terms and Conditions;
- .2 Add that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing), less retainage of Zero percent ( 0 %);
- .3 Subtract the aggregate of previous payments made by the Owner; and
- .4 Subtract amounts, if any, for which the Owner has withheld payment from or nullified an Application for Payment as provided in Section A.9.5 of Exhibit A, Terms and Conditions.

§ 5.2.3 The progress payment amount determined in accordance with Section 5.2.2 shall be further modified under the following circumstances:

- .1 add, upon Substantial Completion of the Work, a sum sufficient to increase the total payments to the full amount of the Contract Sum, less such amounts as the Owner shall determine for incomplete Work, retainage applicable to such work and unsettled claims; and  
*(Section A.9.8.6 of Exhibit A, Terms and Conditions requires release of applicable retainage upon Substantial Completion of Work with consent of surety, if any.)*
- .2 add, if final completion of the Work is thereafter materially delayed through no fault of the Design-Builder, any additional amounts payable in accordance with Section A.9.10.3 of Exhibit A, Terms and Conditions.

§ 5.2.4 Reduction or limitation of retainage, if any, under Section 5.2.2 shall be as follows:

*(If it is intended, prior to Substantial Completion of the entire Work, to reduce or limit the retainage resulting from the percentages inserted in Sections 5.2.2.1 and 5.2.2.2 above, and this is not explained elsewhere in the Design-Build Documents, insert here provisions for such reduction or limitation.)*

N/A

### § 5.3 PROGRESS PAYMENTS - COST OF THE WORK PLUS A FEE

§ 5.3.1 Where the Contract Sum is based upon the Cost of the Work plus a fee without a Guaranteed Maximum Price, Applications for Payment shall show the Cost of the Work actually incurred by the Design-Builder through the end of the period covered by the Application for Payment and for which Design-Builder has made or intends to make actual payment prior to the next Application for Payment.

§ 5.3.2 Subject to other provisions of the Design-Build Documents, the amount of each progress payment shall be computed as follows:

- .1 Take the Cost of the Work as described in Exhibit B;
- .2 Add the Design-Builder's Fee, less retainage of percent ( %). The Design-Builder's Fee shall be computed upon the Cost of the Work described in the preceding Section 5.3.2.1 at the rate stated in Section 4.3.2; or if the Design-Builder's Fee is stated as a fixed sum in that section, an amount which bears the same ratio to that fixed-sum Fee as the Cost of the Work in the preceding section bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .3 Subtract the aggregate of previous payments made by the Owner;
- .4 Subtract the shortfall, if any, indicated by the Design-Builder in the documentation required by Section 5.1.4 or resulting from errors subsequently discovered by the Owner's accountants in such documentation; and
- .5 Subtract amounts, if any, for which the Owner has withheld or withdrawn a Certificate for Payment as provided in the Section A.9.5 of Exhibit A, Terms and Conditions.

§ 5.3.3 Retainage in addition to the retainage stated at Section 5.3.2.2, if any, shall be as follows:

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§ 5.3.4 Except with the Owner's prior approval, payments for the Work, other than for services provided by design professionals and other consultants retained directly by the Design-Builder, shall be subject to retainage of not less than percent ( %). The Owner and Design-Builder shall agree on a mutually acceptable procedure for review and approval of payments and retention for Contractors.

#### § 5.4 PROGRESS PAYMENTS - COST OF THE WORK PLUS A FEE WITH A GUARANTEED MAXIMUM PRICE

§ 5.4.1 Applications for Payment where the Contract Sum is based upon the Cost of the Work Plus a Fee with a Guaranteed Maximum Price shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed; or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Design-Builder on account of that portion of the Work for which the Design-Builder has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

§ 5.4.2 Subject to other provisions of the Design-Build Documents, the amount of each progress payment shall be computed as follows:

- .1 Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section A.7.3.8 of Exhibit A, Terms and Conditions;
- .2 Add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work, or if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
- .3 Add the Design-Builder's Fee, less retainage of percent ( %). The Design-Builder's Fee shall be computed upon the Cost of the Work described in the two preceding sections at the rate stated in Section 4.4.2 or, if the Design-Builder's Fee is stated as a fixed sum in that section, shall be an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work in the two preceding sections bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .4 Subtract the aggregate of previous payments made by the Owner;
- .5 Subtract the shortfall, if any, indicated by the Design-Builder in the documentation required by Section 5.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's accountants in such documentation; and
- .6 Subtract amounts, if any, for which the Owner has withheld or nullified a Certificate for Payment as provided in Section A.9.5 of Exhibit A, Terms and Conditions.

§ 5.4.3 Except with the Owner's prior approval, payments for the Work, other than for services provided by design professionals and other consultants retained directly by the Design-Builder, shall be subject to retainage of not less than percent ( %). The Owner and Design-Builder shall agree on a mutually acceptable procedure for review and approval of payments and retention for Contractors.

#### § 5.5 FINAL PAYMENT

§ 5.5.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Design-Builder no later than 30 days after the Design-Builder has fully performed the Design-Build Contract, including the requirements in Section A.9.10 of Exhibit A, Terms and Conditions, except for the Design-Builder's responsibility to correct non-conforming Work discovered after final payment or to satisfy other requirements, if any, which extend beyond final payment.

### ARTICLE 6 DISPUTE RESOLUTION

**Disputes between Design Builder and Owner.** In the event of any dispute arising between the Design/Builder and the Owner regarding any part of this Agreement or the Parties' obligations or performance hereunder, either Party may institute the

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dispute resolution procedures set forth herein. The Parties shall continue performance of their respective obligations hereunder notwithstanding the existence of a dispute.

**6.1 Initial Meeting to Resolve Disputes.** Any party may from time to time call a special meeting for the resolution of disputes that would have a material impact on the cost or progress of the Project. Such meeting shall be held at the Owner's offices in Anchorage, Alaska within three (3) working days of written request therefore, which request shall specify in reasonable detail the nature of the dispute. The Design/Builder's Authorized Representative, Owner's Authorized Representative, and any other person who may be affected in any material respect by the resolution of such dispute shall attend the meeting. Such Authorized Representative shall have authority to settle the dispute and shall attempt in good faith to resolve the dispute.

**6.2 Mediation.** If the dispute has not been resolved within five (5) working days after the special meeting has been held, a mediator, mutually acceptable to the Parties and experienced in design and construction matters shall be appointed. The Parties shall share the cost of the mediator. If the parties cannot agree on the selection of a mediator within ten days of the decision to proceed to mediation, then either party may request that the American Arbitration Association will select a mediator to serve as a mediator for the Parties. The mediator shall be a lawyer competent in the subject matter of the dispute. The mediator shall be given any written statements of the Parties and may review the Property and any relevant documents. The mediator shall call a meeting of the Parties within ten (10) working days after his/her appointment, which meeting shall be attended by the Design Builder's Authorized Representative, the Owner's Authorized Representative and any other person who may be affected in any material respect by the resolution of such dispute. Such Authorized Representatives shall have authority to settle the dispute and shall attempt in good faith to resolve the dispute. During such ten (10) day period, the mediator may meet with the Parties separately.

**6.2.1** No minutes shall be kept with respect to any mediation proceedings, and the comments and/or findings of the mediator, together with any written statements prepared, shall be non-binding, confidential and without prejudice to the rights and remedies of any Party. The entire mediation process shall be completed within twenty (20) working days of the date upon which the initial special meeting is held, unless the Parties agree otherwise in writing. If the dispute is settled through the mediation process, the decision will be implemented by written agreement signed by the Parties.

**6.3 Court.** In the event mediation fails, then any party may seek to resolve the dispute in a court of competent jurisdiction located in Anchorage, Alaska. The prevailing party in such action shall be entitled to payment of their reasonable attorney fees and court costs incurred in the court action itself and in any action

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necessary to enforce the judgment, as well as fees incurred prior to and after the action to the extent reasonably necessary to secure relief.

**6.4 Other contracts.** All contracts that the Design Builder or Owner enter into with third parties that implement design or construction of the Project shall be required to include as a term a dispute resolution procedure in substantial compliance with the terms of Article 6 of this Agreement.

**6.5 Authorized Representative/Notice.** Each Party agrees, within ten days of the delivery of a mutual executed copy of this Agreement, to notify the other party who its Authorized Representative is, including mailing address, phone numbers, fax numbers, and e-mail address.

6.5.1 Notice. All notices sent pursuant to this Agreement shall be in writing and sent by regular, registered or certified mail, postage prepaid, or by hand-delivery to the parties as follows below:

**To Bob O'Neill, PE:**

Pfeffer Development, LLC  
425 G Street, Suite 210  
Anchorage, AK 99501

With a copy to:

Ashburn and Mason

**To Design/Builder:**

Criterion General, Inc  
2820 Commercial Drive  
Anchorage, Alaska 99501  
ATTN: Dave DeRoberts

Either party may change these persons or addresses by giving notice as provided above. Notice shall be considered given and received on the latest original delivery or attempted delivery date as indicated on the postage or service receipt(s) of all persons and addresses to which notice is to be given. In the event of notice by regular mail, notice shall be deemed received on the fourth business day after posting.

*(Paragraphs deleted)*

**§ 6.2** If the parties do not resolve their dispute through mediation pursuant to Section A.4.3 of Exhibit A, Terms and Conditions, the method of binding dispute resolution shall be the following:

*(If the parties do not select a method of binding dispute resolution, then the method of binding dispute resolution shall be by litigation in a court of competent jurisdiction.)*

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(Check one.)

- ☐ Arbitration pursuant to Section A.4.4 of Exhibit A, Terms and Conditions
- ☐ Litigation in a court of competent jurisdiction
- ☐ Other (Specify)

N/A

### § 6.3 ARBITRATION

§ 6.3.1 If Arbitration is selected by the parties as the method of binding dispute resolution, then any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to arbitration as provided in Section A.4.4 of Exhibit A, Terms and Conditions.

### ARTICLE 7 MISCELLANEOUS PROVISIONS

§ 7.1 The Architect, other design professionals and consultants engaged by the Design-Builder shall be persons or entities duly licensed to practice their professions in the jurisdiction where the Project is located and are listed as follows:

(Insert name, address, license number, relationship to Design-Builder and other information.)

Name and Address	License Number	Relationship to Design-Builder	Other Information
Kpb Architects			

§ 7.2 Consultants, if any, engaged directly by the Owner, their professions and responsibilities are listed below:  
(Insert name, address, license number, if applicable, and responsibilities to Owner and other information.)

Name and Address	License Number	Responsibilities to Owner	Other Information
------------------	----------------	---------------------------	-------------------

§ 7.3 Separate contractors, if any, engaged directly by the Owner, their trades and responsibilities are listed below:  
(Insert name, address, license number, if applicable, responsibilities to Owner and other information.)

Name and Address	License Number	Responsibilities to Owner	Other Information
------------------	----------------	---------------------------	-------------------

N/A

§ 7.4 The Owner's Designated Representative is:  
(Insert name, address and other information.)

Bob O'Neill, PE  
425 G Street, suite 210  
Anchorage, AK 99501  
907-646-4644

§ 7.4.1 The Owner's Designated Representative identified above shall be authorized to act on the Owner's behalf with respect to the Project.

§ 7.5 The Design-Builder's Designated Representative is:  
(Insert name, address and other information.)

Dave DeRoberts  
2820 Commercial Drive  
Anchorage, Alaska 99501  
907-277-3200

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§ 7.5.1 The Design-Builder's Designated Representative identified above shall be authorized to act on the Design-Builder's behalf with respect to the Project.

§ 7.6 Neither the Owner's nor the Design-Builder's Designated Representative shall be changed without ten days written notice to the other party.

§ 7.7 Other provisions:

N/A

§ 7.7.1 Where reference is made in this Agreement to a provision of another Design-Build Document, the reference refers to that provision as amended or supplemented by other provisions of the Design-Build Documents.

§ 7.7.2 Payments due and unpaid under the Design-Build Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

*(Insert rate of interest agreed upon, if any.)*

Prevaling Rate percent ( %)

*(Usury laws and requirements under the Federal Truth in Lending Act, similar state and local consumer credit laws and other regulations at the Owner's and Design-Builder's principal places of business, the location of the Project and elsewhere may affect the validity of this provision. Legal advice should be obtained with respect to deletions or modifications, and also regarding requirements such as written disclosures or waivers.)*

#### ARTICLE 8 ENUMERATION OF THE DESIGN-BUILD DOCUMENTS

§ 8.1 The Design-Build Documents, except for Modifications issued after execution of this Agreement, are enumerated as follows:

§ 8.1.1 The Agreement is this executed edition of the Standard Form of Agreement Between Owner and Design-Builder, AIA Document A141-2004.

§ 8.1.2 The Supplementary and other Conditions of the Agreement, if any, are as follows:  
*(Either list applicable documents below or refer to an exhibit attached to this Agreement.)*

kpb drawings and narratives dated 7-1-2013

Document	Title	Pages
----------	-------	-------

§ 8.1.3 The Project Criteria, including changes to the Project Criteria proposed by the Design-Builder, if any, and accepted by the Owner, consist of the following:

*(Either list applicable documents and their dates below or refer to an exhibit attached to this Agreement.)*

N/A

Title	Date
-------	------

§ 8.1.4 The Design-Builder's Proposal, dated August 27, 2013 , consists of the following:  
*(Either list applicable documents below or refer to an exhibit attached to this Agreement.)*

Attached

§ 8.1.5 Amendments to the Design-Builder's Proposal, if any, are as follows:  
*(Either list applicable documents below or refer to an exhibit attached to this Agreement.)*

N/A

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§ 8.1.6 The Addenda, if any, are as follows:

*(Either list applicable documents below or refer to an exhibit attached to this Agreement.)*

N/A

Number

Date

Pages

§ 8.1.7 Exhibit A, Terms and Conditions.

*(If the parties agree to substitute terms and conditions other than those contained in AIA Document A141-2004, Exhibit A, Terms and Conditions, then identify such terms and conditions and attach to this Agreement as Exhibit A.)*

Exhibit A

§ 8.1.8 Exhibit B, Determination of the Cost of the Work, if applicable.

*(If the parties agree to substitute a method to determine the cost of the Work other than that contained in AIA Document A141-2004, Exhibit B, Determination of the Cost of the Work, then identify such other method to determine the cost of the Work and attach to this Agreement as Exhibit B. If the Contract Sum is a Stipulated Sum, then Exhibit B is not applicable.) N/A*

§ 8.1.9 Exhibit C, Insurance and Bonds, if applicable.

*(Complete AIA Document A141-2004, Exhibit C, Insurance and Bonds or indicate "not applicable.")*

Exhibit C

§ 8.1.10 Other documents, if any, forming part of the Design-Build Documents are as follows:

*(Either list applicable documents below or refer to an exhibit attached to this Agreement.)*

N/A

This Agreement entered into as of the day and year first written above



OWNER (Signature)

Mark Pfeffer, Managing Member

*(Printed name and title)*



DESIGN-BUILDER (Signature)

Dave DeRoberts, President

*(Printed name and title)*

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# **AIA**® Document A141™ – 2004 Exhibit A

## **Terms and Conditions**

for the following PROJECT:

*(Name and location or address)*

LIO Building Remodel  
716 West 4th Avenue  
Anchorage, AK 99501

**THE OWNER:**

*(Name, legal status and address)*

716 WEST FOURTH AVENUE, LLC  
425 G Street, Suite 210  
Anchorage, AK 99501

**THE DESIGN-BUILDER:**

*(Name, legal status and address)*

Criterion General, INC.  
2820 Commercial Drive  
Anchorage, Alaska 99501

### **ADDITIONS AND DELETIONS:**

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Consultation with an attorney is also encouraged with respect to professional licensing requirements in the jurisdiction where the Project is located.

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## **ARTICLE A.1 GENERAL PROVISIONS**

### **§ A.1.1 BASIC DEFINITIONS**

#### **§ A.1.1.1 THE DESIGN-BUILD DOCUMENTS**

The Design-Build Documents are identified in Section 1.1 of the Agreement.

#### **§ A.1.1.2 PROJECT CRITERIA**

The Project Criteria are identified in Section 8.1.3 of the Agreement and may describe the character, scope, relationships, forms, size and appearance of the Project, materials and systems and, in general, their quality levels, performance standards, requirements or criteria, and major equipment layouts.

#### **§ A.1.1.3 ARCHITECT**

The Architect is the person lawfully licensed to practice architecture or an entity lawfully practicing architecture identified as such in the Agreement and having a direct contract with the Design-Builder to perform design services for all or a portion of the Work, and is referred to throughout the Design-Build Documents as if singular in number. The term "Architect" means the Architect or the Architect's authorized representative.

#### **§ A.1.1.4 CONTRACTOR**

A Contractor is a person or entity, other than the Architect, that has a direct contract with the Design-Builder to perform all or a portion of the construction required in connection with the Work. The term "Contractor" is referred to throughout the Design-Build Documents as if singular in number and means a Contractor or an authorized representative of the Contractor. The term "Contractor" does not include a separate contractor, as defined in Section A.6.1.2, or subcontractors of a separate contractor.

#### **§ A.1.1.5 SUBCONTRACTOR**

A Subcontractor is a person or entity who has a direct contract with a Contractor to perform a portion of the construction required in connection with the Work at the site. The term "Subcontractor" is referred to throughout the Design-Build Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor.

#### **§ A.1.1.6 THE WORK**

The term "Work" means the design, construction and services required by the Design-Build Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Design-Builder to fulfill the Design-Builder's obligations. The Work may constitute the whole or a part of the Project.

#### **§ A.1.1.7 THE PROJECT**

The Project is the total design and construction of which the Work performed under the Design-Build Documents may be the whole or a part, and which may include design and construction by the Owner or by separate contractors.

#### **§ A.1.1.8 NEUTRAL**

The Neutral is the individual appointed by the parties to decide Claims and disputes pursuant to Section A.4.2.1.

### **§ A.1.2 COMPLIANCE WITH APPLICABLE LAWS**

**§ A.1.2.1** If the Design-Builder believes that implementation of any instruction received from the Owner would cause a violation of any applicable law, statute, ordinance, building code, rule or regulation, the Design-Builder shall notify the Owner in writing. Neither the Design-Builder nor any Contractor or Architect shall be obligated to perform any act which they believe will violate any applicable law, ordinance, rule or regulation.

**§ A.1.2.2** The Design-Builder shall be entitled to rely on the completeness and accuracy of the information contained in the Project Criteria, but not that such information complies with applicable laws, regulations and codes, which shall be the obligation of the Design-Builder to determine. In the event that a specific requirement of the Project Criteria conflicts with applicable laws, regulations and codes, the Design-Builder shall furnish Work which complies with such laws, regulations and codes. In such case, the Owner shall issue a Change Order to the Design-Builder unless the Design-Builder recognized such non-compliance prior to execution of this Agreement and failed to notify the Owner.

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**§ A.1.3 CAPITALIZATION**

§ A.1.3.1 Terms capitalized in these Terms and Conditions include those which are (1) specifically defined, (2) the titles of numbered articles and identified references to sections in the document, or (3) the titles of other documents published by the American Institute of Architects.

**§ A.1.4 INTERPRETATION**

§ A.1.4.1 In the interest of brevity, the Design-Build Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

§ A.1.4.2 Unless otherwise stated in the Design-Build Documents, words which have well-known technical or construction industry meanings are used in the Design-Build Documents in accordance with such recognized meanings.

**§ A.1.5 EXECUTION OF THE DESIGN-BUILD DOCUMENTS**

§ A.1.5.1 The Design-Build Documents shall be signed by the Owner and Design-Builder.

§ A.1.5.2 Execution of the Design-Build Contract by the Design-Builder is a representation that the Design-Builder has visited the site, become generally familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Design-Build Documents.

**§ A.1.6 OWNERSHIP AND USE OF DOCUMENTS AND ELECTRONIC DATA**

§ A.1.6.1 Drawings, specifications, and other documents including those in electronic form, prepared by the Architect and furnished by the Design-Builder are Instruments of Service. The Design-Builder, Design-Builder's Architect and other providers of professional services individually shall retain all common law, statutory and other reserved rights, including copyright in those Instruments of Services furnished by them. Drawings, specifications, and other documents and materials and electronic data are furnished for use solely with respect to this Project.

§ A.1.6.2 Upon execution of the Design-Build Contract, the Design-Builder grants to the Owner a non-exclusive license to reproduce and use the Instruments of Service solely in connection with the Project, including the Project's further development by the Owner and others retained by the Owner for such purposes, provided that the Owner shall comply with all obligations, including prompt payment of sums when due, under the Design-Build Documents. Subject to the Owner's compliance with such obligations, such license shall extend to those parties retained by the Owner for such purposes, including other design professionals. The Design-Builder shall obtain similar non-exclusive licenses from its design professionals, including the Architect. The Owner shall not otherwise assign or transfer any license herein to another party without prior written agreement of the Design-Builder. Any unauthorized reproduction or use of the Instruments of Service by the Owner or others shall be at the Owner's sole risk and expense without liability to the Design-Builder and its design professionals. Except as provided in Section A.1.6.4, termination of this Agreement prior to completion of the Design-Builder's services to be performed under this Agreement shall terminate this license.

§ A.1.6.3 Prior to any electronic exchange by the parties of the Instruments of Service or any other documents or materials to be provided by one party to the other, the Owner and the Design-Builder shall agree in writing on the specific conditions governing the format thereof, including any special limitations or licenses not otherwise provided in the Design-Build Documents.

§ A.1.6.4 If this Agreement is terminated for any reason other than the default of the Owner, each of the Design-Builder's design professionals, including the Architect, shall be contractually required to convey to the Owner a non-exclusive license to use that design professional's Instruments of Service for the completion, use and maintenance of the Project, conditioned upon the Owner's written notice to that design professional of the Owner's assumption of the Design-Builder's contractual duties and obligations to that design professional and payment to that design professional of all amounts due to that design professional and its consultants. If the Owner does not assume the remaining duties and obligations of the Design-Builder to that design professional under this Agreement, then the Owner shall indemnify and hold harmless that design professional from all claims and any expense, including legal fees, which that design professional shall thereafter incur by reason of the Owner's use of such Instruments of Service. The Design-Builder shall incorporate the requirements of this Section A.1.6.4 in all agreements with its design professionals.

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§ A.1.6.5 Submission or distribution of the Design-Builder's documents to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the rights reserved in Section A.1.6.1.

## ARTICLE A.2 OWNER

### § A.2.1 GENERAL

§ A.2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Design-Build Documents as if singular in number. The term "Owner" means the Owner or the Owner's authorized representative. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all Project matters requiring the Owner's approval or authorization. The Owner shall render decisions in a timely manner and in accordance with the Design-Builder's schedule submitted to the Owner.

§ A.2.1.2 The Owner shall furnish to the Design-Builder within 15 days after receipt of a written request information necessary and relevant for the Design-Builder to evaluate, give notice of or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.

### § A.2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

§ A.2.2.1 Information or services required of the Owner by the Design-Build Documents shall be furnished by the Owner with reasonable promptness. Any other information or services relevant to the Design-Builder's performance of the Work under the Owner's control shall be furnished by the Owner after receipt from the Design-Builder of a written request for such information or services.

§ A.2.2.2 The Owner shall be responsible to provide surveys, if not required by the Design-Build Documents to be provided by the Design-Builder, describing physical characteristics, legal limitations, and utility locations for the site of this Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements, and adjoining property and structures; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restriction, boundaries, and contours of the site; locations, dimensions, and necessary data pertaining to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

§ A.2.2.3 The Owner shall provide, to the extent available to the Owner and if not required by the Design-Build Documents to be provided by the Design-Builder, the results and reports of prior tests, inspections or investigations conducted for the Project involving structural or mechanical systems, chemical, air and water pollution, hazardous materials or environmental and subsurface conditions and information regarding the presence of pollutants at the Project site.

§ A.2.2.4 The Owner may obtain independent review of the Design-Builder's design, construction and other documents by a separate architect, engineer, and contractor or cost estimator under contract to or employed by the Owner. Such independent review shall be undertaken at the Owner's expense in a timely manner and shall not delay the orderly progress of the Work.

§ A.2.2.5 The Owner shall cooperate with the Design-Builder in securing building and other permits, licenses and inspections. The Owner shall not be required to pay the fees for such permits, licenses and inspections unless the cost of such fees is excluded from the responsibility of the Design-Builder under the Design-Build Documents.

§ A.2.2.6 The services, information, surveys and reports required to be provided by the Owner under Section A.2.2, shall be furnished at the Owner's expense, and the Design-Builder shall be entitled to rely upon the accuracy and completeness thereof, except as otherwise specifically provided in the Design-Build Documents or to the extent the Owner advises the Design-Builder to the contrary in writing.

§ A.2.2.7 If the Owner observes or otherwise becomes aware of a fault or defect in the Work or non-conformity with the Design-Build Documents, the Owner shall give prompt written notice thereof to the Design-Builder.

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§ A.2.2.8 The Owner shall, at the request of the Design-Builder, prior to execution of the Design-Build Contract and promptly upon request thereafter, furnish to the Design-Builder reasonable evidence that financial arrangements have been made to fulfill the Owner's obligations under the Design-Build Documents.

§ A.2.2.9 The Owner shall communicate through the Design-Builder with persons or entities employed or retained by the Design-Builder, unless otherwise directed by the Design-Builder.

§ A.2.2.10 The Owner shall furnish the services of geotechnical engineers or other consultants, if not required by the Design-Build Documents to be provided by the Design-Builder, for subsoil, air and water conditions when such services are deemed reasonably necessary by the Design-Builder to properly carry out the design services provided by the Design-Builder and the Design-Builder's Architect. Such services may include, but are not limited to, test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, ground corrosion and resistivity tests, and necessary operations for anticipating subsoil conditions. The services of geotechnical engineer(s) or other consultants shall include preparation and submission of all appropriate reports and professional recommendations.

§ A.2.2.11 The Owner shall promptly obtain easements, zoning variances, and legal authorizations regarding site utilization where essential to the execution of the Owner's program.

#### § A.2.3 OWNER REVIEW AND INSPECTION

§ A.2.3.1 The Owner shall review and approve or take other appropriate action upon the Design-Builder's submittals, including but not limited to design and construction documents, required by the Design-Build Documents, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Design-Build Documents. The Owner's action shall be taken with such reasonable promptness as to cause no delay in the Work or in the activities of the Design-Builder or separate contractors. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details, such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Design-Builder as required by the Design-Build Documents.

§ A.2.3.2 Upon review of the design documents, construction documents, or other submittals required by the Design-Build Documents, the Owner shall take one of the following actions:

- .1 Determine that the documents or submittals are in conformance with the Design-Build Documents and approve them.
- .2 Determine that the documents or submittals are in conformance with the Design-Build Documents but request changes in the documents or submittals which shall be implemented by a Change in the Work.
- .3 Determine that the documents or submittals are not in conformity with the Design-Build Documents and reject them.
- .4 Determine that the documents or submittals are not in conformity with the Design-Build Documents, but accept them by implementing a Change in the Work.
- .5 Determine that the documents or submittals are not in conformity with the Design-Build Documents, but accept them and request changes in the documents or submittals which shall be implemented by a Change in the Work.

§ A.2.3.3 The Design-Builder shall submit to the Owner for the Owner's approval, pursuant to Section A.2.3.1, any proposed change or deviation to previously approved documents or submittals. The Owner shall review each proposed change or deviation to previously approved documents or submittals which the Design-Builder submits to the Owner for the Owner's approval with reasonable promptness in accordance with Section A.2.3.1 and shall make one of the determinations described in Section A.2.3.2.

§ A.2.3.4 Notwithstanding the Owner's responsibility under Section A.2.3.2, the Owner's review and approval of the Design-Builder's documents or submittals shall not relieve the Design-Builder of responsibility for compliance with the Design-Build Documents unless a) the Design-Builder has notified the Owner in writing of the deviation prior to approval by the Owner or, b) the Owner has approved a Change in the Work reflecting any deviations from the requirements of the Design-Build Documents.

§ A.2.3.5 The Owner may visit the site to keep informed about the progress and quality of the portion of the Work completed. However, the Owner shall not be required to make exhaustive or continuous on-site inspections to check

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the quality or quantity of the Work. Visits by the Owner shall not be construed to create an obligation on the part of the Owner to make on-site inspections to check the quantity or quality of the Work. The Owner shall neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Design-Builder's rights and responsibilities under the Design-Build Documents, except as provided in Section A.3.3.7.

§ A.2.3.6 The Owner shall not be responsible for the Design-Builder's failure to perform the Work in accordance with the requirements of the Design-Build Documents. The Owner shall not have control over or charge of and will not be responsible for acts or omissions of the Design-Builder, Architect, Contractors, or their agents or employees, or any other persons or entities performing portions of the Work for the Design-Builder.

§ A.2.3.7 The Owner may reject Work that does not conform to the Design-Build Documents. Whenever the Owner considers it necessary or advisable, the Owner shall have authority to require inspection or testing of the Work in accordance with Section A.13.5.2, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Owner nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Owner to the Design-Builder, the Architect, Contractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ A.2.3.8 The Owner may appoint an on-site project representative to observe the Work and to have such other responsibilities as the Owner and the Design-Builder agree to in writing.

§ A.2.3.9 The Owner shall conduct inspections to determine the date or dates of Substantial Completion and the date of final completion.

#### § A.2.4 OWNER'S RIGHT TO STOP WORK

§ A.2.4.1 If the Design-Builder fails to correct Work which is not in accordance with the requirements of the Design-Build Documents as required by Section A.12.2 or persistently fails to carry out Work in accordance with the Design-Build Documents, the Owner may issue a written order to the Design-Builder to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Design-Builder or any other person or entity, except to the extent required by Section A.6.1.3.

#### § A.2.5 OWNER'S RIGHT TO CARRY OUT THE WORK

§ A.2.5.1 If the Design-Builder defaults or neglects to carry out the Work in accordance with the Design-Build Documents and fails within a seven-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may after such seven-day period give the Design-Builder a second written notice to correct such deficiencies within a three-day period. If the Design-Builder within such three-day period after receipt of such second notice fails to commence and continue to correct any deficiencies, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case, an appropriate Change Order shall be issued deducting from payments then or thereafter due the Design-Builder the reasonable cost of correcting such deficiencies. If payments due the Design-Builder are not sufficient to cover such amounts, the Design-Builder shall pay the difference to the Owner.

### ARTICLE A.3 DESIGN-BUILDER

#### § A.3.1 GENERAL

§ A.3.1.1 The Design-Builder is the person or entity identified as such in the Agreement and is referred to throughout the Design-Build Documents as if singular in number. The Design-Builder may be an architect or other design professional, a construction contractor, a real estate developer or any other person or entity legally permitted to do business as a design-builder in the location where the Project is located. The term "Design-Builder" means the Design-Builder or the Design-Builder's authorized representative. The Design-Builder's representative is authorized to act on the Design-Builder's behalf with respect to the Project.

§ A.3.1.2 The Design-Builder shall perform the Work in accordance with the Design-Build Documents.

#### § A.3.2 DESIGN SERVICES AND RESPONSIBILITIES

§ A.3.2.1 When applicable law requires that services be performed by licensed professionals, the Design-Builder shall provide those services through the performance of qualified persons or entities duly licensed to practice their

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professions. The Owner understands and agrees that the services performed by the Design-Builder's Architect and the Design-Builder's other design professionals and consultants are undertaken and performed in the sole interest of and for the exclusive benefit of the Design-Builder.

§ A.3.2.2 The agreements between the Design-Builder and Architect or other design professionals identified in the Agreement, and in any subsequent Modifications, shall be in writing. These agreements, including services and financial arrangements with respect to this Project, shall be promptly and fully disclosed to the Owner upon the Owner's written request.

§ A.3.2.3 The Design-Builder shall be responsible to the Owner for acts and omissions of the Design-Builder's employees, Architect, Contractors, Subcontractors and their agents and employees, and other persons or entities, including the Architect and other design professionals, performing any portion of the Design-Builder's obligations under the Design-Build Documents.

§ A.3.2.4 The Design-Builder shall carefully study and compare the Design-Build Documents, materials and other information provided by the Owner pursuant to Section A.2.2, shall take field measurements of any existing conditions related to the Work, shall observe any conditions at the site affecting the Work, and report promptly to the Owner any errors, inconsistencies or omissions discovered.

§ A.3.2.5 The Design-Builder shall provide to the Owner for Owner's written approval design documents sufficient to establish the size, quality and character of the Project; its architectural, structural, mechanical and electrical systems; and the materials and such other elements of the Project to the extent required by the Design-Build Documents. Deviations, if any, from the Design-Build Documents shall be disclosed in writing.

§ A.3.2.6 Upon the Owner's written approval of the design documents submitted by the Design-Builder, the Design-Builder shall provide construction documents for review and written approval by the Owner. The construction documents shall set forth in detail the requirements for construction of the Project. The construction documents shall include drawings and specifications that establish the quality levels of materials and systems required. Deviations, if any, from the Design-Build Documents shall be disclosed in writing. Construction documents may include drawings, specifications, and other documents and electronic data setting forth in detail the requirements for construction of the Work, and shall:

- .1 be consistent with the approved design documents;
- .2 provide information for the use of those in the building trades; and
- .3 include documents customarily required for regulatory agency approvals.

§ A.3.2.7 The Design-Builder shall meet with the Owner periodically to review progress of the design and construction documents.

§ A.3.2.8 Upon the Owner's written approval of construction documents, the Design-Builder, with the assistance of the Owner, shall prepare and file documents required to obtain necessary approvals of governmental authorities having jurisdiction over the Project.

§ A.3.2.9 The Design-Builder shall obtain from each of the Design-Builder's professionals and furnish to the Owner certifications with respect to the documents and services provided by such professionals (a) that, to the best of their knowledge, information and belief, the documents or services to which such certifications relate (i) are consistent with the Project Criteria set forth in the Design-Build Documents, except to the extent specifically identified in such certificate, (ii) comply with applicable professional practice standards, and (iii) comply with applicable laws, ordinances, codes, rules and regulations governing the design of the Project; and (b) that the Owner and its consultants shall be entitled to rely upon the accuracy of the representations and statements contained in such certifications.

§ A.3.2.10 If the Owner requests the Design-Builder, the Architect or the Design-Builder's other design professionals to execute certificates other than those required by Section A.3.2.9, the proposed language of such certificates shall be submitted to the Design-Builder, or the Architect and such design professionals through the Design-Builder, for review and negotiation at least 14 days prior to the requested dates of execution. Neither the Design-Builder, the Architect nor such other design professionals shall be required to execute certificates that would require knowledge, services or responsibilities beyond the scope of their respective agreements with the Owner or Design-Builder.

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### § A.3.3 CONSTRUCTION

§ A.3.3.1 The Design-Builder shall perform no construction Work prior to the Owner's review and approval of the construction documents. The Design-Builder shall perform no portion of the Work for which the Design-Build Documents require the Owner's review of submittals, such as Shop Drawings, Product Data and Samples, until the Owner has approved each submittal.

§ A.3.3.2 The construction Work shall be in accordance with approved submittals, except that the Design-Builder shall not be relieved of responsibility for deviations from requirements of the Design-Build Documents by the Owner's approval of design and construction documents or other submittals such as Shop Drawings, Product Data, Samples or other submittals unless the Design-Builder has specifically informed the Owner in writing of such deviation at the time of submittal and (1) the Owner has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Design-Builder shall not be relieved of responsibility for errors or omissions in design and construction documents or other submittals such as Shop Drawings, Product Data, Samples or other submittals by the Owner's approval thereof.

§ A.3.3.3 The Design-Builder shall direct specific attention, in writing or on resubmitted design and construction documents or other submittals such as Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by the Owner on previous submittals. In the absence of such written notice, the Owner's approval of a resubmission shall not apply to such revisions.

§ A.3.3.4 When the Design-Build Documents require that a Contractor provide professional design services or certifications related to systems, materials or equipment, or when the Design-Builder in its discretion provides such design services or certifications through a Contractor, the Design-Builder shall cause professional design services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professionals, if prepared by others, shall bear such design professional's written approval. The Owner shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals.

§ A.3.3.5 The Design-Builder shall be solely responsible for and have control over all construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Design-Build Documents.

§ A.3.3.6 The Design-Builder shall keep the Owner informed of the progress and quality of the Work.

§ A.3.3.7 The Design-Builder shall be responsible for the supervision and direction of the Work, using the Design-Builder's best skill and attention. If the Design-Build Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Design-Builder shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Design-Builder determines that such means, methods, techniques, sequences or procedures may not be safe, the Design-Builder shall give timely written notice to the Owner and shall not proceed with that portion of the Work without further written instructions from the Owner. If the Design-Builder is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Design-Builder, the Owner shall be solely responsible for any resulting loss or damage.

§ A.3.3.8 The Design-Builder shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

### § A.3.4 LABOR AND MATERIALS

§ A.3.4.1 Unless otherwise provided in the Design-Build Documents, the Design-Builder shall provide or cause to be provided and shall pay for design services, labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.



§ A.3.4.2 When a material is specified in the Design-Build Documents, the Design-Builder may make substitutions only with the consent of the Owner and, if appropriate, in accordance with a Change Order.

§ A.3.4.3 The Design-Builder shall enforce strict discipline and good order among the Design-Builder's employees and other persons carrying out the Design-Build Contract. The Design-Builder shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.

#### § A.3.5 WARRANTY

§ A.3.5.1 The Design-Builder warrants to the Owner that materials and equipment furnished under the Design-Build Documents will be of good quality and new unless otherwise required or permitted by the Design-Build Documents, that the Work will be free from defects not inherent in the quality required or permitted by law or otherwise, and that the Work will conform to the requirements of the Design-Build Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. The Design-Builder's warranty excludes remedy for damage or defect caused by abuse, modifications not executed by the Design-Builder, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Owner, the Design-Builder shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

#### § A.3.6 TAXES

§ A.3.6.1 The Design-Builder shall pay all sales, consumer, use and similar taxes for the Work provided by the Design-Builder which had been legally enacted on the date of the Agreement, whether or not yet effective or merely scheduled to go into effect.

#### § A.3.7 PERMITS, FEES AND NOTICES

§ A.3.7.1 The Design-Builder shall secure and pay for building and other permits and governmental fees, licenses and inspections necessary for the proper execution and completion of the Work which are customarily secured after execution of the Design-Build Contract and which were legally required on the date the Owner accepted the Design-Builder's proposal.

§ A.3.7.2 The Design-Builder shall comply with and give notices required by laws, ordinances, rules, regulations and lawful orders of public authorities relating to the Project.

§ A.3.7.3 It is the Design-Builder's responsibility to ascertain that the Work is in accordance with applicable laws, ordinances, codes, rules and regulations.

§ A.3.7.4 If the Design-Builder performs Work contrary to applicable laws, ordinances, codes, rules and regulations, the Design-Builder shall assume responsibility for such Work and shall bear the costs attributable to correction.

#### § A.3.8 ALLOWANCES

§ A.3.8.1 The Design-Builder shall include in the Contract Sum all allowances stated in the Design-Build Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Design-Builder shall not be required to employ persons or entities to which the Design-Builder has reasonable objection.

§ A.3.8.2 Unless otherwise provided in the Design-Build Documents:

- .1 allowances shall cover the cost to the Design-Builder of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 Design-Builder's costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and
- .3 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section A.3.8.2.1 and (2) changes in Design-Builder's costs under Section A.3.8.2.2.

§ A.3.8.3 Materials and equipment under an allowance shall be selected by the Owner in sufficient time to avoid delay in the Work.

