

City of Kodiak Regular Council Meeting Agenda for August 8, 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 July 25, 2019, Regular Council Meeting1

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

- IV. Unfinished Business**
 - a. Second Reading and Public Hearing, Ordinance No. 1388 Authorizing Amendment No. 4 to the Lease Between the City of Kodiak and NOAA for Office and Warehouse Space on Pier II.....10

- V. New Business**
 - a. First Reading, Ordinance No. 1389 Amending Chapter 2.04 With a New Section 2.04.025, Excusing the Mayor’s or Councilmembers’ Non-Attendance When Caused by City Business.....23
 - b. Resolution No. 2019-12, Amending Section 9, Harbor Fees of the Schedule of Fees, Charges, and Tariffs27
 - c. Resolution No. 2019-14, Authorizing Payment of Fiscal Year 2020 Nonprofit Organization Grants and In-Kind Contributions.....37
 - d. Authorization to Award Bid for Leasing Document Production Equipment to OfficeTECH (an Authorized Xerox Agency).....44
 - e. Authorization to Award Bid of Cisco Phone System Equipment and Installation and Migration of Existing Cisco System to GCI Communications Corp.....64
 - f. Authorization of a Three-Year Service Agreement for Preventative Maintenance for Uninterruptible Power Supply (UPS) with Vertiv Corporation.....77
 - g. Authorization to Purchase and Replace VRLA Batteries, Fans, and Capacitors in the Police Department’s Uninterruptible Power Supply (UPS) with Vertiv Corporation.....90
 - h. Authorization of FY2020 Pavement Repairs for Von Scheele Drive, Project No. 20-01/5039 to Brechan Construction LLC.....120

- 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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DRAFT

**MINUTES OF THE REGULAR COUNCIL MEETING
OF THE CITY OF KODIAK
HELD THURSDAY, JULY 25, 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 Laura B. Arboleda, Charles E. Davidson, Terry J. Haines, Richard H. Walker, and John B. Whiddon were present and constituted a quorum. Councilmember Randall C. Bishop was absent. City Manager Mike Tvenge, City Clerk Nova Javier, and Deputy Clerk Michelle Shuravloff-Nelson were also present.

Salvation Army Corps Sergeant Major David Blacketer gave the invocation and the Pledge of Allegiance was recited.

II. PREVIOUS MINUTES

Councilmember Whiddon MOVED to approve the minutes of the June 13, 2019, regular meeting, as presented.

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

III. PERSONS TO BE HEARD

a. Public Comments

Alisha Drabek, Afognak Native Corporation Executive Vice President, thanked the Mayor and Council for the last five-year land lease. She referred to lease amendment on the Council's agenda for the next five-years and said they plan to continue to use the land for green space and stated they are interested in purchasing the land in the future.

b. Public Hearing: Retail Marijuana Store Application No. 21069 for Wildflower

The City received notice from the State of Alaska on June 27, 2019, of a new application from Wildflower for a retail marijuana store license at 158 Alimaq Drive. As part of the license application review process established by Ordinance No. 1378, this hearing allows the public to comment before the Council considers the application later in the agenda.

Mayor Branson closed the regular meeting and opened the public hearing.

Janiese Stevens, Wilflower Marijuana Store applicant, thanked the Council and said she looked forward to working with the City.

Mayor Branson closed the public hearing and re-opened the regular meeting.

c. Public Hearing: Resolution No. 2019–13 Amending Section 14, Utilities (Sewer), of the Schedule of Fees, Charges, and Tariffs and Authorizing Implementation of a Five-Year Rate Structure

The City sets its fees and charges for various services by resolution of the Council. This public hearing on proposed fee schedule amendments is scheduled prior to New Business agenda item V.c. Resolution No. 2019–13 Amending Section 14, Utilities (Sewer), of the Schedule of Fees, Charges, and Tariffs and Authorizing Implementation of a Five-Year Rate Structure. The proposed changes to fees pertain to the sewer rate increases. The sewer rate fee changes are proposed to take effect on August 1, 2019. The Council has requested a public hearing prior to amending fees.

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

IV. UNFINISHED BUSINESS

a. Second Reading and Public Hearing, Ordinance No. 1387, Replacing the Existing Addendum B, Sexual Harassment and Anti-Harassment Policy in the City Personnel Rules and Regulations with a New Addendum B, Non-Discrimination, Anti-harassment and Equal Employment Policy

Mayor Branson read Ordinance No. 1387 by title. The City of Kodiak entered into a settlement agreement with the Alaska State Commission for Human Rights (ASCHR) as a result of Michael Chiesa v. City of Kodiak, Kodiak Police Department, per Settlement Agreement J-15-068 and J-16-291. The City, as required in the agreement, needs to comply with remedial provisions to include adopting a revised non-discrimination, anti-harassment and equal employment policy by ordinance and provide training to a select group, identified in the agreement.

The existing policy in the Personnel Rules and Regulations, Addendum B needs to be replaced with the new Non-Discrimination, Anti-Harassment and Equal Employment Policy.

Councilmember Davidson MOVED to adopt Ordinance No. 1387.

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

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

V. NEW BUSINESS

a. First Reading, Ordinance No. 1388 Authorizing Amendment No. 4 to the Lease Between the City of Kodiak and NOAA for Office and Warehouse Space on Pier II

Mayor Branson read Ordinance No. 1388 by title. Ordinance No. 1388 authorizes Amendment No. 4 to the existing NOAA Warehouse Lease at Pier II. Currently NOAA leases warehouse

space totaling 5,400 sf at \$17.55 per square foot per year. The current lease allows for this Amendment No. 4 and is supported by the Harbormaster.

Councilmember Walker MOVED to pass Ordinance No. 1388 in the first reading and advance to second reading and public hearing at the next regular or special Council meeting.

Councilmember Whiddon stated he appreciated the work of staff to bring the lease rate to market value.

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

b. Resolution No. 2019–13, Amending Section 14, Utilities (Sewer), of the Schedule of Fees, Charges, and Tariffs and Authorizing Implementation of a Five-Year Rate Structure

Mayor Branson read Resolution No. 2019-13 by title. Jacobs (formerly CH2MHill) has prepared several water and sewer rate studies for the City of Kodiak dating back to 1982. The last study was completed in 2011 and the Council adopted five years of the rates projected out over a 10-year period for water and a single-year increase for sewer. In February 2018 staff requested Jacobs to complete the sewer rate structure and make recommendations if rates needed to be adjusted. The study showed rates needed to be increased over a five-year period to meet operational and capital improvement needs. The Council has considered the 2019 rate study at several work sessions including presentations by Jacobs.

Councilmember Arboleda MOVED to adopt Resolution No. 2019–13.

Councilmember Whiddon referred to Resolution No. 2019–13 and stated the Council agreed to adopt the five-year rate structure with the condition that the rates be reviewed on an annual basis, which is stated within the resolution.

Councilmember Davidson referred the infrastructure costs of the sewer system and regulatory requirements.

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

c. Consideration of Retail Marijuana Store Application No. 21069 for Wildflower

The City received notice from the State of Alaska on June 27, 2019, of a new application from Wildflower for a marijuana retail store license at 158 Alimaq Drive.

Ordinance No. 1378 established the license application review process for the City Council in Section 4. As required by Section 4 of Ordinance No. 1378, the City Clerk sent inquires to the Chief of Police, Fire Chief, Finance Director, and Building Official asking if any had concerns about the proposed license. None expressed concerns that would require the Council to object to the issuance of the license. This section also stipulates, for the purpose of public hearing and Council action, that the clerk place the matter of the application upon the agenda for a regular or special meeting of the Council held not less than fifteen or more than 50 days from receipt of the

notice from the Alcohol and Marijuana Control Office. A public hearing was held earlier in tonight's meeting.

Councilmember Haines MOVED to direct the City Clerk to issue a letter of non-objection with conditions that prohibit the sale of edible marijuana products to the Marijuana Control Board for Marijuana Retail Store Application No. 21069 for Wildflower.

Councilmember Haines reminded the public that the City prohibits marijuana edibles. He encouraged citizens to share their viewpoints as they continually review the City's regulations.

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

d. Authorization of the Regional and Community Jail Contract with the Alaska Department of Corrections

The Alaska Department of Corrections (DOC) has proposed a new one-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, 2019, and continue in force through June 30, 2020. 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 additional amounts for services the City provides, to include: \$37,380 for Pretrial Electronic Monitoring Services; \$53,400 for Pretrial Supervision; and \$10,000 for Sentenced Electronic Monitoring. The total FY2020 contract amount is \$1,092,332. The Kodiak Community Jail is an integral piece to the overall public safety of Kodiak.

Councilmember Walker MOVED to authorize a one-year professional services contract for Regional and Community Jail services with the Alaska Department of Corrections (DOC Contract No. 2001006) commencing on July 1, 2019, and ending on June 30, 2020, for \$1,092,332 and authorize the City Manager to sign the agreement on behalf of the City.

Councilmember Whiddon commended staff for the work on this contract and increasing the revenue that will be earned.

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

e. Authorization of Lease Amendment 1 to Adjust the Rental Rate for the 5-Year Renewal of a City of Kodiak – Afognak Lease.

The City of Kodiak and Afognak Native Corporation entered into a lease agreement in 2014 on a City-owned property. During that time, the Council's decision was not sell City land, therefore the discussions with Afognak Native Corporation turned to the idea of leasing property for the purposes of viewshed protection. City Council intended to complete an updated land use study on Near Island before entering into long-term property leases, therefore approved a 2014 lease,

which was for a short duration and staff believed it was a benefit to Afognak Native Corporation and the City. Council adopted Ordinance No. 1316 in May 2014.

Councilmember Davidson MOVED to authorize Lease Amendment # 1 to adjust the rental rate for the five-year renewal of a City of Kodiak – Afognak Lease and authorize the City Manager to sign documents on behalf of the City.

Councilmember Whiddon complimented the Afognak Native Corporation and indicated that there are many community events held at the facility.

Councilmember Haines supports the usage of the land lease for the viewshed.

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

f. Authorization of FY2020 Marketing and Tourism Development Agreement With Discover Kodiak

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. This Council action will approve the agreement for FY2020 in the amount of \$108,000, which was approved in the FY2020 budget.

Councilmember Arboleda MOVED to authorize the FY2020 Marketing and Tourism Development Agreement 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.

Councilmember Whiddon MOVED to amend the motion to approve a two-year authorization for FY2020 and FY2021 Marketing and Tourism Development Agreement with Discover Kodiak in the amount of \$108,000 annually 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.

Councilmember Whiddon said that Discover Kodiak has presented measurable outcomes and been very productive. He said by amending and authorizing the agreement for a two-year timeframe will allow Discover Kodiak to hire new staff and have an easier time projecting budgetary expenses.

Councilmember Haines complimented Discover Kodiak and the increase in tourism to the community.

Councilmember Davidson stated that Kodiak has become more widely known for tourism and he supports the amendment.

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

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

g. Authorization of Bid Award for Bid No. 2019-009 Sodium Chloride FY 2020

Each year Public Works combines deicing salt with ¼ inch rock chips for winter deicing and traction control on City streets and parking lots. Annually the quantity of product requested is based on the remaining stock on hand and the previous winter’s consumption. A bid was advertised on May 6, 2019 for 150 tons of salt for winter deicing. Bids were opened on June 6 and we had two bidders.

Councilmember Haines MOVED to authorize the FY2020 sodium chloride bid to Round Butte Products in the amount of \$57,920 with funds coming from the FY20 Public Works Department, Street Supplies account and authorize the City Manager to sign documents on behalf of the City.

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

h. Authorization of Bid Award for FY2020 Petroleum Products

Each year the Public Works Department issues bids for the City’s petroleum products. Bids were opened on June 6, 2019, for petroleum products FY2020. Two bids were received. Petro Marine Services was the low bidder for heating and equipment fuel and North Pacific Fuel was low bidder for unleaded gasoline. Staff recommends Council authorize the bid award for the purchase of unleaded gasoline to North Pacific Fuel and heating and equipment fuel to Petro Marine Services.

Councilmember Walker MOVED to authorize award of the City’s FY2020 petroleum products bid to Petro Marine Services for heating and equipment fuel and to North Pacific Fuel for unleaded gasoline fuel for all four fuel types with funds coming from each department’s FY2020 line items and authorize the City Manager to sign documents on behalf of the City.

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

i. Authorization to Purchase a Cat 950GC Loader from NC Machinery

Public Works budgeted to replace our 1995 Case 821 B Loader in the FY 2020 budget. After evaluating the options of bidding on our own for a replacement loader or attaching to the State of Alaska bid, we opted to attach to the State of Alaska’s bid as allowed in City Code 3.12.070 (c). NC Machinery currently has a contract with the State to supply Cat loaders. NC Machinery has offered a Cat 950GC equipped as the City requested for \$229,211.

Councilmember Davidson MOVED to authorize the purchase of a Cat950GC from NC Machinery in an amount not-to-exceed \$229,211 with funds coming from the Streets Improvement Fund Project No. 5040 Streets Capital Equipment and authorize the City Manager to execute the documents on behalf of the City.

Councilmember Whiddon stated that he appreciates that the staff was cost effective by attaching to the state contract and he commented that this effort saved tax dollars. He commented that it is expensive to maintain services and unfortunately Kodiak’s climate can be harsh on equipment.

Councilmember Davidson asked Manager Tvenge about the budget for this item and Manager Tvenge stated that it was purchased under budget by approximately \$100,000.

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

j. Recommendation of Appointment of City Applicant to the Planning and Zoning Commission

Three of the seven seats on the Planning and Zoning Commission are designated as City seats. There is currently one City seat that is vacant for a term to expire December 2021, which was vacated by Mr. Barry Altenhof.

An application was received from Mr. Duane Dvorak and he was interviewed by Mayor Branson and Councilmembers on Tuesday, July 23, 2019. Mr. Dvorak served on the Commission as a Borough representative and due to his recent move to the City, he resigned from the Borough seat and desires to serve on the City seat.

Councilmember Haines MOVED to recommend Mr. Duane Dvorak for appointment to the vacant City seat on the Planning and Zoning Commission for a term ending December 2021.

Councilmember Davidson thanked Duane for volunteering, and commended him for being well prepared during the interview. Councilmember Haines agreed with Councilmember Davidson and stated that Mr. Dvorak is a knowledgeable individual and he believes he will be a good representative.

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

VI. STAFF REPORTS

a. City Manager

Manager Tvenge said the third annual employee picnic will be held at Baranof Park on Friday, August 9 from 3 p.m. to 6 p.m. He said the Alaska Division of Homeland Security and Emergency Management announced yesterday that the City of Kodiak was awarded \$586,063 for tsunami sirens, emergency radios and emergency shelter cots. He shared that a second award for \$20,000 will be used for emergency management. He highlighted that the State of Alaska must accept the federal funding source making the funding available to the City for expenditure October 1. Manager Tvenge acknowledged the work of Fire Chief Mullican and Chief of Police Putney to secure this funding for the community.

Manager Tvenge said that the East Addition Dog Park is now open. He stated that a new section of the park is fenced for temporary use while the Parks & Recreation Department continue to

make improvements to the original site. He shared that the City has signed an agreement with the State Department of Transportation for temporary use of the Center Street parking lot while sidewalk improvements are constructed next summer. The exception will be during Kodiak's Crab Festival where the entire parking lot will be available. The temporary use includes a narrow stretch along Center Street, not the entire parking lot.

b. City Clerk

Clerk Javier gave an overview of the upcoming meeting schedule work session and regular Council meetings. She indicated that candidate nominating petitions are now available in the Clerk's office in room 110.

VII. MAYOR'S COMMENTS

Mayor Branson thanked Fire Chief Mullican and Chief of Police Putney for their work to obtain grant funding for sirens. She thanked the City Manager for his monthly report. She thanked Duane Dvorak for volunteering to represent the City on the Planning & Zoning Commission and she thanked Councilmember Haines for volunteering to represent the City on the Consolidation Committee. She shared current legislative updates. She said HB2001 is open for public comments and she explained the overall content of the state budget and the restored funding proposed. She said it will now go to the Senate and said the lobbyist keeps the City well informed. She said the Alaska Marine Highway System (AMHS) has a proposed draft winter schedule that eliminated a ferry service from January to April 2020; she said the City wrote a letter to Department of Transportation (DOT) encouraging a ferry service at least once a week. She said she attended the marine highway advisory board meeting and there was lengthy discussion and she requested a narrative that explains the proposed schedule. She said comments can be made with DOT directly on Monday, July 29; Mayor Branson provided the contact information for DOT and encouraged the public to make comments. She said they received a letter regarding concerns with the updated senior sales tax exemption and follow-up occurred individually, which will include written response.

VIII. COUNCIL COMMENTS

Councilmember Haines said the weather has been nice. He encouraged to provide public input on the Governor's budget and stated that this is the time to contact your legislators.

Councilmember Whiddon said several letters have gone out from the City regarding fisheries. He said they commented on the Bristol Bay environmental impact statement and he said they continue to support electronic monitoring. He said USCG's 229th birthday on August 4 and he thanked the USCG for their service.

Councilmember Arboleda thanked the Chiefs for securing the funding for sirens and emphasized the public safety service for Kodiak. She commended the Discover Kodiak's Executive Director for her work on marketing and tourism. She encouraged citizens to reach out to the legislature.

Councilmember Davidson wished everyone a wonderful summer. He thanked the City staff.

Councilmember Walker acknowledged the Chiefs’ for their work. He said he is pleased to hear about the City’s employee picnic. He encouraged citizens to comment on the ferry system and budgetary issues within the state, and he said to be bear aware.

IX. AUDIENCE COMMENTS

Michael Queen, Inlandboatmen’s Union of the Pacific Executive Boardmember, said he is available to speak to anyone with questions outside of the regular Council meeting.

X ADJOURNMENT

Councilmember Davidson MOVED to adjourn the meeting.

The meeting adjourned at 8:36 p.m.

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

CITY OF KODIAK

MAYOR

ATTEST:


CITY CLERK

Minutes Approved:

UNFINISHED BUSINESS

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MEMORANDUM TO COUNCIL

To: Mayor Branson and City Councilmembers
From: Mike Tvenge, City Manager 
Thru: Josie Bahnke, Deputy City Manager
Date: August 8, 2019

Agenda Item: IV. a. Second Reading and Public Hearing, Ordinance No. 1388, Authorizing Amendment No. 4 to the Lease Between the City of Kodiak and NOAA for Warehouse Space on Pier II

SUMMARY: Ordinance No. 1388 authorizes Amendment No. 4 to the existing NOAA Warehouse Lease at Pier II. Currently NOAA leases warehouse space totaling 5,400 sf at \$17.55 per square foot per year. The current lease allows for this Amendment No. 4 and is supported by the Harbormaster.

PREVIOUS COUNCIL ACTION:

- In March 2009 Council approved a ten-year lease to NOAA that included 5,400 sf of Pier II warehouse space on the ground floor, 147 sf of office space on the second floor, and parking adjacent to the warehouse. Ordinance No. 1325 would amend the lease to remove the office space identified in the original lease. Council passed it in the first reading at the regular meeting on August 28, 2014.
- In September 2014, the Council adopted Ordinance No. 1325, which authorizes Amendment No. 1 to the existing NOAA Warehouse Lease at Pier II, which excluded a 147 square foot (sf) office on the second floor. At the time, NOAA leased warehouse and office space totaling 5,547 sf at \$17.55 per square foot per year. NOAA desired to exclude the office space from the lease. Exclusion of the office space resulted in a reduction in rent of \$2,580.33 annually, or \$215.03 per month.
- In March 2019, a Standstill Agreement (Lease Amendment #3) was signed to extend the lease to July 31, 2019.
- On July 25, 2019, Council passed Ordinance No. 1388 in the first reading and advanced to second reading and public hearing at the next regular or special Council meeting.

DISCUSSION: NOAA has a long-term commitment with the City of Kodiak to homeport the research vessel OSCAR DYSON at Pier II. In exchange for funding that was provided by NOAA to rebuild Pier II, the vessel is exempt from dock fees. To support vessel operations, NOAA leased warehouse and office space in the Pier II warehouse. Provisions in the lease allow for amendments after the first five years. The original lease was approved in 2009, and the first five-year period started in March 2014. NOAA continues to use the warehouse space for its intended purpose.

ALTERNATIVES:

- 1) Approve the amendment to the NOAA warehouse lease. This is the recommendation of staff.
- 2) Do not approve the amendment. NOAA could elect to forfeit the entire lease or ask to re-negotiate the terms. This would not be beneficial to the City. NOAA pays a premium rate for the facility.

FINANCIAL IMPLICATIONS: The current lease for the warehouse space is \$94,787.97 annually or \$7,898.97 per month. Under the new negotiated agreement, annual rent will be \$114,744.00 or \$9,562.00 per month.

LEGAL: The ordinance was prepared by the City Attorney.

STAFF RECOMMENDATION: Staff recommends Council adopt Ordinance No. 1388 to amend the NOAA lease for Pier II Warehouse, effective March 1, 2019 to February 29, 2024.

CITY MANAGER'S COMMENTS: I support NOAA's request and the Deputy City Manager's recommendation to authorize the amendment of the lease for Pier II warehouse space. The lease space is primarily used for storage, and supports the Oscar Dyson's mission. The lease is currently extended through a Standstill Agreement until Ordinance 1388 is approved and effective.

ATTACHMENTS:

- Attachment A: Ordinance No. 1388, Amendment No. 4
- Attachment B: Standstill Agreement
- Attachment C: NOAA lease amendment 2019-2024

PROPOSED MOTION:

Move to adopt Ordinance No. 1388.

**CITY OF KODIAK
ORDINANCE NUMBER 1388**

AN ORDINANCE OF THE COUNCIL OF THE CITY OF KODIAK AUTHORIZING AMENDMENT NO. 4 TO THE LEASE BETWEEN THE CITY OF KODIAK AND NOAA FOR OFFICE AND WAREHOUSE SPACE ON PIER II

WHEREAS, the City owns a warehouse building on Pier II that contains office and warehouse space; and

WHEREAS, under a U.S Government Lease for Real Property dated March 1, 2009 (the "Lease"), the City leased 5,547 square feet of office and warehouse space on Pier II to the U S Department of Commerce National Oceanic and Atmospheric Administration ("NOAA"); and

WHEREAS, NOAA desires to amend the Lease to relinquish the leased office space, with a corresponding reduction in rent; and

WHEREAS, the Council finds that it would be appropriate and in the public interest to authorize the amendment to the Lease.

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

Section 1: The Council of the City of Kodiak hereby authorizes Lease Amendment No. 4 to Lease No 133954 with the U.S. Department of Commerce, National Oceanic and Atmospheric Administration (the "Amendment") to reduce the leased area to 5,400 square feet and to adjust the annual rent under the Lease to \$94,787.67

Section 2: The form and content of the Amendment hereby are in all respects authorized, approved and confirmed, and the City Manager hereby is authorized, empowered and directed to execute and deliver the Amendment to the U.S. Department of Commerce, National Oceanic and Atmospheric Administration 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 said document now before this meeting; and from and after the execution and delivery of said document 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 Amendment as executed.

Section 3: This ordinance shall go into effect one month after its passage and publication.

CITY OF KODIAK

MAYOR

ATTEST:

CITY CLERK

First Reading: July 25, 2019

Second Reading:

Effective Date:

GENERAL SERVICES ADMINISTRATION PUBLIC BUILDINGS SERVICE LEASE AMENDMENT	LEASE AMENDMENT No. 3
	TO LEASE NO. GS-10B-07054
ADDRESS OF PREMISES PIER II WAREHOUSE 727 SHELIKOF STREET KODIAK, AK 99615727	PDN Number: N/A

THIS AMENDMENT is made and entered into between **City of Kodiak**

whose address is: 710 Mill Bay Road, Kodiak, AK 99615

hereinafter called the Lessor, and the **UNITED STATES OF AMERICA**, hereinafter called the Government:

WHEREAS, the parties hereto desire to amend the above Lease to extend the lease through 7/31/2019 and memorialize the attached Standstill Agreement.

NOW THEREFORE, these parties for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, covenant and agree that the said Lease is amended, effective 2/28/2019 as follows: Part II Section B TERM Paragraph 3 shall be deleted in its entirety and replaced with the same numbered paragraph, below, and Exhibit LA3-1 is hereby attached to the Lease.

B. TERM

3. To have and to hold, for the term commencing on March 1, 2019 and continuing through July 31, 2019 inclusive. This lease shall terminate on the earlier of July 31, 2019, or on the date a new lease agreement is signed in accordance with the attached Exhibit LA3-1.

This Lease Amendment contains 1 pages.

All other terms and conditions of the lease shall remain in force and effect.
 IN WITNESS WHEREOF, the parties subscribed their names as of the below date.

FOR THE LESSOR:

Signature: Mike Tvenge
 Name: Mike Tvenge
 Title: City Manager
 Entity Name: City of Kodiak
 Date: 3-7-19

FOR THE GOVERNMENT:

Signature: Breanne Campbell
 Name: Breanne Campbell
 Title: Lease Contracting Officer
 GSA, Public Buildings Service, Region 10
 Date: 3/7/2019

WITNESSED FOR THE LESSOR BY:

Signature: Debra Marlar
 Name: Debra Marlar
 Title: City Clerk
 Date: March 7, 2019



GSA Northwest Arctic Region

STANDSTILL AGREEMENT

THIS AGREEMENT (hereinafter, "Agreement") is made by and between City of Kodiak, (hereinafter, the "Lessor"), whose address is 710 Mill Bay Road, Kodiak, AK 99615 and the United States of America (hereinafter, the "Government"), acting by and through the General Services Administration ("GSA"), 400 15th Street SW (10PRAC), Auburn, WA 98001-6599.

RECITALS:

1. The Lessor owns certain improved real property located at Pier 2 Warehouse, 727 Shelikof Street, Kodiak, AK 99615 (hereinafter, the "Premises"). The Government currently occupies approximately 5,400 rentable square feet (rsf), 5,400 usable square feet (usf) of office and related space on the Premises under Lease No. GS-10B-07054, (hereinafter, "the Lease") as amended. The Lease expires on February 28, 2019. The Lessor and the Government (hereinafter, collectively, "the Parties") have not consummated a lease extension/new lease agreement to date.
2. The Parties do not want an unnecessary condemnation lawsuit and the Government does not want its operations, services or tenancy interrupted or disturbed. Neither party wants a lease holdover, and the Parties prefer their negotiations to end with a new lease agreement at a new monthly rental rate to be retroactively effective from March 1, 2019.
3. By this Agreement, the Parties seek to preserve the status quo, pending the completion of a leasehold acquisition procedure which could result in a mutually acceptable new lease, by the terms of which the Government could continue to lease the Premises from the Lessor.
4. The Lessor and the Government believe that this Agreement will facilitate settlement negotiations. As evidenced by their signatures to this Agreement, the Parties agree that no right, action or claim either party may otherwise have against the other party will be prejudiced or waived by this agreement.

NOW THEREFORE, in consideration of the foregoing recitals and the mutual covenants set forth herein, the adequacy of which is hereby acknowledged by the undersigned, the Parties agree as follows:

During the term of this Agreement:

1. The Parties agree to negotiate, actively and in good faith, a new lease for the Premises.
2. **The Government will not condemn the Premises by the power of eminent domain, and will not file a Declaration of Taking with respect to the Premises.**

3. **The Lessor will not initiate an “inverse condemnation”, or breach of lease action in any United States Court or tribunal with respect to the Premises.**
4. **The Lessor will not:**
 - A. **undertake to evict the Government from the Premises or;**
 - B. **interfere with the use or occupancy of the Premises by the Government; or**
 - C. **market the space to potential tenants; or**
 - D. **interrupt the operations, building services or utilities of the Government from what they were while the lease was in effect; or**
 - E. **threaten to do any of the acts or omissions referenced in A, B, C, or D above.**
5. **Each Party agrees not to take any action to alter its position to the detriment of the other Party in any condemnation type action arising out of these facts.**

At all times after this Agreement becomes effective:

6. **The Government shall receive full credit for money paid to the Lessor during the term of this Agreement in accordance with Lease No. GS-10B-07054 whether there is a lease extension, new lease, other legal action, or settlement.**
7. **Neither Party will seek or accept severance damages or attorneys’ fees from the other Party for the period this Agreement is in effect.**
8. **In the event that a lease extension, or new lease, with respect to the Premises, is not executed by the Parties during the course of this Agreement, or that this Agreement is otherwise terminated, then any legal proceedings arising therefrom is stipulated by the Parties to be deemed to have been commenced on March 1, 2019.**
9. **Termination of Agreement: This Agreement shall terminate on the earlier of **July 31, 2019**, or on the date a lease extension or new lease agreement is signed by the Parties. This termination provision may be amended to extend the termination date of this Agreement by the mutual written consent of the Parties.**
10. **Successors in Interest: All of the terms, covenants, agreements, and provisions herein contained shall bind and inure to the benefit of the Lessor and the Government, their heirs, executors, administrators, personal representatives, successors, trustees, receivers, and assigns, as applicable, except as otherwise provided herein.**
11. **Merger Clause: All prior understandings and agreements with respect to the subject matter of this Agreement, written or oral are merged into this Agreement. This Agreement represents the final agreement between the Parties with respect to such subject matter, and may not be superseded, except by a separate written agreement signed and agreed to by the Parties.**

12. Amendments: Neither this Agreement, nor any terms hereof, may be changed, waived, discharged or terminated orally, but only by an instrument in writing signed by the Party against which the enforcement of a change, waiver, discharge or termination is sought.
13. Construction: Any provision contained in this Agreement which is prohibited or unenforceable shall be ineffective to the extent of such prohibition or enforceability without invalidating the remaining provisions hereof. A waiver by a Party of any right, covenant, condition or remedy in any instance hereunder shall not operate as a waiver of such right, covenant, condition or remedy in any other instance, and waiver by a Party of any breach of the terms hereof shall not be a waiver of any additional or subsequent breach. This Agreement shall be governed by, and construed in accordance with, the laws of the United States of America.
14. Counterparts: This Agreement may be executed in photocopied counterparts which, when taken together, shall constitute a single agreement.
15. Effective Date: This Agreement is effective and enforceable only after having been first signed by the Lessor, and second, accepted and signed by the Government.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the 1st day of March, 2019.

