

City of Kodiak Regular Council Meeting Agenda for January 24, 2019
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 January 10, 2019, Regular Council Meeting.....1

- III. Persons to Be Heard**
 - a. Public Comments (limited to 3 minutes) (486-3231)

- IV. Unfinished Business**
 - a. None

- V. New Business**
 - a. Resolution No. 2019–04, Adopting an Alternative Allocation Method for the FY19 Shared Fisheries Business Tax Program and Certifying that this Allocation Method Fairly Represents the Distribution of Significant Effects of Fisheries Business Activity in FMA 13: Kodiak Area.....9
 - b. Authorization of Professional Services Contract for Legal Services With Boyd, Chandler, Falconer & Munson, LLP16

- 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. Adjournment**

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**MINUTES OF THE REGULAR COUNCIL MEETING
OF THE CITY OF KODIAK
HELD THURSDAY, JANUARY 10, 2019
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 Randall C. Bishop, Laura B. Arboleda, Terry J. Haines, Richard H. Walker, and John B. Whiddon were present and constituted a quorum. Councilmember Charles E. Davidson was absent. 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 December 13, 2018, regular meeting.

The roll call vote was Councilmembers Arboleda, Bishop, Haines, Walker, and Whiddon in favor. Councilmember Davidson was absent. The motion passed.

III. PERSONS TO BE HEARD

a. Public Comments

Mary Ellen Keen thanked the Council for the nonprofit grant awarded to the Kodiak Girl Scouts. She stated the award will help with travel costs for the girls and shared some of the events they have participated in within the community.

Daniel Mckenna-Foster stated he was speaking as a private citizen and he wanted to share his opposition for the Shelikof Street project outlined in Resolution No. 2019-01 and his disappointment in Resolution No. 2019-02 for the downtown revitalization committee.

Nick Szabo, Chairman of the Port and Harbor Advisory Board provided a report which included the following: Harbor project status updates; Alaska Aerospace launches; the KPD satellite station downtown; the Alaska President Lines lease; and recommendations for Gibson Cove.

Dan Ogg spoke in support of Resolution No. 2019-01. He commented on the Parks and Recreation Facility Upgrade on the CIP list and stated there are community members willing to volunteer and fundraise for the growth and maintenance of Baranof Park.

Debbie Glover said she was representing the Kodiak Hockey League and she spoke in support of Resolution No. 2019-01. She thanked the Council for their support.

IV. UNFINISHED BUSINESS

None

V. NEW BUSINESS**a. Resolution No. 2019–01, Adopting a FY2020 State Capital Improvement Program List**

Mayor Branson read Resolution No. 2019–01 by title. Resolution No. 2019–01 reflects the prioritized list of funding requests for the City’s main infrastructure related projects as outlined for FY2020 and will be submitted to our Alaska Legislature, via the Capital Project Submission and Information System (CAPSIS) upon adoption by Council. The five projects included in the resolution will provide formality to the City’s concerns and allow the Mayor, Council, and staff to promote the City’s interests.

Councilmember Haines MOVED to adopt Resolution No. 2019–01.

Councilmember Bishop MOVED to amend Resolution No. 2019–01 by substituting Resolution No. 2019–01(SUB).

Councilmember Whiddon stated the capital improvement program list was discussed and reprioritized at the work session to include the outdoor warning sirens / tsunami siren system.

The roll call vote on the amendment was Councilmembers Arboleda, Bishop, Haines, Walker, and Whiddon in favor. Councilmember Davidson was absent. The motion passed.

The roll call vote on the main motion as amended was Councilmembers Arboleda, Bishop, Haines, Walker, and Whiddon in favor. Councilmember Davidson was absent. The motion passed.

b. Resolution No. 2019–02, Rescinding Resolution No. 2013–19 and Re-Establishing a Downtown Kodiak Revitalization Special Committee

Mayor Branson read Resolution No. 2019–02 by title. Resolution No. 2019–02 provides changes to the formation and size of the Downtown Kodiak Revitalization Special Committee. The committee has already established the short-term and long-term priorities for downtown Kodiak. At this time, the Mayor recommends the committee be refined to the Mayor, three subcommittee chairs, and the manager, which will continue to meet and work on priorities to revitalize downtown Kodiak. The committee shall be active until the Council rescinds the resolution.

Councilmember Arboleda MOVED to adopt Resolution No. 2019–02.

The roll call vote was Councilmembers Arboleda, Bishop, Haines, Walker, and Whiddon in favor. Councilmember Davidson was absent. The motion passed.

c. Resolution No. 2019–03, Amending Section 14, Utilities (Water), of the Schedule of Fees and Charges to Allow Water Discounts as Incentive for the Collection of a Water Sample Program

Mayor Branson read Resolution No. 2019–03 by title. For the City to maintain and operate a compliant water system with the State of Alaska’s Department of Environmental Conservation (ADEC), water samples need to be collected from 40 local residences. The City Manager would like to streamline the efficiency and increase compliance with the community water sample program by creating a one-time discount incentive program for local residents. The amount of \$55.23 for the sampled city residents and \$66.26 for service district residents will be discounted on participants’ water utility bills following a completed water sample.