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**§ A.3.9 DESIGN-BUILDER'S SCHEDULE**

§ A.3.9.1 The Design-Builder, promptly after execution of the Design-Build Contract, shall prepare and submit for the Owner's information the Design-Builder's schedule for the Work. The schedule shall not exceed time limits and shall be in such detail as required under the Design-Build Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Design-Build Documents, shall provide for expeditious and practicable execution of the Work and shall include allowances for periods of time required for the Owner's review and for approval of submissions by authorities having jurisdiction over the Project.

§ A.3.9.2 The Design-Builder shall prepare and keep current a schedule of submittals required by the Design-Build Documents.

§ A.3.9.3 The Design-Builder shall perform the Work in general accordance with the most recent schedules submitted to the Owner.

**§ A.3.10 DOCUMENTS AND SAMPLES AT THE SITE**

§ A.3.10.1 The Design-Builder shall maintain at the site for the Owner one record copy of the drawings, specifications, addenda, Change Orders and other Modifications, in good order and marked currently to record field changes and selections made during construction, and one record copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be delivered to the Owner upon completion of the Work.

**§ A.3.11 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES**

§ A.3.11.1 Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Design-Builder or a Contractor, Subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

§ A.3.11.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Design-Builder to illustrate materials or equipment for some portion of the Work.

§ A.3.11.3 Samples are physical examples that illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

§ A.3.11.4 Shop Drawings, Product Data, Samples and similar submittals are not Design-Build Documents. The purpose of their submittal is to demonstrate for those portions of the Work for which submittals are required by the Design-Build Documents the way by which the Design-Builder proposes to conform to the Design-Build Documents.

§ A.3.11.5 The Design-Builder shall review for compliance with the Design-Build Documents and approve and submit to the Owner only those Shop Drawings, Product Data, Samples and similar submittals required by the Design-Build Documents with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors.

§ A.3.11.6 By approving and submitting Shop Drawings, Product Data, Samples and similar submittals, the Design-Builder represents that the Design-Builder has determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Design-Build Documents.

**§ A.3.12 USE OF SITE**

§ A.3.12.1 The Design-Builder shall confine operations at the site to areas permitted by law, ordinances, permits and the Design-Build Documents, and shall not unreasonably encumber the site with materials or equipment.

**§ A.3.13 CUTTING AND PATCHING**

§ A.3.13.1 The Design-Builder shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly.

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§ A.3.13.2 The Design-Builder shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or separate contractors by cutting, patching or otherwise altering such construction or by excavation. The Design-Builder shall not cut or otherwise alter such construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Design-Builder shall not unreasonably withhold from the Owner or a separate contractor the Design-Builder's consent to cutting or otherwise altering the Work.

#### § A.3.14 CLEANING UP

§ A.3.14.1 The Design-Builder shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Design-Build Contract. At completion of the Work, the Design-Builder shall remove from and about the Project waste materials, rubbish, the Design-Builder's tools, construction equipment, machinery and surplus materials.

§ A.3.14.2 If the Design-Builder fails to clean up as provided in the Design-Build Documents, the Owner may do so and the cost thereof shall be charged to the Design-Builder.

#### § A.3.15 ACCESS TO WORK

§ A.3.15.1 The Design-Builder shall provide the Owner access to the Work in preparation and progress wherever located.

#### § A.3.16 ROYALTIES, PATENTS AND COPYRIGHTS

§ A.3.16.1 The Design-Builder shall pay all royalties and license fees. The Design-Builder shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required or where the copyright violations are contained in drawings, specifications or other documents prepared by or furnished to the Design-Builder by the Owner. However, if the Design-Builder has reason to believe that the required design, process or product is an infringement of a copyright or a patent, the Design-Builder shall be responsible for such loss unless such information is promptly furnished to the Owner.

#### § A.3.17 INDEMNIFICATION

§ A.3.17.1 To the fullest extent permitted by law, the Design-Builder shall indemnify and hold harmless the Owner, Owner's consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death or to injury to or destruction of tangible property other than the Work itself, but only to the extent caused by the negligent acts or omissions of the Design-Builder, Architect, a Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section A.3.17.

§ A.3.17.2 In claims against any person or entity indemnified under this Section A.3.17 by an employee of the Design-Builder, the Architect, a Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Section A.3.17.1 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Design-Builder, the Architect or a Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

### ARTICLE A.4 DISPUTE RESOLUTION

#### § A.4.1 CLAIMS AND DISPUTES

§ A.4.1.1 Definition. A Claim is a demand or assertion by one of the parties seeking, as a matter of right, adjustment or interpretation of Design-Build Contract terms, payment of money, extension of time or other relief with respect to the terms of the Design-Build Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Design-Builder arising out of or relating to the Design-Build Contract. Claims must be initiated by written notice. The responsibility to substantiate Claims shall rest with the party making the Claim.

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§ A.4.1.2 Time Limits on Claims. Claims by either party must be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later. Claims must be initiated by written notice to the other party.

§ A.4.1.3 Continuing Performance. Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section A.9.7.1 and Article A.14, the Design-Builder shall proceed diligently with performance of the Design-Build Contract and the Owner shall continue to make payments in accordance with the Design-Build Documents.

§ A.4.1.4 Claims for Concealed or Unknown Conditions. If conditions are encountered at the site which are (1) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Design-Build Documents or (2) unknown physical conditions of an unusual nature which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Design-Build Documents, then the observing party shall give notice to the other party promptly before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Owner shall promptly investigate such conditions and, if they differ materially and cause an increase or decrease in the Design-Builder's cost of, or time required for, performance of any part of the Work, shall negotiate with the Design-Builder an equitable adjustment in the Contract Sum or Contract Time, or both. If the Owner determines that the conditions at the site are not materially different from those indicated in the Design-Build Documents and that no change in the terms of the Design-Build Contract is justified, the Owner shall so notify the Design-Builder in writing, stating the reasons. Claims by the Design-Builder in opposition to such determination must be made within 21 days after the Owner has given notice of the decision. If the conditions encountered are materially different, the Contract Sum and Contract Time shall be equitably adjusted, but if the Owner and Design-Builder cannot agree on an adjustment in the Contract Sum or Contract Time, the adjustment shall proceed pursuant to Section A.4.2.

§ A.4.1.5 Claims for Additional Cost. If the Design-Builder wishes to make Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section A.10.6.

§ A.4.1.6 If the Design-Builder believes additional cost is involved for reasons including but not limited to (1) an order by the Owner to stop the Work where the Design-Builder was not at fault, (2) a written order for the Work issued by the Owner, (3) failure of payment by the Owner, (4) termination of the Design-Build Contract by the Owner, (5) Owner's suspension or (6) other reasonable grounds, Claim shall be filed in accordance with this Section A.4.1.

§ A.4.1.7 Claims for Additional Time

§ A.4.1.7.1 If the Design-Builder wishes to make Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Design-Builder's Claim shall include an estimate of the time and its effect on the progress of the Work. In the case of a continuing delay, only one Claim is necessary.

§ A.4.1.7.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated and had an adverse effect on the scheduled construction.

§ A.4.1.8 Injury or Damage to Person or Property. If either party to the Design-Build Contract suffers injury or damage to person or property because of an act or omission of the other party or of others for whose acts such party is legally responsible, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ A.4.1.9 If unit prices are stated in the Design-Build Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Construction Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Design-Builder, the applicable unit prices shall be equitably adjusted.

§ A.4.1.10 Claims for Consequential Damages. Design-Builder and Owner waive Claims against each other for consequential damages arising out of or relating to the Design-Build Contract. This mutual waiver includes:

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- .1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
- .2 damages incurred by the Design-Builder for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article A.14. Nothing contained in this Section A.4.1.10 shall be deemed to preclude an award of liquidated direct damages, when applicable, in accordance with the requirements of the Design-Build Documents.

§ A.4.1.11 If the enactment or revision of codes, laws or regulations or official interpretations which govern the Project cause an increase or decrease of the Design-Builder's cost of, or time required for, performance of the Work, the Design-Builder shall be entitled to an equitable adjustment in Contract Sum or Contract Time. If the Owner and Design-Builder cannot agree upon an adjustment in the Contract Sum or Contract Time, the Design-Builder shall submit a Claim pursuant to Section A.4.1.

#### § A.4.2 RESOLUTION OF CLAIMS AND DISPUTES

§ A.4.2.1 **Decision by Neutral.** If the parties have identified a Neutral in Section 6.1 of the Agreement or elsewhere in the Design-Build Documents, then Claims, excluding those arising under Sections A.10.3 through A.10.5, shall be referred initially to the Neutral for decision. An initial decision by the Neutral shall be required as a condition precedent to mediation of all Claims between the Owner and Design-Builder arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Neutral with no decision having been rendered by the Neutral. Unless the Neutral and all affected parties agree, the Neutral will not decide disputes between the Design-Builder and persons or entities other than the Owner.

§ A.4.2.2 **Decision by Owner.** If the parties have not identified a Neutral in Section 6.1 of the Agreement or elsewhere in the Design-Build Documents then, except for those claims arising under Sections A.10.3 and A.10.5, the Owner shall provide an initial decision. An initial decision by the Owner shall be required as a condition precedent to mediation of all Claims between the Owner and Design-Builder arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Owner with no decision having been rendered by the Owner.

§ A.4.2.3 The initial decision pursuant to Sections A.4.2.1 and A.4.2.2 shall be in writing, shall state the reasons therefore and shall notify the parties of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject first to mediation under Section A.4.3 and thereafter to such other dispute resolution methods as provided in Section 6.2 of the Agreement or elsewhere in the Design-Build Documents.

§ A.4.2.4 In the event of a Claim against the Design-Builder, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Design-Builder's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ A.4.2.5 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to initial resolution of the Claim.

#### § A.4.3 MEDIATION

§ A.4.3.1 Any Claim arising out of or related to the Design-Build Contract, except those waived as provided for in Sections A.4.1.10, A.9.10.4 and A.9.10.5, shall, after initial decision of the Claim or 30 days after submission of the Claim for initial decision, be subject to mediation as a condition precedent to arbitration or the institution of legal or equitable or other binding dispute resolution proceedings by either party.

§ A.4.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect at the time of the mediation. Request for mediation shall be filed in writing with the other party to the Design-Build Contract and with the American Arbitration Association. The request may be made concurrently with the filing of a demand for arbitration or other binding dispute resolution proceedings but, in such

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event, mediation shall proceed in advance thereof or of legal or equitable proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order.

§ A.4.3.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

#### § A.4.4 ARBITRATION

§ A.4.4.1 Claims, except those waived as provided for in Sections A.4.1.10, A.9.10.4 and A.9.10.5, for which initial decisions have not become final and binding, and which have not been resolved by mediation but which are subject to arbitration pursuant to Sections 6.2 and 6.3 of the Agreement or elsewhere in the Design-Build Documents, shall be decided by arbitration which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association currently in effect at the time of the arbitration. The demand for arbitration shall be filed in writing with the other party to the Design-Build Contract and with the American Arbitration Association.

§ A.4.4.2 A demand for arbitration may be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when institution of legal or equitable proceedings based on such Claim would be barred by the applicable statute of limitations as determined pursuant to Section A.13.6.

§ A.4.4.3 An arbitration pursuant to this Section A.4.4 may be joined with an arbitration involving common issues of law or fact between the Owner or Design-Builder and any person or entity with whom the Owner or Design-Builder has a contractual obligation to arbitrate disputes which does not prohibit consolidation or joinder. No other arbitration arising out of or relating to the Design-Build Contract shall include, by consolidation, joinder or in any other manner, an additional person or entity not a party to the Design-Build Contract or not a party to an agreement with the Owner or Design-Builder, except by written consent containing a specific reference to the Design-Build Contract signed by the Owner and Design-Builder and any other person or entities sought to be joined. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent or with a person or entity not named or described therein. The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by the parties to the Agreement shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof.

§ A.4.4.4 Claims and Timely Assertion of Claims. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

§ A.4.4.5 Judgment on Final Award. The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

#### ARTICLE A.5 AWARD OF CONTRACTS

§ A.5.1 Unless otherwise stated in the Design-Build Documents or the bidding or proposal requirements, the Design-Builder, as soon as practicable after award of the Design-Build Contract, shall furnish in writing to the Owner the names of additional persons or entities not originally included in the Design-Builder's proposal or in substitution of a person or entity (including those who are to furnish design services or materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Owner will promptly reply to the Design-Builder in writing stating whether or not the Owner has reasonable objection to any such proposed additional person or entity. Failure of the Owner to reply promptly shall constitute notice of no reasonable objection.

§ A.5.2 The Design-Builder shall not contract with a proposed person or entity to whom which the Owner has made reasonable and timely objection. The Design-Builder shall not be required to contract with anyone to whom the Design-Builder has made reasonable objection.

§ A.5.3 If the Owner has reasonable objection to a person or entity proposed by the Design-Builder, the Design-Builder shall propose another to whom the Owner has no reasonable objection. If the proposed but rejected additional person or entity was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall

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be issued before commencement of the substitute person's or entity's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Design-Builder has acted promptly and responsively in submitting names as required.

§ A.5.4 The Design-Builder shall not change a person or entity previously selected if the Owner makes reasonable objection to such substitute.

#### § A.5.5 CONTINGENT ASSIGNMENT OF CONTRACTS

§ A.5.5.1 Each agreement for a portion of the Work is assigned by the Design-Builder to the Owner provided that:

- .1 assignment is effective only after termination of the Design-Build Contract by the Owner for cause pursuant to Section A.14.2 and only for those agreements which the Owner accepts by notifying the contractor in writing; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Design-Build Contract.

§ A.5.5.2 Upon such assignment, if the Work has been suspended for more than 30 days, the Contractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension.

#### ARTICLE A.6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

##### § A.6.1 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

§ A.6.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces and to award separate contracts in connection with other portions of the Project or other construction or operations on the site. The Design-Builder shall cooperate with the Owner and separate contractors whose work might interfere with the Design-Builder's Work. If the Design-Builder claims that delay or additional cost is involved because of such action by the Owner, the Design-Builder shall make such Claim as provided in Section A.4.1.

§ A.6.1.2 The term "separate contractor" shall mean any contractor retained by the Owner pursuant to Section A.6.1.1.

§ A.6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each separate contractor with the work of the Design-Builder, who shall cooperate with them. The Design-Builder shall participate with other separate contractors and the Owner in reviewing their construction schedules when directed to do so. The Design-Builder shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Design-Builder, separate contractors and the Owner until subsequently revised.

##### § A.6.2 MUTUAL RESPONSIBILITY

§ A.6.2.1 The Design-Builder shall afford the Owner and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities and shall connect and coordinate the Design-Builder's construction and operations with theirs as required by the Design-Build Documents.

§ A.6.2.2 If part of the Design-Builder's Work depends for proper execution or results upon design, construction or operations by the Owner or a separate contractor, the Design-Builder shall, prior to proceeding with that portion of the Work, promptly report to the Owner apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Design-Builder so to report shall constitute an acknowledgment that the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Design-Builder's Work, except as to defects not then reasonably discoverable.

§ A.6.2.3 The Owner shall be reimbursed by the Design-Builder for costs incurred by the Owner which are payable to a separate contractor because of delays, improperly timed activities or defective construction of the Design-Builder. The Owner shall be responsible to the Design-Builder for costs incurred by the Design-Builder because of delays, improperly timed activities, damage to the Work or defective construction of a separate contractor.

§ A.6.2.4 The Design-Builder shall promptly remedy damage wrongfully caused by the Design-Builder to completed or partially completed construction or to property of the Owner or separate contractors.

§ A.6.2.5 The Owner and each separate contractor shall have the same responsibilities for cutting and patching as are described in Section A.3.13.

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**§ A.6.3 OWNER'S RIGHT TO CLEAN UP**

§ A.6.3.1 If a dispute arises among the Design-Builder, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Owner shall allocate the cost among those responsible.

**ARTICLE A.7 CHANGES IN THE WORK**

**§ A.7.1 GENERAL**

§ A.7.1.1 Changes in the Work may be accomplished after execution of the Design-Build Contract, and without invalidating the Design-Build Contract, by Change Order or Construction Change Directive, subject to the limitations stated in this Article A.7 and elsewhere in the Design-Build Documents.

§ A.7.1.2 A Change Order shall be based upon agreement between the Owner and Design-Builder. A Construction Change Directive may be issued by the Owner with or without agreement by the Design-Builder.

§ A.7.1.3 Changes in the Work shall be performed under applicable provisions of the Design-Build Documents, and the Design-Builder shall proceed promptly, unless otherwise provided in the Change Order or Construction Change Directive.

**§ A.7.2 CHANGE ORDERS**

§ A.7.2.1 A Change Order is a written instrument signed by the Owner and Design-Builder stating their agreement upon all of the following:

- .1 a change in the Work;
- .2 the amount of the adjustment, if any, in the Contract Sum; and
- .3 the extent of the adjustment, if any, in the Contract Time.

§ A.7.2.2 If the Owner requests a proposal for a change in the Work from the Design-Builder and subsequently elects not to proceed with the change, a Change Order shall be issued to reimburse the Design-Builder for any costs incurred for estimating services, design services or preparation of proposed revisions to the Design-Build Documents.

§ A.7.2.3 Methods used in determining adjustments to the Contract Sum may include those listed in Section A.7.3.3.

**§ A.7.3 CONSTRUCTION CHANGE DIRECTIVES**

§ A.7.3.1 A Construction Change Directive is a written order signed by the Owner directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Design-Build Contract, order changes in the Work within the general scope of the Design-Build Documents consisting of additions, deletions or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

§ A.7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

§ A.7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

- .1 mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 unit prices stated in the Design-Build Documents or subsequently agreed upon, or equitably adjusted as provided in Section A.4.1.9;
- .3 cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 as provided in Section A.7.3.6.

§ A.7.3.4 Upon receipt of a Construction Change Directive, the Design-Builder shall promptly proceed with the change in the Work involved and advise the Owner of the Design-Builder's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

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§ A.7.3.5 A Construction Change Directive signed by the Design-Builder indicates the agreement of the Design-Builder therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ A.7.3.6 If the Design-Builder does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the method and the adjustment shall be determined by the Owner on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, a reasonable allowance for overhead and profit. In such case, and also under Section A.7.3.3.3, the Design-Builder shall keep and present, in such form as the Owner may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Design-Build Documents, costs for the purposes of this Section A.7.3.6 shall be limited to the following:

- .1 additional costs of professional services;
- .2 costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;
- .3 costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
- .4 rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Design-Builder or others;
- .5 costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and
- .6 additional costs of supervision and field office personnel directly attributable to the change.

§ A.7.3.7 The amount of credit to be allowed by the Design-Builder to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ A.7.3.8 Pending final determination of the total cost of a Construction Change Directive to the Owner, amounts not in dispute for such changes in the Work shall be included in Applications for Payment accompanied by a Change Order indicating the parties' agreement with part or all of such costs. For any portion of such cost that remains in dispute, the Owner shall make an interim determination for purposes of monthly payment for those costs. That determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of the Design-Builder to disagree and assert a Claim in accordance with Article A.4.

§ A.7.3.9 When the Owner and Design-Builder reach agreement concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and shall be recorded by preparation and execution of an appropriate Change Order.

#### § A.7.4 MINOR CHANGES IN THE WORK

§ A.7.4.1 The Owner shall have authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Design-Build Documents. Such changes shall be effected by written order and shall be binding on the Design-Builder. The Design-Builder shall carry out such written orders promptly.

#### ARTICLE A.8 TIME

##### § A.8.1 DEFINITIONS

§ A.8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Design-Build Documents for Substantial Completion of the Work.

§ A.8.1.2 The date of commencement of the Work shall be the date stated in the Agreement unless provision is made for the date to be fixed in a notice to proceed issued by the Owner.

§ A.8.1.3 The date of Substantial Completion is the date determined by the Owner in accordance with Section A.9.8.

§ A.8.1.4 The term "day" as used in the Design-Build Documents shall mean calendar day unless otherwise specifically defined.

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**§ A.8.2 PROGRESS AND COMPLETION**

**§ A.8.2.1** Time limits stated in the Design-Build Documents are of the essence of the Design-Build Contract. By executing the Design-Build Contract, the Design-Builder confirms that the Contract Time is a reasonable period for performing the Work.

**§ A.8.2.2** The Design-Builder shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence construction operations on the site or elsewhere prior to the effective date of insurance required by Article A.11 to be furnished by the Design-Builder and Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance. Unless the date of commencement is established by the Design-Build Documents or a notice to proceed given by the Owner, the Design-Builder shall notify the Owner in writing not less than five days or other agreed period before commencing the Work to permit the timely filing of mortgages, mechanic's liens and other security interests.

**§ A.8.2.3** The Design-Builder shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

**§ A.8.3 DELAYS AND EXTENSIONS OF TIME**

**§ A.8.3.1** If the Design-Builder is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or of a separate contractor employed by the Owner, or by changes ordered in the Work, or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Design-Builder's control, or by delay authorized by the Owner pending resolution of disputes pursuant to the Design-Build Documents, or by other causes which the Owner determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Owner may determine.

**§ A.8.3.2** Claims relating to time shall be made in accordance with applicable provisions of Section A.4.1.7.

**§ A.8.3.3** This Section A.8.3 does not preclude recovery of damages for delay by either party under other provisions of the Design-Build Documents.

**ARTICLE A.9 PAYMENTS AND COMPLETION**

**§ A.9.1 CONTRACT SUM**

**§ A.9.1.1** The Contract Sum is stated in the Design-Build Documents and, including authorized adjustments, is the total amount payable by the Owner to the Design-Builder for performance of the Work under the Design-Build Documents.

**§ A.9.2 SCHEDULE OF VALUES**

**§ A.9.2.1** Before the first Application for Payment, where the Contract Sum is based upon a Stipulated Sum or the Cost of the Work plus Contractor's Fee with a Guaranteed Maximum Price, the Design-Builder shall submit to the Owner an initial schedule of values allocated to various portions of the Work prepared in such form and supported by such data to substantiate its accuracy as the Owner may require. This schedule, unless objected to by the Owner, shall be used as a basis for reviewing the Design-Builder's Applications for Payment. The schedule of values may be updated periodically to reflect changes in the allocation of the Contract Sum.

**§ A.9.3 APPLICATIONS FOR PAYMENT**

**§ A.9.3.1** At least ten days before the date established for each progress payment, the Design-Builder shall submit to the Owner an itemized Application for Payment for operations completed in accordance with the current schedule of values. Such application shall be notarized, if required, and supported by such data substantiating the Design-Builder's right to payment as the Owner may require, such as copies of requisitions from Contractors and material suppliers, and reflecting retainage if provided for in the Design-Build Documents:

**§ A.9.3.1.1** As provided in Section A.7.3.8, such applications may include requests for payment on account of Changes in the Work which have been properly authorized by Construction Change Directives but are not yet included in Change Orders.

**§ A.9.3.1.2** Such applications may not include requests for payment for portions of the Work for which the Design-Builder does not intend to pay to a Contractor or material supplier or other parties providing services for the Design-Builder, unless such Work has been performed by others whom the Design-Builder intends to pay.

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§ A.9.3.2 Unless otherwise provided in the Design-Build Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Design-Builder with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.

§ A.9.3.3 The Design-Builder warrants that title to all Work other than Instruments of Service covered by an Application for Payment will pass to the Owner no later than the time of payment. The Design-Builder further warrants that, upon submittal of an Application for Payment, all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Design-Builder's knowledge, information and belief, be free and clear of liens, Claims, security interests or encumbrances in favor of the Design-Builder, Contractors, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

#### § A.9.4 ACKNOWLEDGEMENT OF APPLICATION FOR PAYMENT

§ A.9.4.1 The Owner shall, within seven days after receipt of the Design-Builder's Application for Payment, issue to the Design-Builder a written acknowledgement of receipt of the Design-Builder's Application for Payment indicating the amount the Owner has determined to be properly due and, if applicable, the reasons for withholding payment in whole or in part.

#### § A.9.5 DECISIONS TO WITHHOLD PAYMENT

§ A.9.5.1 The Owner may withhold a payment in whole or in part to the extent reasonably necessary to protect the Owner due to the Owner's determination that the Work has not progressed to the point indicated in the Application for Payment or that the quality of Work is not in accordance with the Design-Build Documents. The Owner may also withhold a payment or, because of subsequently discovered evidence, may nullify the whole or a part of an Application for Payment previously issued to such extent as may be necessary to protect the Owner from loss for which the Design-Builder is responsible, including loss resulting from acts and omissions, because of the following:

- .1 defective Work not remedied;
- .2 third-party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Design-Builder;
- .3 failure of the Design-Builder to make payments properly to Contractors or for design services labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a separate contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 persistent failure to carry out the Work in accordance with the Design-Build Documents.

§ A.9.5.2 When the above reasons for withholding payment are removed, payment will be made for amounts previously withheld.

#### § A.9.6 PROGRESS PAYMENTS

§ A.9.6.1 After the Owner has issued a written acknowledgement of receipt of the Design-Builder's Application for Payment, the Owner shall make payment of the amount, in the manner and within the time provided in the Design-Build Documents.

§ A.9.6.2 The Design-Builder shall promptly pay the Architect, each design professional and other consultants retained directly by the Design-Builder, upon receipt of payment from the Owner, out of the amount paid to the Design-Builder on account of each such party's respective portion of the Work, the amount to which each such party is entitled.

§ A.9.6.3 The Design-Builder shall promptly pay each Contractor, upon receipt of payment from the Owner, out of the amount paid to the Design-Builder on account of such Contractor's portion of the Work, the amount to which said Contractor is entitled, reflecting percentages actually retained from payments to the Design-Builder on account of the

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Contractor's portion of the Work. The Design-Builder shall, by appropriate agreement with each Contractor, require each Contractor to make payments to Subcontractors in a similar manner.

§ A.9.6.4 The Owner shall have no obligation to pay or to see to the payment of money to a Contractor except as may otherwise be required by law.

§ A.9.6.5 Payment to material suppliers shall be treated in a manner similar to that provided in Sections A.9.6.3 and A.9.6.4.

§ A.9.6.6 A progress payment, or partial or entire use or occupancy of the Project by the Owner, shall not constitute acceptance of Work not in accordance with the Design-Build Documents.

§ A.9.6.7 Unless the Design-Builder provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Design-Builder for Work properly performed by Contractors and suppliers shall be held by the Design-Builder for those Contractors or suppliers who performed Work or furnished materials, or both, under contract with the Design-Builder for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not be commingled with money of the Design-Builder, shall create any fiduciary liability or tort liability on the part of the Design-Builder for breach of trust or shall entitle any person or entity to an award of punitive damages against the Design-Builder for breach of the requirements of this provision.

#### § A.9.7 FAILURE OF PAYMENT

§ A.9.7.1 If for reasons other than those enumerated in Section A.9.5.1, the Owner does not issue a payment within the time period required by Section 5.1.3 of the Agreement, then the Design-Builder may, upon seven additional days' written notice to the Owner, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Design-Builder's reasonable costs of shutdown, delay and start-up, plus interest as provided for in the Design-Build Documents.

#### § A.9.8 SUBSTANTIAL COMPLETION

§ A.9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Design-Build Documents so that the Owner can occupy or use the Work or a portion thereof for its intended use.

§ A.9.8.2 When the Design-Builder considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Design-Builder shall prepare and submit to the Owner a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Design-Builder to complete all Work in accordance with the Design-Build Documents.

§ A.9.8.3 Upon receipt of the Design-Builder's list, the Owner shall make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Owner's inspection discloses any item, whether or not included on the Design-Builder's list, which is not substantially complete, the Design-Builder shall complete or correct such item. In such case, the Design-Builder shall then submit a request for another inspection by the Owner to determine whether the Design-Builder's Work is substantially complete.

§ A.9.8.4 In the event of a dispute regarding whether the Design-Builder's Work is substantially complete, the dispute shall be resolved pursuant to Article A.4.

§ A.9.8.5 When the Work or designated portion thereof is substantially complete, the Design-Builder shall prepare for the Owner's signature an Acknowledgement of Substantial Completion which, when signed by the Owner, shall establish (1) the date of Substantial Completion of the Work, (2) responsibilities between the Owner and Design-Builder for security, maintenance, heat, utilities, damage to the Work and insurance, and (3) the time within which the Design-Builder shall finish all items on the list accompanying the Acknowledgement. When the Owner's inspection discloses that the Work or a designated portion thereof is substantially complete, the Owner shall sign the Acknowledgement of Substantial Completion. Warranties required by the Design-Build Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Acknowledgement of Substantial Completion.

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§ A.9.8.6 Upon execution of the Acknowledgement of Substantial Completion and consent of surety, if any, the Owner shall make payment of retainage applying to such Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Design-Build Documents.

#### § A.9.9 PARTIAL OCCUPANCY OR USE

§ A.9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Design-Builder, provided such occupancy or use is consented to by the insurer, if so required by the insurer, and authorized by public authorities having jurisdiction over the Work. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Design-Builder have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for completion or correction of the Work and commencement of warranties required by the Design-Build Documents. When the Design-Builder considers a portion substantially complete, the Design-Builder shall prepare and submit a list to the Owner as provided under Section A.9.8.2. Consent of the Design-Builder to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Design-Builder.

§ A.9.9.2 Immediately prior to such partial occupancy or use, the Owner and Design-Builder shall jointly inspect the area to be occupied or portion of the Work to be used to determine and record the condition of the Work.

§ A.9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Design-Build Documents.

#### § A.9.10 FINAL COMPLETION AND FINAL PAYMENT

§ A.9.10.1 Upon receipt of written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Owner shall promptly make such inspection and, when the Owner finds the Work acceptable under the Design-Build Documents and fully performed, the Owner shall, subject to Section A.9.10.2, promptly make final payment to the Design-Builder.

§ A.9.10.2 Neither final payment nor any remaining retained percentage will become due until the Design-Builder submits to the Owner (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Design-Build Documents to remain in force after final payment is currently in effect and will not be cancelled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) a written statement that the Design-Builder knows of no substantial reason that the insurance will not be renewable to cover the period required by the Design-Build Documents, (4) consent of surety, if any, to final payment, and (5) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Design-Build Contract, to the extent and in such form as may be designated by the Owner. If a Contractor refuses to furnish a release or waiver required by the Owner, the Design-Builder may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Design-Builder shall refund to the Owner all money that the Owner may be liable to pay in connection with the discharge of such lien, including all costs and reasonable attorneys' fees.

§ A.9.10.3 If, after the Owner determines that the Design-Builder's Work or designated portion thereof is substantially completed, final completion thereof is materially delayed through no fault of the Design-Builder or by issuance of a Change Order or a Construction Change Directive affecting final completion, the Owner shall, upon application by the Design-Builder, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Design-Build Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Design-Builder. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

§ A.9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from:

- .1 liens, Claims, security interests or encumbrances arising out of the Design-Build Documents and unsettled;
- .2 failure of the Work to comply with the requirements of the Design-Build Documents; or

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- .3 terms of special warranties required by the Design-Build Documents.

§ A.9.10.5 Acceptance of final payment by the Design-Builder, a Contractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

#### ARTICLE A.10 PROTECTION OF PERSONS AND PROPERTY

##### § A.10.1 SAFETY PRECAUTIONS AND PROGRAMS

§ A.10.1.1 The Design-Builder shall be responsible for initiating and maintaining all safety precautions and programs in connection with the performance of the Design-Build Contract.

##### § A.10.2 SAFETY OF PERSONS AND PROPERTY

§ A.10.2.1 The Design-Builder shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to:

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site or under the care, custody or control of the Design-Builder or the Design-Builder's Contractors or Subcontractors; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

§ A.10.2.2 The Design-Builder shall give notices and comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

§ A.10.2.3 The Design-Builder shall erect and maintain, as required by existing conditions and performance of the Design-Build Documents, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.

§ A.10.2.4 When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Design-Builder shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

§ A.10.2.5 The Design-Builder shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Design-Build Documents) to property referred to in Sections A.10.2.1.2 and A.10.2.1.3 caused in whole or in part by the Design-Builder, the Architect, a Contractor, a Subcontractor, or anyone directly or indirectly employed by any of them or by anyone for whose acts they may be liable and for which the Design-Builder is responsible under Sections A.10.2.1.2 and A.10.2.1.3, except damage or loss attributable to acts or omissions of the Owner or anyone directly or indirectly employed by the Owner, or by anyone for whose acts the Owner may be liable, and not attributable to the fault or negligence of the Design-Builder. The foregoing obligations of the Design-Builder are in addition to the Design-Builder's obligations under Section A.3.17.

§ A.10.2.6 The Design-Builder shall designate in writing to the Owner a responsible individual whose duty shall be the prevention of accidents.

§ A.10.2.7 The Design-Builder shall not load or permit any part of the construction or site to be loaded so as to endanger its safety.

##### § A.10.3 HAZARDOUS MATERIALS

§ A.10.3.1 If reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Design-Builder, the Design-Builder shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner.

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§ A.10.3.2 The Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Design-Builder and, in the event such material or substance is found to be present, to verify that it has been rendered harmless. Unless otherwise required by the Design-Build Documents, the Owner shall furnish in writing to the Design-Builder the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Design-Builder shall promptly reply to the Owner in writing stating whether or not the Design-Builder has reasonable objection to the persons or entities proposed by the Owner. If the Design-Builder has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Design-Builder has no reasonable objection. When the material or substance has been rendered harmless, work in the affected area shall resume upon written agreement of the Owner and Design-Builder. The Contract Time shall be extended appropriately, and the Contract Sum shall be increased in the amount of the Design-Builder's reasonable additional costs of shutdown, delay and start-up, which adjustments shall be accomplished as provided in Article A.7.

§ A.10.3.3 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Design-Builder, Contractors, Subcontractors, Architect, Architect's consultants and the agents and employees of any of them from and against Claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance exists on site as of the date of the Agreement, is not disclosed in the Design-Build Documents and presents the risk of bodily injury or death as described in Section A.10.3.1 and has not been rendered harmless, provided that such Claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death or to injury to or destruction of tangible property (other than the Work itself) to the extent that such damage, loss or expense is not due to the negligence of the Design-Builder, Contractors, Subcontractors, Architect, Architect's consultants and the agents and employees of any of them.

§ A.10.4 The Owner shall not be responsible under Section A.10.3 for materials and substances brought to the site by the Design-Builder unless such materials or substances were required by the Design-Build Documents.

§ A.10.5 If, without negligence on the part of the Design-Builder, the Design-Builder is held liable for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Design-Build Documents, the Owner shall indemnify the Design-Builder for all cost and expense thereby incurred.

#### § A.10.6 EMERGENCIES

§ A.10.6.1 In an emergency affecting safety of persons or property, the Design-Builder shall act, at the Design-Builder's discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Design-Builder on account of an emergency shall be determined as provided in Section A.4.1.7 and Article A.7.

#### ARTICLE A.11 INSURANCE AND BONDS

§ A.11.1 Except as may otherwise be set forth in the Agreement or elsewhere in the Design-Build Documents, the Owner and Design-Builder shall purchase and maintain the following types of insurance with limits of liability and deductible amounts and subject to such terms and conditions, as set forth in this Article A.11.

#### § A.11.2 DESIGN-BUILDER'S LIABILITY INSURANCE

§ A.11.2.1 The Design-Builder shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located such insurance as will protect the Design-Builder from claims set forth below that may arise out of or result from the Design-Builder's operations under the Design-Build Contract and for which the Design-Builder may be legally liable, whether such operations be by the Design-Builder, by a Contractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

- .1 claims under workers' compensation, disability benefit and other similar employee benefit acts which are applicable to the Work to be performed;
- .2 claims for damages because of bodily injury, occupational sickness or disease, or death of the Design-Builder's employees;
- .3 claims for damages because of bodily injury, sickness or disease, or death of any person other than the Design-Builder's employees;
- .4 claims for damages insured by usual personal injury liability coverage;

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- .5 claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
- .6 claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;
- .7 claims for bodily injury or property damage arising out of completed operations; and
- .8 claims involving contractual liability insurance applicable to the Design-Builder's obligations under Section A.3.17.

§ A.11.2.2 The insurance required by Section A.11.2.1 shall be written for not less than limits of liability specified in the Design-Build Documents or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from date of commencement of the Work until date of final payment and termination of any coverage required to be maintained after final payment.

§ A.11.2.3 Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work. These certificates and the insurance policies required by this Section A.11.2 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner. If any of the foregoing insurance coverages are required to remain in force after final payment and are reasonably available, an additional certificate evidencing continuation of such coverage shall be submitted with the final Application for Payment as required by Section A.9.10.2. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Design-Builder with reasonable promptness in accordance with the Design-Builder's information and belief.

#### § A.11.3 OWNER'S LIABILITY INSURANCE

§ A.11.3.1 The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance.

#### § A.11.4 PROPERTY INSURANCE

§ A.11.4.1 Unless otherwise provided, the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk, "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus the value of subsequent Design-Build Contract modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Design-Build Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Section A.9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Section A.11.4 to be covered, whichever is later. This insurance shall include interests of the Owner, Design-Builder, Contractors and Subcontractors in the Project.

§ A.11.4.1.1 Property insurance shall be on an "all-risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal, including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Design-Builder's services and expenses required as a result of such insured loss.

§ A.11.4.1.2 If the Owner does not intend to purchase such property insurance required by the Design-Build Contract and with all of the coverages in the amount described above, the Owner shall so inform the Design-Builder in writing prior to commencement of the Work. The Design-Builder may then effect insurance that will protect the interests of the Design-Builder, Contractors and Subcontractors in the Work, and, by appropriate Change Order, the cost thereof shall be charged to the Owner. If the Design-Builder is damaged by the failure or neglect of the Owner to purchase or maintain insurance as described above without so notifying the Design-Builder in writing, then the Owner shall bear all reasonable costs properly attributable thereto.

§ A.11.4.1.3 If the property insurance requires deductibles, the Owner shall pay costs not covered because of such deductibles.

§ A.11.4.1.4 This property insurance shall cover portions of the Work stored off the site and also portions of the Work in transit.

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§ A.11.4.1.5 Partial occupancy or use in accordance with Section A.9.9 shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use, by endorsement or otherwise. The Owner and the Design-Builder shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

§ A.11.4.2 Boiler and Machinery Insurance. The Owner shall purchase and maintain boiler and machinery insurance required by the Design-Build Documents or by law, which shall specifically cover such insured objects during installation and until final acceptance by the Owner; this insurance shall include interests of the Owner, Design-Builder, Contractors and Subcontractors in the Work, and the Owner and Design-Builder shall be named insureds.

§ A.11.4.3 Loss of Use Insurance. The Owner, at the Owner's option, may purchase and maintain such insurance as will insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused. The Owner waives all rights of action against the Design-Builder, Architect, the Design-Builder's other design professionals, if any, Contractors and Subcontractors for loss of use of the Owner's property, including consequential losses due to fire or other hazards, however caused.

§ A.11.4.4 If the Design-Builder requests in writing that insurance for risks other than those described herein or other special causes of loss be included in the property insurance policy, the Owner shall, if possible, include such insurance, and the cost thereof shall be charged to the Design-Builder by appropriate Change Order.

§ A.11.4.5 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner shall waive all rights in accordance with the terms of Section A.11.4.7 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.

§ A.11.4.6 Before an exposure to loss may occur, the Owner shall file with the Design-Builder a copy of each policy that includes insurance coverages required by this Section A.11.4. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. Each policy shall contain a provision that the policy will not be canceled or allowed to expire and that its limits will not be reduced until at least 30 days' prior written notice has been given to the Design-Builder.