Lessor:

By: Mike Trenge (name)
City Manager (title)

United States of America

By: Breanne Campbell
Lease Contracting Officer
General Services Administration

GENERAL SERVICES ADMINISTRATION PUBLIC BUILDINGS SERVICE	LEASE AMENDMENT No. 4
	TO LEASE NO. GS-10B-07054
LEASE AMENDMENT	
ADDRESS OF PREMISES PIER II WAREHOUSE 727 SHELIKOF STREET KODIAK, AK 99615727	PDN Number: N/A

THIS AMENDMENT is made and entered into between **City of Kodiak**

whose address is: 710 Mill Bay Road, Kodiak, AK 99615

hereinafter called the Lessor, and the **UNITED STATES OF AMERICA**, hereinafter called the Government:

WHEREAS, the parties hereto desire to amend the above Lease to add and execute a five (5) year renewal term.

NOW THEREFORE, these parties for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, covenant and agree that the said Lease is amended, effective 6/21/2019 as follows: Part II Section B TERM Paragraph 3 and Part II Section C RENTAL paragraphs 5 and 6 shall be deleted in their entirety and replaced with the same numbered paragraph, below.

Upon execution of this Lease Amendment #4, the Standstill Agreement executed in LA #3 shall be terminated.

B. TERM

3. To have and to hold, for the term commencing on March 1, 2019 and continuing through February 29, 2024 inclusive. The Government may terminate this lease in whole or in part at any time on or after February 28, 2014, by giving at least 60 days notice in writing to the Lessor. No rental shall accrue after the effective date of termination. Said notice shall be computed commencing with the day after the date of mailing.

C. RENTAL

5. Amount of annual rent: \$114,744.00

6. Rate per month: \$9,562.00

This Lease Amendment contains 1 pages.

All other terms and conditions of the lease shall remain in force and effect.

IN WITNESS WHEREOF, the parties subscribed their names as of the below date.

FOR THE LESSOR:

Signature: _____
Name: _____
Title: _____
Entity Name: _____
Date: _____

FOR THE GOVERNMENT:

Signature: _____
Name: Breanne Campbell
Title: Lease Contracting Officer
GSA, Public Buildings Service,
Date: _____

WITNESSED FOR THE LESSOR BY:

Signature: _____
Name: _____
Title: _____
Date: _____

**CITY OF KODIAK
ORDINANCE NUMBER 1325**

AN ORDINANCE OF THE COUNCIL OF THE CITY OF KODIAK AUTHORIZING AN AMENDMENT TO THE LEASE BETWEEN THE CITY OF KODIAK AND NOAA FOR OFFICE AND WAREHOUSE SPACE ON PIER II

WHEREAS, the City owns a warehouse building on Pier II that contains office and warehouse space; and

WHEREAS, under a U.S Government Lease for Real Property dated March 1, 2009 (the "Lease"), the City leased 5,547 square feet of office and warehouse space on Pier II to the U S Department of Commerce National Oceanic and Atmospheric Administration ("NOAA"); and

WHEREAS, NOAA desires to amend the Lease to relinquish the leased office space, with a corresponding reduction in rent; and

WHEREAS, the Council finds that it would be appropriate and in the public interest to authorize the amendment to the Lease.

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

Section 1: The Council of the City of Kodiak hereby authorizes Lease Amendment No. 1 to Lease No 133954 with the U.S. Department of Commerce, National Oceanic and Atmospheric Administration (the "Amendment") to reduce the leased area to 5,400 square feet and to adjust the annual rent under the Lease to \$94,787.67

Section 2: The form and content of the Amendment hereby are in all respects authorized, approved and confirmed, and the City Manager hereby is authorized, empowered and directed to execute and deliver the Amendment to the U.S. Department of Commerce, National Oceanic and Atmospheric Administration 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 said document now before this meeting; and from and after the execution and delivery of said document 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 Amendment as executed.

Section 3: This ordinance shall go into effect one month after its passage and publication.



CITY OF KODIAK

Pat Quinn
MAYOR

ATTEST:

Monika W. Simonelli-Tulis
CITY CLERK

First Reading: August 28, 2014
Second Reading: September 11, 2014
Effective Date: October 17, 2014

U.S. GOVERNMENT LEASE FOR REAL PROPERTY
(Short Form)

LEASE NUMBER
GS-10B-07054
Bldg Number AK3475

PART I - SOLICITATION/DESCRIPTION OF REQUIREMENTS (To be completed by Government)

A. REQUIREMENTS

2. The Government of the United States of America is seeking to lease approximately 5,547 rentable square feet of warehouse/office space located in Kodiak, AK for occupancy not later than March 1, 2009 for a term of ten (10) years, five (5) years firm. Rentable space must yield a minimum of 5,547 square feet of ANSI/BOMA Office Area (ABOA) for use by Tenant for personnel, furnishing, and equipment.

3. INITIAL OFFERS ARE DUE ON OR BEFORE CLOSE OF BUSINESS N/A.

B. STANDARD CONDITIONS AND REQUIREMENTS

4. The following standard conditions and requirements shall apply to any premises offered for lease to the UNITED STATES OF AMERICA (the GOVERNMENT):

- a. Space offered must be in a quality building of sound and substantial construction meeting the Government's requirements for the intended use.
- b. The Lessor shall provide floor plans for the offered space and a valid Certificate of Occupancy for the intended use of the Government and shall meet, maintain, and operate the building in conformance with all applicable current (as of the date of this solicitation) codes and ordinances. If space is offered in a building to be constructed for lease to the Government, the building must be in compliance with the most recent edition of the building code, fire code, and ordinances adopted by the jurisdiction in which the building is located.
- c. Offered space shall meet or be upgraded to meet the applicable egress requirements in National Fire Protection Association (NFPA) 101, *Life Safety Code* or an alternative approach or method for achieving a level of safety deemed equivalent and acceptable by the Government. Offered space located below-grade, including parking garage areas, and all areas referred to as "hazardous areas" (defined in NFPA 101) within the entire building (including non-Government areas), shall be protected by an automatic sprinkler system or an equivalent level of safety. Additional automatic fire sprinkler requirements will apply when offered space is located on or above the 6th floor. Unrestricted access to a minimum of two remote exits shall be provided on each floor of Government occupancy. Scissor stairs shall be counted as only one approved exit. Open-air exterior fire escapes will not be counted as an approved exit. Additional fire alarm system requirements will apply when offered space is located 2 or more stories in height above the lowest level of exit discharge.
- d. The Building and the leased space shall be accessible to persons with disabilities in accordance with appendices C and D of 36 CFR Part 1191 (ABA Chapters 1 and 2 and Chapters 3 through 10 of the ADA-ABA Accessibility Guidelines).
- e. The leased space shall be free of all asbestos containing materials, except undamaged asbestos flooring in the space or undamaged boiler or pipe insulation outside the space, in which case an asbestos management program conforming to Environmental Protection Agency guidance shall be implemented. The space shall be free of other hazardous materials and in compliance with applicable Federal, State, and local environmental laws and regulations.
- f. Services, utilities, and maintenance will be provided daily, extending from 7 a.m. to 5 p.m. except Saturday, Sunday, and Federal holidays. The Government shall have access to the leased space at all times, including the use of electrical services, toilets, lights, elevators, and Government office machines without additional payment.
- g. The Lessor shall complete any necessary alterations within N/A days after receipt of approved layout drawings.
- h. The Offeror must have an active registration in the Central Contractor Registration (CCR) System (via the Internet at <http://www.ccr.gov>) prior to lease award and throughout the life of the lease. To remain active, the Lessor must update or renew its registration annually. The Government will not process rent payments to Lessors without an active CCR Registration. The Government will recognize no change of ownership of the leased premises until the new owner registers in the CCR system.

5. SERVICES AND UTILITIES (To be provided by Lessor as part of rent)

<input type="checkbox"/> HEAT	<input type="checkbox"/> TRASH REMOVAL	<input type="checkbox"/> ELEVATOR SERVICE	<input checked="" type="checkbox"/> INITIAL & REPLACEMENT LAMPS, TUBES & BALLASTS	<input checked="" type="checkbox"/> OTHER (Specify below)
<input type="checkbox"/> ELECTRICITY	<input type="checkbox"/> CHILLED DRINKING WATER	<input checked="" type="checkbox"/> WINDOW WASHING Frequency <u>Semi-Annually</u>	<input checked="" type="checkbox"/> PAINTING FREQUENCY Space <u>Every 5 Years</u> Public Areas <u>Every 5 Years</u>	<u>Sewer, Security Patrol, Pest control, Landscape Maintenance</u>
<input type="checkbox"/> POWER (Special Equip.)	<input type="checkbox"/> AIR CONDITIONING	<input type="checkbox"/> CARPET CLEANING Frequency <u>Semi-Annually</u>		
<input checked="" type="checkbox"/> WATER (Hot & Cold)	<input type="checkbox"/> FOIEI SUPPLIES			
<input checked="" type="checkbox"/> SNOW REMOVAL	<input type="checkbox"/> JANITORIAL SERV & SUPP			

6. OTHER REQUIREMENTS

24/7 Access, Use of Dock facilities.

Heat and Electricity are not included in the terms of this lease

Offeror should also include the following with their offers:

Attachment Sheet Number 1, GSA Form 12000 Pre Lease Fire Life Safety Review, SF3881 ACH Enrollment Form, CCR Registration

7. NOTE: All offers are subject to the terms and conditions outlined above, and elsewhere in this solicitation, including the Government's General Clauses and Representations and Certifications.

8. BASIS OF AWARD

- THE ACCEPTABLE OFFER WITH THE LOWEST PRICE PER SQUARE FOOT, ACCORDING TO THE ANSI/BOMA Z65.1-1996 DEFINITION FOR BOMA USABLE OFFICE AREA, WHICH MEANS "THE AREA WHERE A TENANT NORMALLY HOUSES PERSONNEL AND/OR FURNITURE, FOR WHICH A MEASUREMENT IS TO BE COMPUTED"
- OFFER MOST ADVANTAGEOUS TO THE GOVERNMENT, WITH THE FOLLOWING EVALUATION FACTORS BEING:
 - SIGNIFICANTLY MORE IMPORTANT THAN PRICE
 - APPROXIMATELY EQUAL TO PRICE
 - SIGNIFICANTLY LESS IMPORTANT THAN PRICE
 - (Listed in descending order unless stated otherwise)

AK/ASM

PART II - OFFER (To be completed by Offeror/Owner and remain open until lease award)

A LOCATION AND DESCRIPTION OF PREMISES OFFERED FOR LEASE BY GOVERNMENT

1 NAME AND ADDRESS OF BUILDING (Include ZIP Code) Pier 2 Warehouse 727 Shelikof Street Kodiak, AK 99615	2 LOCATION(S) IN BUILDING	
	a FLOOR(S) 1 st floor – 5,400 RSF 2 nd Floor – 147 RSF	b ROOM NUMBER(S) N/A
	c SQ FT RENTABLE <u>5,547</u> ABOA <u>5,547</u> Common Area Factor <u>1.000</u>	d TYPE <input checked="" type="checkbox"/> GENERAL OFFICE <input checked="" type="checkbox"/> OTHER (Specify) <input checked="" type="checkbox"/> WAREHOUSE Ship Dock Facilities

B TERM

3. To have and to hold, for the term commencing on March 1, 2009 and continuing through February 28, 2019 inclusive. The Government may terminate this lease in whole or in part at any time on or after February 28, 2014, by giving at least 60 days notice in writing to the Lessor. No rental shall accrue after the effective date of termination. Said notice shall be computed commencing with the day after the date of mailing.

C RENTAL

4. Rent shall be payable in arrears and will be due on the first workday of each month. When the date for commencement of the lease falls after the 15th day of the month, the initial rental payment shall be due on the first workday of the second month following the commencement date. Rent for a period of less than a month shall be prorated.

5 AMOUNT OF ANNUAL RENT \$97,368.00	7 HVAC OVERTIME RATE PER HOUR \$0.00	8 ELECTRONIC FUNDS TRANSFER PAYMENT SHALL BE MADE TO (Name and Address) City of Kodiak 710 Mill Bay Road Kodiak, AK 99615
6 RATE PER MONTH \$8,114.00		

9a NAME AND ADDRESS OF OWNER (Include ZIP code. If requested by the Government and the owner is a partnership or joint venture, list all General Partners, using a separate sheet, if necessary.)
City of Kodiak, 710 Mill Bay Road, Kodiak, AK 99615

9b TELEPHONE NUMBER OF OWNER 907-486-8080/907-486-8090 fax	10 TYPE OF INTEREST IN PROPERTY OF PERSON SIGNING <input type="checkbox"/> OWNER <input checked="" type="checkbox"/> AUTHORIZED AGENT <input type="checkbox"/> OTHER (Specify)
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11a NAME OF OWNER OR AUTHORIZED AGENT (Type or Print) Martin Owen, Harbormaster	11b TITLE OF PERSON SIGNING Aimée Kniazowski, City Manager
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11c SIGNATURE OF OWNER OR AUTHORIZED AGENT 	11d DATE 10/7/09
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PART III - AWARD (To be completed by Government)

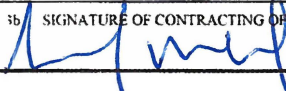
1. Your offer is hereby accepted. This award consummates the lease which consists of the following attached documents: (a) this GSA Form 3626, (b) Representations and Certifications, (c) the Government's General Clauses, and (d) the following changes or additions made or agreed to by you:

Attachment Sheet Number 1 to Lease GS-10B-07054 (2 pages)

Exhibit A: Pier 2 Warehouse floor plan
Exhibit B: Pier 2 Site Plan

Lessor DUNS #: 078191970

2. THIS DOCUMENT IS NOT BINDING ON THE GOVERNMENT OF THE UNITED STATES OF AMERICA UNLESS SIGNED BELOW BY AUTHORIZED CONTRACTING OFFICER.

a NAME OF CONTRACTING OFFICER (Type or Print) ANDREW S. MOHL	b SIGNATURE OF CONTRACTING OFFICER 	c DATE NOV 19 2009
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NEW BUSINESS

MEMORANDUM TO COUNCIL

To: Mayor Branson and City Councilmembers

From: Nova Javier, City Clerk
Mike Tvenge, City Manager *WT*

Date: August 8, 2019

Agenda Item: V. a. **First Reading, Ordinance No. 1389 Amending Chapter 2.04 With a New Section 2.04.025, Excusing the Mayor's or Councilmembers' Non-Attendance When Caused by City Business**

SUMMARY: The Mayor and Council wish to include a section in the City code that contains language that could be considered for excusing absences when the Mayor or Councilmember are absent from regular meetings, when caused by conducting or attending City business.

PREVIOUS COUNCIL ACTION:

- June 11, 2019, work session, the Council gave direction to Clerk to research on how absences could be excused when the Mayor or councilmembers are unavailable due to other official City business.
- A draft ordinance was presented to the Council on July 23, 2019, and direction was given to introduce an ordinance at the August 8, 2019, regular meeting.

DISCUSSION: The purpose of this ordinance is to implement Charter Article II, Section 8 by providing rules for determining an absence. Legal Counsel advised that ordinances implementing charter provisions are appropriate and noted there is no conflict in excusing non-attendance caused by concurrent city business because the official is observing official duties, not neglecting them. This ordinance allows for approving an official's concurrent city-business activity through an open process of disclosure which ensures transparency.

ALTERNATIVES: Council may adopt Ordinance No. 1389 or Council may fail Ordinance No. 1389.

FINANCIAL IMPLICATIONS: None

LEGAL: The City Attorney drafted the ordinance.

STAFF RECOMMENDATION: Staff does not have a recommendation. This ordinance was presented at Council's direction

CITY MANAGER'S COMMENTS: This situation is easily remedied by implementing this ordinance.

ATTACHMENTS:

Attachment A: Ordinance No. 1389

PROPOSED MOTION:

Move to pass Ordinance No. 1389 in first reading to advance to second reading and public hearing at the next regular or special Council meeting.

AUGUST 8, 2019
Agenda Item V.a. Memo Page 2 of 2

**CITY OF KODIAK
ORDINANCE NUMBER 1389**

AN ORDINANCE OF THE COUNCIL OF THE CITY OF KODIAK AMENDING CHAPTER 2.04 WITH A NEW SECTION 2.04.025, EXCUSING THE MAYOR'S OR COUNCILMEMBERS' NON-ATTENDANCE WHEN CAUSED BY CITY BUSINESS

WHEREAS, Article II, Section 8 of the Charter of the City of Kodiak provides that persons holding the offices of mayor or councilmember may be removed from or forfeit office based on absence from regular meetings of the council;

WHEREAS, elected officials travel and conduct business on behalf of the City and such activities may preclude attendance at meetings; and

WHEREAS, the council has, by Resolution No. 2013-03, adopted the Mayor and Council Travel Policy, governing and defining official travel; and

WHEREAS, the mayor and council approve and adopt a travel budget and official travel calendar annually, and may amend the official travel calendar at a work session or regular or special meeting; and

WHEREAS, officials should not be penalized if unable to attend a council meeting as a result of approved city business;

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

Section 1: **Amendment to Chapter 2.04.** Kodiak City Code Chapter 2.04 is hereby amended by inserting a new Section 2.04.025 to as follows:

2.04.025 – Attendance excused.

(a) For the purposes of removal from office under Charter Art. II, Sec. 8, the mayor's or councilmember's non-attendance of a regular meeting of the council shall be excused and not considered an absence if:

- (1) A councilmember's non-attendance is caused by official travel or the member's participation in a concurrent city-business activity, and the council previously approved the official travel or participation in the concurrent city-business activity by approval of the official travel calendar, resolution, or motion.
- (2) The mayor's non-attendance is caused by official travel or participation in a concurrent city-business activity, and: (i) the council previously approved the mayor's travel or participation, or (ii) in advance of the non-attended meeting, the mayor provided the city manager with written notice of the mayor's concurrent city-business activity.

(b) If non-attendance is excused under subsection (a), the official's non-attendance and concurrent city-business activity shall be noted by the presiding

officer during roll call at the non-attended meeting, and the same shall be recorded in the minutes.

Section 2: This ordinance shall go into effect one month after its passage and publication.

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 *MT*

Date: August 8, 2019

Agenda Item: V. b. **Resolution No. 2019–12, Amending Sections 9 Harbor Fees of the Schedule of Fees, Charges, and Tariffs**

SUMMARY: The City sets its fees and charges for various services by a resolution of the Council. On June 13, 2019, the Council adopted Resolution 2019–10(SUB), which amended several sections of the fee schedule. Some of the harbor fees needed to be further amended to reflect the five-year rate structure adopted per Resolution No. 2017–01.

PREVIOUS COUNCIL ACTION: The Council updates the City’s Schedule of Fees, Charges, and Tariffs on a routine basis by resolution. The most recent changes were adopted in June 2019.

ALTERNATIVES: Council can adopt, amend, or choose to not approve Resolution No. 2019–12. Staff recommends Council adopt the resolution with the recommended fee changes because of the adoption of the five-year rate structure. If the Council fails to adopt this resolution, it will be necessary to rescind Resolution No. 2017–01.

STAFF RECOMMENDATION: Staff recommends Council adopt Resolution No. 2019–12 with fee changes effective upon adoption.

CITY MANAGER’S COMMENTS: This resolution realigns the fee structure previously approved by Resolution 2017–01.

ATTACHMENTS:

Attachment A: Resolution No. 2019–12

Attachment B: Resolution No. 2017–01

PROPOSED MOTION:

Move to adopt Resolution No. 2019–12.

**CITY OF KODIAK
RESOLUTION NUMBER 2019—12**

**A RESOLUTION OF THE COUNCIL OF THE CITY OF KODIAK AMENDING
SECTION 9 HARBOR FEES OF THE SCHEDULE OF FEES, CHARGES, AND
TARIFFS**

WHEREAS, at the January 12, 2017, regular meeting the Kodiak City Council adopted Resolution No. 2017-01 which authorized implementation of a five year rate structure for Fiscal Year 2018 to Fiscal Year 2022; and

WHEREAS, on June 13, 2019, the Council adopted Resolution No. 2019-10 and a few of the harbor fees needed to be amended to reflect the five year rate structure adopted per Resolution No. 2017-01; and

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Kodiak, Alaska, that Sections 9 of the City's Schedule of Fees, Charges, and Tariffs are hereby amended as follows:

BE IT FURTHER RESOLVED that this resolution shall supersede previous resolutions amending Sections 9 of the Schedules of Fees, Charges and Tariffs.

BE IT FURTHER RESOLVED that the changes to Sections 9 Schedule of Fees, Charges, and Tariffs herein shall be effective upon adopted of this ordinance.

BE IT FURTHER RESOLVED that the City Clerk is authorized to make the required changes to the Schedule of Fees, Charges, and Tariffs.

Section 9	Harbor	
	<i>A day is defined as a calendar day, midnight to midnight or portion thereof.</i>	
9.1	Disposal	
	9.1.1	Drums, each 55 gallon 25.00
	9.1.2	Containment boom, per foot, per day, plus labor 0.62 <u>60</u>
	9.1.3	Sorbent pads and boom cost + 10%
	9.1.4	Petroleum products and bilge waste, per gallon
	9.1.4.1	Used oil 1.30
	9.1.4.2	Oily bilge water, vessels under 400 gross tons 2.80 <u>3.00</u>
	9.1.4.3	Oily bilge water, vessels over 400 gross tons 5.40 <u>5.50</u>
	9.1.4.4	Testing and other necessary services cost + 10%
9.2	Dry Storage	
	<i>No charge for fishing gear storage for the first three (3) days. Minimum charge is \$10.00 or per square foot fee, whichever is greater.</i>	
	9.2.1	Daily, per square foot 0.05
	9.2.2	Weekly, per square foot 0.15
	9.2.3	Monthly, per square foot 0.49
	9.2.4	Annual, per square foot 1.54 <u>1.50</u>
	9.2.5	Impounded vessels: cost of labor, equipment, and storage cost + 10%
9.3	Electric Service, temporary, per day	
	9.3.1	120-volt single-phase or actual KWH cost, whichever is greater 18.40 <u>19.00</u>
	9.3.2	208-volt single-phase or actual KWH cost, whichever is greater 44.20 <u>44.00</u>
	9.3.3	208-volt three-phase or actual KWH cost, whichever is greater 50.35 <u>50.00</u>
	9.3.4	Electric cord rental, per day 30-amp 120-volt twist lock cords 9.25 <u>9.00</u>

9.3.5	Electric plug rental, per day				
	30-amp twist lock GFI to 20-amp straight blade	6.15	<u>7.00</u>		
	208 single phase to 30-amp twist lock	12.30	<u>13.00</u>		
	208 three phase to 208 single phase	18.50	<u>19.00</u>		
9.4	Tidal Grid, per foot, per tide	2.57	<u>2.50</u>		
9.5	Services and equipment rental				
9.5.1	Backhoe/loader, with operator, per 1/2 hour			94.00	
9.5.2	Fork Lift				
9.5.2.1	4-ton, with operator, per 1/2 hour			94.00	
9.5.3	Labor and Materials				
9.5.3.1	City employees, straight time, per hour	81.00	<u>81.50</u>		
9.5.3.2	City employees, overtime, per hour			113.00	
9.5.3.3	Non-City labor and miscellaneous materials			cost + 10%	
9.5.4	Pumps				
9.5.4.1	Dewatering, electric, per day	37.00	<u>38.00</u>		
9.5.4.2	Dewatering, electric, per week			150.00	
9.5.4.3	Dewatering, electric, per month	375.00	<u>376.00</u>		
9.5.4.4	Dewatering gasoline, per day	62.50	<u>63.00</u>		
9.5.4.5	Sewage, vessel or RV pump-out, per use	12.25	<u>13.00</u>		
9.5.5	Tanker, used oil, with operator, per hour	162.00	<u>163.00</u>		
9.5.6	Vessel, with operator, per hour	132.50	<u>136.00</u>		
9.6	Dockage for commercial fishing vessels at piers and docks (all other vessels charged per port tariff)				
9.6.1	Vessels 80' and under			1.90	
9.6.2	Vessels 81' and over			2.20	
	• Includes Dock 1, Oscar's Dock, Piers 1, 2, & 3.				
	• Dockage fees shall be equal to the vessel's daily moorage rate, or the per foot rate, whichever is greater. Vessels with exclusive moorage, and vessels which have paid their annual daily moorage ceiling, receive the first day free when scheduled in advance. Dockage fees do not apply to the moorage ceiling.				
9.7	Moorage, exclusive, annual				
	• Exclusive moorage means a permanently assigned slip for a specific vessel. Moorage is calculated depending upon vessel length: Length x rate per linear foot.				
	• Length = length of vessel, including all fixed protuberances or length of slip, whichever is greater.				
	• Vessels moored at posted restricted areas in excess of the allotted time shall incur a moorage charge at double the daily rate, until the vessel has departed.				
	• 20% surcharge for vessels wider than 80% of the slip water space				
	• 50% surcharge for vessels wider than 100% of the slip water space				
9.7.1	0 to 20 feet	37.50	<u>37.60</u>		
9.7.2	21 to 30 feet	37.50	<u>37.60</u>		
9.7.3	31 to 40 feet	37.50	<u>37.60</u>		
9.7.4	41 to 60 feet	51.30	<u>51.35</u>		
9.7.5	61 to 80 feet			76.40	
9.7.6	81 to 100 feet	89.50	<u>89.54</u>		
9.7.7	101 to 120 feet	102.70	<u>102.69</u>		
9.7.8	121 to 150 feet	111.40	<u>111.46</u>		
9.7.9	151 feet +	125.20	<u>125.23</u>		
9.8	Moorage, open/daily			1/60 of the annual moorage rate	
	• Daily moorage shall stop accruing when an amount equal to 100% of the annual exclusive moorage has been reached.				
	• Vessels moored at posted restricted areas in excess of the allotted time shall incur a moorage charge at double the daily rate, until the vessel has departed.				
	• Vessels under 21' receive one free day per month at designated areas only, on first-come, first-served				

	basis.		
9.9	Parking		
9.9.1	Trailers at designated long-term parking areas		
9.9.1.1	Daily	6.17	7.00
9.9.1.2	Monthly		94.00
9.9.2	Permit parking for harbor customers in designated 30-day lots adjacent to the harbors, per day	4.03	1.00
	<ul style="list-style-type: none"> Permits available to vessel slip holders and paid up transient vehicles only. Except that permits may be sold to the general public in the 30-day lot north of Ramp 1, St. Herman Harbor. 		
9.10	Gravel ramp use at SHH and SPH		
9.10.1	Aircraft, per launch or retrieval		94.00
9.10.2	Vessels under 76 feet in length, per foot, per tide	1.29	1.30
9.10.3	Vessels 76 feet and longer, per foot, per tide	1.85	1.90
9.10.4	Annual usage fee (must be paid in advance)	2,500.00	2,505.00
9.11	Waiting list, per year	31.00	31.50
9.12	Launch ramp (exclusive slip holders and personal pleasure boats of persons sixty-five years of age or older are exempt)		
9.12.1	Daily		10.00
9.12.2	Annual	125.00	126.00
9.13	Administrative fees		
9.13.1	Slip Transfer fee, per vessel	18.50	19.00
9.13.2	Account sent to collections		125.00
9.14	Vessel sewage disposal at Pier II per day (dockage charged separately)		94.00
9.15	Harbor Shower Fee per time period		6.00
9.16	Crane Use Fee, per 15 minute period or portion thereof.....		25.00
9.17	Shipyard		
	<ul style="list-style-type: none"> Payment, without pre-approved credit, is 50% of the estimated yard fees and is due before the lift; the remainder must be paid prior to launch. Lifts taking more than four hours will be assessed extra labor and/or machine time. Dry dockage is assessed the entire time the vessel remains in the yard. 		
9.17.1	Lift, Block, and Launch		
9.17.1.1	Vessels up to 80'		69.00/ft
9.17.1.2	81' to 100'		78.00/ft
9.17.1.3	101' to 120'		94.00/ft
9.17.1.4	121' to 150'		111.00/ft
9.17.1.5	151' and up		120.00/ft
9.17.2	After hours surcharge		+ 20% / ft
9.17.2.1	Nonstandard Lift (operator and lift)	1,500.00/hr	
9.17.2.2	Travel strap set up		T, M&E *+ 15%
9.17.2.3	Inspection Lift, includes 1 hour hang time free		75% of lift per launch
9.17.2.4	Hang Time (other than wash pad)		275.00 ea. addl. hour
9.17.2.4.1	Hang Time, on wash pad		200.00/hr
9.17.2.4.2	Hang Time, on heated wash pad		300.00/hr
9.17.5	Delay of Lift		250.00/half hour
9.17.6	Pressure Wash (and scrape if necessary)		T, M, & E*
9.17.7	Reposition		50% of lift / launch
9.17.8	Scheduling Deposit (credited to lift or forfeited if the vessel is late or no show)		750.00
9.17.9	Dry Dockage Space (lay day)		

9.17.9.1	1 to 30 days	2.90/ft/day
9.17.9.2	31 days or greater	1.45/ft/day
9.17.10	On-site Storage	
9.17.10.1	Daily (first three days or portion thereof no charge)	0.05/ft/day
9.17.10.2	Minimum charge	15.00
9.17.11	Vendor (must be preapproved and have \$1 million liability coverage).....	
9.17.11.1	Annual vendor fee	500.00/yr
9.17.11.2	Per vessel vendor fee (one-time use)	250.00
9.17.12	Utilities (includes water)	
9.17.12.1	120v single-phase 30 amp or actual kWh cost, whichever is greater	18.50/day
9.17.12.2	208v single-phase 50 amp or actual kWh cost, whichever is greater	44.20/day
9.17.12.3	208v three-phase 100 amp or actual kWh cost, whichever is greater	50.35/day
9.17.12.4	480v three-phase 100 amp or actual kWh cost, whichever is greater	70.00/day
9.17.13	Equipment Rental	
9.17.13.1	Fork lift	94.00/half hr
9.17.13.2	Man lift.....	94.00/half hr
9.17.13.3	Pressure Washer	250.00/day
9.17.13.4	Other	T, M, & E*
9.17.14	Environmental Tarp (ground tarp required for all bottom work)	Cost + 15%
9.17.15	Waste Disposal	
9.17.15.1	Used oil	1.30/gallon
9.17.15.2	Dumpster (5.5 yard)	110.00/tip
9.17.15.3	Non-Hazardous liquids, including oil bilge water	2.80/gallon
9.17.15.4	Hazardous	Cost + 15%
9.17.15.5	Other, e.g., metals and wood	Cost + 15%
9.17.16	Labor	
9.17.16.1	City Employee, straight time	81.00/hr
9.17.16.2	City Employee, overtime	113.00/hr
9.17.16.3	Contract service provider (e.g., diver, lift operator, etc)	Cost + 15%
9.17.17	Environmental Surcharge	2.5% of gross
9.17.18	Other Fees and Services	Cost + 15%

