

City of Kodiak Regular Council Meeting Agenda for August 9, 2018
7:30 p.m., at 710 Mill Bay Road, Assembly Chambers (Room 232)

I.	Call to Order/Roll Call	
	Invocation/Pledge of Allegiance	
II.	Previous Minutes	
	Approval of Minutes of the July 12, 2018, Regular Council Meeting.....	1
III.	Persons to Be Heard	
a.	Public Comments (limited to 3 minutes) (486-3231)	
IV.	Unfinished Business	
a.	Authorization of the Five-Year Regional and Community Jail Contract with the Alaska Department of Corrections [Clerk’s Note: This may be substituted with a one-year contract.].....	8
V.	New Business	
a.	First Reading, Ordinance No. 1381, Amending Chapters 18.12 and 18.20 of the Kodiak City Code to Allow for Negotiated Leases of Real Property if Approved by Ordinance .32	
b.	Resolution No. 2018–08, Option A or B, Authorizing Payment of Fiscal year 2019 Nonprofit Organization Grants and In-Kind Contributions.....	38
c.	Authorization of Professional Services Contract to Richard Birdsall With Avitus Group for a Third-Party Review of the Process Followed in the Dismissal of the Former Deputy Manager	48
d.	Authorization of Bid Award to Brechan Construction LLC for Annual Pavement Repair; Project No. 19-02/5039	62
e.	Authorization of Change Order No. 1 With Brechan Construction LLC for Aleutian Homes Water and Sewer Phase VI, Project No. 15-03/7037	68
f.	Authorization of the Second Renewal to the Cooperative Land Use Management Agreement With the State of Alaska Providing for the State to Manage the Portion of Lot 3, U.S. Survey No. 3462, Located North of Monashka Bay Road, Commonly Known as the Cry of the Wild Ram Site, as Part of Fort Abercrombie State Historic Park.....	74
g.	Authorization of a Professional Services Agreement With Axon Enterprises, Inc. in Support of Body Worn Cameras, Equipment, and Video Storage for the Kodiak Police Department.....	86
VI.	Staff Reports	
a.	City Manager	
b.	City Clerk	
VII.	Mayor’s Comments	
VIII.	Council Comments	
IX.	Audience Comments (limited to 3 minutes) (486-3231)	
X.	Executive Session	
a.	Receive Update on City Litigation	102
XI.	Adjournment	

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<p>DRAFT</p>

**MINUTES OF THE REGULAR COUNCIL MEETING
OF THE CITY OF KODIAK
HELD THURSDAY, JULY 12, 2018
IN THE BOROUGH ASSEMBLY CHAMBERS**

I. MEETING CALLED TO ORDER/INVOCATION/PLEDGE OF ALLEGIANCE

Mayor Pat Branson called the meeting to order at 7:30 p.m. Councilmembers Laura B. Arboleda, Randall C. Bishop, Charles E. Davidson, Daniel Mckenna-Foster, Richard H. Walker, and John B. Whiddon were present and constituted a quorum. City Manager Mike Tvenge, City Clerk Debra Marlar, and Deputy Clerk Michelle Shuravloff-Nelson were also present.

Salvation Army Major Dave Davis gave the invocation and the Pledge of Allegiance was recited.

II. PREVIOUS MINUTES

Councilmember Whiddon MOVED to approve the minutes of the June 14, 2018, regular meeting as presented.

The roll call vote was Councilmembers Arboleda, Bishop, Davidson, Mckenna-Foster, Walker, and Whiddon in favor. The motion passed.

III. PERSONS TO BE HEARD

a. Public Comments

Lawrence Anderson, Board of Directors of Senior Citizens of Kodiak Inc., provided a quarterly report. He highlighted some of the services provided to those that are 60 years and older, and he reported on the percentage of ethnic populations served. He spoke about an upcoming caregiver training. He said they are on track with their mission to enhance the quality of lives for senior citizens, which was confirmed by their recent surveys.

IV. UNFINISHED BUSINESS

a. Second Reading and Public Hearing, Ordinance No. 1380, Amending Kodiak City Code Chapter 2.12, Relating to the Fire Department Employee Residency Requirement

The Kodiak Fire Department requires staff to live within 5.5 miles of the station, maintain a land line telephone in residence, and meet medical requirements to fulfill the duties of firefighting. Due to increased housing costs and availability, the Fire Chief has requested the mileage requirement be lengthened to 12 miles in order to allow staff more cost effective housing choices. In addition, the Chief has requested the land line phone requirement be amended to accept cell service as an alternative. The final change to this section clarifies language pertaining to pre-employment physicals and physical ability tests.

Councilmember Davidson MOVED to adopt Ordinance No. 1380.

Mayor Branson closed the regular meeting, opened and closed the public hearing when no one came forward to testify, and reopened the regular meeting.

The roll call vote was Councilmembers Arboleda, Bishop, Davidson, Walker, and Whiddon in favor. Councilmember Mckenna-Foster opposed. The motion passed.

V. NEW BUSINESS

a. Authorization of FY2019 Special Services Contract With Alaska Department of Public Safety

The Alaska Department of Public Safety (DPS) requested the renewal of its contract with the City to provide services that support the mission and operations of the Alaska State Troopers (AST) and Alaska Wildlife Troopers (AWT) in Kodiak. In exchange for providing these services, DPS will compensate the City with \$78,750 for FY2019.

Councilmember Bishop MOVED to authorize the FY2019 Special Services Contract with the Alaska Department of Public Safety, Division of Alaska State Troopers, and authorize the City Manager to sign the contract on behalf of the City.

The roll call vote was Councilmembers Arboleda, Bishop, Davidson, Mckenna-Foster, Walker, and Whiddon in favor. The motion passed.

b. Authorization of Animal Shelter Operation Contract With the Humane Society of Kodiak

The City of Kodiak has contracted with the Humane Society of Kodiak (HSK) for the operation of the City animal shelter since 1995. Staff supports the work the Humane Society does for the City and community and recommends Council authorize the two-year contract with the Humane Society of Kodiak at an annual amount of \$125,000, which is reflected in the FY2019 budget adopted by Council on May 10, 2018.

Councilmember Arboleda MOVED to authorize Contract No. 237762, ending June 30, 2020, with the Humane Society of Kodiak in the amount of \$125,000 each year for FY2019 and FY2020 with funds coming from the General Fund, Police Department, Animal Control account and authorize the City Manager to sign the documents on behalf of the City.

The roll call vote was Councilmembers Arboleda, Bishop, Davidson, Mckenna-Foster, Walker, and Whiddon in favor. The motion passed.

c. Authorization of Marketing and Tourism Development Agreement

Council has authorized agreements with the Kodiak Island Convention and Visitors Bureau, known as Discover Kodiak, to provide marketing and tourism outreach for Kodiak since FY2009.

Councilmember Whiddon MOVED to authorize the FY2019 Marketing and Tourism Development Agreement No. 237760 with Discover Kodiak in the amount of \$108,000 with funds coming from the Special Revenue Funds, Tourism Development Fund and authorize the City Manager to sign the agreement on behalf of the City.

The roll call vote was Councilmembers Arboleda, Bishop, Davidson, Mckenna-Foster, Walker, and Whiddon in favor. The motion passed.

d. Non-objection to the Transfer of Liquor Licenses 1155 and 1156 for CNG, Inc. dba Tony's Bar and Tony's Liquor

CNG, Inc. dba Tony's Bar and Tony's Liquor filed applications for a transfer of ownership with the State of Alaska Alcohol & Marijuana Control Office (AMCO). State regulations require that AMCO forward the applications to the City Council for the option to protest the approval of the applications for the transfer of the alcohol packaging store and beverage dispensary licenses. The transfer is due to an internal realignment of stock ownership.

Councilmember Walker MOVED to voice non-objection to the Alcohol & Marijuana Control Office regarding transfer of ownership application for CNG, Inc. Beverage Dispensary License No. 1155 and Packaging Store License No. 1156.

The roll call vote was Councilmembers Arboleda, Bishop, Davidson, Mckenna-Foster, Walker, and Whiddon in favor. The motion passed.

e. Authorization of Novation Agreement for Borrow Material Permit No. 14-2

On May 22, 2018, the City Engineer received an email from Jim Graham letting him know that Brechan Construction LLC purchased various assets and assumed responsibility for previously executed contracts held by Brechan Enterprises Inc. Jim Graham requested that Brechan Enterprises Inc. be released from further obligations regarding the Breakwater Quarry Borrow Permit No. 14-2 and that Brechan Construction LLC be allowed to assume all obligations under the permit.

Councilmember Walker MOVED to authorize the Novation Agreement between the City of Kodiak and Brechan Construction LLC for operation of Breakwater Quarry Borrow Material Permit No. 14-2 and authorize the City Manager execute the agreement on behalf of the City.

The roll call vote was Councilmembers Arboleda, Bishop, Davidson, Mckenna-Foster, Walker, and Whiddon in favor. The motion passed.

f. Authorization of the Five-Year Regional and Community Jail Contract With the Alaska Department of Corrections

The Alaska Department of Corrections (DOC) has proposed a new five-year contract with the City to provide short-term regional and community jail services for persons held for violations of State law. The new contract would be effective July 1, 2018, and continue in force through June 30, 2023. The contract can be terminated upon ninety (90) days notice from the terminating party, and contract amendments for additional work could be incorporated through mutually

agreed upon appendices or attachments. The base contract amount is \$991,552 with an additional \$37,380 included for pretrial electronic monitoring services the City provides for the State.

Councilmember Whiddon MOVED to authorize a five-year professional services contract for regional and community jail services with the Alaska Department of Corrections (DOC Contract No. 2091006) commencing on July 1, 2018, and ending on June 30, 2023, for \$1,028,932 and authorize the City Manager to sign the agreement on behalf of the City.

Councilmember Davidson MOVED to postpone the vote on this motion until the August 9, 2018, regular Council meeting.

The roll call vote to postpone was Councilmembers Arboleda, Bishop, Davidson, McKenna-Foster, Walker, and Whiddon in favor. The motion passed.

VI. STAFF REPORTS

a. City Manager

Manager Tvenge provided an update on the Birch Avenue project; he said Brechan Construction LLC is on schedule and on budget. They will expect to start rebuilding Birch Avenue in August. He met with the Borough Manager and they will work on the E911, Building Inspection, and Animal Control contracts; he said they will be completed when they have consensus and he will bring them forward to Council. He recognized three dedicated and hardworking employees that are retiring from the City. He said Anna Castillo began working for the City's Finance department in 1978 and after 21 years she transferred to the Fire department. He said Sandi Heglin a Senior Accountant started in 1987 in Finance and has held various positions in the department in her 31 years with the City. He shared that Harbormaster Lon White worked for the City for 36 years, and had worked as a harbor officer, maintenance, and deputy director within the harbor. He said Lon played an instrumental role in the Pier III project and Channel Transient float replacement. Manager Tvenge wished them all well in retirement.

b. City Clerk

Clerk Marlar provided an update on the process to conduct a third party review related to the termination of the former Deputy City Manager. Clerk Marlar said the candidate nominating packets for the 2018 election are available in the Clerk's office, and the filing date is from August 1 through August 15, 2018. She the City Clerk's webpage has been updated to include a meeting notification for Council agenda and packet materials. She said if citizens have any difficulties signing up for the notifications, they should contact the Clerk's office. She gave an upcoming Council meeting schedule. Clerk Marlar said she has worked with Lon for many years and stated that he will be missed.

VII. MAYOR'S COMMENTS

Mayor Branson wished all three individuals retiring well and she thanked them for their many years of service. She said she met with Mayor Rohrer and determined that the joint work sessions would be held quarterly, and there will be discussion on a consolidation committee at

the September joint work session. She thanked Clerk Marlar for the parliamentary training material and updates at the work session; she said it is always helpful to have reminders.

VIII. COUNCIL COMMENTS

Councilmember Mckenna-Foster thanked the Clerk's office for the new automatic meeting notification subscription on the City's website. He expressed his concern that vendors hired by the City need to produce deliverables. He questioned what the deliverables were from the City's Economic Development contract and if the contractor is still working with the City. He expressed frustration that he can't find documents on the City's website. He stated his opinion that the City hires contractors without follow through. He questioned if the City is making good investments with City money. He expressed excitement about the Pedestrian Plan and Near Island Plan and expressed frustration that he cannot easily find the documents on the website. He spoke in support of the crane downtown and stated the process to receive training to use the crane has impediments. He said this type of commerce is not easy and is hopeful for a new and easier process. He said he went to the Clerk's office and received assistance for a citizen that wanted to have a food truck; he mentioned that the City does not have a food truck permit process and processes need to be more clear and concise.

Councilmember Bishop extended his appreciation to those retiring from the City. He commented that a wealth of knowledge is departing the City's workforce. He encouraged citizens to run for a seat on the City Council.

Councilmember Whiddon said August 4, 2018, is the birthday of the USCG. He said it will be a big celebration and he thanked the USCG for all that they do. He said there was a Fisheries Work Group meeting yesterday and he provided a summary. He said Brad Gilman, the lobbyist in D.C. and Garrett Everidge from the McDowell Group called into the meeting to discuss potential impacts of the tariffs with China. He shared that ADF&G indicated the salmon runs are very low and Chignik had requested an emergency petition. He shared the City wrote a letter regarding the Chignik emergency and the BBNA resolution calling for changes to Kodiak's salmon management plans and that the City wants a public and transparent process on any changes that can impact the community. He said Representative Stutes plans to re-introduce House Bill 199. He said they are still awaiting a final update on the \$56 million pink salmon disbursement. He thanked Mr. Anderson for his comprehensive report and Lon for his years of service.

Councilmember Walker congratulated all the individuals that are retiring. He said he has known Lon for many years and shared that he has a lot of knowledge and he has enjoyed working with him. He said that last election was a low turnout. He encouraged people to participate and to vote for the state and local elections. He thanked Clerk Marlar and staff for their help and Manager Tvenge for his work. He said the City is about infrastructure and they have to get by with what they have, which occurs in communities statewide. He thanked Councilmembers for their service. He wished everyone well and to catch fish this season.

Councilmember Davidson thanked the retiring individuals. He stated he hopes the Council will approve Richard Birdsall to perform a third party review of the Deputy City Manager dismissal process.

Councilmember Arboleda stated we are very fortunate to live in a place where we can readily go to beach. She reminded the public to keep the island clean. She thanked the Clerk's office for the automatic meeting notification. She thanked Anna, Sandi, and Lon and wished them well in retirement. She encouraged citizens to run for election, especially if they have a passion for Kodiak.

Mayor Branson said there is no casual spending within the City.

IX. AUDIENCE COMMENTS

Lawrence Anderson complimented the harbor and police departments. He said he has worked for the City and there is a lot of work that goes on behind the scenes that people do not see. He thanked the elected officials and staff and stated he loves the community of Kodiak.

Lon White shared he was hired by George McCorkle at a very young age and he is thankful for his mentorship early in his career and Marty Owens's management guidance later in his career. He said it has been a pleasure and an honor to work at the harbor. He said the department and staff are his family. He shared that Kodiak has one of the greatest ports and harbors. He said he is proud that within the last few years over \$50 million dollars of harbor projects have been completed with a majority of outside funding. He said Fishermen's Hall was remodeled and showers and restrooms have been added. He said he is glad the crane is operational and shared that the model they used was Homer's model that has been successful and in place for numerous years. He thanked the Council for their support.

X. ADJOURNMENT

Councilmember Davidson MOVED to adjourn the meeting.

The roll call vote was Councilmembers Arboleda, Bishop, Davidson, Mckenna-Foster, Walker, and Whiddon in favor. The motion passed.

The meeting adjourned at 8:35 p.m.

CITY OF KODIAK

MAYOR

ATTEST:

CITY CLERK

Minutes Approved:

UNFINISHED BUSINESS

MEMORANDUM TO COUNCIL

To: Mayor Branson and City Council members

From: Mike Tvenge, City Manager *MT*

Thru: Timothy Putney, Chief of Police

Date: August 9, 2018

Agenda Item: IV. a. **Authorization of the Five-Year Regional and Community Jail Contract with the Alaska Department of Corrections**

SUMMARY: The Alaska Department of Corrections (DOC) has proposed a new five-year contract with the City to provide short-term Regional and Community Jail Services for persons held for violations of State law. The new contract would be effective July 1, 2018, and continue in force through June 30, 2023. The contract can be terminated upon ninety (90) days notice from the terminating party, and contract amendments for additional work could be incorporated through mutually agreed upon appendices or attachments. The base contract amount is \$991,552 with an additional \$37,380 included for Pretrial Electronic Monitoring Services the City provides for the State. The total FY2019 contract amount is \$1,028,932. The Kodiak Community Jail is an integral piece to the overall public safety of Kodiak, and staff recommends approval of a Community Jail contract.

UPDATE: During the July 12, 2018, regular Council meeting the proposed five-year contract was postponed to address the term/payment amounts and the medical billing procedures. Discussions with the Alaska Department of Corrections Procurement Manager John Schauwecker provide the following results. The Alaska Department of Corrections will modify the agreement for a term of one year; remove Article 2.2 Appendix B from the cover page, which sets forth liability and insurance provisions that are not relevant to the City; and leave the medical and dental care reimbursement without change. This contract term of one year will allow for continuing negotiations of the annual reimbursement amounts provided by the State.

PREVIOUS COUNCIL ACTION:

- Since March 1960 the Council has approved annual jail services contracts.
- On June 27, 2013, Council reviewed and approved a five-year Regional and Community Jail Services contract beginning July 1, 2013, in the amount of \$1,208,290.
- On June 24, 2015, Council reviewed and approved an amendment to the five-year Regional and Community Jail Services contract for FY2016 in the amount of \$991,552.00.
- On July 14, 2016, Council reviewed and approved an FY2017 contract in the amount of \$991,552.
- On July 12, 2018, Council postponed the vote on the authorization of the five-year Regional and Community Jail Contract with the Alaska Department of Corrections.

DISCUSSION: The Alaska Department of Corrections (DOC) has proposed the continuation of a contract with the City to provide short-term Regional and Community Jail Services for persons held for violations of State law. Prior to the first five-year contract ending June 30, 2018, the term of the contract was for one year, and the terms had to be continuously evaluated. Staff believes that the long history between the City and DOC concerning a community jail contract warrants continued support for another contract.

ALTERNATIVES:

- 1) Authorize this five-year contract with the Department of Corrections commencing on July 1, 2018, which is not recommended, because staff recommends a one-year agreement.
- 2) Amend the motion on the floor by substituting the five-year contract with the one-year contract. This is staffs recommendation.
- 3) Do not authorize this contract with the Department of Corrections. Staff does not recommend this alternative. If this contract is not authorized, the quality of life and health and safety of the community could be negatively impacted.

FINANCIAL IMPLICATIONS: With capital improvement projects included, staff estimates the FY2019 jail expenses to be \$1,627,705. The total contract offered by DOC for FY2019 is \$1,028,932. Revenues received under this contract do not cover, but do offset, our costs to operate the jail.

LEGAL: N/A

STAFF RECOMMENDATION: Staff recommends the approval of the contract with the Alaska Department of Corrections (DOC) to provide Regional and Community Jail Services commencing on July 1, 2018, and ending June 30, 2019, for a total of \$1,028,932.

CITY MANAGER'S COMMENTS: I support the Council's decision to approve the professional services contract for Regional and Community Jail Service with the Alaska Department of Corrections.

ATTACHMENTS:

- Attachment A: Five-Year Contract Cover Page
- Attachment B: One-Year Professional Services Contract
- Attachment C: Original DOC Letter

{Clerk's Note: The motion to authorize a five-year professional services contract for Regional and Community Jail services with the Alaska Department of Corrections (DOC Contract No. 2091006) commencing on July 1, 2018, and ending on June 30, 2023, for \$1,028,932 and authorize the City Manager to sign the agreement on behalf of the City is on the floor. Both the five-year and one-year contracts have the same contract number. The dates were changed in the one-year document pages to reflect the reduced contract time.}

PROPOSED MOTION:

Move to amend the motion by substituting the five-year DOC contract for Regional and Community Jail services with a one-year contract, (DOC Contract No. 2091006) commencing on July 1, 2018, and ending on June 30, 2019, in the amount of \$1,028,932 and authorize the City Manager to sign the agreement on behalf of the City

The parties' contract comprises this Standard Agreement Form, as well as its referenced Articles and their associated Appendices

1. Agency Contract Number 2091006	2. Contract Title Regional and Community Jail: Kodiak	3. Agency Fund Code 1004	4. Agency Appropriation Code 201014600-1600000002-3020-5019
5. Vendor Number CIK84916	6. IRIS GAE Number (if used) 2091006	7. Alaska Business License Number Not Applicable	

This contract is between the State of Alaska,

8. Department of Corrections	Division Institutions	hereafter the State, and
9. Contractor City of Kodiak, Police Department hereafter the contractor		
Mailing Address 217 Mill Bay Road	Street or P.O. Box	City Kodiak
		State AK
		ZIP+4 99615

10.