§ A.11.4.7 Waivers of Subrogation. The Owner and Design-Builder waive all rights against each other and any of their consultants, separate contractors described in Section A.6.1, if any, Contractors, Subcontractors, agents and employees, each of the other, and any of their contractors, subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Section A.11.4 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Owner or Design-Builder, as appropriate, shall require of the separate contractors described in Section A.6.1, if any, and the Contractors, Subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, even though the person or entity did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

§ A.11.4.8 A loss insured under Owner's property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section A.11.4.10. The Design-Builder shall pay Contractors their just shares of insurance proceeds received by the Design-Builder, and, by appropriate agreements, written where legally required for validity, shall require Contractors to make payments to their Subcontractors in similar manner.

§ A.11.4.9 If required in writing by a party in interest, the Owner as fiduciary shall, upon occurrence of an insured loss, give bond for proper performance of the Owner's duties. The cost of required bonds shall be charged against proceeds

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received as fiduciary. The Owner shall deposit in a separate account proceeds so received, which the Owner shall distribute in accordance with such agreement as the parties in interest may reach. If after such loss no other special agreement is made and unless the Owner terminates the Design-Build Contract for convenience, replacement of damaged property shall be performed by the Design-Builder after notification of a Change in the Work in accordance with Article A.7.

§ A.11.4.10 The Owner as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of loss to the Owner's exercise of this power.; The Owner as fiduciary shall, in the case of a decision or award, make settlement with insurers in accordance with directions of a decision or award. If distribution of insurance proceeds by arbitration is required, the arbitrators will direct such distribution.

#### § A.11.5 PERFORMANCE BOND AND PAYMENT BOND

§ A.11.5.1 The Owner shall have the right to require the Design-Builder to furnish bonds covering faithful performance of the Design-Build Contract and payment of obligations arising thereunder, including payment to design professionals engaged by or on behalf of the Design-Builder, as stipulated in bidding requirements or specifically required in the Agreement or elsewhere in the Design-Build Documents on the date of execution of the Design-Build Contract.

### ARTICLE A.12 UNCOVERING AND CORRECTION OF WORK

#### § A.12.1 UNCOVERING OF WORK

§ A.12.1.1 If a portion of the Work is covered contrary to requirements specifically expressed in the Design-Build Documents, it must be uncovered for the Owner's examination and be replaced at the Design-Builder's expense without change in the Contract Time.

§ A.12.1.2 If a portion of the Work has been covered which the Owner has not specifically requested to examine prior to its being covered, the Owner may request to see such Work and it shall be uncovered by the Design-Builder. If such Work is in accordance with the Design-Build Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If such Work is not in accordance with the Design-Build Documents, correction shall be at the Design-Builder's expense unless the condition was caused by the Owner or a separate contractor, in which event the Owner shall be responsible for payment of such costs.

#### § A.12.2 CORRECTION OF WORK

##### § A.12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION.

§ A.12.2.1.1 The Design-Builder shall promptly correct Work rejected by the Owner or failing to conform to the requirements of the Design-Build Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing, shall be at the Design-Builder's expense.

##### § A.12.2.2 AFTER SUBSTANTIAL COMPLETION

§ A.12.2.2.1 In addition to the Design-Builder's obligations under Section A.3.5, if, within one year after the date of Substantial Completion or after the date for commencement of warranties established under Section A.9.8.5 or by terms of an applicable special warranty required by the Design-Build Documents, any of the Work is found to be not in accordance with the requirements of the Design-Build Documents, the Design-Builder shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Design-Builder a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Design-Builder and give the Design-Builder an opportunity to make the correction, the Owner waives the rights to require correction by the Design-Builder and to make a claim for breach of warranty. If the Design-Builder fails to correct non-conforming Work within a reasonable time during that period after receipt of notice from the Owner, the Owner may correct it in accordance with Section A.2.5.

§ A.12.2.2.2 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual performance of the Work.



§ A.12.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Design-Builder pursuant to this Section A.12.2.

§ A.12.2.3 The Design-Builder shall remove from the site portions of the Work which are not in accordance with the requirements of the Design-Build Documents and are neither corrected by the Design-Builder nor accepted by the Owner.

§ A.12.2.4 The Design-Builder shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors caused by the Design-Builder's correction or removal of Work which is not in accordance with the requirements of the Design-Build Documents.

§ A.12.2.5 Nothing contained in this Section A.12.2 shall be construed to establish a period of limitation with respect to other obligations the Design-Builder might have under the Design-Build Documents. Establishment of the one-year period for correction of Work as described in Section A.12.2.2 relates only to the specific obligation of the Design-Builder to correct the Work, and has no relationship to the time within which the obligation to comply with the Design-Build Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Design-Builder's liability with respect to the Design-Builder's obligations other than specifically to correct the Work.

#### § A.12.3 ACCEPTANCE OF NONCONFORMING WORK

§ A.12.3.1 If the Owner prefers to accept Work not in accordance with the requirements of the Design-Build Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be equitably adjusted by Change Order. Such adjustment shall be effected whether or not final payment has been made.

#### ARTICLE A.13 MISCELLANEOUS PROVISIONS

##### § A.13.1 GOVERNING LAW

§ A.13.1.1 The Design-Build Contract shall be governed by the law of the place where the Project is located.

##### § A.13.2 SUCCESSORS AND ASSIGNS

§ A.13.2.1 The Owner and Design-Builder respectively bind themselves, their partners, successors, assigns and legal representatives to the other party hereto and to partners, successors, assigns and legal representatives of such other party in respect to covenants, agreements and obligations contained in the Design-Build Documents. Except as provided in Section A.13.2.2, neither party to the Design-Build Contract shall assign the Design-Build Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Design-Build Contract.

§ A.13.2.2 The Owner may, without consent of the Design-Builder, assign the Design-Build Contract to an institutional lender providing construction financing for the Project. In such event, the lender shall assume the Owner's rights and obligations under the Design-Build Documents. The Design-Builder shall execute all consents reasonably required to facilitate such assignment.

##### § A.13.3 WRITTEN NOTICE

§ A.13.3.1 Written notice shall be deemed to have been duly served if delivered in person to the individual or a member of the firm or entity or to an officer of the corporation for which it was intended, or if sent by registered or certified mail to the last business address known to the party giving notice.

##### § A.13.4 RIGHTS AND REMEDIES

§ A.13.4.1 Duties and obligations imposed by the Design-Build Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.

§ A.13.4.2 No action or failure to act by the Owner or Design-Builder shall constitute a waiver of a right or duty afforded them under the Design-Build Documents, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

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**§ A.13.5 TESTS AND INSPECTIONS**

**§ A.13.5.1** Tests, inspections and approvals of portions of the Work required by the Design-Build Documents or by laws, ordinances, rules, regulations or orders of public authorities having jurisdiction shall be made at an appropriate time. Unless otherwise provided, the Design-Builder shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Design-Builder shall give timely notice of when and where tests and inspections are to be made so that the Owner may be present for such procedures.

**§ A.13.5.2** If the Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Section A.13.5.1, the Owner shall in writing instruct the Design-Builder to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Design-Builder shall give timely notice to the Owner of when and where tests and inspections are to be made so that the Owner may be present for such procedures. Such costs, except as provided in Section A.13.5.3, shall be at the Owner's expense.

**§ A.13.5.3** If such procedures for testing, inspection or approval under Sections A.13.5.1 and A.13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Design-Build Documents, all costs made necessary by such failure, including those of repeated procedures, shall be at the Design-Builder's expense.

**§ A.13.5.4** Required certificates of testing, inspection or approval shall, unless otherwise required by the Design-Build Documents, be secured by the Design-Builder and promptly delivered to the Owner.

**§ A.13.5.5** If the Owner is to observe tests, inspections or approvals required by the Design-Build Documents, the Owner will do so promptly and, where practicable, at the normal place of testing.

**§ A.13.5.6** Tests or inspections conducted pursuant to the Design-Build Documents shall be made promptly to avoid unreasonable delay in the Work.

**§ A.13.6 COMMENCEMENT OF STATUTORY LIMITATION PERIOD**

**§ A.13.6.1** As between the Owner and Design-Builder:

- .1 Before Substantial Completion.** As to acts or failures to act occurring prior to the relevant date of Substantial Completion, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than such date of Substantial Completion;
- .2 Between Substantial Completion and Final Application for Payment.** As to acts or failures to act occurring subsequent to the relevant date of Substantial Completion and prior to issuance of the final Application for Payment, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than the date of issuance of the final Application for Payment; and
- .3 After Final Application for Payment.** As to acts or failures to act occurring after the relevant date of issuance of the final Application for Payment, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than the date of any act or failure to act by the Design-Builder pursuant to any Warranty provided under Section A.3.5, the date of any correction of the Work or failure to correct the Work by the Design-Builder under Section A.12.2, or the date of actual commission of any other act or failure to perform any duty or obligation by the Design-Builder or Owner, whichever occurs last.

**ARTICLE A.14 TERMINATION OR SUSPENSION OF THE DESIGN/BUILD CONTRACT**

**§ A.14.1 TERMINATION BY THE DESIGN-BUILDER**

**§ A.14.1.1** The Design-Builder may terminate the Design-Build Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Design-Builder or a Contractor, Subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Design-Builder, for any of the following reasons:

- .1** issuance of an order of a court or other public authority having jurisdiction which requires all Work to be stopped;
- .2** an act of government, such as a declaration of national emergency which requires all Work to be stopped;

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- .3 the Owner has failed to make payment to the Design-Builder in accordance with the Design-Build Documents; or
- .4 the Owner has failed to furnish to the Design-Builder promptly, upon the Design-Builder's request, reasonable evidence as required by Section A.2.2.8.

§ A.14.1.2 The Design-Builder may terminate the Design-Build Contract if, through no act or fault of the Design-Builder or a Contractor, Subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Design-Builder, repeated suspensions, delays or interruptions of the entire Work by the Owner, as described in Section A.14.3, constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ A.14.1.3 If one of the reasons described in Sections A.14.1.1 or A.14.1.2 exists, the Design-Builder may, upon seven days' written notice to the Owner, terminate the Design-Build Contract and recover from the Owner payment for Work executed and for proven loss with respect to materials, equipment, tools, and construction equipment and machinery, including reasonable overhead, profit and damages.

§ A.14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Design-Builder or a Contractor or their agents or employees or any other persons performing portions of the Work under a direct or indirect contract with the Design-Builder because the Owner has persistently failed to fulfill the Owner's obligations under the Design-Build Documents with respect to matters important to the progress of the Work, the Design-Builder may, upon seven additional days' written notice to the Owner, terminate the Design-Build Contract and recover from the Owner as provided in Section A.14.1.3.

#### § A.14.2 TERMINATION BY THE OWNER FOR CAUSE

§ A.14.2.1 The Owner may terminate the Design-Build Contract if the Design-Builder:

- .1 persistently or repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Contractors for services, materials or labor in accordance with the respective agreements between the Design-Builder and the Architect and Contractors;
- .3 persistently disregards laws, ordinances or rules, regulations or orders of a public authority having jurisdiction; or
- .4 otherwise is guilty of substantial breach of a provision of the Design-Build Documents.

§ A.14.2.2 When any of the above reasons exist, the Owner may without prejudice to any other rights or remedies of the Owner and after giving the Design-Builder and the Design-Builder's surety, if any, seven days' written notice, terminate employment of the Design-Builder and may, subject to any prior rights of the surety:

- .1 take possession of the site and of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Design-Builder;
- .2 accept assignment of contracts pursuant to Section A.5.5.1; and
- .3 finish the Work by whatever reasonable method the Owner may deem expedient. Upon request of the Design-Builder, the Owner shall furnish to the Design-Builder a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ A.14.2.3 When the Owner terminates the Design-Build Contract for one of the reasons stated in Section A.14.2.1, the Design-Builder shall not be entitled to receive further payment until the Work is finished.

§ A.14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Design-Builder. If such costs and damages exceed the unpaid balance, the Design-Builder shall pay the difference to the Owner.

#### § A.14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE

§ A.14.3.1 The Owner may, without cause, order the Design-Builder in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine.

§ A.14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section A.14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent:

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- .1 that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Design-Builder is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of the Design-Build Contract.

**§ A.14.4 TERMINATION BY THE OWNER FOR CONVENIENCE**

**§ A.14.4.1** The Owner may, at any time, terminate the Design-Build Contract for the Owner's convenience and without cause.

**§ A.14.4.2** Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Design-Builder shall:

- .1 cease operations as directed by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing contracts and purchase orders and enter into no further contracts and purchase orders.

**§ A.14.4.3** In the event of termination for the Owner's convenience prior to commencement of construction, the Design-Builder shall be entitled to receive payment for design services performed, costs incurred by reason of such termination and reasonable overhead and profit on design services not completed. In case of termination for the Owner's convenience after commencement of construction, the Design-Builder shall be entitled to receive payment for Work executed and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed.

# AIA® Document A141™ – 2004 Exhibit C

## **Insurance and Bonds**

### **for the following PROJECT:**

*(Name and location or address)*

LIO Building Remodel  
716 West 4th Avenue  
Anchorage, AK 99501

### **THE OWNER:**

*(Name, legal status and address)*

716 WEST FOURTH AVENUE, LLC  
425 G Street, Suite 210  
Anchorage, AK 99501

### **THE DESIGN-BUILDER:**

*(Name, legal status and address)*

Criterion General, INC.  
2820 Commercial Drive  
Anchorage, Alaska 99501

### **ADDITIONS AND DELETIONS:**

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Consultation with an attorney is also encouraged with respect to professional licensing requirements in the jurisdiction where the Project is located.

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#### ARTICLE C.1

The Owner and Design-Builder shall provide policies of liability insurance as required by the Design-Build Documents, or as follows:

*(Specify changes, if any, to the requirements of the Design-Build Documents, and for each type of insurance identify applicable limits and deductible amounts.)*

Design Builder will carry:

1. Commercial GL \$1.0M per occurrence, \$2.0M Aggregate Minimum;
2. Auto coverage \$1.0M per occurrence, \$2.0M Aggregate Minimum;
3. Umbrella Coverage \$4 Million;
4. 100% Builder's All Risk replacement coverage;
5. Professional Liability \$1.0M;
6. Workman's compensation and employer's liability in statutory amounts;

Deductibles shall not exceed \$10,000.

Design builder liability coverages will name Pfeffer Development, LLC and Owner as additional insureds and will be primary and non contributing to any coverage carried by Pfeffer Development, LLC and Owner.

#### ARTICLE C.2

The Design-Builder shall provide surety bonds as follows:

*(Specify type and penal sum of bonds.)*

Type	Penal Sum (\$0.00)
100%Performance and Payment Bond	

§ C.2.1 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Agreement, the Design-Builder shall promptly furnish a copy of the bonds or shall permit a copy to be made.

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**CRITERION GENERAL, INC.**  
**2820 COMMERCIAL DRIVE, ANCHORAGE AK 99501-3015**  
**907-277-3200 TELEPHONE; 907-272-8544 FACSIMILE**

**CONSTRUCTION CONSTRUCTION ESTIMATE**

**PROJECT TITLE: ALASKA LIO BUILDING 4TH AVENUE**  
**BUDGET PROPOSAL DATE: AUGUST 27, 2013**  
**OWNER: PFEFFER DEVELOPMENT**  
**ARCHITECT: KPB ARCHITECTS**  
**START DATE: NOVEMBER 2013**  
**COMPLETE DATE: DECEMBER 2014**  
**TOTAL AREA: 64,048 SF**  
**ESTIMATE BY: DEROBERTS**

**DEMO OLD ANCHOR BAR, CONSTRUCT NEW BUILDING WITH ELEVATOR/RESTROOM CORE), RENOVATE EXISTING LIO BUILDING.**

**ALL FINISHES ARE ALLOWANCES. FINAL SELECTIONS TO BE DETERMINED.**

716-000109

ESTIMATE SUMMARY								
CODE	DESCRIPTION		LABOR	TOTAL	MATERIAL	EQUIPMENT	SUB / OTHER	TOTAL
01000	GENERAL REQUIREMENTS		HOURS					
			15414.5	1280238.12	247500.00	658000.00	1626000.00	\$3,811,738.12
02000	SITEWORK		4982	413775.75	141820.00	22350.00	3334450.00	\$3,912,395.75
03000	CONCRETE		8139.002	675977.85	542147.40	31155.00	138858.00	\$1,388,138.25
04000	MASONRY	NOT USED	0	0.00	0.00	0.00	0.00	\$0.00
05000	METALS		6188	514769.59	1289136.00	0.00	430148.00	\$2,234,053.59
06000	WOOD AND PLASTIC		1572.6	130810.95	220570.00	0.00	0.00	\$351,180.95
07000	THERMAL AND MOISTURE		4829.9	401143.22	570175.00	0.00	717582.00	\$1,688,900.22
08000	DOORS AND WINDOWS		1012	84050.79	269200.00	0.00	2215000.00	\$2,568,250.79
09000	FINISHES		11426.975	949057.64	451527.00	0.00	1512532.00	\$2,913,116.64
10000	SPECIALTIES		559.45	46464.64	176020.00	0.00	10000.00	\$232,484.64
11000	EQUIPMENT	NOT USED	0	0.00	0.00	0.00	0.00	\$0.00
12000	FURNISHINGS		300	24916.24	0.00	4500.00	0.00	\$29,416.24
13000	SPECIAL CONSTRUCTION	NOT USED	0	0.00	0.00	0.00	0.00	\$0.00
14000	CONVEYING SYSTEMS		280	23255.16	42300.00	0.00	505000.00	\$570,555.16
15000	MECHANICAL		80	6644.33	0.00	0.00	4192625.00	\$4,199,269.33
16000	ELECTRICAL		100	8305.41	0.00	0.00	3101124.00	\$3,109,429.41
SUBTOTAL, COST			54894.427	4559209.71	3950395.40	716005.00	17783319.00	\$27,008,929.11
COMPOSITE HOURLY RATE			\$83.05 Estimator Note import this rate from the hourly rate calculator worksheet					
MARK-UPS:								
4%	PROFIT MARKUP		1,147,879					
4%	GENERAL OVERHEAD MARKUP		1,147,879					
TOTAL MARKUPS			2,295,759	Net markup on sale =	7.07%			\$2,295,758.97
FEES & PREMIUMS:								
00610	LIABILITY INSURANCE		27,422.31					
00610	UMBRELLA PREMIUM		0.00	EXCLUDED				
00620	DEPARTMENT OF LABOR FEE		5,000.00					
00620	BUILDERS ALL-RISK INSURANCE		64,470.31		PERMIT FEE	PLAN REVIEW	FIRE REVIEW	
00630	MOA BUILDING PERMIT & INSPECTION FEES		354,627.24		\$162,054	\$91,027	\$29,710	
00650	AWWU		15,000.00					
00650	PARKING RENTAL		20,000.00					
00650	ROAD CLOSURE & TRAFFIC PERMITS		100,000.00	alley&4th				
00650	ENSTAR		5,000.00					
00650	ML&P FEES		40,000.00					
TOTAL FEES & PREMIUMS			631,519.86					\$631,519.86
TOTAL ESTIMATE								\$29,936,208
PERFORMANCE & PAYMENT BOND PREMIUM (cost code 00640) IF REQUIRED								\$232,847
TOTAL ESTIMATE WITH BOND								\$30,169,055

DIVISION 01000, GENERAL REQUIREMENTS												
CODE	DESCRIPTION	COMPOSITE RATE	\$83.05 / HR	UNIT	LABOR	TOTAL	MATERIAL	EQUIPM'NT	SUB / OTHER	TOTALS		
	JOB DURATION	QUAN.	UNIT		HRS		UNIT	UNIT	UNIT			
		13 mo										
01300	JOB ADMINISTRATION											
01310	Project design & engineering	1.0	cb	80	80	6644.33	0	0.00	0	0.00	1342000	1342000.00
01310	Exploratory & as-built work	1.0	cb	0	0	0.00	0	0.00	0	0.00	25000	25000.00
01310	Project manager	13.0	mo	60	780	64782.23	400	5200.00	0	0.00	0	0.00
01320	Project supervision	55.3	wks	50	2763	229437.08	0	0.00	0	0.00	0	0.00
01325	Safety program manager	13.0	mo	32	416	34550.52	0	0.00	0	0.00	0	0.00
01330	Project engineer / submittals / C&M's	13.0	mo	20	260	21594.08	500	6500.00	0	0.00	0	0.00
01340	Project coordinator	13.0	mo	10	130	10797.04	0	0.00	0	0.00	0	0.00
01350	Expediting / purchasing	13.0	mo	40	520	43188.16	0	0.00	0	0.00	0	0.00
01400	O.C. / FIELD ENGR.											
01420	Construction staking & as-built plot plan	1.0	job	0	0	0.00	0	0.00	0	0.00	8000	8000.00
01430	Inspections	1.0	job	0	0	0.00	0	0.00	0	0.00	80000	80000.00
01500	TEMPORARY FACILITIES											
01501	Field office	13.0	mo	8	104	8637.63	0	0.00	2000	26000.00	0	0.00
01501	Temp crew parking - Use garage	0.0	mo	0	0	0.00	0	0.00	0	0.00	0	0.00
01502	Project signs	1.0	ea	10	10	830.54	1000	1000.00	0	0.00	0	0.00
01503	Storage Containers	2.0	ea	0	0	0.00	0	0.00	1500	3000.00	0	0.00
01503	Storage area / security fence	600.0	lf	0.05	30	2491.62	0	0.00	8	4800.00	0	0.00
01504	Temporary toilets	13.0	mo	0	0	0.00	0	0.00	0	0.00	1050	13650.00
01505	Temp electric service	1.0	job	100	100	8305.41	0	0.00	0	0.00	20000	20000.00
01506	Electricity	13.0	mo	0	0	0.00	0	0.00	0	0.00	3000	39000.00
01507	Temporary lights	13.0	flrs	10	130	10797.04	1000	13000.00	0	0.00	0	0.00
01508	Temporary heat	8.0	mo	40	320	26577.33	15000	120000.00	1000	8000.00	0	0.00
01509	Telephones	13.0	mo	0	0	0.00	0	0.00	100	1300.00	250	3250.00
01510	Temp weather protection	6.0	flrs	125	750	62290.61	4000	24000.00	0	0.00	0	0.00
01510	Temp pedestrian walkways	1.0	job	100	100	8305.41	4000	4000.00	0	0.00	0	0.00
01511	Snow removal	5.0	mo	40	200	16610.83	0	0.00	0	0.00	0	0.00
01512	Cleanup periodic	13.0	mo	140	1820	151158.54	0	0.00	0	0.00	0	0.00
01513	Cleanup final, inc. windows	1.0	job	200	200	16610.83	200	200.00	0	0.00	8000	8000.00
01514	Safe - supplies	1.0	job	0	0	0.00	8000	8000.00	0	0.00	0	0.00
01515	Material handling	13.0	mo	200	2600	215940.78	0	0.00	0	0.00	0	0.00
01516	Trash haul, dumpsters	13.0	mo	24	312	25912.89	0	0.00	600	7800.00	1200	15600.00
01600	EQUIPMENT											
01610	Consumables	1.0	job	0	0	0.00	16000	16000.00	0	0.00	0	0.00
01620	Scaffolding / man lifts	12.0	mo	0	0	0.00	0	0.00	3500	42000.00	0	0.00
01630	Job trucks (pickup, flatbed)	13.0	mo	0	0	0.00	0	0.00	1200	15600.00	0	0.00
01640	Boom Truck	8.0	mo	0	0	0.00	0	0.00	3000	24000.00	0	0.00
01640	Forklift	10.0	mo	0	0	0.00	0	0.00	3000	30000.00	0	0.00
01640	Aerial Boom Lift	12.0	mo	0	0	0.00	0	0.00	8000	96000.00	0	0.00
01650	Misc rental	13.0	mo	0	0	0.00	0	0.00	500	6500.00	0	0.00
01660	Fuel & maintenance	13.0	mo	30	390	32391.12	800	10400.00	0	0.00	0	0.00
01670	Crane Service	11.0	mo	200	2200	182719.12	3200	35200.00	30000	330000.00	0	0.00
01680	Man / equipment hoist	7.0	mo	160	1120	93020.64	0	0.00	9000	63000.00	6500	45500.00
01800	FREIGHT											
01820	General ocean freight-sea to jobsite	4.0	loads	0	0	0.00	0	0.00	0	0.00	6500	26000.00
01860	Move / demobe	1.0	job	80	80	6644.33	2000	2000.00	0	0.00	0	0.00
GENERAL REQUIREMENTS, TOTAL					15415	1280238.12	247500.00	658000.0		1626000.00		\$3,811,738.12



DIVISION 02000, SITEWORK												
COMPOSITE RATE:		\$83.05 / HR	LABOR			MATERIAL		EQUIPMNT		SUB / OTHER		
CODE	DESCRIPTION	QUAN. UNIT	UNIT	HRS	TOTAL	UNIT	TOTAL	UNIT	TOTAL	UNIT	TOTAL	TOTALS
02220	Additional Asbestos Abatement - ALLOWAN	1.0 job	0	0	0.00	0	0.00	0	0.00	300000	300000.00	\$300,000.00
02221	Demolition subcontractor - AK DEMO	1.0 job	500	500	41527.07	0	0.00	0	0.00	1976200	1976200.00	\$2,017,727.07
02221	Temporary shoring - building	1.0 job	100	400	33221.66	20000	20000.00	0	0.00	0	0.00	\$53,221.66
02221	Temporary shoring - garage	1.0 job	500	500	41527.07	20000	20000.00	0	0.00	0	0.00	\$81,527.07
02221	Additional demolition	6.0 hrs	100	600	49832.49	0	0.00	500	3000.00	0	0.00	\$52,832.49
02221	Haul off misc demo debris	20.0 lds	4	80	6644.33	0	0.00	350	7000.00	650	13000.00	\$26,644.33
02221	Remove floor adhesives	61000.0 sf	0.0075	458	37997.27	0	0.00	0.05	3050.00	0	0.00	\$41,047.27
02300	Traffic control plan	1.0 job	100	100	8305.41	20000	20000.00	0	0.00	8000	8000.00	\$36,305.41
02300	Traffic control plan - flagger	8.0 mo	160	1280	106309.31	0	0.00	0	0.00	0	0.00	\$106,309.31
02300	Site & utility subcontractor - BCX	1.0 job	40	40	3322.17	0	0.00	0	0.00	359300	359300.00	\$362,622.17
02316	Trenching for M & E-interior bldg	500.0 lf	0.05	25	2076.35	1	500.00	2.5	1250.00	0	0.00	\$3,826.35
02370	SWPPP management / street sweeping	7.0 mo	60	420	34882.74	500	3500.00	1000	7000.00	0	0.00	\$45,382.74
02455	H piling & lagging (basement shoring)	120.0 lf	2	240	19932.99	100	12000.00	0	0.00	4500	54000.00	\$571,832.99
02740	Asphalt pavement @ Alley	4000.0 sf	0	0	0.00	0	0.00	0	0.00	5	20000.00	\$20,000.00
02740	Asphalt pavement @ roads	4000.0 sf	0	0	0.00	0	0.00	0	0.00	5	20000.00	\$20,000.00
02740	Asphalt seal coat parking garage	40300.0 sf	0	0	0.00	0	0.00	0	0.00	0.5	20150.00	\$20,150.00
02760	Paint markings - garage	120.0 ea	0	0	0.00	0	0.00	0	0.00	35	4200.00	\$4,200.00
02770	Curb & gutter patches	120.0 lf	0	0	0.00	0	0.00	0	0.00	40	4800.00	\$4,800.00
02775	Sidewalks & pads	3800.0 sf	0.025	95	7890.14	5	19000.00	0	0.00	2	7600.00	\$34,490.14
02775	Patio deck	2100.0 sf	0.025	53	4360.34	5	10500.00	0.5	1050.00	2	4200.00	\$20,110.34
02775	Ramp - garage	4000.0 sf	0.025	100	8305.41	6	24000.00	0	0.00	3	12000.00	\$44,305.41
02820	Fences & gates-dumpster enclosure	36.0 lf	1	36	2989.95	120	4320.00	0	0.00	0	0.00	\$7,309.95
02820	Gates @ garage ramp	1.0 job	40	40	3322.17	0	0.00	0	0.00	25000	25000.00	\$28,322.17
02900	Landscape planing	1.0 job	0	0	0.00	0	0.00	0	0.00	5000	5000.00	\$5,000.00
02900	Landscape planter/trees @ patio	5.0 ea	0	0	0.00	0	0.00	0	0.00	3500	15000.00	\$15,000.00
02900	Landscape furnishings (bike rack, benches)	8.0 ea	2	16	1328.87	1000	8000.00	0	0.00	0	0.00	\$9,328.87
		0.0	0	0	0.00	0	0.00	0	0.00	0	0.00	\$0.00
DIVISION 02, TOTAL				4982	413775.75		141820.00		22350.00		3334450.00	\$3,912,395.75
DIVISION 03000, CONCRETE												
COMPOSITE RATE:		\$83.05 / HR	LABOR			MATERIAL		EQUIPMNT		SUB / OTHER		
CODE	DESCRIPTION	QUAN. UNIT	UNIT	HRS	TOTAL	UNIT	TOTAL	UNIT	TOTAL	UNIT	TOTAL	TOTALS
03100	Formwork	23500.0 sfsa	0.1	2350	195177.24	5	117500.00	0	0.00	0	0.00	\$312,677.24
03200	Reinforcing-purchase	190000 lb	0	0	0.00	0.75	142500.00	0	0.00	0	0.00	\$142,500.00
03200	Reinforcing place rebar	100.0 ton	0	0	0.00	0	0.00	0	0.00	900	90000.00	\$90,000.00
03200	Reinforcing place WWF	26672 sf	0.0025	67	5538.05	0.4	10688.80	0	0.00	0	0.00	\$16,206.85
03300	Place footing, walls, grade beams	582.0 cy	0.75	436.50	36253.13	125	72750.00	15	8730.00	0	0.00	\$117,733.13
03300	Place concrete ballast SOG	580.0 cy	0.75	435.00	36128.55	125	72500.00	15	8700.00	0	0.00	\$117,328.55
03300	Place concrete on grade/decks/infills	362.0 cy	1	362.00	30065.60	125	45250.00	25	9050.00	0	0.00	\$84,365.60
03300	Place & finish stairs & landings	30.0 cy	3	90.00	7474.87	125	3750.00	15	450.00	400	12000.00	\$23,674.87
03300	Place housekeeping pads	30.0 cy	3	90.00	7474.87	125	3750.00	15	450.00	0	0.00	\$11,674.87
03300	Edge of deck infill	3000.0 sf	0.1	300.00	24916.24	3	9000.00	1	3000.00	0	0.00	\$36,916.24
03300	Place misc. conc	50.0 cy	3	150.00	12458.12	125	6250.00	0	0.00	0	0.00	\$18,708.12
03300	Garage - upgrades	1.0 job	2000	2000.00	166108.29	30000	30000.00	0	0.00	0	0.00	\$196,108.29
03350	Finish concrete slabs	24572 sf	0	0	0.00	0	0.00	0	0.00	1.5	36858.00	\$36,858.00
03390	Curing / sealing	24572 sf	0.001	25	2040.81	0.05	1228.60	0	0.00	0	0.00	\$3,269.41
03600	Grout column bases	20.0 ea	1	20	1661.08	50	1000.00	0	0.00	0	0.00	\$2,661.08
03151	Sawcut control joints	1550.0 lf	0.035	54	4505.69	0	0.00	0.5	775.00	0	0.00	\$5,280.69
03050	Epoxy Bolts	1.0 job	1500	1500	124581.22	15000	15000.00	0	0.00	0	0.00	\$139,581.22
03050	Embedded items	1.0 job	200	200	16610.83	8000	8000.00	0	0.00	0	0.00	\$24,610.83
03050	Anchor bolts & templates	120.0 ea	0.5	60	4983.25	25	3000.00	0	0.00	0	0.00	\$7,983.25
DIVISION 03, TOTAL				8139	675977.85		542147.40		31155.00		138858.00	\$1,388,138.25
total yards		4555.0										

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DIVISION 04000, MASONRY												
CODE	DESCRIPTION	COMPOSITE RATE: QUAN. UNIT	UNIT	LABOR HRS	TOTAL	MATERIAL UNIT	TOTAL	EQUIPMENT UNIT	TOTAL	SUB / OTHER UNIT	TOTAL	TOTALS
04200	Concrete masonry units	0.0 blks	0	0	0.00	0	0.00	0	0.00	0	0.00	\$0.00
	<b>DIVISION 04, TOTAL</b>			0	0.00		0.00		0.00		0.00	\$0.00
DIVISION 05000, METALS												
CODE	DESCRIPTION	COMPOSITE RATE: QUAN. UNIT	UNIT	LABOR HRS	TOTAL	MATERIAL UNIT	TOTAL	EQUIPMENT UNIT	TOTAL	SUB / OTHER UNIT	TOTAL	TOTALS
05090	Welding rod, gas, bolts, supplies	1.0 job	0	0	0.00	2500	2500.00	0	0.00	0	0.00	\$2,500.00
05100	Structural steel fabrication	455000 lbs	0	0	0.00	1.5	682500.00	0	0.00	0	0.00	\$682,500.00
05100	Buckling restraint braces	104 ea	8	832	69101.05	2500	260000.00	0	0.00	0	0.00	\$329,101.05
05100	Stairwells	1 ea	0	0	0.00	35000	35000.00	0	0.00	0	0.00	\$35,000.00
05100	Structural steel erection	27572 sf	0	0	0.00	0	0.00	0	0.00	9	248148.00	\$248,148.00
05100	Structural steel decking purchase	27572 sf	0	0	0.00	3	82716.00	0	0.00	0	0.00	\$82,716.00
05100	Structural steel upgrades	1 job	2200	2200	182719.12	100000	100000.00	0	0.00	0	0.00	\$282,719.12
05100	Ship structural steel	22 lds	0	0	0.00	0	0.00	0	0.00	6500	143000.00	\$143,000.00
05200	Steel roof joists	5600 sf	0	0	0.00	6	33600.00	0	0.00	0	0.00	\$33,600.00
05200	Ship roof joist & deck	5 lds	0	0	0.00	0	0.00	0	0.00	7600	39000.00	\$39,000.00
05400	Cold-formed metal framing	21800 lf	0.125	2725	226322.55	2.4	52320.00	0	0.00	0	0.00	\$278,642.55
05500	Welded rebar @ pour stop	700 ea	0.25	175	14534.48	5	3500.00	0	0.00	0	0.00	\$18,034.48
05500	Angles openings through deck	1 job	60	60	4983.25	3500	3500.00	0	0.00	0	0.00	\$8,483.25
05500	Angles at elevator pits	3 ea	4	12	996.65	300	900.00	0	0.00	0	0.00	\$1,896.65
05500	Miscellaneous fabricated metals	1 job	50	50	4152.71	5000	5000.00	0	0.00	0	0.00	\$9,152.71
05500	Handrails	600 lf	0.1	60	4983.25	30	18000.00	0	0.00	0	0.00	\$22,983.25
05500	Temporary guard rails	2400 lf	0.035	84	6976.55	4	9600.00	0	0.00	0	0.00	\$16,576.55
	<b>DIVISION 05, TOTAL</b>			6198	514769.59		1289136.00		0.00		430148.00	\$2,234,053.59
DIVISION 06000, WOOD AND PLASTIC												
CODE	DESCRIPTION	COMPOSITE RATE: QUAN. UNIT	UNIT	LABOR HRS	TOTAL	MATERIAL UNIT	TOTAL	EQUIPMENT UNIT	TOTAL	SUB / OTHER UNIT	TOTAL	TOTALS
06100	Curbs cants blocking	4000.0 bf	0.04	160	13288.66	3	12000.00	0	0.00	0	0.00	\$25,288.66
06160	Sheathing - data boards	2800 sf	0.025	7	581.38	1	280.00	0	0.00	0	0.00	\$861.38
06160	Sheathing - parapets	18000 bf	0.025	45	3737.44	1.2	2160.00	0	0.00	0	0.00	\$5,897.44
06160	Sheathing	17000 sf	0.025	43	3529.80	1.4	2380.00	0	0.00	0	0.00	\$5,909.80
06200	Modular art wall	0 ea	10	0	0.00	5000	0.00	0	0.00	0	0.00	\$0.00
06200	Custom floor base	30000 lf	0.35	1050	87206.85	10	30000.00	0	0.00	0	0.00	\$117,206.85
06410	Custom casework - security desk	1.0 job	20	20	1661.08	20000	20000.00	0	0.00	0	0.00	\$21,661.08
06410	Custom casework - allowance	1.0 job	150	150	12458.12	125000	125000.00	0	0.00	0	0.00	\$137,458.12
06415	Solid surface @ restrooms	128 lf	0.45	58	4783.92	200	25600.00	0	0.00	0	0.00	\$30,383.92
06600	FRP panels - janitor closets	900.0 sf	0.045	41	3363.69	3.5	3150.00	0	0.00	0	0.00	\$6,513.69
	<b>DIVISION 06, TOTAL</b>			1573	130610.95		220570.00		0.00		0.00	\$351,180.95



716-000113

DIVISION 07000, THERMAL AND MOISTURE													
COMPOSITE RATE:		\$83.05 / HR	LABOR			MATERIAL		EQUIPMNT		SUB / OTHER			
CODE	DESCRIPTION	QUAN	UNIT	UNIT	HRS	TOTAL	UNIT	TOTAL	UNIT	TOTAL	UNIT	TOTAL	TOTALS
07110	Foundation membrane - E/P	0.0	sf	0	0	0.00	0	0.00	0	0.00	0	0.00	\$0.00
07110	Damp proofing - E/P	0.0	sf	0	0	0.00	0	0.00	0	0.00	0	0.00	\$0.00
07210	Foundation insulation - E/P	0.0	sf	0	0	0.00	0	0.00	0	0.00	0	0.00	\$0.00
07210	Garage ramp	4000.0	sf	0.0075	30	2491.62	1.6	6400.00	0	0.00	0	0.00	\$8,891.62
07210	Sidewalk insulation	2000.0	sf	0.0075	15	1245.81	1.6	3200.00	0	0.00	0	0.00	\$4,445.81
07210	Building insulation-core acoustical	38500.0	sf	0	0	0.00	0	0.00	0	0.00	1.5	57750.00	\$57,750.00
07260	Building insulation- exterior wall	32000.0	sf	0	0	0.00	0	0.00	0	0.00	2	64000.00	\$64,000.00
07260	Air barriers	15100.0	sf	0.0075	113	9405.88	0.85	12835.00	0	0.00	0	0.00	\$22,240.88
07400	Covered utility soffit panels	1280.0	sf	0.08	102	8504.74	30	38400.00	0	0.00	0	0.00	\$46,904.74
07400	Metal siding panels	15160.0	sf	0.2	3020	250823.52	20	302000.00	0	0.00	0	0.00	\$552,823.52
07400	Mechanical room panels	3240.0	sf	0.2	648	53819.09	50	162000.00	0	0.00	0	0.00	\$215,819.09
07500	Membrane roofing ALLOWANCE - E/P	1.0	job	0	0	0.00	0	0.00	0	0.00	406500	406500.00	\$406,500.00
07600	Flashing & sheet metal trim	4000.0	lf	0.03	120	9966.50	5	20000.00	0	0.00	0	0.00	\$29,966.50
07600	Fire stopping-safing @ penetrations	400.0	ea	0.5	200	16610.83	5	2000.00	0	0.00	0	0.00	\$18,610.83
07800	Fire stopping-perimeter angles	3690.0	lf	0.125	461	38308.72	6	22140.00	0	0.00	0	0.00	\$60,448.72
07800	Spray fireproofing - Bradshaw	69848.0	sf	0	0	0.00	0	0.00	0	0.00	2.75	189332.00	\$189,332.00
07900	Caulking & sealants - interiors	1.0	job	40	40	3322.17	400	400.00	0	0.00	0	0.00	\$3,722.17
07900	Caulking & sealants - exteriors	1.0	job	80	80	6844.33	800	800.00	0	0.00	0	0.00	\$7,444.33
DIVISION 07, TOTAL					4830	401143.22		570175.00		0.00		717582.00	\$1,688,900.22
DIVISION 08000, DOORS AND WINDOWS													
COMPOSITE RATE:		\$83.05 / HR	LABOR			MATERIAL		EQUIPMNT		SUB / OTHER			
CODE	DESCRIPTION	QUAN	UNIT	UNIT	HRS	TOTAL	UNIT	TOTAL	UNIT	TOTAL	UNIT	TOTAL	TOTALS
08100	HM frames & doors	95.0	ea	0	760	63121.15	1600	152000.00	0	0.00	0	0.00	\$215,121.15
08310	Access doors	20.0	ea	1	20	1661.08	35	700.00	0	0.00	0	0.00	\$2,361.08
08400	Forms and surface glass ALLOWANCE	1500.0	sf	0	150	12458.12	75	112500.00	0	0.00	0	0.00	\$124,958.12
08800	Glass & Glazing	1.0	job	32	32	2657.73	4000	4000.00	0	0.00	0	0.00	\$6,657.73
08900	Extruded aluminum sills	0.0	lf	0.025	0	0.00	8	0.00	0	0.00	0	0.00	\$0.00
08900	Canopies	1.0	job	10	10	830.54	0	0.00	0	0.00	15000	15000.00	\$15,830.54
08900	Glazed curtain wall & aluminum entrances	1.0	job	40	40	3322.17	0	0.00	0	0.00	2200000	2200000.00	\$2,203,322.17
DIVISION 08, TOTAL					1012	84050.79		269200.00		0.00		2215000.00	\$2,568,250.79