Councilmember Walker MOVED to adopt Resolution No. 2019–03.

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

d. Authorization of City Clerk Employment Agreement With Nova Javier

The City Clerk is hired by and works directly for the City Council under contract. In November 2018 the current City Clerk indicated she will retire April 30, 2019. The Council established a Clerk Hiring Committee. The Hiring Committee met to establish a hiring timeline and review a letter of interest submitted by Nova Javier, MMC. Ms. Javier has been in the Clerk profession for 18 years. She obtained her Master Municipal Clerk designation in 2009. She is well qualified for the City Clerk position and knowledgeable about local elections and other essential components of municipal government in Kodiak. Article IV-1 of the Charter states hires “shall be made solely on the basis of merit and fitness.” Since the City Clerk is a contracted position, this charter provision is the guiding rule for the appointment of the City Clerk. After receiving Council approval at the December 13, 2018, regular meeting to negotiate with Ms. Javier, the Hiring Committee negotiated a contract with Ms. Javier for the City Clerk position, and the Committee requests it be approved by the Council. If approved, Ms. Javier will begin employment with the City on April 15, 2019.

Councilmember Walker MOVED to authorize the new City Clerk employment agreement, Record No. 239628, with Nova Javier.

The roll call vote was Councilmembers Arboleda, Bishop, Haines, Walker, and Whiddon in favor. Councilmember Davidson was absent. The motion passed.

e. Appointment of City Advisory Board Members

Several advisory board seats expired at the end of December. Volunteers were solicited via newspaper advertisements, public service announcements, and City Clerk and department head recruitment efforts. Applications have been received for appointment to the Building Code Board of Appeals, Parks and Recreation Advisory Board, Port and Harbors Advisory Board, and the Personnel Board. Except for the Personnel Board whose appointments are made by the Council, appointments to the other boards are made by the Mayor and confirmed by the Council.

Mayor Branson made the following appointments:

- Doug Mathers to the Building Code Board of Appeals for a term ending December 31, 2021
- John Butler and Helm Johnson to regular seats on the Parks and Recreation Advisory Board for terms ending December 31, 2021
- Oliver Holm and Paddy O'Donnell to regular seats on the Port and Harbors Advisory Board for terms ending December 31, 2021
- Tim Abena to the Alternate No. 1 seat and David Jentry to the Alternate No. 2 seat on the Port and Harbors Advisory Board for terms ending December 31, 2019

Councilmember Haines MOVED to appoint Derek P. Foster to a two-year term on the Personnel Board and confirm the Mayoral advisory board appointments as stated.

The roll call vote was Councilmembers Arboleda, Bishop, Haines, Walker, and Whiddon in favor. Councilmember Davidson was absent. The motion passed.

VI. STAFF REPORTS

a. City Manager

Manager Tvenge said the City is accepting Christmas trees at the Wastewater Treatment Plant's south lot on Spruce Cape road. He stated the Kodiak Fire Department is sufficiently staffed to rotate to three-shifts of 24 hours on and 48 hours off. He shared they have been on a grueling 48 hour shift for the past 18 months. He expressed his appreciation for the dedication of the firefighters. He stated they were short staffed and still able to respond to all calls. He said the 2019 model ambulance built in Washington State is completed, and Deputy Chief Dorner will make the final inspection and acceptance prior to the shipment of the vehicle to Kodiak, which is expected in early March. Manager Tvenge shared that the ambulance was purchased with matching funds through a Southern Region EMS Code Blue grant. He said the City has been working with the Earthquake and Tsunami Program Manager at the Division of Homeland Security and Emergency Management and a siren company to determine local siren replacement and funding opportunities for Kodiak. He said he would work with the Kodiak Island Borough Manager to determine the tsunami siren needs along the road system.

b. City Clerk

Clerk Marlar expressed her gratitude for the Mayor and Council's leadership over the last 25 years of her employment with the City and commended the City Manager for his professionalism and hard work. She informed the public of the next scheduled City work session on January 22 and the regular Council meeting on January 24. Clerk Marlar welcomed Annika Woods, the new Assistant Clerk.

VII. MAYOR'S COMMENTS

Mayor Branson thanked the volunteers for their willingness to serve on the advisory boards. She stated she is pleased for the smooth transition of the City Clerk position and she thanked Deb for her service. She referred to the meeting packet and identified that the CIP resolution was amended to reflect the changes in the CIP list, which replaced Shelikof Street with the Tsunami Siren system. She said the adopted resolution reflects the City's priority of life and safety. She shared the history and accomplishments of the Downtown Kodiak Revitalization committee and stated the meetings are open to the public.