ARTICLE 1. Appendices: Appendices referred to in this contract and attached to it are considered part of it.

ARTICLE 2. Performance of Service:

- 2.1 Appendix A (General Provisions), Articles 1 through 16, governs the performance of services under this contract.
- 2.2 Appendix B sets forth the liability and insurance provisions of this contract.
- 2.3 Appendix C sets forth the services to be performed by the contractor.

ARTICLE 3. Period of Performance: The period of performance for this contract begins July 1, 2018, and ends June 30, 2019.

ARTICLE 4. Considerations:

- 4.1 In full consideration of the contractor's performance under this contract, the State shall pay the contractor a sum not to exceed \$1,028,932.00 in accordance with the provisions of Appendix D.
- 4.2 When billing the State, the contractor shall refer to the Authority Number or the Agency Contract Number and send the billing to:

11. Department of Corrections	Attention: Division of Administrative Services, Accounting
Mailing Address P.O. Box 112000, Juneau, AK 99811-2000	Attention: Janette Perlasca (ph. 907-465-3461)

12. CONTRACTOR		14. CERTIFICATION: I certify that the facts herein and on supporting documents are correct, that this voucher constitutes a legal charge against funds and appropriations cited, that sufficient funds are encumbered to pay this obligation, or that there is a sufficient balance in the appropriation cited to cover this obligation. I am aware that to knowingly make or allow false entries or alternations on a public record, or knowingly destroy, mutilate, suppress, conceal, remove or otherwise impair the verity, legibility or availability of a public record constitutes tampering with public records punishable under AS 11.56.815-.820. Other disciplinary action may be taken up to and including dismissal.	
Name of Firm City of Kodiak			
Signature of Authorized Representative	Date		
Typed or Printed Name of Authorized Representative Mike Tvenge			
Title City Manager (ph. 907-486-8640; fax 907-486-8023)			
13. CONTRACTING AGENCY		Signature of Head of Contracting Agency or Designee	Date
Department/Division Corrections, Division of Institutions	Date		
Signature of Project Director		Typed or Printed Name John Schauwecker	
Typed or Printed Name of Project Director Jacob Wyckoff		Title Procurement Manager CPPB, C.P.M	
Title Acting Director of Institutions			

NOTICE: This contract has no effect until signed by the head of contracting agency or designee.

STANDARD AGREEMENT FORM FOR PROFESSIONAL SERVICES

Attachment B

The parties' contract comprises this Standard Agreement Form, as well as its referenced Articles and their associated Appendices

1. Agency Contract Number 2091006	2. Contract Title Regional and Community Jail: Kodiak	3. Agency Fund Code 1004	4. Agency Appropriation Code 201014600-1600000002-3020-5019
5. Vendor Number CIK84916	6. IRIS GAE Number (if used) 2091006	7. Alaska Business License Number Not Applicable	
This contract is between the State of Alaska,			
8. Department of Corrections		Division Institutions	hereafter the State, and
9. Contractor City of Kodiak, Police Department		hereafter the contractor	
Mailing Address 217 Mill Bay Road	Street or P.O. Box	City Kodiak	State AK ZIP+4 99615
<p>10. ARTICLE 1. Appendices: Appendices referred to in this contract and attached to it are considered part of it.</p> <p>ARTICLE 2. Performance of Service:</p> <p>2.1 Appendix A (General Provisions), Articles 1 through 16, governs the performance of services under this contract.</p> <p>2.2 Appendix C sets forth the services to be performed by the contractor.</p> <p>ARTICLE 3. Period of Performance: The period of performance for this contract begins <u>July 1, 2018</u>, and ends <u>June 30, 2019</u>.</p> <p>ARTICLE 4. Considerations:</p> <p>4.1 In full consideration of the contractor's performance under this contract, the State shall pay the contractor a sum not to exceed <u>\$1,028,932.00</u> in accordance with the provisions of Appendix D.</p> <p>4.2 When billing the State, the contractor shall refer to the Authority Number or the Agency Contract Number and send the billing to:</p>			
11. Department of Corrections		Attention: Division of Administrative Services, Accounting	
Mailing Address P.O. Box 112000, Juneau, AK 99811-2000		Attention: Janette Perlasca (ph. 907-465-3461)	
<p>12. CONTRACTOR</p> <p>Name of Firm City of Kodiak</p> <p>Signature of Authorized Representative _____ Date _____</p> <p>Typed or Printed Name of Authorized Representative Mike Tvenge</p> <p>Title City Manager (ph. 907-486-8640; fax 907-486-8023)</p>		<p>14. CERTIFICATION: I certify that the facts herein and on supporting documents are correct, that this voucher constitutes a legal charge against funds and appropriations cited, that sufficient funds are encumbered to pay this obligation, or that there is a sufficient balance in the appropriation cited to cover this obligation. I am aware that to knowingly make or allow false entries or alternations on a public record, or knowingly destroy, mutilate, suppress, conceal, remove or otherwise impair the verity, legibility or availability of a public record constitutes tampering with public records punishable under AS 11.56.815-.820. Other disciplinary action may be taken up to and including dismissal.</p>	
<p>13. CONTRACTING AGENCY</p> <p>Department/Division Corrections, Division of Institutions</p> <p>Signature of Project Director _____</p>		<p>Signature of Head of Contracting Agency or Designee _____</p>	<p>Date _____</p>
<p>Typed or Printed Name of Project Director Jacob Wyckoff</p> <p>Title Acting Director of Institutions</p>		<p>Typed or Printed Name John Schauwecker</p> <p>Title Procurement Manager CPPB, C.P.M</p>	

NOTICE: This contract has no effect until signed by the head of contracting agency or designee.

APPENDIX A

GENERAL PROVISIONS

Article 1. Definitions.

- 1.1 In this contract and appendices, "Project Director" or "Agency Head" or "Procurement Officer" means the person who signs this contract on behalf of the Requesting Agency and includes a successor or authorized representative.
- 1.2 "State Contracting Agency" means the department for which this contract is to be performed and for which the Commissioner or Authorized Designee acted in signing this contract.

Article 2. Inspections and Reports.

- 2.1 The department may inspect, in the manner and at reasonable times it considers appropriate, all the contractor's facilities and activities under this contract.
- 2.2 The contractor shall make progress and other reports in the manner and at the times the department reasonably requires.

Article 3. Disputes.

- 3.1 If the contractor has a claim arising in connection with the contract that it cannot resolve with the State by mutual agreement, it shall pursue the claim, if at all, in accordance with the provisions of AS 36.30.620 – 632.

Article 4. Equal Employment Opportunity.

- 4.1 The contractor may not discriminate against any employee or applicant for employment because of race, religion, color, national origin, or because of age, disability, sex, marital status, changes in marital status, pregnancy or parenthood when the reasonable demands of the position(s) do not require distinction on the basis of age, disability, sex, marital status, changes in marital status, pregnancy, or parenthood. The contractor shall take affirmative action to insure that the applicants are considered for employment and that employees are treated during employment without unlawful regard to their race, color, religion, national origin, ancestry, disability, age, sex, marital status, changes in marital status, pregnancy or parenthood. This action must include, but need not be limited to, the following: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training including apprenticeship. The contractor shall post in conspicuous places, available to employees and applicants for employment, notices setting out the provisions of this paragraph.
- 4.2 The contractor shall state, in all solicitations or advertisements for employees to work on State of Alaska contract jobs, that it is an equal opportunity employer and that all qualified applicants will receive consideration for employment without regard to race, religion, color, national origin, age, disability, sex, marital status, changes in marital status, pregnancy or parenthood.
- 4.3 The contractor shall send to each labor union or representative of workers with which the contractor has a collective bargaining agreement or other contract or understanding a notice advising the labor union or workers' compensation representative of the contractor's commitments under this article and post copies of the notice in conspicuous places available to all employees and applicants for employment.
- 4.4 The contractor shall include the provisions of this article in every contract, and shall require the inclusion of these provisions in every contract entered into by any of its subcontractors, so that those provisions will be binding upon each subcontractor. For the purpose of including those provisions in any contract or subcontract, as required by this contract, "contractor" and "subcontractor" may be changed to reflect appropriately the name or designation of the parties of the contract or subcontract.
- 4.5 The contractor shall cooperate fully with State efforts which seek to deal with the problem of unlawful discrimination, and with all other State efforts to guarantee fair employment practices under this contract, and promptly comply with all requests and directions from the State Commission for Human Rights or any of its officers or agents relating to prevention of discriminatory employment practices.
- 4.6 Full cooperation in paragraph 4.5 includes, but is not limited to, being a witness in any proceeding involving questions of unlawful discrimination if that is requested by any official or agency of the State of Alaska; permitting employees of the contractor to be witnesses or complainants in any proceeding involving questions of unlawful discrimination, if that is requested by any official or agency of the State of Alaska; participating in meetings; submitting periodic reports on the equal employment aspects of present and future employment; assisting inspection of the contractor's facilities; and promptly complying with all State directives considered essential by any office or agency of the State of Alaska to insure compliance with all federal and State laws, regulations, and policies pertaining to the prevention of discriminatory employment practices.
- 4.7 Failure to perform under this article constitutes a material breach of contract.

Article 5. Termination.

The Project Director, by written notice, may terminate this contract, in whole or in part, when it is in the best interest of the State. In the absence of a breach of contract by the contractor, the State is liable only for payment in accordance with the payment provisions of this contract for services rendered before the effective date of termination.

Article 6. No Assignment or Delegation.

The contractor may not assign or delegate this contract, or any part of it, or any right to any of the money to be paid under it, except with the written consent of the Project Director and the Agency Head.

Article 7. No Additional Work or Material.

No claim for additional services, not specifically provided in this contract, performed or furnished by the contractor, will be allowed, nor may the contractor do any work or furnish any material not covered by the contract unless the work or material is ordered in writing by the Project Director and approved by the Agency Head.

Article 8. Independent Contractor.

The contractor and any agents and employees of the contractor act in an independent capacity and are not officers or employees or agents of the State in the performance of this contract.

Article 9. Payment of Taxes.

As a condition of performance of this contract, the contractor shall pay all federal, State, and local taxes incurred by the contractor and shall require their payment by any Subcontractor or any other persons in the performance of this contract. Satisfactory performance of this paragraph is a condition precedent to payment by the State under this contract.

Article 10. Ownership of Documents.

All designs, drawings, specifications, notes, artwork, and other work developed in the performance of this agreement are produced for hire and remain the sole property of the State of Alaska and may be used by the State for any other purpose without additional compensation to the contractor. The contractor agrees not to assert any rights and not to establish any claim under the design patent or copyright laws. Nevertheless, if the contractor does mark such documents with a statement suggesting they are trademarked, copyrighted, or otherwise protected against the State's unencumbered use or distribution, the contractor agrees that this paragraph supersedes any such statement and renders it void. The contractor, for a period of three years after final payment under this contract, agrees to furnish and provide access to all retained materials at the request of the Project Director. Unless otherwise directed by the Project Director, the contractor may retain copies of all the materials.

Article 11. Governing Law; Forum Selection

This contract is governed by the laws of the State of Alaska. To the extent not otherwise governed by Article 3 of this Appendix, any claim concerning this contract shall be brought only in the Superior Court of the State of Alaska and not elsewhere.

Article 12. Conflicting Provisions.

Unless specifically amended and approved by the Department of Law, the terms of this contract supersede any provisions the contractor may seek to add. The contractor may not add additional or different terms to this contract; AS 45.02.207(b)(1). The contractor specifically acknowledges and agrees that, among other things, provisions in any documents it seeks to append hereto that purport to (1) waive the State of Alaska's sovereign immunity, (2) impose indemnification obligations on the State of Alaska, or (3) limit liability of the contractor for acts of contractor negligence, are expressly superseded by this contract and are void.

Article 13. Officials Not to Benefit.

Contractor must comply with all applicable federal or State laws regulating ethical conduct of public officers and employees.

Article 14. Covenant Against Contingent Fees.

The contractor warrants that no person or agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee except employees or agencies maintained by the contractor for the purpose of securing business. For the breach or violation of this warranty, the State may terminate this contract without liability or in its discretion deduct from the contract price or consideration the full amount of the commission, percentage, brokerage or contingent fee.

Article 15. Compliance.

In the performance of this contract, the contractor must comply with all applicable federal, state, and borough regulations, codes, and laws, and be liable for all required insurance, licenses, permits and bonds.

Article 16. Force Majeure:

The parties to this contract are not liable for the consequences of any failure to perform, or default in performing, any of their obligations under this Agreement, if that failure or default is caused by any unforeseeable Force Majeure, beyond the control of, and without the fault or negligence of, the respective party. For the purposes of this Agreement, Force Majeure will mean war (whether declared or not); revolution; invasion; insurrection; riot; civil commotion; sabotage; military or usurped power; lightning; explosion; fire; storm; drought; flood; earthquake; epidemic; quarantine; strikes; acts or restraints of governmental authorities affecting the project or directly or indirectly prohibiting or restricting the furnishing or use of materials or labor required; inability to secure materials, machinery, equipment or labor because of priority, allocation or other regulations of any governmental authorities.

**ALASKA DEPARTMENT OF CORRECTIONS
CONTRACT FOR REGIONAL AND COMMUNITY JAILS SERVICES
July 1, 2018 through June 30, 2019**

**Appendix C
General Terms**

Parties

The parties to this contract are the Alaska Department of Corrections, and the Borough/City of Kodiak, herein referred to as the "Borough/City".

1. Services

Provide short-term regional and community jail confinement of persons held under **State** law.

This is a contract for the Borough/City to operate a jail facility and hold prisoners in accordance with this contract and The Standards for Jail Operations adopted by the Governor's Task Force on Community Jails (November 18, 1994 edition), hereafter referred to as "The Standards".

The Standards and the final report of the Governor's Task Force are attached as Appendix E to this contract. As adopted by the Governor's Task Force, and as explained in the Document, Chapter 13, sec. 13.05 of Appendix E, these standards were not, and are not, intended to be used in any legal proceeding to establish a "duty of care", or evidence of a legal duty to any person or entity. Rather, these standards were and are intended:

- a. as a statement of professional goals to be achieved;
- b. to promote recognition of needed improvements, both as to facilities and operations;
- c. to promote efficiency; and
- d. to encourage professionalism in the operations of Alaska jails.

As used in this contract, "Community Jail Administrator", "DOC Oversight Officer" and "State Regional & Community Jail Coordinator" has the meaning given in Chapter 13 of The Standards.

As used in this contract, "prisoner" has the meaning given in AS 33.30.901(12), and specifically excludes persons detained under authority of AS 47. This contract allows the Borough/City to hold persons detained under AS 47 in its jail facility, however the Department is authorized to, and will not, compensate the Borough/City for any direct or indirect costs related as AS 47 detainees, including medical or transportation costs.

2. Sole Agreement

This contract is the sole agreement between the parties relating to jail services. There are no other agreements, express or implied. This contract represents the Department's sole obligation for payment for the care and custody of prisoners held at the Kodiak Regional and Community Jail participating in the Regional and Community Jails Program during the term of the contract. It is the intention of the parties that no other sums will be billed to or owed by the Department for jail services.

3. Effective Date/Termination/Amendments

This contract is effective **July 1, 2018** and continues in force through **June 30, 2019** except that it may be terminated by either party upon ninety (90) days written notice from the terminating party. This will be a five-year contract.

Contract amendments for additional work can be incorporated through appendices or attachments mutually agreed upon and signed by both parties.

4. Responsibilities of the parties

General Responsibilities of the Borough/City

The Borough/City Shall

- a. Operate a facility for the care and confinement of prisoners in accordance with this contract and with goals set out in The Standards, including any additions or deletions to The Standards by the Commissioner of Corrections following notice to all community jail administrators and an opportunity to comment.
- b. Comply with the U.S. Civil Rights Act of 1964, as amended (P.L. 88-35-42 USC secs. 2000e-2 and 2000e-3) and Federal regulations implementing the act in the hiring and treatment of its employees and will not subject any prisoner to discrimination on the grounds of race, creed, color, religion, national origin, sex.
- c. Permit reasonable visitation for prisoners as set out in The Standards. A record or log of all prisoner visitors will be kept indicating date, time and identity of each visitor.
- d. Protect prisoner property by taking proper precautions and providing the necessary policies and procedures to protect the property from loss or destruction.
- e. Not accept a prisoner into the facility under this contract if the person is unconscious or in immediate need of medical attention, and shall not be entitled to reimbursement for immediate medical services provided to such a person. The Borough/City shall provide necessary medical care for prisoners accepted into the facility under this contract, and shall be entitled to reimbursement by the Department for the cost of such care, per Section C6 of this contract.
- f. Immediately notify the Department of Corrections, the nearest post of the Alaska State Troopers, and any police agencies in the general vicinity of the jail facility if a prisoner escapes or leaves the premises of the facility without authority. The Borough/City shall make every reasonable effort to return the prisoner to the facility without cost to the Department of Corrections, as long as there are reasonable grounds to believe the prisoner is within the Borough/City limits.
- g. Adopt and enforce rules concerning smoking by prisoners and staff consistent with State statutes and regulations, keeping in mind the health and welfare of all prisoners and staff personnel.
- h. Maintain prisoner records showing the prisoner's time served, the date and time the prisoner was booked in, the date and time of changes to custody, notations about the

prisoner's institutional adjustment, and records of medical and dental treatment. These prisoner records must be in a prisoner's file when they are transferred from the regional and community jail facility to another state correctional facility.

- i. Immediately, but, in no event more than 24 hours following receipt of notice, report to the Department of Corrections all claims concerning the jail facility that could foreseeably affect the legal liability of either party to this contract and cooperate with the Department of Corrections in the defense and/or settlement of the claim.
- j. Purchase and maintain in force at all times during the performance of services under this agreement the policies of insurance listed in the contract. Where specific limits are shown, it is understood that they shall be the minimum acceptable limits. If the Borough's/City's policy contains higher limits, the State shall be entitled to coverage to the extent of such higher limits.
- k. Certificates of Insurance must be furnished to the contracting officer prior to beginning work and must provide for a notice of cancellation, non-renewal, or material change of conditions in accordance with policy provisions. Failure to furnish satisfactory evidence of insurance or lapse of the policy is a material breach of this contract and shall be grounds for termination of the Borough's/City services. All insurance policies shall comply with and be issued by insurers licensed to transact the business of insurance under AS21.
- l. The Borough / City shall provide and maintain, for all employees engaged in work under this contract, coverage as required by AS 23.30.045, and where applicable, any other statutory obligations including but not limited to Federal U.S.L.&H. and Jones Act requirements. This policy must waive subrogation against the state. The Borough/City shall be responsible for insuring that any subcontractor who directly or indirectly provides services under this contract will maintain Worker's Compensation Insurance.
- m. Provide and maintain comprehensive general liability insurance, with a combined single limit per occurrence of not less than \$1,000,000.00 covering activities associated with or arising out of this contract, to include jail keeper's legal liability coverage. The State shall be added as an additional insured under such policies. The Borough/City shall be solely responsible for the payment of claims or losses to the extent they fall within the deductible amount of such insurance. This insurance shall be primary to any other insurance or self insurance carried by the State.
- n. Hold that the Borough / City shall indemnify, hold harmless, and defend the contracting agency from and against any claim of, or liability for error, omission or negligent act of the Borough / City under this agreement up to the Borough / City policy limits as noted in Section 4(m). The Borough / City shall not be required to indemnify the contracting agency for a claim of, or liability for, the independent negligence of the contracting agency. If there is a claim of, or liability for, the joint negligent error or omission of the Borough / City and the independent negligence of the Contracting agency, the indemnification and hold harmless obligation shall be apportioned on a comparative fault basis. "Borough / City" and "Contracting agency", as used within this and the following article, include the employees, agents and other Borough / City who are directly responsible, respectively, to each. The term "independent negligence" is negligence other than in the Contracting agency's

selection, administration, monitoring, or controlling of the Borough / City and in approving or accepting the Borough / City work.