716-000114

<b>DIVISION 09000, FINISHES</b>												
CODE	DESCRIPTION	COMPOSITE RATE: \$83.05 / HR QUAN. UNIT	UNIT	LABOR HRS	TOTAL	MATERIAL UNIT	TOTAL	EQUIPM'T UNIT	TOTAL	SUB / OTHER UNIT	TOTAL	TOTALS
09100	Metal studs- furring interior	51486 lf	0.035	1802	149664.40	0.75	38614.50	0	0.00	0	0.00	\$188,278.90
09100	Metal studs- partition interior	111119 lf	0.035	3889	323011.27	1.1	122230.90	0	0.00	0	0.00	\$445,242.17
09120	Gyp ceiling suspension systems	18298 0 sf	0.05	915	75986.24	3	54894.00	0	0.00	0	0.00	\$130,880.24
09260	GWB - stock & hang	298830 sf	0.01	2988	248190.70	0.5	149415.00	0	0.00	0	0.00	\$397,605.70
09260	Exterior Gyp	15100 sf	0.02	302	25082.35	0.65	9815.00	0	0.00	0	0.00	\$34,897.35
09260	Shall wall	14000 0 sf	0.04	560	46510.32	4	56000.00	0	0.00	0	0.00	\$102,510.32
09260	Tile backer	2224 0 sf	0.025	56	4617.81	1.15	2557.60	0	0.00	0	0.00	\$7,175.41
09300	Tile - ALLOWANCE	1.0 job	20	20	1661.08	0	0.00	0	0.00	200000	200000.00	\$201,661.08
09510	Ceilings ALLOWANCE	50000 0 sf	0.0025	125	10381.77	0	0.00	0	0.00	5	250000.00	\$260,381.77
09510	Floor prep	60000 0 sf	0.01	600	49832.49	0.05	3000.00	0	0.00	0	0.00	\$52,832.49
09680	Flooring - ALLOWANCE	60000 0 sf	0.001	60	4983.25	0	0.00	0	0.00	6.75	405000.00	\$409,983.25
09680	Entry floor system	1.0 job	40	40	3322.17	15000	15000.00	0	0.00	0	0.00	\$18,322.17
09900	Painting & taping	1.0 job	50	50	4152.71	0	0.00	0	0.00	448474	448474.00	\$452,626.71
09900	Painting - garage	1.0 job	20	20	1661.08	0	0.00	0	0.00	65068	65068.00	\$66,729.08
09950	Wallcoverings - restroom ALLOWANCE	10780 0 sf	0	0	0.00	0	0.00	0	0.00	8	86240.00	\$86,240.00
09950	Wallcoverings fancy- ALLOWANCE	770 0 sf	0	0	0.00	0	0.00	0	0.00	75	57750.00	\$57,750.00
<b>DIVISION 09, TOTAL</b>				<b>11427</b>	<b>949057.64</b>		<b>451527.00</b>		<b>0.00</b>		<b>1512532.00</b>	<b>\$2,913,116.64</b>
<b>DIVISION 10000, SPECIALTIES</b>												
CODE	DESCRIPTION	COMPOSITE RATE: \$83.05 / HR QUAN. UNIT	UNIT	LABOR HRS	TOTAL	MATERIAL UNIT	TOTAL	EQUIPM'T UNIT	TOTAL	SUB / OTHER UNIT	TOTAL	TOTALS
10200	Louvers & vents	32 0 ea	2	64	5315.47	100	3200.00	0	0.00	0	0.00	\$8,515.47
10300	Projector screens	3 0 ea	10	30	2491.62	9000	27000.00	0	0.00	0	0.00	\$29,491.62
10400	Interior Signage	120 0 ea	2	240	19932.99	140	16800.00	0	0.00	0	0.00	\$36,732.99
10400	Exterior Signage	1 0 ea	10	10	830.54	0	0.00	0	0.00	10000	10000.00	\$10,830.54
10520	Fire extinguishers	28 0 ea	2	56	4651.03	225	6300.00	0	0.00	0	0.00	\$10,951.03
10520	Knox box	1 0 ea	2	2	166.11	520	520.00	0	0.00	0	0.00	\$686.11
10651	Operable folding wall	2 0 ea	20	40	3322.17	35000	70000.00	0	0.00	0	0.00	\$73,322.17
10800	Toilet & bath accessories	261 0 pcs	0.45	117	9754.71	200	52200.00	0	0.00	0	0.00	\$61,954.71
<b>DIVISION 10, TOTAL</b>				<b>559</b>	<b>46464.64</b>		<b>176020.00</b>		<b>0.00</b>		<b>10000.00</b>	<b>\$232,484.64</b>
<b>DIVISION 12000, FURNISHINGS</b>												
CODE	DESCRIPTION	COMPOSITE RATE: \$8.00 / HR QUAN. UNIT	UNIT	LABOR HRS	TOTAL	MATERIAL UNIT	TOTAL	EQUIPM'T UNIT	TOTAL	SUB / OTHER UNIT	TOTAL	TOTALS
12400	Appliances - EXCLUDED	0 0 job	0	0	0.00	0	0.00	0	0.00	0	0.00	\$0.00
12400	Embed floor closer for KI	0 0 ea	2	0	0.00	50	0.00	0	0.00	0	0.00	\$0.00
12400	Stock KI walls	6 0 ea	50	300	24916.24	0	0.00	750	4500.00	0	0.00	\$29,416.24
<b>DIVISION 04, TOTAL</b>				<b>300</b>	<b>24916.24</b>		<b>0.00</b>		<b>4500.00</b>		<b>0.00</b>	<b>\$29,416.24</b>

DIVISION 14000, CONVEYING SYSTEMS														
CODE	DESCRIPTION	COMPOSITE RATE:		UNIT	LABOR		TOTAL	MATERIAL		EQUIPM'NT		SUB / OTHER		TOTALS
		\$83.05 / HR	QUAN. UNIT		HRS	UNIT		TOTAL	UNIT	TOTAL	UNIT	TOTAL	UNIT	
14200	Elevators - passenger w/ glass back	2.0	ea	40	80	6644.33	15000	30000.00	0	0.00	215000	430000.00	\$466,844.33	
14200	Elevators - passager (basement)	1.0	job	40	40	3322.17	0	0.00	0	0.00	75000	75000.00	\$78,322.17	
14600	Elevator hoist way beam	3.0	ea	12	36	2989.95	500	1500.00	0	0.00	0	0.00	\$4,489.95	
14600	Elevator work platforms	3.0	ea	24	72	5979.90	1500	4500.00	0	0.00	0	0.00	\$10,479.90	
14600	Elevator temporary guard rails	16.0	ea	3	48	3986.60	300	4800.00	0	0.00	0	0.00	\$8,786.60	
14600	Pil ladder	2.0	ea	2	4	332.22	750	1500.00	0	0.00	0	0.00	\$1,832.22	
		0.0		0	0	0.00	0	0.00	0	0.00	0	0.00	\$0.00	
DIVISION 14, TOTAL					280	23255.16		42300.00		0.00		505000.00	\$570,555.16	
DIVISION 15000, MECHANICAL														
CODE	DESCRIPTION	COMPOSITE RATE:		UNIT	LABOR		TOTAL	MATERIAL		EQUIPM'NT		SUB / OTHER		TOTALS
		\$83.05 / HR	QUAN. UNIT		HRS	UNIT		TOTAL	UNIT	TOTAL	UNIT	TOTAL	UNIT	
15000	Mechanical Design Build Allowance	1.0	job	60	60	4983.25	0	0.00	0	0.00	3497125	3497125.00	\$3,502,108.25	
15000	Radiant patio heat	1.0	job	0	0	0.00	0	0.00	0	0.00	80000	80000.00	\$80,000.00	
15000	Control wiring	1.0	job	0	0	0.00	0	0.00	0	0.00	100000	100000.00	\$100,000.00	
15000	Snow melt	1.0	job	10	10	830.54	0	0.00	0	0.00	185000	185000.00	\$185,830.54	
15300	Fire protection - Chinook	1.0	job	0	0	0.00	0	0.00	0	0.00	305500	305500.00	\$305,500.00	
15300	FM 200 data room	1.0	job	10	10	830.54	0	0.00	0	0.00	25000	25000.00	\$25,830.54	
15300	Fire tanks and pumps EXCLUDED	0.0	job	0	0	0.00	0	0.00	0	0.00	0	0.00	\$0.00	
DIVISION 15, TOTAL					80	6644.33		0.00		0.00		4192625.00	\$4,199,269.33	
DIVISION 16000, ELECTRICAL														
CODE	DESCRIPTION	COMPOSITE RATE:		UNIT	LABOR		TOTAL	MATERIAL		EQUIPM'NT		SUB / OTHER		TOTALS
		\$83.05 / HR	QUAN. UNIT		HRS	UNIT		TOTAL	UNIT	TOTAL	UNIT	TOTAL	UNIT	
16000	Electrical Engineering & management	1.0	ob	100	100	8305.41	0	0.00	0	0.00	311024	311024.00	\$319,329.41	
16000	MDP/panels/buse duct/feeders	1.0	job	0	0	0.00	0	0.00	0	0.00	350000	350000.00	\$350,000.00	
16000	Power - (outlets) ALLOWANCE	1.0	ob	0	0	0.00	0	0.00	0	0.00	367200	367200.00	\$367,200.00	
16000	Lighting rough in	1.0	ob	0	0	0.00	0	0.00	0	0.00	275000	275000.00	\$275,000.00	
16000	Light fixtures ALLOWANCE	1.0	ob	0	0	0.00	0	0.00	0	0.00	750000	750000.00	\$750,000.00	
16000	Data ALLOWANCE	1.0	ob	0	0	0.00	0	0.00	0	0.00	250000	250000.00	\$250,000.00	
16000	Fire alarm / security	1.0	ob	0	0	0.00	0	0.00	0	0.00	397400	397400.00	\$397,400.00	
16000	Video conference -ALLOWANCE	1.0	ob	0	0	0.00	0	0.00	0	0.00	45000	45000.00	\$45,000.00	
16000	Generator	1.0	ob	0	0	0.00	0	0.00	0	0.00	146000	146000.00	\$146,000.00	
16000	Parking garage - ALLOWANCE	1.0	job	0	0	0.00	0	0.00	0	0.00	34500	34500.00	\$34,500.00	
16000	Lighting control	1.0	job	0	0	0.00	0	0.00	0	0.00	120000	120000.00	\$120,000.00	
16000	Patio lighting	1.0	job	0	0	0.00	0	0.00	0	0.00	5000	5000.00	\$5,000.00	
16000	Coax cable	1.0	job	0	0	0.00	0	0.00	0	0.00	50000	50000.00	\$50,000.00	
DIVISION 16, TOTAL					100	8305.41		0.00		0.00		3101124.00	\$3,109,429.41	
END														

716-000115





716-000116





716-000117





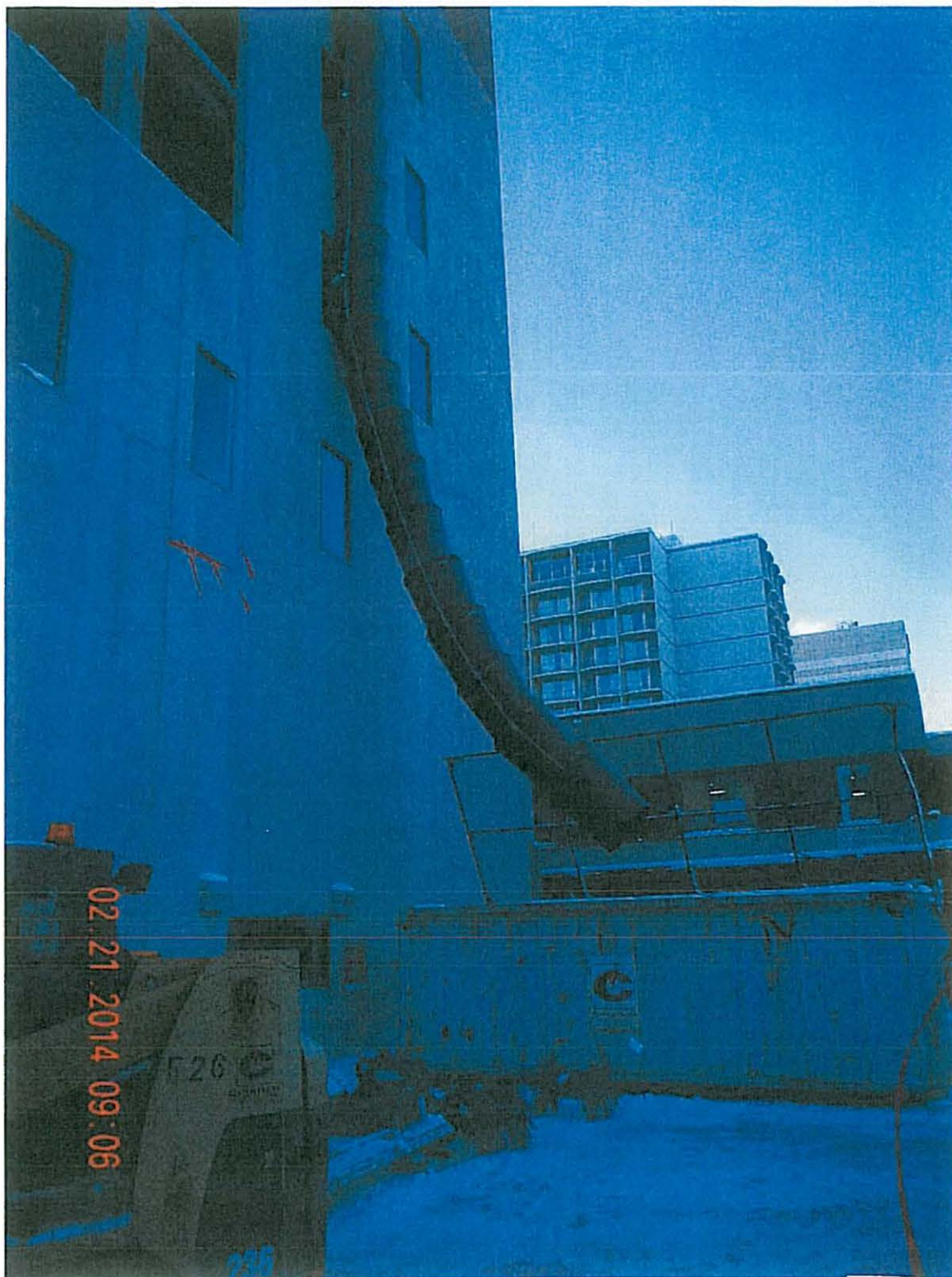
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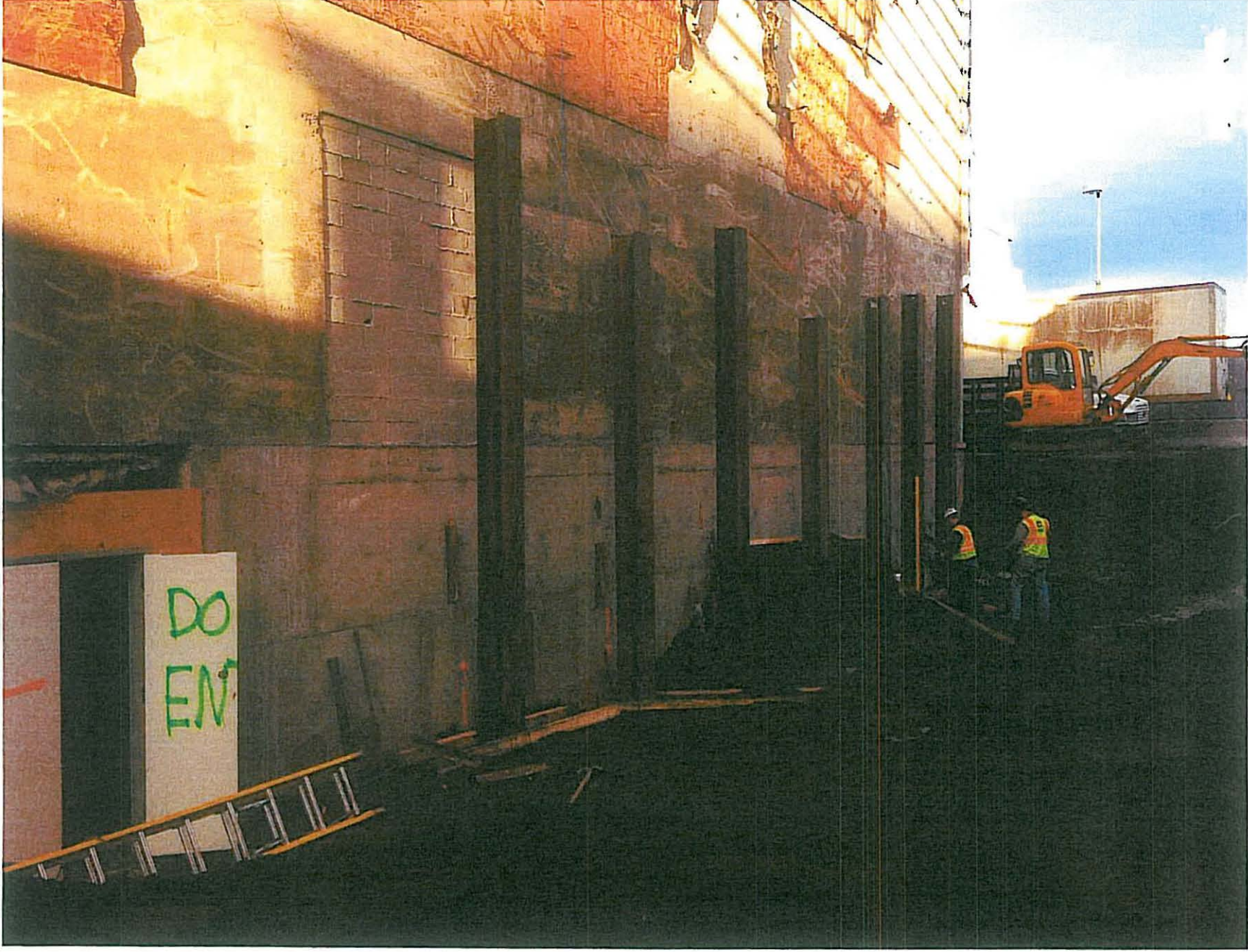
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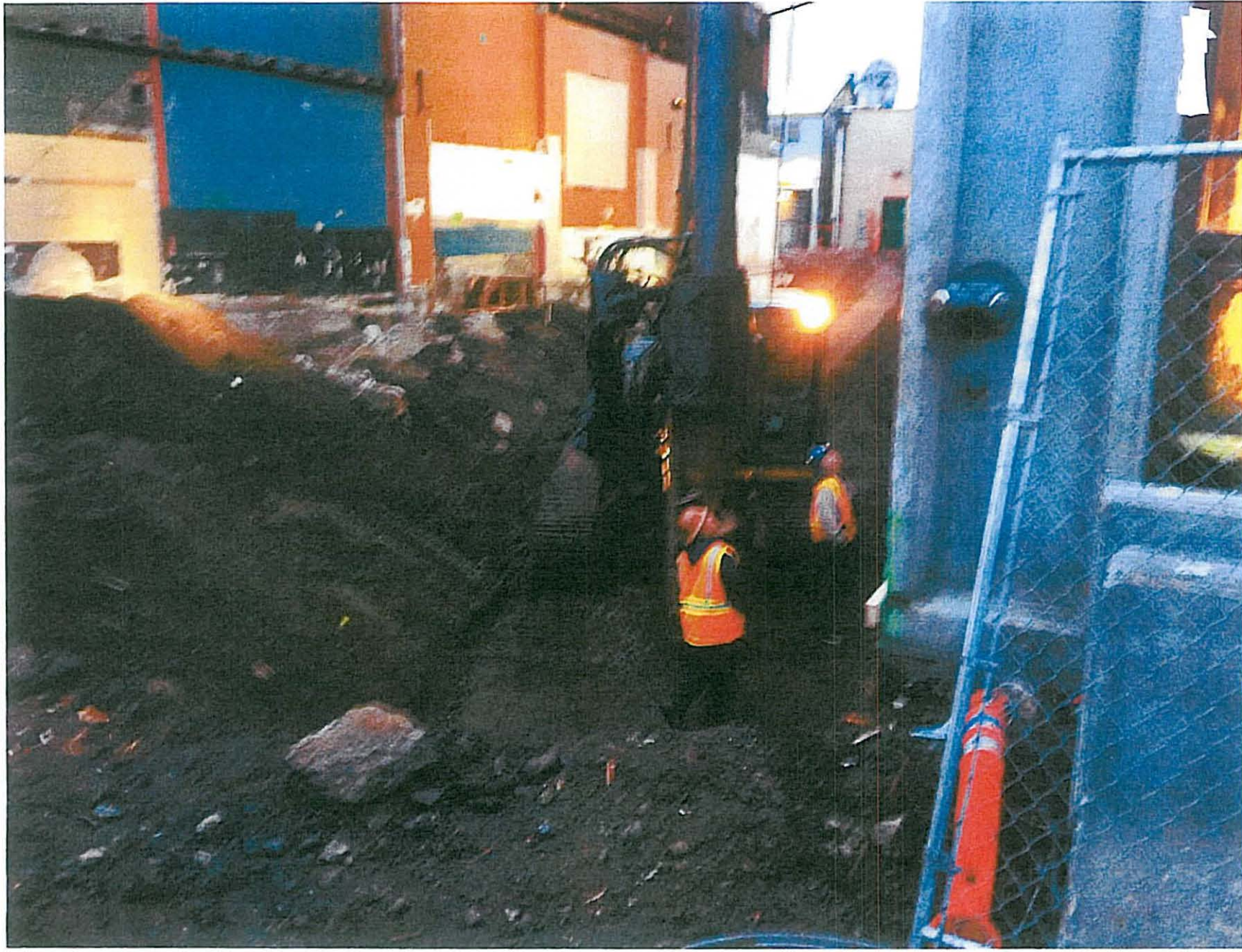
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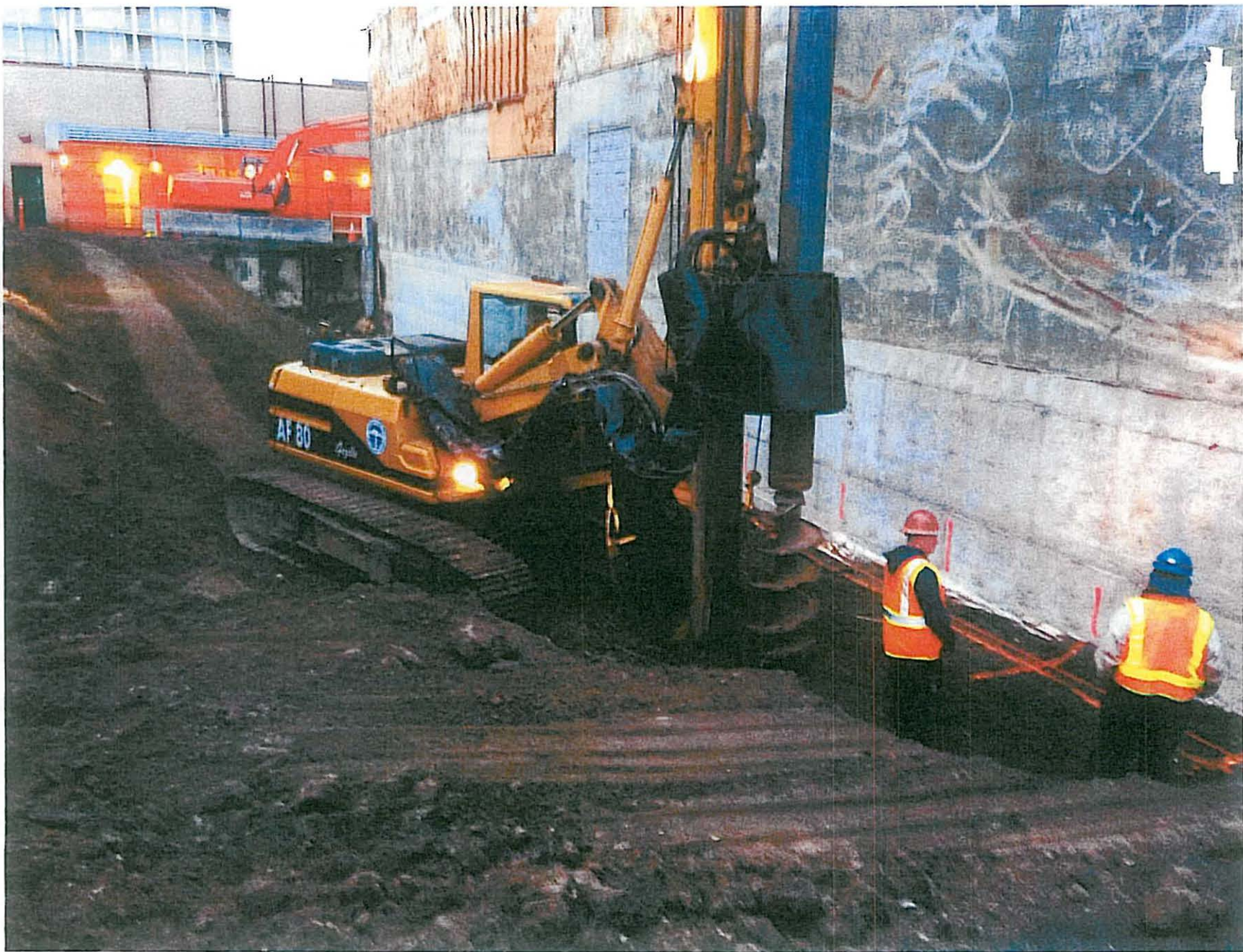
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716-000125





716-000126





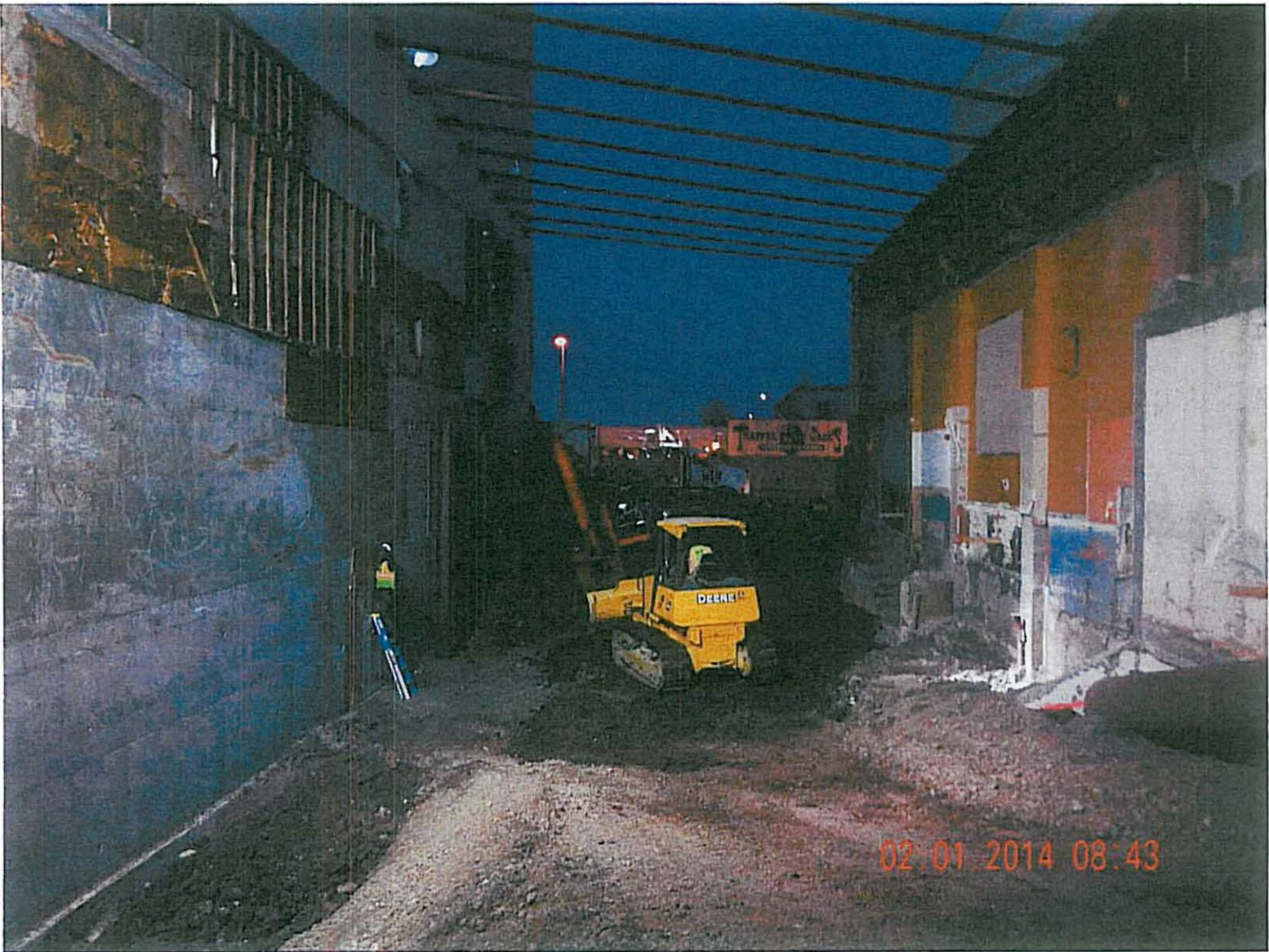
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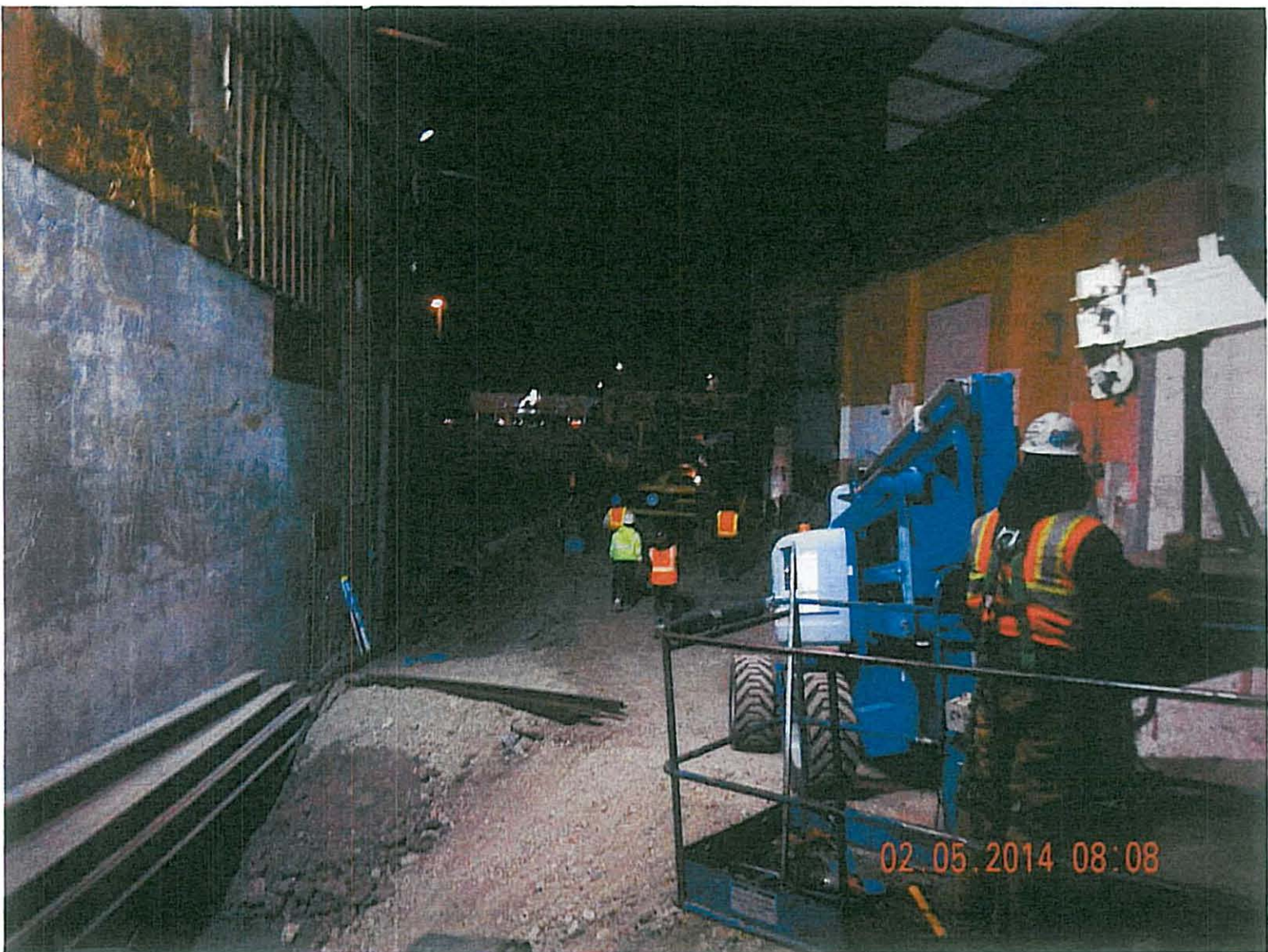
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716-000130





716-000131





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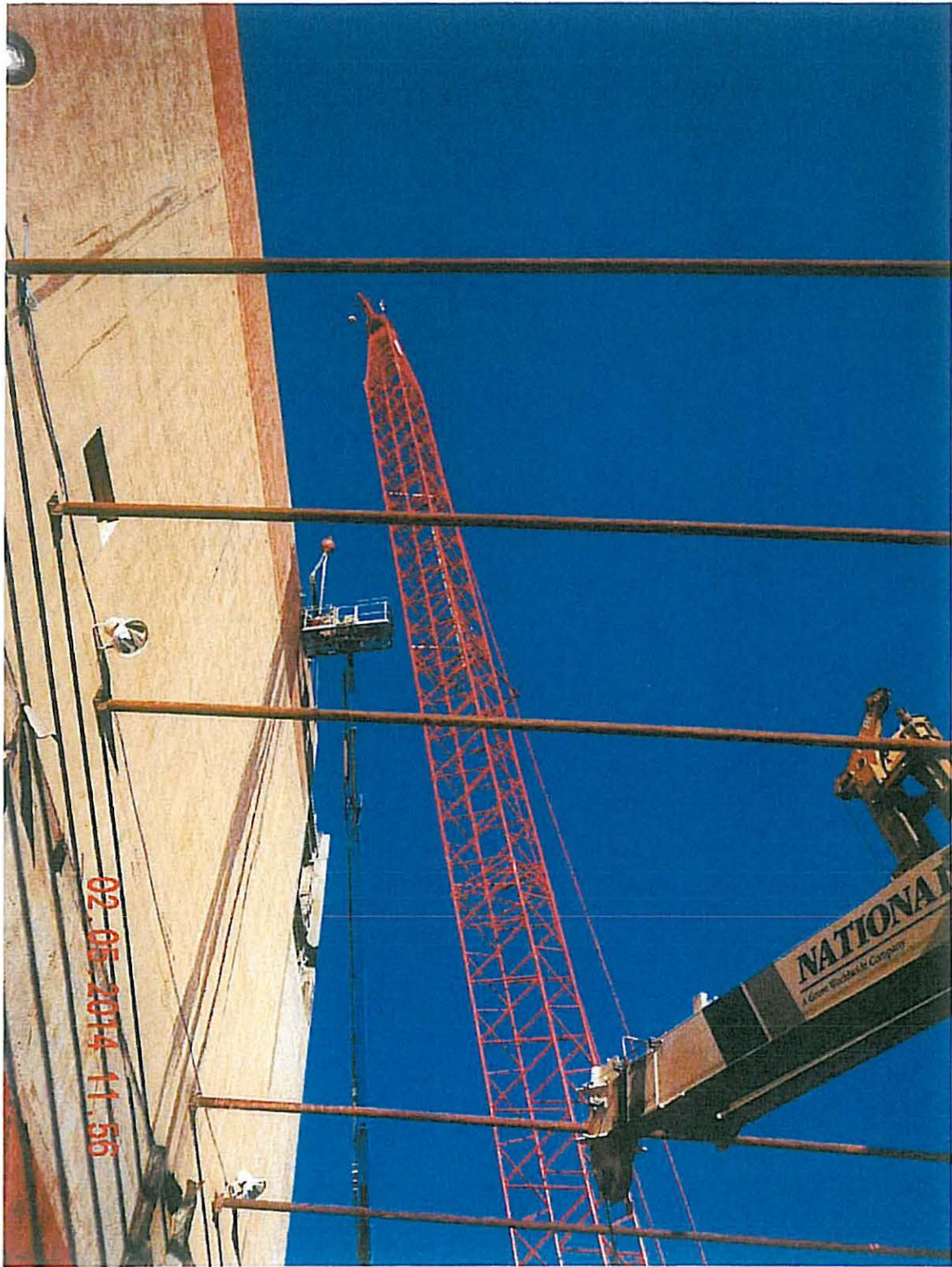
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716-000133