VIII. COUNCIL COMMENTS

Councilmember Arboleda shared her comments regarding opposition of Resolution No. 2019-03 regarding the incentive for the water samples. She stated the process to collect a water sample was completed successfully in the past without an incentive. She said that water collection is a requirement; therefore, she did not support the incentive. She said she commends the water treatment staff for their service. She thanked Clerk Marlar for her service and the advisory board volunteers. She said she appreciated the individuals that have maintained the winter roads.

Councilmember Walker thanked City Manager Tvenge and Fire Chief Mullican for their efforts to recruit a full staff at the Fire Department. He stated he was pleased with the CIP changes in Resolution No. 2019-01(SUB). He thanked Clerk Marlar, welcomed new Assistant Clerk Annika Woods to the Clerk's office, and congratulated Nova Javier as the new City Clerk. He said the Downtown Kodiak Revitalization committee for the City has made progress, and he said previous problems in the downtown area have been reduced. He thanked the advisory board volunteers. He shared that his mother-in-law Shirley Pruitt had recently passed and shared information for her memorial service.

Councilmember Whiddon said the next Fisheries Work Group is scheduled for January 23, 2019, and shared the upcoming topics of discussion. Councilmember Whiddon stated he welcomes positive and negative comments during the meetings and hopes that all citizen complaints are brought with a potential solution. He complimented staff and shared some of the capital project successes to include the pier improvements and Waste Water Treatment Plant upgrades.

Councilmember Bishop thanked the advisory board volunteers. He welcomed Annika to the City. He said everything is a process and highlighted that there were three new businesses in the downtown area. He encouraged the public to be willing to be part of the process.

Councilmember Haines reminded the public of the upcoming Galley Tables event. He shared his enthusiasm and encouraged the public to attend the City’s planning work session on January 26, 2019. He expressed his happiness for Nova Javier as the incoming City Clerk and commented on her vast experience as a municipal clerk.

IX. AUDIENCE COMMENTS

Clerk Marljar shared that there is a City Council Planning Work Session on Saturday, January 26, 2019, at 10 a.m. in the Fisheries Research Center.

Chris Lynch via telephone congratulated the City Manager on the success of the improvements in downtown Kodiak. She said as a business owner in the downtown area, she appreciates the work of the City.

X. ADJOURNMENT

Councilmember Whiddon MOVED to adjourn the meeting.

The roll call vote was Councilmembers Arboleda, Bishop, Haines, Walker, and Whiddon in favor. Councilmember Davidson was absent. The motion passed.

The meeting adjourned at 8:24 p.m.

CITY OF KODIAK

MAYOR



ATTEST:

CITY CLERK

Minutes Approved:

NEW BUSINESS

MEMORANDUM TO COUNCIL

To: Mayor Branson and City Councilmembers
From: Mike Tvenge, City Manager 
Thru: Karl Swanson, Interim Finance Director 
Date: January 24, 2019

Agenda Item: V. a. Resolution No. 2019-04, Adopting an Alternative Method for the FY2019 Shared Fisheries Business Tax Program and Certifying That This Allocation Method Fairly Represents the Distribution of Significant Effects of Fisheries Business Activity in Fisheries Management Area 13: Kodiak Area

SUMMARY: Resolution No. 2019-04 adopts an alternative allocation method and certifies the allocation method fairly represents the distribution of significant effects of Fisheries Business activity in Fishing Management Area (FMA) 13. This resolution adopts an alternative allocation from the long form, which was used in the past. The decision to use the short or alternative form is agreed upon by the Kodiak Island Borough, other Kodiak local governments, and the City each year by resolution. Staff recommends Council adopt Resolution No. 2019-04.

PREVIOUS COUNCIL ACTION: Each year, the City Council adopts a resolution to identify a method of payment of the shared fisheries taxes available to communities in the Kodiak Island area. Last year the Council adopted Resolution No. 2018-03 on January 25, 2018, identifying the alternative allocation as the preferred method for the shared fisheries business tax program.

BACKGROUND: The State of Alaska Shared Fisheries Business Tax Program was created in 1990 to help municipalities impacted by the effects of the rapidly expanding offshore fish processing industry. A previously existing fish tax sharing program (commonly referred to as the Raw Fish Tax Program), administered by the Department of Revenue, shares back to municipalities half of the state fisheries business tax collected from fish processors operating inside municipal boundaries. The Department's program extends tax sharing to include a sharing of fish taxes collected outside of municipal boundaries, primarily from floating processors.

There are two application methods available to the municipalities in each Fisheries Management Area

1. Under the **Standard Method**, each municipality in the FMA must determine and document the cost of fisheries business impacts experienced by the community in the previous calendar year. These impacts are submitted by each municipality in their applications. The department reviews the applications and determines if the impacts submitted are valid. Once

the impacts have been established for each of the municipalities in the FMA, the department calculates the allocation for each municipality using the following formula:

One half of the funding available within a FMA is divided up among participating municipalities on the basis of the relative dollar amount of impact in each municipality. The other half of the funding available to that area is divided equally among all eligible municipalities.