- o. Provide and maintain comprehensive automobile liability insurance, covering all owned, hired and non-owned vehicles used during the provision of services under this contract with coverage limits not less than \$100,000.00 per person, \$300,000.00 per occurrence bodily injury and \$50,000.00 property damage.
- p. The regional and community jail must use an accounting system that records all expenditures on an ongoing basis and must provide a record of these expenditures to the oversight agency on a quarterly basis in a format prescribed by the oversight agency.
- q. The regional and community jail must prepare and present an annual operational budget that reflects the necessary resources required for facility operations. Operational budget will be prepared in the manner and detail prescribed by the oversight agency and will include a staffing plan showing in detail staff assignments and the number of full and part-time positions.
- r. Annual operational budget for each fiscal year is due to the Department's State Regional and Community Jail Administrator on July 15 of each year.
- s. Annual budget request for each fiscal year is due to the State Regional and Community Jail Administrator on October 1 of each year for inclusion in the annual Department of Corrections' fiscal year operating appropriations request annually. For example; Fiscal Year 2020 is due to the State Regional and Community Jail administrator on October 1, 2018 for inclusion in the annual Department of corrections' fiscal year 2020 operating budget request.
- t. By October 1 of each fiscal year, the Regional and Community Jail Administrator must provide their request for the next fiscal year capital project request. Failure to meet this deadline may result in no capital project request for the next fiscal year
- u. Quarterly financial reports are due to the state regional and community jail administrator on the following dates of each fiscal year:
 - July – September – quarterly and year-to-date financial statement due on October 31.
 - October – December – quarterly and year-to-date financial statement due on January 31.
 - January – March – quarterly and year-to-date financial statement due on April 30.
 - April – June– quarterly financial and year-to-date financial statement due on July 31.
- v. Provide a monthly accounting of prisoner statistics by the 15th day of the month following the monthly period covered on forms provided by the Department of Corrections. The forms shall include specific information on each prisoner housed during the reporting period to include the prisoner's name, the number of man-days, the charge or reason for incarceration, the dates of incarceration, the arresting agency and other information as requested on the forms.

"Man-day" indicates a prisoner was confined for more than four (4) hours in one twenty-four hour calendar day. If a prisoner had been confined for less than or equal to (4) hours in one calendar day, the accounting shall indicate one-half man-day.

- w. Not operate furlough or release programs for pre-sentenced prisoners held, unless ordered by a court. The Borough/City shall not permit a furlough or release for any sentenced prisoners without the consent of the Department of Corrections.
- x. Regional and Community Jails accessing the Agency's Alaska Corrections Offender Management System (ACOMS) will require all jail personnel using the ACOMS System to undergo a DOC background security check. The Regional and Community Jail Administrator will submit the following information for each person accessing the ACOMS System for security review by DOC:
 - (1) Full name
 - (2) Residence address
 - (3) Telephone
 - (4) Date of birth
 - (5) Valid drivers license and state of issue, or other photo identification
 - (6) Social Security number

The Jail Administrator, with assistance from the State Regional and Community Jail Administrator, will develop Policy and Procedures for monitoring jail staff to ensure system security, confidentiality and the use of the ACOMS System only for Regional and Community Jail business. The Jail Administrator will immediately notify the Regional and Community Jail Coordinator if jail staff with access to the ACOMS System leave their employment.

Regional and Community Jail will be responsible for ongoing telecommunications costs such as line charges, connection fees and internet service provider fees, etc.

- y. The Contractor shall comply with the national standards to prevent, detect, and respond to prison rape under the Prison Rape Elimination Act (PREA), Federal Rule 28 C.F.R. Part 115. The Contractor shall also comply with all Department policies and procedures that relate to PREA to include but not limited to: conducting investigations, background checks, audits and training. The Contractor is responsible for all costs associated with PREA compliance, to include certification by an accredited auditor.

5. General Responsibilities of the Department of Corrections

The Department of Corrections shall:

- a. Reimburse the Borough/City for necessary medical care under section C6 of this Contract.

- b. Not be responsible for the management of local jail facility prisoner population. It is the policy of the Department of Corrections to detain and confine only prisoners from the normally serviced region of the respective facilities. However, in the case of an emergency or for necessary population or security management purposes, prisoners may be transferred from other areas of the State.
 - c. Be permitted to inspect, at all reasonable times, any facility used by the Borough/City to house prisoners that are confined, in order to determine if that facility is complying with The Standards and with this agreement.
 - d. Provide on-going technical assistance and training for regional and community jails requesting access to the ACOMS System. The Department of Corrections will conduct security checks, with information provided by the Jail Administrator, for all jail staff requesting access to the ACOMS System. All related telecommunications charges (such as telephone company lines fees or tolls and internet service provider fees, or special charges for initial line installation) will be the responsibility of the community jail.
- E Throughout the contract term, the DOC Oversight Officer will perform audits to ensure that the Borough / City are following PREA guidelines.

6. Medical and Dental Care and Reimbursement

The Borough/City shall:

- a. Provide necessary medical care to prisoners accepted into the Regional and Community Jail facility under this contract. Prisoners who require medical attention are to be provided treatment as soon as possible, taking into consideration the nature of the illness or injury. If medical care is provided outside of the jail facility, the Regional and Community Jail Administrator shall provide transport to the off-site medical facility and necessary security as required by paragraph 7a of this contract.

As used in this contract, "necessary medical care" has the meaning given in Chapter 13 of The Standards. If requirements of this definition are otherwise met, the following are included within the term "necessary medical care" and subject to reimbursement:

- (1) psychological or psychiatric care; and
- (2) dental care to:
 - i. control bleeding;
 - ii. relieve pain;
 - iii. eliminate acute infection;
 - iv. prevent pulp decay and imminent loss of teeth through operative procedures; and
 - v. treat injuries to teeth or repair supporting dental structures, caused by accident or injury.
- b. Maintain control of and dispense medicines to prisoners in compliance with The Standards and directions specified by a physician or other qualified health care provider, and take reasonable steps to guard against misuse or overdose of medicines by prisoners.

- c. Adopt emergency medical procedures and make available telephone numbers for medical, psychiatric, or other health services, so that staff will have ready access to such information.
- d. Obtain approval from the Department before incurring liability for medical care which reimbursement is sought, except in the case of emergency care that must be provided to the prisoner before approval from the Department of Corrections can be obtained. The Borough/City shall make a reasonable effort to obtain approval from the Department of Corrections and shall promptly, but in no event later than the next working business day, notify the Department of Corrections of any emergency for which medical care was provided before such approval could be obtained. Approval from the Department of Corrections will not be unreasonably withheld. To obtain approval Borough/City staff should contact the Department of Corrections Central Office during normal working hours Monday through Friday 8:00am to 4:30pm at (907) 269-7300, after hours, weekends and holidays contact the Anchorage Correctional Complex Medical Unit at (907) 269-4233.
- e. Be entitled to reimbursement from the Department of Corrections for expenses of necessary medical care provided under paragraph 6a and approved under paragraph 6d. In applying for reimbursement, the Borough/City must follow the procedure set out in paragraph 6f. The Borough/City will not be entitled to reimbursement for the hiring of emergency guards or other medically related security costs, or for medical care for persons

- (1) held under the authority of AS 47,
- (2) accepted into the facility while unconscious or in immediate need of medical attention,
- (3) receiving medical services for elective, cosmetic or other medical services that are not necessary medical care, or

Medical services provided to prisoners who have been properly accepted into the Borough/City jail facilities under this contract shall not, however, be challenged by the Department merely because they were rendered immediately or shortly after the prisoner was accepted.

- f. Request reimbursement by submitting to the Department of Corrections a properly certified accounting containing:
 - (1) a copy of the medical bill with the prisoner's name and a description of the services rendered,
 - (2) a copy of the monthly booking form showing the prisoner's date and time of booking, and
 - (3) a copy of the medical payment request form.

The Regional and Community Jail Administrator will make reasonable effort and take appropriate steps to assure that the Department of Corrections is billed only for necessary and required medical services beyond the payment limits of the prisoner or

any insurance carrier or other third-party payer.

7. Transfers and Transportation of Prisoners

The parties agree that:

- a. The Borough/City shall provide transportation and supervision for medical care provided within local boundaries as required by paragraph 6(a). Supervision must be adequate to prevent escapes, prevent inappropriate contact with others, prevent possession of contraband and provide security for the prisoner and the public.
- b. The Borough/City shall immediately notify the Department of Public Safety to request that a prisoner be transferred from the facility to one outside of local boundaries because;
 - (1) a court has ordered the transportation;
 - (2) the prisoner has been incarcerated in the facility for 7 consecutive days, unless a court has ordered that the prisoner remain in the facility or the prisoner has signed a written waiver requesting to remain in the facility; or
 - (3) the Regional and Community Jail Administrator believes a transfer is necessary for security or population management reasons.
- c. The Borough/City shall continue to hold prisoners, notwithstanding the existence of grounds for a transfer, until the Department of Public Safety arranges transportation for the prisoner.
- d. The City shall, when the prisoner leaves the facility, furnish the transporting officer with the prisoner's file described in paragraph 4h of this agreement.

8. Sentenced Electronic Monitoring

The Borough/City has the option to use electronic monitoring. If the Borough/City is interested in electronic monitoring, please contact DOC to coordinate an Amendment to this contract and utilization of the DOC BI, Inc. Electronic Monitoring contract.

Sentenced Electronic Monitoring:

The Department will provide additional funds if the Borough/City will take Sentenced EM placements and supervise them. The Department will provide \$10,000 for the first 1-5 inmates and \$5,000 for each additional 5 inmates annually. If a Borough/City has any number between 1-5 at any given time during a fiscal year, example 7/1/18 through 6/30/19, they will receive the full \$10,000. If the City/Borough exceeds 5 and has any number between 6-10, they will receive the full \$5,000, for any number between 11-15 at

any given time during the fiscal year they will receive another \$5,000 in full and so on for each additional 5 Sentenced EM placements, they will receive another \$5,000.

To further illustrate, by way of example, if a Borough/City had for any particular month in a fiscal year 26 Sentenced EM placements they would receive \$35,000 for that fiscal year. The breakdown of the \$35,000 is: 1-5 Sentenced EM \$10,000 + 6-10 Sentenced EM \$5,000 + 11-15 Sentenced EM \$5,000 + 16-20 Sentenced EM \$5,000 + 21-25 Sentenced EM \$5,000 + 26th Sentenced EM \$5,000 = a total of \$35,000.

If a Borough/City elects to participate in the Sentenced Electronic Monitoring they will automatically receive \$10,000 and it will be added to Appendix D. If at any time throughout the contract they exceed 5 Sentenced EM placements they will receive an additional \$5,000 for each additional 5 Sentenced EM placements. The Department is not going to prorate this by day or period of time, it will add the additional \$5,000 for every additional 5 Sentenced EM placements when either notified by the Borough/City through their monthly count sheets or the DOC recognizes the additional Sentenced EM placements on the monthly count sheets. The DOC will exercise a unilateral amendment and automatically add the funds to their contract. The unilateral amendment will be used to expedite the amendment process for both parties, only as it applies to this Section 8 Sentenced Electronic Monitoring.

If an inmate has been sentenced and only has 20-30 days they can go to Sentenced EM, stay in their community and not have to be housed in the jail or transported out of their community to a prison. If prisoners on Sentenced EM run away or violate the conditions of their EM placements, they will go to prison.

9. Pretrial Program Services

a. Assessment & Database Collection:

Complete training and comply with DOC policies for the following program services:

Complete inmate bookings by utilizing the ACOMS software system. Complete and submit the Alaska pretrial risk assessment tool (AK-2S), located in the ACOMS software application and submit release recommendations for the courts. Meet all risk assessment and recommendation timeline requirements by scheduled initial appearances. Participate in remedial training and quality evaluation as needed.

Document all contacts and pretrial actions with defendants in the ACOMS software application to ensure proper and complete records are maintained. Notify and file pretrial status and/or violation reports and paperwork through the court as needed.

*****Service currently not included but can be added via amendment throughout the life of the contract***. The amount for this service would be: \$16,020.00**

b. Community Pretrial Electronic Monitoring:

Complete training and comply with DOC policies for the following program services:

Defendants may be required to have electronic monitoring (EM). Electronic monitoring requires that defendants are fitted with the proper device at the time of release. Related data with regard to the defendant and the EM restrictions should be loaded into the web based database utilized for EM and also noted in the ACOMS software application. Most

defendants on EM will be moderate or high risk defendants, but low risk defendants may also be placed on EM with court orders. EM also requires monitoring of the system and response to EM alarms and alerts. This can be accomplished in a variety of ways, such as EM monitoring by DOC staff, monitoring by community jail staff, or monitoring by local dispatchers, who will then contact local providers, Police Departments (PDs), for response to alerts and alarms. Defendants placed on EM may require occasional action such as notification to the court for those in violation of release conditions. Coordination for arrests may also be required for defendants who are in violation. Community and Regional Jails will not charge pretrial defendants a fee for EM services.

Documentation of all contacts and pretrial actions with defendants must be entered in the ACOMS software application to ensure proper and complete records are maintained. It may be necessary to file reports and paperwork through the court in the event of violations.

*****Service currently included in the contract. Price included for this service is \$37,380.00*****

c. Community Pretrial Monitoring and Pretrial Supervision

Complete training and comply with DOC policies for the following program services:

Defendants placed on Pretrial monitoring may require occasional action such as phone contact for reminders about upcoming court appearances, or home visits for defendants to ensure compliance with release conditions. Notification to the court or potential coordination for arrests may also be required for defendants who are in violation.

Provide Pretrial supervision for low, moderate and high risk pretrial defendants who are released from jail. Pretrial supervision involves occasional office visits (when necessary), random home visits, and phone contact with defendants as well as reminders about upcoming court appearances. Defendants placed on Pretrial supervision may require occasional action such as drug and alcohol testing as well as notification to the court for those in violation of release conditions. Coordination with Pretrial for arrests may also be required for defendants who are in violation.

Documentation of all contacts and pretrial actions with defendants must be entered in the ACOMS software application to ensure proper and complete records are maintained. It may be necessary to file reports and paperwork through the court in the event of violations.

*****Service currently not included but can be added via amendment throughout the life of the contract***. The amount for this service would be: \$53,400.00**

d. Diversion Programs

Complete training and comply with DOC policies for the following program services:

Coordinate diversion programs with prosecutors, treatment providers, law enforcement, and other interested parties. Diversion programs will be tailored to each community and what can be offered and supported. Programs will be clearly defined with related performance measurements. Develop and implement programs to divert appropriate defendants to services while still achieving public safety outcomes. Funding allocation

for diversion programs will be distributed upon program authorization by the Pretrial Services Director.

Documentation of all contacts and pretrial actions with defendants must be entered in the ACOMS software application to ensure proper and complete records are maintained. It may be necessary to file reports and paperwork through the court in the event of violations.

*****Service currently not included but can be added via amendment throughout the life of the contract***. The amount for this service would be: \$35,600.00**

**ALASKA DEPARTMENT OF CORRECTIONS
CONTRACT FOR REGIONAL AND COMMUNITY JAIL SERVICES
July 1, 2018 through June 30, 2019**

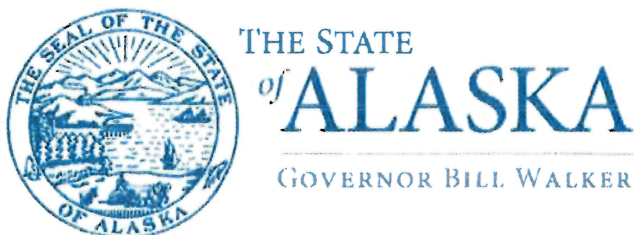
**Appendix D
Payment Provisions**

1. The base contract amount for the City / Borough of Kodiak is **\$991,552.00**. The **Pretrial Services contract amount is \$37,380.00 (Community Pretrial Electronic Monitoring \$37,380.00)**. The **total contract amount is at \$1,028,932.00** for the period from **July 1, 2018 through June 30, 2019** and represents the total payment due for FY 19. This will be a one-year contract that includes Pretrial Services programs and options to add Sentenced Electronic Monitoring to the contract. 22 Beds
2. It is specifically agreed by the parties that the Department of Corrections is not funded for and will not provide annual in-service training as set out in Section 10.01 of The Standards, unless funding is provided by the Alaska Legislature or the City.
3. The City / Borough shall be prohibited from utilizing funds received under this contract for any purpose other than operation of Regional and Community Jail facility. Any funds received by the City / Borough under this contract that are utilized for purposes other than those authorized by this contract shall be reimbursed to the State and deposited to the general fund.

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Appendix List:

- A General Provisions**
- B Not used**
- C General Terms and Indemnity and Insurance related language**
- D Payment Provisions**
- E State of Alaska, Community Jails Program: Standards for Jail Operation
As produced and adopted by the Governor's Task Force on Community Jails,
November 1994**



Department of Corrections

DIVISION OF ADMINISTRATIVE SERVICES
Juneau Procurement Section

P.O. Box 112000
Juneau, AK 99811-2000
Tele: 907.465-3399
Fax: 907.465-2006

Email: john.schauwecker@alaska.gov

May 25, 2018

Dear Borough / City:

Please find attached the Regional & Community Jail Contract for FY19. The Department of Corrections has identified below changes that were made to the contract language and the reasons for the changes.

1. Appendix C.1: Added additional titles for the "Community Jail Administrator".
2. Appendix C.3: This language changed to reflect the new ¹/₅ year contract term. *mt*
3. Appendix C. 4. q - r: This language was slightly modified to add the word "Operational" for current fiscal year and change the date from October 15 to July 15.
4. Appendix C.4. s - t: This language was slightly modified to add the word "Operational" for future year budget requests.
5. Appendix C. 4. y: This language was added to recognize that the Borough / City will comply with the national standards to prevent, detect, and response to prison rape under the Prison Rape Elimination Act (PREA) guidelines.
6. Appendix C. 5. e: This language was added to recognize that the DOC Oversight Officer will perform audits to ensure that the Borough / City are following PREA guidelines.
7. Appendix C. 8: The Sentenced Electronic Monitoring language was modified and the intent of this language is to explain how the Sentenced Electronic Monitoring will work and compensation.
8. Appendix C.9: Pretrial Program Services were added to provide optional services the Community and Regional Jails can participate and the respective compensation for the optional Pretrial Services.

9. Appendix D.1: This language was modified to include the amount of money for Pretrial Program Services.

If you have any questions, please don't hesitate to contact me.

Sincerely,

A handwritten signature in blue ink, appearing to read "John P. Schauwecker".

John Schauwecker CPPB, C.P.M
Procurement Manager

cc: Clair Sullivan
Deputy Commissioner

April Wilkerson,
Administrative Services Director

Jacob Wyckoff,
Institutions Director

Geri Fox,
Pretrial Services Director

Brann Wade,
Probation Officer V

Matthias Cicotte
Alaska Department of Law
Attorney III

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NEW BUSINESS

MEMORANDUM TO COUNCIL

To: Mayor Branson and City Councilmembers
From: Mike Tvenge, City Manager *MT*
Date: August 9, 2018

Agenda Item: V. a. First Reading, Ordinance No. 1381, Amending Chapters 18.12 and 18.20 of the Kodiak City Code to Allow for Negotiated Leases of Real Property if Approved by Ordinance

SUMMARY: Ordinance No. 1381 will codify the process of authorizing property leases via a standalone ordinance, which has been done for many years upon attorney advice. Kodiak City Code Title 18, Chapters 12 and 20 specify the process to dispose of or lease City real property. Title 18 as written includes a lengthy process requiring leases having a term of more than five years or having a computed annual minimum rental of more than \$5,000 to be offered by sealed bid or at public auction and an appraisal, in addition to other requirements. Staff recommends Council pass Ordinance No. 1381 in the first reading and advance to second reading and public hearing. Once adopted, Title 18, Chapters 12 and 20 will document a long standing process that helps to streamline routine property leases.

PREVIOUS COUNCIL ACTION: At the July 10, 2018, work session the Council reviewed the ordinance written by our City attorney that amends Title 18, Chapters 12 and 20 to more clearly document a separate ordinance process to approve real property transactions.

ALTERNATIVES:

- 1) Pass Ordinance No. 1381 in the first reading and advance to second reading and public hearing, which is recommended.
- 2) Amend, postpone, or decline to pass Ordinance No. 1381, which is not suggested, because the City Attorney has recommended the ordinance be adopted.

FINANCIAL IMPLICATIONS: N/A

LEGAL: The City Attorney wrote Ordinance No. 1381 and has recommended that it be adopted.

STAFF RECOMMENDATION: Staff recommends that Council pass Ordinance No. 1381 in the first reading and advance to second reading at the next regular or special Council meeting.

CITY MANAGER'S COMMENTS: An amendment to Chapter 18 will benefit the City's Code requirements, which are not always applicable to particular leases. This change in language allows for appraisals and sealed bids if desired.