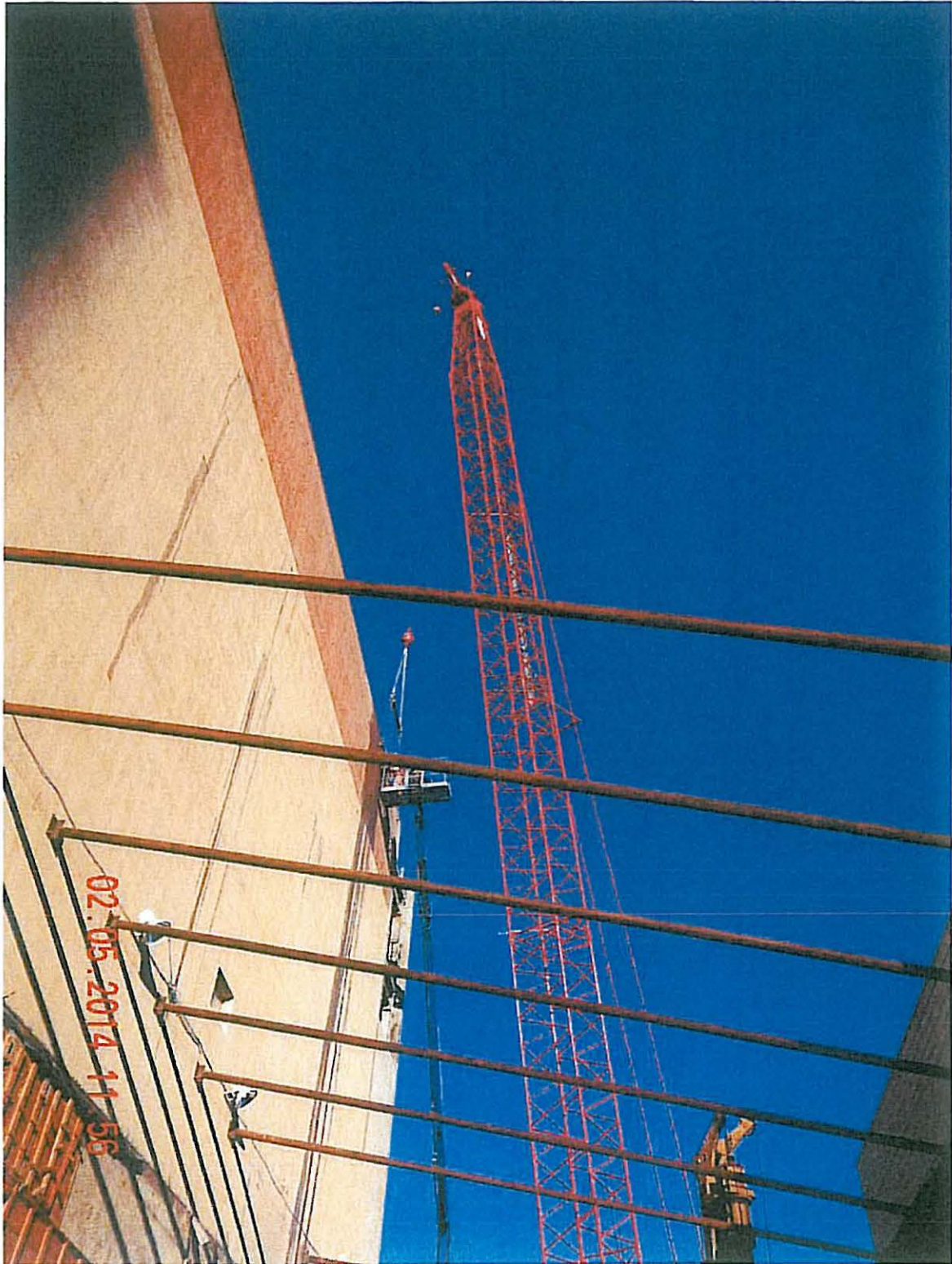
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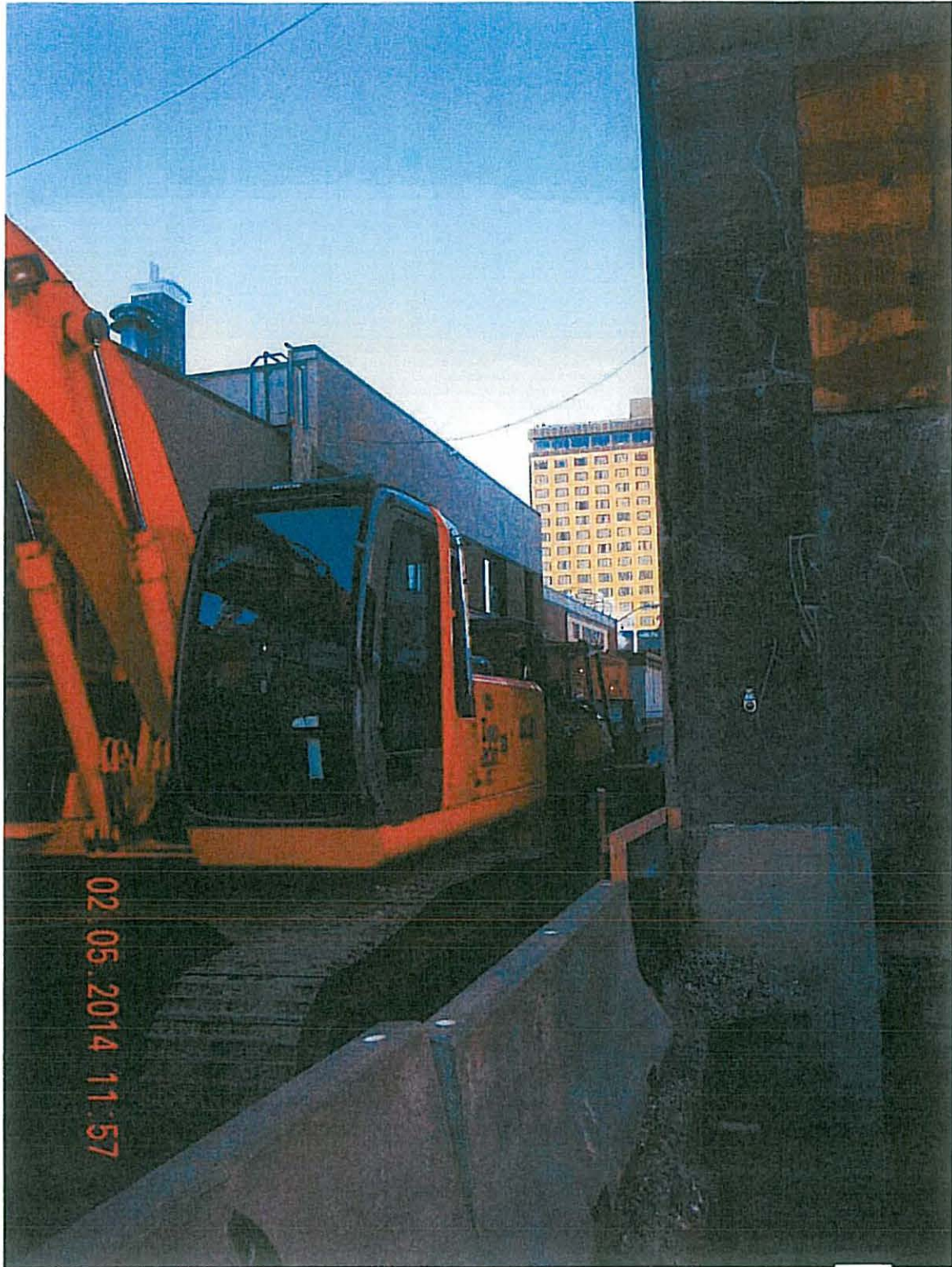
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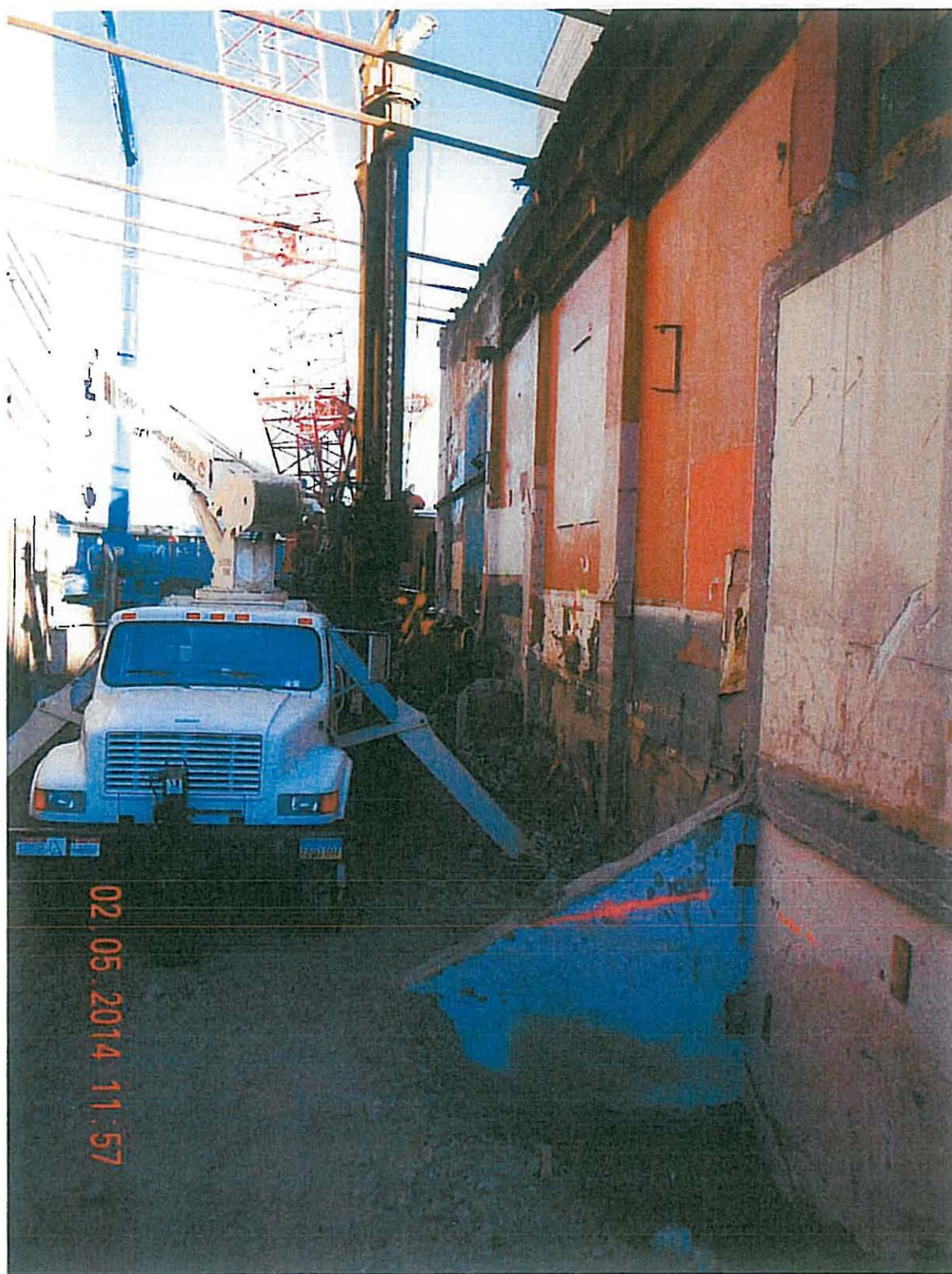
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716-000137



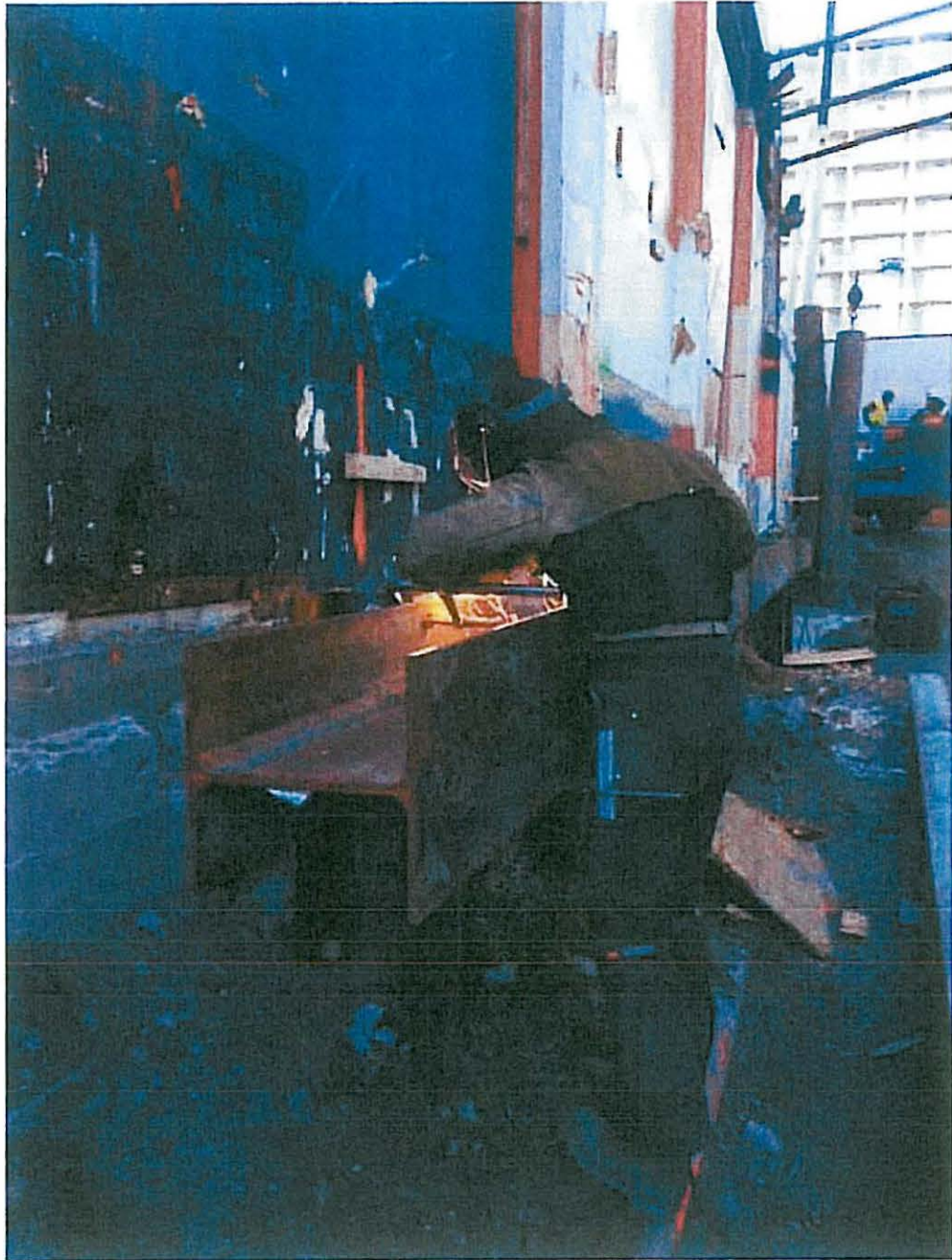


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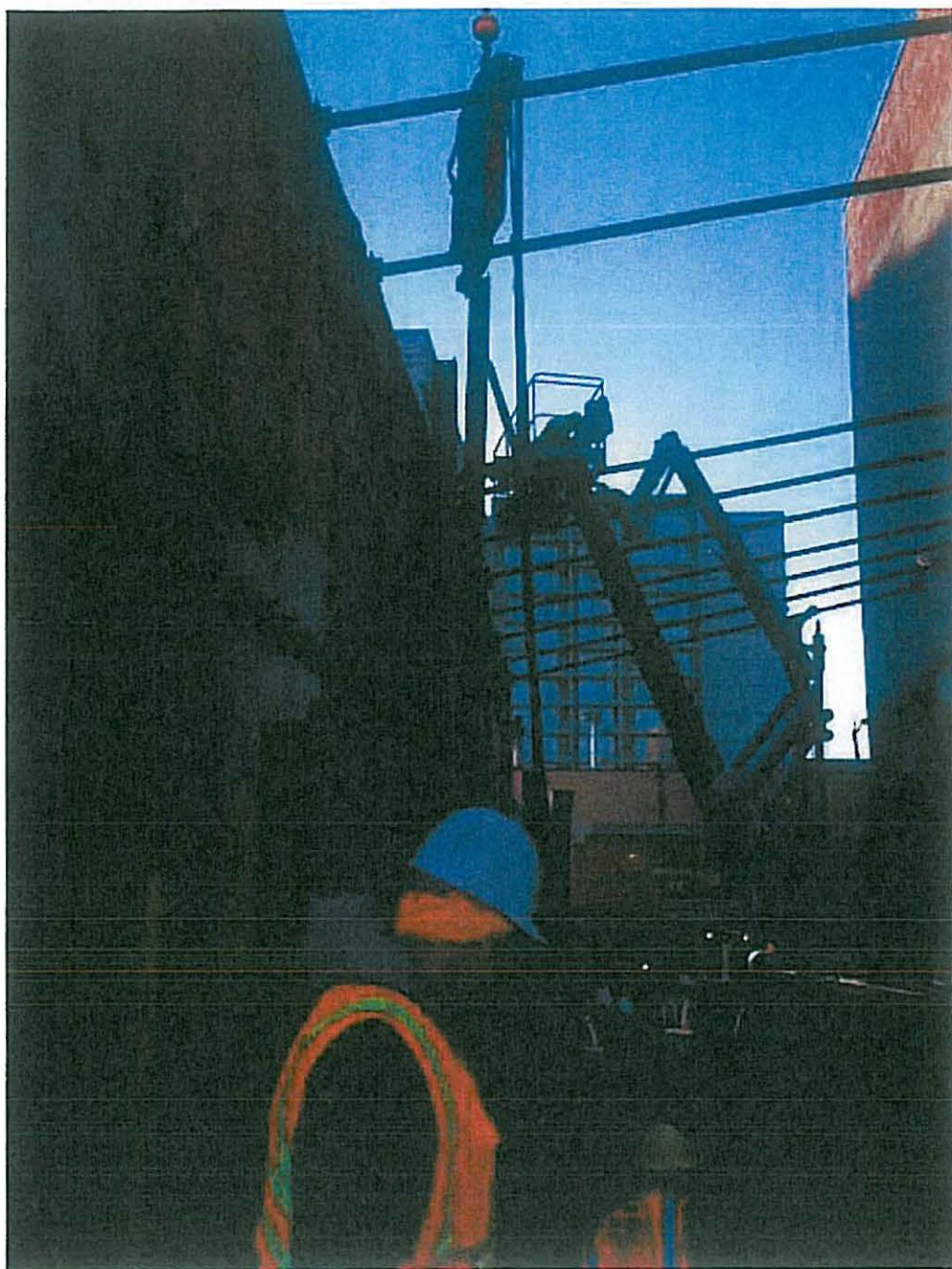


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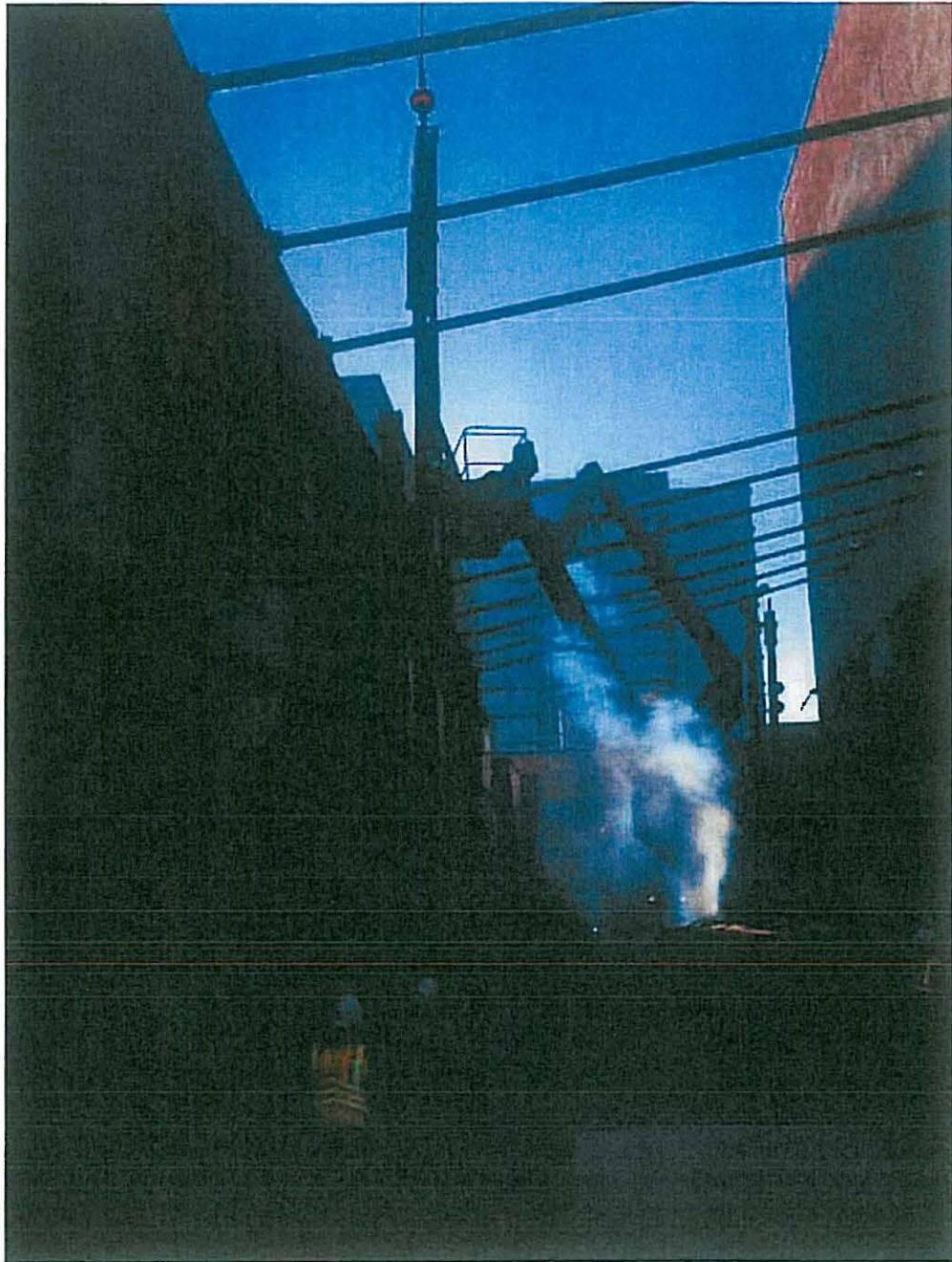


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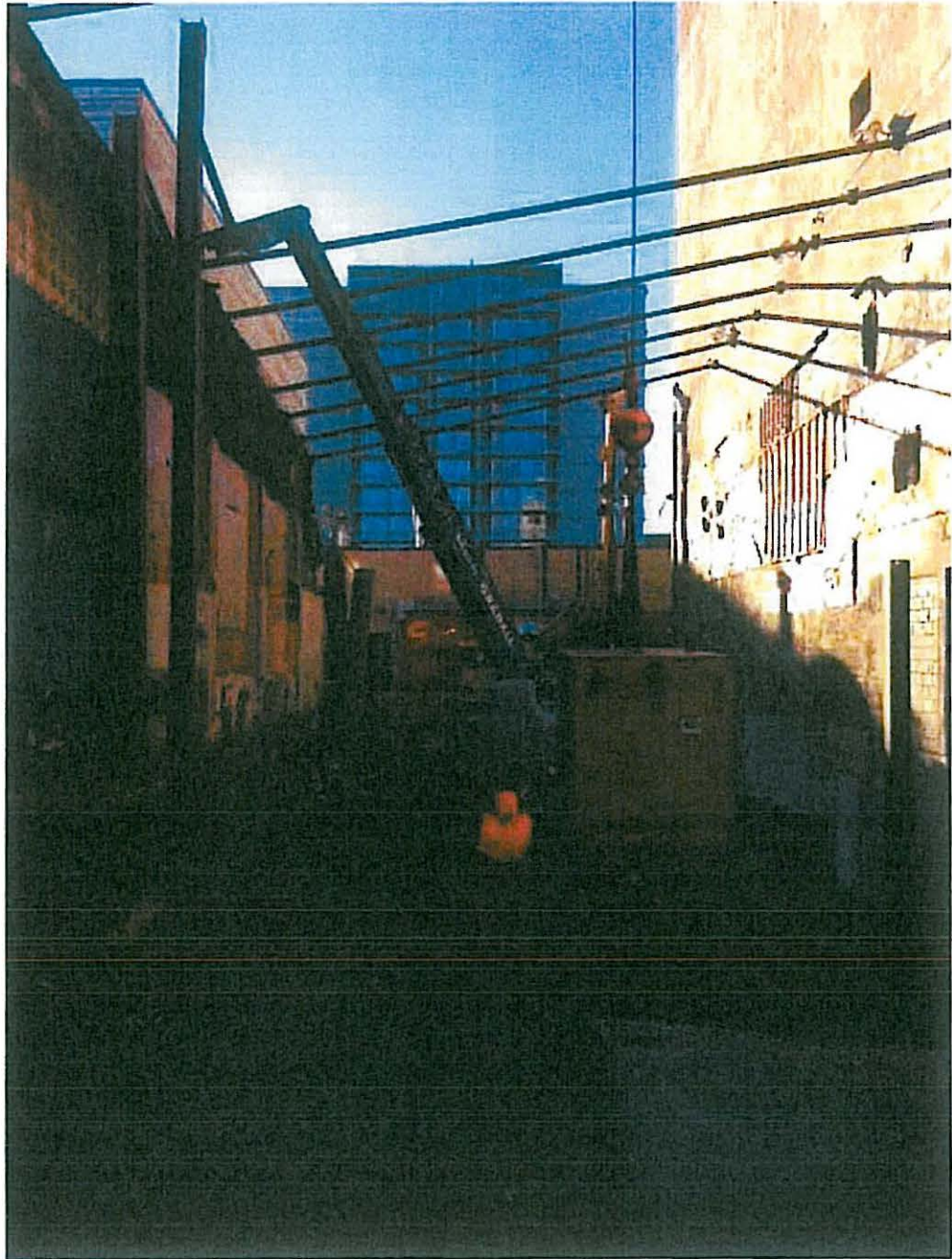


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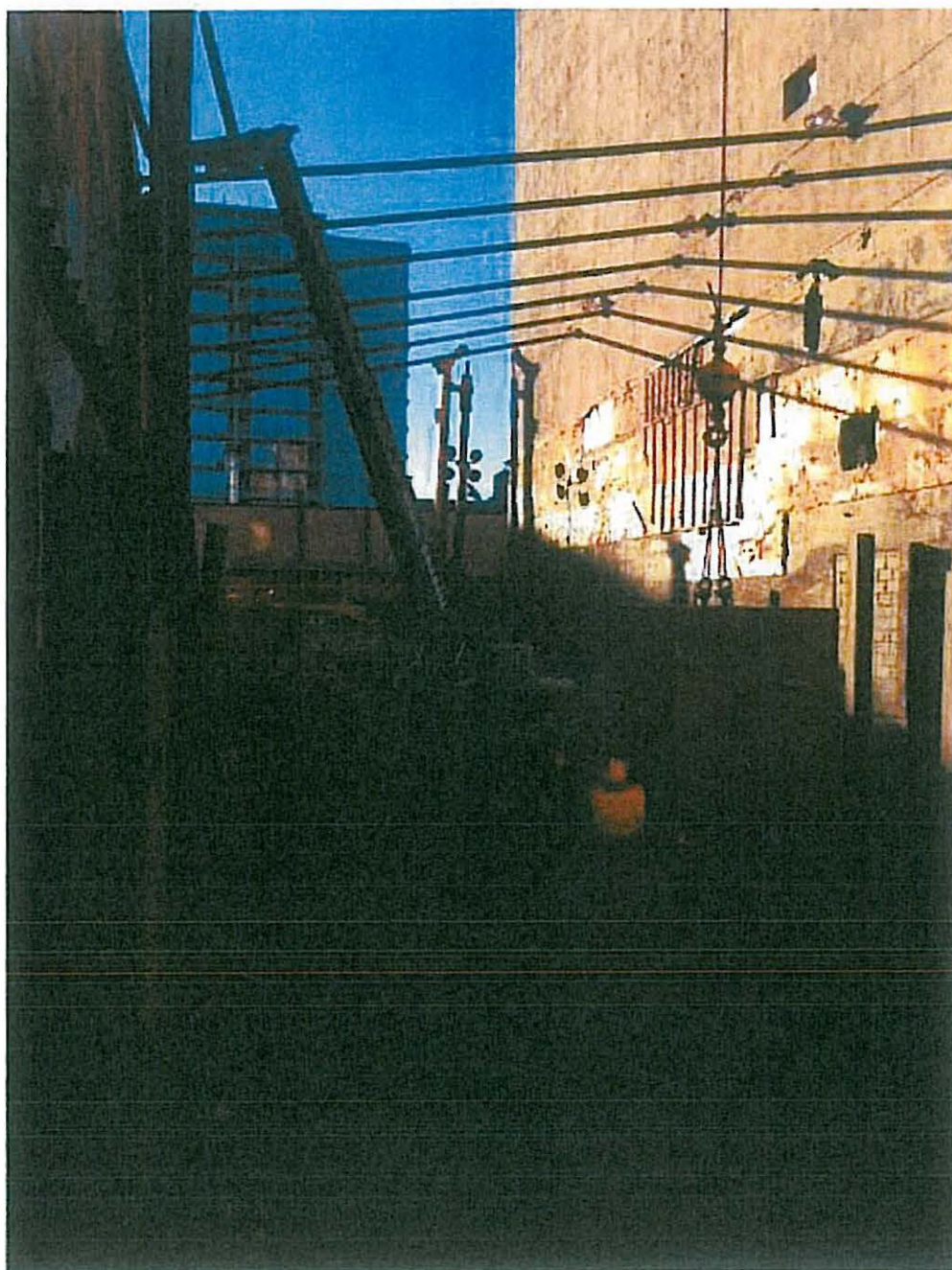


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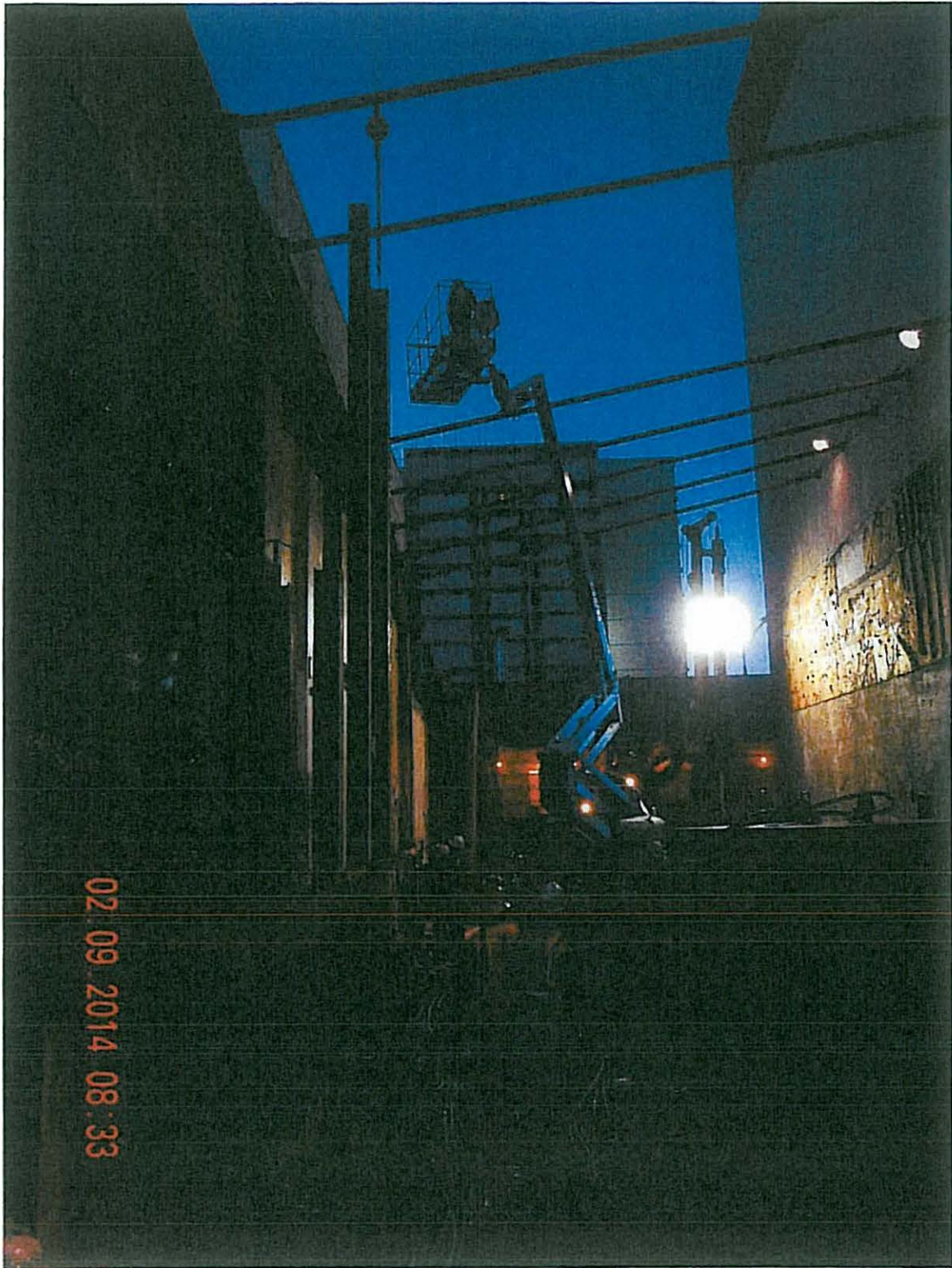


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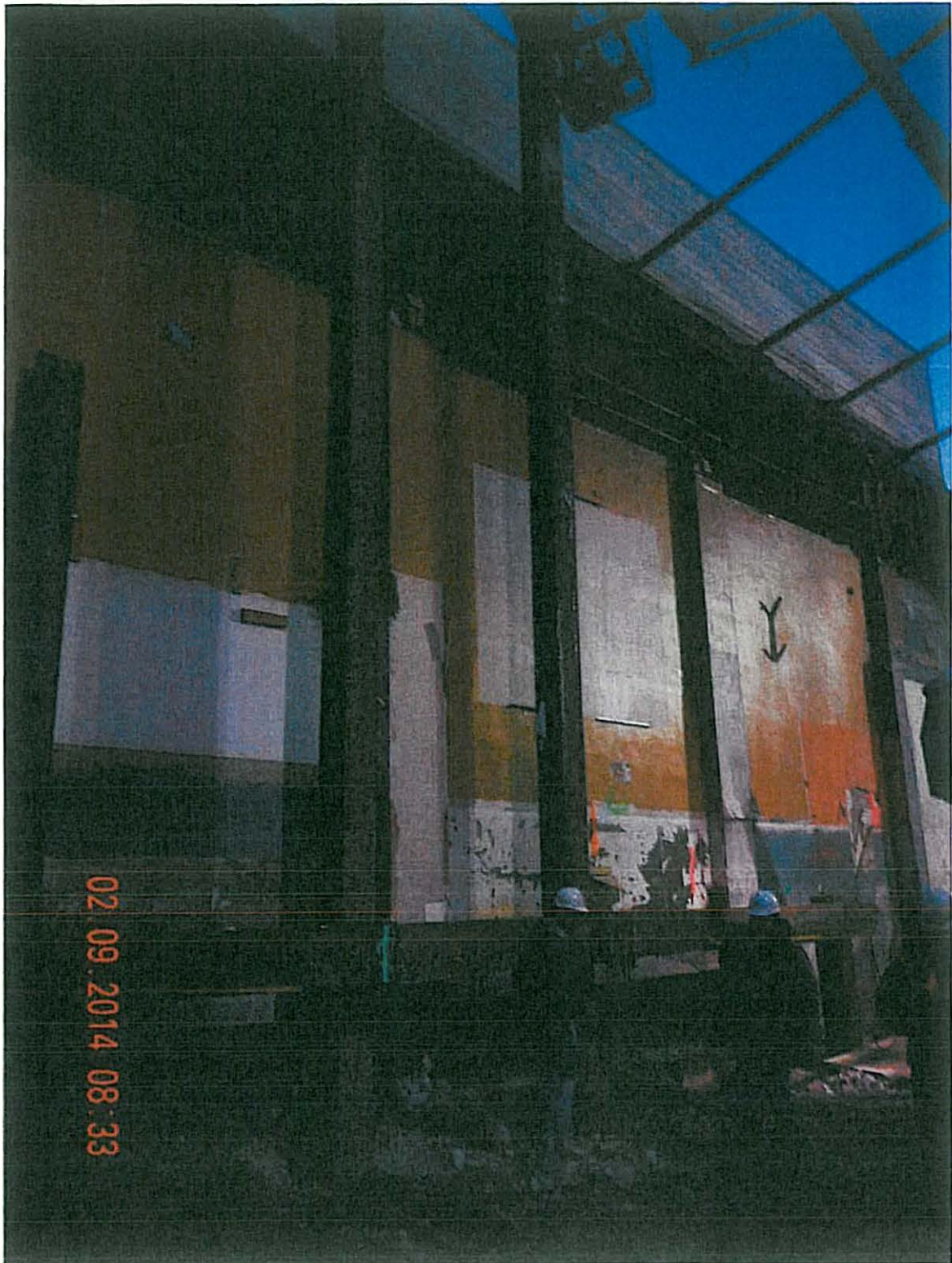
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716-000149