2. Under the **Alternative Method**, municipalities within the FMA agree on a distribution formula. The department only approves the use of a proposed alternative method if all the municipalities in the area agree to use the method, and if the method includes some measure of the relative effects of the fishing industry on the respective municipalities in the area.

The proposed alternative method divides half of the funding available equally among all eligible municipalities. The other half would be divided within the area and is based on population.

Due to the time and expense involved in determining and documenting the standard method, all of the FMAs have used the Alternative Method to determine the allocation of the Shared Fisheries Business Tax for the past several years. The Kodiak Management Area, FMA13, is the only FMA in Alaska that used the long form to distribute the Shared Fisheries Taxes to the communities up until FY2014.

DISCUSSION: The municipalities located in this region's FMA include Akhiok, Kodiak, Kodiak Island Borough, Larsen Bay, Old Harbor, Ouzinkie, and Port Lions. The total FY2019 program allocation to be shared within FMA13 is estimated to be \$254,478.73 compared to the \$252,914.79 in FY2018. Kodiak's share for FY2019 is estimated to be \$75,174.77. (Attachment B). The program requires that funding be first allocated to fisheries management areas around the state based on the level of fish processing in each area compared to the total fish processing for the whole state. Then the funding is further allocated among the municipalities located within each fisheries management area based on the relative level of impacts experienced by each municipality.

Based on capital expenditures made by the other municipalities in FMA13, it appears unlikely that the City of Kodiak would receive a larger allocation for FY2019 by using the standard method. The alternative allocation method allocates 50 percent shared equally among the municipalities located within the FMA 13 region. The remaining 50 percent is shared among the municipalities on a per capita basis. The City has opted, along with the other communities on Kodiak and the Borough, to use the alternative method (short form) since FY2015. Using the

alternative method this year does not preclude the City from using the standard method in future years.

Based on the cost and time needed to prepare the standard form, staff believes the alternative method will provide the available funds more easily to offset some of the impacts from fisheries-related activities in the community.

ALTERNATIVES:

- 1) Adopt Resolution No. 2019–04, which is the staff recommendation, because it provides the City with funding to offset impacts to fisheries business conducted in Kodiak.
- 2) Council could require the City to complete the standard method application. This is not recommended because it is inconsistent with the agreed upon method currently used by local governments in the Kodiak Island Borough.

FINANCIAL IMPLICATIONS: By adopting the resolution and completing the application, the City will receive funding from the Department of Commerce, Community and Economic Development. In FY2018 the City received \$86,507.88 and expects to receive \$75,174.77 for the FY2019. This funding is recorded in the general fund.

STAFF RECOMMENDATION: Staff recommends Council adopt Resolution No. 2019–04 in order for the City to receive funding using the alternative method.

CITY MANAGER’S COMMENTS: The City has received funds through the State of Alaska Shared Fisheries Business Tax Program since its inception, and Council approves the application process for the funds by resolution each year. Receipt of the shared fisheries tax helps to offset expenses that result from impacts to the City’s facilities, operations, and services created by fisheries activities. The department only approves the use of a proposed alternative method if all the municipalities/ communities in the area agree to use the method, and if the method includes some measure of the relative effects of the fishing industry on the respective municipalities in the area. Kodiak communities are using the alternative allocation method. I support staff’s recommendation to adopt Resolution No. 2019–04.

ATTACHMENTS:

Attachment A: Resolution No. 2019–04

Attachment B: DCCED FY2019 Shared Fisheries application letter

PROPOSED MOTION:

Move to adopt Resolution No. 2019–04.

**CITY OF KODIAK
RESOLUTION NUMBER 2019-04**

A RESOLUTION OF THE COUNCIL OF THE CITY OF KODIAK ADOPTING AN ALTERNATIVE ALLOCATION METHOD FOR THE FY2019 SHARED FISHERIES BUSINESS TAX PROGRAM AND CERTIFYING THAT THIS ALLOCATION METHOD FAIRLY REPRESENTS THE DISTRIBUTION OF SIGNIFICANT EFFECTS OF FISHERIES BUSINESS ACTIVITY IN FMA 13: KODIAK AREA

WHEREAS, AS 29.60.450 requires that, for a municipality to participate in the FY2019 Shared Fisheries Business Tax Program, the municipality must demonstrate to the Department of Commerce, Community and Economic Development that the municipality suffered significant effects during calendar year 2017 from fisheries business activities; and

WHEREAS, 3 AAC 134.060 provides for the allocation of available program funding to eligible municipalities located within fisheries management areas specified by the Department of Commerce, Community, and Economic Development; and,