NOTES/ATTACHMENTS:

Attachment A: Ordinance No. 1381

PROPOSED MOTION:

Move to pass Ordinance No. 1381 in the first reading and advance to second reading and public hearing at the next regular or special meeting.

**CITY OF KODIAK
ORDINANCE NUMBER 1381**

**AN ORDINANCE OF THE COUNCIL OF THE CITY OF KODIAK
AMENDING CHAPTERS 18.12 AND 18.20 OF THE KODIAK CITY CODE TO ALLOW
FOR NEGOTIATED LEASES OF REAL PROPERTY IF APPROVED BY ORDINANCE**

WHEREAS, the Kodiak City Code Sections 18.12.130 and 18.20.110 require certain leases of tidelands and uplands owned by the City of Kodiak to occur only after bids are solicited and an appraisal obtained; and

WHEREAS, the City of Kodiak operates port and harbor facilities which include both tidelands and uplands; and

WHEREAS, the City of Kodiak has historically negotiated agreements for the use of port and harbor facilities by carriers of cargo which include as a component of the agreement a lease of city-owned real property; and

WHEREAS, given the limited number of participants in the ocean-going cargo business and the fact a property lease is only one component of a use agreement for port and harbor facilities it is not practical or efficient to separate the lease agreement from other portions of an overall use agreement in order to seek competitive bids; and

WHEREAS, the City has on other occasions entered into sole source leases or other disposals of property which have been approved by ordinance without following the request for proposal requirements of Chapters 18.12 or 18.20 and;

WHEREAS, it is in the best interest of the City to recognize its past practice and specifically provide for the practice to be followed in the future through an amendment to the city code.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Kodiak, Alaska, as follows:

Section 1: Kodiak City Code Section 18.12.130 is hereby amended to read as follows:

18.12.130 Leasing procedure

(a) Leases for a term of five years or less with computed annual minimum rental of \$5,000 or less may be negotiated or offered at public auction at the discretion of the council. Except for leases approved by ordinance as authorized by subsection 18.12.130(b), all leases having a term of more than five years or having a computed minimum rental of more than \$5,000 shall be offered at public auction. All public auctions of tide or submerged lands in the city shall be conducted by the city manager or an official designated by the city manager. At

the completion of the auction of each tract of land, the official conducting the auction shall indicate the apparent high bidder. In the event of a re-lease, the original lease holder may exercise the right to meet the bid of the apparent high bidder under the circumstances described in KCC 18.12.370. Failure to do so at this time shall void and cancel such right. The apparent high bidder, or the original lease holder bidding on a re-lease if the re-lease holder's right is exercised, shall thereupon deposit with the official conducting the auction the portion of the annual rental then due, together with the unpaid costs of survey, appraisal, and advertising. All payments must be made in cash, money order, certified check, or cashier's check or any combination thereof.

(b) Notwithstanding any provisions of this chapter relating to advertising, public notice, public auctions, competitive bids, and appraisals the council may, by ordinance approve a negotiated lease of city tidelands in connection with an agreement for use of port and harbor facilities or in furtherance of economic development. The ordinance approving any such lease shall comply with applicable requirements of Kodiak City Charter section V-17.

Section 2: Kodiak City Code Section 18.12.160 is hereby amended to read as follows:

18.12.160 Public notice

Public notice of lease or sale of land is required to be given under the provisions of Chapters 18.04 through 18.16 KCC; such notice shall be published in a newspaper of general circulation published in the city at least 30 days before the sale, lease, or other disposition, and posted within that time in at least three public places in the city. The notice must contain a brief description of the land, its area and general location, proposed use, term, computed annual minimum rental or minimum sales price, limitations, if any, and time and place set for: 1) the consideration of the ordinance approving the lease, 2) the public auction, or 3) the bid opening.

Section 3: Kodiak City Code Section 18.20.110 is hereby amended to read as follows:

18.20.110 Leasing procedure

(a) Notwithstanding KCC 18.20.050 and 18.20.060, leases for a term of five years or less with computed annual minimum rental of \$5,000 or less may be negotiated, offered by sealed bid, or offered at public auction at the discretion of the council. Applicants seeking a lease to be negotiated under this section are required to make a deposit for appraisal and other costs. Except for leases approved by ordinance as authorized by subsection 18.20.110(b), all leases having a term of more than five years or having a computed annual minimum rental of more than \$5,000 shall be offered by sealed bid or at public auction. All sealed bid openings and public auctions of city lands shall be conducted by the city manager or an official designated by the city manager. At the completion of the bid opening or auction of each tract of land, the official conducting the auction shall indicate

the apparent high bidder. In the event of a re-lease, the original lease holder may exercise the right to meet the bid of the apparent high bidder under the circumstances described in KCC 18.20.350. Failure to do so at this time shall void and cancel such right. The apparent high bidder, or the original lease holder bidding on a re-lease if the re-lease holder's right is exercised, shall thereon deposit with the official conducting the bid opening or auction any portion of the annual rental then due, together with the unpaid costs of survey, appraisal, and advertising. All payments must be made in cash, money order, certified check, or a cashier's check, or any combination thereof.

(b) Notwithstanding KCC 18.20.050 and 18.20.060 and any provisions of this chapter relating to advertising, competitive bids, public notice, public auctions, or appraisals the council may, by ordinance approve a negotiated lease in connection with an agreement for use of port and harbor facilities or in furtherance of economic development.

The ordinance approving any such lease shall comply with applicable requirements of Kodiak City Charter section V-17.

Section 4: **Amendment of Section 18.20.140.** Section 18.20.140 of the Kodiak City Code is hereby amended to read as follows:

18.20.140 Public notice

Public notice of lease or sale of land is required to be given under the provisions of this chapter; such notice shall be published in a newspaper of general circulation in the city at least 30 days before the date of the sale, lease, or other disposition, and posted within that time in at least three public places in the city. The notice must contain a brief description of the land, its area and general location, proposed use, term, computed annual minimum rental, or minimum sales price, limitations, if any, and time and place set for: 1) the consideration of the ordinance authoring the lease or sale, 2) the public auction, or 3) the bid opening.

Section 5: This ordinance shall be effective on the date that is one month after final passage and publication in accordance with Kodiak Charter Section 2–13.

CITY OF KODIAK

MAYOR

ATTEST:

CITY CLERK


First Reading:

Second Reading:

Effective Date:

MEMORANDUM TO COUNCIL

To: Mayor Branson and City Councilmembers

From: Mike Tvenge, City Manager 

Date: August 9, 2018

Agenda Item: V. b. Resolution No. 2018–08, Option A or B, Authorizing Payment of Fiscal Year 2019 Nonprofit Organization Grants and In-Kind Contributions

SUMMARY: Each year the City Council authorizes grant payments to local nonprofit organizations. The types and levels of funding are based on the City Council's nonprofit funding policy guidelines, which were most recently adopted by Resolution No. 2018–06. The policy resolution stipulates the total amount available for nonprofit grants in a given fiscal year, which equals a maximum of one percent of budgeted general fund revenues, not to exceed \$175,000, exclusive of any fund balance appropriations and transfers to capital project funds. This policy limits organizations to one funding criteria or program per year and provides up to \$5,000 for Youth and Adult Recreation Programs and up to \$15,000 for Public Safety Support and Emergency Response Support Programs. The policy also grants agencies the ability to apply for a special one-time only grant for special projects when the City has additional funds available. The City received 20 FY2019 applications from nonprofit organizations that serve Kodiak, down from the 22 applications received last fiscal year, for a total amount requested of \$178,126.50. Council reviewed the applications at the July 11 work session and voiced a consensus to cut each request by approximately \$33 to keep within the \$175,000 cap. Subsequently, the Mayor and some Councilmembers voiced a preference for an alternative funding method that would include funding one request from the Tourism Fund, which has been done in previous years. Both the original funding method discussed at the July 11 work session, Option A, and the subsequent funding suggestion, Option B, were discussed at the August 7 work session.

PREVIOUS COUNCIL ACTION:

- The Council has authorized nonprofit grant requests since at least 1982.
- The Council adopted its first nonprofit grant funding policy resolution in 2005.
- On March 18, 2018, Council adopted Resolution No. 2018–06, which amended the City Council's policy for the amount and distribution of annual local nonprofit grant funds and initiated a \$175,000 cap on the amount of cash contributions to nonprofit organizations.
- On July 10, 2018, Council reviewed FY2019 nonprofit grant applications.
- On August 7, 2018, Council reviewed funding options presented in Resolution No. 2018–08, Options A and B.

ALTERNATIVES:

- 1) Adopt Resolution No. 2018–08, Option A or B to appropriate FY2019 grant funds to local nonprofits.

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2) Amend, postpone, or do not adopt the resolution.

FINANCIAL IMPLICATIONS: \$175,000 is available for FY2019 nonprofit grants from the General Fund. The Council has discussed various scenarios to provide the full amount requested of \$178,126.50, with no more than \$175,000 from the General Fund non-departmental account and other budgeted funds from the Tourism Fund.

CITY MANAGER'S COMMENTS: The City Council continues to recognize the value of supporting the efforts of local nonprofits through grant funding, in-kind awards, and other types of support throughout the year. I support Council's decision to adopt Resolution No. 2018-08, Option A or B to authorize funding of the nonprofit requests.

ATTACHMENTS:

Attachment A: Resolution No. 2018-08, Option A

Attachment B: Resolution No. 2018-08, Option B

Attachment C: Policy Resolution No. 2018-06

PROPOSED MOTION:

Move to adopt Resolution No. 2018-08 Option (A or B).

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**CITY OF KODIAK
RESOLUTION NUMBER 2018-08
OPTION A**

**A RESOLUTION OF THE COUNCIL OF THE CITY OF KODIAK
AUTHORIZING PAYMENT OF FISCAL YEAR 2019 NONPROFIT ORGANIZATION
GRANTS AND IN-KIND CONTRIBUTIONS**

WHEREAS, the City Council recognizes and supports local nonprofit organizations and has made provisions in the Fiscal Year 2019 budget for cash contributions to these organizations; and

WHEREAS, the City Council supports these nonprofit organizations because they supplement and complement services provided by the City; and

WHEREAS, the funding criteria for cash grants from the General Fund Non-Departmental Contributions Account to nonprofit organizations is based on the criteria established in Resolution No. 2018-06; and

WHEREAS, the City Council reviewed FY2019 nonprofit grant applications at the July 10, 2018, work session and voiced a consensus to provide funding.

NOW, THEREFORE, BE IT RESOLVED that the Council of the City of Kodiak, Alaska, hereby authorizes payment of the following nonprofit organization grants and in-kind contributions for fiscal year 2019:

Section 1. General Fund-Non-Departmental FY2019 Cash Contributions

	Cash
<u>Youth Recreation Programs</u>	<u>11,427.59</u>
Alutiiq Museum & Archaeological Repository	4,456.03
Kodiak Girl Scouts	2,967.03
Kodiak Hockey League	4,004.53
<u>Adult Recreation Programs</u>	<u>14,901.09</u>
Hope Community Resources, Inc.	4,967.03
Kodiak Arts Council	4,967.03
Special Olympics - Kodiak Area (received late)	4,967.03
<u>Public Safety Support Programs (Shelter/Food)</u>	<u>97,703.23</u>
Brother Francis Shelter – Kodiak	14,967.02
Hospice and Palliative Care of Kodiak	9,967.03

Public Safety Support Programs (continued)

Humane Society of Kodiak	5,967.03
Kodiak Area Mentor Program, Inc.	4,967.03
Kodiak Baptist Mission	9,967.03
Kodiak Teen Court, Inc.	6,967.03
Kodiak Women's Resource and Crisis Center	14,967.02
Senior Citizens of Kodiak, Inc.	14,967.02
The Salvation Army	14,967.02

Emergency Response Support Programs **50,968.09**

American Red Cross of Alaska	6,067.03
Kodiak Area Transit System (KATS)	14,967.02
Kodiak Public Broadcasting Corporation	14,967.02
Providence Kodiak Is Counseling/Safe Harbor	14,967.02

Total Grant Funding **175,000.00**

Section 2. Tourism Development Fund. The Fiscal Year 2019 Tourism Development Fund Budget is amended by appropriating the use of additional funds in the amount of \$2,500.00 and authorizing payment to the Kodiak Maritime Museum as follows:

<u>Account</u>	<u>Description</u>	<u>Amount</u>
251.260.100.440.100	Contributions	2,500.00
251.001.000.385.100	Appropriation From Tourism Fund Balance	(2,500.00)

Section 3. In-Kind Contributions.**In-Kind**

Alaska Wing Civil Air Patrol	35,545.44
Brother Francis Shelter	96,326.28
Humane Society of Kodiak – Animal Shelter	26,916.12
Kodiak Chamber of Commerce	46,257.36
Kodiak Head Start	46,665.36
Kodiak Historical –Society Baranof Museum	103,336.68
Kodiak Public Broadcasting Corporation	1,624.68
Kodiak Women's Resource and Crisis Center (2 buildings)	1,624.68 + 1,624.68
Senior Citizens of Kodiak	6,498.72

Section 4. Reporting Requirements. All grantees shall submit two written reports annually to the City Manager, one not later than January 15 and one not later than July 15 to document expenditure of grant funds. Grantees that fail to comply with grant reporting requirements may be ineligible for future grant funding.

CITY OF KODIAK

MAYOR

ATTEST:

CITY CLERK

Adopted:

DRAFT

**CITY OF KODIAK
RESOLUTION NUMBER 2018-08
OPTION B**

**A RESOLUTION OF THE COUNCIL OF THE CITY OF KODIAK
AUTHORIZING PAYMENT OF FISCAL YEAR 2019 NONPROFIT ORGANIZATION
GRANTS AND IN-KIND CONTRIBUTIONS**

WHEREAS, the City Council recognizes and supports local nonprofit organizations and has made provisions in the Fiscal Year 2019 budget for cash contributions to these organizations; and

WHEREAS, the City Council supports these nonprofit organizations because they supplement and complement services provided by the City; and

WHEREAS, the funding criteria for cash grants from the General Fund Non-Departmental Contributions Account to nonprofit organizations is based on the criteria established in Resolution No. 2018-06; and

WHEREAS, the City Council reviewed FY2019 nonprofit grant applications at the July 10, 2018, work session and voiced a consensus to provide funding.

NOW, THEREFORE, BE IT RESOLVED that the Council of the City of Kodiak, Alaska, hereby authorizes payment of the following nonprofit organization grants and in-kind contributions for fiscal year 2019:

Section 1. General Fund-Non-Departmental FY2019 Cash Contributions

	Cash
<u>Youth Recreation Programs</u>	<u>7,037.50</u>
Kodiak Girl Scouts	3,000.00
Kodiak Hockey League	4,037.50
<u>Adult Recreation Programs</u>	<u>17,500.00</u>
Hope Community Resources, Inc.	5,000.00
Kodiak Arts Council	5,000.00
Kodiak Maritime Museum	2,500.00
Special Olympics - Kodiak Area	5,000.00
<u>Public Safety Support Programs (Shelter/Food)</u>	<u>98,000.00</u>
Brother Francis Shelter – Kodiak	15,000.00
Hospice and Palliative Care of Kodiak	10,000.00

Public Safety Support Programs (continued)

Humane Society of Kodiak	6,000.00
Kodiak Area Mentor Program, Inc.	5,000.00
Kodiak Baptist Mission	10,000.00
Kodiak Teen Court, Inc.	7,000.00
Kodiak Women's Resource and Crisis Center	15,000.00
Senior Citizens of Kodiak, Inc.	15,000.00
The Salvation Army	15,000.00

Emergency Response Support Programs **51,100.00**

American Red Cross of Alaska	6,100.00
Kodiak Area Transit System (KATS)	15,000.00
Kodiak Public Broadcasting Corporation	15,000.00
Providence Kodiak Is Counseling/Safe Harbor	15,000.00

Total Grant Funding Requested **173,637.50**

Section 2. Tourism Development Fund. The Fiscal Year 2019 Tourism Development Fund Budget is amended by appropriating the use of additional funds in the amount of \$4,489.00 and authorizing payment to the Alutiiq Museum & Archaeological Repository as follows:

<u>Account</u>	<u>Description</u>	<u>Amount</u>
251.260.100.440.100	Contributions	4,489.00
251.001.000.385.100	Appropriation From Tourism Fund Balance	(4,489.00)

Section 3. In-Kind Contributions.**In-Kind**

Alaska Wing Civil Air Patrol	35,545.44
Brother Francis Shelter	96,326.28
Humane Society of Kodiak – Animal Shelter	26,916.12
Kodiak Chamber of Commerce	46,257.36
Kodiak Head Start	46,665.36
Kodiak Historical –Society Baranof Museum	103,336.68
Kodiak Public Broadcasting Corporation	1,624.68
Kodiak Women's Resource and Crisis Center (2 buildings)	1,624.68 + 1,624.68
Senior Citizens of Kodiak	6,498.72

Section 3. Reporting Requirements. All grantees shall submit two written reports annually to the City Manager, one not later than January 15 and one not later than July 15 to document expenditure of grant funds. Grantees that fail to comply with grant reporting requirements may be ineligible for future grant funding.

CITY OF KODIAK

MAYOR

ATTEST:

CITY CLERK

Adopted:

DRAFT

**CITY OF KODIAK
RESOLUTION NUMBER 2018-06**

A RESOLUTION OF THE COUNCIL OF THE CITY OF KODIAK RESCINDING RESOLUTION NO. 2017-13 AND ESTABLISHING FUNDING CRITERIA FOR NONPROFIT GRANTS

WHEREAS, the City Council recognizes and supports local nonprofit organizations and has historically made funding and in-kind contributions available to these organizations on an annual basis; and

WHEREAS, it has been determined that the appropriate total amount of City funds to grant to nonprofit organizations is a maximum of one percent of budgeted general fund revenues, not to exceed \$175,000 until such time as the fund balance of the General fund reaches an accumulation of six months of operating expenditures, exclusive of any fund balance appropriation and transfers to capital project funds; and

WHEREAS, City funds and in-kind contributions have been provided to nonprofit organizations that supplement and compliment the services provided to residents by the City; and

WHEREAS, it is the intent of the City Council to update this policy statement.

NOW, THEREFORE, BE IT RESOLVED that the Council of the City of Kodiak, Alaska hereby establishes the following additional funding criteria for nonprofit grants provided by the City:

1. Organizations receiving funds must be legally recognized by the Internal Revenue Service.
2. Organizations are limited to one funding criteria or program per year, not including in-kind contributions authorized by the Council.
3. Funding will be granted only for the following kinds of programs/activities and up to the maximum identified funding amount per organization and program type as defined:
 - a. Youth Recreation Programs \$5,000

Indoor and outdoor recreational activities typically include games and pursuit of hobbies and activities that one engages in, for entertainment. Typically included in this category are activities like baseball, football, hockey, swimming, basketball, wrestling, cheerleading singing, reading, listening to music, watching movies, dancing, and aerobics.

- b. Adult Recreation Programs \$5,000

Indoor and outdoor recreational activities typically include games and pursuit of hobbies and activities that one engages in, for entertainment. Typically included in this category are activities like baseball, football, hockey, swimming, basketball, wrestling, cheerleading singing, reading, listening to music, watching movies, dancing, and aerobics.

- c. Public Safety Support Programs \$15,000

Programs serving the entire Kodiak area through its emergency shelters and food service programs. Typically included in this category are food banks, soup kitchens, sleeping shelters, crisis centers, senior services and animal shelters.

- d. Emergency Response Support Programs \$15,000

Programs that provide humanitarian relief, disaster relief and education designed to mitigate local disasters. Typically included in this category are emergency temporary shelters, counseling, public awareness and basic humanitarian needs.

4. Subject to available funding, the Council may authorize a special one-time funding increase for a special project.

CITY OF KODIAK


MAYOR

ATTEST:


CITY CLERK

Adopted: March 8, 2018



MEMORANDUM TO COUNCIL

To: Mayor Branson and City Councilmembers

From: Debra Marlar, City Clerk DM

Date: August 9, 2018

Agenda Item: **V. c. Authorization of Professional Services Contract to Richard Birdsall With Avitus Group for a Third-Party Review of the Process Followed in the Dismissal of the Former Deputy Manager**

SUMMARY: Personnel actions are confidential and are handled administratively. However, the City Charter grants the Council the right to inquire into the conduct of any office, department, or agency of the City and to investigate municipal affairs.

In response to public comments, the Council authorized the Mayor and Councilmembers Arboleda and Davidson to choose a reviewer to pursue a thorough, independent third-party review of the process followed in the termination of the Deputy Manager and provide the general outcome of the review once completed. The committee named the City Clerk as the contact person for this investigation.