716-000150





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716-000151





716-000152





716-000153

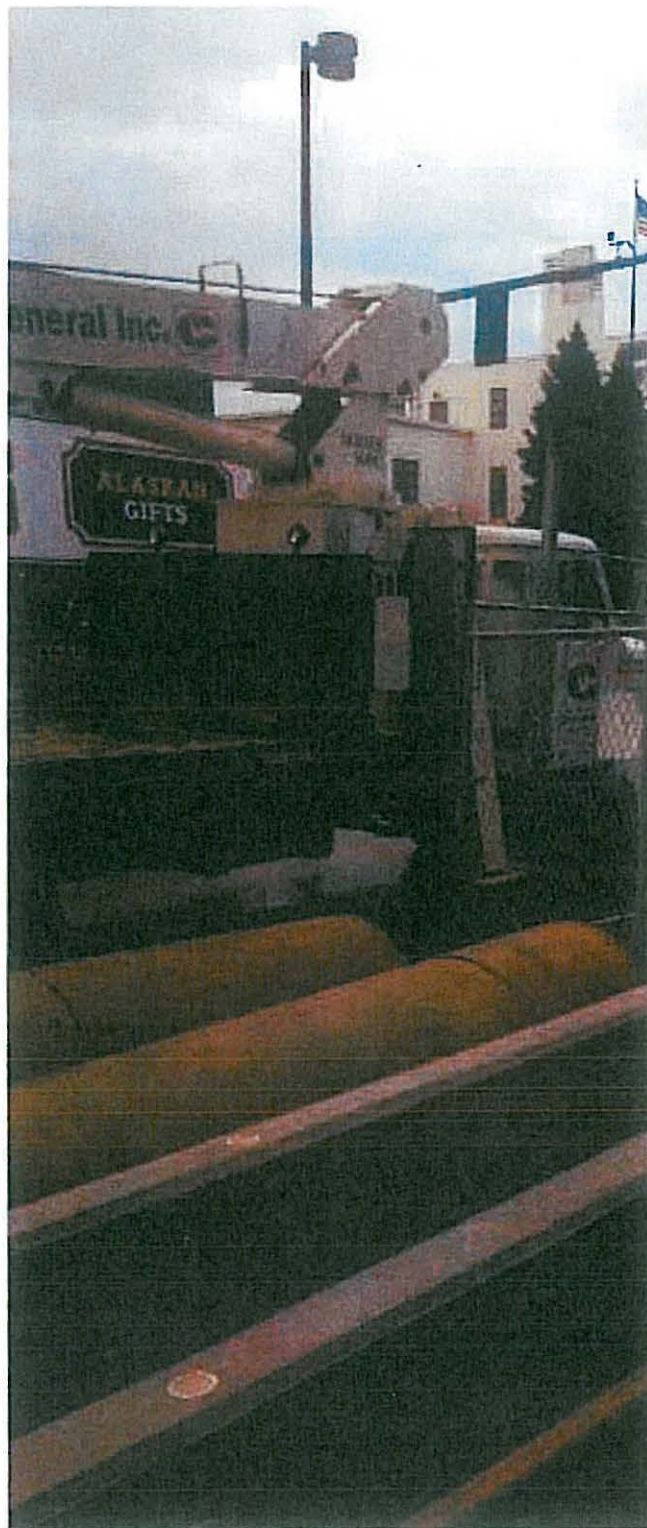


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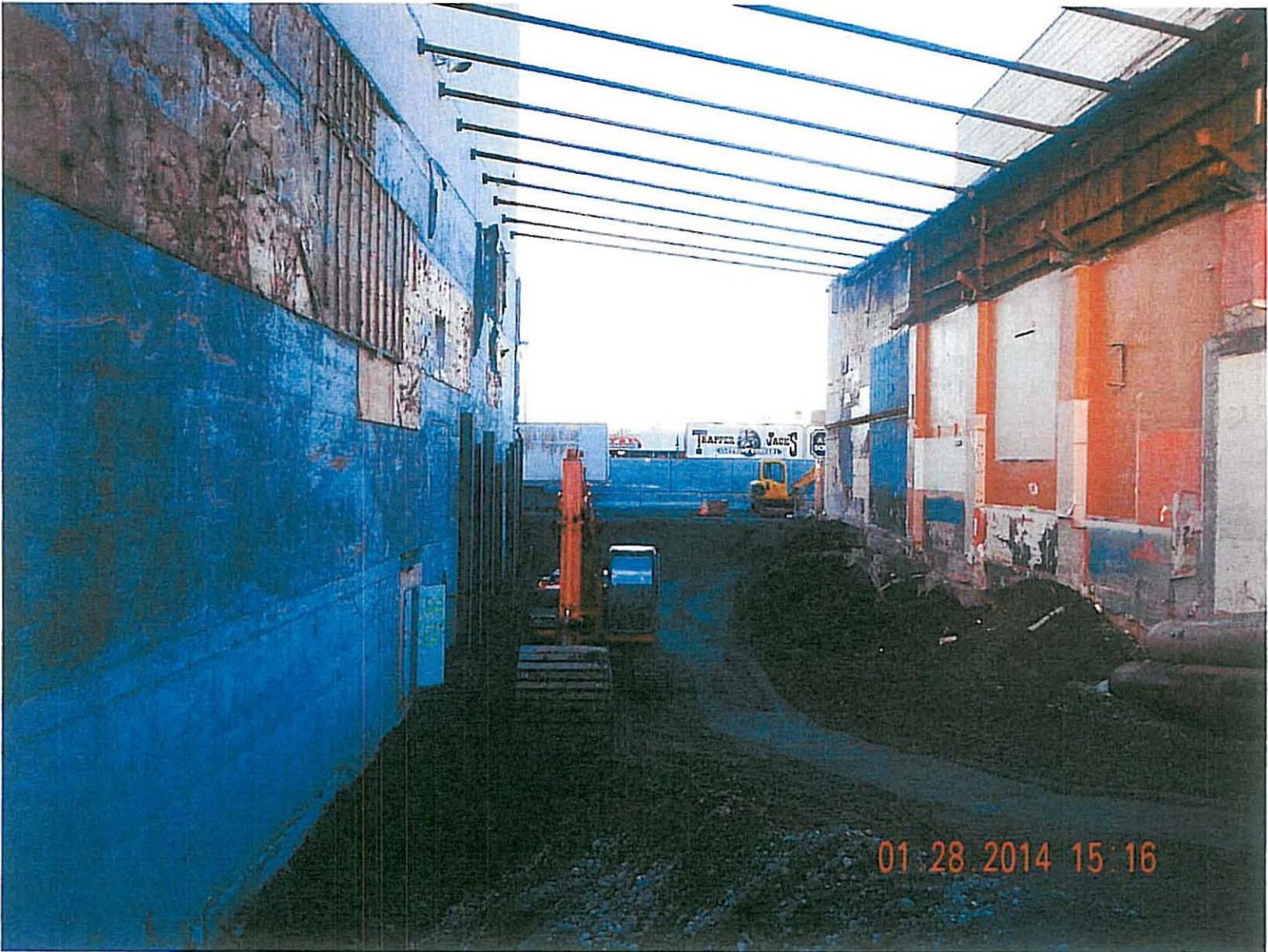


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716-000156





716-000157





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716-000165





716-000166





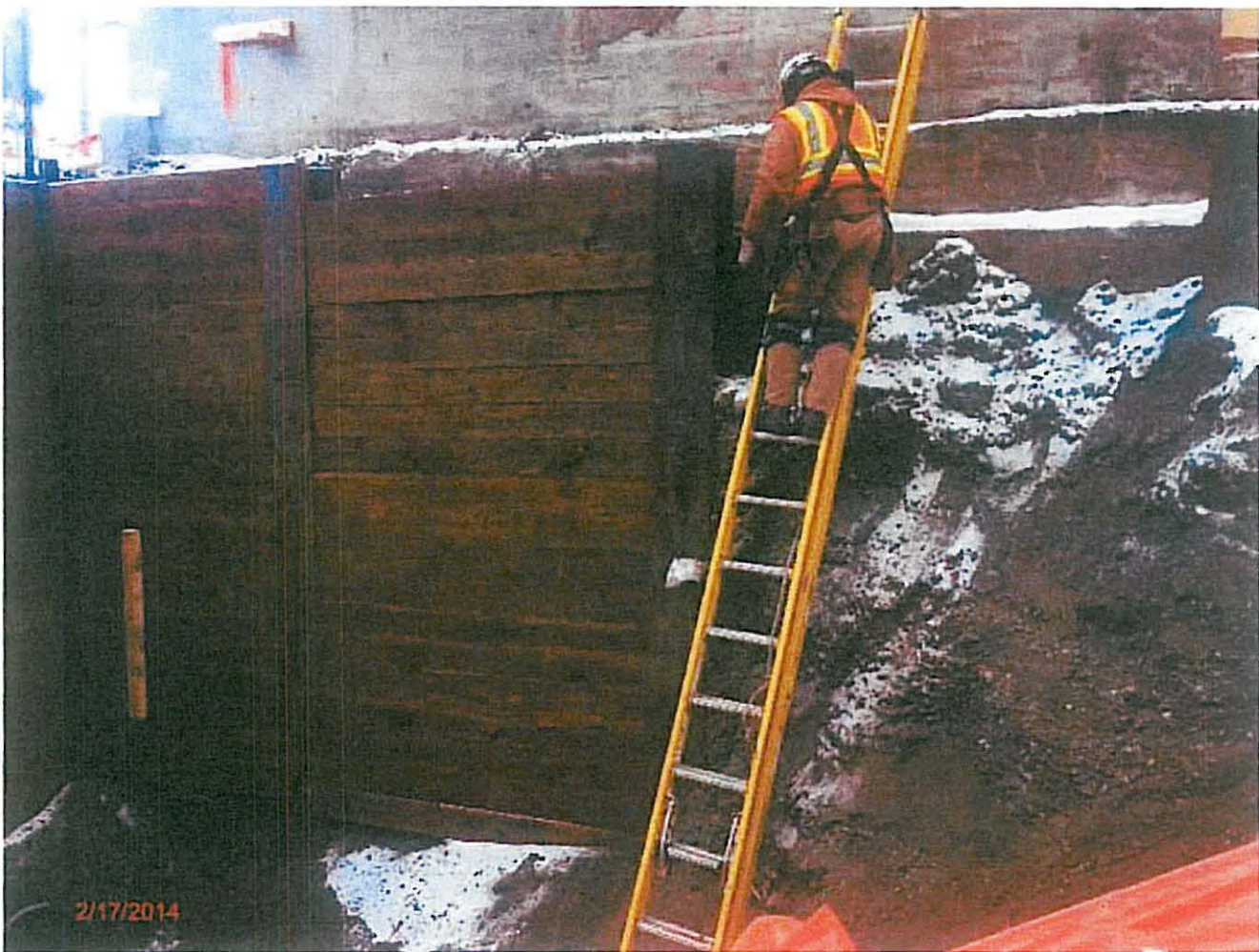
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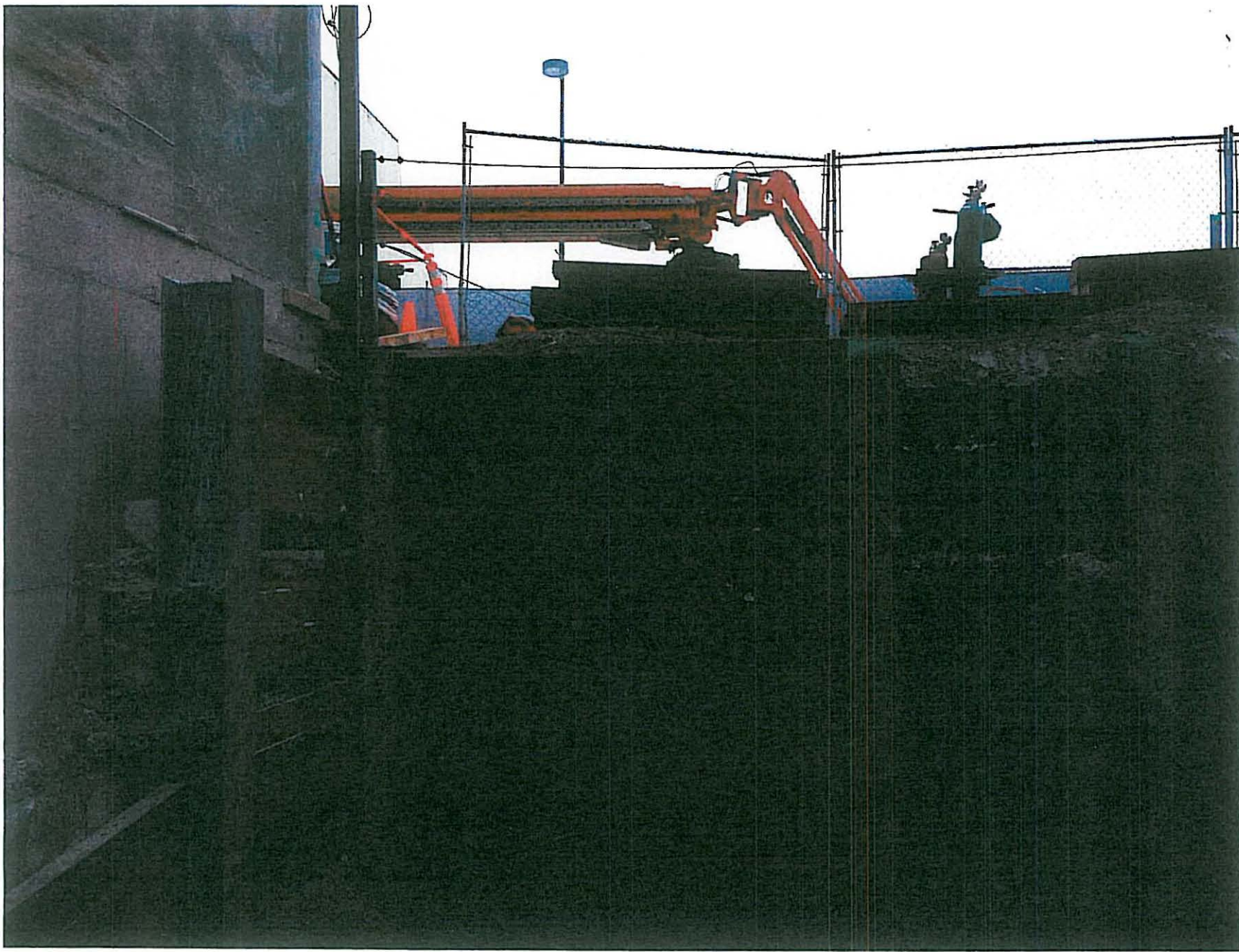
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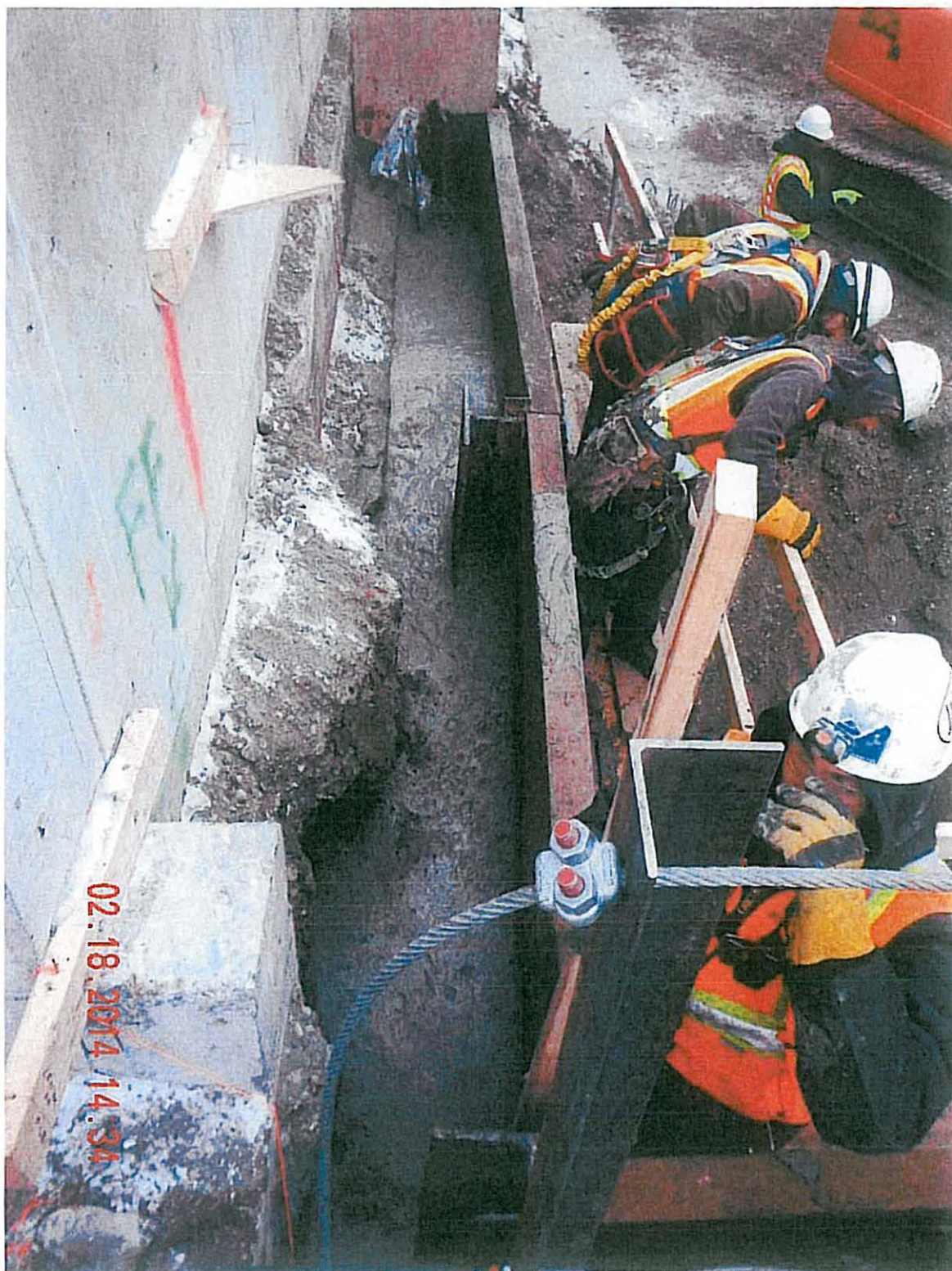
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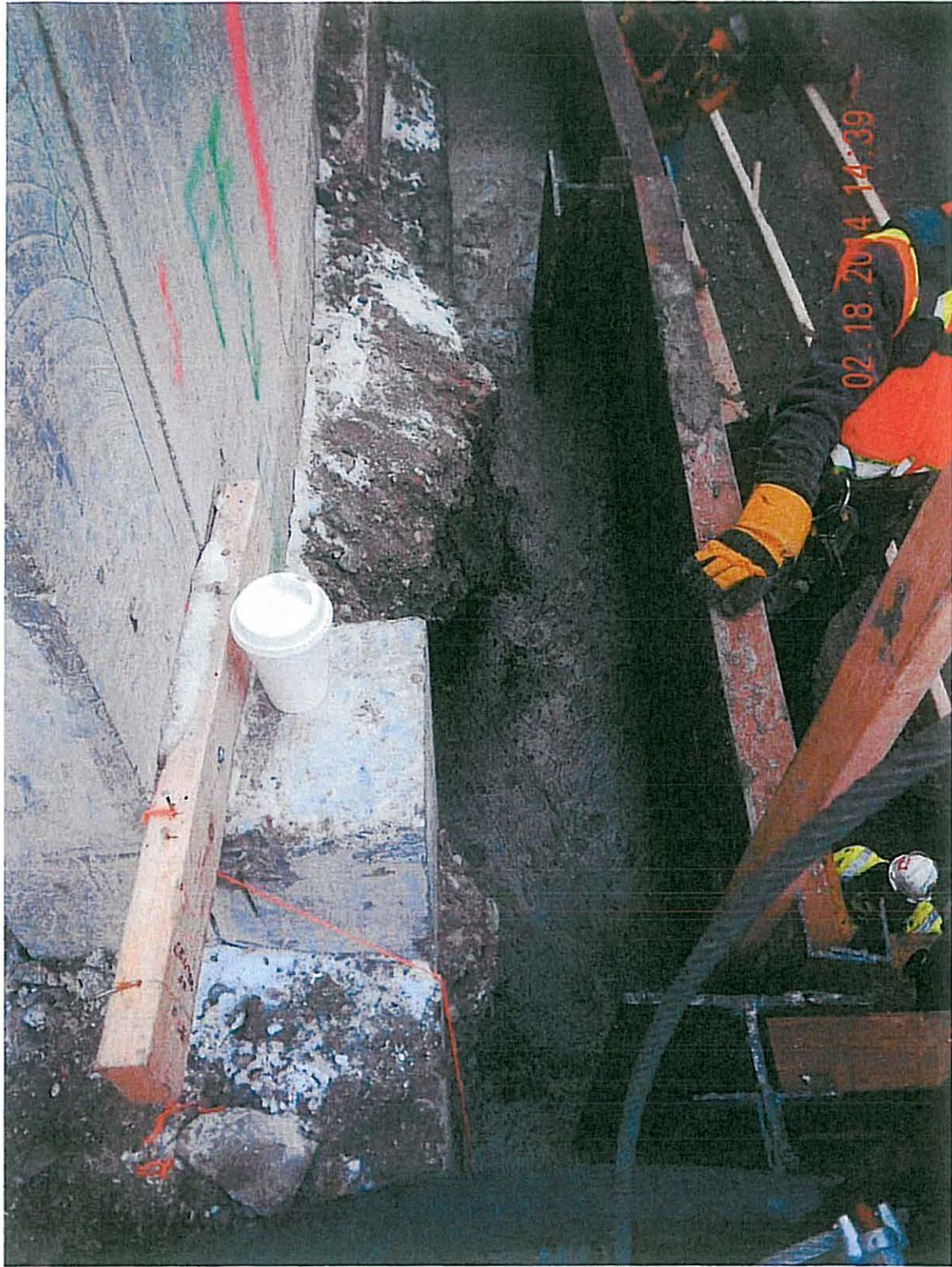
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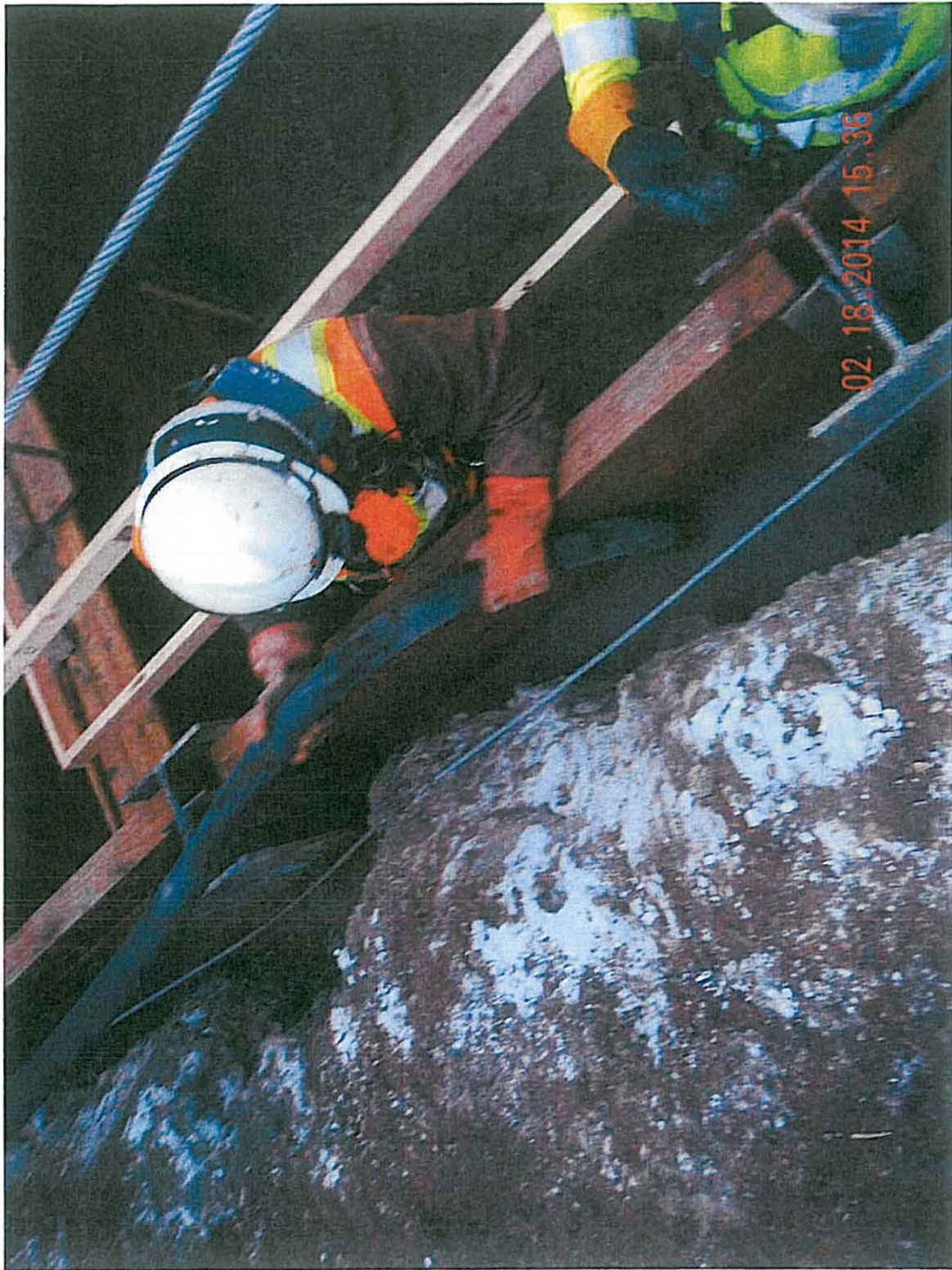
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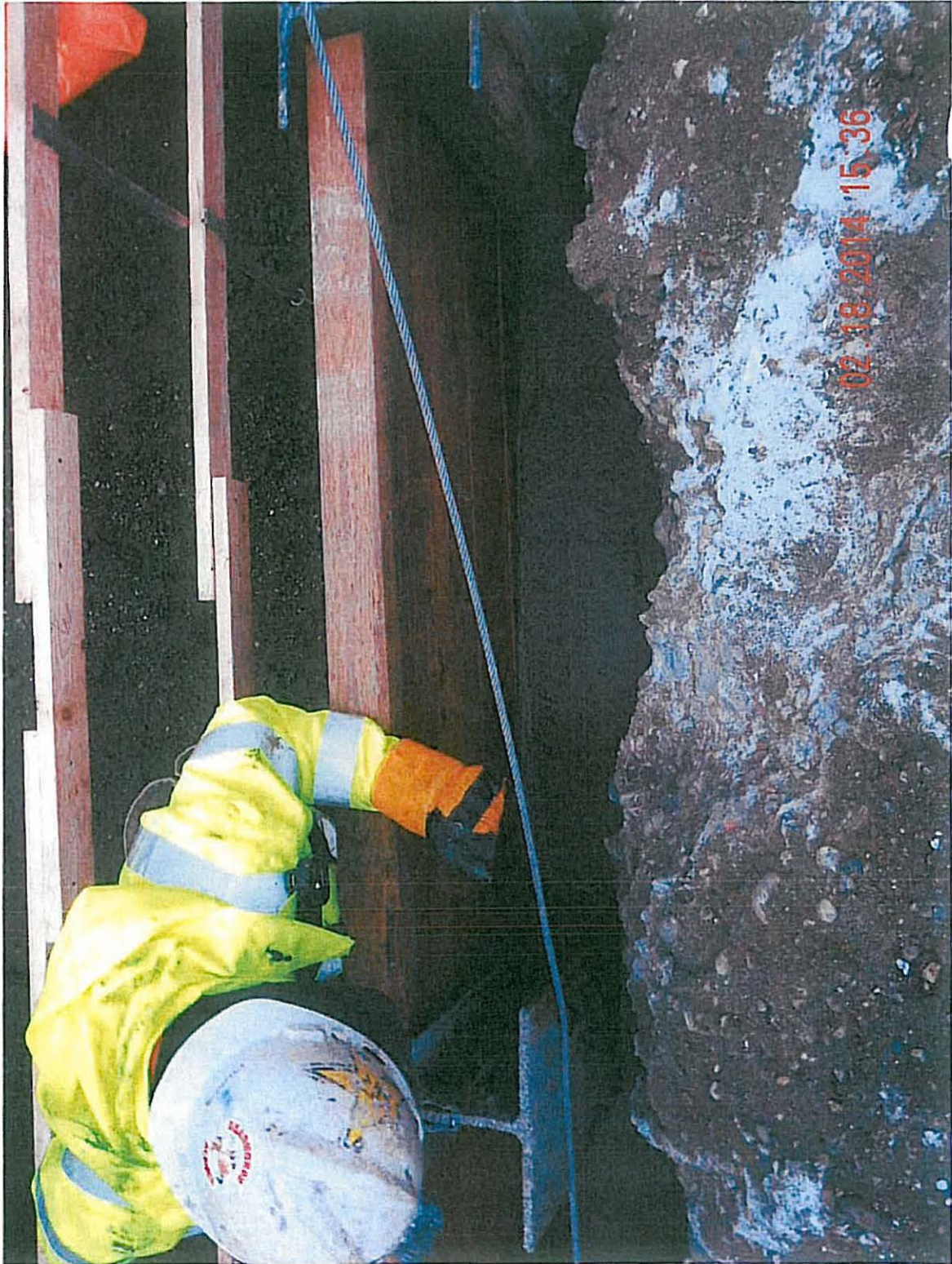
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716-000187