WHEREAS, 3 AAC 134.070 provides for the use, at the discretion of the Department of Commerce, Community, and Economic Development, of alternative allocation methods which may be used within fisheries management areas if all eligible municipalities within the area agree to use the method, and the method incorporates some measure of the relative significant effect of fisheries business activity on the respective municipalities in the area; and,

WHEREAS, The Council of the City of Kodiak proposes to use an alternative allocation method for the allocation of FY2019 funding available within the FMA 13: Kodiak Area in agreement with all other municipalities in this area participating in the FY2019 Shared Fisheries Business Tax Program;

NOW, THEREFORE, BE IT RESOLVED that the Council of the City of Kodiak, Alaska, by this resolution, certifies that following alternative allocation method fairly represents the distribution of significant effects during 2017 of fisheries business activity in FMA 13: Kodiak Area:

All municipalities share equally 50% of the allocation; all municipalities share remaining 50% on a per capita basis.

The Kodiak Island Borough population is reduced by the population of the Cities of Akhiok, Kodiak, Larsen Bay, Old harbor, Ouzinkie and Port Lions.

CITY OF KODIAK

MAYOR

ATTEST:

CITY CLERK

Adopted:



THE STATE
of **ALASKA**
GOVERNOR BILL WALKER

Department of Commerce, Community,
and Economic Development

DIVISION OF COMMUNITY AND REGIONAL AFFAIRS

455 3rd Avenue, Suite 140
Fairbanks, Alaska 99701-4737
Main: 907.451.2718
Programs fax: 907.451.2742

November 15, 2019

Dear Municipal Official:

The Department of Commerce, Community, and Economic Development is pleased to announce availability of the **FFY 2019 Shared Fisheries Business Tax Program**. The purpose of the program is to allocate a share of state fish tax collected outside municipal boundaries with municipalities affected by fishing industry activities. Municipalities around the state will share approximately \$1.6 million based on 2017 fisheries activity as reported by fish processors on their fish tax returns. Details of how the program works are included in the application under *Program Description*.

Historically, your municipality along with the other communities in your fisheries management area (FMA) has filed using the Alternative Method found on the last four pages of this application. A breakdown is included that details the communities in your FMA, in addition to the anticipated payment based on the agreed upon allocation method for your FMA. If this agreement is still in place with your FMA, you will only need to have your Council/Assembly pass the enclosed alternative method sample resolution in order to participate in the program.

If your FMA intends to change the alternative method of allocation, the new proposal must be submitted to our office no later than **January 15, 2019**. If an agreement cannot be made with all communities in your FMA, you will need to file using the standard method and claim your significant effects. Instructions on both of these methods are detailed in the application packet.

**DEADLINE FOR SUBMISSION OF COMPLETED APPLICATION IS
FEBRUARY 15, 2019.**

Applications can be scanned and emailed to caa@alaska.gov with the subject line **"Municipality Name, FY19, SFBT"** If you have any questions about the program or require assistance in completing the application, please contact me at kimberly.phillips@alaska.gov or call (907) 451-2718.

Sincerely,

A handwritten signature in blue ink, appearing to read "Kimberly Phillips".

Kimberly Phillips
Grants Administrator II

Enclosures

FMA 13: Kodiak Area

Community	Population	50% Divided Equally	50% per Capita	Calculated Allocation	Calculated Allocation	Total Distribution
Total allocation:	\$231,406.85	\$115,703.43	\$115,703.43			
City of Akhiok	88	\$16,529.06	\$766.31	\$17,295.37	\$1,724.39	\$19,019.76
City of Kodiak	5,952	\$16,529.06	\$51,830.12	\$68,359.18	\$6,815.59	\$75,174.77
Kodiak Island Borough	6,626	\$16,529.06	\$57,699.32	\$74,228.38	\$7,400.77	\$81,629.15
City of Larsen Bay	86	\$16,529.06	\$748.89	\$17,277.95	\$1,722.66	\$19,000.61
City of Old Harbor	214	\$16,529.06	\$1,863.52	\$18,392.58	\$1,833.79	\$20,226.37
City of Ouzinkie	146	\$16,529.06	\$1,271.37	\$17,800.43	\$1,774.75	\$19,575.18
City of Port Lions	175	\$16,529.06	\$1,523.90	\$18,052.96	\$1,799.93	\$19,852.89
Totals	13,287	\$115,703.43	\$115,703.43	\$231,406.85	\$23,071.88	\$254,478.73
Community Count	7					


* 50% Divided Equally and 50% on a Per Capita Basis.