Three proposal solicitation letters were sent to prospective proposers. Richard Birdsall, Senior Associate with Avitus Group (formerly known as The Growth Company) submitted the sole proposal, which was endorsed by the committee (Attachment B). Mr. Birdsall is an attorney, trainer, mediator, investigator, and expert witness who has conducted HR investigations for multiple organizations.

The City attorney drafted the professional services agreement (Attachment A), which is before the Council for approval.

PREVIOUS ACTION:

- On May 24, 2018, Council authorized the Mayor and Councilmembers Arboleda and Davidson to select a reviewer to pursue a thorough, independent third-party review of the process followed in the termination of the Deputy Manager and provide the general outcome of the review once completed.
- On June 1, 2018, the committee discussed the process, evaluation criteria, and a proposal solicitation letter.
- On June 21, 2018, the committee met to review a draft solicitation letter, draft contract, timeline, and named the City Clerk as the point of contact.
- On June 25, 2018, the City Clerk sent out three solicitation letters for proposals for professional services related to the review of the process followed in the termination of the Deputy City Manager.

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- On July 9, 2018, the committee met to review the sole proposal received and voiced a consensus to recommend the Council award the contract to Richard Birdsall with Avitus Group.

ALTERNATIVES:

- 1) Authorize the agreement with Richard Birdsall, Senior Associate with Avitus Group.
- 2) The Council may also decline to authorize the agreement or may amend or postpone it.

ATTACHMENTS:

Attachment A: Agreement for Professional Services with Avitus Group

Attachment B: Professional Services Proposal from Avitus Group

FINANCIAL IMPLICATIONS: The investigation fee is \$225 per hour with a cap of \$5,000, not including travel/lodging costs. If the Council desires an oral follow-up report at an executive session or public meeting, there will be no additional charge if the \$5,000 cap has not been reached. Otherwise, the time will be billed at an additional \$225 per hour.

This professional services agreement expense was not budgeted in the FY2019 Legislative Professional Services account. In the event the FY2019 legislative budget is fully spent, this agreement amount may need to be included in a future supplemental budget ordinance.

LEGAL: The City attorney advised staff, drafted the proposal solicitation letter, and the professional services agreement.

PROPOSED MOTION:

Move to authorize a professional services agreement with Richard Birdsall of Avitus Group in an amount not-to-exceed \$7,500 for an independent review of the process used in the termination of the Deputy City Manager, with funds coming from Legislative Professional Services line item, and authorize the City Clerk to execute the necessary documents for the City.

AGREEMENT FOR PROFESSIONAL SERVICES

This Agreement is entered into this ____ day of _____, 2018, by and between **Richard Birdsall, Avitus Group ("Consultant")** and the **City of Kodiak ("City")**. For good and valuable consideration, the receipt whereof is hereby acknowledged, Consultant and City agree as follows:

1. Employment of Consultant. Consultant shall perform the following professional services ("the Work") in accordance with the provisions of this Agreement:

Review of the recent termination of the deputy city manager to include a review of documentation, interviews as deemed necessary by the reviewer, preparation of a confidential summary report to the city council with the option at Council's direction to provide an oral report to the city council. The City Council will determine whether the report presented or a summary version of the report will be made public and whether the oral report will be presented in a public meeting or in executive session.

2. Time of Performance. Consultant shall commence performance within ten (10) days following approval of this Agreement and complete performance no later than August 31, 2018. The time for completion may be extended by mutual written agreement of City and Consultant. Should any delays in the performance of the Work be caused solely by City, the completion date, but not the Consultant's fee, shall be extended by an amount of time equal to the length of the delay.

3. Fee. City shall pay Consultant as compensation for the services rendered under this Agreement at an hourly rate of \$225 and a sum not to exceed five thousand dollars (\$5,000) exclusive of travel/lodging costs. Any additional follow up requested by the Council will be billed at an additional \$225 per hour if the maximum cap of \$5,000 has been reached. The amounts payable to Consultant shall not exceed the sums identified in this paragraph without the prior written approval of the City. Any additional professional services other than those identified in paragraph 1 above shall be requested in writing by City.

4. Payments. City agrees to make payments to Consultant as services are performed and costs are incurred, provided Consultant submits two (2) copies of a proper invoice for each payment, in such form accompanied by such evidence in support thereof as may be reasonably required by the City. All invoices are otherwise due and payable within thirty (30) days of receipt by City.

5. Services Supplied by City. City shall cooperate with Consultant and will make available information reasonably available to the City and relevant to the Work subject to any consents of current or former city employees or limited waivers of the attorney-client privilege as city, in its sole discretion may require.

6. Independent Contractor Status. In performing under this Agreement, Consultant acts as an independent contractor and shall have responsibility for and control over the details and means for performing the services required hereunder.

7. Indemnification. Consultant shall defend and save harmless City or any employee or other representative thereof from and against losses, damages, liabilities, expenses, claims and demands arising out of any negligent act or negligent omission of Consultant while performing under the terms of this Agreement.

8. Assignment. Consultant shall not assign this Agreement or any of the monies due or to become due hereunder without the prior written consent of City.

9. Subcontracting. Consultant may not subcontract any portion of its performance under this Agreement without prior written consent of City.

10. Designation of Representatives. The parties agree, for the purposes of this Agreement, that the City shall be represented by and may act only through the City Clerk or such other person as she may designate in writing. The City Clerk shall have authority to act for and bind Consultant in connection with this Agreement.

11. Insurance. Consultant shall, at all times, at its own expense, keep in force the following described insurance for protection against the claims of employees or other persons, insuring both the Consultant and the City against liability that may accrue against them or either of them in connection with the performance of Consultant under this Agreement:

(a) Insurance in at least the required statutory amounts covering claims under workers' compensation, disability benefits and other similar employee benefit acts; and

(b) Public liability insurance covering bodily injury, death, and property damage with a combined single limit of not less than \$500,000.

12. Insurance Certificate. All insurance shall be placed with an insurance carrier or carriers satisfactory to the City and shall not be subject to cancellation or any material change except after thirty (30) days written notice to the City and shall provide that no failure of Consultant to comply with any condition or provision of this Agreement or other conduct of Consultant or those for whose conduct it is responsible, shall void or otherwise affect the protection under the policy afforded to the City. A Certificate of Insurance reflecting full compliance with these requirements shall, at all times during the term of this Agreement, be kept on deposit at the general offices of the City. If Consultant fails to comply with these insurance requirements, the City may terminate this Agreement on ten (10) days written notice.

13. Claims Recovery. Claims by the City resulting from Consultant's failure to comply with the terms of and specifications of this Agreement and/or default hereunder may be recovered by City by withholding the amount of such claims from compensation otherwise due Consultant for work performed or to be performed. City shall notify Consultant of any such failure, default or damage therefrom as soon as practicable after discovery of such event by

written notice. Nothing provided herein shall be deemed as constituting an exclusive remedy on behalf of City, nor a waiver of any other rights hereunder at law or in equity.

14. Compliance with Applicable Laws. Consultant shall, in the performance of this Agreement, comply with all applicable federal, state and local laws, ordinances, orders, rules and regulations applicable to its performance hereunder, including, without limitation, all such legal provisions pertaining to social security, income tax withholding, medical aid, industrial insurance, worker's compensation, and other employee benefit laws.

15. Records and Audit. Consultant agrees to maintain sufficient and accurate records and books of account, including detailed time records, showing all direct labor hours expended and all reimbursable costs incurred and the same shall be subject to inspection and audit by City at all reasonable times.

16. Labor and Reimbursable Expense Rates. Labor and reimbursable rates which Consultant will charge City are described in Section 3. Any modification of such rates shall not be effective unless agreed to in writing and signed by both parties hereto, and subsequent revisions thereto as executed by both parties are hereby incorporated into this Agreement by this reference.

17. Venue and Applicable Law. The venue of any legal action between the parties arising because of this Agreement shall be laid in the Third Judicial District of the Superior Court of the State of Alaska, at Kodiak, Alaska unless a non-waivable federal or state law requires otherwise. This Agreement shall be interpreted in accordance with the laws of the State of Alaska.

18. Attorney's Fees. In the event either party institutes any suit or action to enforce its right hereunder, the prevailing party shall be entitled to recover from the other party its reasonable attorney's fees and costs in such suit or action and on any appeal therefrom.

19. Waiver. No failure on the part of the City to enforce any covenant or provision herein contained, nor any waiver of any right hereunder by City, unless in writing and signed by the parties sought to be bound, shall discharge or invalidate such covenants or provisions or affect the right of the City to enforce the same or any other provision in the event of any subsequent breach or default.

20. Binding Effect. The terms, conditions and covenants contained in this Agreement shall apply to, inure to the benefit of, and bind the parties and their respective successors.

21. Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof, and all prior negotiations and understandings are superseded and replaced by this Agreement and shall be of no further force and effect. No modification of this Agreement shall be of any force or effect unless reduced to writing, signed by both parties and expressly made a part of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed, or caused to be executed by their duly authorized officials, this Agreement on the respective date indicated below.

CITY OF KODIAK

Dated: _____

By:

Debra Marlar
City Clerk

Dated: _____

By:

Richard Birdsall
Senior Associate, Avitus Group



AVITUS GROUP®
Simplify, Strengthen and Grow Your Business

City Of Kodiak

Professional Services Proposal

07.05.2018

PREPARED BY:

Richard Birdsall
rbirdsall@avitusgroup.com
3801 Center Point Drive Suite 301
Anchorage, Ak 99503
AVITUS BUSINESS SERVICES



PROFESSIONAL
ACCELERATION



PROFESSIONAL ACCELERATION

Avitus Business Services, Inc. proposes
professional Acceleration Training
Services for:

CITY OF KODIAK
710 MILL BAY ROAD
ROOM 220,
KODIAK, ALASKA 99615
DEBRA MARLAR, MMC
CITY CLERK
DMARLAR@CITY.KODIAK.AK.US

Thank you for your invitation to Avitus
Group as a consultant to submit a
proposal for Professional Services for
the City Of Kodiak. You can be assured
we will provide a quality of service you
can trust and convenience that fits
your needs.



Proposal For Professional Services To Provide Independent Review Of Employee Termination

Avitus Group is a leading provider of services designed to help leaders and organizations simplify, strengthen, and grow.

The City Of Kodiak is requesting proposals for the provision of professional services to accomplish an independent review of the recent termination of the deputy city manager, prior to completion of his probationary period.

Project Scope

- Review of written materials (Personnel file documents) of former employee (With permission of employee)
- Interviews of current and former employees (in person or telephonic)

Project Deliverable

- A confidential summary written report will be submitted to the identified contact of the City of Kodiak
- An oral report will be delivered to the city council on an agreed upon date (optional based on the direction of the city council)



Consultant: Richard Birdsall

Addendum 1: Summary of education, employment history and professional qualifications

Addendum 2: Summary of recent (within the past five years) experience in conducting human resource investigations on behalf of public employer

Our Methods

Phase 1: Establish Expectations

Discussions with City Of Kodiak 1 1/2 day 1/2 day

- Review of Handbook and Policies

Request of materials / documents 1/2 day

- Employee documents, personnel files, Email, etc.
- List of identified individuals for interview

Phase 2: Investigation

Review of materials/ documents & interviews 7 days

To keep costs down we plan to spend two days interviewing with one night overnight stay. If I don't complete all the interviews or if an employee is unavailable I will follow up with telephone interviews

Phase 3: complete confidential report

3 days

Draft and deliver confidential report with one day to deliver oral, if requested. Kodiak

Cost for Service (Proposed hourly rate)

We have discounted our regular investigation fee from \$270/hr. to \$225/hr. Given that we don't know how many trips City of Kodiak officials or interviews may require us to make, our travel/lodging is at actual cost, and is in addition to and is not included within the \$5000 cap (for the documentation review, interviews as deemed necessary by the reviewer and preparation of a confidential summary report to the City Council).

We further agree that should the City Council ask for a follow-up oral report to the City Council or at a public meeting or executive session the hours involved in this will be billed for at our continued discounted rate of \$225/hr. If this can be completed within the \$5000 cap it will be. If not, it would require City approval of a cap increase prior to occurring.

List Of Client references

The following Alaska governmental agencies have entrusted us to provide Human Resource Services and investigative services

- City of Soldotna
- City of Dillingham
- City of Valdez
- Denali Borough
- Mat Su Borough

Alaska governmental entities have entrusted us to provide Human Resource Services and investigative services.



THANK YOU

THIS PROPOSAL WAS
CREATED EXCLUSIVELY FOR
CITY OF KODIAK

INFORMATION

Richard Birdsall
rbirdsall@avitusgroup.com
3801 Center Point Drive Suite 301
Anchorage, Ak 99503

T: 907-242-0119

LOCATIONS

Billings, Montana
San Francisco, California
Denver, Colorado
San Diego, California
Los Angeles, California

Tampa, Florida
Newark, New Jersey
Sioux Falls, South Dakota
Anchorage, Alaska
Fairbanks, Alaska





ADDENDUM 1

Richard D. Birdsall, Senior Associate
Trainer, Mediator, Investigator, Expert Witness

EDUCATION

J.D., Western State University of Law, San Diego, CA, 1982

B.A., Criminal Justice, California State University, Sacramento, CA, 1974

Community College Teaching Credential, Consumnes River College, Sacramento, CA, 1978

PROFESSIONAL EXPERIENCE

As directly relevant to this project I have conducted HR investigation for multiple organizations in the public sector and for several municipalities. As a consultant for The Growth Company I regularly instruct in a multitude of subject matters including an ongoing supervisory training program accredited by the University of Alaska, Fairbanks. I also train in a host of other subjects including the fiduciary duties of board members; board management and practices; executive hiring; contract ethics; organization and structure; recruitment, hiring and retention; investigation; EEO training; training with respect to the ADA, FMLA, FLSA and other laws that impact business management; along with conflict analysis and resolution.

I regularly consult with at least 20 companies as their "HR on call" advisor and have assisted many corporations with C-level recruiting, writing policies and manuals including provisions to address conflicts of interest and ethics in contracting meeting federal contracting requirements.

I provide HR advice and frequently conduct workplace investigations with follow-up coaching or training as necessary.

Legally trained in settlement negotiation and mediation with past appointments as a judge pro tem to mediate litigation cases.

Participated in countless court and professionally administered dispute resolution/mediation programs.

Facilitate advance business strategic planning.

20 years of experience as a trial attorney leading and supervising four-person litigation teams for the California Department of Transportation. The last six years included trial work while supervising a team of tort attorneys. 100% trial success rate as lead attorney.

Law and litigation instructor for the Project Engineers Academy, California State University – Sacramento. Instructed approximately 10 times per year.

Law and litigation instructor for the Resident Engineers Academy, State of California. Instructed approximately 6 times per year.

2 years of experience drafting complaints and conducting investigations enforcing federal/state employment-related laws for the Alaska State Commission for Human Rights.

Conducted litigation in employment related cases both as an attorney for the defendant and as an attorney for the plaintiff. Conducted oral arguments before the California Court of Appeals.

9 years of criminal investigation experience for the State of California, including 3 years as a sworn investigator with the California Department of Justice investigating major fraud.

SPECIAL EDUCATION AND TRAINING

Trial Advocacy, Hastings College of Law

Advanced Trial Advocacy, Hastings College of Law

Negotiating Strategy Institute

Topics for Trial Lawyers, Opening Statements and Hearsay, Lorman Education

Trial Advocacy College: Essentials of Civil Practice, Hastings

Presenting Trial Evidence, Continuing Education of the Bar

Traffic Accident Reconstruction, State of California

Project Engineering, State of California

Inside the Jury; Influencing Damage Awards, Lorman Education

Insurance Bad Faith Claims, Lorman Education

Personal Injury Seminar, Rutter Group

Member of the 2007 Federal Highway Safety Planning Program performing Strategic Planning for statewide motorcycle safety

Resolving Multiparty Disputes, American Arbitration Association;

Annual litigation tort conferences, State of California

Calif. Environmental Quality Act, U.C. Davis

C.E.Q.A. Mitigation Measures, U.C. Davis

Construction Contracting, U.S. Dept. of General Services

Bankruptcy, Calif. State Bar

Hazardous Substances and Emergency Response, U.C. Davis

CERCLA Compliance and Enforcement, U.S. EPA

Risk Assessment, U.S. EPA

Groundwater Hydrogeology, National Water Well Assn.

Groundwater Remediation, National Water Well Assn.

Chemistry for Bio-hazard Remediation, U.C. Davis

Peace Officer Standards and Training, Advanced Certificate

Private Pilot (not current)

EMPLOYMENT HISTORY

Consultant, Avitus Group, 05/2017 to present

Consultant, The Growth Company, 10/2011 to /052017

Investigator, Alaska State Commission for Human Rights, 9/2009 to 10/2011

Deputy Attorney IV, California Dept. of Transportation, 10/1990 to 9/2009

Attorney, Central California Appellate Program, California Court System, 1989-1994

Staff Counsel, California EPA, 1986-1990

Staff Counsel, California Dept. of Health Services, 1984-1986

Special Investigator, California Dept. of Justice, 1981-1984

Special Investigator, California Dept. of Motor Vehicles, 1975-1981

Alaska Department of Commerce, Community, and Economic Development

Division of Corporations, Business and Professional Licensing
P.O. Box 110806, Juneau, Alaska 99811-0806

This is to certify that

AVITUS BUSINESS SERVICES, INC.

PO BOX 2506 BILLINGS MT 59103

owned by

AVITUS BUSINESS SERVICES, INC.

is licensed by the department to conduct business for the period

February 02, 2018 through December 31, 2019
for the following line of business:

56 - Administrative, Support, Waste Management and Remediation Services



This license shall not be taken as permission to do business in the state without having complied with the other requirements of the laws of the State or of the United States.


This license must be posted in a conspicuous place at the business location.
It is not transferable or assignable.

Mike Navarre

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MEMORANDUM TO COUNCIL

To: Mayor Branson and City Councilmembers

From: Mike Tvenge, City Manager 

Thru: Craig Walton, Public Works Director and Glenn Melvin, City Engineer

Date: August 9, 2018

Agenda Item: V. d. Authorization of Bid Award to Brechan Construction LLC for Annual Pavement Repair, Project No. 19-02/5039

SUMMARY: To keep City streets and parking lots in good driving condition requires a continual asphalt maintenance program. This project will repair areas of asphalt damaged by wear and water erosion. Public notice was advertised and bids were opened on July 25, 2018, with Brechan Construction LLC the only bidder to submit a bid. The bid has been reviewed by the Engineering Department and is a responsible/responsive bid; therefore, staff recommends Council authorize the FY2019 pavement repair project to Brechan Construction LLC in the amount of \$215,812.50.

PREVIOUS COUNCIL ACTION: Since 2006, the City has authorized multiple contracts to repair sections of street and parking lots in order to keep the paved areas from deteriorating to the point of requiring a complete rebuild, which includes the subsurface.

BACKGROUND: In each of the last three years, the City had funded a pavement repair project with primary focus on Mill Bay road. The first two years were sole source to Brechan Enterprises Inc. In June another local contractor indicated that they intended to provide road paving services, so we prepared the project to bid publicly. This contractor did not submit a bid.

In FY2018 we requested \$250,000 of the designated street funding to go toward pavement repair. We ultimately decided to forgo paving in FY2018 and defer the work to the FY2019 construction season.

DISCUSSION: Because of the limited funds available for asphalt pavement repairs, we focused on the worst parts on Alimaq Drive on Near Island. The following is an outline of the project scope of work:

The Bridge to just past the Coffee shop: We will remove the existing pavement, rebuild the existing D-1 base course and pave with a single layer of 3" thick AC pavement. Because of the existing deterioration, we believe this is the best approach for this section, since the two existing layers are coming apart from each other. This includes the intersection of Trident Basin Way as well.

Alimaq Drive corner at the bottom of the hill: Existing pavement in this section will be removed and replaced with two layers of 2" AC pavement. This corner is really deteriorating from the traffic and, particularly, the heavy truck activity coming out of the rock quarries. Using this approach will maintain the full 4" pavement thickness and provide better performance in response to the heavy truck traffic in and out of the Breakwater Quarry.

The unit prices are such that we have an opportunity to expand the project and pave some other areas that are badly needed without needing additional funding. If time permits, the additional paving would be brought back to Council for approval at the next available meeting.

ALTERNATIVES: Council may consider the following:

- 1) Authorize the FY2019 pavement repairs to Brechan Construction LLC, which is staff's recommendation.
- 2) Do not authorize the FY2019 pavement project and patching work, which is not recommended, because it would leave Alimaq Drive in a continuing worsening condition.

FINANCIAL IMPLICATIONS: In the FY2019 budget \$250,000 was added to project budget No. 5039. The current available project balance is approximately \$372,000, which is sufficient to fully fund the project.