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02.20.2014 14:09

716-000193











716-000196

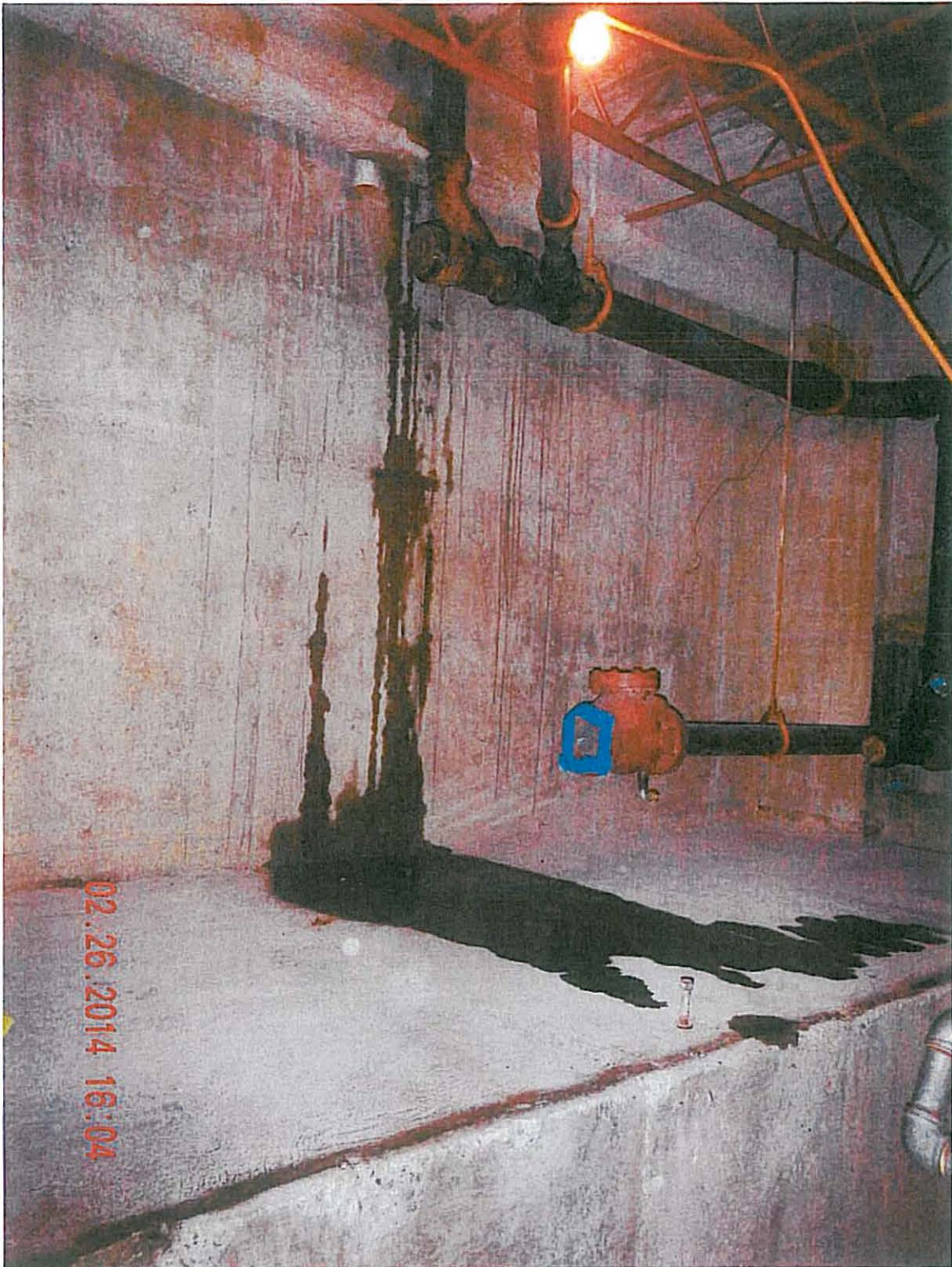






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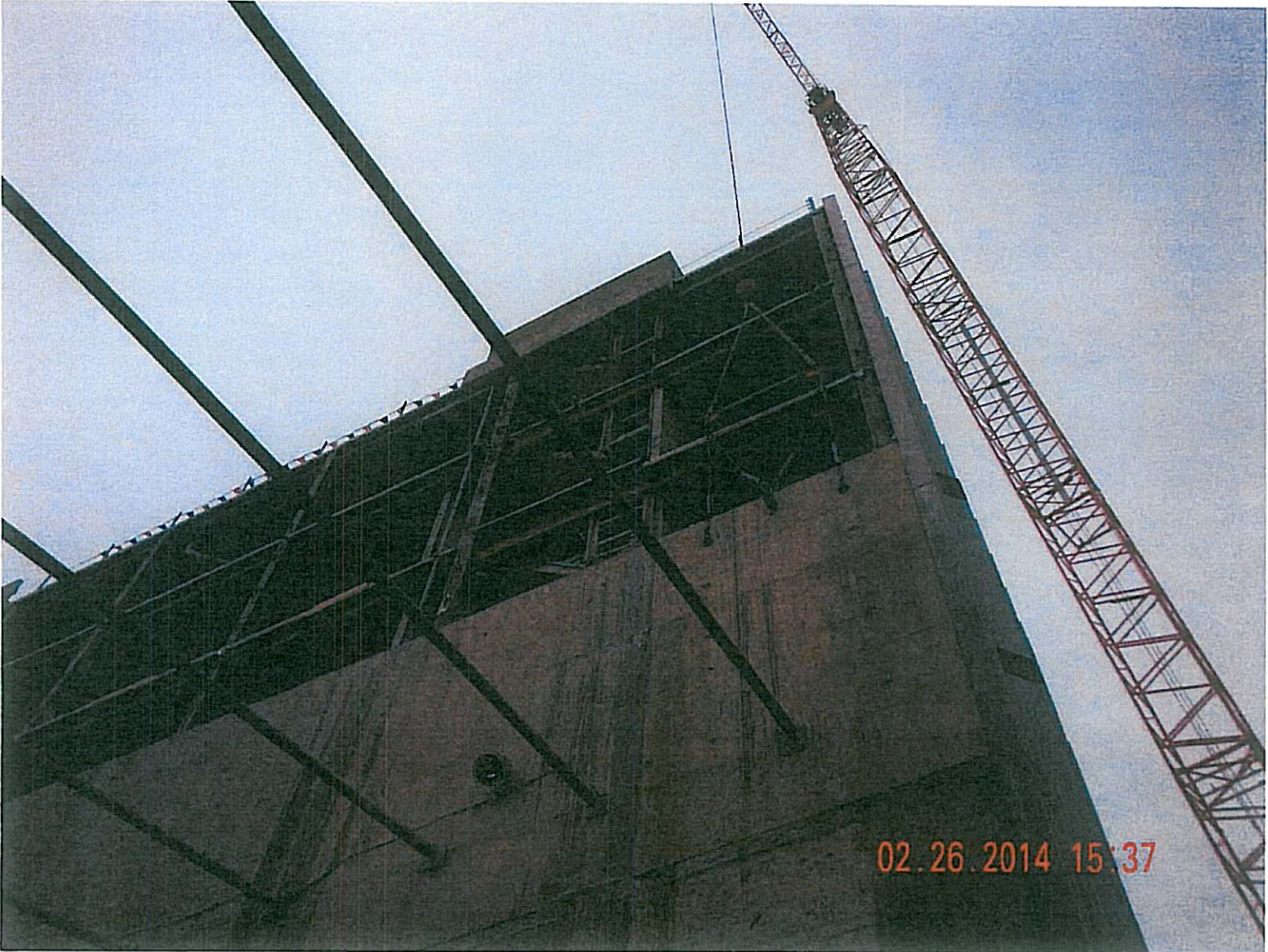
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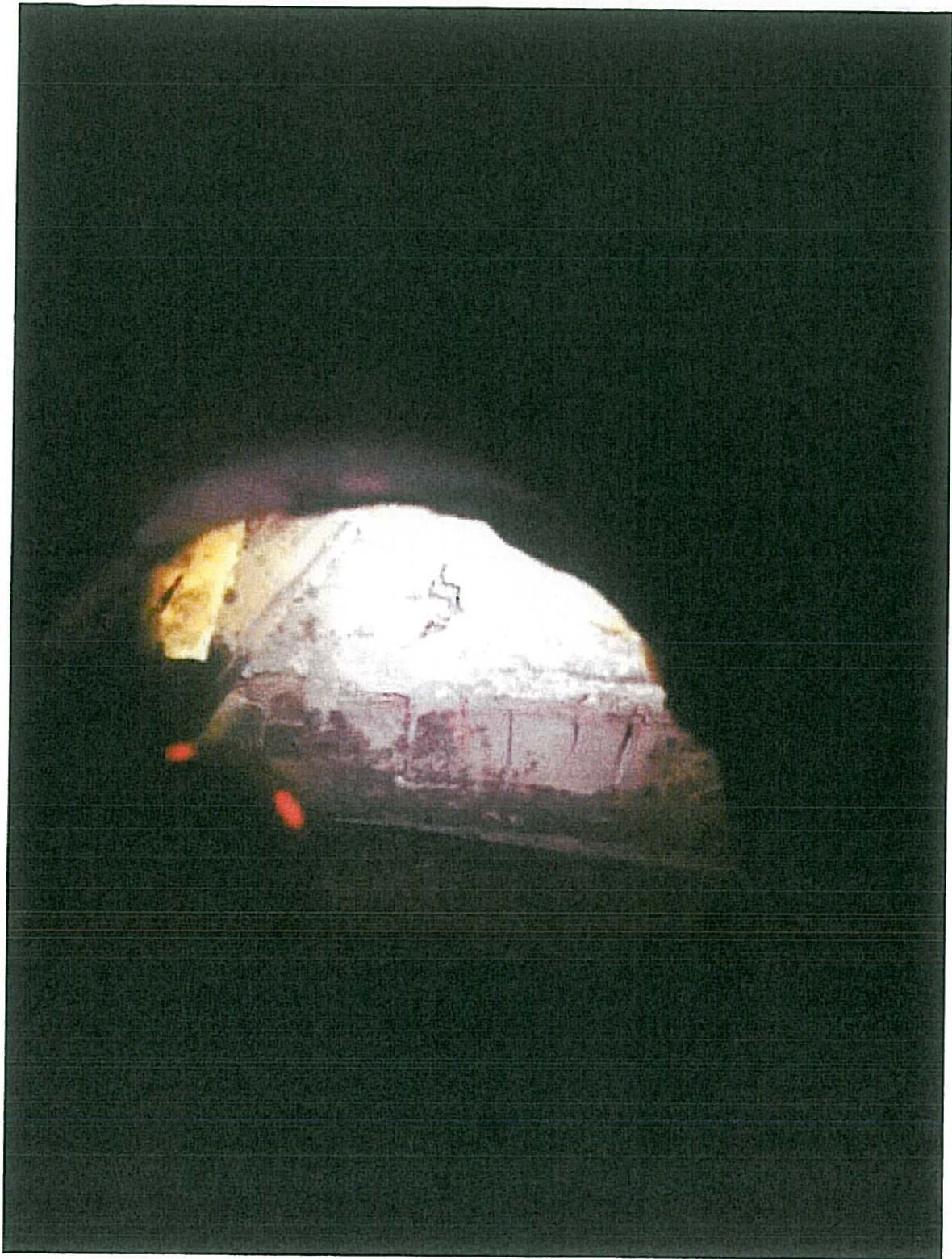
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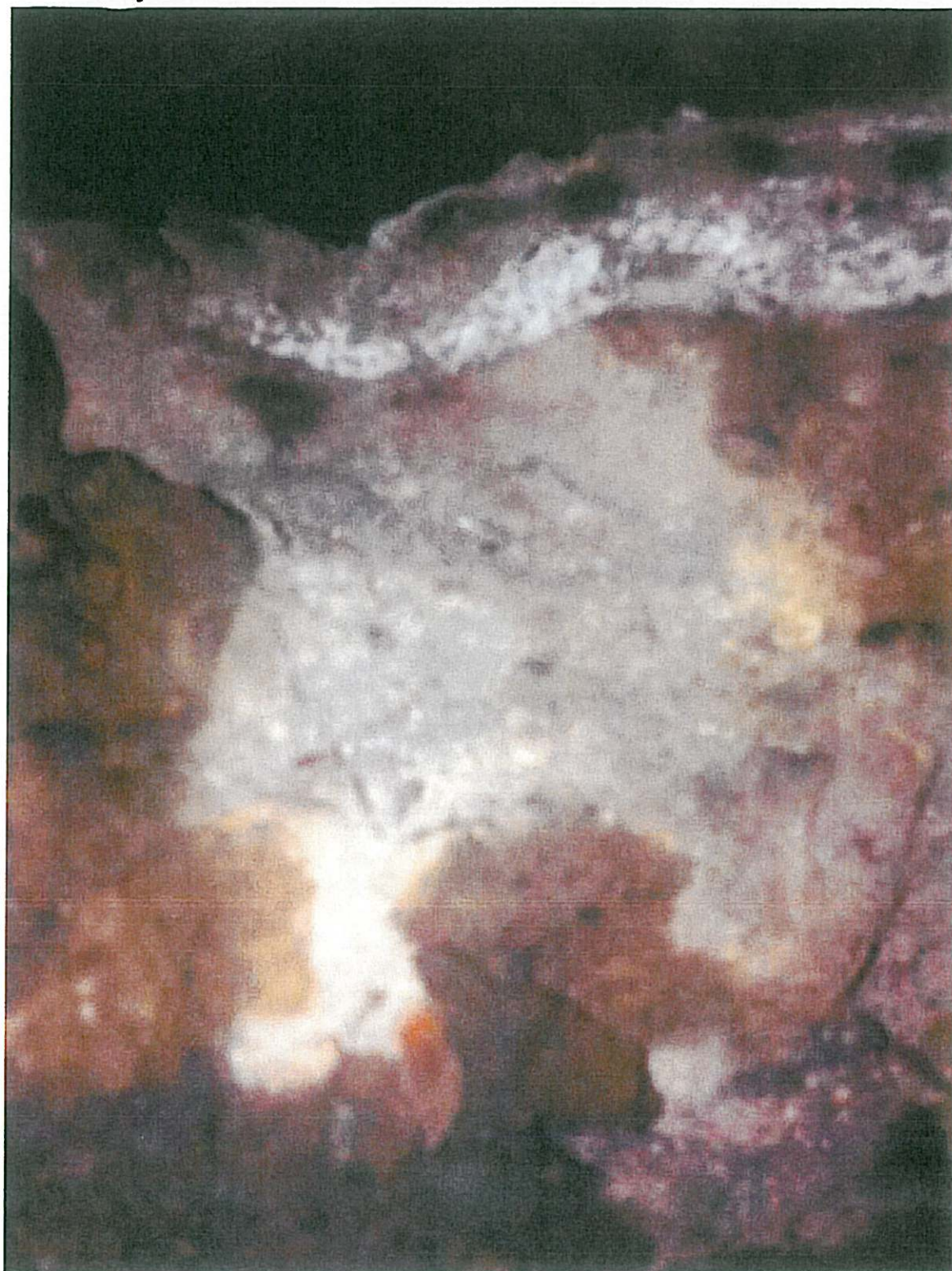
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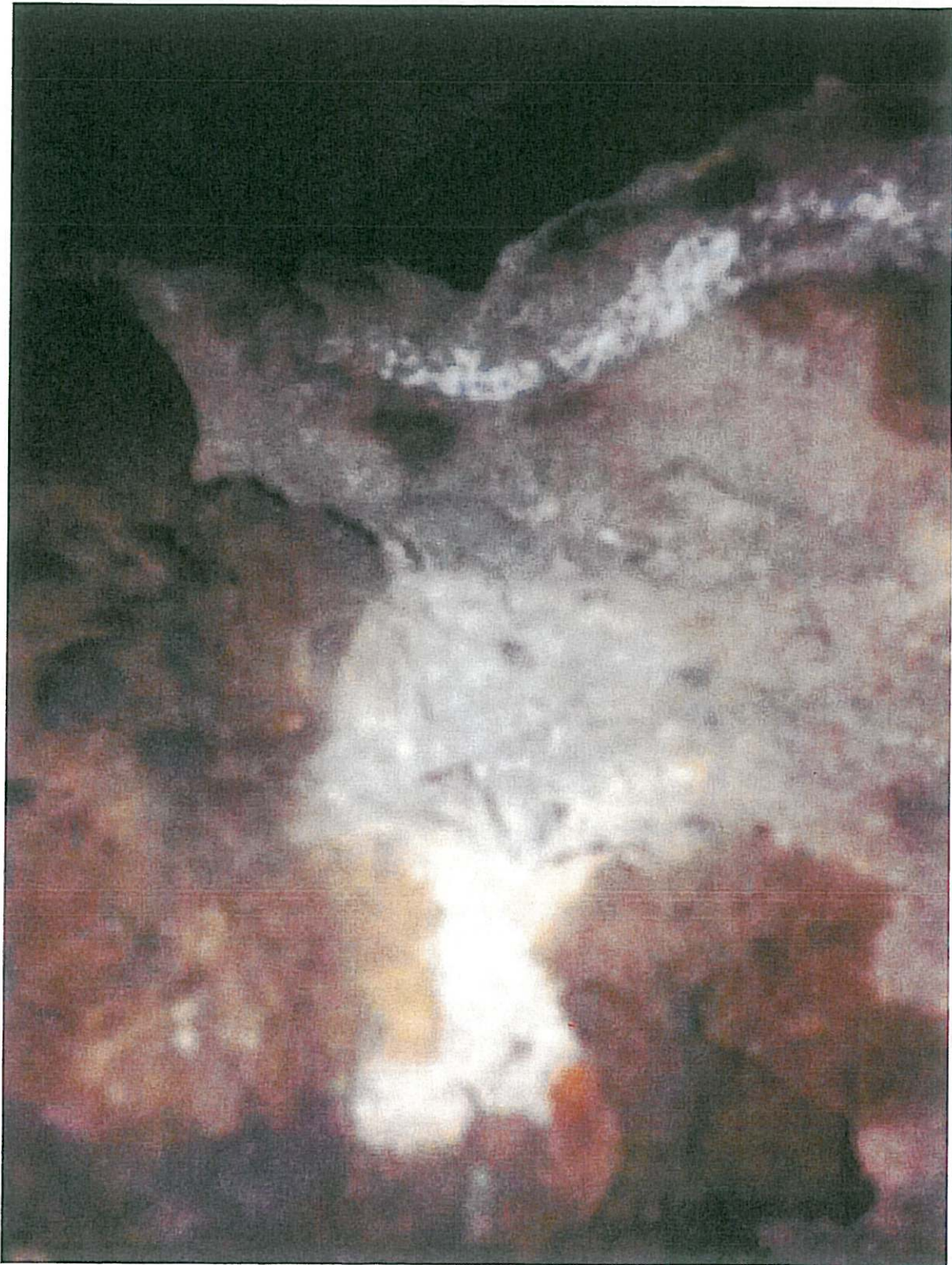
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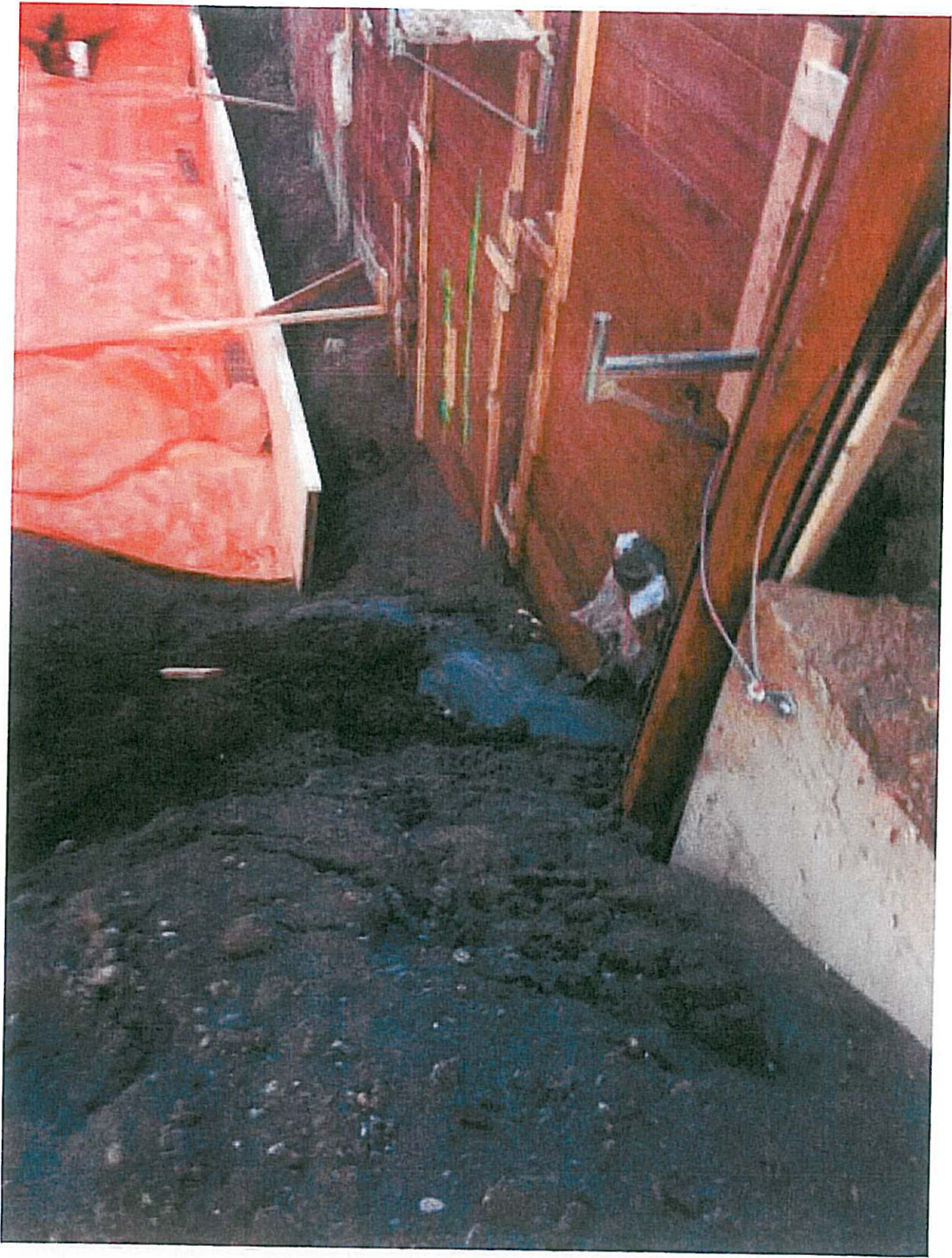
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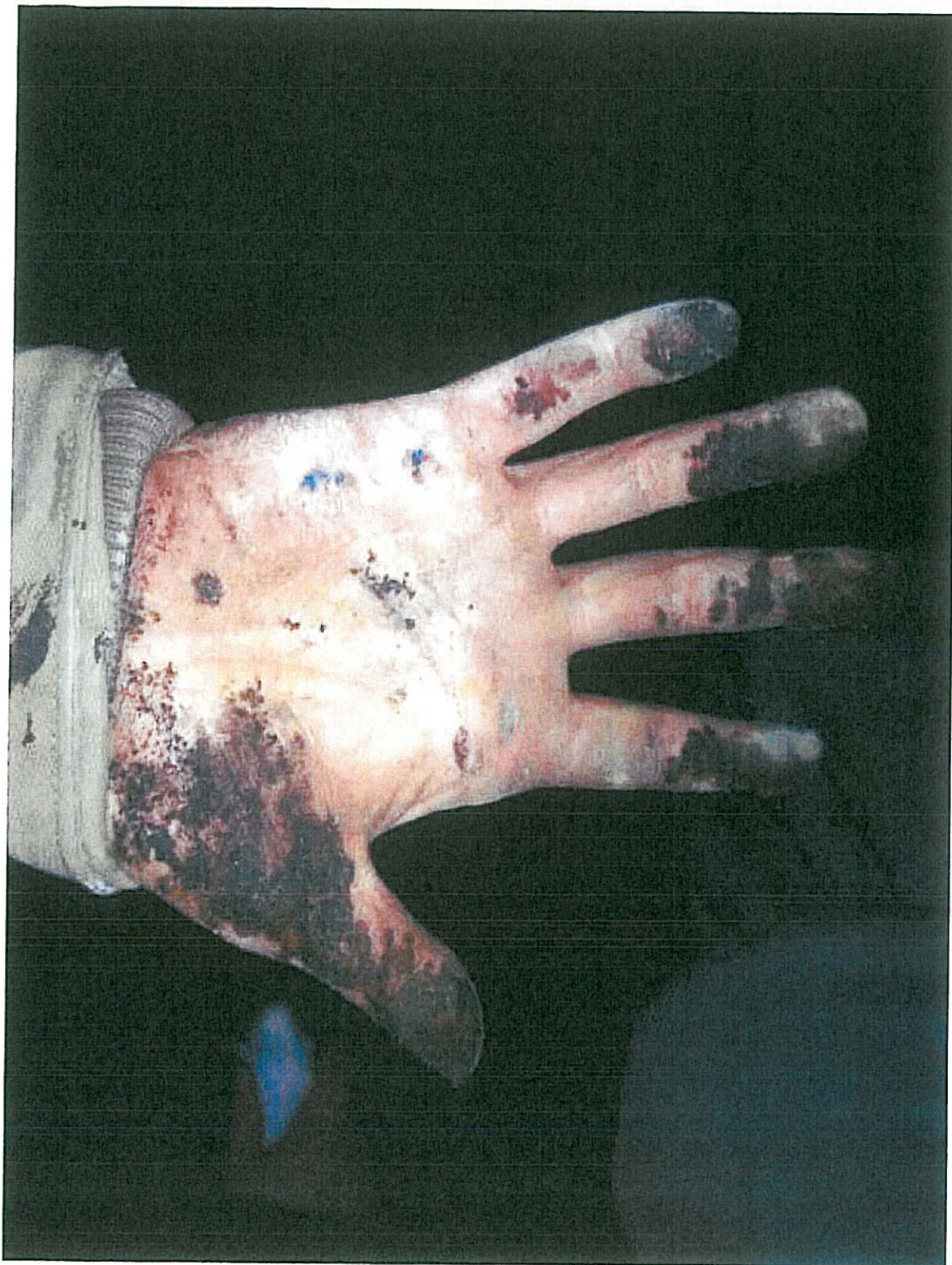


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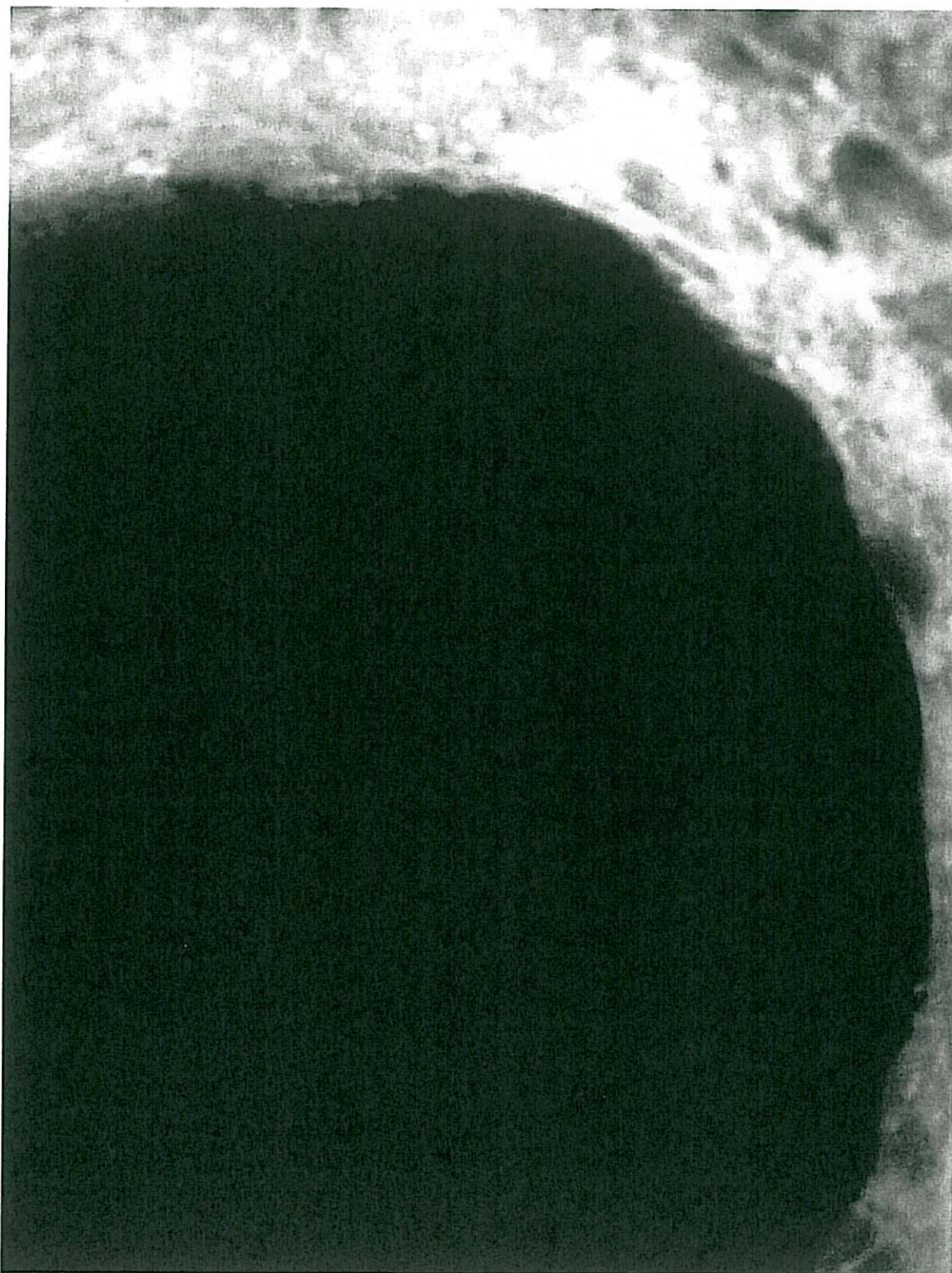


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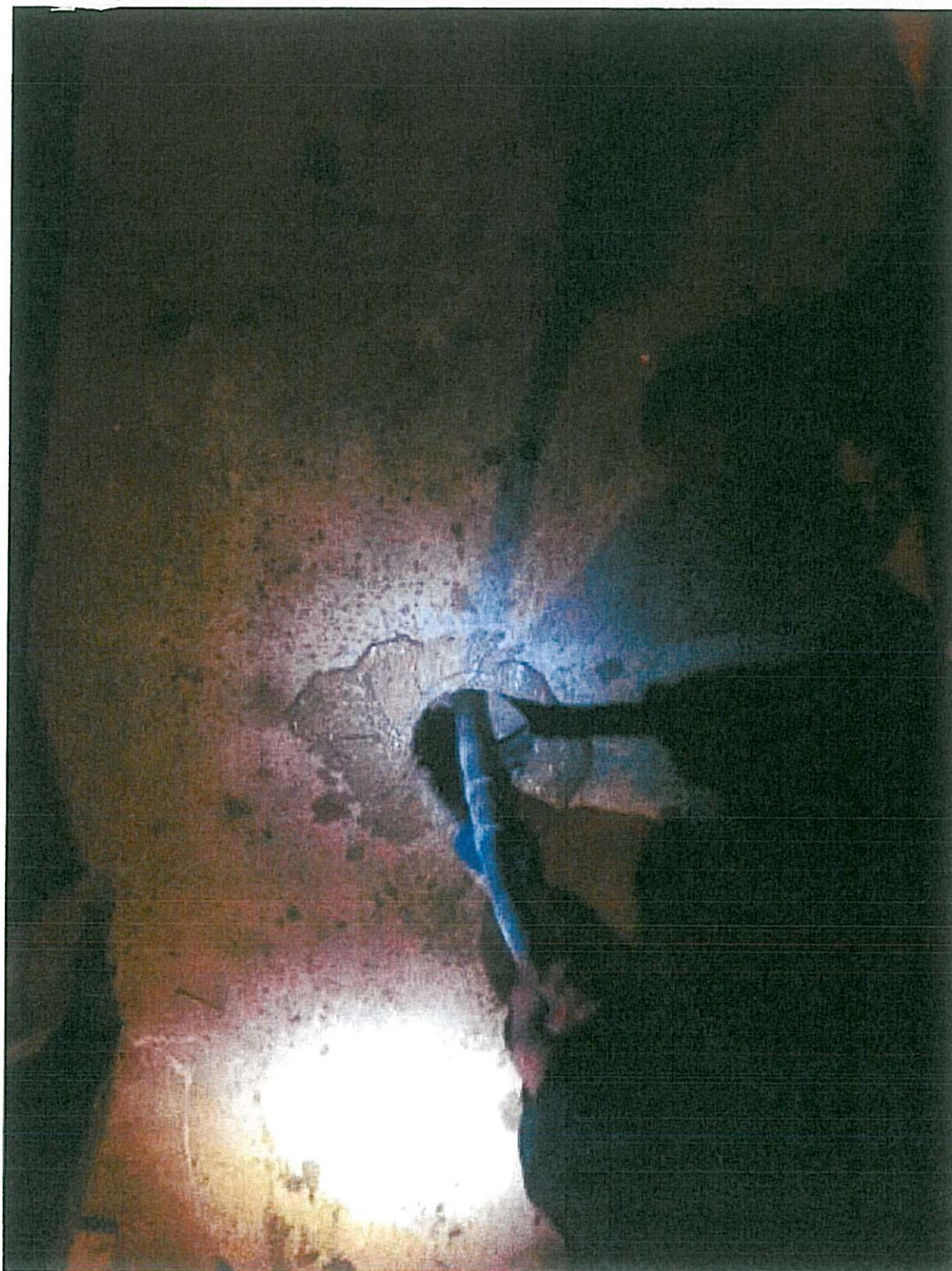


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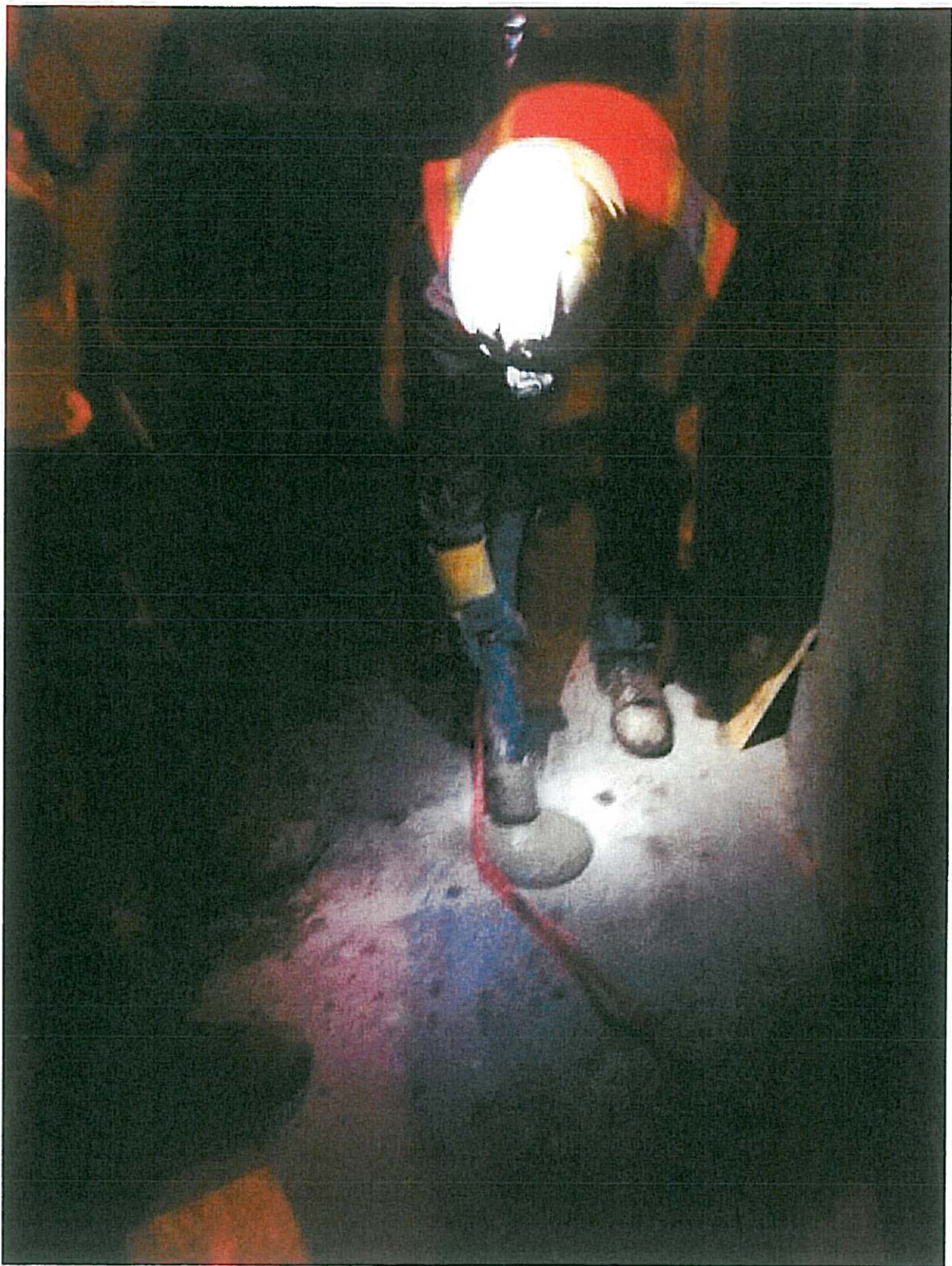
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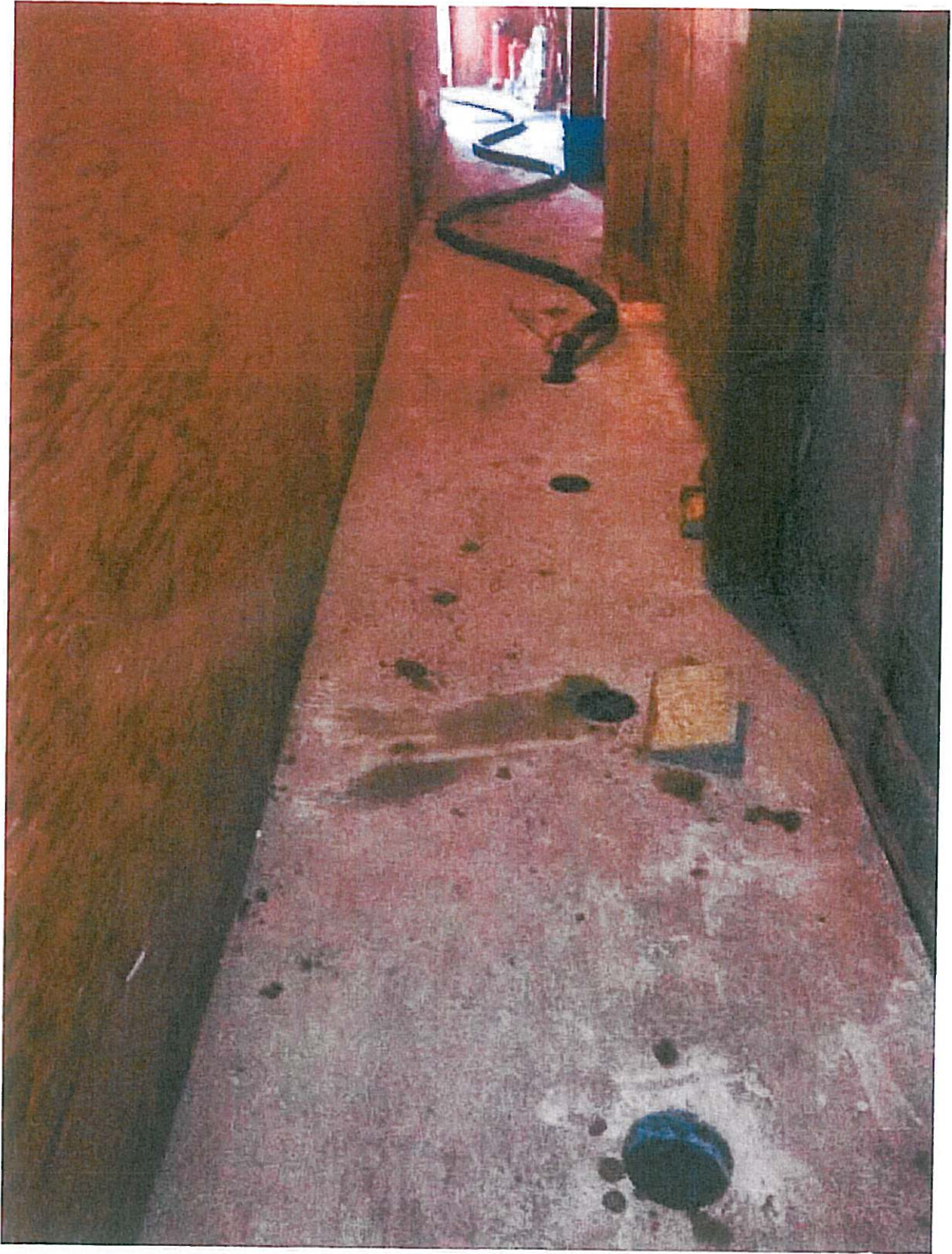