*T, M, & E: Time (i.e., labor hours), materials, and equipment hours

CITY OF KODIAK

MAYOR

ATTEST:

CITY CLERK

Adopted:

**CITY OF KODIAK
RESOLUTION NUMBER 2017-01**

A RESOLUTION OF THE COUNCIL OF THE CITY OF KODIAK AMENDING SECTION 9, HARBOR FEES, OF THE SCHEDULE OF FEES, CHARGES, AND TARIFFS AND AUTHORIZING IMPLEMENTATION OF A FIVE-YEAR RATE STRUCTURE

WHEREAS, existing harbor fees are insufficient to fund harbor facilities replacement and maintenance costs; and

WHEREAS, the proposed rate structure contained within Resolution No. 2017-01 would address continuing inflationary costs; and

WHEREAS, Northern Economics conducted a rate study and cash flow analysis for moorage rates and other boat harbor services recommending an 18.5 percent increase the first year and annual inflation-based adjustments based on the Producer Price Index (PPI) for the subsequent four years, which have averaged approximately 2.8 percent per year; and

WHEREAS, the Port and Harbors Advisory Board endorsed the five-year harbor rate structure proposed by Northern Economics to increase the revenues needed for maintenance of harbor facilities; and

WHEREAS, the Council of the City of Kodiak desires to amend harbor fees in Section 9 of the City's Schedule of Fees, Charges, and Tariffs to sufficiently fund facilities operations and maintenance costs.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Kodiak, Alaska, that Section 9 of the City's Schedule of Fees, Charges, and Tariffs herein are amended for FY2018 through FY2022 as follows:

Harbor Fee Schedule

July 1, 2017, through June 30, 2022

Section 9	Harbor <i>A day is defined as a calendar day, midnight to midnight or portion thereof.</i>	Current Rates FY17	7/1/17 FY18 (18.5%)	7/1/18 FY19 (2.8%)	7/1/19 FY20 (2.8%)	7/1/20 FY21 (2.8%)	7/1/21 FY22 (2.8%)
	Increase per year:						
9.1	Disposal						
9.1.1	Drums, each 55 gallon.....	20.00	24.00	24.50	25.00	26.00	26.50
9.1.2	Containment boom, per foot, plus labor	0.50	0.60	0.60	0.60	0.70	0.70
9.1.3	Sorbent pads and boom.....	cost + 10%	cost + 10%	cost + 10%	cost + 10%	cost + 10%	cost + 10%
9.1.4	Petroleum products and bilge waste, per gallon						
9.1.4.1	Used oil.....	1.00	1.20	1.25	1.30	1.35	1.40
9.1.4.2.	Oily bilge water, vessels under 400 gross tons.....	2.25	2.75	2.75	3.00	3.00	3.00
9.1.4.3.	Oily bilge water, vessels over 400 gross tons.....	4.25	5.00	5.25	5.50	5.50	5.75
9.1.4.4.	Testing and other necessary services	cost + 10%	cost + 10%	cost + 10%	cost + 10%	cost + 10%	cost + 10%
9.2	Dry Storage <i>No charge for fishing gear storage for the first three (3) days. Minimum charge is \$10.00 or per square foot fee, whichever is greater.</i>						
9.2.1	Daily, per square foot.....	0.03	0.04	0.04	0.05	0.05	0.05
9.2.2	Weekly, per square foot.....	0.12	0.14	0.14	0.15	0.15	0.16
9.2.3.	Monthly, per square foot.....	0.40	0.47	0.48	0.49	0.50	0.52
9.2.4	Annual, per square foot.....	1.20	1.40	1.50	1.50	1.60	1.60
9.2.5	Impounded vessels: cost of labor, equipment, and storage	cost + 10%	cost + 10%	cost + 10%	cost + 10%	cost + 10%	cost + 10%
9.3	Electric Service, temporary, per day						
9.3.1	120-volt single-phase or actual KWH cost, whichever is greater	15.00	18.00	18.00	19.00	19.00	20.00
9.3.2	208-volt single-phase or actual KWH cost, whichever is greater	35.00	41.50	43.00	44.00	45.00	46.50
9.3.3	208-volt three-phase or actual KWH cost, whichever is greater.....	40.00	47.50	49.00	50.00	51.50	53.00
9.3.4	Electric cord rental, per day						
	30-amp 120-volt twist lock cords	5.00	7.50	9.00	9.00	9.50	10.00
9.3.5	Electric plug rental, per day						
	30-amp twist lock GFI to 20-amp straight blade.....	5.00	6.00	6.00	7.00	7.00	7.00

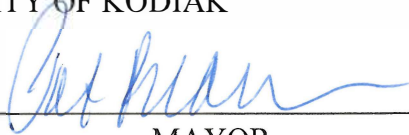
	Current Rates	7/1/17	7/1/18	7/1/19	7/1/20	7/1/21
		12.00	12.00	13.00	13.00	13.50
		18.00	18.00	19.00	19.00	20.00
9.4		2.40	2.50	2.50	2.60	2.70
9.5						
9.5.1		89.00	91.50	94.00	97.00	100.00
9.5.2						
9.5.2.1		89.00	91.50	94.00	97.00	100.00
9.5.3						
9.5.3.1		65.00	79.00	81.50	84.00	86.00
9.5.3.2		90.00	110.00	113.00	116.00	119.00
9.5.3.3		cost + 10%	cost + 10%	cost + 10%	cost + 10%	cost + 10%
9.5.4						
9.5.4.1		36.00	36.00	38.00	40.00	40.00
9.5.4.2		142.00	146.00	150.00	153.00	156.00
9.5.4.3		350.00	365.00	376.00	386.00	397.00
9.5.4.4		60.00	61.00	63.00	65.00	66.00
9.5.4.5		12.00	12.00	13.00	13.00	14.00
9.5.5		154.00	158.00	163.00	168.00	172.00
9.5.6		122.00	129.00	136.00	143.00	150.00
9.6						
9.6.1		1.80	1.85	1.90	1.95	2.00
9.6.2		2.10	2.15	2.20	2.25	2.30
9.7						
9.7.1		35.55	36.55	37.60	38.65	39.73

		Current Rates	7/1/17	7/1/18	7/1/19	7/1/20	7/1/21
9.7.2	21 to 30 feet.....	30.00	35.55	36.55	37.60	38.65	39.73
9.7.3	31 to 40 feet.....	30.00	35.55	36.55	37.60	38.65	39.73
9.7.4	41 to 60 feet.....	41.00	48.59	49.95	51.35	52.79	54.27
9.7.5	61 to 80 feet.....	61.00	72.29	74.31	76.40	78.54	80.74
9.7.6	81 to 100 feet.....	71.50	84.73	87.10	89.54	92.05	94.63
9.7.7	101 to 120 feet.....	82.00	97.17	99.89	102.69	105.57	108.53
9.7.8	121 to 150 feet.....	89.00	105.47	108.42	111.46	114.58	117.79
9.7.9	151 feet +	100.00	118.50	121.82	125.23	128.74	132.35
9.8	Moorage, open/daily..... <ul style="list-style-type: none"> Daily moorage shall stop accruing when an amount equal to 100% of the annual exclusive moorage has been reached. Vessels moored at posted restricted areas in excess of the allotted time shall incur a moorage charge at double the daily rate, until the vessel has departed. Vessels under 21' receive one free day per month at designated areas only, on first-come, first-served basis. 	1/60 of the annual moorage rate	1/60 of the annual moorage rate	1/60 of the annual moorage rate	1/60 of the annual moorage rate	1/60 of the annual moorage rate	1/60 of the annual moorage rate
9.9	Parking						
9.9.1	Trailers at designated long-term parking areas						
9.9.1.1	Daily.....	5.00	6.00	6.00	7.00	7.00	7.00
9.9.1.2	Monthly.....	75.00	89.00	91.50	94.00	96.70	100.00
9.9.2	Permit parking for harbor customers in designated 30-day lots adjacent to the harbors, per day..... <ul style="list-style-type: none"> Permits available to vessel slip holders and paid up transient vehicles only. Except that permits may be sold to the general public in the 30-day lot north of Ramp 1, St. Herman Harbor. 	1.00	1.00	1.00	1.00	1.00	1.00
9.10	Gravel ramp use at SHH and SPH						
9.10.1	Aircraft, per launch or retrieval.....	75.00	89.00	91.50	94.00	97.00	100.00
9.10.2	Vessels under 76 feet in length, per foot, per tide.....	1.00	1.20	1.25	1.30	1.30	1.40
9.10.3	Vessels 76 feet and longer, per foot, per tide.....	1.50	1.80	1.80	1.90	1.90	2.00
9.10.4	Annual usage fee (must be paid in advance).....	2,000.00	2370.00	2437.00	2505.00	2575.00	2647.00
9.11	Waiting list, per year.....	25.00	30.00	30.50	31.50	32.00	33.00
9.12	Launch ramp (exclusive slip holders and personal pleasure boats of persons sixty-five years of age or older are exempt)						
9.12.1	Daily.....	10.00	10.00	10.00	10.00	10.00	10.00
9.12.2	Annual.....	100.00	118.50	122.00	126.00	129.00	132.50
9.13	Slip transfer fee, per vessel.....	15.00	18.00	18.00	19.00	19.00	20.00
9.14	Account sent to collections.....	100.00	118.50	122.00	125.00	130.00	132.00
9.15	Sewage disposal at Pier II, per day (dockage charged separately).....	75.00	89.00	91.50	94.00	97.00	100.00

BE IT FURTHER RESOLVED that this resolution shall supersede previous resolutions amending these sections of Section 9 of the Schedule of Fees, Charges, and Tariffs.

BE IT FURTHER RESOLVED that the City Clerk is authorized to make the required changes to the Schedule of Fees and Charges as stated herein.

CITY OF KODIAK



MAYOR

ATTEST:



CITY CLERK

Adopted: January 12, 2017



MEMORANDUM TO COUNCIL

To: Mayor Branson and City Councilmembers

From: Mike Tvenge, City Manager *MT*

Through: Kelly Mayes, Finance Director

Date: August 8, 2019

Agenda Item: **V. c. Resolution 2019–14 Authorizing Payment of Fiscal Year 2020 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 19 FY2020 applications from nonprofit organizations that serve Kodiak, down from the 20 applications received last fiscal year, for a total amount requested of \$184,522. Council reviewed the applications at the July 23 work session and voiced a consensus to fund the Alutiiq Museum & Archaeological Repository and the Kodiak Maritime Museum from the Tourism Development Fund to keep within the available \$175,000 cap. Subsequently, the Mayor and Councilmembers voiced a preference to award the excess of \$430 to the Kodiak Hockey League effectively increasing their request to \$4700.

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 23, 2019, Council reviewed FY2020 nonprofit grant applications.

ALTERNATIVES:

- 1) Adopt Resolution No. 2019–14 to appropriate FY2020 grant funds to local nonprofits.
- 2) Amend, postpone, or do not adopt the resolution.

AUGUST 8, 2019

Agenda Item V. c. Memo Page 1 of 2

FINANCIAL IMPLICATIONS: \$175,000 is available for FY2020 nonprofit grants from the General Fund. The Council has discussed various scenarios to provide the full amount requested of \$184,552, with no more than \$175,000 from the General Fund non-departmental account and other budgeted funds from the Tourism Development 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. 2019-14, to authorize funding of the nonprofit requests.

ATTACHMENTS:

Attachment A: Resolution No. 2019-14

Attachment B: Policy Resolution No. 2018-06

PROPOSED MOTION:

Move to adopt Resolution No. 2019-14.

**CITY OF KODIAK
RESOLUTION NUMBER 2019–14**

**A RESOLUTION OF THE COUNCIL OF THE CITY OF KODIAK
AUTHORIZING PAYMENT OF FISCAL YEAR 2020 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 2020 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 FY2020 nonprofit grant applications at the July 23, 2019, 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 2020:

Section 1. General Fund-Non-Departmental FY2020 Cash Contributions

	Cash
<u>Youth Recreation Programs</u>	<u>9,700.00</u>
Kodiak Girl Scouts	5,000.00
Kodiak Hockey League	4,700.00
<u>Adult Recreation Programs</u>	<u>15,000.00</u>
Hope Community Resources, Inc.	5,000.00
Kodiak Arts Council	5,000.00
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.	15,000.00
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 **52,300.00**

American Red Cross of Alaska	7,300.00
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 **175,000.00**

Section 2. Tourism Development Fund. The Fiscal Year 2020 Tourism Development Fund Budget is amended by appropriating the use of additional funds in the amount of \$9,982.00 and authorizing payment in the amount of \$4,982.00 to the Alutiiq Museum & Archaeological Repository and \$5,000 to the Kodiak Maritime Museum as follows:

<u>Account</u>	<u>Description</u>	<u>Amount</u>
251.260.100.440.100	Contributions	9,982.00
251.001.000.385.100	Appropriation From Tourism Fund Balance	9,982.00

Section 3. In-Kind Contributions.

In-Kind

Alaska Wing Civil Air Patrol	35,593.56
Brother Francis Shelter	97,336.80
Humane Society of Kodiak – Animal Shelter	26,964.24
Kodiak Chamber of Commerce	46,353.60
Kodiak Head Start	46,761.60
Kodiak Historical –Society Baranof Museum	103,384.80
Kodiak Public Broadcasting Corporation	1,672.80
Kodiak Women’s Resource and Crisis Center (2 buildings)	1,672.80 + 1,672.80
Senior Citizens of Kodiak	6,691.20

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.

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



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MEMORANDUM TO COUNCIL

To: Mayor Branson and City Councilmembers

From: Mike Tvenge, City Manager 

Through: Kelly Mayes, Finance Director

Date: August 8, 2019

Agenda Item: V. d. **Authorization to Award Bid for Leasing Document Production Equipment to OfficeTECH (an Authorized Xerox Agency)**

SUMMARY: The City of Kodiak accepted sealed bids for the lease of document production equipment for the Administration offices at City Hall, the Kodiak Public Library, the Harbor offices at Fisherman's Hall, and the Kodiak Police Department. The date of invitation began on June 19, 2019, and closed at 2 p.m. on July 19, 2019. City staff reviewed all bid proposals and scored based on the required criteria as set forth by the bid documents. City staff recommends accepting the proposal from Office Tech (an Authorized Xerox Agency).

PREVIOUS COUNCIL ACTION: None

DISCUSSION: There were two proposals for a five year lease of document production equipment submitted by Office Tech (an Authorized Xerox Agency) and Konica Minolta. City staff reviewed the proposal based on the required criteria as set forth by the bid documents. These qualifying criteria include Firm Qualifications (maximum 20 points), Equipment Requirements (maximum 25 points), Pricing of Proposal (maximum 30 points), and Quality Assurance/Support (maximum 25 points). The reviewing committee consisted of Nova Javier, City Clerk, Tim Putney, Chief of Police, Lee Peterson, IT Administrator, Kelly Mayes, Finance & IT Director, and Mike Tvenge, City Manager. Each member of the reviewing committee scored both proposers based on these four qualifying criteria. The scores were then averaged for each proposer. Based on this scoring mechanism for the qualifying criteria, City staff recommends accepting the proposal from Office Tech (an Authorized Xerox Agency) for multifunction copiers/printers.

ALTERNATIVES:

- 1) Authorize the bid award to Office Tech (an Authorized Xerox Agency) for an annual base lease amount of \$20,705.88. Staff supports this recommendation.
- 2) Do not authorize this purchase, which is not recommended.

FINANCIAL IMPLICATIONS: The annual lease amount is budgeted within the General Fund-Nondepartmental-Equipment Rental for Administration; General Fund-Kodiak Police Department-

Administration-Equipment Rental for the Kodiak Police Department; General Fund-Library-Equipment Rental for the Kodiak Public Library; and the Harbor Enterprise Fund-Harbor Administration-Equipment Rental for the Harbor offices at Fisherman's Hall.

LEGAL: Advertisement was in accordance to KCC 3.12.040. In accordance with the City of Kodiak Charter Article V-17, *Contracts and Sales*, any contract which by its terms will not be fully executed within five years and which cannot be terminated by the City upon not more than one month's notice without penalty shall be made by authority of an ordinance of the City Council. The attached bid award can be terminated without payment or penalty upon a written 30-day notice. Therefore, an ordinance of the City Council is not required to award the bid to Office Tech (an Authorized Xerox Agency).

STAFF RECOMMENDATION: Staff recommends Council authorize the award and purchase to Office Tech (an Authorized Xerox Agency) for an annual base lease amount of \$20,705.88.

CITY MANAGER'S COMMENTS: I support staff's recommendation.

ATTACHMENTS:

Attachment A: Office Tech (an Authorized Xerox Agency) bid quote

Attachment B: Multifunction Copiers / Printers Bid Summary

PROPOSED MOTION:

Move to authorize a sixty-month lease agreement with OfficeTECH/Xerox Corporation for:

- 1 Xerox C8055/H2 in the amount of \$673.78 monthly, with funds coming from the General Fund, Non-Departmental, Administration Equipment Rental Account; (\$8,085.36 annually; \$9,000 budgeted)
- 1 Xerox C8055/H2 in the amount of \$465.57 monthly with funds coming from the General Fund, Police, Police Support Services Equipment Rental Account; (\$5,586.84 annually; \$8,920 is budgeted)
- 1 Xerox C8055/H2 in the amount of \$341.82 monthly, with funds coming from the Enterprise Fund, Boat Harbor, Administration Equipment Rental Account; (\$4,101.84; \$5,000 is budgeted)
- 1 Xerox C8055/H2 in the amount of \$244.32 monthly, with funds coming from the General Fund, Library, Administration Equipment Rental Account; (\$2,931.84 annually; \$3,000 is budgeted)

and authorize the City Manager to sign the leases on behalf of the City.

Invitation to Bid 2019-006

June 19th 2019

BID FORM

TO: Mike Tvenge, City Manager
 City of Kodiak
 710 Mill Bay Road, Rm #114
 Kodiak AK 99615

Any exceptions to the published bid specifications must be listed by item.

In compliance with your Invitation to bid for Bid No. 2019-006 for Document Production Equipment dated June 19th 2019, the undersigned hereby proposes to provide the following:

Item Location	Total Bid amount
City Hall - XEROX CB055/HZ + ACCESSORIES 250,000 PAGE ALLOWANCE	<u>\$673.78</u> Per Month
Kodiak Police Department - XEROX CB055/HZ + 150,000 PAGES ACCESSORIES	<u>\$405.57</u> Per Month
Kodiak Harbormasters Office - XEROX CB055/HZ + 100,000 PAGES ACCESSORIES	<u>\$341.82</u> Per Month
Kodiak Public Library - XEROX CB055/HZ + 50,000 PAGES ACCESSORIES	<u>\$244.32</u> Per Month

Total Monthly Lease \$1,725.49

Total Annual Lease \$20,705.88
Includes Annual Page Allowances Stated Above.

Additional Charges:

City Hall	<u>COLOR-.0456 BLACK-.005</u> per copy overage charge
Kodiak Police Department	<u>COLOR-.0456 BLACK-.005</u> per copy overage charge
Kodiak Harbormasters Office	<u>COLOR-.0456 BLACK-.005</u> per copy overage charge
Kodiak Public Library	<u>COLOR-.0456 BLACK-.005</u> per copy overage charge

(Submit Pages 14 & 15 as part of your bid)

Invitation to Bid 2019-006

June 19th 2019

Business License and City Sales Tax Registration copies are included.

Bid price valid for 90 days.

Terms Net 30 Dated 7/18/2019

Submitted by: Julie Olson Dated: 7/18/2019

JA Olson
Signature

OFFICE TECH, INC
Business Name

AGENT OWNER
Title

3709 SPENARD RD. SUITE 200
Address

907-522-5850
Telephone

ANCHORAGE, AK 99503
City, State, Zip



REQUEST FOR PROPOSALS

For

DOCUMENT
PRODUCTION
EQUIPMENT LEASE
BID NO. 2019-006

June 19, 2019

CITY OF KODIAK REQUEST FOR PROPOSALS (RFP)
BID No. 2019-006
DOCUMENT PRODUCTION EQUIPMENT

Introduction

The City of Kodiak desires to enter into a contract for leasing and maintaining document production equipment. You are invited to submit a proposal for providing the equipment; equipment consumables, except paper; and equipment servicing and repair. The following information is provided for your consideration.

Questions regarding this RFP may be addressed to:
Lee Peterson or Dave Smith
isadmins@city.kodiak.ak.us
907-486-8619

Anticipated Schedule

RFP Issued June 19, 2019	
Proposals Due	July 19, 2019
High Scoring Proposer Identified	July 19, 2019
Council Considers Contract Award	August 8, 2019
Equipment Installed by.....	September 15, 2019

Goal

The goal of this RFP is to award a contract to one or more vendors to replace three multi-purpose document production machines – one at City Hall, one at the Kodiak Police Department, one at the Harbormaster Office; replace a public-use, coin-operated copy machine at the Public Library; provide timely equipment repair/on-site support for each machine; provide all machine consumables, except paper; provide staff training; and remove and dispose of the existing equipment.

Background

A five-year lease for multi-purpose document production machines at City Hall, the Kodiak Police Department, the Harbormaster Office, and Public Library has reached expiration.

Scope of Work/Specifications

Contractor shall include all peripheral equipment and installation needed to provide a turnkey system that meets all terms, conditions, and specifications herein. All equipment must be the most current technology available.

Provide the cost for each multi-purpose machine, delivered to the respective sites described below, to include staff training; onsite repair/support within four-hour notification; all consumables, except paper; and Additive A to include hole-punch. Additive B to include a magnetic stripe reader for user authorization for color copy and computer print functions.

Because the City seeks to identify the best overall solution, proposers may submit alternative proposals in addition to the primary proposal requests herein. The contractor selected shall provide a representative to handle all issues, inquiries, and activities, including adding upgrades and expediting maintenance problems, etc. The representative will act as a liaison between the City and the contractor.

Equipment Requirements – Notwithstanding the additional accessories delineated below, document production equipment, with the exception the machine to be placed at the Public Library, shall be configured with the minimum following features/accessories:

- All machines shall be new, not remanufactured or rebuilt, and have driver support for Windows 7 and newer
- Minimum of 55 pages per minute print/copy output speed for B&W and color
- Ethernet 10/100/1000 Base T network connection
- Printing via network connection
- Support IBM iSeries (PDT file for IBM PC5250 Emulation)
- At least 1 GB RAM
- Hard Drive with secure automatic overwrite
- High capacity paper feeder (ADF for Copy/Scan as well as flatbed)
- By-pass tray
- Multiple paper supply trays capable of holding a minimum of 500 sheets each
- Enlargement and reduction
- Automatic duplex copying
- Maximum paper size 11" x 17"
- Minimum paper size: 5.5X8.5 (1/2 letter)
- Automatic multiple staple, hole punch, and collating
- Electronic auditing
- Web-based configuration and diagnostics
- Automatic paper select
- Job build for disparate originals
- Multi copy exposure modes
- Bound original copying
- Multiple stored job programming
- Automatic job recovery
- Warm up time less than 30 seconds
- High-speed color scanning, including scan to e-mail, or network location at no additional charge or page count

Also provide pricing for the following additives:

Additive A: Punch capability

In addition to the above, the following is required:

City Hall:

Provide equipment to replace a Xerox 7855 Copier, located at City Hall, 710 Mill Bay Road, Room 222, with a new machine that meets or exceeds the duty cycle of the current machine and has the additional minimum following features:

- One paper tray capable of holding 4,000 sheets
- 500,000 copies annually included in lease (specify number of color copies included)
- Maximum capacity booklet creation (multi fold/stitch modes) capable of stitching at least 100 pages

Kodiak Police Department:

Provide equipment to replace a Xerox 7855 Copier, located at Kodiak Police Department, 2160 Mill Bay Road, with a new machine that meets or exceeds the duty cycle of the current machine and has the additional minimum following features:

- 150,000 copies annually included in lease (specify number of color copies included)
- Maximum capacity booklet creation (multi fold/stitch modes) capable of stitching at least 50 pages

Harbormaster Office:

Provide equipment to replace a Xerox 7855 Copier, located at the Kodiak Harbormaster's Office, 403 Marine Way, with a new machine that meets or exceeds the duty cycle of the current machine and has the additional minimum following features:

- 100,000 copies annually included in lease (specify number of color copies included)

Kodiak Library:

Provide equipment to replace a Xerox with an attached coin op copier, located at the Kodiak Public Library, 612 Egan Way, with a new (not remanufactured or rebuilt) machine that meets or exceeds the duty cycle of the current machine and has the minimum following features:

- Minimum of 55 pages per minute print/copy output speed for B&W and color
- 50,000 copies annually included in lease
- Sheetfeeder
- High *capacity paper feeder*

- By-pass tray
- Multiple paper supply trays capable of holding a minimum of 500 sheets each
- Maximum paper size 11" x 17"
- Minimum paper sizes 8 1/2" x 11"
- Enlargement and reduction
- Automatic duplex copying
- Electronic auditing
- Automatic paper select
- Multi copy exposure modes
- Bound original copying
- Automatic job recovery
- Warm up time less than 30 seconds
- All copier functions must be operational and compatible with the attached coin operation unit

The City's contract with its current vendor will continue on a month-to-month basis until it terminates upon the installation of new equipment by the vendor(s) who is/are awarded the bid(s). At no cost to the City, all machines must be delivered and installed within 30 days of contract award. Contractor shall be responsible for removal of all packing material. Contractor shall be responsible for coordination with any prior vendor and removal of old machines. If Contractor fails to deliver and install the new equipment as ordered by the City or fails to remove the old equipment within the specified timeframes, the City may cancel the order without penalty.

Contractor must perform complete installation and verify satisfactory operation of all equipment. Contractor shall perform all standard installation and shall provide drivers and software/firmware needed for departmental IT staff to load to the Network. Contractor must demonstrate a successful copy/print/scan from the installed equipment.

Quality Assurance and Technical Support: The Contractor shall provide training and demonstrations, at no additional cost, in conjunction with initial installation, and on an as-needed basis thereafter, as may be requested by authorized City personnel. Upon such request for training and/or demonstrations, contractor shall respond in a reasonable time period. An operator's manual shall be provided with each copy machine.

At no additional cost to the City, Contractor must provide both telephone support and timely on-site support for network-related problems by technicians that have computer network training. These technicians will not have direct access to the network or to computers, but departmental IT staff will be available to coordinate troubleshooting efforts.

At no additional cost to the City, Contractor agrees to timely erasure of all data on hard drives from machines that are removed from City service. Data erasure shall be coordinated with the City IT Administrator and performed according to City specifications.

The Contractor shall make repairs and adjustments necessary to keep and maintain copy quality and equipment operations within manufacturer's specifications. Contractor shall be

responsible for all cost of maintenance and repairs, including labor, parts, test copies, travel time, mileage, supplies, and any other expenses required to maintain the equipment in proper working order.

Contractor shall perform preventive maintenance on all copiers per manufacturer specifications. Contractor shall provide the manufacturer's scheduled maintenance program for each class of copier.

Contractor shall respond on-site to verbal service calls within an average response time of (4) workday hours after notification of a malfunction. Workday hours are defined as those running from 8 a.m. to 5 p.m., Monday through Friday, except City holidays. Contractor shall adhere to a standard policy of calling back within two (2) hours of the call for service to advise departmental personnel how and when the problem will be addressed. Calculation of response time starts when authorized City personnel report a malfunction to the Contractor. Response time for equipment installed at City facilities operating 24 hours per day shall be calculated on the workday hour basis. Contractor's repeated failure to meet the four (4) hour response time obligation shall constitute a material breach of the Contract.

All equipment must be repaired or replaced within twenty-four (24) consecutive hours of the initial call for service. Contractor's repeated failure to comply with this obligation shall constitute a material breach of the Contract.

When repair time exceeds or is expected to exceed twenty-four (24) consecutive hours, Contractor shall replace any such unrepaired machine with a reasonably comparable loaner machine that allows continued machine operations. Reasonably comparable shall, at the very least, mean a machine with a speed that is no less than 50 copies per minute from the machine being temporarily replaced. After five business days wherein a loaned machine has been placed, such locations must be provided with a loaner machine that provides equal or better performance and features to the original equipment being temporarily replaced. Contractor's repeated failure to comply with this obligation shall constitute a material breach of the Contract.

Copiers that develop a trend of requiring an excessive number of service calls (defined as four (4) service calls in a month or six (6) service calls within a 90-day period) must be replaced with comparable equipment of equal or greater capability at no additional charge. Contractor agrees that the City Manager, or his/her designee, shall be the final authority for determining whether a machine has been subject to an excessive number of service calls. Contractor's repeated failure to comply with this obligation shall constitute a material breach of the Contract.

Contractor shall provide a representative to act as a single point of contact for all inquiries. Contractor shall establish a practice of maintaining routine visits to departments to provide services, which include, but are not limited to satisfaction inquiries, equipment requests, training, and complaint resolution.

Supplies: Contractor shall provide, at no additional cost to the City, all consumable supplies, except paper, throughout the term of this Contract, including shipping charges. Said supplies include, but are not limited to toner, developer, ink/copy cartridges, fusers, drums, image units, transfer belts, and staples.