LEGAL N/A

STAFF RECOMMENDATION: Staff recommends Council authorize the award of the FY2019 Pavement Repair, Project No. 19-02/5039, to Brechan Construction LLC for the total amount of \$215,812.50 with funds coming from the Streets Capital Improvement Fund project No. 5039, Pavement Repairs.

CITY MANAGER'S COMMENTS: This project was delayed until this year where staff felt the City would receive a greater cost/benefit with the planned community paving scheduled for this season. One of those projects is Birch Street.

ATTACHMENTS:

Attachment A: Bid Tab and Areas to Be Repaired

PROPOSED MOTION:

Move to authorize the bid award for annual pavement repair, Project No. 19-02/5039, to Brechan Construction LLC in the amount of \$215,812.50 with funds coming from the Streets Capital Improvement Fund, Project No. 5039, Pavement Repairs.



Bid Tab Annual Pavement Repairs FY2019 PN 19-02/5039 PN 19-02

Bid Date: Wednesday, July 25, 2018

Bid Item	Description	Quantity	Units	Engineers Estimate	Brechan Construction LLC
1	Area 1, Remove and Replace Existing Asphalt Surface with 3" Single Lift	1950	square yard	\$68.00	\$132,600.00
2	Area 2, Remove and Replace Existing Asphalt Surface with 2 Layer of 2"	1150	square yard	\$75.00	\$86,250.00
3	Area 1, 1" Additional Base	1950	square yard	\$3.00	\$5,850.00
4	Sawcut existing pavement (all areas)	425	linear foot	\$5.00	\$2,125.00
5	Mobilization and Demobilization	1	Lump Sum	\$15,000.00	\$15,000.00
6	Traffic Control	1	Lump Sum	\$35,000.00	\$17,000.00
7	Adjust Manhole to Finish Grade	2	each	\$500.00	\$1,000.00
8	Adjust Valve Box to Finish Grade	1	each	\$250.00	\$250.00
Grand Total				\$278,075.00	\$215,812.50



ALIMAQ DR.

AREA #2

DOG SALMON BAY RD.



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MEMORANDUM TO COUNCIL

To: Mayor Branson and City Councilmembers
From: Mike Tvenge, City Manager *MT*
Thru: Craig Walton, Public Works Director and Glenn Melvin, City Engineer
Date: August 9, 2018

Agenda Item: V. e. Authorization of Change Order No. 1, With Brechan Construction LLC for Aleutian Homes Water and Sewer Phase VI, Project No. 15-03/7037

SUMMARY: Aleutian Homes Water and Sewer Replacement Phase VI is a continuation of the upgrade of utilities, pavement, and sidewalks in the Aleutian Home Area. The Notice to Proceed for construction of the upgrade project was issued to Brechan Construction LLC on March 23, 2018, and construction began in early May. This memorandum discusses Change Order No. 1, which has been prepared to reconcile unit cost quantities for work performed during FY2018 up to June 30, 2018. All contract administration work from July 1, 2018, to the end of the project will be administered during FY2019. Staff recommends Council approve Change Order No. 1 in the amount of \$58,219.57 to Brechan Construction LLC.

PREVIOUS COUNCIL ACTION: The Council approved the FY2018 budget, which included \$4,834,530 for the construction of Phase VI.

- On March 8, 2018, Council authorized the bid award for Aleutian Homes Phase VI to Brechan Construction LLC in the amount of \$3,008,087.
- On March 8, 2018, Council authorized the Professional Services contract with DOWL for Construction Management Services for Aleutian Homes Water and Sewer, Phase VI in the amount not to exceed \$239,000.

BACKGROUND: Aleutian Homes Phases I through V were constructed from 2007 to 2014. Phase VI will continue the improvements made in the Aleutian homes section of Kodiak.

DISCUSSION: This change order is for reconciliation of seven construction items completed as of June 30, 2018. The bulk of the change order is for the following items:

- 1) Removal of 640LF of old storm drain pipe that was found under the road bed. This pipe was unknown to exist and, therefore, not identified in the bid documents
- 2) A field modification that added 28LF of 12" diameter water pipe to realign the connection to the existing water main on Larch Street and relocate a fire hydrant
- 3) A field modification that added 20LF of 20" diameter water pipe
- 4) A field modification to add one additional storm drain manhole

- 5) A field modification to remove a layer of organics and ash under the road bed and replace with classified material

The change order was reviewed by the DOWL Field Engineer on July 9, 2018. All unit cost quantities were verified and an email follow up was sent to the City Engineer and Public Works Director with itemized comments.

ALTERNATIVES:

- 1) Award Change Order No. 1 in the amount of \$58,219.57. Staff believes this alternative will best utilize project funding and maximize the project scope of construction, and is recommended.
- 2) Do not award Change Order No. 1. This alternative is not recommended.

FINANCIAL IMPLICATIONS: This project was authorized in the FY2018 capital budget and has a current available balance of approximately \$1,385,000, which is sufficient to award this change order.

LEGAL: N/A

STAFF RECOMMENDATION: Staff recommends the award of construction Change Order No. 1 of the Aleutian Homes Water and Sewer Replacement Phase VI Project No. 15-03/7037 for the quoted price of \$58,219.57 with funds coming from the Water Capital Improvement Project No. 7037.

CITY MANAGER'S COMMENTS: These project changes were approved by the City Engineer and will benefit the Aleutian Homes Project.

ATTACHMENTS:

Attachment A: Change Order No. 1

PROPOSED MOTION:

Move to authorize Change Order No. 1 to Brechan Construction LLC for \$58,219.57 with funds coming from the Aleutian Homes Water and Sewer Replacement Phase VI, Project No. 15-03/7037 and authorize the City Manager to execute the documents on behalf of the City.



CITY OF KODIAK CHANGE ORDER

CHANGE ORDER NO.: 1

DATE: 6/30/2018

NAME OF PROJECT: Aleutian Homes Water and Sewer Phase VIPROJECT NO.: 15-03/7037CONTRACTOR: Brechan Construction LLC

The following changes are hereby made to the CONTRACT DOCUMENTS:

1. Provides for Reconciliation of Unit Cost items from project beginning through June 30, 2018 and closes out FY 20018 project expenses. Reconciliation is as follows:

Item No.	Description of Items	Unit	Qty	Unit Bid Price	Bid Amount
203(11)	Rock Excavation	Contingent Sum	1.00	\$640.37	\$640.37
207(8)	Remove Catch Basin	Each	1.00	\$580.00	\$580.00
207(11)	Remove Storm Drain Pipe	LF	664.00	\$21.00	\$13,944.00
602(1-12)	12" Water Main	LF	28.00	\$500.00	\$14,000.00
602(1-20)	20" Water Main	LF	32.00	\$345.00	\$11,040.00
70 (1-2)	Storm Drain Manhole, Type II	Each	1.00	\$8,000.00	\$8,000.00
	Over-Excavation & Backfill (Change Order #1)	CY	90.00	\$111.28	\$10,015.20
Total Change Order Price					\$58,219.57

Justification: (see attached spreadsheets)Original CONTRACT PRICE: \$3,008,087.00The CONTRACT PRICE prior to this CHANGE ORDERS: \$3,008,087.00The CONTRACT PRICE due to this CHANGE ORDER will increase: \$58,219.57The new CONTRACT PRICE including this CHANGE ORDER: \$3,066,306.57Requested by City Engineer Approved by Department Head Ordered by City Manager Accepted by Contractor 

Aleutian Homes Water and Sewer, Phase VI**PN 15-03/7037****Cleanup Change Order for Increased Quantities Through FY18 (6/30/18)****Date Compiled** 7/3/2018

Item #	Section #	Description	Units	Bid Quant	AS BID UNIT PRICE	AS BID EXTENDED PRICE	Work In Place	Total Billable	Overage Difference
1		Schedule A							
4	203 (11)	Rock Excavation	Contingent	1	\$ 40,000.00	\$ 40,000.00	40640.37	\$ 40,640.37	640.37
13	207 (8)	Remove Catch Basin	Each	4	\$ 580.00	\$ 2,320.00	5.00	\$ 2,900.00	580.00
16	207 (11)	Remove Storm Drain Pipe	LF	900	\$ 21.00	\$ 18,900.00	1564.00	\$ 32,844.00	13944.00
30	602 (1-12)	12" Water Main	LF	22	\$ 500.00	\$ 11,000.00	50.00	\$ 25,000.00	14000.00
31	602 (1-20)	20" Water Main	LF	1,128	\$ 345.00	\$ 389,160.00	1160.00	\$ 400,200.00	11040.00
44	704 (1-2)	Storm Drain Manhole, Type II	Each	1	\$ 8,000.00	\$ 8,000.00	2.00	\$ 16,000.00	8000.00
77		Over-Excavation & Backfill (Change Order #1)	CY	-	\$ 111.28	\$ -	90.00	\$ 10,015.20	10015.20
				TOTAL		\$ 469,380.00		\$ 527,599.57	\$ 58,219.57

Melvin, Glenn

From: Forrester Cook [fcook@dowl.com]
Sent: Monday, July 09, 2018 11:10 AM
To: Melvin, Glenn
Cc: Walton, Craig
Subject: RE: FY18 Cleanup Change Order - AHP6

Glenn,

Please see below for my comments regarding the Cleanup CO and CO #1:

1. Item 203 (11) – Rock Excavation
 - Review of Brechan's Excel spreadsheet for this work corresponds with my records for the dates rock excavation took place and the level of effort/reduction in productivity for each of those dates
 - No exception taken
2. Item 207 (8) – Remove Catch Basin
 - Additional quantity of one (1) unit corresponds to existing catch basin at corner of Birch/Hemlock not shown on conformed drawings
 - No exception taken
3. Item 207 (11) – Remove Storm Drain Pipe
 - Additional quantity – nearly 700 LF – due to presence of 8" CMP underdrain pipe located along east side of Birch Avenue not shown on conformed drawings
 - No exception taken
4. Item 602 (1-12) – Furnish and Install 12" Water Main
 - Additional quantity – nearly 30 LF – required for tie-in connection to Larch Street's existing water main
 - No exception taken
5. Item 602 (1-20) – Furnish and Install 20" Water Main
 - Additional quantity – approx. 30 LF
 - No exception taken
6. Item 704 (1-2) – Storm Drain Manhole, Type II
 - Additional quantity of one (1) unit corresponds to Addendum #2, which changed storm structure S7's type from CBMH Type I to CBMH Type II.
 - No exception taken
7. Change Order #1 – Over excavation and backfill
 - Much of this work – 28 out of the 37 loads – occurred past the end of the fiscal year, 06-30-18.
 - CO #1 accounts for 9 loads of overex. and backfill. This work took place prior to the end of the fiscal year
 - Review of Brechan's Excel spreadsheet for this work corresponds with my records for the dates when excavation extending below the roadway limits took place
 - Per load, \$1113 is a reasonable price considering:
 - i. We have a contractor onsite with equipment and the workforce to facilitate the material removal
 - ii. This project will be the only opportunity in the next 2-3 decades to remove organic material within and below the roadway structural section
 - iii. Half of the backfill material is existing roadway material that has been hauled to Pillar Mountain during this project
 - iv. Half of the backfill material is the 2" minus (both bedding and Type A) material already being placed on the project
 - v. When all is said and done, this additional cost will be around \$50K, however, Birch Avenue's subbase/subgrade will be comprised of substantially better aggregate which should help extend the longevity of the subbase and roadway surface course
 - vi. The City will also see a benefit the next time Birch Avenue experiences an upgrade. Far less organic/unsuitable material will be required for removal, and far more existing excavation material should be able to be classified as reusable.

If you have any questions, I am always available.

Thanks,

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MEMORANDUM TO COUNCIL

To: Mayor Branson and City Councilmembers

From: Mike Tvenge, City Manager

Date: August 9, 2018

Agenda Item: **V. f. Authorization of the Second Renewal to the Cooperative Land Use Management Agreement With the State of Alaska Providing for the State to Manage the Portion of Lot 3, U.S. Survey No. 3462, Located North of Monashka Bay Road, Commonly Known as the Cry of the Wild Ram Site, as Part of Fort Abercrombie State Historic Park**

SUMMARY: On July 1, 2018, the first five-year renewal expired for the Cooperative Land Use Management Agreement with the State of Alaska Department of Natural Resources. Alaska Parks and Recreation manages this portion of city property. The State would like to continue to manage the Cry of the Wild Ram site north of the State historic park. The agreement that was authorized by Ordinance No. 1232 has unlimited five-year renewal options. It has been ten years since this agreement was authorized.

PREVIOUS ACTION:

- On April 5, 2008, Council adopted Ordinance No. 1232, Authorizing the City to Enter Into a Cooperative Land Use Management Agreement With the State of Alaska Providing for the State to Manage the Portion of Lot 3, U.S. Survey No. 3462, Located North of Monashka Bay Road, Commonly Known as the Cry of the Wild Ram Site, as Part of Fort Abercrombie State Historic Park

DISCUSSION: In 2006 at a Council planning meeting, the City Council discussed future use of City property known as the “Ram” site. There was discussion about the BLM deed restriction that requires that the property be managed for recreational use. At that planning meeting, the Council supported a concept that would allow that section of the property adjacent to Fort Abercrombie State Historical Park to be “incorporated” into the Park. In November 2006, the City Council further discussed the concept and the development of a formal agreement that would allow Alaska State Parks to manage the property. An agreement was originally drafted and reviewed by both the State and City attorneys. At that time, the City attorney recommended that the agreement be approved by ordinance.

ALTERNATIVES:

- 1) Authorize the second renewal to the agreement, which is the desire of the State of Alaska Department of Natural Resources, Division of Parks and Outdoor Recreation (DNR).
- 2) Council could choose not to authorize the renewal, amend, or postpone the agreement.

ATTACHMENTS:

Attachment A: Second Renewal to the Cooperative Land Use Management Agreement

Attachment B: First Renewal and the Cooperative Land Use Management Agreement

Attachment C: Land Use Management Agreement

Attachment D: Ordinance No. 1232

PROPOSED MOTION:

Move to authorize the second renewal to the Cooperative Land Use Management Agreement with the State of Alaska Providing for Management of the Portion of Lot 3, U.S. Survey No. 3462, Located North of Monashka Bay Road, commonly known as the Cry of the Wild Ram Site, as Part of Fort Abercrombie State Historic Park and authorize the City Manager to execute the documents on behalf of the City.

**SECOND RENEWAL TO THE COOPERATIVE
LAND USE MANAGEMENT AGREEMENT**

between the
City of Kodiak

and the
State of Alaska Dept. of Natural Resources
Division of Parks and Outdoor Recreation

SECOND RENEWAL, dated as of July 1, 2018, (the "Renewal") to the Cooperative Land Use Management Agreement between the CITY OF KODIAK (the "City") and State of Alaska Department of Natural Resources, Division of Parks and Outdoor Recreation (DNR), dated March 20, 2008 (City Record No. 130620)

WHEREAS, the Agreement provides for DNR to manage City property known as the RAM SITE, which neighbors the state lands located at Fort Abercrombie State Historic Park; and

WHEREAS, the Agreement, which will expire at the end of June 2018 unless renewed, provides for unlimited additional five-year terms by simple written consent by both parties; and

WHEREAS, Ordinance No. 1232, which authorized the agreement, grants authority and empowers the City Manager to do all acts and things and to execute all documents as may be necessary to carry out the comply with the provisions of the Agreement; and

WHEREAS, the City and DNR desire to renew the Agreement for an additional five-year term.

NOW, THEREFORE, the parties agree as follows:

The Cooperative Land Use Management Agreement between the City and DNR is renewed for an additional five-year period beginning July 1, 2018 and ending June 30, 2023.

All other terms and provisions of the Agreement shall remain unchanged.

DATED as of the date first set forth above.

CITY OF KODIAK

X

Mike Tvenge, City Manager

**STATE OF ALASKA,
DEPT. OF NATURAL RESOURCES**

X

Matt Wedeking
Deputy Director, Alaska State Parks

**FIRST RENEWAL TO THE COOPERATIVE
LAND USE MANAGEMENT AGREEMENT**

between the
City of Kodiak
and the

State of Alaska Dept. of Natural Resources
Division of Parks and Outdoor Recreation

FIRST RENEWAL, dated as of July 1, 2013, (the "Renewal") to the Cooperative Land Use Management Agreement between the CITY OF KODIAK (the "City") and State of Alaska Department of Natural Resources, Division of Parks and Outdoor Recreation (DNR), dated March 20, 2008 (City Record No. 130620).

WHEREAS, the Agreement provides for DNR to manage City property known as the RAM SITE, which neighbors the state lands located at Fort Abercrombie State Historic Park; and

WHEREAS, the Agreement, which will expire at the end of June 2013 unless renewed, provides for unlimited additional five-year terms by simple written consent by both parties; and

WHEREAS, Ordinance No. 1232, which authorized the agreement, grants authority and empowers the City Manager to do all acts and things and to execute all documents as may be necessary to carry out and comply with the provisions of the Agreement; and

WHEREAS, the City and DNR desire to renew the Agreement for an additional five-year term.

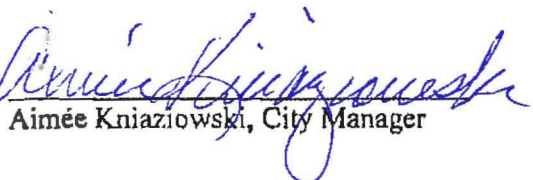
NOW, THEREFORE, the parties agree as follows:

The Cooperative Land Use Management Agreement between the City and DNR is renewed for an additional five-year period beginning July 1, 2013 and ending June 30, 2018.


All other terms and provisions of the Agreement shall remain unchanged.

DATED as of the date first set forth above.

CITY OF KODIAK


Aimée Kniazowski, City Manager

**STATE OF ALASKA,
DEPT. OF NATURAL RESOURCES**

 6-28-13
CLAIRE LECLAIR, DEPUTY DIRECTOR
DIVISION OF PARKS & OUTDOOR RECREATION

Cooperative Land Use Management Agreement

between the

City of Kodiak

and the

State of Alaska

Department of Natural Resources

Division of Parks and Outdoor Recreation

This agreement, executed this day by and between the City of Kodiak, hereinafter referred to as the CITY, and the State of Alaska, Department of Natural Resources, Division of Parks and Outdoor Recreation, hereinafter referred to as the STATE.

WHEREAS, this agreement is made and entered into for the purpose of providing beneficial public recreational use of lands under the current ownership of the CITY, located at property commonly referred to as the "Cry of the Wild Ram" property, hereinafter referred to as the RAM SITE, in a cooperative manner with the neighboring STATE lands located at Fort Abercrombie State Historic Park;

WHEREAS, the RAM SITE is an important recreational use area enjoyed by the both Kodiak residents and visitors to Kodiak;

WHEREAS, the CITY is presently the owner of the RAM SITE property, located at the end of Abercrombie Drive and along Monashka Bay, more particularly described as follows:

That portion of Lot 3, embraced in U. S. Survey No. 3462, that is located to the north of Monashka Bay Road, situated approximately 3 ½ miles northeasterly from Kodiak.

The area described contains approximately 45 acres.

WHEREAS, the CITY is required to manage the RAM SITE lands for "public recreation purposes" as part of their patent with the Bureau of Land Management, and this agreement will further that cause; and

WHEREAS, the STATE has operated and owned Fort Abercrombie State Historic Park since 1969, and hosts an annual visitation of over 65,000 visits; and

WHEREAS the STATE has recently completed a management plan and public process for Fort Abercrombie State Historic Park that includes recommendations on the expansion and development of the RAM SITE lands; and

WHEREAS, the public review process has indicated that an overwhelming majority believes that the RAM SITE should be made part of the State Park for consistency of management, public safety, resource protection and for recreational development.