** Kodiak Island Borough population = population (13,287) less pop. of cities

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MEMORANDUM TO COUNCIL

To: Mayor Branson and City Councilmembers

From: Mike Tvenge, City Manager 

Date: January 24, 2019

Agenda Item: V. b. **Authorization of Professional Services Contract With Boyd, Chandler, Falconer & Munson, LLP for Legal Services**

SUMMARY: The City Manager discussed with Boyd, Chandler, Falconer & Munson (BCFM), LLP an additional contract term of two-years. Mr. Chandler stated that BCFM would welcome the opportunity to continue working with the Kodiak team. The new contract (Attachment A) outlines the changes in the initial contract. The fee change includes: a \$10 hourly fee change for Mr. Cacciola; and a \$25 hourly fee change for their new partner, Mr. Munson. Staff recommends Council authorize a new contract with Boyd, Chandler, Falconer & Munson, LLP.

PREVIOUS COUNCIL ACTION:

- BIRCH, HORTON, BITTNER, and CHEROT have provided legal services for the City of Kodiak from August 2000 to 2017.
- On January 14, 2017, during the planning work session the Council determined they would proceed with a Request for Proposal (RFP) for legal services, in preparation of their legal services contract ending on June 30, 2017.
- In March 2017, a Request for Proposal for General Counsel Legal Services was released by the City Manager's office.
- On April 11, 2017, Council discussed their preferred attorney selection process at a work session and the membership of the Legal Counsel Review Committee was determined.
- The closure period of the RFP was on May 2, 2017, and the City received proposals from seven law firms in Alaska. In August, the Mayor, two City Councilmembers, the City Manager, and the City Clerk interviewed representatives of four firms under consideration as the City's primary legal counsel and made a recommendation to Council.
- On September 28, 2017, Council approved a one-year contract with Boyd, Chandler & Falconer, LLP for professional legal services.

ALTERNATIVES:

- 1) Authorize the legal services contract with Boyd, Chandler, Falconer & Munson, LLP, which is staff's recommendation.
- 2) Amend the contract.
- 3) Do not authorize the contract.

FINANCIAL IMPLICATIONS: The FY2020 budget will include funds for legal services in the General Fund, Legislative, Legal, Professional Services account.

LEGAL: The services provided by legal counsel are identified in the Kodiak City Code. Legal services are critical to the City's day-to-day operation.

CITY MANAGER'S COMMENTS: Working with Brooks Chandler and staff at BCFM has been a pleasure, and I am supportive of the City to retain the firm for at least another two years.

ATTACHMENTS:

Attachment A: Contract for Professional Legal Services

PROPOSED MOTION:

Move to authorize the contract No. 239997 with Boyd, Chandler, Falconer & Munson, LLP for professional legal services.

CONTRACT FOR PROFESSIONAL LEGAL SERVICES

THIS CONTRACT ("Contract") is made this ~~28th day of September, 2017~~, 1st day of January, 2019 by and between the City of Kodiak, of P. O. Box 1397, Kodiak, Alaska 99615 ("City"), and Boyd, Chandler, & Falconer & Munson, LLP, an Alaska professional corporation, of 911 W. 8th Avenue, Suite 302, Anchorage, AK 99501 ("City Attorney" or "BCFM").

In consideration of the mutual promises herein, the parties agree as follows:

1. Scope of Services. The City Attorney is expected to provide the City with general counsel legal services to include the following:

- a. Serve as the legal advisor of and be responsible to the City Council, advise the City Manager and City Clerk concerning matters affecting the City, and perform other duties prescribed by the City Council.
- b. Prepare legal documents including, but not limited to ordinances, resolutions, contracts, collective bargaining contracts, conveyances, leases, easements, and legal opinions as needed.
- c. Be readily available for consultation with the City Council, City Manager, and City Clerk.
- d. Provide representation in court and manage the activities of other attorneys who may represent the City in court.
- e. Assist the City Manager in negotiations on the City's behalf and handle other legal matters as they may arise.
- f. Draft opinion letters regarding, among other things, the interpretation of the City Code, state and federal laws, and policies.
- g. Perform other such duties as may be prescribed for the City Attorney by ordinance or by direction of the City Council and/or City Manager.
- h. Work effectively with the City Council, City Manager, City Clerk, and, when directed, with other public agencies and other entities with which the City has a legal relationship.
- i. Attend at least one meeting annually in person and others telephonically, or in person, as requested.

2. Access to Municipal Personnel. The City Manager shall secure the cooperation of the City personnel as necessary to assist the City Attorney's performance hereunder.

3. Contract Administrator. The City Manager shall administer the contract on behalf of the City.

4. Term. The term of the professional services contract shall be ~~one~~two years initially. A longer term may be negotiated by the parties ~~after the initial year~~thereafter. The contract may be terminated at the convenience of the City at any time with or without cause.