At the time of copier installation, Contractor shall deliver supplies for not less than an estimated two (2) month period for each machine placed. Contractor shall allow City to maintain a reserve of toner and staples for each machine equivalent to two (2) month's usage. City shall be responsible for ordering subsequent supplies from Contractor. Contractor shall deliver ordered supplies within five (5) days after notification.

Invoicing and Reports: Payments shall be made on a Net 30 basis from receipt of valid invoices.

Contractor shall provide a monthly electronic copy count meter history report to the Purchasing Agent that shall include the following for each machine: make and model, location, serial number, equipment ID number, exact location of machine.

Pricing: Based on a sixty-month lease, contractor shall provide the monthly lease amount for each machine and shall also include the overage per copy rate for each machine.

The price shall remain firm through the term of the Contract. As specified herein, the price shall include equipment and accessories, supplies (except paper), installation, training, maintenance, and all forms of service and repair.

Contractual Requirements

The term of the Contract shall be 60 months.

The City may suspend or terminate this Agreement at any time upon written 30-day notice to the Contractor in the event of a material breach of contractual obligations. Contractor shall be responsible for removing all equipment from City premises within 15 days from the date of the termination notice, at no cost to the City, unless an otherwise mutual time is agreed upon. A default shall include, but is not limited to a "Failure to Perform". Failure to Perform means any of the following actions or inactions by the Contractor, which, if occurring, shall also constitute a material breach of this Agreement by Contractor:

1. The Contractor provides material that does not meet the specifications of the Contract.
2. The Contractor fails to adequately perform the services set forth in the specifications of the Contract.
3. The Contractor fails to complete the work required or furnish the materials required within the time stipulated in the contract.
4. The Contractor fails to make progress in the performance of the Contract and/or give the City reason to believe that the Contractor will not or cannot perform to the requirements of the Contract. Contractor will implement no changes to price or interpretation of contract terms without the express advanced concurrence and consent of the City Manager or his/her designee.

Contractor is solely responsible for all taxes and fees that may be levied by any local, state, or federal governmental agency. If, in the sole judgment of the City, Contractor's equipment, at any individual location, develops a history of unsatisfactory performance, City shall provide Contractor with a 30-day notice to allow Contractor to correct such unsatisfactory performance. If such unsatisfactory performance persists upon the expiration of the 30-day period, the City may demand removal of machine and exclude that machine from this Agreement.

Selection Criteria

The City will consider the quality of the proposed products, price, and the capabilities of the vendor to manage and service the equipment. Any final analysis does not imply that one vendor is superior to another, but simply, that, in the City's judgment, the vendor selected appears to offer the best overall solution for the City's current and anticipated needs.

Submittal of a Proposal authorizes the City to investigate, without limitation, the background and current performance of your company and your present staff. Discovery of any material misstatement of fact may lead to disqualification of a Proposal or to cancellation of any resulting Contract.

The City reserves the sole right to determine whether goods and/or services offered are acceptable for our use.

Proposals will be evaluated in relation to all aspects of this Request, including your responsiveness to this RFP; our perception of your understanding of our stated needs and ability to provide quality assurance as evidenced by your Proposal; and, possibly, by interviews with your staff; the ability of Proposer to provide reliable and timely maintenance and support services; and evaluation of cost in relationship to the foregoing criteria. More specifically, proposals will be evaluated and scored based on the criteria listed below. The City may schedule interviews to further evaluate the proposing firms.

1. Firm Qualifications

20 Points

Provide detailed information about your firm's qualifications to provide, maintain, and repair document production equipment. Describe the firm's experience in Alaska and in Kodiak. Name the principal of the firm who will be responsible for binding the firm to the provisions of this Agreement.

To be eligible for selection, the firm must fully comply with all federal and state statutes regarding employment practices with regard to women and minorities. Furthermore, the firm must maintain a valid Alaska Business license.

2. Equipment/Supply Requirements (Includes Additives)

25 Points

Describe separately for each machine, and in detail, the make, model, and specifications of the equipment you propose for each location specified herein. Include equipment

brochures, if desired. Describe separately for each machine, and in detail, applicable equipment that includes Additives.

Describe the consumable supplies that will be included, at no additional cost, for each machine and the amount of reserves provided for each.

Describe the consumable supplies that will be included, at no additional cost, for Additive C.

3. Pricing (Include Additives)

30 Points

Provide your proposed pricing structure for each piece of equipment. Include a separate pricing structure for Additives.

Specify any agreement/contract you have with other governmental entities that provides special government pricing and whether these agreements can extend to the City of Kodiak.

4. Quality Assurance and Technical Support

25 Points

Describe your plan for supporting this account, including, at a minimum, customer service capabilities, network support, on-site technical service, and parts availability. Include whether the service technicians assigned to this account are factory trained, whether or not they live in the Kodiak area, and what your response time to service calls will be. Discuss any other aspect of quality assurance and technical support.

Name the technical staff who will perform key aspects of the work. Describe in detail the experience each key staff member has with installing and servicing document production equipment in Kodiak. Do not list projects in which personnel has had less than a key role. Attach resumes for each key staff member and provide three professional references for each.

Proposal Format

Submit six (6) original copies of the proposal. The response must contain a statement of qualifications and a concise narrative, which addresses, in the order presented, the evaluation criteria set forth in this solicitation. The proposal shall not exceed fifteen (15) pages in length, exclusive of cover page, letter of transmittal, table of contents and requested attachments.

Submit proposals to: Mike Tvenge, City Manager
City of Kodiak
710 Mill Bay Rd. Room 114
Kodiak AK 99615

Proposals should be bound and organized according to the following outline:

1. Letter of Transmittal: A letter of transmittal shall include the following:

- a. The proposer's name and address
 - b. Statement that indicates the proposal is valid for at least 90 days from the proposal submission deadline
 - c. Statement that indicates the proposer's willingness to perform the services described in this RFP
 - d. Statement that all staff and other resources that are required to perform the services described in this RFP will be made available by your organization over the life of the anticipated contract
 - e. Statement that the signatory has authority to bind the proposer
 - f. Signature of authorized individual
2. Table of Contents
 3. Firm Qualifications
 4. Equipment/Supply Requirements
 5. Pricing
 6. Quality Assurance and Technical Support

Conflict of Interest and Restrictions

Provide a statement that no conflicts of interest exist, or that if there are potential conflicts, they were declared in writing to the City of Kodiak, and the City of Kodiak found either no conflict existed, and/or the conflict was not significant and/or the conflict could be mitigated. If applicable, attach a copy of any response from the City.

Review of Proposals

Evaluation Process: An evaluation committee designated by the City Manager will evaluate responsive proposals. Each proposal will be independently evaluated by each member of the evaluation committee. The evaluation committee will select the firm(s) that provides the best overall value to the City of Kodiak. The proposal(s) selected by the evaluation committee will be presented to the City Council for approval, upon the recommendation of the City Manager.

Interviews: At the City's option, a short list of proposers may be requested to interview with the selection committee. Proposers will be notified in writing of the interview requirements, date, time, location, and amount of time allowed for an interview/presentation and question and answer period.

Administrative Information

1. Contact Person: Any request for information or questions regarding this RFP should be addressed and delivered to:

Lee Peterson or Dave Smith
710 Mill Bay Road, Room 214
Kodiak, Alaska 99615
Phone: (907) 486-8636
Fax: (907) 486-8633
Email: isadmins@city.kodiak.ak.us
2. Deadline for Receipt of Proposals: Proposals may be mailed or hand delivered, as long as six (6) original copies are physically received by the City of Kodiak no later than 2 p.m., prevailing time (AK), July 19, 2019. No faxed or emailed proposals will be accepted. Proposals received after the above proposal submission deadline will not be considered and will be returned.
3. Bids shall be submitted on the "Bid Form" provided and must be manually signed by an authorized representative of the firm.
4. In order to ensure consideration, bids must be submitted in a sealed envelope, identified with the name "Bid No. 2019-006 " and time and date of opening, and addressed as follows:

Mike Tvenge, City Manager
City of Kodiak
710 Mill Bay Rd. Room 114
Kodiak AK 99615

Bid No. 2019-006
2:00 PM, July 19th 2019

5. Bids must be mailed to the address indicated on the Bid Form or hand delivered to the person opening bids. Bids must be received at this address BY THE DATE AND TIME SHOWN for receipt of bids or hand delivered to the City Manager's office at the City of Kodiak. It is the Bidder's responsibility to ensure delivery of their bids to the City Manager's office. The City will not be responsible for picking up parcels other than the daily mail delivery.
6. Any bid, amendment, or withdrawal, which has not been actually received by the person opening bids prior to the time of the scheduled time for receipt of bids, will not be considered. Questions of fact regarding circumstances such as weather, delay of mails, etc. that circumvent legitimate timely receipt of an otherwise responsive bid will be decided by the City of Kodiak.
7. Bids may be withdrawn by written or facsimile request received from bidders prior to the time fixed for opening. Negligence on the part of the bidder in preparing the bid

does not confer the right for the withdrawal of the bid after it has been opened.

8. Bidder must submit a copy of its current Alaska Business License or Bidder's application to obtain an Alaska Business License for the current year. Local bidders must be registered to collect City Sales Tax. Bidder shall be current with filing all City of Kodiak sales tax returns and shall not have any delinquent port or harbor fees owing to the City.
9. Inquiries or requests for information pertaining to these specifications should be directed to Lee Peterson or Dave Smith at (907) 486-8619 or emailed to isadmins@city.kodiak.ak.us.

GENERAL INFORMATION:

Processing of bids – Kodiak City Code Section 3.12.050 states: Notwithstanding other provisions of this chapter relating to the award after competitive bid for purchases, sales, and contracts, the city may:

- (a) Reject any defective or non-responsive bids;
- (b) Waive any irregularities in any and all bids;
- (c) Reject all bids;
- (d) Negotiate with two or more of the lowest bidders, if bid prices are in excess of the money available or authorized, for a reduction in the scope, quality, or quantity of the purchase, service, or contract;
- (e) Readvertise for bids with or without making changes in the plans or specifications.

Local bid preference – Kodiak City Code Section 3.12.060 states, in part:

(a) Notwithstanding section 3.12.040, the council shall direct an award of a contract for the purchase of personal property or services or for the construction, repair, or improvement of city facilities after competitive bidding to a local bidder who is also a responsible bidder, if that bid does not exceed the otherwise lowest responsible bid by more than ten (10) percent or \$30,000, whichever is less.

(b) For the purposes of this section "local bidder" shall mean a responsible bidder who had, at the time of the bid award, maintained a business office or store within the Borough of Kodiak Island, which was open for business on a substantially full-time basis and staffed by at least one full-time employee for at least one year.

Lowest responsible bidder – The bid may be awarded to the lowest responsible bidder. Kodiak City Code Section 3.12.080 states: In determining the lowest responsible bidder factors to be considered shall include, but not necessarily be limited to the following criteria:

- (a) The ability, capacity, and skill of the bidder to perform the contract;
- (b) Whether the bidder can perform the contract within the time specified, without delay or interference;
- (c) The character, integrity, reputation, judgment, experience, and efficiency of the bidder;
- (d) The quality of performance of previous contracts;
- (e) The previous and existing compliance by the bidder with laws and ordinances related

to the contract;

(f) The sufficiency of the financial resources and ability of the bidder to perform the contract; and

(g) Litigation by the bidder on previous orders or contracts with the city.

Bid Award. It is anticipated that bid results will awarded at the City Council Meeting following bid closure

Respectfully submitted

CITY OF KODIAK

Victoria Ellis
Purchasing Clerk

BID FORM

TO: Mike Tvenge, City Manager
City of Kodiak
710 Mill Bay Road, Rm #114
Kodiak AK 99615

Any exceptions to the published bid specifications must be listed by item.

In compliance with your Invitation to bid for Bid No. 2019-006 for Document Production Equipment dated June 19th 2019, the undersigned hereby proposes to provide the following:

Item Location	Total Bid amount
City Hall	_____ Per Month
Kodiak Police Department	_____ Per Month
Kodiak Harbormasters Office	_____ Per Month
Kodiak Public Library	_____ Per Month
 Total Monthly Lease	 _____
Total Annual Lease	_____

(Submit Pages 14 & 15 as part of your bid)

Invitation to Bid 2019-006

June 19th 2019

Business License and City Sales Tax Registration copies are included.

Bid price valid for _____ days.

Terms _____ Dated _____

Submitted by: _____ Dated: _____

Signature

Business Name

Title

Address

Telephone

City, State, Zip

ADDENDUM TO CITY OF KODIAK DOCUMENT PRODUCTION EQUIPMENT LEASE BID NO 2019-006

Corrections to Specifications of device for City hall clarification in large capacity tray and an error in the number of copies annually

The corrections are in bold type:

City Hall:

Provide equipment to replace a Xerox 7855 Copier, located at City Hall, 710 Mill Bay Road, Room 222, with a new machine that meets or exceeds the duty cycle of the current machine and has the additional minimum following features:

- One paper tray capable of holding 4,000 sheets, **can be split into multiple high capacity trays of same paper size (8½X11) that automatically switch to next tray when empty**
- ~~500,000 copies~~ **250,000 copies** annually included in lease (specify number of color copies included)
- Maximum capacity booklet creation (multi fold/stitch modes) capable of stitching at least 100 pages

MEMORANDUM TO COUNCIL

To: Mayor Branson and City Councilmembers
From: Mike Tvenge, City Manager *WT*
Thru: Kelly Mayes, Finance Director
Date: August 8, 2019

Agenda Item: V. e. **Authorization to Award Bid of Cisco Phone System Equipment and Installation and Migration of Existing Cisco System to GCI Communications Corp**

SUMMARY: The City of Kodiak accepted sealed bids for the Cisco phone system equipment and installation and migration from the existing Cisco system. The date of invitation began on June 14, 2019, and closed at 2 p.m. on July 15, 2019. The lowest responsive bidder was GCI Communications Corp. GCI Communications Corp bid \$77,903 for the Cisco phone system upgrade for parts and labor \$21,785 for the optional updated Cisco phones. Staff recommends Council authorize the award and purchase to GCI Communications Corp for a total of \$99,688.

PREVIOUS COUNCIL ACTION: None

DISCUSSION: There was one proposal for the Cisco phone system equipment and installation and migration from the existing Cisco system submitted to the City at the deadline. The proposal received was from GCI Communications Corp. City staff reviewed the proposal based on the required criteria as set forth by the bid documents and recommends accepting the proposal from GCI Communications Corporation.

ALTERNATIVES:

- 1) Authorize the bid award to GCI Communications Corp. in the amount of \$99,688. Staff supports this recommendation.
- 2) Do not authorize this purchase, which is not recommended.

FINANCIAL IMPLICATIONS: The Cisco phone system upgrade is budgeted within General Capital Projects, Project Number 4057, Citywide Phone System Upgrade.

LEGAL: Advertisement was in accordance to KCC 3.12.040.

STAFF RECOMMENDATION: Staff recommends Council authorize the award and purchase to GCI Communications Corp for \$99,688.

CITY MANAGER'S COMMENTS: I support staff's recommendation. The current phone system is years past it's scheduled life and is no longer supported by Cisco. The risk is unexpected failure.

ATTACHMENTS:

Attachment A: GCI Communications Corp Bid Quote

Attachment B: Cisco Phone System Bid Summary

PROPOSED MOTION:

Move to authorize a bid award of Cisco Phone System Equipment and Installation and Migration of Existing Cisco System to GCI Communications Corp in the amount of \$99,688, with funds from the General Capital Projects, Project Number 4057, Citywide Phone System Upgrade and authorize the City Manager to execute the documents on behalf of the City.



July 15, 2019

Mike Tvenge
City Manager
City of Kodiak
Purchasing Department
710 Mill Bay Road, Room 114
Kodiak, AK 99615

Re: ITB No. 2019-005

Dear Mr. Tvenge

Attached please find the GCI response to ITB 2019-005.

GCI qualifies for Local Bid Preference and we have attached a copy of our Alaska Business License. Our City Sales Tax Registration number is 8294

If you need anything else, please let me know and I will provide it to you promptly.

Sincerely,

A handwritten signature in blue ink that reads "Jeff Glaser". The signature is fluid and cursive, with the first name "Jeff" being more prominent than the last name "Glaser".

Jeff Glaser

Account Director, Government Markets
tel: 907-868-5899 | cell: 907-717-5655

BID FORM

TO: Mike Tvenge, City Manager
City of Kodiak
710 Mill Bay Road, Rm #114
Kodiak AK 99615

Any exceptions to the published bid specifications must be listed by item.

In compliance with your Invitation to bid for Bid No. 2019-005 for **Cisco Phone System upgrade** dated June 16, 2019, the undersigned hereby proposes to provide the following:

Item	Total Bid amount
1. Cisco Phone System Upgrade Parts and Labor	1. <u>\$77,903</u>
2. Optional Cisco Phones as Listed	2. <u>\$21,785</u>
	Total Bid \$ <u>\$99,688</u>



CITY OF KODIAK
POST OFFICE BOX 1397, KODIAK, ALASKA 99615

Finance
907-486-8656 Voice
907-486-8600 Fax

Cover Sheet Page 1 of 9 Pages

Invitation to Bid

PLEASE RETURN THIS INVITATION TO BID BY THE DATE AND TIME SHOWN BELOW OR BID WILL BE REJECTED

DATE OF INVITATION	TIME AND DATE OF OPENING	Bid No.
June 14, 2019	2:00 P.M. July 15, 2019	2019-005

**Bid No.: 2019-005
Cisco Phone System Upgrade**

The City of Kodiak is accepting sealed bids for Cisco Phone System Upgrade configured as specified in the bid package.

Bids will be opened in the City Conference Rm #116, 710 Mill Bay Road, Kodiak, Alaska.

BIDS RECEIVED BY THE CITY MANAGERS OFFICE AFTER TIME/DATE SPECIFIED FOR THE OPENING OF BIDS, WILL NOT BE CONSIDERED AND WILL BE RETURNED UNOPENED

The City of Kodiak reserves the right to reject any and all bids, to waive informalities, and to reject non-conforming, non-responsive or conditional bids.



Office of the City Manager

710 Mill Bay Road, Room 113, Kodiak, Alaska 99615

SECTION I – BID SPECIFICATIONS:

The City of Kodiak is accepting sealed bids for Cisco Phone System Equipment and installation/migration from existing Cisco System.

The following is a list of required equipment for the upgrade:

Part Number	Description	Service Duration (Months)	Qty
Redundant BE6M servers			
BE6M-M5-K9	Cisco Business Edition 6000M (M5) Appliance, Export Restr SW	—	2
CON-SNT-BE6MM5K9	SNTPC-8X5XNBD Cisco Business Edition 6000M (M5) Applia	12	2
BE6K-PSU	Cisco UCS 770W AC Power Supply for Rack Server	—	2
BE6K-RAIDCTRLR	Cisco 12G Modular RAID controller with 2GB cache	—	2
BE6K-DISK	300GB 12G SAS 10K RPM SFF HDD	—	12
R2XX-RAID5	Enable RAID 5 Setting	—	2
BE6K-RAM	16GB DDR4-2666-MHz RDIMM/PC4-21300/single rank/x4/1.2v	—	6
BE6K-CPU	2.2 GHz 4114/85W 10C/13.75MB Cache/DDR4 2400MHz	—	2
CAB-9K12A-NA	Power Cord, 125VAC 13A NEMA 5-15 Plug, North America	—	2
VMW-VS6-HYPPLS-K9	Embedded License, Cisco UC Virt. Hypervisor Plus 6.x (2-cpu)	—	2
BE6k SW and licensing			
R-CBE6K-K9	Cisco Business Edition 6000-Electronic SW Delivery-Top Level	—	1
CON-ECMU-RCBE6KK	SWSS UPGRADES Cisco Business Editi	12	1
BE6K-SW-11.5	Business Edition 6000 v11.5 export restricted software	—	1
BE6K-START-UCL35	BE6000 Starter Bundle with 35 UCL Enh and 35 vmail Licenses	—	1
BE6K-UCL-ESS	Cisco Business Edition 6000 - Essential User Connect License	—	74
BE6K-UCL-BAS	Cisco Business Edition 6000 - Basic User Connect License	—	72
BE6K-UCL-ENH	Cisco Business Edition 6000 - Enhanced User Connect License	—	23
BE6K-UCL-VM	Cisco Business Edition 6000-Voicemail/Unified Messaging UCL	—	95
UCM-11X-ENH-UCL	BE6K UCM 11X Enhanced User Connect Lic - Single Fulfillment	—	23

CON-ECMU-UCMENHUC	SWSS UPGRADES BE6K UCM 10X Enhance	12	23
UCN-11X-VM-UCL	BE6000 Unity Connection 11x Basic Voicemail License	---	95
CON-ECMU-UCN10XVM	SWSS UPGRADES BE6K - Unity Connect	12	95
UCXN-11X-SCPORTS	BE6K - Unity Connection 11x - VM Speech Connect Ports	---	2
UCM-11X-BAS-UCL	BE6K UCM 11X Basic User Connect License - Single Fulfillment	---	72
CON-ECMU-UCMUCBAS	SWSS UPGRADES BE6K UCM 10X Basic U	12	72
UCM-11X-ESS-UCL	BE6K UCM 11X Essential User Connect Lic-Single Fulfillment	---	74
CON-ECMU-UCMESSUC	SWSS UPGRADES BE6K UCM 10X Essenti	12	74
LIC-EXP-E-PAK	Expressway Series, Expressway-E PAK	---	1
LIC-EXP-GW	Enable GW Feature (H323-SIP)	---	4
LIC-EXP-E	Enable Expressway-E Feature Set	---	2
LIC-EXP-TURN	Enable TURN Relay Option	---	2
LIC-EXP-AN	Enable Advanced Networking Option	---	2
LIC-SW-EXP-K9	License Key Software Encrypted	---	4
LIC-EXP-SERIES	Enable Expressway Series Feature Set	---	4
EXPWY-VE-E-K9	Cisco Expressway-E Server, Virtual Edition	---	2
BE6K-UXL-START	BE6K Starter Pack - Single Fulfillment Enforcement	---	1
EXPWY-VE-C-K9	Cisco Expressway-C Server, Virtual Edition	---	2
BE-11X-UCL-STR	BE6000 v11 UCL Starter licenses	---	1
CON-ECMU-BE1U1XCU	SWSS UPGRADES BE6000 v11 UCL Starter licenses	12	1
SW-EXP-8.X-K9	Software Image for Expressway with Encryption, Version X8	---	1
BE6K-PAK	Cisco Business Edition 6000 - PAK - Single Fulfillment	---	1
LIC-EXP-DSK	Expressway Desktop Endpoint License	---	58

Replacement for older PRI Gateways			
ISR4321-V/K9	Cisco ISR 4321 Bundle, w/UC License, CUBE-10	---	2
CON-SNT-ISR4321V	SNTC-8X5XNBD Cisco ISR 4321 UC Bundle, PVDM4-32, UC L	12	2
SL-4320-IPB-K9	IP Base License for Cisco ISR 4320 Series	---	2
SL-4320-UC-K9	Unified Communication License for Cisco ISR 4320 Series	---	2
PWR-4320-AC	AC Power Supply for Cisco ISR 4320	---	2
CAB-AC-C5	AC Power Cord, Type C5, US, Canada	---	2
MEM-FLSH-4G	4G Flash Memory for Cisco ISR 4300 (Soldered on motherboard)	---	2

MEM-4320-4G	4G DRAM for Cisco ISR 4320 (Soldered on motherboard)	---	2
NIM-BLANK	Blank faceplate for NIM slot on Cisco ISR 4400	---	2
FL-CUBEE-5	Unified Border Element Enterprise License - 5 sessions	---	4
SISR4300UK9-169	Cisco ISR 4300 Series IOS XE Universal	---	2
NIM-1MFT-T1/E1	1 port Multiflex Trunk Voice/Clear-channel Data T1/E1 Module	---	2
PVDM4-64	64-channel DSP module	---	2

Replacement for older VG224 (Uses Essential License on CUCM)

VG310	Modular 24 FXS Port VoIP Gateway with PVDM3-64	—	2
CON-SNT-VG310ICV	SNTC-8X5XNBD Cisco VG310 - Modular 24 FXS Port Voice	12	2
SVG3XUK9-15603M	Cisco VG3X0 UNIVERSAL	—	2
MEM-CF-256MB	256MB Compact Flash for Cisco 1900, 2900, 3900 ISR	---	2
CAB-AC	AC Power Cord (North America), C13, NEMA 5-15P, 2.1m	—	2
HWIC-BLANK	Blank faceplate for HWIC slot on Cisco ISR	---	2
PVDM3-64	64-channel high-density voice DSP module	—	2
SL-VG3X0-IPB-K9	Cisco VG3X0 IP Base License	—	2
SL-VG3X0-UC-K9	Cisco VG3X0 Unified Communications License	—	2

Replacement for older VG202 (Uses Essential License on CUCM)

VG202XM	Cisco VG202XM Analog Voice Gateway	---	3
CON-SNT-VG202XM	SNTC-8X5XNBD Cisco VG202XM Analog	12	3
SVG2XAISK9-15703M	Cisco VG20X Series IOS ADVANCED IP SERVICES	---	3
CAB-AC	AC Power Cord (North America), C13, NEMA 5-15P, 2.1m	---	3
CAB-ETH-S-RJ45	Yellow Cable for Ethernet, Straight-through, RJ-45, 6 feet	---	3
PWR-30W-AC	Power Supply 30 Watt AC	—	3

Replacement for older VG204 (Uses Essential License on CUCM)

VG204XM	Cisco VG204XM Analog Voice Gateway	---	5
CON-SNT-VG204XM	SNTC-8X5XNBD Cisco VG204 Analog V	12	5
SVG2XAISK9-15703M	Cisco VG20X Series IOS ADVANCED IP SERVICES	---	5
CAB-AC	AC Power Cord (North America), C13, NEMA 5-15P, 2.1m	---	5
CAB-ETH-S-RJ45	Yellow Cable for Ethernet, Straight-through, RJ-45, 6 feet	---	5
PWR-30W-AC	Power Supply 30 Watt AC	—	5

Labor and travel expenses: Complete installation and programming of the system, including roll over from old system, also include time for training City IT Staff for troubleshooting, phone and voicemail management and maintenance of new system.

The following items are optional (to be installed by City IT staff if purchased):

Replacement Phone for 7937 (Uses Enhanced License on CUCM)			
CP-7832-K9=	Cisco 7832 IP Conference Station	---	6
CON-SNT-CP7832K9	SNTC-8X5XNBD Cisco 7832 IP Conference Station	12	6
Replacement Phone for 7911 (Uses Basic License on CUCM)			
CP-7811-K9=	Cisco UC Phone 7811	---	72
CON-SNT-CP78119K	SNTC-8X5XNBD Cisco UC Phone 7811	12	72
Replacement Phone for 79x2 (Uses Enhanced License on CUCM)			
CP-7841-K9=	Cisco UC Phone 7841	---	51
CON-SNT-CP7841K9	SNTC-8X5XNBD Cisco UC Phone 7841	12	51

Scope of Work:

Installation of new equipment will be in the Kodiak Police department server room, and other locations throughout the City, as this is a secure location, and other locations may require access after-hours. City IT staff will be required to escort installers while on site and can assist as needed. In order to minimize service interruptions, some city departments being operational 24/7, the switch over to the new system will need to be scheduled for late night midweek. In addition, there is in place at the Police department a Stancil voice recorder (with analog and VOIP channels) and a West Viper 911 system that will need to be connected to the new system. All locations are using Cisco layer 3 switches maintained by the IT Staff. We are planning to utilize the existing 7900 (7911, 7937 conference phones, 7942, and 7962) series phones until City IT staff are able to replace them with newer phones. All system and administrator user names and passwords required are to be given to City IT staff upon completion of project.

Bids will be opened in the City Conference Room #116, 710 Mill Bay Road, Kodiak, Alaska on July 15th at 2:00 pm.

Bids received by the City Manager's Office after Time/ Date specified for the opening of bids, will not be considered and will be returned unopened.

The City of Kodiak reserves the right to reject any and all bids, to waive informalities, and to reject non-conforming, non-responsive, or conditional bids.

Packaging Requirements:

All packages must be original manufacturer shipping packaging; additional packaging or consolidating smaller items is permitted as long as original packaging of the item(s) is intact.

Prices quoted must be FOB Kodiak, Alaska.

SECTION II – GENERAL REQUIREMENTS:

1. Bids shall be submitted on the “Bid Form” provided and must be manually signed by an authorized representative of the firm.
2. In order to ensure consideration, bids must be submitted in a sealed envelope, identified with the name “Bid No. 2019-005 ” and time and date of opening, and addressed as follows:

Mike Tvenge, City Manager
 City of Kodiak
 710 Mill Bay Rd. Room 114
 Kodiak AK 99615

Bid No. 2019-005
 2:00 PM, May 28th 2019

3. Bids must be mailed to the address indicated on the Bid Form or hand delivered to the person opening bids. Bids must be received at this address BY THE DATE AND TIME SHOWN for receipt of bids or hand delivered to the City Manager’s office at the City of Kodiak. It is the Bidder’s responsibility to ensure delivery of their bids to the City Manager’s office. The City will not be responsible for picking up parcels other than the daily mail delivery.
4. Any bid, amendment, or withdrawal which has not been actually received by the person opening bids prior to the time of the scheduled time for receipt of bids will not be considered. Questions of fact regarding circumstances such as weather, delay of mails, etc. that circumvent legitimate timely receipt of an otherwise responsive bid will be decided by the City of Kodiak.
5. Bids may be withdrawn by written or facsimile request received from bidders prior to the time fixed for opening. Negligence on the part of the bidder in preparing the bid does not confer the right for the withdrawal of the bid after it has been opened.
6. Bidder must submit a copy of its current Alaska Business License or Bidder’s application to obtain an Alaska Business License for the current year. Local bidders must be registered to collect City Sales Tax. Bidder shall be current with filing all City of Kodiak sales tax returns and shall not have any delinquent port or harbor fees owing to the City.
7. Inquiries or requests for information pertaining to these specifications should be directed to Lee Peterson or Dave Smith at (907) 486-8619 or emailed to isadmins@city.kodiak.ak.us.