NOW THEREFORE, the CITY grants the STATE the authority to manage the RAM SITE land for a 5 (five) year term, for public recreation purposes and as part of Fort Abercrombie State Historic Park, subject to the following terms:

I. LAND USE and SUPPORT

- A. This land may only be used by the STATE under this agreement for a State Park, and will fully comply with the CITY's patent terms, as amended by Certificate of Approval of Change of Use No. 50-2, dated August 28, 1964. Any other use will result in immediate termination of the agreement.
- B. The STATE agrees to provide all plans for major development, including utility installation, to the CITY for review prior to construction. Development may consist of but is not necessarily limited to the construction of those facilities commonly associated with a typical state park, such as park headquarters/office space, visitor center, equipment maintenance shop, storage compound, campsites, picnic sites, restrooms, public use cabins, trails, boat launch, or vehicle parking. Any new utilities will be placed underground.
- C. The STATE recognizes that there are limited utilities currently available on the lands, and will assume all fiscal responsibility for utility expansion or metering. The STATE will be responsible for any and all utility services used in connection with the operation of the land as a park.
- D. The CITY agrees that under the terms of this agreement, and for the orderly management of the lands, the STATE will impose standard State Park Regulations on these lands pursuant to AS 41.21.020(a)(6), and are more specifically identified in 11 AAC. A copy of these regulations will be provided upon request.
- E. The STATE agrees to assume mutual (Kodiak Police Department, Alaska State Troopers, State Park Rangers) law enforcement responsibilities for this site. It is the intent of this agreement that the STATE will enforce typical and routine violations, and there will not be an expectation of City Police to frequently patrol or respond to minor violations. However, the CITY will retain its police powers on the site, and will be expected to respond to major violations, and may work cooperatively with the STATE. The City Police may be requested on occasion and when available to provide law enforcement assistance for Park Rangers.
- F. The STATE agrees to assume responsibility for road maintenance on the land.
- G. The STATE will be responsible for the protection, maintenance, cleanliness, safety and good order of the lands covered by this agreement.

- H. The entire cost of administration, maintenance, and operations of the site for recreational purposes will be borne by the STATE.
- I. The STATE may impose certain public use fees on the lands typical to state park units. Such fees may include but are not limited to overnight camping, firewood, overnight cabin, day use, boat launch, guided hikes or tours, commercial use, or fees for special events (such as races, etc).
- J. All signs erected shall identify the lands as being managed by the STATE, as part of Fort Abercrombie State Historic Park.
- K. The STATE will comply with all environmental and health laws and regulations pertaining to water systems and waste disposal.
- L. The cost of a property survey to identify and mark the common boundary between the STATE and CITY lands will be equally shared, and completed within six (6) months of execution of this agreement.

II. GENERAL PROVISIONS

- A. The CITY expressly agrees that in regard to any liability which may arise out of work under or related to this agreement, the CITY will not look to the STATE to save or hold the CITY, its employees, agents, and/or contractors harmless for any injuries, damages or other consequences of any act or omission of the CITY or of the CITY's employees, agents and/or contractors. The CITY is not hereby waiving any rights or protection it presently enjoys, nor limiting any duties, responsibilities or liabilities it may bear, by reason of any applicable state or federal law, including the Federal Tort Claims Act.
- B. The STATE expressly agrees that in regard to any liability which may arise out of work under or related to this agreement, STATE will not look to the CITY to save or hold the STATE harmless for any injuries, damages or other consequences of any act or omission of the STATE or of the STATE's own employees, agents, and/or contractors. The STATE is not hereby waiving any rights or protection it presently enjoys, nor limiting any duties, responsibilities, liabilities it may bear, by reason of any applicable state or federal law, including the Federal Tort Claims Act.
- C. The STATE will be subject to all reservations and right-of-ways listed in the original BLM patent documents.
- D. The STATE will comply with all Civil Rights Laws, more specifically that no person shall, on the grounds of race, color, or national origin be excluded from participation in, denied benefits of, or be otherwise subjected to discrimination in the use or occupancy of the above described lands or of the accommodations, facilities, services, or privileges furnished thereon.
- E. Both the STATE and the CITY agree to comply with all applicable laws, regulations, and executive orders and nothing in this agreement is intended to conflict with any federal, state, or local laws or regulations.
- F. The STATE agrees that upon termination of this agreement, that all improvements will become property of the CITY.

- G. The STATE is a self-insured entity. Although the STATE is relieved of the obligation to provide liability coverage, the STATE shall nevertheless assume the same liabilities arising out of its, or any of its designated contractors, use of government property as any entity not so exempt.
- H. The CITY agrees to confer with the STATE regarding any action, use, or disposition of the land that may effect the STATE's or the public's use of the lands.
- I. The CITY reserves the right to access and inspect the lands at any time for compliance with this agreement.

III. Mutual Agreement

This agreement expires five (5) years from the date executed. Earlier termination may occur by presentation in writing with at least a thirty (30) day advance notice for just cause. Notices of termination shall be signed by either the Director, Division of Parks and Outdoor Recreation, or the City Manager.

This agreement may be renewed for unlimited additional five (5) year terms by simple written consent by both parties.

IN WITNESS WHEREOF, the parties hereto have caused this COOPERATIVE MANAGEMENT AGREEMENT to be executed by their duly authorized representatives, as of the date set forth.

For the City of Kodiak

For the State of Alaska
Department of Natural Resources
Division of Parks and Outdoor Recreation


Linda Freed, City Manager


James King, Director

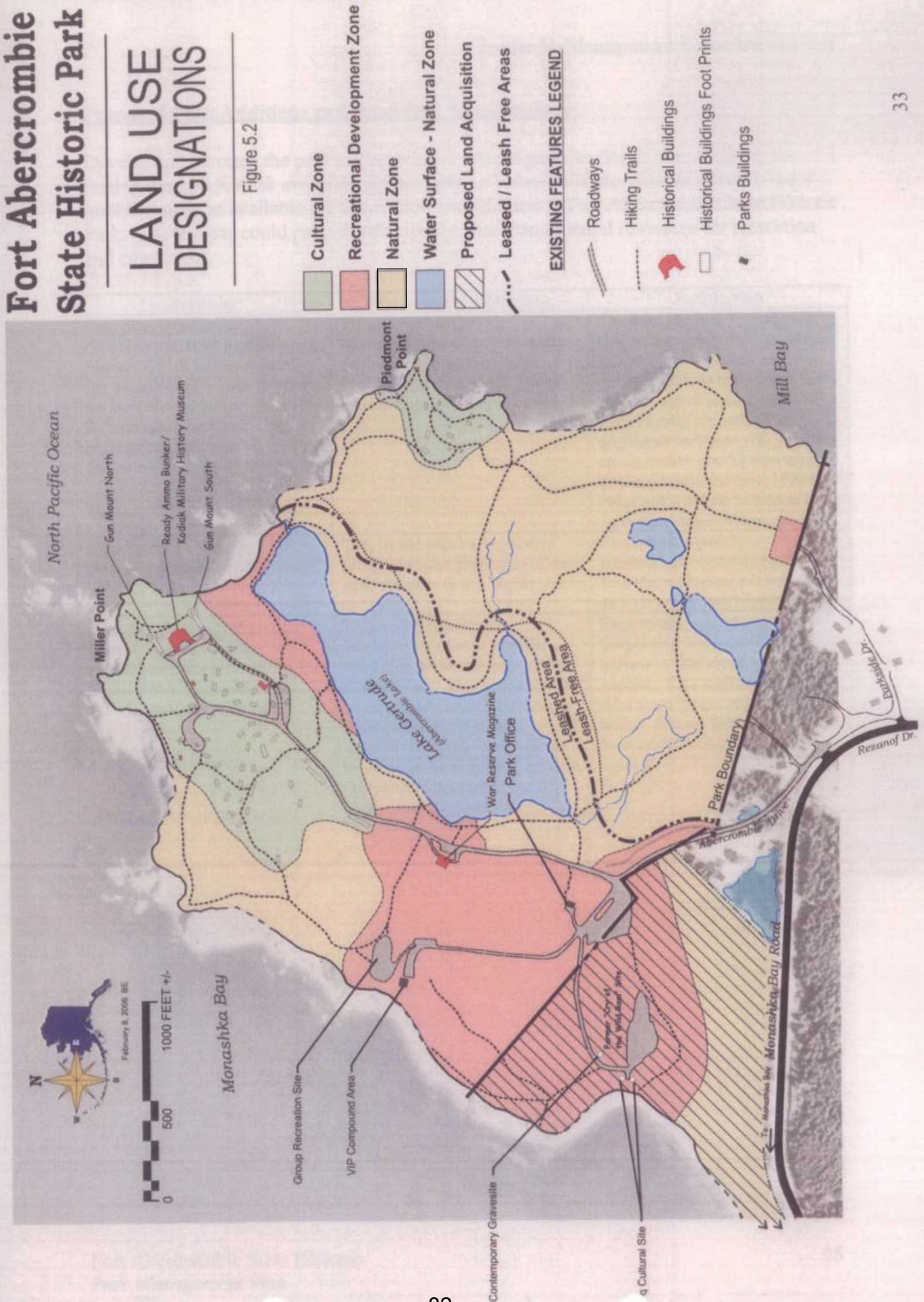
7/1/08
Date

3/20/08
Date
*Please make effective
7/1/08*

Fort Abercrombie State Historic Park

LAND USE DESIGNATIONS

Figure 5.2



**CITY OF KODIAK
ORDINANCE NUMBER 1232**

AN ORDINANCE OF THE COUNCIL OF THE CITY OF KODIAK AUTHORIZING THE CITY TO ENTER INTO A COOPERATIVE LAND USE MANAGEMENT AGREEMENT WITH THE STATE OF ALASKA PROVIDING FOR THE STATE TO MANAGE THE PORTION OF LOT 3, U.S. SURVEY NO. 3462 LOCATED NORTH OF MONASHKA BAY ROAD, COMMONLY KNOWN AS THE CRY OF THE WILD RAM SITE, AS PART OF FORT ABERCROMBIE STATE HISTORIC PARK

WHEREAS, the City of Kodiak owns property described as the portion of Lot 3, U.S. Survey No. 3462 located north of Monashka Bay Road, and commonly known as the Cry of the Wild Ram site (the "Property"); and

WHEREAS, the patent of the Property from the United States to the City requires that the City manage the Property for public recreation purposes, and the use of the Property authorized herein is consistent with that requirement; and

WHEREAS, Kodiak City Code 18.20.030(a) authorizes the City to make City land available for less than the minimum rental or sales price otherwise established by Kodiak City Code Title 18 to the State of Alaska if the Council determines that the permitted use of the land would be in the best interests of the public, and the Council has determined that the use of the Property by the State of Alaska authorized herein is in the best interests of the public; and

WHEREAS, there has been presented to this meeting the form of a Cooperative Land Use Agreement between the City and the State of Alaska, Department of Natural Resources, Division of Parks and Outdoor Recreation (the "Agreement") providing for the State to manage the Property as part of Fort Abercrombie State Historic Park, and it appears that the Agreement, which now is before this meeting, is in appropriate form and is an appropriate instrument for the purposes intended.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Kodiak, Alaska, as follows:

Section 1: The form and content of the Agreement hereby are in all respects authorized, approved, and confirmed, and the City Manager hereby is authorized, empowered, and directed to execute and deliver to the counterparty the Agreement on behalf of the City, in substantially the form and content now before this meeting but with such changes, modifications, additions and deletions therein as she shall deem necessary, desirable, or appropriate, the execution thereof to constitute conclusive evidence of approval of any and all changes, modifications, additions, or deletions therein from the form and content of the Agreement, and from and after the execution and delivery of the Agreement, the City Manager hereby is authorized, empowered, and directed to do all acts and things and to execute all documents as may be necessary to carry out and comply with the provisions of the Agreement as executed.

Section 2: The Agreement authorized by this ordinance is subject to the requirements of City Charter Section V-17. Therefore, if one or more referendum petitions with signatures are properly filed within one month after the passage and publication of this ordinance, this ordinance shall not go into effect until the petition or petitions are finally found to be illegal and/or insufficient, or, if any such petition is found legal and sufficient, until the ordinance is approved at an election by a majority of the qualified voters voting on the question. If no referendum petition with signatures is filed, this ordinance shall go into effect one month after its passage and publication.

CITY OF KODIAK


MAYOR

ATTEST:


CITY CLERK

First Reading: January 24, 2008
Second Reading: February 28, 2008
Effective Date: April 5, 2008



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MEMORANDUM TO COUNCIL

To: Mayor Branson and City Councilmembers
From: Mike Tvenge, City Manager *MT*
Thru: Lieutenant DJ Clumpner
Date: August 9, 2018

Agenda Item: V. g. Authorization of Professional Services Agreement With Axon Enterprises, Inc. in Support of Body Worn Cameras, Equipment, and Video Storage for the Kodiak Police Department

SUMMARY: In 2017 the City of Kodiak entered into a five-year agreement with Axon Enterprises Inc. (formerly Taser International) to provide body-worn cameras (BWCs), peripheral equipment, software and license fees, an electronic storage solution with redaction capabilities (Evidence.com), and on-site training to equip the police department with BWCs. The agreement included full warranties on equipment and new camera replacement at 2.5 years and new cameras again at five years. The City paid \$18,184 at signing (\$13,359 was covered by grant money) with an understanding that approximately \$9,852 would be due each of the subsequent four years.

The Kodiak Police Department (KPD) wants to renegotiate the existing contract with Axon Enterprises Inc. to replace 12 of the original 18 cameras that aren't performing well in our climate. Currently, the KPD has two styles of Axon body worn cameras: 12 -Flex 2 cameras and 6- Body 2 cameras. The Flex 2 camera can be mounted near the head or shoulder and provides a good point of view camera angle (from the officer's perspective), but the Flex 2 is in separate pieces and was too susceptible to water damage. The Body 2 camera is only one piece, it's sealed to a higher standard, and it attaches to the front of the officer's uniform. None of the Body 2 cameras have malfunctioned.

Axon Enterprises Inc. has agreed to replace all 12 of the Flex 2 cameras at no cost with 12 new Body 2 cameras and peripheral equipment. In essence, this new five-year agreement starts the five-year term over again. The new annual amount is \$11,946, which is higher, because we had to add cloud storage and additional cameras and accessories (there are two additional police officer positions in this budget year compared to FY2017). Pursuant to evidence retention laws, we have BWC footage from previous investigations that needs to be stored for different lengths of time. Cloud storage is purchased a la carte.

PREVIOUS COUNCIL ACTION:

- November 10, 2016, Council adopted Resolution No. 2016-40, accepting a FY2016 Byrne Memorial Justice Assistance Grant (JAG) in the amount of \$13,359.

ALTERNATIVES:

1. Authorize the new five-year agreement with Axon Enterprises. Inc., which is staff's recommendation.
2. Do not authorize the new contract. This is not recommended, because refusal of the renegotiated contract would require KPD to continue operations with cameras that are known to fail during wet weather conditions.

FINANCIAL IMPLICATIONS: This is a five-year contract proposal with a yearly cost of \$11,946 totaling \$59,730. This includes a discount of \$17,480.

STAFF RECOMMENDATION: Staff recommends Council approve the new agreement with Axon Enterprises Inc. The KPD has been using Axon products for over 15 years. The BWC solution includes secure storage, full warranties, and new equipment.

NOTES/ATTACHMENTS:

Attachment A: Axon Agreement

PROPOSED MOTION:

Move to authorize a Professional Services Agreement with AXON Enterprises Inc. in support of body worn cameras, equipment, and video storage for the Kodiak Police Department in the amount of \$59,730 with funds from the General Fund, Police Department Uniformed Patrol account.



Master Services and Purchasing Agreement

This Master Services and Purchasing Agreement (the **Agreement**) by and between Axon Enterprise, Inc., (**Axon or Party**) a Delaware corporation having its principal place of business at 17800 N 85th Street, Scottsdale, Arizona, 85255, and the Agency listed on the Quote (**Agency, Party** or collectively **Parties**), is entered into the later of (a) the last signature date on this Agreement, or (b) the signature date on the quote (**the Effective Date**).

This Agreement sets forth the terms and conditions for the purchase, delivery, use, and support of Axon Products and Services as detailed in the Quote Appendix (the **Quote**), which is hereby incorporated by reference. In consideration of this Agreement, the Parties agree as follows:

1 **Term.** This Agreement will commence on the Effective Date and will remain in full force and effect until terminated by either Party. The Agency may renew the terms and conditions of this Agreement for an additional 5 years upon the execution of a new pricing Quote. New products and services may require additional terms and conditions. Axon services will not be authorized until a signed Quote or Purchase Order is accepted by Axon, whichever is first.

2 **Definitions.**

"Confidential Information" means all nonpublic information disclosed by Axon, Axon affiliates, business partners of Axon or their respective employees, contractors or agents that is designated as confidential or that, given the nature of the information or circumstances surrounding its disclosure, reasonably should be understood to be confidential.

"Evidence.com Service" means Axon web services for Evidence.com, the Evidence.com site, Evidence Sync software, Axon Capture App, Axon View App, other software, maintenance, storage, and any product or service provided by Axon under this Agreement for use with Evidence.com. This does not include any third-party applications, hardware warranties, or my.evidence.com services.

"Products" means all hardware, software, cloud based services, and software maintenance releases and updates provided by Axon under this Agreement.

"Quote" is an offer to sell, and is valid only for products and services listed on the quote at prices on the quote. Any terms and conditions contained within the Agency's purchase order in response to the Quote will be null and void and shall have no force or effect. Axon is not responsible for pricing, typographical, or other errors in any offer by Axon and Axon reserves the right to cancel any orders resulting from such errors.

"Services" means all services provided by Axon pursuant to this Agreement.

3 **Payment Terms.** Axon invoices upon shipment, unless otherwise specified in the Quote. Invoices are due to be paid within 30 days of the date of invoice, unless otherwise specified by Axon. All orders are subject to prior credit approval. Payment obligations are non-cancelable, fees paid are non-refundable, and all amounts payable will be made without setoff, deduction, or withholding. If a delinquent account is sent to collections, the Agency is responsible for all collection and attorneys' fees. In the event the Agency chooses a phased deployment for the Products in the Quote, the Quote



pricing is subject to change if the phased deployment changes.

- 4 **Taxes.** Unless Axon is provided with a valid and correct tax exemption certificate applicable to the purchase and ship-to location, the Agency is responsible for sales and other taxes associated with the order.
- 5 **Shipping; Title; Risk of Loss; Rejection.** Axon reserves the right to make partial shipments and Products may ship from multiple locations. All shipments are FOB Shipping Point via common carrier and title and risk of loss pass to the Agency upon delivery to the common carrier by Axon. The Agency is responsible for any shipping charges on the Quote. Shipping dates are estimates only. The Agency may reject Products that do not match the Products listed in the Quote, are damaged, or non-functional upon receipt (**Nonconforming Product**) by providing Axon written notice of rejection within 10 days of shipment. In the event the Agency receives a Nonconforming Product, the Agency's sole remedy is to return the Product to Axon for repair or replacement as further described in the Warranties Section. Failure to notify Axon within the 10-day rejection period will be deemed as acceptance of Product.
- 6 **Returns.** All sales are final and no refunds or exchanges are allowed, except for warranty returns or as provided by state or federal law.
- 7 **Warranties.**
 - 7.1 **Hardware Limited Warranty.** Axon warrants that its law enforcement hardware Products are free from defects in workmanship and materials for a period of ONE (1) YEAR from the date of receipt. Extended warranties run from the date of purchase of the extended warranty through the balance of the 1-year limited warranty term plus the term of the extended warranty measured from the date of expiration of the 1-year limited warranty. CEW cartridges and Smart cartridges that are expended are deemed to have operated properly. Axon-manufactured accessories are covered under a limited 90-DAY warranty from the date of receipt. Non-Axon manufactured accessories, including all Apple and Android devices, are covered under the manufacturer's warranty. In the event of a warranty claim for an Apple or Android device, the Agency should contact the manufacturer. If Axon determines that a valid warranty claim is received within the warranty period, as further described in the Warranty Limitations section, Axon agrees to repair or replace the Product. Axon's sole responsibility under this warranty is to either repair or replace with the same or like Product, at Axon's option.
 - 7.2 **Warranty Limitations.**
 - 7.2.1 The warranties do not apply to and Axon will not be responsible for any loss, data loss, damage, or other liabilities arising from damage: (a) from failure to follow instructions relating to the Product's use; (b) caused by use with non-Axon products or from the use of cartridges, batteries or other components that are not manufactured or recommended by Axon; (c) caused by abuse, misuse, intentional or deliberate damage to the Product, or force majeure; (d) to a Product or part that has been repaired or modified by persons other than Axon authorized personnel or without the written permission of Axon; or (e) to any Axon Product whose serial number has been removed or defaced.
 - 7.2.2 **To the extent permitted by law, the warranties and the remedies set forth above**

are exclusive and Axon disclaims all other warranties, remedies, and conditions, whether oral or written, statutory, or implied, as permitted by applicable law. If statutory or implied warranties cannot be lawfully disclaimed, then all such warranties are limited to the duration of the express warranty described above and limited by the other provisions contained in this Agreement.

7.2.3 Axon's cumulative liability to any Party for any loss or damage resulting from any claims, demands, or actions arising out of or relating to any Axon Product will not exceed the purchase price paid to Axon for the Product or if for Services, the amount paid for such Services over the prior 12 months preceding the claim. In no event will either Party be liable for any direct, special, indirect, incidental, exemplary, punitive or consequential damages, however caused, whether for breach of warranty, breach of contract, negligence, strict liability, tort or under any other legal theory.

