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Attorneys for Plaintiffs

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA**

ANNA NICK, *et al*,

Plaintiffs,

v.

BETHEL, ALASKA; *et al*

Defendants.

Case No. 3:07-cv-0098-TMB

JOINT STIPULATION AND
[PROPOSED] ORDER
TRANSFERRING PART OF CONSENT
DECREE TO BINDING
ARBITRATION UNDER LOCAL
RULE 16.2

Plaintiffs and Bethel Defendants (collectively, “the Parties”) have reached agreement on most major points at issue in the above-captioned litigation. The Parties are nearly ready to submit a joint proposed Consent Decree to the Court memorializing that agreement, but there is one provision on which the Parties were not able to agree. Rather than litigate this single outstanding issue, the Parties jointly request, pursuant to Local Rule 16.2(c)(2), that the Court assist the Parties in resolving this remaining issue through binding arbitration using a “baseball arbitration” process.

Under this process, the Parties will each submit a proposed provision and the Court will select from the two options. Along with their proposal, each party will submit a brief explaining why their proposal should be included in the Consent Decree. The two briefs and proposals will be submitted simultaneously along with the proposed final Consent Decree. Each Party’s proposal and brief shall be contained in a single document not to exceed five pages (exclusive of caption, signature page, certificate of service, and exhibits) and the Parties may cite to any previously filed documents. The Court would then select from the two proposals, with the Court’s selection becoming a final term in the Consent Decree. The remaining terms of the Consent Decree will not be subject to further revision by the Parties unless directed by the Court. The Parties agree to accept the remaining terms of the Consent Decree regardless of which Party’s proposal the Court selects for the outstanding provision.

The purpose of this kind of binding arbitration is that each party has a strong incentive to submit a reasonable proposal in the hope that it will be selected by the Court. The Parties have reached agreement, with the assistance of the Ninth Circuit mediator, as to all but this one outstanding provision and this method of arbitration requires the Parties to give as much as they can to present a reasonable proposal to the Court. The baseball arbitration process would require

the Court to choose one proposal in its entirety and not “split the baby” or select parts from each proposal.¹ Furthermore, the Parties stipulate to waive their right of appeal of the Court’s decision on this issue.

The Parties respectfully request that the Court approve this process pursuant to Local Rule 16.2(c)(2) and refer the outstanding provision of the proposed Consent Decree to binding arbitration subject to the terms described above. Due to the schedules of counsel, the Parties respectfully request permission to submit their proposals and briefs, along with the agreed upon provisions of the consent decree for the Court’s reference, under seal on or before June 1, 2009.²

Respectfully submitted,

By: s/jbrandeis

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¹ Descriptions of baseball arbitration can be found at the Cornell University Alliance for Education in Dispute Resolution website, www.ilr.cornell.edu/alliance/resources/Basics/ABCs.html, as well as on California state court websites such as www.sbcadre.org/articles/0010.htm.

² The Parties intend that the final Consent Decree, to be entered after the completion of this binding arbitration, will not be under seal.

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STRICKLER, in her capacity as municipal clerk of
Bethel

PROPOSED ORDER

This Court having considered the terms of the above Joint Stipulation between Plaintiffs and the Bethel Defendants and it appearing that there are reasonable grounds for entering this relief, now hereby:

ENTERS the relief requested above and enters this matter into binding arbitration under LR 16. The Plaintiffs and Bethel defendants may each submit one five-page brief (exclusive of caption, signature page, certificate of service, and exhibits) under seal on or before June 1, 2009 at 5 p.m. One of the parties shall also submit the proposed form of consent decree under seal.

DATED this _____ day of May, 2009.

HONORABLE TIMOTHY M. BURGESS

CERTIFICATE OF SERVICE

I hereby certify that on the 15th day of May, 2009, a true and correct copy of the foregoing document was served electronically pursuant to the Court's electronic filing procedures upon the following:

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