SECTION III – GENERAL INFORMATION:

Processing of bids – Kodiak City Code Section 3.12.050 states: Notwithstanding other provisions of this chapter relating to the award after competitive bid for purchases, sales, and contracts, the city may:

- (a) Reject any defective or non-responsive bids;
- (b) Waive any irregularities in any and all bids;
- (c) Reject all bids;
- (d) Negotiate with two or more of the lowest bidders, if bid prices are in excess of the money available or authorized, for a reduction in the scope, quality, or quantity of the purchase, service, or contract;
- (e) Re-advertise for bids with or without making changes in the plans or specifications.

Local bid preference – Kodiak City Code Section 3.12.060 states, in part:

- (a) Notwithstanding section 3.12.040, the council shall direct an award of a contract for the purchase of personal property or services or for the construction, repair, or improvement of city facilities after competitive bidding to a local bidder who is also a responsible bidder, if that bid does not exceed the otherwise lowest responsible bid by more than ten (10) percent or \$30,000, whichever is less.
- (b) For the purposes of this section “local bidder” shall mean a responsible bidder who had, at the time of the bid award, maintained a business office or store within the Borough of Kodiak Island, which was open for business on a substantially full-time basis and staffed by at least one full-time employee for at least one year.

Lowest responsible bidder – The bid may be awarded to the lowest responsible bidder. Kodiak City Code Section 3.12.080 states: In determining the lowest responsible bidder factors to be considered shall include, but not necessarily be limited to the following criteria:

- (a) The ability, capacity, and skill of the bidder to perform the contract;
- (b) Whether the bidder can perform the contract within the time specified, without delay or interference;
- (c) The character, integrity, reputation, judgment, experience, and efficiency of the bidder;
- (d) The quality of performance of previous contracts;
- (e) The previous and existing compliance by the bidder with laws and ordinances related to the contract;
- (f) The sufficiency of the financial resources and ability of the bidder to perform the contract; and
- (g) Litigation by the bidder on previous orders or contracts with the city.

Bid Award. It is anticipated that bid results will awarded August 8th, 2019.

Bid Protest Procedure. Any bidder who believes the bid has been improperly awarded may file a bid protest, no later than five (5) calendar days from the date the Notice of Intent to award is issued. Any protest shall be in writing, shall be filed with the City Clerk, and shall specify the reasons the bidder feels the Notice of Intent to Award was improper. The City shall notify all bidders of the filing of the protest within two (2) working days after the protest is filed. The City Council shall hold an informal hearing at which all interested persons may participate no later than five (5) working days after the protest is filed. The City Council shall issue a written decision on the protest no later than twenty-four (24) hours after the conclusion of the informal hearing. The decision of the City Council shall be final.

Respectfully submitted
CITY OF KODIAK

Victoria Ellis
Purchasing Clerk

BID FORM

TO: Mike Tvenge, City Manager
City of Kodiak
710 Mill Bay Road, Rm #114
Kodiak AK 99615

Any exceptions to the published bid specifications must be listed by item.

In compliance with your Invitation to bid for Bid No. 2019-005 for **Cisco Phone System upgrade** dated June 16, 2019, the undersigned hereby proposes to provide the following:

Item	Total Bid amount
1. Cisco Phone System Upgrade Parts and Labor	1. _____
2. Optional Cisco Phones as Listed	2. _____
Total Bid \$ _____	

Invitation to Bid 2019-005

June 16, 2019

Business License and City Sales Tax Registration copies are included.

Bid price valid for _____ days.

Terms _____ Dated _____

Submitted by: _____ **Dated:** _____

Signature

Business Name

Title

Address

Telephone

City, State, Zip

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MEMORANDUM TO COUNCIL

To: Mayor Branson and City Councilmembers
From: Mike Tvenge, City Manager *MT*
Thru: Timothy Putney, Chief of Police
Date: August 8, 2019

Agenda Item: V. f. Authorization of a Three-Year Service Agreement for Preventative Maintenance for Uninterruptible Power Supply (UPS) with Vertiv Corporation

SUMMARY: This request authorizes a three-year service agreement with Vertiv Corporation, original manufacturer of the Liebert uninterruptible power supply (UPS) installed at the Police Department, for annual preventative maintenance. The UPS system protects over a million dollars' worth of critical equipment from source power disturbances, outages, and load faults allowing critical aspects of public safety and City business to continue during utility power problems. The cost of this agreement is \$24,530 (or about \$8,176.66 per year of coverage) and includes a thorough inspection and testing to ensure the system is properly functioning. This is a budgeted expense.

PREVIOUS COUNCIL ACTION:

- The Police Department's annual budget has included preventative maintenance for the UPS since the system was installed in 2010.

ALTERNATIVES:

- 1) Authorize this request to continue annual inspections of the UPS. This is the recommendation being made to council and will ensure the system continues to be maintained.
- 2) Do not authorize this request. This could have a negative impact on public safety operations and regular City business. Staff does not recommend this alternative.

FINANCIAL IMPLICATIONS: Funding for this service agreement was included in the FY2020 annual budget under police administration repair and maintenance.

STAFF RECOMMENDATION: Staff recommends continuing the annual inspection and testing of the Police Department's UPS. This provides an opportunity to find issues before they become a much larger problem.

CITY MANAGER'S COMMENTS: The system is responsible for the uninterrupted service of the 911 system, city phone system, all servers, radios, cameras and computers at KPD. As you see this is a critical infrastructure that needs support and preventive maintenance.

NOTES/ATTACHMENTS:

Attachment A: Proposal for Service 3-Year Agreement

PROPOSED MOTION:

Move to authorize a Three-Year Service Agreement for Preventative Maintenance for Uninterruptible Power Supply (UPS) with Vertiv Corporation in the amount of \$24,530 with funds coming from police administration repair and maintenance and authorize the City Manager to sign the agreement on behalf of the City.

Proposal for Service

Vertiv Corporation

Feb 22, 2019

Kodiak Police Station
2160 Mill Bay Rd
Kodiak, AK, 99615

Feb 22, 2019

Kodiak Police Station
2160 Mill Bay Rd
Kodiak, AK, 99615
Q02914360

Thank you for your interest in Vertiv Corporation. We are pleased to submit the following proposal for your review and consideration.

As the rate of change and complexity in your data center increases, Vertiv is the dedicated partner that you need to help you achieve your goals.

Please complete all required fields on the signature page and attach your Purchase Order to assist timely order processing. Should you have any questions regarding the proposal, feel free to contact me directly at +1 206 763 5000. I look forward to your response and the opportunity to work together to improve your data center investment.

Sincerely,

JOSEPH SETTERBERG

3415 South 116th Street,
Suite 103
Tukwila, WA 98168

PHONE +1 206 763 5000

FAX + 1 206 763 6700

EMAIL Joseph.Setterberg@vertivco.com

Order Q02914360

Liebert UPS / Power / Battery Services:

- We are the Original Equipment Manufacturer and the experts on Liebert equipment with access to updates and changes, knowledge of engineering specifications, current issues and how to fix them correctly.
- Our factory trained service force is twice the size of the next largest competitor with over 650 customer engineers and field technicians in the United States alone; everywhere in the US the most knowledgeable engineers and technicians available, will cover you.
- With the most advanced tooling and instrumentation available, each CE has over \$10,000 in gear with him at all times, so any issue can be resolved in the least amount of time possible.
- To make sure we get the right part to the right place at the right time, we have the industry's most sophisticated parts logistics system. No matter where you are in the US we also have a parts warehouse close to serve you.
- We maintain and follow all safety and compliance regulations necessary to keep CE's from harm and protect you, our customers from liability. We care about your safety.

Standard Maintenance Contracts:

Site #: 123566, Kodiak Police Station

Tag #	Description	Model #	Annual PM Qty.	Coverage Type (Coverage Dates)	Coverage Amount
1497238	NPOWER 65-80	37SA065C0C6BB76	1	PM ONLY 24X7 (2/28/2019) - (2/27/2022)	\$15,579.90
1497241	SEALED BATTERY	37BP065XWRCBNS	1	PM ONLY 24X7 (2/28/2019) - (2/27/2022)	\$2,237.51
1497242	SEALED BATTERY	37BP065XWRDBNS	1	PM ONLY 24X7 (2/28/2019) - (2/27/2022)	\$2,237.51
1497243	SEALED BATTERY	37BP065XWREBNS	1	PM ONLY 24X7 (2/28/2019) - (2/27/2022)	\$2,237.54
1497244	SEALED BATTERY	37BP065XWREBNS	1	PM ONLY 24X7 (2/28/2019) - (2/27/2022)	\$2,237.54

Total price not including tax: USD \$24,530.00
any tax required must be included in customer purchase order
Payment Terms: Net 30 Days

SCOPE OF WORK

SEALED VRLA BATTERIES

PREVENTIVE MAINTENANCE ONLY (24X7) SERVICE - 1 PM

SERVICE SUMMARY

Feature	Detail
On-Site Service	Includes 1 Preventive Maintenance Service, scheduled by the customer at the customer's convenience (excluding national holidays).
Service Professional	Performed by Vertiv factory trained and authorized technician. Vertiv Services is the OEM service provider for Liebert products.

SERVICE PERFORMED

PM Service

1. Inspect the appearance and cleanliness of the battery and the battery room. Clean normal cell top dirt accumulation (to be done only with battery off line).
2. Measure and record the total battery float voltage and charging current.
3. Measure and record overall AC ripple voltage.
4. Measure and record overall AC ripple current.
5. Visually inspect the jars and covers for cracks and leakage.
6. Visually inspect for evidence of corrosion.
7. Measure and record the ambient temperature.
8. Verify the condition of the ventilation equipment, if applicable.
9. Verify the integrity of the battery rack/cabinet.
10. Measure and record 100% of the cell temperatures.
11. Measure and record the float voltage of all cells.
12. Measure and record all internal impedance readings.
13. Provide a detailed written report noting any deficiencies and corrective action needed, taken and/or planned.
14. Verify approval for Battery Life program.
15. Re-tighten all connections to the battery manufacturer's specifications.
16. Measure and record all battery connection resistances in micro-ohms, when applicable.

ASSUMPTIONS AND CLARIFICATIONS

Does not include parts or return corrective visits.

CUSTOMER RESPONSIBILITIES

In order to provide timely, accurate and thorough execution of the services described herein, Vertiv requests the following:

- Point of Contact: Provide an authorized point of contact(s), specific for the scope of work, for scheduling and coordination purposes.

- **Scheduling:** Make dates available for scheduling service. All visits must be requested 10 business days in advance of need by contacting the Vertiv Services Customer Resolution Center at 1-800-543-2378.
- **Site Access:** Prior to time of scheduled work, provide site access including any customer required escort, security clearance, safety training and badging for Vertiv service personnel.
- **Equipment Access:** Convenient access to the equipment covered by the Scope of Work. Prior to scheduled time of work, notify Vertiv service personnel of any special requirements for equipment access including lifts, ladders, etc.
- **Shutdown:** Service may require shutdown of load to ensure electrical connection integrity.
- **Notification:** If for any reason the work cannot be performed during scheduled time, notify Vertiv service personnel 24-hours prior to scheduled event.

TERMS AND CONDITIONS

Subject to all Terms & Conditions as noted in the Vertiv Services Terms & Conditions or the terms of a Master Agreement between the parties, if any, shall apply.

SCOPE OF WORK

UNINTERRUPTIBLE POWER SYSTEMS

ALL 3-PHASE MODELS

PREVENTIVE MAINTENANCE ONLY (24X7) SERVICE - 1 PM

SERVICE SUMMARY

Feature	Detail
On-Site Service	Includes 1 Preventive Maintenance Service, scheduled by the customer at the customer's convenience (excluding national holidays).
Service Professional	Performed by Vertiv factory trained and authorized technician. Vertiv Services is the OEM service provider for Liebert products.

SERVICE PERFORMED

UPS Full Preventive Maintenance Service

Annual Service

1. Perform temperature check on all breakers, connections, and associated controls. Repair and/or report all high temperature areas.
2. Perform a complete visual inspection of the equipment including subassemblies, wiring harnesses, contacts, cables, and major components.
3. Check air filters for cleanliness. (if applicable)
4. Check rectifier and inverter snubber boards for discoloration.
5. Record all voltage and current meter readings on the module control cabinet or the system control cabinet.
6. Check for DC capacitor vent caps that have extruded more than 1/8" (if applicable). fff
7. Measure and record harmonic trap filter currents (if applicable).
8. Check the inverter and rectifier snubbers for burned or broken wires.
9. Check all nuts, bolts, screws, and connectors for tightness and heat discoloration.
10. Check fuses on the DC capacitor deck for continuity (if applicable).
11. With customer approval, perform operational test of the system, including unit transfer and battery discharge.
12. Calibrate and record all electronics to system specifications.
13. Check or perform Engineering Field Change Notices (FCN) as necessary.
14. Measure and record all low-voltage power supply levels.
15. Record phase-to-phase input voltage and currents.
16. Review system performance with customer to address any questions and to schedule any repairs.

Battery Inspection Service - Performed During the UPS Annual PM Service

1. Check integrity of battery cabinet (if applicable).
2. Visual inspection of the battery cabinet and/or room to include:
 - Check for NO-OX grease or oil on all connections (if applicable).
 - Check battery jars for proper liquid level (if flooded cells).

- Check for corrosion on all the terminals and cables.
 - Examine the physical cleanliness of the battery room and jars.
3. Measure and record DC bus ripple voltage (if applicable).
 4. Measure and record total battery float voltage.

ASSUMPTIONS AND CLARIFICATIONS

Does not include parts or return corrective visits.

Customer should check air filters monthly for cleanliness and replace as necessary.

Maintenance does not include System Control Cabinet, Power Tie, Breaker Cabinets, Load Bus Sync or Maintenance Bypass Cabinets.

The Battery Inspection Service listed above is only a visual inspection and is not intended to replace a full preventive maintenance program for the battery system.

CUSTOMER RESPONSIBILITIES

In order to provide timely, accurate and thorough execution of the services described herein, Vertiv requests the following:

- **Point of Contact:** Provide an authorized point of contact(s), specific for the scope of work, for scheduling and coordination purposes.
- **Scheduling:** Make dates available for scheduling service. All visits must be requested 10 business days in advance of need by contacting the Vertiv Services Customer Resolution Center at 1-800-543-2378.
- **Site Access:** Prior to time of scheduled work, provide site access including any customer required escort, security clearance, safety training and badging for Vertiv service personnel.
- **Equipment Access:** Convenient access to the equipment covered by the Scope of Work. Prior to scheduled time of work, notify Vertiv service personnel of any special requirements for equipment access including lifts, ladders, etc.
- **Shutdown:** Service may require shutdown of load to ensure electrical connection integrity.
- **Notification:** If for any reason the work cannot be performed during scheduled time, notify Vertiv service personnel 24-hours prior to scheduled event.

TERMS AND CONDITIONS

Subject to all Terms & Conditions as noted in the Vertiv Services Terms & Conditions or the terms of a Master Agreement between the parties, if any, shall apply.

Order Number: Q02914360

Purchase Order must be assigned to:
 Vertiv Corporation
 1050 Dearborn Dr.
 Columbus, OH 43085

Payment remittance address:
 Vertiv Corporation
 PO Box 70474
 Chicago, IL 60673

FID# 31-0715256

EXCITING NEWS: On Sept. 1, 2018, we transitioned to Vertiv Corporation as our legal entity.
 Visit <http://vertivco.com/legalentityinfo> for changes you may need to make.

PO should be e-mailed or faxed with signed proposal to:
 Vertiv Corporation c/o JOSEPH SETTERBERG
 Attn: JOSEPH SETTERBERG
 Email: Joseph.Setterberg@vertivco.com
 Fax: + 1 206 763 6700

Please complete the following information (All fields are required):

Purchase Order Number: _____ Purchase Order attached: Yes No

If PO **NOT** attached, please specify reason: _____

Invoice Delivery Method: Web Billing (Attach Instructions) Mail Other _____
 Accounts Payable Email _____ @ _____

Billing Contact Person: _____ Phone: _____

Email: _____ Fax #: _____

Bill-To Company Name: _____ Bill-To Address: _____

Federal Tax ID # _____ Bill-To City, ST Zip: _____

Tax Exempt: Yes (Attach tax exempt certificate) No

Site Services/IT Contact Person: _____ Phone: _____

**** COVERAGE DETAILS ****

For equipment not currently under a Service Agreement or for equipment for which the warranty has expired in excess of thirty (30) days, parts required to bring equipment back to manufacturers specifications are the responsibility of the Buyer and billable at the time of the first preventive maintenance visit or Service call. All pricing is valid only for Service coverage stated and is subject to change if this Proposal is modified in any way. This Proposal is valid for 30 days from the date of this Proposal unless otherwise noted. INFORMATION TO BUYER: This order between the Buyer and Seller is limited to Seller's Terms and Conditions located at termsconditions.vertivco.com unless a formal agreement governing this Purchase Order/transaction has been executed by the parties, in which case the Terms and Conditions of the signed agreement shall govern. Seller hereby objects to all Buyer's terms and conditions received by Seller and/or issued by Buyer.

Signature of this agreement authorizes Seller to invoice for Services mentioned herein and to utilize the provided purchase order number. If a purchase order number is not used, then the Buyer authorizes and guarantees Seller the payment of such invoices by authority of the signature below.

Thank you for your business.

Proposed By:

Accepted By:

JOSEPH SETTERBERG Date

 Buyer Signature Required Date

 Printed Name Title Phone

Vertiv Corporation
TERMS AND CONDITIONS OF SALE

Vertiv Corporation is herein referred to as the "Seller" and the customer or person or entity purchasing goods and/or services ("Goods") and/or parts required for services ("Parts") or licensing software and/or firmware, which are preloaded, or to be used with Goods ("Software") from Seller is referred to as the "Buyer." These Terms and Conditions, any price list or schedule, quotation, acknowledgment, Seller's scope or statement of work, or invoice from Seller relevant to the sale of the Goods, Parts and licensing of Software by Seller, and all associated terms, conditions and documents incorporated by specific reference herein or therein, constitute the complete and exclusive statement of the terms of the agreement ("Agreement") governing the sale of Goods, Parts, and/or license of Software by Seller to Buyer. Any discrepancies between the terms of the above referenced documents shall be resolved by Seller. Seller's acceptance of Buyer's purchase order is expressly conditional on Buyer's assent to all of Seller's terms and conditions of sale, including terms and conditions that are different from or additional to the terms and conditions of Buyer's purchase order. Buyer's acceptance of the Goods, Parts, and/or Software will manifest Buyer's assent to the terms of this Agreement. Seller reserves the right in its sole discretion to refuse orders.

1. **PRICES:** Unless otherwise specified in writing by Seller, the price quoted or specified by Seller for the Goods, Parts and/or Software shall remain in effect for thirty (30) days after the date of Seller's quotation, Seller's scope of work or acknowledgment of Buyer's order for the Goods, whichever occurs first, provided an unconditional authorization from Buyer for the shipment or performance of the Goods and/or Parts, and/or Software is received and accepted by Seller within such time period. If such authorization is not received by Seller within such thirty (30) day period, Seller shall have the right to change the price for the Goods, Parts and/or Software to Seller's price for the Goods, Parts, and/or Software at the time of Seller's shipment or performance thereof. All prices and licensee fees are exclusive of taxes, transportation and insurance, which are to be borne by Buyer. Seller reserves the right to correct any obvious errors in specifications or prices. Unless otherwise specified by Seller, Parts, that are required for the performance of services will be furnished at Seller's then prevailing prices. A service charge of \$19.99 will be added to all orders which, excluding shipping charges, taxes, and insurance, do not meet the minimum order value of \$750.00. The service charge amount and/or minimum order value may be changed by Seller at any time, without notice.

2. **TAXES:** Any current or future tax, duty, tariff or governmental charge (or increase in same) affecting Seller's costs of production, sale, services or delivery or shipment of Goods Parts, and/or Software, or which Seller is otherwise required to pay or collect in connection with the sale, purchase, delivery, performance, storage, processing, use or consumption of Goods, Parts, and/or Software, shall be for Buyer's account and shall be added to the price or billed to Buyer separately, at Seller's election.

3. **TERMS OF PAYMENT:** Unless otherwise specified by Seller, terms are net thirty (30) days from date of Seller's invoice in U.S. currency. Seller shall have the right, among other remedies, either to terminate this Agreement or to suspend further performance under this and/or other agreements with Buyer in the event Buyer fails to make any payment when due, which other agreements Buyer and Seller hereby amend accordingly. Buyer shall be liable for all expenses, including attorneys' fees, relating to the collection of past due amounts. If any payment owed to Seller is not paid when due, it shall bear interest, at a rate to be determined by Seller, which shall not exceed the maximum rate permitted by law, from the date on which it is due until it is paid. Seller may preserve its interests in payment by enforcing any applicable mechanic's, labor, construction or similar lien rights. Should Buyer's financial responsibility become unsatisfactory to Seller, cash payments or security satisfactory to Seller may be required by Seller for future deliveries or performance of Goods, Parts, and/or Software. If such cash payment or security is not provided, in addition to Seller's other rights and remedies, Seller may discontinue deliveries or performance. Buyer hereby grants Seller a security interest in all Goods, Parts, and/or Software sold to Buyer by Seller, which security interest shall continue until all such Goods, Parts, and/or Software are fully paid for, and Buyer, upon Seller's demand, will execute and deliver to Seller such instruments as Seller requests to protect and perfect such security interest.

4. **SHIPMENT AND DELIVERY:** While Seller will use all reasonable commercial efforts to maintain the delivery date(s) and/or performance dates acknowledged or quoted by Seller, all shipping dates and/or performance dates are approximate and not guaranteed. Seller reserves the right to make partial shipments. Seller, at its option, shall not be bound to tender delivery of any Goods, Parts, and/or Software for which Buyer has not provided shipping instructions and other required information. If the shipment or performance of the Goods, Parts, and/or Software is postponed or delayed by Buyer for any reason, Buyer agrees to reimburse Seller for any and all storage costs and other additional expenses resulting therefrom. For sales in which the end destination of the Goods, Parts, and/or Software is outside of the United States (except for those international sales to Seller's affiliated companies), risk of loss and legal title to the Goods, Parts, and/or Software shall transfer to Buyer immediately after the Goods, Parts, and/or Software have passed beyond the territorial limits of the United States. For international sales to Seller's affiliated companies, all shipments of Goods, Parts, and/or Software are made on a Delivered at Terminal (DAT) basis, per Incoterms 2010, with freight charges from Seller's facility to destination terminal invoiced to buyer either on a Prepaid or PPD/Add basis, as agreed to by Seller and Buyer. All other shipments of Goods, Parts, and/or Software are made on an Ex Works (EXW) Seller's Shipping Point basis, per Incoterms 2010, with Seller responsible to load goods on Buyer's nominated vehicle. Any claims for shortages or damages suffered in transit are the responsibility of Buyer and shall be submitted by Buyer directly to the carrier. Notwithstanding the above, risk of loss and legal title to Parts shall transfer to Buyer (i) upon delivery by the Seller, or (ii) at the time Parts are placed in storage due to Buyer's delay or postponement. Shortages or damages must be identified and signed for at the time of delivery. Requests for changes in quoted transportation modes will not be made or accepted on orders already processed unless otherwise mutually agreed upon by Seller and Buyer. Requests for changes in quoted transportation modes to orders already accepted by Seller will be subject to new freight terms and billed at the price in effect at the time of the request for change. Any request for changes to quoted transportation modes must be submitted in writing to Seller and are subject to Seller's acceptance and adjustment in freight price. The transportation costs quoted by Seller may be

changed by Seller without notice in order to reflect Seller's prices at the time of shipment and will reflect any market increase in transportation costs. If a price for delivery has been quoted, any changes at the destination for transportation modes, spotting, switching, handling, storage and other accessororial services and demurrage shall be borne by the customer, and any related increase in transportation charges shall be added to the quoted price.

5. **LIMITED WARRANTY:** Subject to the limitations of Section 6, Seller's standard warranty that is applicable to the Goods and/or Software at the time of purchase is the only warranty applicable to the sale of Seller's Goods and/or Software and its terms, conditions and limitations are incorporated by reference herein and Seller warrants that it will perform the services as described in these terms and conditions and will exercise all reasonable skill, care and due diligence in the performance of the services. Seller warrants that all services performed shall be free from faulty workmanship for a period of thirty (30) days from completion of services. Thermal Solution Components, including but not limited to, fans, air-to-air heat exchangers, air conditioners, emergency DC vent systems and filtered thermal vent systems are warranted to be free from defects in material and workmanship for a period of twelve (12) months from date of shipment, or manufacturer's pass through warranty, whichever is longer, provided the following conditions are met: (i) Semi-annual preventive maintenance logs are maintained by Buyer and such logs are available to Seller upon request; and (ii) Input voltage to the air conditioner unit does not vary by greater than +/-10%; and (iii) in the event of accidental or intentional shut-off, a Thermal Solution Component will not be restarted for at least five (5) minutes; and (iv) The refrigerant specified on the unit nameplate label will be the only refrigerant utilized in the air conditioner unit; and, (v) Buyer complies with all installation, operations and maintenance instructions provided by Seller. Goods, Parts and/or Software purchased by Seller from a third party for resale or license to Buyer ("Resale Products") shall carry only the warranty extended by the original manufacturer. To the extent assignable, Seller assigns to Buyer any warranties that are made by manufacturers and suppliers of such Resale Products. EXCEPT AS SPECIFIED ABOVE, RESELLER PRODUCTS FURNISHED HEREUNDER ARE FURNISHED AS-IS, WHERE-IS, WITH NO WARRANTY WHATSOEVER. **THE WARRANTY SET FORTH IN THIS SECTION 5 AND THE WARRANTY SET FORTH IN SECTION 8 ARE THE SOLE AND EXCLUSIVE WARRANTIES GIVEN BY SELLER WITH RESPECT TO THE GOODS AND/OR SOFTWARE AND ARE IN LIEU OF AND EXCLUDE ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, ARISING BY OPERATION OF LAW OR OTHERWISE, INCLUDING WITHOUT LIMITATION, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE WHETHER OR NOT THE PURPOSE OR USE HAS BEEN DISCLOSED TO SELLER IN SPECIFICATIONS, DRAWINGS OR OTHERWISE, AND WHETHER OR NOT SELLER'S PRODUCTS ARE SPECIFICALLY DESIGNED AND/OR MANUFACTURED BY SELLER FOR BUYER'S USE OR PURPOSE.**

SELLER'S WARRANTY EXTENDS ONLY TO PURCHASERS WHO BUY FOR INDUSTRIAL OR COMMERCIAL USE. This warranty does not extend to any losses or damages due to misuse, accident, abuse, neglect, normal wear and tear, negligence (other than Seller's), unauthorized modification or alteration, use beyond rated capacity, unsuitable power sources or environmental conditions, improper installation, repair, handling, maintenance or application or any other cause not the fault of Seller. To the extent that Buyer or its agents have supplied specifications, information, representation of operating conditions or other data to Seller in the selection or design of the Goods and/or Software and the preparation of Seller's quotation, and/or scope of work, and in the event that actual operating conditions or other conditions differ from those represented by Buyer, any warranties or other provisions contained herein that are affected by such conditions shall be null and void. Buyer assumes all other responsibility for any loss, damage, or injury to persons or property arising out of, connected with, or resulting from the use of Goods, Parts, and/or Software, either alone or in combination with other products/components.

6. **LIMITATION OF REMEDY AND LIABILITY:** **THE SOLE AND EXCLUSIVE REMEDY FOR BREACH OF ANY WARRANTY HEREUNDER (OTHER THAN THE WARRANTY PROVIDED UNDER SECTION 8) SHALL BE LIMITED TO REPAIR, CORRECTION OR REPLACEMENT, OR REFUND OF THE PURCHASE PRICE UNDER SECTION 5. SELLER SHALL NOT BE LIABLE FOR DAMAGES CAUSED BY DELAY IN PERFORMANCE AND THE REMEDIES OF BUYER SET FORTH IN THIS AGREEMENT ARE EXCLUSIVE. IN NO EVENT, REGARDLESS OF THE FORM OF THE CLAIM OR CAUSE OF ACTION (WHETHER BASED IN CONTRACT, INFRINGEMENT, NEGLIGENCE, STRICT LIABILITY, OTHER TORT OR OTHERWISE), SHALL SELLER'S LIABILITY TO BUYER AND/OR ITS CUSTOMERS EXCEED THE PRICE PAID BY BUYER FOR THE SPECIFIC GOODS, PARTS, AND/OR SOFTWARE PROVIDED BY SELLER GIVING RISE TO THE CLAIM OR CAUSE OF ACTION.**

BUYER AGREES THAT SELLER'S LIABILITY TO BUYER AND/OR ITS CUSTOMERS SHALL NOT EXTEND TO INCLUDE INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES. The term "consequential damages" shall include, but not be limited to, loss of anticipated profits, business interruption, loss of use, revenue, reputation and data, costs incurred, including without limitation, for capital, fuel, power and loss or damage to property or equipment. It is expressly understood that any technical advice furnished by Seller with respect to the use of the Goods, Parts and/or Software is given without charge, and Seller assumes no obligation or liability for the advice given, or results obtained, all such advice being given and accepted at Buyer's risk.

7. **INSURANCE:** Seller shall maintain the following insurance or self-insurance coverage: **Worker's Compensation** in accordance with the statutory requirements of the state in which the work is performed. **Employer's Liability** with a limit of liability of \$2,000,000 per occurrence for bodily injury by accident or bodily injury by disease. **Commercial General Liability (CGL)** for bodily injury and property damage with a limit of \$2,000,000 per occurrence and per location aggregate. **Automobile Liability** insurance that covers usage of all owned, non-owned and leased vehicles and which is subject to a combined single limit per occurrence of \$2,000,000. Automobile Liability insurance includes Contractual Liability, but no special endorsements. **Buyer expressly acknowledges and agrees that Seller has set its prices and entered into this Agreement in reliance upon the limitations of liability, insurance coverage, and other terms and conditions specified herein,**

which allocate the risk between Seller and Buyer and form a basis of this bargain between the parties.