5. Compensation.

- a. Fees. The City Attorneys' shall be compensated at the following hourly rates [effective January 1, 2019](#):

\$225 – Mr. Chandler
\$~~200~~25 – Mr. Munson
\$~~190~~200 – Mr. Cacciola
\$250 – Mr. Falconer
\$100 – Paralegal Services

The attorneys' fee schedule is to remain fixed for the ~~first year of the~~ [term of the](#) contract. ~~After the first year of the contract, the fee schedule may be negotiated.~~ The City Attorney will not charge for travel time by attorneys performing work for the City except when the attorney actually is performing work for the City while en route. Attorneys will be made available on call for telephonic participation in City meetings without charge for "standby" time. The City Attorney will bill at standard hourly rates for actual attendance at meetings but will not charge for "standby" time while in attendance at a city council meeting.

b. Costs. The City Attorney shall be entitled to reimbursement for out-of-pocket expenses incurred in the course of representation. Expenses, including long distance telephone charges, expedited mail or courier service, filing and recording fees, computerized research fees and travel expenses will be billed at actual cost. Certain in-house expenses, such as photocopying and messenger service, are billed at standard rates.

6. Payment and Reporting.

a. The City Attorney shall submit itemized monthly billings to the Finance Department, P.O. Box 1397 for payment of all fees and costs for which the City Attorney seeks reimbursement under paragraph 5. Costs shall be itemized and described separately on each monthly invoice.

b. Upon approved billing, payment will be remitted to the City Attorney within forty-five (45) days.

7. Termination of the City Attorney's Services. The City Attorney's services may be terminated:

- a. For convenience by the City Council;
b. By mutual consent of the parties; or

c. For cause, by either party where the other party fails in any material way to perform its obligations under this contract. Termination under this subsection is subject to the condition that the terminating party notify the other party of its intent to terminate, stating with reasonable specificity the grounds therefor, and the other party fails to commence to cure the default within fifteen (15) days after receiving notice and diligently work

to cure the default within thirty (30) days after receiving notice.

8. Duties Upon Termination. If the City Attorney's services are terminated, the City Attorney will be paid for services performed to the date of termination.

9. Case Management. Execution of the contract by the City shall act as full authority for the City Attorney to proceed with representation of the City as provided herein. The City will have complete and total access to all material, information, and files worked on by the City Attorney pursuant to this contract.

10. Assignments. City Attorney shall not assign this contract, or any interest in this Contract without consent of the City.

11. Confidentiality. The City Attorney agrees to discuss matters and reveal documents relating to this contract only with the City Council, City Manager, City Manager, City Clerk, or any other person authorized by the aforementioned, and as required by court order, city ordinance or Alaska law.

12. Notices. Any notice required pertaining to the subject matter of this contract shall be either personally delivered, faxed, or mailed by prepaid first class registered or certified mail, return receipt requested, to the following addresses:

City: City of Kodiak
Attn: Mike Tvenge, City Manager
~~P.O. Box 1397~~ [710 Mill Bay Road,](#)
[Room 113](#)
Kodiak, AK 99615
Fax: (907) 486-8600

City Attorney: Boyd, Chandler, ~~&~~ Falconer [& Munson](#), LLP
Attn: Brooks W. Chandler
911 W. 8th Avenue, Suite 302, Anchorage, AK 99501
Fax: (907) 274-3698

13. Conflicts of Interest. The City Attorney may not represent or assist private or public clients in connection with other claims, litigation, or other legal matters where such representation would constitute or appear to constitute a conflict of interest. In particular, the City Attorney shall comply with all relevant provisions of the Alaska Bar Rules and the Alaska Rules of Professional Conduct concerning the prohibition of conflicts of interest among clients. The City Attorney shall not accept any employment and shall not render any professional services to other parties if such action might be inconsistent with the above-referenced standards unless the prior approval of the City Council has been first obtained.

14. Relationship of Parties. The City Attorney shall perform its obligations hereunder as an independent City Attorney of the City. The City may administer the contract and monitor the City Attorney's compliance with its obligations hereunder.

15. Nondiscrimination. The City Attorney will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, ancestry, age, sex, or marital status or mental or physical disability. The City Attorney will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, religion, or mental or physical disability. Such action shall include, without limitation, employment, upgrading, demotion, or transfer, recruitment or recruiting advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training including apprenticeship. The City Attorney agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

16. Permits, Laws, and Taxes. The City Attorney shall acquire and maintain in good standing all permits, licenses, and other entitlements necessary to its performance under this contract. All actions taken by the City Attorney under this contract shall comply with all applicable laws to include, without limitation, statutes, ordinances, rules, and regulations.

17. Nonwaiver. The failure of either party at any time to enforce a provision of this contract shall in no way constitute a waiver of the provision, nor in any way affect the validity of this contract or any part thereof, or the right of such party thereafter to enforce each and every provision hereof.

18. Amendment. This contract may be amended, modified, or changed only in writing executed by the City Manager and an authorized representative of the City Attorney.

19. Governing Law. The laws of the State of Alaska shall govern the rights and obligations of the parties under this contract.

20. Severability. Any provision of this contract decreed invalid by a court of competent jurisdiction shall not invalidate the remaining provisions of the contract.