7.3 **Warranty Returns.** If a valid warranty claim is received by Axon within the warranty period, Axon agrees to repair or replace the Product that Axon determines in its sole discretion to be defective under normal use, as defined in the Product instructions. Axon's sole responsibility under this warranty is to either repair or replace with the same or like Product, at Axon's option.

7.3.1 For warranty return and repair procedures, including troubleshooting guides, please go to Axon's websites www.axon.com/support or www.evidence.com, as indicated in the appropriate Product user manual or quick start guide.

7.3.2 Before delivering Product for warranty service, it is the Agency's responsibility to upload the data contained in the Product to the Evidence.com Service or download the Product data and keep a separate backup copy of the contents. Axon is not responsible for any loss of software programs, data, or other information contained on the storage media or any other part of the Product.

7.3.3 A replacement Product will be new or like new and have the remaining warranty period of the original Product or 90 days from the date of replacement or repair, whichever period is longer. When a Product or part is exchanged, any replacement item becomes Agency's property and the replaced item becomes Axon's property.

8 **Product Warnings.** See Axon's website at www.axon.com/legal for the most current Axon product warnings.

9 **Design Changes.** Axon reserves the right to make changes in the design of any of Axon's products and services without incurring any obligation to notify the Agency or to make the same change to products and services previously purchased.

10 **Insurance.** Axon will maintain, at Axon's own expense and in effect during the Term, Commercial General Liability Insurance, and Workers' Compensation Insurance and Commercial Automobile Insurance, and will furnish certificates of insurance or self-insurance upon request.

11 **Indemnification.** Axon will indemnify and defend the Agency's officers, directors, and employees (**Agency Indemnitees**) from and against all claims, demands, losses, liabilities, reasonable costs and expenses arising out of a claim by a third party against an Agency Indemnitee resulting from any negligent act, error or omission, or willful misconduct of Axon under or related to this Agreement,



except in the case of negligent acts, omissions or willful misconduct of the Agency or claims that fall under Workers Compensation coverage.

- 12 **IP Rights.** Axon owns and reserves all right, title, and interest in the Axon Products and Services, and related software, as well as any suggestions made to Axon.
- 13 **IP Indemnification.** Axon will defend, indemnify, and hold the Agency Indemnitees harmless from and against any claims, damages, losses, liabilities, costs, and expenses (including reasonable attorneys' fees) arising out of or relating to any third-party claim alleging that use of Axon Products or Services as permitted under this Agreement infringes or misappropriates the intellectual property rights of a third party. The Agency must provide Axon with prompt written notice of such a claim, tender to Axon the defense or settlement of such a claim at Axon's expense, and cooperate fully with Axon in the defense or settlement of such a claim.

Axon has no liability to the Agency or any third party if any alleged infringement or claim of infringement is to any extent based upon: (a) any modification of the Evidence.com Service by the Agency or any third party not approved by Axon; (b) use of the Evidence.com Service in connection or in combination with equipment, devices, or services not approved or recommended by Axon; (c) the use of Evidence.com Service other than as permitted under this Agreement or in a manner for which it was not intended; or (d) the use of other than the most current release or version of any software provided by Axon as part of or in connection with the Evidence.com Service. Nothing in this Section will affect any warranties in favor of the Agency that are otherwise provided in or arise out of this Agreement.

- 14 **Agency Responsibilities.** The Agency is responsible for (i) use of Axon Products (including any activities under the Agency Evidence.com account and use by Agency employees and agents), (ii) breach of this Agreement or violation of applicable law by the Agency or any of the Agency's end users, (iii) Agency Content or the combination of Agency Content with other applications, content or processes, including any claim involving alleged infringement or misappropriation of third party rights by Agency Content or by the use of Agency Content, (iv) a dispute between the Agency and any third party over Agency use of Axon Products or the collection or use of Agency Content, (v) any hardware or networks that the Agency connects to the Evidence.com Service, and (vi) any security settings the Agency establishes to interact with or on the Evidence.com Service.

15 **Termination.**

15.1 **By Either Party.** Either Party may terminate for cause upon 30 days advance notice to the other Party if there is any material default or breach of this Agreement by the other Party, unless the defaulting Party has cured the material default or breach within the 30-day notice period. In the event that the Agency terminates this Agreement due to Axon's failure to cure the material breach or default, Axon will issue a refund of any prepaid amounts on a prorated basis from the date of notice of termination.

15.2 **By Agency.** The Agency is obligated to pay the fees under this Agreement as may lawfully be made from funds budgeted and appropriated for that purpose during the Agency's then current fiscal year. In the event that sufficient funds will not be appropriated or are not otherwise legally available to pay the fees required under this Agreement, this Agreement

may be terminated by the Agency. The Agency agrees to deliver notice of termination under this Section at least 90 days prior to the end of the Agency's then current fiscal year, or as soon as reasonably practicable under the circumstances.

15.3 Effect of Termination. Upon any termination of this Agreement: (a) all Agency rights under this Agreement immediately terminate; (b) the Agency remains responsible for all fees and charges incurred through the date of termination; and (c) Payment Terms, Warranty, Product Warnings, Indemnification, and Agency Responsibilities Sections, as well as the Evidence.com Terms of Use Appendix Sections on Agency Owns Agency Content, Data Storage, Fees and Payment, Software Services Warranty, IP Rights and License Restrictions will continue to apply in accordance with their terms. If the Agency purchases Products for a value less than the Manufacturer's Suggested Retail Price (**MSRP**) and this Agreement is terminated before the end of the term then (a) the Agency will be invoiced for the remainder of the MSRP for the Products received and not already paid for; or (b) only in the case of termination for non-appropriations, return the Products to Axon within 30 days of the date of termination. For bundled Products, the MSRP is the value of all standalone components of the bundle.

16 General.

16.1 Confidentiality. Both Parties will take all reasonable measures to avoid disclosure, dissemination or unauthorized use of either Party's Confidential Information. Except as required by applicable law, neither Party will disclose either Party's Confidential Information during the Term or at any time during the 5-year period following the end of the Term. Unless the Agency is legally required to disclose Axon's pricing, all Axon pricing is considered confidential and competition sensitive. To the extent allowable by law, Agency will provide notice to Axon prior to any such disclosure. Notwithstanding the above, Axon retains the right to publicly announce information pertaining to this Agreement. As a publicly traded company, Axon has a duty to provide shareholders with information on material agreements.

16.2 Excusable delays. Axon will use commercially reasonable efforts to deliver all Products and Services ordered as soon as reasonably practicable. In the event of interruption of any delivery due to causes beyond Axon's reasonable control, Axon has the right to delay or terminate the delivery with reasonable notice.

16.3 Force Majeure. Neither Party will be liable for any delay or failure to perform any obligation under this Agreement where the delay or failure results from any cause beyond the Parties' reasonable control, including acts of God, labor disputes or other industrial disturbances, systemic electrical, telecommunications, or other utility failures, earthquake, storms or other elements of nature, blockages, embargoes, riots, acts or orders of government, acts of terrorism, or war.

16.4 Proprietary Information. The Agency agrees that Axon has and claims various proprietary rights in the hardware, firmware, software, and the integration of ancillary materials, knowledge, and designs that constitute Axon products and services, and that the Agency will not directly or indirectly cause any proprietary rights to be violated.

16.5 Independent Contractors. The Parties are independent contractors. Neither Party, nor any

of their respective affiliates, has the authority to bind the other. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary, or employment relationship between the Parties.

- 16.6 No Third-Party Beneficiaries.** This Agreement does not create any third-party beneficiary rights in any individual or entity that is not a party to this Agreement.
- 16.7 Non-discrimination and Equal Opportunity.** During the performance of this Agreement, neither the Parties nor the Party's employees will discriminate against any person, whether employed by a Party or otherwise, on the basis of race, color, religion, gender, age, national origin, handicap, marital status, or political affiliation or belief. In all solicitations or advertisements for employees, agents, subcontractors or others to be engaged by a Party or placed by or on behalf of a Party, the solicitation or advertisement shall state all qualified applicants shall receive consideration for employment without regard to race, color, religion, gender, age, national origin, handicap, marital status, or political affiliation or belief.
- 16.8 U.S. Government Rights.** Any Evidence.com Service provided to the U.S. Government as "commercial items," "commercial computer software," "commercial computer software documentation," and "technical data" will have the same rights and restrictions generally applicable to the Evidence.com Service. If the Agency is using the Evidence.com Services on behalf of the U.S. Government and these terms fail to meet the U.S. Government's needs or are inconsistent in any respect with federal law, the Agency will immediately discontinue use of the Evidence.com Service. The terms "commercial item," "commercial computer software," "commercial computer software documentation," and "technical data" are defined in the Federal Acquisition Regulation and the Defense Federal Acquisition Regulation Supplement.
- 16.9 Import and Export Compliance.** In connection with this Agreement, each Party will comply with all applicable import, re-import, export, and re-export control laws and regulations.
- 16.10 Assignment.** Neither Party may assign or otherwise transfer this Agreement without the prior written approval of the other Party. Axon may assign or otherwise transfer this Agreement or any of its rights or obligations under this Agreement without consent (a) for financing purposes, (b) in connection with a merger, acquisition or sale of all or substantially all of its assets, (c) as part of a corporate reorganization, or (d) to an affiliate or subsidiary corporation. Subject to the foregoing, this Agreement will be binding upon the Parties and their respective successors and assigns.
- 16.11 No Waivers.** The failure by either Party to enforce any provision of this Agreement will not constitute a present or future waiver of the provision nor limit the Party's right to enforce the provision at a later time.
- 16.12 Severability.** This Agreement is contractual and not a mere recital. If any portion of this Agreement is held to be invalid or unenforceable, the remaining portions of this Agreement will remain in full force and effect.
- 16.13 Governing Law; Venue.** The laws of the state where the Agency is physically located, without



reference to conflict of law rules, govern this Agreement and any dispute of any sort that might arise between the Parties. The United Nations Convention for the International Sale of Goods does not apply to this Agreement.

16.14 Notices. All communications and notices to be made or given pursuant to this Agreement must be in the English language. Notices provided by posting on the Agency's Evidence.com site will be effective upon posting and notices provided by email will be effective when the email was sent. Notices provided by personal delivery will be effective immediately. Contact information for notices:

Axon: Axon Enterprise, Inc.
Attn: Contracts
17800 N. 85th Street
Scottsdale, Arizona 85255
contracts@axon.com

Agency:

16.15 Entire Agreement. This Agreement, including the Appendices attached hereto, and the Quote provided by Axon, represents the entire agreement between the Parties. This Agreement supersedes all prior or contemporaneous representations, understandings, agreements, or communications between the Parties, whether written or verbal, regarding the subject matter of this Agreement. No modification or amendment of any portion of this Agreement will be effective unless in writing and signed by the Parties to this Agreement. If Axon provides a translation of the English language version of this Agreement, the English language version of the Agreement will control if there is any conflict.

16.16 Counterparts. If this Agreement form requires the signatures of the Parties, then this Agreement may be executed by electronic signature in multiple counterparts, each of which is considered an original.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed. Each Party warrants and represents that its respective signatories, whose signatures appear below, have been and are, on the date of signature, duly authorized to execute this Agreement.

Axon Enterprise, Inc.

Agency

Signature: _____

Signature: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____



Axon Enterprise, Inc.
17800 N 85th St.
Scottsdale, Arizona 85255
United States
Phone: (800) 978-2737

Q-173433-43292.898KP

Issued: 07/11/2018

Quote Expiration: 08/31/2018

Account Number: 111999

Start Date: 07/05/2018

Payment Terms: Net 30

Delivery Method: Fedex - Ground

SALES REPRESENTATIVE

Kenneth Pederson

Phone:

Email: kpederson@axon.com

Fax:

PRIMARY CONTACT

Tim Putney

Phone: (907) 486-8000

Email: tputney@city.kodiak.ak.us

SHIP TO

Tim Putney
Kodiak Police Dept. - AK
2160 Mill Bay Road
Kodiak, AK 99615
US

BILL TO

Kodiak Police Dept. - AK
2160 Mill Bay Road
Kodiak, AK 99615
US

Year 1

Item	Description	Quantity	List Unit Price	Net Unit Price	Total (USD)
Axon Plans & Packages					
85079	TASER ASSURANCE PLAN DOCK ANNUAL PAYMENT	20	36.00	36.00	720.00
80012	BASIC EVIDENCE.COM LICENSE: YEAR 1 PAYMENT	18	180.00	180.00	3,240.00
85110	EVIDENCE.COM INCLUDED STORAGE	180	0.00	0.00	0.00
80022	PRO EVIDENCE.COM LICENSE: YEAR 1 PAYMENT	2	468.00	468.00	936.00
85110	EVIDENCE.COM INCLUDED STORAGE	60	0.00	0.00	0.00
85070	TASER ASSURANCE PLAN ANNUAL PAYMENT, BODYCAM	20	240.00	240.00	4,800.00
85035	EVIDENCE.COM STORAGE	3,000	0.75	0.75	2,250.00
Hardware					
74001	AXON CAMERA ASSEMBLY, ONLINE, AXON BODY 2, BLK	20	499.00	0.00	0.00
74020	MAGNET MOUNT, FLEXIBLE, AXON RAPIDLOCK	20	0.00	0.00	0.00
74021	MAGNET MOUNT, THICK OUTERWEAR, AXON RAPIDLOCK	20	0.00	0.00	0.00
11508	MOLLE MOUNT, DOUBLE, AXON RAPIDLOCK	20	0.00	0.00	0.00
11553	SYNC CABLE, USB A TO 2.5MM	20	0.00	0.00	0.00

Year 1 (Continued)

Item	Description	Quantity	List Unit Price	Net Unit Price	Total (USD)
Hardware (Continued)					
74009	AXON DOCK, SINGLE BAY + CORE, AXON BODY 2	20	375.00	0.00	0.00
				Subtotal	11,946.00
				Estimated Shipping	0.00
				Estimated Tax	0.00
				Total	11,946.00

Year 2

Item	Description	Quantity	List Unit Price	Net Unit Price	Total (USD)
Axon Plans & Packages					
85035	EVIDENCE.COM STORAGE	3,000	0.75	0.75	2,250.00
85079	TASER ASSURANCE PLAN DOCK ANNUAL PAYMENT	20	36.00	36.00	720.00
80013	BASIC EVIDENCE.COM LICENSE: YEAR 2 PAYMENT	18	180.00	180.00	3,240.00
85110	EVIDENCE.COM INCLUDED STORAGE	180	0.00	0.00	0.00
80023	PRO EVIDENCE.COM LICENSE: YEAR 2 PAYMENT	2	468.00	468.00	936.00
85110	EVIDENCE.COM INCLUDED STORAGE	60	0.00	0.00	0.00
85070	TASER ASSURANCE PLAN ANNUAL PAYMENT, BODYCAM	20	240.00	240.00	4,800.00
				Subtotal	11,946.00
				Estimated Tax	0.00
				Total	11,946.00

Year 3

Item	Description	Quantity	List Unit Price	Net Unit Price	Total (USD)
Axon Plans & Packages					
85035	EVIDENCE.COM STORAGE	3,000	0.75	0.75	2,250.00
85079	TASER ASSURANCE PLAN DOCK ANNUAL PAYMENT	20	36.00	36.00	720.00
80014	BASIC EVIDENCE.COM LICENSE: YEAR 3 PAYMENT	18	180.00	180.00	3,240.00
85110	EVIDENCE.COM INCLUDED STORAGE	180	0.00	0.00	0.00
80024	PRO EVIDENCE.COM LICENSE: YEAR 3 PAYMENT	2	468.00	468.00	936.00
85110	EVIDENCE.COM INCLUDED STORAGE	60	0.00	0.00	0.00

Year 3 (Continued)

Item	Description	Quantity	List Unit Price	Net Unit Price	Total (USD)
Axon Plans & Packages (Continued)					
85070	TASER ASSURANCE PLAN ANNUAL PAYMENT, BODYCAM	20	240.00	240.00	4,800.00
				Subtotal	11,946.00
				Estimated Tax	0.00
				Total	11,946.00

Year 4

Item	Description	Quantity	List Unit Price	Net Unit Price	Total (USD)
Axon Plans & Packages					
85035	EVIDENCE.COM STORAGE	3,000	0.75	0.75	2,250.00
85079	TASER ASSURANCE PLAN DOCK ANNUAL PAYMENT	20	36.00	36.00	720.00
80015	BASIC EVIDENCE.COM LICENSE: YEAR 4 PAYMENT	18	180.00	180.00	3,240.00
85110	EVIDENCE.COM INCLUDED STORAGE	180	0.00	0.00	0.00
80025	PRO EVIDENCE.COM LICENSE: YEAR 4 PAYMENT	2	468.00	468.00	936.00
85110	EVIDENCE.COM INCLUDED STORAGE	60	0.00	0.00	0.00
85070	TASER ASSURANCE PLAN ANNUAL PAYMENT, BODYCAM	20	240.00	240.00	4,800.00
				Subtotal	11,946.00
				Estimated Tax	0.00
				Total	11,946.00

Year 5

Item	Description	Quantity	List Unit Price	Net Unit Price	Total (USD)
Axon Plans & Packages					
85035	EVIDENCE.COM STORAGE	3,000	0.75	0.75	2,250.00
85079	TASER ASSURANCE PLAN DOCK ANNUAL PAYMENT	20	36.00	36.00	720.00
80016	BASIC EVIDENCE.COM LICENSE: YEAR 5 PAYMENT	18	180.00	180.00	3,240.00
85110	EVIDENCE.COM INCLUDED STORAGE	180	0.00	0.00	0.00
80026	PRO EVIDENCE.COM LICENSE: YEAR 5 PAYMENT	2	468.00	468.00	936.00
85110	EVIDENCE.COM INCLUDED STORAGE	60	0.00	0.00	0.00

Year 5 (Continued)

Item	Description	Quantity	List Unit Price	Net Unit Price	Total (USD)
Axon Plans & Packages (Continued)					
85070	TASER ASSURANCE PLAN ANNUAL PAYMENT, BODYCAM	20	240.00	240.00	4,800.00
				Subtotal	11,946.00
				Estimated Tax	0.00
				Total	11,946.00
Grand Total					59,730.00



Discounts (USD)

Quote Expiration: 08/31/2018

List Amount	77,210.00
Discounts	17,480.00
Total	59,730.00

**Total excludes applicable taxes and shipping*

Summary of Payments

Payment	Amount (USD)
Year 1	11,946.00
Year 2	11,946.00
Year 3	11,946.00
Year 4	11,946.00
Year 5	11,946.00
Grand Total	59,730.00

Notes

Agency has existing contract 11876 from 07/01/2017 to 06/30/2022 and is interested in transitioning to a new agreement, cancelling out a portion of their last contract resulting in a yet undetermined/un-applied amount of credit. Cancellation of contract 11876 will be accepted when receipt of an executed copy of this agreement is received. Credits will be determined based on a final approval/ship date discussed with the customer.

Axon's Sales Terms and Conditions

This Quote is limited to and conditional upon your acceptance of the provisions set forth herein and Axon's Master Services and Purchasing Agreement (posted at www.axon.com/legal/sales-terms-and-conditions), as well as the attached Statement of Work (SOW) for Axon Fleet and/or Axon Interview Room purchase, if applicable. Any purchase order issued in response to this Quote is subject solely to the above referenced terms and conditions. By signing below, you represent that you are lawfully able to enter into contracts. If you are signing on behalf of an entity (including but not limited to the company, municipality, or government agency for whom you work), you represent to Axon that you have legal authority to bind that entity. If you do not have this authority, please do not sign this Quote.

Signature: _____ Date: _____
Name (Print): _____ Title: _____
PO# (Or write N/A): _____

Please sign and email to Kenneth Pederson at kpederson@axon.com or fax to

Thank you for being a valued Axon customer. For your convenience on your next order, please check out our online store buy.axon.com

Quote: Q-173433-43292.898KP

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EXECUTIVE SESSION

MEMORANDUM TO COUNCIL

To: Mayor Branson and City Councilmembers

From: Mike Tvenge, City Manager

Date: August 9, 2018

Agenda Item: X. a. Receive Update on City Litigation

SUMMARY: The City Council will enter into executive session to discuss City litigation.

PROPOSED MOTION:

Move to enter into executive session pursuant to Kodiak City Code 2.04.100(b)(1) to discuss legal matters, the immediate knowledge of which would clearly have an adverse effect upon the finances of the City.

AUGUST 9, 2018
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