8. PATENTS AND COPYRIGHTS: Subject to the limitations of the second paragraph of Section 6 and any and all associated terms, conditions and documents incorporated by specific reference by Seller, Seller warrants that the Goods and/or Software sold, except as are made specifically for Buyer according to Buyer's specifications, do not infringe any valid U.S. patent or copyright in existence as of the date of shipment. This warranty is given upon the condition that Buyer promptly notify Seller of any claim or suit involving Buyer in which such infringement is alleged and cooperate fully with Seller and permit Seller to control completely the defense, settlement or compromise of any such allegation of infringement. Seller's warranty as to utility patents only applies to infringement arising solely out of Buyer's operation according to Seller's specifications and instructions of such Goods and/or Software. In the event (i) such Goods and/or Software are held to infringe such a U.S. patent or copyright in such suit, and the use of such Goods and/or Software is enjoined, or (ii) a compromise or settlement is made by Seller, Seller shall have the right, at its option and expense, to procure for Buyer the right to continue using such Goods and/or Software, or replace them with non-infringing Goods and/or Software, or modify same to become non-infringing, or grant Buyer a credit for the depreciated value of such Goods and/or Software and accept return of them. In the event of the foregoing, Seller may also, at its option, cancel the agreement as to future deliveries of such Goods and/or Software, without liability. Except as otherwise provided herein, Seller or applicable third party licensor to Seller maintains all right, title and interest in and to the intellectual property in the Goods, Parts, and/or Software.

9. EXCUSE OF PERFORMANCE: Seller shall not be liable for delays in performance or for non-performance due to acts of God; acts of Buyer; war; epidemic; fire; flood; weather; sabotage; strikes or labor disputes; civil disturbances or riots; governmental requests, restrictions, allocations, laws, regulations, orders or actions; unavailability of or delays in transportation; default of suppliers; or unforeseen circumstances, acts or omissions of Buyer, or any events or causes beyond Seller's reasonable control. Deliveries or other performance may be suspended for an appropriate period of time or canceled by Seller upon notice to Buyer in the event of any of the foregoing, but the balance of this Agreement shall otherwise remain unaffected as a result of the foregoing. If Seller determines that its ability to supply the total demand for the Goods, Parts, and/or Software, or to obtain material used directly or indirectly in the manufacture of the Goods, Parts, and/or Software, is hindered, limited or made impracticable due to causes set forth in the preceding paragraph, Seller may delay performance and/or allocate its available supply of the Goods, Parts, Software, and/or such material (without obligation to acquire other supplies of any such Goods, Parts, Software, or material) among its purchasers on such basis as Seller determines to be equitable without liability for any failure of performance which may result therefrom.

10. CANCELLATION: Buyer may cancel orders only upon reasonable advance written notice and upon payment to Seller of Seller's cancellation charges which include, among other things, all costs and expenses incurred, and, to cover commitments made, by the Seller and a reasonable profit thereon. Seller's determination of such cancellation charges shall be conclusive.

11. CHANGES: Buyer may request changes or additions to the Goods, Parts, and/or Software consistent with Seller's specifications and criteria. In the event such changes or additions are accepted by Seller, Seller may revise the price, license fees, and dates of delivery and/or performance dates. Seller reserves the right to change designs and specifications for the Goods, Parts, and/or Software without prior notice to Buyer, except with respect to Goods, Parts, and/or Software being made-to-order for Buyer. Seller shall have no obligation to install or make such change in any Goods, Parts, and/or Software manufactured prior to the date of such change.

12. NUCLEAR/MEDICAL: GOODS, PARTS, AND SOFTWARE SOLD HEREUNDER ARE NOT FOR USE IN CONNECTION WITH ANY NUCLEAR, MEDICAL, LIFE-SUPPORT AND RELATED APPLICATIONS. Buyer accepts Goods, Parts, and Software with the foregoing understanding, agrees to communicate the same in writing to any subsequent purchasers or users and to defend, indemnify and hold harmless Seller from any claims, losses, suits, judgments and damages, including incidental and consequential damages, arising from such use, whether the cause of action be based in tort, contract or otherwise, including allegations that the Seller's liability is based on negligence or strict liability.

13. ASSIGNMENT: Buyer shall not assign its rights or delegate its duties hereunder or any interest herein without the prior written consent of Seller, and any such assignment, without such consent, shall be void.

14. SOFTWARE: Notwithstanding any other provision herein to the contrary, Seller or applicable third party licensor to Seller shall retain all rights of ownership and title in its respective Software, including without limitation all rights of ownership and title in its respective copies of such Software. Except as otherwise provided herein, Buyer is hereby granted a nonexclusive, non-transferable royalty free license to use the Software incorporated into the Goods solely for purposes of Buyer properly utilizing such Goods purchased from Seller. All other Software shall be furnished to, and used by, Buyer only after execution of Seller's (or the licensor's) applicable standard license agreement, the terms of which are incorporated herein by reference.

15. TOOLING: Tool, die, and pattern charges, if any, are in addition to the price of the Goods and are due and payable upon completion of the tooling. All such tools, dies and patterns shall be and remain the property of Seller. Charges for tools, dies, and patterns do not convey to Buyer, title, ownership interest in, or rights to possession or removal, or prevent their use by Seller for other purchasers, except as otherwise expressly provided by Seller and Buyer in writing with reference to this provision.

16. DOCUMENTATION: Seller shall provide Buyer with that data/documentation which is specifically identified in Seller's quotation. If additional copies of data/documentation are to be provided by Seller, it shall be provided to Buyer at Seller's applicable prices then in effect.

17. INSPECTION/TESTING: Buyer, at its option and expense, may observe the inspection and testing by Seller of the Goods and/or Software for compliance with Seller's standard test procedures prior to shipment, which inspection and testing shall be conducted at Seller's plant at such reasonable time as is specified by Seller. Any rejection of the Goods and/or Software must be made promptly by Buyer before shipment. Tests shall be deemed to be satisfactorily completed and the test fully met when the Goods and/or Software meet Seller's criteria for such procedures. If Buyer does not inspect the Goods and/or Software at Seller's plant as provided herein, Buyer shall have ten (10) days from (i) the date of delivery of Goods, Parts, and/or Software and (ii) from the date of completion of each portion of the services to inspect the Goods, Parts, and/or Software, and in the event of any non-

conformity, Buyer must give written notice to Seller within said period stating why the Goods, Parts, and/or Software are not conforming. Failure by Buyer to give such notice constitutes unqualified acceptance of the Goods, Parts, and/or Software. Buyer's sole remedy for non-conforming services shall be correct performance of services incorrectly performed by Seller.

18. RETURNED GOODS: Advance written permission to return Goods, Parts, and/or Software must be obtained from Seller in accordance with Seller's then current Return Material Authorization (RMA) procedures and a return authorization number issued. Such Goods, Parts, and/or Software must be (i) current, unused, catalogued Goods, Parts, and/or Software, still in original packaging (ii) free of all liens, encumbrances, or other claims, and (iii) shipped, transportation prepaid, to Seller's specified location. Returns made without proper written permission will not be accepted by Seller. Seller reserves the right to inspect Goods, Parts, and/or Software prior to authorizing return.

19. BILLABLE SERVICES: Additional charges will be billed to Buyer at Seller's then prevailing labor rates and Parts prices for any of the following: a) any services not specified in Seller's quotation, Seller's order acknowledgement, Seller's scope of work, or other documents referenced herein and therein; b) any services performed at times other than Seller's normal service hours; c) if timely and reasonable site and/or equipment access is denied the Seller service representative; d) if it is necessary, due to local circumstances, to use union labor or hire an outside contractor, Seller service personnel will provide supervision only and the cost of such union or contract labor will be charged to Buyer; (e) if Service or repair is necessary to return equipment to proper operating condition as a result of other than Seller (i) maintenance, repair, or modification (including, without limitation, changes in specifications or incorporation of attachments or other features), (ii) misuse or neglect, (including, without limitation, failure to maintain facilities and equipment in a reasonable manner), (iii) failure to operate equipment in accordance with applicable specifications, and (iv) catastrophe, accident, or other causes external to equipment; (f) Seller's performance is made more burdensome or costly as a result of Buyer's failure to comply with its obligations herein, or (g) any additional obligations or requirements, including but not limited to those related to insurance requirements, service delivery, building entry or technical training.

20. DRAWINGS: Seller's documentation, prints and drawings (including without limitation, the underlying technology) furnished by Seller to Buyer in connection with this Agreement are the property of Seller and Seller retains all rights, including without limitation, exclusive rights of use, licensing and sale. Possession of such prints or drawings does not convey to Buyer any rights or license, and Buyer shall return all copies (in whatever medium) of such prints or drawings to Seller immediately upon request therefor. Notwithstanding the foregoing, Buyer may use the documentation, prints and drawings in connection with the use of the Goods, Parts, and/or Software.

21. BUYER SUPPLIED DATA: To the extent that Seller has been provided by, or on behalf of, Buyer any specifications, description of operating conditions or other data and information in connection with the selection or design of the Goods, Parts, and/or Software, and/or the provision of services, and the actual operating conditions or other circumstances differ from those provided by Buyer and relied upon by Seller, any warranties or other provisions contained herein which are affected by such conditions shall be null and void.

22. EXPORT/IMPORT: Buyer agrees that all applicable import and export control laws, regulations, orders and requirements, including without limitation those of the United States and the European Union, and the jurisdictions in which the Seller and Buyer are established or from which Goods, Parts, Software, and services may be supplied, will apply to their receipt and use. In no event shall Buyer use, transfer, release, import, export, Goods, Parts, or Software in violation of such applicable laws, regulations, orders or requirements.

23. NON-SOLICITATION: Buyer shall not solicit, directly or indirectly, or employ any employee of Seller during the period any Goods are being provided to Buyer and for a period of one (1) year after the last provision of Goods.

24. GENERAL PROVISIONS: These terms and conditions supersede all other communications, negotiations and prior oral or written statements regarding the subject matter of this Agreement. No change, modification, rescission, discharge, abandonment, or waiver of these terms and conditions shall be binding upon the Seller unless made in writing and signed on its behalf by a duly authorized representative of Seller. No conditions, usage of trade, course of dealing or performance, understanding or agreement purporting to modify, vary, explain, or supplement this Agreement shall be binding unless hereafter made in writing and signed by the party to be bound, and no modification or additional terms shall be applicable to this Agreement by Seller's receipt, acknowledgment, or acceptance of purchase orders, shipping instruction forms, or other documentation containing terms at variance with or in addition to those set forth herein. Any such modifications or additional terms are specifically rejected and deemed a material alteration hereof. If this document shall be deemed an acceptance of a prior offer by Buyer, such acceptance is expressly conditional upon Buyer's assent to any additional or different terms set forth herein. Seller reserves the right to subcontract Services to others. No waiver by either party with respect to any breach or default or of any right or remedy, and no course of dealing, shall be deemed to constitute a continuing waiver of any other breach or default or of any other right or remedy, unless such waiver be expressed in writing and signed by the party to be bound. All typographical or clerical errors made by Seller in any quotation, acknowledgment or publication are subject to correction.

The validity, performance, and all other matters relating to the interpretation and effect of this Agreement shall be governed by the law of the state of Ohio without regard to its conflict of laws principles. Buyer and Seller agree that the proper venue for all actions arising in connection herewith shall be only in Ohio and the parties agree to submit to such jurisdiction. No action, regardless of form, arising out of transactions relating to this contract, may be brought by either party more than two (2) years after the cause of action has accrued. The U.N. Convention on Contracts for the International Sales of Goods shall not apply to this agreement.

25. DATA COLLECTION AND USE: By using the Goods, Parts and/or Software, Buyer grants Seller, its affiliates, subsidiaries, and service providers, a non-exclusive, irrevocable, royalty free, worldwide right and license to collect, compile, retain, use, reproduce, and create derivative works of, your non-personal information and data, which includes without limitation, all data, materials, reports, text, sound, video, image files, software or any other information ("Service Data") that is provided by, or on behalf of, Buyer, or collected or compiled by Seller, its affiliates, subsidiaries, or service providers through the Goods, Parts, and/or Software. Seller, its affiliates, subsidiaries, and service providers may collect, compile, retain, use, reproduce, and create derivative works of Service Data: (i) to provide services, support, and maintenance; (ii) to develop and improve products, software, and services; and (iii) for scientific and technical research and marketing purposes. Buyer is solely responsible for the Service Data, and Buyer will secure and maintain all rights necessary for Seller, its

affiliates, subsidiaries, and service providers to process and use Service Data as described in this paragraph without violating the rights of any third party or otherwise obligating Seller, its affiliates, subsidiaries, and service providers to Buyer or any third party. The Service Data will be aggregated with other information, materials, or data collected or compiled by, or provided to, Seller, its affiliates, subsidiaries, or service providers and anonymized, such that the Service Data will not intentionally reveal Buyer's identity. In accordance with applicable law, Service Data may be transferred, transmitted, or distributed to, stored, and processed in, cloud computing environments in the United States or any other country in which Seller, its affiliates, subsidiaries, or service providers maintain operations. By using the Goods, Parts, and/or Software, Buyer agrees to such use, transfer, transmission, distribution, storage, and processing of the Service Data. Seller, its affiliates, subsidiaries, and service providers will retain Service Data for as long as is necessary for Seller and its affiliates and subsidiaries business purposes in accordance with applicable law. The rights and licenses granted herein to Seller's service providers shall only be granted to the extent service providers are providing goods and services on Seller's and its affiliates and subsidiaries behalf.

26. **ADDITIONAL SERVICE CONDITIONS:** The Buyer shall furnish to Seller, at no cost, suitable working space, storage space, adequate heat, telephone, light, ventilation, regulated electric power and outlets for testing purposes. The facilities shall be within a reasonable distance from where the Goods are to be provided. Seller and its representatives shall have full and free access to the equipment in order to provide the necessary Goods. Buyer authorizes Seller to send a service technician or an authorized agent to access any site requested by Buyer to perform services, including services on different scopes of work and equipment as requested by Buyer. Buyer shall provide the means to shut-off and secure electric power to the equipment and provide safe working conditions. Seller is under no obligation to remove or dispose of Parts or equipment unless specifically agreed upon in Seller's scope of work. Buyer shall immediately inform Seller, in writing, at the time of order placement and thereafter, of any unsafe or hazardous substance or condition at the

site, including, but not limited to, the presence of asbestos or asbestos-containing materials, and shall provide Seller with any applicable Material Data Safety Sheets regarding the same. Any losses, costs, damages, claims and expenses incurred by Seller as a result of Buyer's failure to so advise Seller shall be borne by Buyer. Seller, in its sole discretion and without cost or penalty, reserves the right to cancel its performance under this Agreement or any order immediately upon written notice to Buyer following Seller discovery of unsafe or hazardous site substance or condition or any other circumstance altering Seller's performance hereunder. Buyer shall appoint a representative familiar with the site and the nature of Seller's performance to be accessible at all times that Seller personnel are at the site. Seller shall not be liable for any expenses incurred by Buyer in removing, replacing or refurbishing any Buyer equipment or any part of Buyer's building structure that restricts Seller access. Buyer personnel shall cooperate with and provide all necessary assistance to Seller. Seller shall not be liable or responsible for any work performed by Buyer.

27. **INDEMNITY:** Each party shall indemnify and hold the other party harmless from loss, damage, liability or expense resulting from damage to personal property of a third party, or injuries, including death, to third parties to the extent caused by a negligent act or omission of the party providing indemnification or a party's subcontractors, agents or employees during performance of services hereunder. Such indemnification shall be reduced to the extent damage or injuries are attributable to others and in no event shall the indemnifying party be obligated to indemnify or insure the other party for the indemnitee's own fault or negligence. The indemnifying party shall defend the other party in accordance with and to the extent of the above indemnification, provided that the indemnifying party is: i) promptly notified by the other party, in writing, of any claims, demands or suits for such damages or injuries; ii) given all reasonable information and assistance by the other party; iii) given full control over any resulting negotiation, arbitration or litigation, including the right to choose counsel and settle claims, or the indemnifying party's obligations herein shall be deemed waived.

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MEMORANDUM TO COUNCIL

To: Mayor Branson and City Councilmembers

From: Mike Tvenge, City Manager *MT*

Thru: All Applicable Department Heads or Directors

Date: August 8, 2019

Agenda Item: V.g. **Authorization to Purchase and Replace VRLA Batteries, Fans, and Capacitors in the Police Department's UPS with Vertiv Corporation**

SUMMARY: This request authorizes the purchase and replacement of VRLA batteries, fans, and capacitors for the uninterruptible power supply (UPS) at the Kodiak Police Department's battery backup. The current VRLA batteries were replaced in FY 2015 and the fans and capacitors were installed during original construction of the police department in 2010. The estimated cost to replace the batteries is \$63,514.20 and fans and capacitors are estimated to cost \$12,011.00. These estimates include shipping, labor, and the removal of the old batteries. This expense was included in the FY 2020 budget.

PREVIOUS COUNCIL ACTION:

- Proposal discussed during the FY 2020 budget presentation on April 27, 2019
- Council adopted the FY 2020 budget

BACKGROUND/DISCUSSION: The UPS system is comprised of 160 VRLA batteries and a mainframe containing the original fans and capacitors. The UPS system protects over a million dollars' worth of critical equipment from source power disturbances, outages, and load faults. The protection allows critical aspects of public safety and City business to continue during utility power problems.

The UPS manufacturer, Vertiv Corporation, recommends replacing the VRLA batteries every 5 years and replacing fans and capacitors in the mainframe every 10 years. After the last maintenance visit, the technician recommended following the replacement schedule. All offices inside the police department to include dispatch, the server room, and the Emergency Operations Center use the UPS. The server room not only stores public safety information, but it also houses critical software used city-wide.

ALTERNATIVES:

- 1) Authorize this purchase, in which case staff will proceed with replacing batteries, fans and capacitors in the current UPS battery system at the Kodiak Police Department. This is the recommendation staff makes to Council.
- 2) Do not authorize this purchase. The UPS batteries, fans and capacitors are nearing the end of their anticipated useful life; based upon the most recent maintenance report. This could have a negative impact on KPD operations and affect other services delivered to the community.

FINANCIAL IMPLICATIONS: This proposal was discussed during the April 27, 2019 budget presentation meeting and subsequently funded when the FY2020 budget was adopted. The amount budgeted to replace the batteries, fans, and capacitors is \$76,000 with funds coming from police administration machinery and equipment greater than \$5,000.

STAFF RECOMMENDATION: Staff recommends Council authorize the purchase of batteries, fans, and capacitors for the uninterruptible power supply at the police department with funds coming from the Police Department, Administration Sub-Department, Machinery and Equipment over \$5000.

CITY MANAGER'S COMMENTS: I support this recommendation.

NOTES/ATTACHMENTS: Attachments to the proposal, if any, should be referenced in the body of the proposal and listed here.

Attachment A: Proposal for Service: Battery replacement

Attachment B: Proposal for Service: Fans and capacitors

PROPOSED MOTION:

Move to authorize the purchase and replacement of VRLA batteries, fans, and capacitors in the Police Department's Uninterruptible Power Supply from Vertiv Corporation in the amount of \$75,525.20 with funds coming from Police Administration machinery and equipment greater than \$5,000 account and authorize the City Manager to sign the agreement on behalf of the City.

Proposal for Service

Vertiv Corporation

Feb 22, 2019

Kodiak Police Station
2160 Mill Bay Rd
Kodiak, AK 99615

Feb 22, 2019

Kodiak Police Station
2160 Mill Bay Rd
Kodiak, AK 99615

Thank you for your interest in Vertiv Corporation. We are pleased to submit the following proposal for your review and consideration.

As the rate of change and complexity in your critical infrastructure increases, Vertiv is the dedicated partner that you need to help you achieve your goals.

Please complete all required fields on the signature page and attach your purchase order to assist timely order processing. Should you have any questions regarding the proposal, feel free to contact me directly at 614-841-6400. I look forward to your response and the opportunity to work together to improve your critical infrastructure investment.

Sincerely,

PATRICK PEROTTI

610 Executive Campus Dr.
Westerville, OH 43082

PHONE: 614-841-6400

FAX: 614-841-6643

EMAIL: Patrick.Perotti@vertivco.com

Proposal Q02922882

We are pleased to submit the following proposal for replacement of your batteries for your consideration. Please refer to the Scope of Work for specific coverage information. Below is a summary of the services included in this quote.

Site ID: 123566, Kodiak Police Station, 2160 Mill Bay Rd, Kodiak, AK 99615

Line Item	Line Item Pricing
Tag # 1497241 40 x ENERSYS HX505	\$9,000.00
Tag # 1497242 40 x ENERSYS HX505	\$9,000.00
Tag # 1497243 40 x ENERSYS HX505	\$9,000.00
Tag # 1497244 40 x ENERSYS HX505	\$9,000.00
- New Battery Verification Service – 4 Strings	\$1,035.60
1 Disposal	\$1,600.00
Freight	\$9,270.60
Subtotal	\$47,906.20

Select One Option:

	Installation	Total
<input type="checkbox"/> Normal Hours (M-F 8am to 5pm)	\$17,208.00	\$63,514.20
<input type="checkbox"/> After Hours (M-F 5pm to 8am, and/or all day Saturday)	\$20,088.00	\$66,394.20
<input type="checkbox"/> Sunday/Holiday	\$22,968.00	\$69,274.20

(NOT including tax: any tax required must be included in customer purchase order amount)

Payment Terms: Net 30 Days

Progress billing: For all projects involving battery replacement, progress payments will apply. Invoices will be issued per the following project milestones:

Milestone

Shipment of batteries
 Completion of installation and testing

Payment Due

Total amount for batteries and freight
 Balance of project price

SCOPE OF WORK

SEALED VRLA BATTERIES (10 YEAR DESIGN LIFE) BATTERY VERIFICATION SERVICE

SERVICE SUMMARY

Feature	Detail
On-Site Service	Includes 2 site visits on new installations or prior to a load bank test. Scheduled by the customer at the customers convenience (excluding national holidays).
Service Professional	Performed by Vertiv factory trained and authorized technician. Vertiv Services is the OEM service provider for Liebert products.
IEEE	Ensures battery installation meets manufacturer and IEEE requirements.
Freshening Charge	For new installations Vertiv Services will perform the initial freshening charge on the batteries. Water additions for VLA (if applicable), will be addressed as needed after the equalize/freshening charge has been completed.

SERVICE PERFORMED

Battery Verification Service

First trip:

1. Inspect the appearance and cleanliness of the battery and the battery room area. Record any findings
2. Visually inspect the jars and covers for cracks and leakage. Record any findings
3. Visually inspect the racks or cabinets for any deficiencies. Record any findings.
4. Confirm that ventilation is provided.
5. Visually inspect for evidence of corrosion at terminals and connectors ensuring that the connections meet manufacturer's requirements.
6. Tighten all battery connections to the battery manufacturer's specifications and record the value utilized.
7. Ensure connections are properly prepped per the manufacturers IOM.
8. Measure and record the total string voltage.
9. Measure and record the float voltage of all cells.
10. Measure and record the ambient temperature.
11. Measure and record the jar temperature.
12. Place battery online.
13. Verify and record the battery float voltage.
14. Measure and record the AC ripple voltage.
15. Measure and record the AC ripple current.
16. Follow Note 2, below.

Second Trip:

1. Measure and record the ambient temperature.
2. Measure and record cell temperatures.

3. Measure and record the total battery float voltage and charging current. Verify proper float voltage is applied per the manufacturer.
4. Measure and record the float voltage of each jar/cell.
5. Measure and record the AC ripple voltage.
6. Measure and record the AC ripple current.
7. Measure and record the internal ohmic value of each jar.
8. Provide a detailed written report noting any deficiencies and corrective action taken and/or required.

ASSUMPTIONS AND CLARIFICATIONS

Does not include parts or return corrective visits.

CUSTOMER RESPONSIBILITIES

In order to provide timely, accurate and thorough execution of the services described herein, Vertiv requests the following:

- Point of Contact: Provide an authorized point of contact(s), specific for the scope of work, for scheduling and coordination purposes.
- Scheduling: Make dates available for scheduling service. All visits must be requested 10 business days in advance of need by contacting the Vertiv Services Customer Resolution Center at 1-800-543-2378.
- Site Access: Prior to time of scheduled work, provide site access including any customer required escort, security clearance, safety training and badging for Vertiv service personnel.
- Equipment Access: Convenient access to the equipment covered by the Scope of Work. Prior to scheduled time of work, notify Vertiv service personnel of any special requirements for equipment access including lifts, ladders, etc.
- Shutdown: Service may require shutdown of load to ensure electrical connection integrity.
- Notification: If for any reason the work cannot be performed during scheduled time, notify Vertiv service personnel 24-hours prior to scheduled event.

TERMS AND CONDITIONS

Subject to all Terms & Conditions as noted in the Vertiv Services Terms & Conditions or the terms of a Master Agreement between the parties, if any, shall apply.

SCOPE OF WORK

FLOODED CELLS & 20-YEAR SEALED CELL BATTERIES FULL STRING REPLACEMENT

SERVICE SUMMARY

Feature	Detail
Customer Support	Includes access to the Customer Resolution Center (1-800-543-2378) and the Vertiv Customer Services Network Online Internet portal.
Service Professional	Performed by Vertiv factory trained and authorized technician. Vertiv Services is the OEM service provider for Liebert products.
Battery Recycling	Includes battery recycling as required, with documentation meeting EPA requirements.
Alber Commissioning	Includes commissioning of Alber battery monitoring hardware, if battery monitoring is present.

SERVICE PERFORMED

1. Ensure the battery system is disconnected from UPS and battery system is safe to be worked on.
2. Verify the integrity of the battery rack.
3. Inspect the room appearance for cleanliness.
4. Verify the battery rooms eyewash and/or shower are properly working
5. Verify the battery room has adequate ventilation per the manufacturers' and local code requirements
6. Remove all flame arrestors and replace with shipping plugs.
7. Remove all the old cells/units and prepare for recycling and transportation.
8. Inspect all the new cells/units for any leaks, cracks, or any deficiencies.
9. Measure and record all open circuit voltages for all the new cells to ensure they can be placed in the string(s) and online.
10. Measure and record the specific gravity of each cell.
11. Inspect all electrolyte levels to ensure they are not above the mid level line.
12. Clean and neutralize the racks from any possible leaking batteries.
13. Replace with new units in the exact same orientation as the old units.
14. Replace cables/ hardware if supplied with the new batteries. If not supplied, inspect, clean and neutralize the existing cables/hardware.
15. Add a thin coat of anti-corrosion inhibitor to the face of the connector and to the contact surface of the battery terminal or as directed by the battery manufacturer.
16. Install tab washers for battery monitoring senses leads.
17. Torque all connections to the specific "inch pound" requirement specified by the manufacturer of the battery.
18. Measure and record all intercell, inter-tier, inter-aisle connection resistances.
19. Ensure all battery monitoring wires are connected properly, if battery monitoring is present.
20. Verify that no ground faults exist prior to energizing the battery.
21. Return the battery system to normal float per the manufacturer's guidelines.
22. Measure and record the total battery float voltage (at the battery).

23. Measure and record charging current.
24. Measure and record the overall AC ripple voltage.
25. Measure and record the overall AC ripple current.
26. Measure and record the ambient temperature.
27. Measure and record 100% of the jar temperatures.
28. Measure and record the float voltage of all cells.
29. Commission the Alber monitor (if present) following the standard commissioning procedures.
30. Provide the battery the proper Freshening/initial charge per the manufacturer's guidelines.
31. Clean the site of any foreign materials left behind.
32. Provide a detailed written report.

Site specific Requirements for Full String Replacement for VLA Batteries

1. Standard dock delivery that accommodates a standard size semi-truck with an onsite forklift or pallet jack(at least 4,000 lb capacity)
2. Inside staging area must be able to accommodate the size and weight of the batteries being installed and removed.
3. Inside, staging area must be within 50' of the dock area.
4. Battery room/cabinets must be within 200' of the staging area.
5. Doorways at least 34" in width.
6. Elevators within easy access and be rated for at least 4,000 lbs.
7. In the event that the customer needs a service or has a site requirement that falls outside of the Basic Installation Services or Basic Site Requirements, Vertiv Services will provide the customer with an additional quote for said Special Installation Services or in response to said Special Site Requirements, and if agreed to by the customer, the customer shall be separately invoiced the additional amounts set forth in the quote. Please notify your salesperson if you require Special Installation Services or have any other Special Site Requirements for which there will be an additional charge.
8. Special Installation Services and Special Site Requirements for which there will be additional costs and charges include, but are not limited to:
 1. Inside delivery
 2. Ground Delivery
 3. Floor Protection
 4. Floor Loading Limitations
 5. Delivery Path Includes Stairways, Ramps or Other Obstructions
 6. Use of Cranes
 7. Exclusive labor requirements installations
9. If Alber battery monitoring is present, access to the Central computer must be provided at the time of the battery installation for commissioning and developing of the new database. If access is not provided at the time of installation and a return trip is required to commission the Alber Monitor, there will be additional charges applied.

ASSUMPTIONS AND CLARIFICATIONS

If the Alber monitor is not commissioned at the time of the battery installation there could be nuisance alarms generated, until the system is properly commissioned. The data from an un-commissioned Alber Monitor cannot be used for warranty purposes.

CUSTOMER RESPONSIBILITIES

In order to provide timely, accurate and thorough execution of the services described herein, Vertiv requests the following:

- Point of Contact: Provide an authorized point of contact(s), specific for the scope of work, for scheduling and coordination purposes.
- Scheduling: Make dates available for scheduling service. All visits must be requested 10 business days in advance of need by contacting the Vertiv Services Customer Resolution Center at 1-800-543-2378.
- Site Access: Prior to time of scheduled work, provide site access including any customer required escort, security clearance, safety training and badging for Vertiv service personnel.
- Equipment Access: Convenient access to the equipment covered by the Scope of Work. Prior to scheduled time of work, notify Vertiv service personnel of any special requirements for equipment access including lifts, ladders, etc.
- Shutdown: Service may require shutdown of load to ensure electrical connection integrity.
- Notification: If for any reason the work cannot be performed during scheduled time, notify Vertiv service personnel 24-hours prior to scheduled event.