21. Integration. This instrument embodies the entire contract of the parties. There are no promises, terms, conditions, or obligations other than those contained herein. This contract shall supersede all previous communications, representations, or contracts, either oral or written, between the parties hereto.

22. Insurance. Boyd, Chandler, & Falconer, & Munson, LLP, at its expense shall provide the following insurance coverages for its performance under this Contract, and shall provide to the City certificates of insurance and/or policies acceptable to the City at the time this Contract is executed.

a. Professional Liability Insurance for all periods under the contract for claims up to a minimum amount of \$1,000,000 per claim.

b. Commercial General Liability Insurance, with a minimum of \$1,000,000 per occurrence and/or aggregate combined single limit, personal injury, bodily injury, and property damage.

c. Workers' Compensation Insurance shall be provided and maintained for all employees of Boyd, Chandler, ~~& Falconer~~ & Munson, LLP engaged in work under this Contract as required by AS 23.30.045 or any other applicable statutes or regulations. Boyd, Chandler, ~~& Falconer~~ & Munson, LLP shall be responsible for Workers' Compensation Insurance for any subcontractor who directly or indirectly provides services under this Contract.

d. Additional Insurance Requirements are as follows; (1) list the City as an additional insured, including all elected and appointed City officials, all City employees and volunteers, all City boards, commissions, and/or authorities and their board members, employees, and volunteers, and waive subrogation; (2) provide coverage that is primary to the City and not contributing with any other insurance or similar protection available to the City, whether other available coverage be primary, contributing, or excess; and, (3) Require sixty (60) days written notice of cancellation, non-renewal, reduction, and/or material change addressed to: City Clerk, 710 Mill Bay Road, Room 220, Kodiak, Alaska 99615.

e. If the above coverage expires during the term of this Contract, Boyd, Chandler, ~~& Falconer~~ & Munson, LLP shall deliver renewal certificates and/or policies to the City at least ten (10) days prior to the expiration date. Boyd, Chandler, ~~& Falconer~~ & Munson, LLP shall not commence operations under this Contract until it has obtained the coverage required under the terms of this Contract. All coverage shall be with insurance carriers licensed and admitted to do business in the State of Alaska and acceptable to the City. If Boyd, Chandler, ~~& Falconer~~ & Munson, LLP fails to comply with the insurance requirements of this Contract, the City may terminate this Contract on sixty (60) days written notice. Boyd, Chandler, ~~& Falconer~~ & Munson, LLP covenants to maintain the professional liability insurance policy required in this Contract for the period of time in which a person may commence a civil action as prescribed by the applicable statute of limitations. The coverage required by this Contract shall cover all claims arising in connection with Boyd, Chandler, ~~& Falconer~~ & Munson, LLP's performance under this Contract, whether or not asserted during the term of this Contract and even though judicial proceedings may not be commenced until after this Contract expires.

23. Inspection and Retention of Records. The City Attorney shall at any time during normal business hours and as often as the City Manager or Council may deem necessary, make available to the City for examination all records with respect to all matters covered by this contract for a period ending three (3) years after the date the City Attorney is to complete performance of this Contract. If City does not request delivery of the file for this matter before the end of the three year period, BCFM will have no further obligation to retain the file and may, at our discretion, destroy it without further notice to City. Upon request, and within a reasonable time, the City Attorney shall submit such other information and reports relating to its activities under this contract to the City in such a form and at such times as the Council may reasonably require. The City Attorney shall permit the Council or their designee to audit, examine, and make copies of such records, and to make audits of all research, materials, pleadings, records

of personnel, and other data relating to all matters covered by this contract. The City may, at its option, permit the City Attorney to submit its records to the City in lieu of the retention requirements of this section.

24. At sole option of City, all disputes concerning fees charged for professional services or costs incurred by BCFM are subject to arbitration under Alaska Bar Rule 34 except for:

(1) disputes where the City seeks affirmative relief against the attorney for damages based upon alleged malpractice or professional misconduct; or

(2) dispute over fees which were charged more than six years earlier, unless BCF or City could maintain a civil action over the disputed amount.

(3) disputes where the fee to be paid by City or on City's behalf has been determined pursuant to State statute or by a court rule, order or decision.

25. City has been advised that if services performed pursuant to this Agreement involve litigation City may become liable for certain costs, fees and expenses incurred by other parties if City is not the prevailing party in the litigation. Such costs, fees, and expenses may include, but are not necessarily limited to, those identified in Alaska Civil Rules 79 and 82, copies of which are attached to this Agreement.

26. Availability of Funds. This contract is subject to the availability of funds lawfully appropriated for its performance.

IN WITNESS WHEREOF, the parties have executed this contract.

CITY OF KODIAK

By: _____
Mike Tvenge, City Manager

Dated:

ATTEST:

BOYD, CHANDLER, & FALCONER, & MUNSON,
LLP

Debra Marlar, City Clerk

By: _____
Brooks W. Chandler, Partner

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