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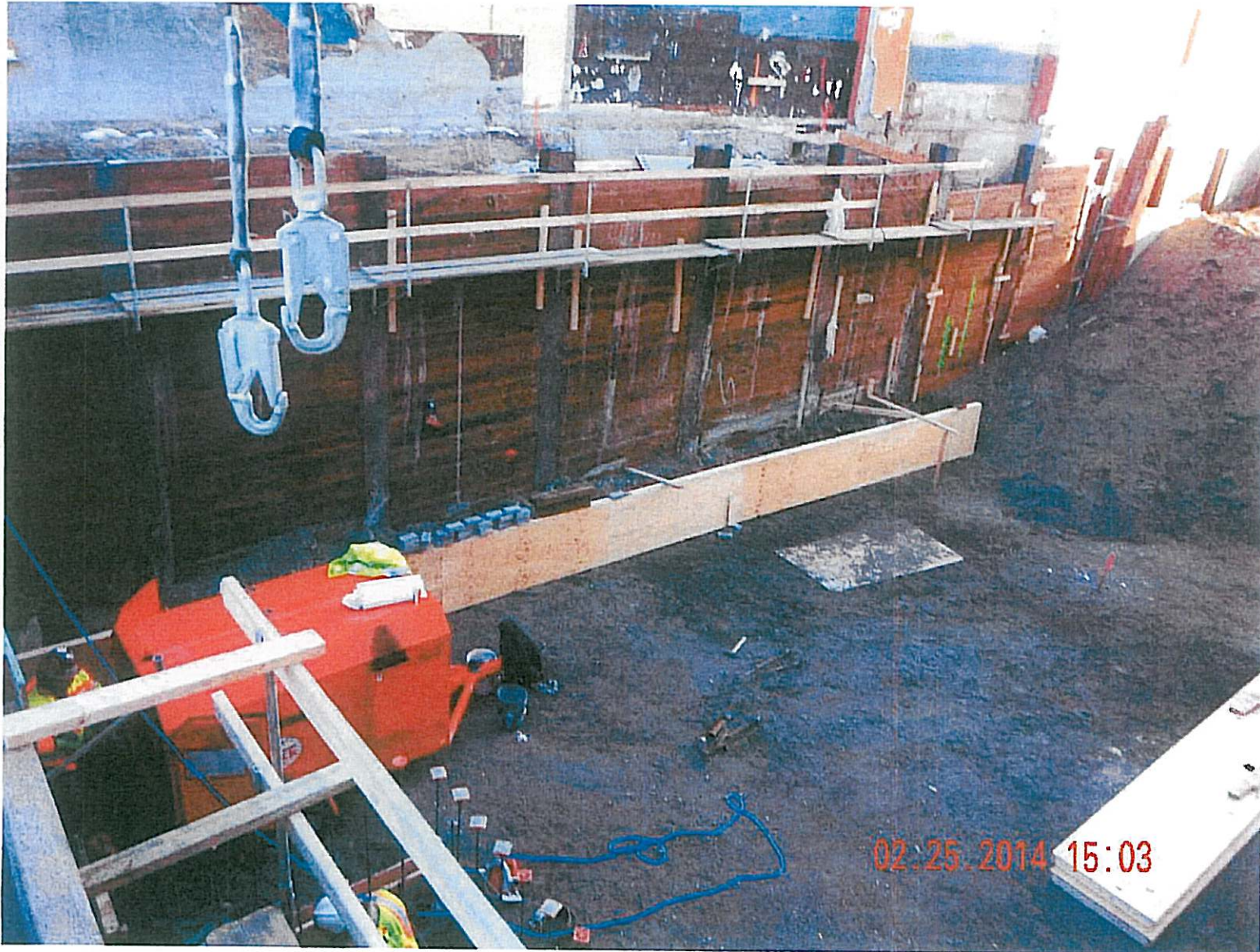
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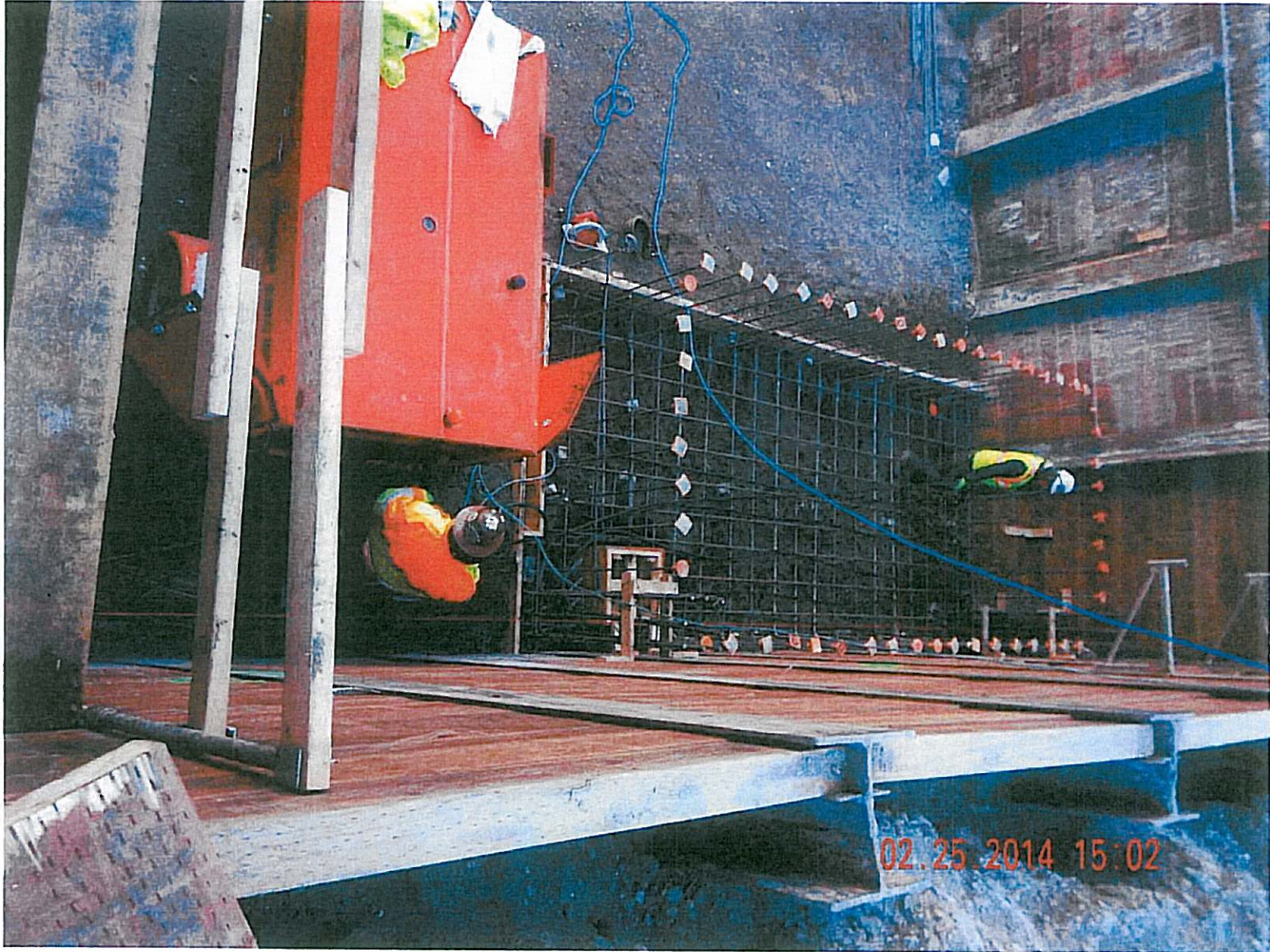
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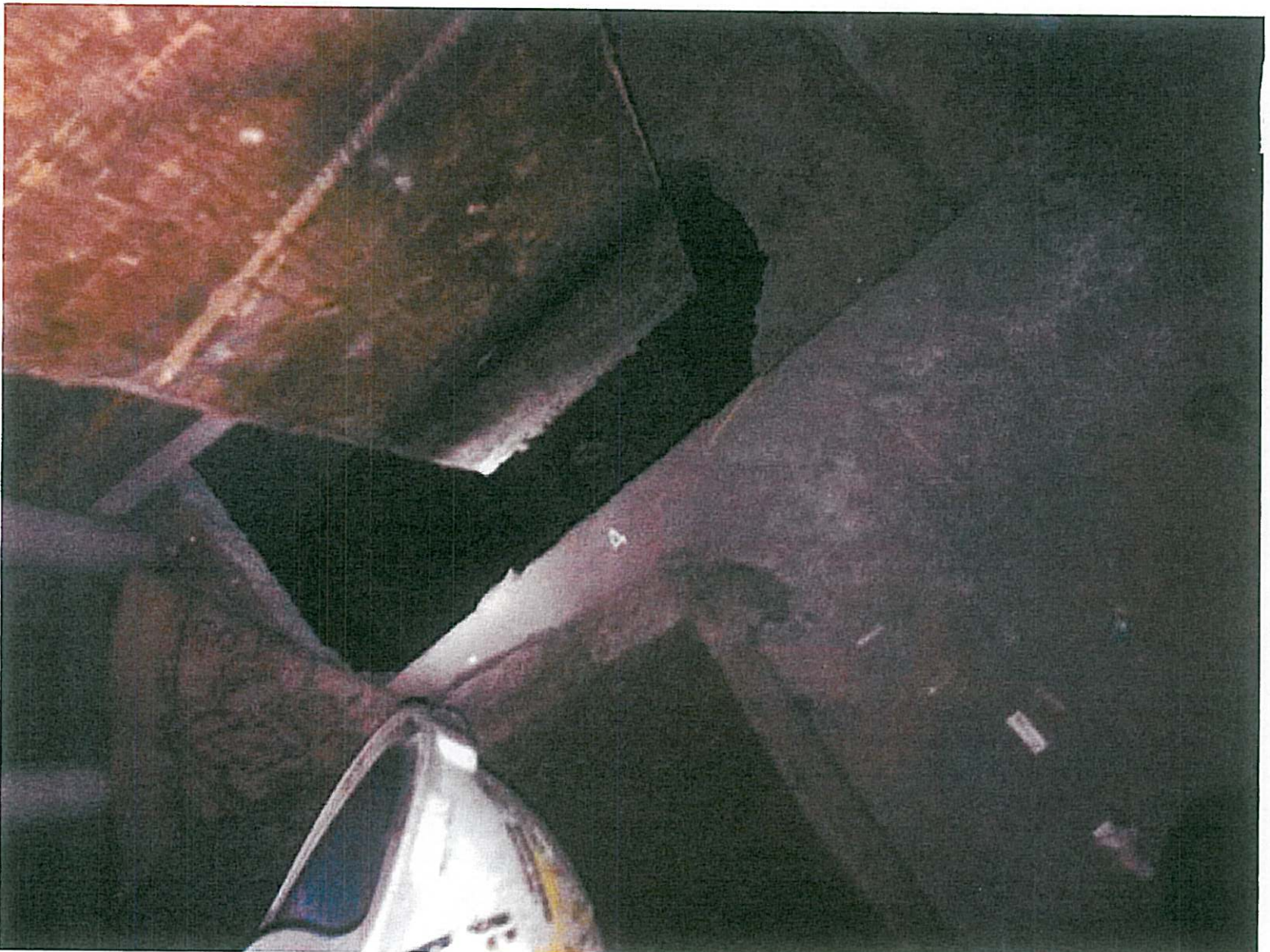
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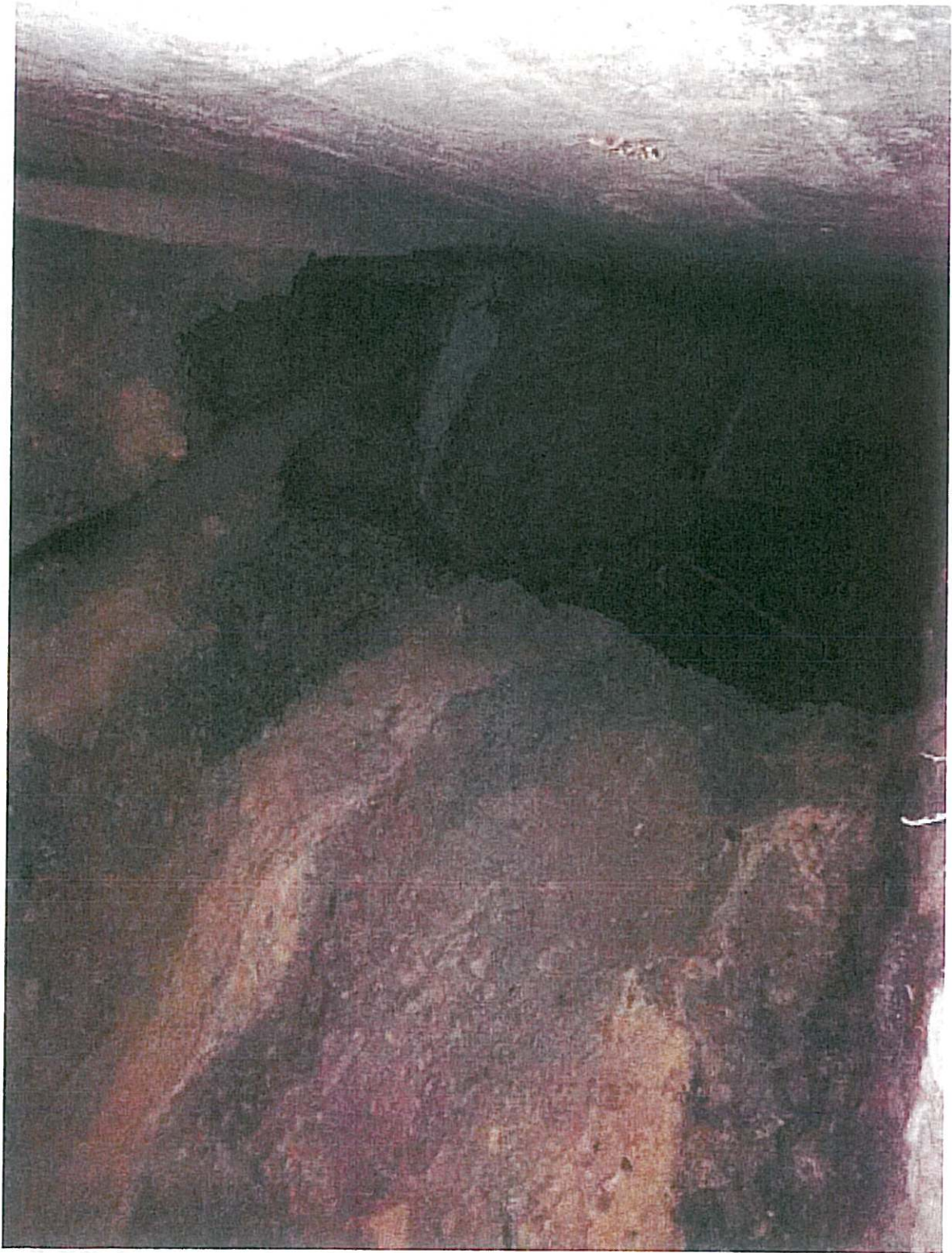
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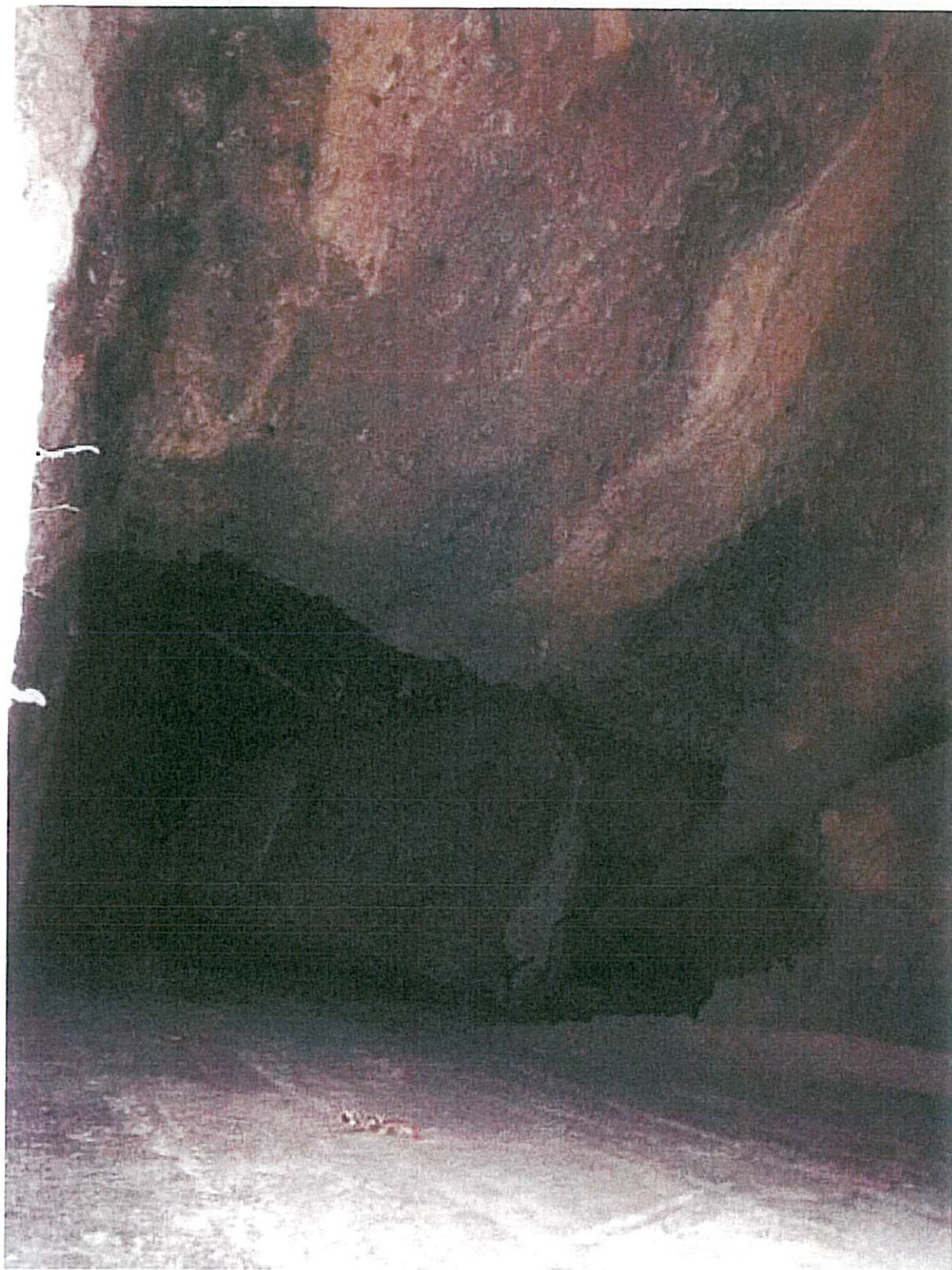
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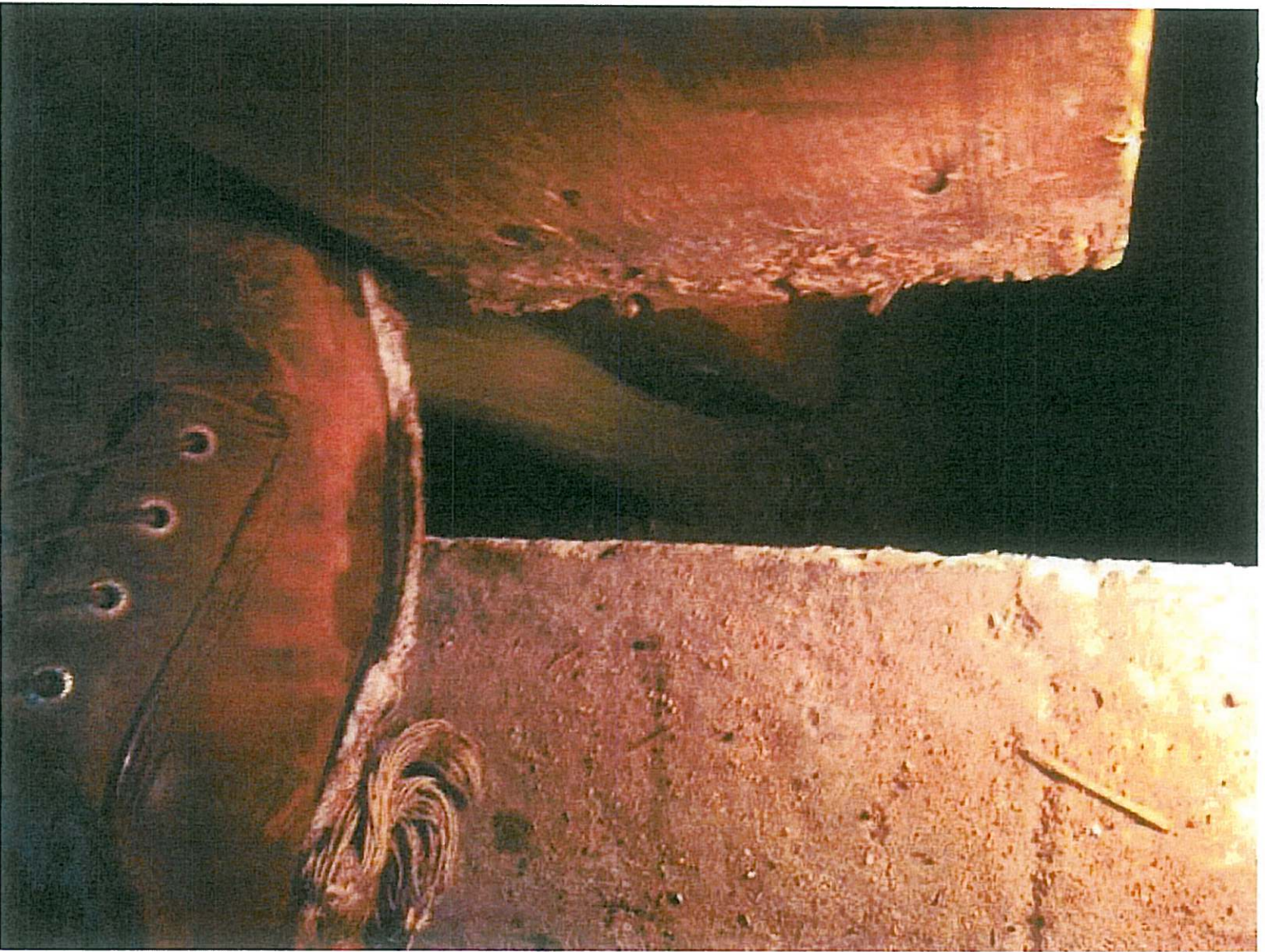
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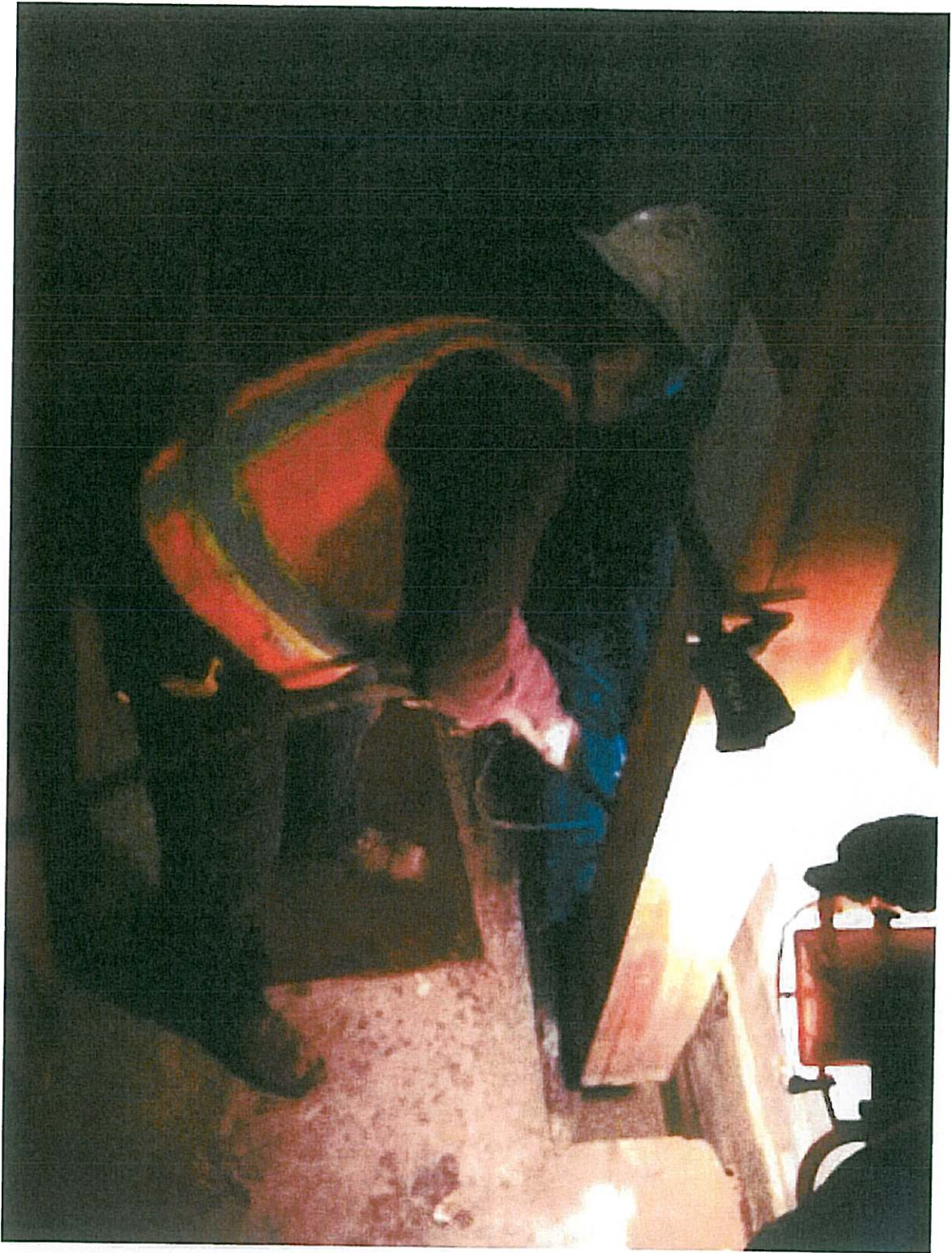
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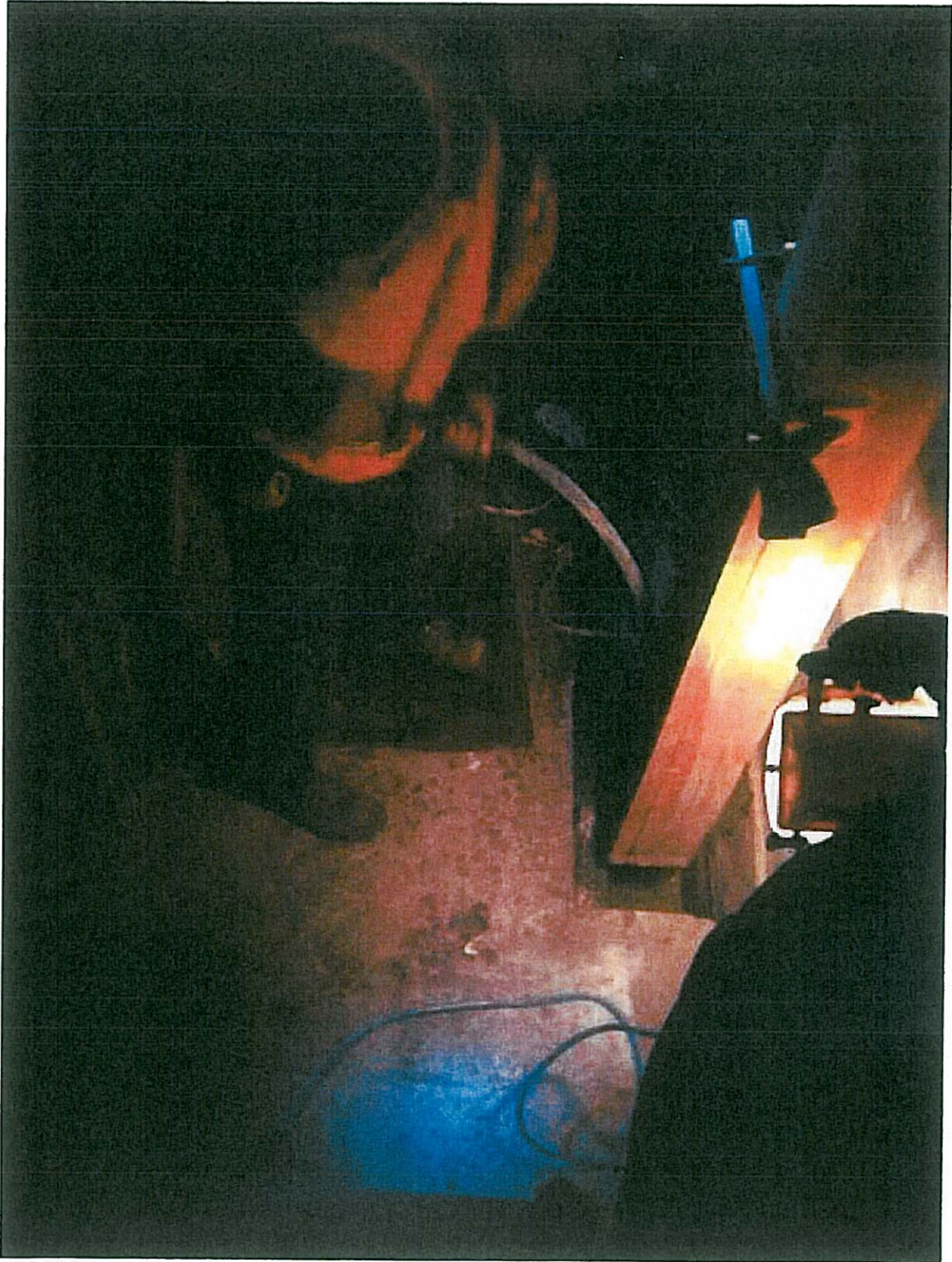
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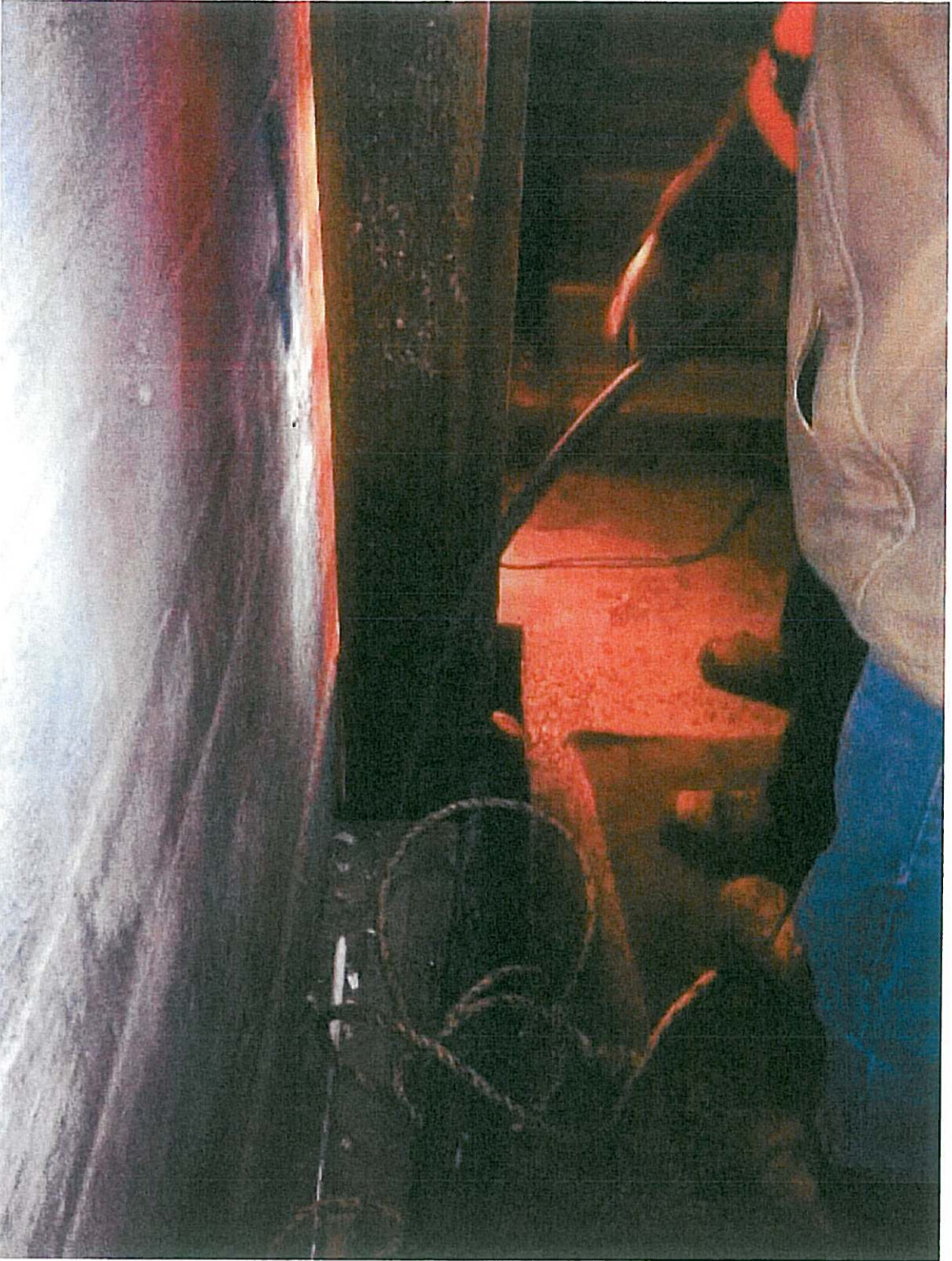


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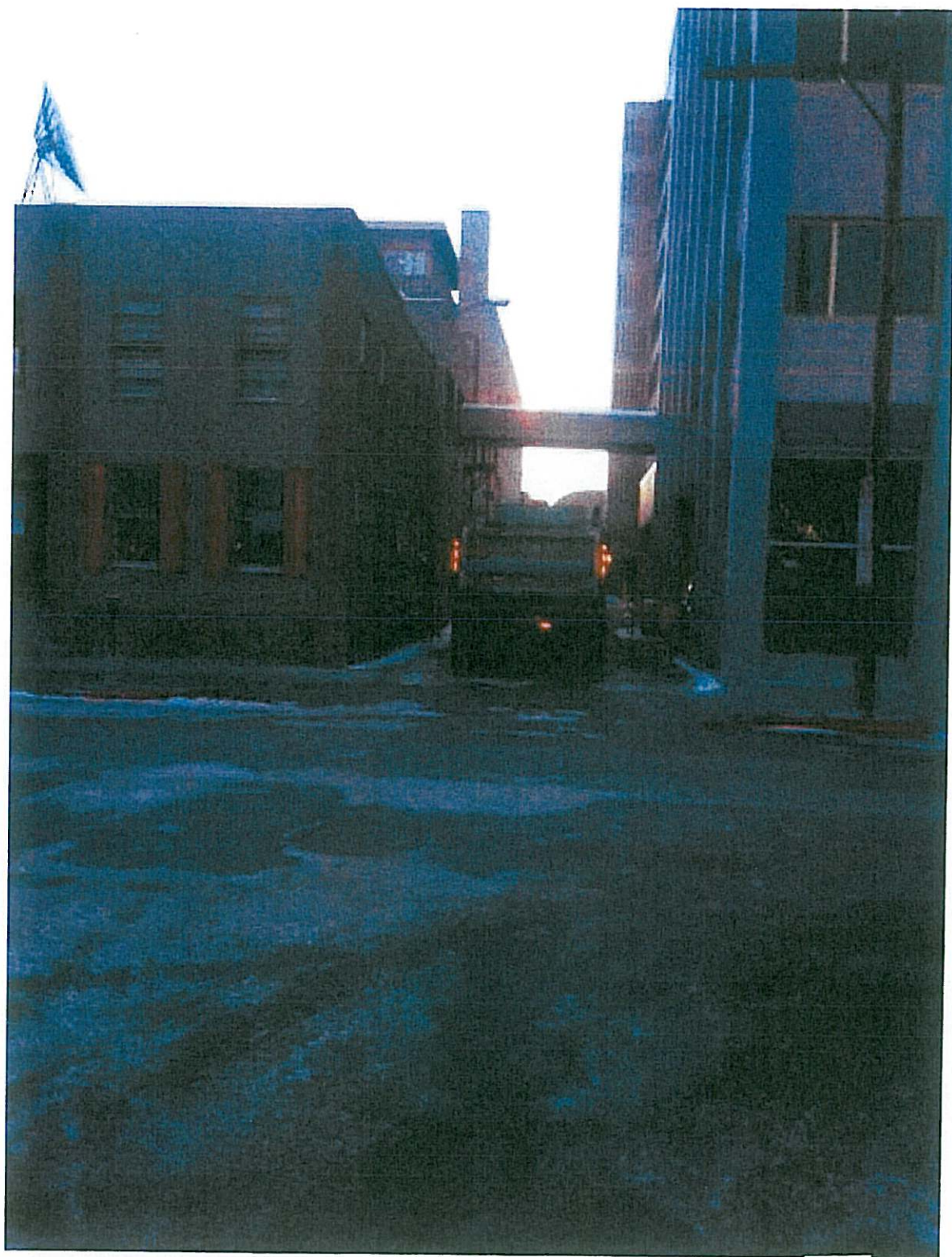
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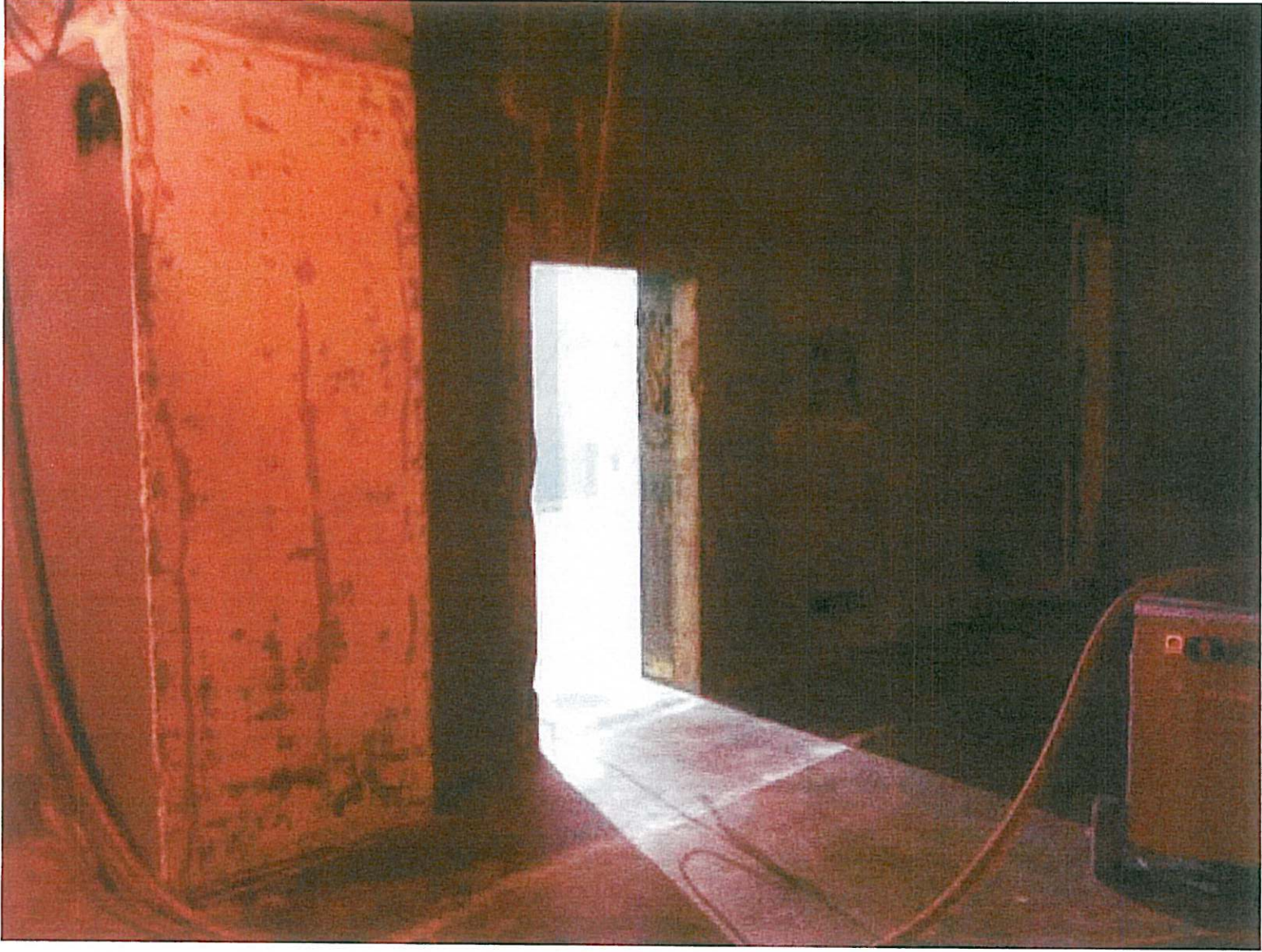






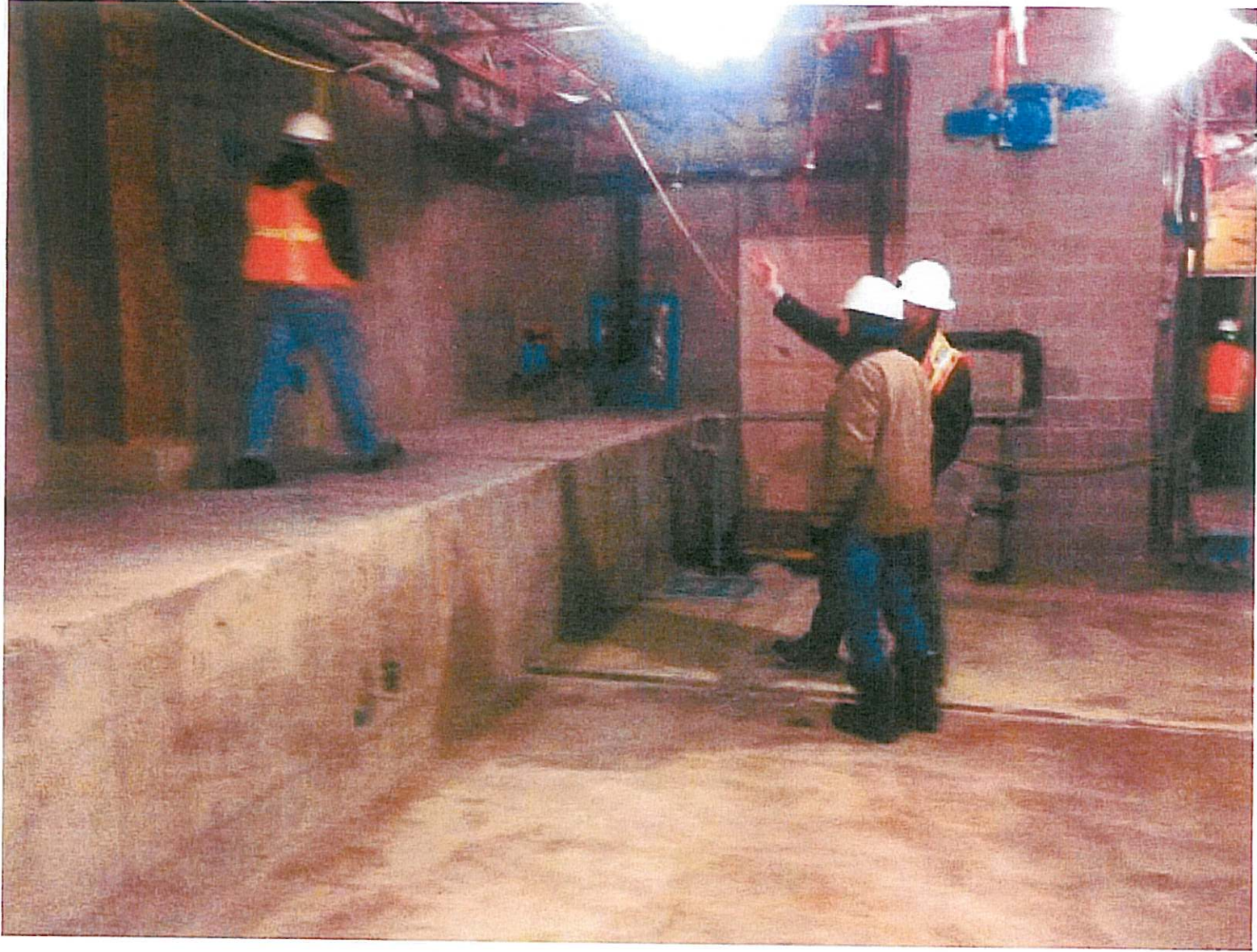
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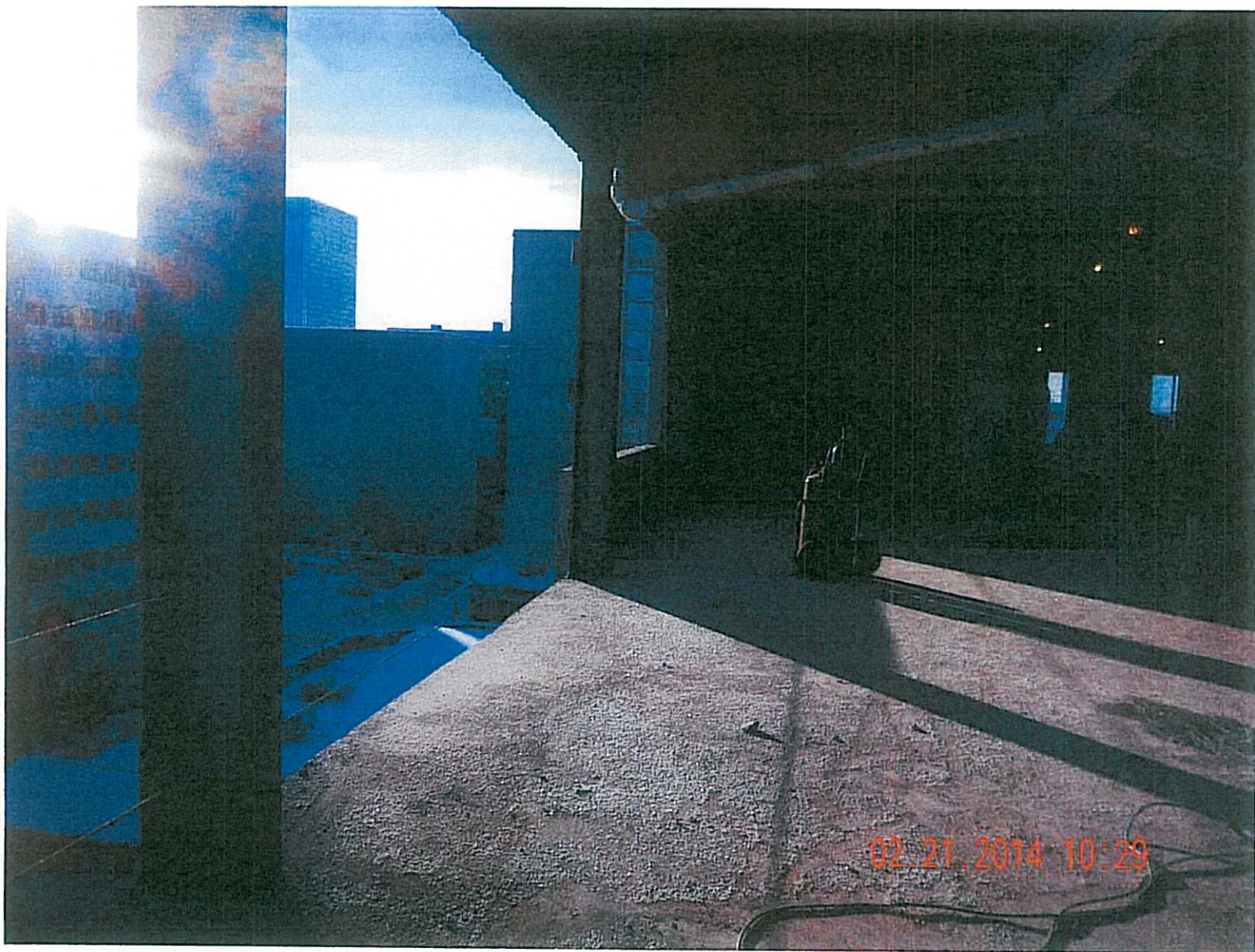
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