TERMS AND CONDITIONS

Subject to all Terms & Conditions as noted in the Vertiv Services Terms & Conditions or the terms of a Master Agreement between the parties, if any, shall apply.

SCOPE OF WORK

STATIONARY BATTERY SYSTEMS

VRLA (SEALED) BATTERY

FULL STRING REPLACEMENT

SERVICE SUMMARY

Feature	Detail
Customer Support	Includes access to the Customer Resolution Center (1-800-543-2378) and the Vertiv Customer Services Network Online Internet portal.
Service Professional	Performed by Vertiv factory trained and authorized technician. Vertiv Services is the OEM service provider for Liebert products.
Battery Recycling	Includes battery recycling as required, with documentation meeting EPA requirements.
Alber Commissioning	Includes commissioning of Alber battery monitoring hardware, if battery monitoring is present.

SERVICE PERFORMED

1. Ensure the battery system is disconnected from UPS and battery system is safe to be worked with.
2. Verify the integrity of the battery rack/cabinet.
3. Remove all modules.
4. Measure and record all open circuit voltages for all units to ensure they can be placed in the string(s) and online.
5. Replace with new units in the exact same orientation as the old units.
6. Replace hardware if supplied with the new batteries. If not supplied, inspect, clean and neutralize the existing cables and clean the racks/trays from any possible leaking batteries.
7. Clean any corrosion from cables if re-using existing cables and clean the racks/trays from any possible leaking batteries.
8. Add a thin coat of anti-corrosion inhibitor to the face of the connector and to the contact surface of the battery terminal or as directed by the battery manufacturer.
9. Install tab washers for battery monitoring senses leads.
10. Torque all connections to the specific "inch pound" requirement specified by the manufacturer of the battery.
11. Ensure all battery monitoring wires are connected properly, if battery monitoring is present.
12. Verify that no ground faults exist prior to energizing the battery.
13. Return the battery system to normal float per the manufacturer's guidelines.
14. Measure and record the total battery float voltage (at the battery).
15. Measure and record charging current.
16. Measure and record the overall AC ripple voltage.
17. Measure and record the overall AC ripple current.
18. Measure and record the ambient temperature.
19. Measure and record 100% of the jar temperatures.
20. Measure and record the float voltage of all jars.
21. Commission the Alber monitor (if present) following the standard commissioning procedures.

Proposal for Service

Vertiv Corporation

Feb 22, 2019

Kodiak Police Station
2160 Mill Bay Rd
Kodiak, AK, 99615

Feb 22, 2019

Kodiak Police Station
2160 Mill Bay Rd
Kodiak, AK, 99615
Q02914360

Thank you for your interest in Vertiv Corporation. We are pleased to submit the following proposal for your review and consideration.

As the rate of change and complexity in your data center increases, Vertiv is the dedicated partner that you need to help you achieve your goals.

Please complete all required fields on the signature page and attach your Purchase Order to assist timely order processing. Should you have any questions regarding the proposal, feel free to contact me directly at +1 206 763 5000. I look forward to your response and the opportunity to work together to improve your data center investment.

Sincerely,

JOSEPH SETTERBERG

3415 South 116th Street,
Suite 103
Tukwila, WA 98168

PHONE +1 206 763 5000

FAX + 1 206 763 6700

EMAIL Joseph.Setterberg@vertivco.com

Order Q02914360

Liebert UPS / Power / Battery Services:

- We are the Original Equipment Manufacturer and the experts on Liebert equipment with access to updates and changes, knowledge of engineering specifications, current issues and how to fix them correctly.
- Our factory trained service force is twice the size of the next largest competitor with over 650 customer engineers and field technicians in the United States alone; everywhere in the US the most knowledgeable engineers and technicians available, will cover you.
- With the most advanced tooling and instrumentation available, each CE has over \$10,000 in gear with him at all times, so any issue can be resolved in the least amount of time possible.
- To make sure we get the right part to the right place at the right time, we have the industry's most sophisticated parts logistics system. No matter where you are in the US we also have a parts warehouse close to serve you.
- We maintain and follow all safety and compliance regulations necessary to keep CE's from harm and protect you, our customers from liability. We care about your safety.

Liebert UPS Capacitor and Fan Replacement Services:

- Please plan/allow 8-12 weeks for capacitor and fan replacement, (if applicable).
- Replacement of all DC Capacitors.
- Replacement of all Fans and Blowers (if applicable).
- Replacement of all AC Input, Output Capacitors.
- Replacement of all Commutation Capacitors, (if applicable).

Standard Maintenance Contracts:

Site #: 123566, Kodiak Police Station

Tag #	Description	Model #	Annual PM Qty.	Coverage Type (Coverage Dates)	Coverage Amount
1497238	NPOWER 65-80	37SA065C0C6BB76		AC/DC Cap Replacement	\$6,974.00
				Fans	\$5,037.00

Progress billing: For all projects involving capacitor replacement, progress payments will apply. Invoices will be issued per the following project milestones:

Milestone

- Shipment of capacitors
- Completion of installation and testing

Payment Due

- Total amount for capacitors and freight
- Balance of project price

Total price not including tax: USD \$12,011.00
any tax required must be included in customer purchase order
Payment Terms: Net 30 Days

SCOPE OF WORK

UNINTERRUPTIBLE POWER SYSTEMS

ALL 3 PHASE MODELS - EXCEPT SERIES 300 AND NX 10-30 KVA

LIFE EXTENSION - FAN / BLOWER REPLACEMENT

SERVICE SUMMARY

Features	Detail
Service Professional	Performed by Vertiv factory trained and authorized technician. Vertiv Services is the OEM service provider for Liebert products.
Fan Replacement	Includes a complete replacement of all fans (all necessary labor and material).

SERVICE PERFORMED

Fan/Blower Replacement Service

1. Check all nuts, bolts, screws, and connections for heat discoloration.
2. Verify new fans/blowers prior to installation.
3. Clean fan/blower assembly area of all dirt and debris.
4. Inspect wiring for loose connections and heat discoloration. Replace, if necessary.
5. Ensure all fan connections are properly done and mechanical connections properly torqued.
6. Dispose of removed fans/blowers (upon request and at time of service).
7. Review system performance with customer to address any system questions.

ASSUMPTIONS AND CLARIFICATIONS

Service to be performed during the Annual preventive maintenance visit, as per the contract purchased on the UPS (excluding national holidays). Change out can also be performed during a Semi-annual visit if customer agrees to shut down the equipment. If a special visit was purchased, service is performed at the customer's convenience, regardless of contract purchased on the UPS (excluding national holidays).

CUSTOMER RESPONSIBILITIES

In order to provide timely, accurate and thorough execution of the services described herein, Vertiv requests the following:

- Point of Contact: Provide an authorized point of contact(s), specific for the scope of work, for scheduling and coordination purposes.
- Scheduling: Make dates available for scheduling service. All visits must be requested 10 business days in advance of need by contacting the Vertiv Services Customer Resolution Center at 1-800-543-2378.
- Site Access: Prior to time of scheduled work, provide site access including any customer required escort, security clearance, safety training and badging for Vertiv service personnel.
- Equipment Access: Convenient access to the equipment covered by the Scope of Work. Prior to scheduled time of work, notify Vertiv service personnel of any special requirements for equipment access including lifts, ladders, etc.
- Shutdown: Service may require shutdown of load to ensure electrical connection integrity.

- Notification: If for any reason the work cannot be performed during scheduled time, notify Vertiv service personnel 24-hours prior to scheduled event.

TERMS AND CONDITIONS

Subject to all Terms & Conditions as noted in the Vertiv Services Terms & Conditions or the terms of a Master Agreement between the parties, if any, shall apply.

SCOPE OF WORK

UNINTERRUPTIBLE POWER SYSTEMS

ALL 3 PHASE MODELS - EXCEPT SERIES 300 AND NX 10-30 KVA

LIFE EXTENSION - DC CAPACITOR REPLACEMENT

SERVICE SUMMARY

Feature	Detail
Service Professional	Performed by Vertiv factory trained and authorized technician. Vertiv Services is the OEM service provider for Liebert products.
Cap Replacements	Includes a complete replacement of all DC capacitors (all necessary labor and material).

SERVICE PERFORMED

DC Capacitor and Fan Replacement Service

1. Check all nuts, bolts, screws, and connectors for tightness and heat discoloration.
2. Verify new capacitor values prior to installation.
3. Clean capacitor decks and buss bars of all dirt, debris, and/or leakage.
4. Record AC ripple voltage and current before, and after, capacitor replacement.
5. Replace DC buss filter capacitors.
6. Inspect DC capacitor wiring for loose connections and heat discoloration. Replace, if necessary.
7. Ensure all capacitor connections are properly torqued.
8. Record new capacitor date codes.
9. Form new DC capacitors.
10. Perform thermal scan of capacitor decks and connections.
11. Dispose of removed capacitors (upon request and at time of service).
12. Review system performance with customer to address any system questions.

ASSUMPTIONS AND CLARIFICATIONS

Service to be performed during the Annual preventive maintenance visit, as per the contract purchased on the UPS (excluding national holidays). Change out can also be performed during a Semi-annual visit if customer agrees to shut down the equipment. If a special visit was purchased, service is performed at the customer's convenience, regardless of contract purchased on the UPS (excluding national holidays).

CUSTOMER RESPONSIBILITIES

In order to provide timely, accurate and thorough execution of the services described herein, Vertiv requests the following:

- Point of Contact: Provide an authorized point of contact(s), specific for the scope of work, for scheduling and coordination purposes.
- Scheduling: Make dates available for scheduling service. All visits must be requested 10 business days in advance of need by contacting the Vertiv Services Customer Resolution Center at 1-800-543-2378.

- Site Access: Prior to time of scheduled work, provide site access including any customer required escort, security clearance, safety training and badging for Vertiv service personnel.
- Equipment Access: Convenient access to the equipment covered by the Scope of Work. Prior to scheduled time of work, notify Vertiv service personnel of any special requirements for equipment access including lifts, ladders, etc.
- Shutdown: Service may require shutdown of load to ensure electrical connection integrity.
- Notification: If for any reason the work cannot be performed during scheduled time, notify Vertiv service personnel 24-hours prior to scheduled event.

TERMS AND CONDITIONS

Subject to all Terms & Conditions as noted in the Vertiv Services Terms & Conditions or the terms of a Master Agreement between the parties, if any, shall apply.

SCOPE OF WORK

UNINTERRUPTIBLE POWER SYSTEMS

ALL 3-PHASE MODELS

LIFE EXTENSION - AC CAPACITOR REPLACEMENT

SERVICE SUMMARY

Feature	Detail
Service Professional	Performed by Vertiv factory trained and authorized technician. Vertiv Services is the OEM service provider for Liebert products.
Cap Replacements	Includes a complete replacement of all AC Input and Output Filter Capacitors (all necessary labor and material).

SERVICE PERFORMED

AC Capacitor Replacement Service

1. Check all nuts, bolts, screws, and connections for heat discoloration.
2. Verify new capacitor values prior to installation.
3. Clean capacitor decks and buss bars of all dirt, debris, and/or leakage.
4. Record AC filter currents before and after capacitor replacement.
5. Replace input filter capacitors.
6. Replace output filter capacitors.
7. Replace commutation capacitors, if applicable.
8. Replace power supply electrolytic capacitors, if applicable.
9. Inspect AC, input/output capacitor wiring, and replace if necessary.
10. Properly torque all capacitor connections.
11. Record new capacitor date codes.
12. Perform thermal scan of capacitor decks and connections.
13. Dispose of removed capacitors (upon request and at time of service).
14. Review system performance with customer to address any system questions.

ASSUMPTIONS AND CLARIFICATIONS

Service to be performed during the Annual preventive maintenance visit, as per the contract purchased on the UPS (excluding national holidays). Change out can also be performed during a Semi-annual visit if customer agrees to shut down the equipment. If a special visit was purchased, service is performed at the customer's convenience, regardless of contract purchased on the UPS (excluding national holidays).

CUSTOMER RESPONSIBILITIES

In order to provide timely, accurate and thorough execution of the services described herein, Vertiv requests the following:

- Point of Contact: Provide an authorized point of contact(s), specific for the scope of work, for scheduling and coordination purposes.
- Scheduling: Make dates available for scheduling service. All visits must be requested 10 business days in advance of need by contacting the Vertiv Services Customer Resolution Center at 1-800-543-2378.
- Site Access: Prior to time of scheduled work, provide site access including any customer required escort, security clearance, safety training and badging for Vertiv service personnel.
- Equipment Access: Convenient access to the equipment covered by the Scope of Work. Prior to scheduled time of work, notify Vertiv service personnel of any special requirements for equipment access including lifts, ladders, etc.
- Shutdown: Service may require shutdown of load to ensure electrical connection integrity.
- Notification: If for any reason the work cannot be performed during scheduled time, notify Vertiv service personnel 24-hours prior to scheduled event.

TERMS AND CONDITIONS

Subject to all Terms & Conditions as noted in the Vertiv Services Terms & Conditions or the terms of a Master Agreement between the parties, if any, shall apply.

Order Number: Q02914360

Purchase Order must be assigned to:

Vertiv Corporation
1050 Dearborn Dr.
Columbus, OH 43085

Payment remittance address:

Vertiv Corporation
PO Box 70474
Chicago, IL 60673

FID# 31-0715256

EXCITING NEWS: On Sept. 1, 2018, we transitioned to Vertiv Corporation as our legal entity. Visit <http://vertivco.com/legalentityinfo> for changes you may need to make.

PO should be e-mailed or faxed with signed proposal to:

Vertiv Corporation c/o JOSEPH SETTERBERG
Attn: JOSEPH SETTERBERG
Email: Joseph.Setterberg@vertivco.com
Fax: + 1 206 763 6700

Please complete the following information (All fields are required):

Purchase Order Number: _____ Purchase Order attached: Yes No

If PO **NOT** attached, please specify reason: _____

Invoice Delivery Method: Web Billing (Attach Instructions) Mail Other _____

Accounts Payable Email _____ @ _____

Billing Contact Person: _____ Phone: _____

Email: _____ Fax #: _____

Bill-To Company Name: _____ Bill-To Address: _____

Federal Tax ID # _____ Bill-To City, ST Zip: _____

Tax Exempt: Yes (Attach tax exempt certificate) No

Site Services/IT Contact Person: _____ Phone: _____

**** COVERAGE DETAILS ****

For equipment not currently under a Service Agreement or for equipment for which the warranty has expired in excess of thirty (30) days, parts required to bring equipment back to manufacturers specifications are the responsibility of the Buyer and billable at the time of the first preventive maintenance visit or Service call. All pricing is valid only for Service coverage stated and is subject to change if this Proposal is modified in any way. This Proposal is valid for 30 days from the date of this Proposal unless otherwise noted. INFORMATION TO BUYER: This order between the Buyer and Seller is limited to Seller's Terms and Conditions located at termsconditions.vertivco.com unless a formal agreement governing this Purchase Order/transaction has been executed by the parties, in which case the Terms and Conditions of the signed agreement shall govern. Seller hereby objects to all Buyer's terms and conditions received by Seller and/or issued by Buyer.

Signature of this agreement authorizes Seller to invoice for Services mentioned herein and to utilize the provided purchase order number. If a purchase order number is not used, then the Buyer authorizes and guarantees Seller the payment of such invoices by authority of the signature below.

Thank you for your business.

Proposed By:

Accepted By:

JOSEPH SETTERBERG Date

Buyer Signature Required Date

Printed Name Title Phone

Vertiv Corporation
TERMS AND CONDITIONS OF SALE

Vertiv Corporation is herein referred to as the "Seller" and the customer or person or entity purchasing goods and/or services ("Goods") and/or parts required for services ("Parts") or licensing software and/or firmware, which are preloaded, or to be used with Goods ("Software") from Seller is referred to as the "Buyer." These Terms and Conditions, any price list or schedule, quotation, acknowledgment, Seller's scope or statement of work, or invoice from Seller relevant to the sale of the Goods, Parts and licensing of Software by Seller, and all associated terms, conditions and documents incorporated by specific reference herein or therein, constitute the complete and exclusive statement of the terms of the agreement ("Agreement") governing the sale of Goods, Parts, and/or license of Software by Seller to Buyer. Any discrepancies between the terms of the above referenced documents shall be resolved by Seller. Seller's acceptance of Buyer's purchase order is expressly conditional on Buyer's assent to all of Seller's terms and conditions of sale, including terms and conditions that are different from or additional to the terms and conditions of Buyer's purchase order. Buyer's acceptance of the Goods, Parts, and/or Software will manifest Buyer's assent to the terms of this Agreement. Seller reserves the right in its sole discretion to refuse orders.

1. PRICES: Unless otherwise specified in writing by Seller, the price quoted or specified by Seller for the Goods, Parts and/or Software shall remain in effect for thirty (30) days after the date of Seller's quotation, Seller's scope of work or acknowledgment of Buyer's order for the Goods, whichever occurs first, provided an unconditional authorization from Buyer for the shipment or performance of the Goods and/or Parts, and/or Software is received and accepted by Seller within such time period. If such authorization is not received by Seller within such thirty (30) day period, Seller shall have the right to change the price for the Goods, Parts and/or Software to Seller's price for the Goods, Parts, and/or Software at the time of Seller's shipment or performance thereof. All prices and licensee fees are exclusive of taxes, transportation and insurance, which are to be borne by Buyer. Seller reserves the right to correct any obvious errors in specifications or prices. Unless otherwise specified by Seller, Parts, that are required for the performance of services will be furnished at Seller's then prevailing prices. A service charge of \$19.99 will be added to all orders which, excluding shipping charges, taxes, and insurance, do not meet the minimum order value of \$750.00. The service charge amount and/or minimum order value may be changed by Seller at any time, without notice.

2. TAXES: Any current or future tax, duty, tariff or governmental charge (or increase in same) affecting Seller's costs of production, sale, services or delivery or shipment of Goods Parts, and/or Software, or which Seller is otherwise required to pay or collect in connection with the sale, purchase, delivery, performance, storage, processing, use or consumption of Goods, Parts, and/or Software, shall be for Buyer's account and shall be added to the price or billed to Buyer separately, at Seller's election.

3. TERMS OF PAYMENT: Unless otherwise specified by Seller, terms are net thirty (30) days from date of Seller's invoice in U.S. currency. Seller shall have the right, among other remedies, either to terminate this Agreement or to suspend further performance under this and/or other agreements with Buyer in the event Buyer fails to make any payment when due, which other agreements Buyer and Seller hereby amend accordingly. Buyer shall be liable for all expenses, including attorneys' fees, relating to the collection of past due amounts. If any payment owed to Seller is not paid when due, it shall bear interest, at a rate to be determined by Seller, which shall not exceed the maximum rate permitted by law, from the date on which it is due until it is paid. Seller may preserve its interests in payment by enforcing any applicable mechanic's, labor, construction or similar lien rights. Should Buyer's financial responsibility become unsatisfactory to Seller, cash payments or security satisfactory to Seller may be required by Seller for future deliveries or performance of Goods, Parts, and/or Software. If such cash payment or security is not provided, in addition to Seller's other rights and remedies, Seller may discontinue deliveries or performance. Buyer hereby grants Seller a security interest in all Goods, Parts, and/or Software sold to Buyer by Seller, which security interest shall continue until all such Goods, Parts, and/or Software are fully paid for, and Buyer, upon Seller's demand, will execute and deliver to Seller such instruments as Seller requests to protect and perfect such security interest.

4. SHIPMENT AND DELIVERY: While Seller will use all reasonable commercial efforts to maintain the delivery date(s) and/or performance dates acknowledged or quoted by Seller, all shipping dates and/or performance dates are approximate and not guaranteed. Seller reserves the right to make partial shipments. Seller, at its option, shall not be bound to tender delivery of any Goods, Parts, and/or Software for which Buyer has not provided shipping instructions and other required information. If the shipment or performance of the Goods, Parts, and/or Software is postponed or delayed by Buyer for any reason, Buyer agrees to reimburse Seller for any and all storage costs and other additional expenses resulting therefrom. For sales in which the end destination of the Goods, Parts, and/or Software is outside of the United States (except for those international sales to Seller's affiliated companies), risk of loss and legal title to the Goods, Parts, and/or Software shall transfer to Buyer immediately after the Goods, Parts, and/or Software have passed beyond the territorial limits of the United States. For international sales to Seller's affiliated companies, all shipments of Goods, Parts, and/or Software are made on a Delivered at Terminal (DAT) basis, per Incoterms 2010, with freight charges from Seller's facility to destination terminal invoiced to buyer either on a Prepaid or PPD/Add basis, as agreed to by Seller and Buyer. All other shipments of Goods, Parts, and/or Software are made on an Ex Works (EXW) Seller's Shipping Point basis, per Incoterms 2010, with Seller responsible to load goods on Buyer's nominated vehicle. Any claims for shortages or damages suffered in transit are the responsibility of Buyer and shall be submitted by Buyer directly to the carrier. Notwithstanding the above, risk of loss and legal title to Parts shall transfer to Buyer (i) upon delivery by the Seller, or (ii) at the time Parts are placed in storage due to Buyer's delay or postponement. Shortages or damages must be identified and signed for at the time of delivery. Requests for changes in quoted transportation modes will not be made or accepted on orders already processed unless otherwise mutually agreed upon by Seller and Buyer. Requests for changes in quoted transportation modes to orders already accepted by Seller will be subject to new freight terms and billed at the price in effect at the time of the request for change. Any request for changes to quoted transportation modes must be submitted in writing to Seller and are subject to Seller's acceptance and adjustment in freight price. The transportation costs quoted by Seller may be

changed by Seller without notice in order to reflect Seller's prices at the time of shipment and will reflect any market increase in transportation costs. If a price for delivery has been quoted, any changes at the destination for transportation modes, spotting, switching, handling, storage and other accessororial services and demurrage shall be borne by the customer, and any related increase in transportation charges shall be added to the quoted price.

5. LIMITED WARRANTY: Subject to the limitations of Section 6, Seller's standard warranty that is applicable to the Goods and/or Software at the time of purchase is the only warranty applicable to the sale of Seller's Goods and/or Software and its terms, conditions and limitations are incorporated by reference herein and Seller warrants that it will perform the services as described in these terms and conditions and will exercise all reasonable skill, care and due diligence in the performance of the services. Seller warrants that all services performed shall be free from faulty workmanship for a period of thirty (30) days from completion of services. Thermal Solution Components, including but not limited to, fans, air-to-air heat exchangers, air conditioners, emergency DC vent systems and filtered thermal vent systems are warranted to be free from defects in material and workmanship for a period of twelve (12) months from date of shipment, or manufacturer's pass through warranty, whichever is longer, provided the following conditions are met: (i) Semi-annual preventive maintenance logs are maintained by Buyer and such logs are available to Seller upon request; and (ii) Input voltage to the air conditioner unit does not vary by greater than +/-10%; and (iii) in the event of accidental or intentional shut-off, a Thermal Solution Component will not be restarted for at least five (5) minutes; and (iv) The refrigerant specified on the unit nameplate label will be the only refrigerant utilized in the air conditioner unit; and, (v) Buyer complies with all installation, operations and maintenance instructions provided by Seller. Goods, Parts and/or Software purchased by Seller from a third party for resale or license to Buyer ("Resale Products") shall carry only the warranty extended by the original manufacturer. To the extent assignable, Seller assigns to Buyer any warranties that are made by manufacturers and suppliers of such Resale Products. EXCEPT AS SPECIFIED ABOVE, RESELLER PRODUCTS FURNISHED HEREUNDER ARE FURNISHED AS-IS, WHERE-IS, WITH NO WARRANTY WHATSOEVER. THE WARRANTY SET FORTH IN THIS SECTION 5 AND THE WARRANTY SET FORTH IN SECTION 8 ARE THE SOLE AND EXCLUSIVE WARRANTIES GIVEN BY SELLER WITH RESPECT TO THE GOODS AND/OR SOFTWARE AND ARE IN LIEU OF AND EXCLUDE ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, ARISING BY OPERATION OF LAW OR OTHERWISE, INCLUDING WITHOUT LIMITATION, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE WHETHER OR NOT THE PURPOSE OR USE HAS BEEN DISCLOSED TO SELLER IN SPECIFICATIONS, DRAWINGS OR OTHERWISE, AND WHETHER OR NOT SELLER'S PRODUCTS ARE SPECIFICALLY DESIGNED AND/OR MANUFACTURED BY SELLER FOR BUYER'S USE OR PURPOSE.

SELLER'S WARRANTY EXTENDS ONLY TO PURCHASERS WHO BUY FOR INDUSTRIAL OR COMMERCIAL USE. This warranty does not extend to any losses or damages due to misuse, accident, abuse, neglect, normal wear and tear, negligence (other than Seller's), unauthorized modification or alteration, use beyond rated capacity, unsuitable power sources or environmental conditions, improper installation, repair, handling, maintenance or application or any other cause not the fault of Seller. To the extent that Buyer or its agents have supplied specifications, information, representation of operating conditions or other data to Seller in the selection or design of the Goods and/or Software and the preparation of Seller's quotation, and/or scope of work, and in the event that actual operating conditions or other conditions differ from those represented by Buyer, any warranties or other provisions contained herein that are affected by such conditions shall be null and void. Buyer assumes all other responsibility for any loss, damage, or injury to persons or property arising out of, connected with, or resulting from the use of Goods, Parts, and/or Software, either alone or in combination with other products/components.

6. LIMITATION OF REMEDY AND LIABILITY: THE SOLE AND EXCLUSIVE REMEDY FOR BREACH OF ANY WARRANTY HEREUNDER (OTHER THAN THE WARRANTY PROVIDED UNDER SECTION 8) SHALL BE LIMITED TO REPAIR, CORRECTION OR REPLACEMENT, OR REFUND OF THE PURCHASE PRICE UNDER SECTION 5. SELLER SHALL NOT BE LIABLE FOR DAMAGES CAUSED BY DELAY IN PERFORMANCE AND THE REMEDIES OF BUYER SET FORTH IN THIS AGREEMENT ARE EXCLUSIVE. IN NO EVENT, REGARDLESS OF THE FORM OF THE CLAIM OR CAUSE OF ACTION (WHETHER BASED IN CONTRACT, INFRINGEMENT, NEGLIGENCE, STRICT LIABILITY, OTHER TORT OR OTHERWISE), SHALL SELLER'S LIABILITY TO BUYER AND/OR ITS CUSTOMERS EXCEED THE PRICE PAID BY BUYER FOR THE SPECIFIC GOODS, PARTS, AND/OR SOFTWARE PROVIDED BY SELLER GIVING RISE TO THE CLAIM OR CAUSE OF ACTION.

BUYER AGREES THAT SELLER'S LIABILITY TO BUYER AND/OR ITS CUSTOMERS SHALL NOT EXTEND TO INCLUDE INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES. The term "consequential damages" shall include, but not be limited to, loss of anticipated profits, business interruption, loss of use, revenue, reputation and data, costs incurred, including without limitation, for capital, fuel, power and loss or damage to property or equipment. It is expressly understood that any technical advice furnished by Seller with respect to the use of the Goods, Parts and/or Software is given without charge, and Seller assumes no obligation or liability for the advice given, or results obtained, all such advice being given and accepted at Buyer's risk.

7. INSURANCE: Seller shall maintain the following insurance or self-insurance coverage: **Worker's Compensation** in accordance with the statutory requirements of the state in which the work is performed. **Employer's Liability** with a limit of liability of \$2,000,000 per occurrence for bodily injury by accident or bodily injury by disease. **Commercial General Liability (CGL)** for bodily injury and property damage with a limit of \$2,000,000 per occurrence and per location aggregate. **Automobile Liability** insurance that covers usage of all owned, non-owned and leased vehicles and which is subject to a combined single limit per occurrence of \$2,000,000. Automobile Liability insurance includes Contractual Liability, but no special endorsements. **Buyer expressly acknowledges and agrees that Seller has set its prices and entered into this Agreement in reliance upon the limitations of liability, insurance coverage, and other terms and conditions specified herein,**

which allocate the risk between Seller and Buyer and form a basis of this bargain between the parties.

8. **PATENTS AND COPYRIGHTS:** Subject to the limitations of the second paragraph of Section 6 and any and all associated terms, conditions and documents incorporated by specific reference by Seller, Seller warrants that the Goods and/or Software sold, except as are made specifically for Buyer according to Buyer's specifications, do not infringe any valid U.S. patent or copyright in existence as of the date of shipment. This warranty is given upon the condition that Buyer promptly notify Seller of any claim or suit involving Buyer in which such infringement is alleged and cooperate fully with Seller and permit Seller to control completely the defense, settlement or compromise of any such allegation of infringement. Seller's warranty as to utility patents only applies to infringement arising solely out of Buyer's operation according to Seller's specifications and instructions of such Goods and/or Software. In the event (i) such Goods and/or Software are held to infringe such a U.S. patent or copyright in such suit, and the use of such Goods and/or Software is enjoined, or (ii) a compromise or settlement is made by Seller, Seller shall have the right, at its option and expense, to procure for Buyer the right to continue using such Goods and/or Software, or replace them with non-infringing Goods and/or Software, or modify same to become non-infringing, or grant Buyer a credit for the depreciated value of such Goods and/or Software and accept return of them. In the event of the foregoing, Seller may also, at its option, cancel the agreement as to future deliveries of such Goods and/or Software, without liability. Except as otherwise provided herein, Seller or applicable third party licensor to Seller maintains all right, title and interest in and to the intellectual property in the Goods, Parts, and/or Software.

9. **EXCUSE OF PERFORMANCE:** Seller shall not be liable for delays in performance or for non-performance due to acts of God; acts of Buyer; war; epidemic; fire; flood; weather; sabotage; strikes or labor disputes; civil disturbances or riots; governmental requests, restrictions, allocations, laws, regulations, orders or actions; unavailability of or delays in transportation; default of suppliers; or unforeseen circumstances, acts or omissions of Buyer, or any events or causes beyond Seller's reasonable control. Deliveries or other performance may be suspended for an appropriate period of time or canceled by Seller upon notice to Buyer in the event of any of the foregoing, but the balance of this Agreement shall otherwise remain unaffected as a result of the foregoing. If Seller determines that its ability to supply the total demand for the Goods, Parts, and/or Software, or to obtain material used directly or indirectly in the manufacture of the Goods, Parts, and/or Software, is hindered, limited or made impracticable due to causes set forth in the preceding paragraph, Seller may delay performance and/or allocate its available supply of the Goods, Parts, Software, and/or such material (without obligation to acquire other supplies of any such Goods, Parts, Software, or material) among its purchasers on such basis as Seller determines to be equitable without liability for any failure of performance which may result therefrom.

10. **CANCELLATION:** Buyer may cancel orders only upon reasonable advance written notice and upon payment to Seller of Seller's cancellation charges which include, among other things, all costs and expenses incurred, and, to cover commitments made, by the Seller and a reasonable profit thereon. Seller's determination of such cancellation charges shall be conclusive.

11. **CHANGES:** Buyer may request changes or additions to the Goods, Parts, and/or Software consistent with Seller's specifications and criteria. In the event such changes or additions are accepted by Seller, Seller may revise the price, license fees, and dates of delivery and/or performance dates. Seller reserves the right to change designs and specifications for the Goods, Parts, and/or Software without prior notice to Buyer, except with respect to Goods, Parts, and/or Software being made-to-order for Buyer. Seller shall have no obligation to install or make such change in any Goods, Parts, and/or Software manufactured prior to the date of such change.

12. **NUCLEAR/MEDICAL:** GOODS, PARTS, AND SOFTWARE SOLD HEREUNDER ARE NOT FOR USE IN CONNECTION WITH ANY NUCLEAR, MEDICAL, LIFE-SUPPORT AND RELATED APPLICATIONS. Buyer accepts Goods, Parts, and Software with the foregoing understanding, agrees to communicate the same in writing to any subsequent purchasers or users and to defend, indemnify and hold harmless Seller from any claims, losses, suits, judgments and damages, including incidental and consequential damages, arising from such use, whether the cause of action be based in tort, contract or otherwise, including allegations that the Seller's liability is based on negligence or strict liability.

13. **ASSIGNMENT:** Buyer shall not assign its rights or delegate its duties hereunder or any interest herein without the prior written consent of Seller, and any such assignment, without such consent, shall be void.

14. **SOFTWARE:** Notwithstanding any other provision herein to the contrary, Seller or applicable third party licensor to Seller shall retain all rights of ownership and title in its respective Software, including without limitation all rights of ownership and title in its respective copies of such Software. Except as otherwise provided herein, Buyer is hereby granted a nonexclusive, non-transferable royalty free license to use the Software incorporated into the Goods solely for purposes of Buyer properly utilizing such Goods purchased from Seller. All other Software shall be furnished to, and used by, Buyer only after execution of Seller's (or the licensor's) applicable standard license agreement, the terms of which are incorporated herein by reference.

15. **TOOLING:** Tool, die, and pattern charges, if any, are in addition to the price of the Goods and are due and payable upon completion of the tooling. All such tools, dies and patterns shall be and remain the property of Seller. Charges for tools, dies, and patterns do not convey to Buyer, title, ownership interest in, or rights to possession or removal, or prevent their use by Seller for other purchasers, except as otherwise expressly provided by Seller and Buyer in writing with reference to this provision.

16. **DOCUMENTATION:** Seller shall provide Buyer with that data/documentation which is specifically identified in Seller's quotation. If additional copies of data/documentation are to be provided by Seller, it shall be provided to Buyer at Seller's applicable prices then in effect.

17. **INSPECTION/TESTING:** Buyer, at its option and expense, may observe the inspection and testing by Seller of the Goods and/or Software for compliance with Seller's standard test procedures prior to shipment, which inspection and testing shall be conducted at Seller's plant at such reasonable time as is specified by Seller. Any rejection of the Goods and/or Software must be made promptly by Buyer before shipment. Tests shall be deemed to be satisfactorily completed and the test fully met when the Goods and/or Software meet Seller's criteria for such procedures. If Buyer does not inspect the Goods and/or Software at Seller's plant as provided herein, Buyer shall have ten (10) days from (i) the date of delivery of Goods, Parts, and/or Software and (ii) from the date of completion of each portion of the services to inspect the Goods, Parts, and/or Software, and in the event of any non-

conformity, Buyer must give written notice to Seller within said period stating why the Goods, Parts, and/or Software are not conforming. Failure by Buyer to give such notice constitutes unqualified acceptance of the Goods, Parts, and/or Software. Buyer's sole remedy for non-conforming services shall be correct performance of services incorrectly performed by Seller.

18. **RETURNED GOODS:** Advance written permission to return Goods, Parts, and/or Software must be obtained from Seller in accordance with Seller's then current Return Material Authorization (RMA) procedures and a return authorization number issued. Such Goods, Parts, and/or Software must be (i) current, unused, catalogued Goods, Parts, and/or Software, still in original packaging (ii) free of all liens, encumbrances, or other claims, and (iii) shipped, transportation prepaid, to Seller's specified location. Returns made without proper written permission will not be accepted by Seller. Seller reserves the right to inspect Goods, Parts, and/or Software prior to authorizing return.

19. **BILLABLE SERVICES:** Additional charges will be billed to Buyer at Seller's then prevailing labor rates and Parts prices for any of the following: a) any services not specified in Seller's quotation, Seller's order acknowledgement, Seller's scope of work, or other documents referenced herein and therein; b) any services performed at times other than Seller's normal service hours; c) if timely and reasonable site and/or equipment access is denied the Seller service representative; d) if it is necessary, due to local circumstances, to use union labor or hire an outside contractor, Seller service personnel will provide supervision only and the cost of such union or contract labor will be charged to Buyer; (e) if Service or repair is necessary to return equipment to proper operating condition as a result of other than Seller (i) maintenance, repair, or modification (including, without limitation, changes in specifications or incorporation of attachments or other features), (ii) misuse or neglect, (including, without limitation, failure to maintain facilities and equipment in a reasonable manner), (iii) failure to operate equipment in accordance with applicable specifications, and (iv) catastrophe, accident, or other causes external to equipment; (f) Seller's performance is made more burdensome or costly as a result of Buyer's failure to comply with its obligations herein, or (g) any additional obligations or requirements, including but not limited to those related to insurance requirements, service delivery, building entry or technical training.

20. **DRAWINGS:** Seller's documentation, prints and drawings (including without limitation, the underlying technology) furnished by Seller to Buyer in connection with this Agreement are the property of Seller and Seller retains all rights, including without limitation, exclusive rights of use, licensing and sale. Possession of such prints or drawings does not convey to Buyer any rights or license, and Buyer shall return all copies (in whatever medium) of such prints or drawings to Seller immediately upon request therefor. Notwithstanding the foregoing, Buyer may use the documentation, prints and drawings in connection with the use of the Goods, Parts, and/or Software.

21. **BUYER SUPPLIED DATA:** To the extent that Seller has been provided by, or on behalf of, Buyer any specifications, description of operating conditions or other data and information in connection with the selection or design of the Goods, Parts, and/or Software, and/or the provision of services, and the actual operating conditions or other circumstances differ from those provided by Buyer and relied upon by Seller, any warranties or other provisions contained herein which are affected by such conditions shall be null and void.

22. **EXPORT/IMPORT:** Buyer agrees that all applicable import and export control laws, regulations, orders and requirements, including without limitation those of the United States and the European Union, and the jurisdictions in which the Seller and Buyer are established or from which Goods, Parts, Software, and services may be supplied, will apply to their receipt and use. In no event shall Buyer use, transfer, release, import, export, Goods, Parts, or Software in violation of such applicable laws, regulations, orders or requirements.

23. **NON-SOLICITATION:** Buyer shall not solicit, directly or indirectly, or employ any employee of Seller during the period any Goods are being provided to Buyer and for a period of one (1) year after the last provision of Goods.

24. **GENERAL PROVISIONS:** These terms and conditions supersede all other communications, negotiations and prior oral or written statements regarding the subject matter of this Agreement. No change, modification, rescission, discharge, abandonment, or waiver of these terms and conditions shall be binding upon the Seller unless made in writing and signed on its behalf by a duly authorized representative of Seller. No conditions, usage of trade, course of dealing or performance, understanding or agreement purporting to modify, vary, explain, or supplement this Agreement shall be binding unless hereafter made in writing and signed by the party to be bound, and no modification or additional terms shall be applicable to this Agreement by Seller's receipt, acknowledgment, or acceptance of purchase orders, shipping instruction forms, or other documentation containing terms at variance with or in addition to those set forth herein. Any such modifications or additional terms are specifically rejected and deemed a material alteration hereof. If this document shall be deemed an acceptance of a prior offer by Buyer, such acceptance is expressly conditional upon Buyer's assent to any additional or different terms set forth herein. Seller reserves the right to subcontract Services to others. No waiver by either party with respect to any breach or default or of any right or remedy, and no course of dealing, shall be deemed to constitute a continuing waiver of any other breach or default or of any other right or remedy, unless such waiver be expressed in writing and signed by the party to be bound. All typographical or clerical errors made by Seller in any quotation, acknowledgment or publication are subject to correction.

The validity, performance, and all other matters relating to the interpretation and effect of this Agreement shall be governed by the law of the state of Ohio without regard to its conflict of laws principles. Buyer and Seller agree that the proper venue for all actions arising in connection herewith shall be only in Ohio and the parties agree to submit to such jurisdiction. No action, regardless of form, arising out of transactions relating to this contract, may be brought by either party more than two (2) years after the cause of action has accrued. The U.N. Convention on Contracts for the International Sales of Goods shall not apply to this agreement.

25. **DATA COLLECTION AND USE:** By using the Goods, Parts and/or Software, Buyer grants Seller, its affiliates, subsidiaries, and service providers, a non-exclusive, irrevocable, royalty free, worldwide right and license to collect, compile, retain, use, reproduce, and create derivative works of, your non-personal information and data, which includes without limitation, all data, materials, reports, text, sound, video, image files, software or any other information ("Service Data") that is provided by, or on behalf of, Buyer, or collected or compiled by Seller, its affiliates, subsidiaries, or service providers through the Goods, Parts, and/or Software. Seller, its affiliates, subsidiaries, and service providers may collect, compile, retain, use, reproduce, and create derivative works of Service Data: (i) to provide services, support, and maintenance; (ii) to develop and improve products, software, and services; and (iii) for scientific and technical research and marketing purposes. Buyer is solely responsible for the Service Data, and Buyer will secure and maintain all rights necessary for Seller, its

affiliates, subsidiaries, and service providers to process and use Service Data as described in this paragraph without violating the rights of any third party or otherwise obligating Seller, its affiliates, subsidiaries, and service providers to Buyer or any third party. The Service Data will be aggregated with other information, materials, or data collected or compiled by, or provided to, Seller, its affiliates, subsidiaries, or service providers and anonymized, such that the Service Data will not intentionally reveal Buyer's identity. In accordance with applicable law, Service Data may be transferred, transmitted, or distributed to, stored, and processed in, cloud computing environments in the United States or any other country in which Seller, its affiliates, subsidiaries, or service providers maintain operations. By using the Goods, Parts, and/or Software, Buyer agrees to such use, transfer, transmission, distribution, storage, and processing of the Service Data. Seller, its affiliates, subsidiaries, and service providers will retain Service Data for as long as is necessary for Seller and its affiliates and subsidiaries business purposes in accordance with applicable law. The rights and licenses granted herein to Seller's service providers shall only be granted to the extent service providers are providing goods and services on Seller's and its affiliates and subsidiaries behalf.

26. **ADDITIONAL SERVICE CONDITIONS:** The Buyer shall furnish to Seller, at no cost, suitable working space, storage space, adequate heat, telephone, light, ventilation, regulated electric power and outlets for testing purposes. The facilities shall be within a reasonable distance from where the Goods are to be provided. Seller and its representatives shall have full and free access to the equipment in order to provide the necessary Goods. Buyer authorizes Seller to send a service technician or an authorized agent to access any site requested by Buyer to perform services, including services on different scopes of work and equipment as requested by Buyer. Buyer shall provide the means to shut-off and secure electric power to the equipment and provide safe working conditions. Seller is under no obligation to remove or dispose of Parts or equipment unless specifically agreed upon in Seller's scope of work. Buyer shall immediately inform Seller, in writing, at the time of order placement and thereafter, of any unsafe or hazardous substance or condition at the

site, including, but not limited to, the presence of asbestos or asbestos-containing materials, and shall provide Seller with any applicable Material Data Safety Sheets regarding the same. Any losses, costs, damages, claims and expenses incurred by Seller as a result of Buyer's failure to so advise Seller shall be borne by Buyer. Seller, in its sole discretion and without cost or penalty, reserves the right to cancel its performance under this Agreement or any order immediately upon written notice to Buyer following Seller discovery of unsafe or hazardous site substance or condition or any other circumstance altering Seller's performance hereunder. Buyer shall appoint a representative familiar with the site and the nature of Seller's performance to be accessible at all times that Seller personnel are at the site. Seller shall not be liable for any expenses incurred by Buyer in removing, replacing or refurbishing any Buyer equipment or any part of Buyer's building structure that restricts Seller access. Buyer personnel shall cooperate with and provide all necessary assistance to Seller. Seller shall not be liable or responsible for any work performed by Buyer.

27. **INDEMNITY:** Each party shall indemnify and hold the other party harmless from loss, damage, liability or expense resulting from damage to personal property of a third party, or injuries, including death, to third parties to the extent caused by a negligent act or omission of the party providing indemnification or a party's subcontractors, agents or employees during performance of services hereunder. Such indemnification shall be reduced to the extent damage or injuries are attributable to others and in no event shall the indemnifying party be obligated to indemnify or insure the other party for the indemnitee's own fault or negligence. The indemnifying party shall defend the other party in accordance with and to the extent of the above indemnification, provided that the indemnifying party is: i) promptly notified by the other party, in writing, of any claims, demands or suits for such damages or injuries; ii) given all reasonable information and assistance by the other party; iii) given full control over any resulting negotiation, arbitration or litigation, including the right to choose counsel and settle claims, or the indemnifying party's obligations herein shall be deemed waived.

22. Provide the battery the proper Freshening charge per the manufacturer's guidelines.
23. Clean the site of any foreign materials left behind.
24. Prepare batteries for recycling and transportation (wrap the batteries with plastic wrap to secure them to the pallets)

Site specific Requirements for Full String Replacement for VRLA Batteries

1. Standard dock delivery that accommodates a standard size semi-truck with an onsite forklift or pallet jack(at least 4,000 lb capacity)
2. Inside staging area large enough for the batteries being installed and removed.
3. Inside, staging area must be within 50' of the dock area.
4. Battery room/cabinets must be within 200' of the staging area.
5. Doorways at least 34" in width.
6. Elevators within easy access and be rated for at least 4,000 lbs.
7. In the event that the customer needs a service or has a site requirement that falls outside of the Basic Installation Services or Basic Site Requirements, Vertiv Services will provide the customer with an additional quote for said Special Installation Services or in response to said Special Site Requirements, and if agreed to by the customer, the customer shall be separately invoiced the additional amounts set forth in the quote. Please notify your salesperson if you require Special Installation Services or have any other Special Site Requirements for which there will be an additional charge.
8. Special Installation Services and Special Site Requirements for which there will be additional costs and charges include, but are not limited to:
 1. Inside delivery
 2. Ground Delivery
 3. Floor Protection
 4. Floor Loading Limitations
 5. Delivery Path Includes Stairways, Ramps or Other Obstructions
 6. Use of Cranes
 7. Exclusive labor requirements installations
9. If Alber battery monitoring is present, access to the Central computer must be provided at the time of the battery installation for commissioning and developing of the new database. If access is not provided at the time of installation and a return trip is required to commission the Alber Monitor, there will be additional charges applied.

ASSUMPTIONS AND CLARIFICATIONS

If the Alber monitor is not commissioned at the time of the battery installation there could be nuisance alarms generated, until the system is properly commissioned. The data from an un-commissioned Alber Monitor cannot be used for warranty purposes.

CUSTOMER RESPONSIBILITIES

In order to provide timely, accurate and thorough execution of the services described herein, Vertiv requests the following:

- Point of Contact: Provide an authorized point of contact(s), specific for the scope of work, for scheduling and coordination purposes.
- Scheduling: Make dates available for scheduling service. All visits must be requested 10 business days in advance of need by contacting the Vertiv Services Customer Resolution Center at 1-800-543-2378.
- Site Access: Prior to time of scheduled work, provide site access including any customer required escort, security clearance, safety training and badging for Vertiv service personnel.
- Equipment Access: Convenient access to the equipment covered by the Scope of Work. Prior to scheduled time of work, notify Vertiv service personnel of any special requirements for equipment access including lifts, ladders, etc.

- Shutdown: Service may require shutdown of load to ensure electrical connection integrity.
- Notification: If for any reason the work cannot be performed during scheduled time, notify Vertiv service personnel 24-hours prior to scheduled event.

TERMS AND CONDITIONS

Subject to all Terms & Conditions as noted in the Vertiv Services Terms & Conditions or the terms of a Master Agreement between the parties, if any, shall apply.

Proposal Number: Q02922882

Purchase order must be assigned to:
 Vertiv Corporation
 1050 Dearborn Dr.
 Columbus, OH 43085

Payment remittance address:
 Vertiv Corporation
 PO Box 70474
 Chicago, IL 60673

FID# 31-0715256

EXCITING NEWS: On Sept. 1, 2018, we transitioned to Vertiv Corporation as our legal entity. Visit <http://vertivco.com/legalentityinfo> for changes you may need to make.

PO should be e-mailed or faxed with signed proposal to:
 Vertiv Corporation c/o PATRICK PEROTTI
 Attn: PATRICK PEROTTI
 Email: Patrick.Perotti@vertivco.com
 Fax: 614-841-6643

Please complete the following information (All fields are required):

Purchase Order Number: _____ Purchase Order attached: Yes No

If PO **NOT** attached, please specify reason: _____

Invoice Delivery Method: Web Billing (Attach Instructions) Mail Other _____
 Accounts Payable Email _____ @ _____

Billing Contact Person: _____ Phone: _____

Email: _____ Fax #: _____

Bill-To Company Name: _____ Bill-To Address: _____

Federal Tax ID # _____ Bill-To City, ST Zip: _____

Tax Exempt: Yes (Attach tax exempt certificate) No

Site Services/IT Contact Person: _____ Phone: _____

**** COVERAGE DETAILS ****

For equipment not currently under a Service Agreement or for equipment for which the warranty has expired in excess of thirty (30) days, parts required to bring equipment back to manufacturers specifications are the responsibility of the Buyer and billable at the time of the first preventive maintenance visit or Service call. All pricing is valid only for Service coverage stated and is subject to change if this Proposal is modified in any way. This Proposal is valid for 30 days from the date of this Proposal unless otherwise noted. INFORMATION TO BUYER: This order between the Buyer and Seller is limited to Seller's Terms and Conditions located at termsconditions.vertivco.com unless a formal agreement governing this Purchase Order/transaction has been executed by the parties, in which case the Terms and Conditions of the signed agreement shall govern. Seller hereby objects to all Buyer's terms and conditions received by Seller and/or issued by Buyer.

Signature of this agreement authorizes Seller to invoice for Services mentioned herein and to utilize the provided purchase order number. If a purchase order number is not used, then the Buyer authorizes and guarantees Seller the payment of such invoices by authority of the signature below.

Thank you for your business.

Proposed By:

Accepted By:

PATRICK PEROTTI _____ Date

Buyer Signature Required _____ Date

Printed Name _____ Title _____ Phone _____

Vertiv Corporation
TERMS AND CONDITIONS OF SALE

Vertiv Corporation is herein referred to as the "Seller" and the customer or person or entity purchasing goods and/or services ("Goods") and/or parts required for services ("Parts") or licensing software and/or firmware, which are preloaded, or to be used with Goods ("Software") from Seller is referred to as the "Buyer." These Terms and Conditions, any price list or schedule, quotation, acknowledgment, Seller's scope or statement of work, or invoice from Seller relevant to the sale of the Goods, Parts and licensing of Software by Seller, and all associated terms, conditions and documents incorporated by specific reference herein or therein, constitute the complete and exclusive statement of the terms of the agreement ("Agreement") governing the sale of Goods, Parts, and/or license of Software by Seller to Buyer. Any discrepancies between the terms of the above referenced documents shall be resolved by Seller. Seller's acceptance of Buyer's purchase order is expressly conditional on Buyer's assent to all of Seller's terms and conditions of sale, including terms and conditions that are different from or additional to the terms and conditions of Buyer's purchase order. Buyer's acceptance of the Goods, Parts, and/or Software will manifest Buyer's assent to the terms of this Agreement. Seller reserves the right in its sole discretion to refuse orders.

1. **PRICES:** Unless otherwise specified in writing by Seller, the price quoted or specified by Seller for the Goods, Parts and/or Software shall remain in effect for thirty (30) days after the date of Seller's quotation, Seller's scope of work or acknowledgment of Buyer's order for the Goods, whichever occurs first, provided an unconditional authorization from Buyer for the shipment or performance of the Goods and/or Parts, and/or Software is received and accepted by Seller within such time period. If such authorization is not received by Seller within such thirty (30) day period, Seller shall have the right to change the price for the Goods, Parts and/or Software to Seller's price for the Goods, Parts, and/or Software at the time of Seller's shipment or performance thereof. All prices and licensee fees are exclusive of taxes, transportation and insurance, which are to be borne by Buyer. Seller reserves the right to correct any obvious errors in specifications or prices. Unless otherwise specified by Seller, Parts, that are required for the performance of services will be furnished at Seller's then prevailing prices. A service charge of \$19.99 will be added to all orders which, excluding shipping charges, taxes, and insurance, do not meet the minimum order value of \$750.00. The service charge amount and/or minimum order value may be changed by Seller at any time, without notice.

2. **TAXES:** Any current or future tax, duty, tariff or governmental charge (or increase in same) affecting Seller's costs of production, sale, services or delivery or shipment of Goods Parts, and/or Software, or which Seller is otherwise required to pay or collect in connection with the sale, purchase, delivery, performance, storage, processing, use or consumption of Goods, Parts, and/or Software, shall be for Buyer's account and shall be added to the price or billed to Buyer separately, at Seller's election.

3. **TERMS OF PAYMENT:** Unless otherwise specified by Seller, terms are net thirty (30) days from date of Seller's invoice in U.S. currency. Seller shall have the right, among other remedies, either to terminate this Agreement or to suspend further performance under this and/or other agreements with Buyer in the event Buyer fails to make any payment when due, which other agreements Buyer and Seller hereby amend accordingly. Buyer shall be liable for all expenses, including attorneys' fees, relating to the collection of past due amounts. If any payment owed to Seller is not paid when due, it shall bear interest, at a rate to be determined by Seller, which shall not exceed the maximum rate permitted by law, from the date on which it is due until it is paid. Seller may preserve its interests in payment by enforcing any applicable mechanic's, labor, construction or similar lien rights. Should Buyer's financial responsibility become unsatisfactory to Seller, cash payments or security satisfactory to Seller may be required by Seller for future deliveries or performance of Goods, Parts, and/or Software. If such cash payment or security is not provided, in addition to Seller's other rights and remedies, Seller may discontinue deliveries or performance. Buyer hereby grants Seller a security interest in all Goods, Parts, and/or Software sold to Buyer by Seller, which security interest shall continue until all such Goods, Parts, and/or Software are fully paid for, and Buyer, upon Seller's demand, will execute and deliver to Seller such instruments as Seller requests to protect and perfect such security interest.

4. **SHIPMENT AND DELIVERY:** While Seller will use all reasonable commercial efforts to maintain the delivery date(s) and/or performance dates acknowledged or quoted by Seller, all shipping dates and/or performance dates are approximate and not guaranteed. Seller reserves the right to make partial shipments. Seller, at its option, shall not be bound to tender delivery of any Goods, Parts, and/or Software for which Buyer has not provided shipping instructions and other required information. If the shipment or performance of the Goods, Parts, and/or Software is postponed or delayed by Buyer for any reason, Buyer agrees to reimburse Seller for any and all storage costs and other additional expenses resulting therefrom. For sales in which the end destination of the Goods, Parts, and/or Software is outside of the United States (except for those international sales to Seller's affiliated companies), risk of loss and legal title to the Goods, Parts, and/or Software shall transfer to Buyer immediately after the Goods, Parts, and/or Software have passed beyond the territorial limits of the United States. For international sales to Seller's affiliated companies, all shipments of Goods, Parts, and/or Software are made on a Delivered at Terminal (DAT) basis, per Incoterms 2010, with freight charges from Seller's facility to destination terminal invoiced to buyer either on a Prepaid or PPD/Add basis, as agreed to by Seller and Buyer. All other shipments of Goods, Parts, and/or Software are made on an Ex Works (EXW) Seller's Shipping Point basis, per Incoterms 2010, with Seller responsible to load goods on Buyer's nominated vehicle. Any claims for shortages or damages suffered in transit are the responsibility of Buyer and shall be submitted by Buyer directly to the carrier. Notwithstanding the above, risk of loss and legal title to Parts shall transfer to Buyer (i) upon delivery by the Seller, or (ii) at the time Parts are placed in storage due to Buyer's delay or postponement. Shortages or damages must be identified and signed for at the time of delivery. Requests for changes in quoted transportation modes will not be made or accepted on orders already processed unless otherwise mutually agreed upon by Seller and Buyer. Requests for changes in quoted transportation modes to orders already accepted by Seller will be subject to new freight terms and billed at the price in effect at the time of the request for change. Any request for changes to quoted transportation modes must be submitted in writing to Seller and are subject to Seller's acceptance and adjustment in freight price. The transportation costs quoted by Seller may be

changed by Seller without notice in order to reflect Seller's prices at the time of shipment and will reflect any market increase in transportation costs. If a price for delivery has been quoted, any changes at the destination for transportation modes, spotting, switching, handling, storage and other accessororial services and demurrage shall be borne by the customer, and any related increase in transportation charges shall be added to the quoted price.

5. **LIMITED WARRANTY:** Subject to the limitations of Section 6, Seller's standard warranty that is applicable to the Goods and/or Software at the time of purchase is the only warranty applicable to the sale of Seller's Goods and/or Software and its terms, conditions and limitations are incorporated by reference herein and Seller warrants that it will perform the services as described in these terms and conditions and will exercise all reasonable skill, care and due diligence in the performance of the services. Seller warrants that all services performed shall be free from faulty workmanship for a period of thirty (30) days from completion of services. Thermal Solution Components, including but not limited to, fans, air-to-air heat exchangers, air conditioners, emergency DC vent systems and filtered thermal vent systems are warranted to be free from defects in material and workmanship for a period of twelve (12) months from date of shipment, or manufacturer's pass through warranty, whichever is longer, provided the following conditions are met: (i) Semi-annual preventive maintenance logs are maintained by Buyer and such logs are available to Seller upon request; and (ii) Input voltage to the air conditioner unit does not vary by greater than +/-10%; and (iii) in the event of accidental or intentional shut-off, a Thermal Solution Component will not be restarted for at least five (5) minutes; and (iv) The refrigerant specified on the unit nameplate label will be the only refrigerant utilized in the air conditioner unit; and, (v) Buyer complies with all installation, operations and maintenance instructions provided by Seller. Goods, Parts and/or Software purchased by Seller from a third party for resale or license to Buyer ("Resale Products") shall carry only the warranty extended by the original manufacturer. To the extent assignable, Seller assigns to Buyer any warranties that are made by manufacturers and suppliers of such Resale Products. EXCEPT AS SPECIFIED ABOVE, RESELLER PRODUCTS FURNISHED HEREUNDER ARE FURNISHED AS-IS, WHERE-IS, WITH NO WARRANTY WHATSOEVER. THE WARRANTY SET FORTH IN THIS SECTION 5 AND THE WARRANTY SET FORTH IN SECTION 8 ARE THE SOLE AND EXCLUSIVE WARRANTIES GIVEN BY SELLER WITH RESPECT TO THE GOODS AND/OR SOFTWARE AND ARE IN LIEU OF AND EXCLUDE ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, ARISING BY OPERATION OF LAW OR OTHERWISE, INCLUDING WITHOUT LIMITATION, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE WHETHER OR NOT THE PURPOSE OR USE HAS BEEN DISCLOSED TO SELLER IN SPECIFICATIONS, DRAWINGS OR OTHERWISE, AND WHETHER OR NOT SELLER'S PRODUCTS ARE SPECIFICALLY DESIGNED AND/OR MANUFACTURED BY SELLER FOR BUYER'S USE OR PURPOSE.

SELLER'S WARRANTY EXTENDS ONLY TO PURCHASERS WHO BUY FOR INDUSTRIAL OR COMMERCIAL USE. This warranty does not extend to any losses or damages due to misuse, accident, abuse, neglect, normal wear and tear, negligence (other than Seller's), unauthorized modification or alteration, use beyond rated capacity, unsuitable power sources or environmental conditions, improper installation, repair, handling, maintenance or application or any other cause not the fault of Seller. To the extent that Buyer or its agents have supplied specifications, information, representation of operating conditions or other data to Seller in the selection or design of the Goods and/or Software and the preparation of Seller's quotation, and/or scope of work, and in the event that actual operating conditions or other conditions differ from those represented by Buyer, any warranties or other provisions contained herein that are affected by such conditions shall be null and void. Buyer assumes all other responsibility for any loss, damage, or injury to persons or property arising out of, connected with, or resulting from the use of Goods, Parts, and/or Software, either alone or in combination with other products/components.

6. **LIMITATION OF REMEDY AND LIABILITY:** THE SOLE AND EXCLUSIVE REMEDY FOR BREACH OF ANY WARRANTY HEREUNDER (OTHER THAN THE WARRANTY PROVIDED UNDER SECTION 8) SHALL BE LIMITED TO REPAIR, CORRECTION OR REPLACEMENT, OR REFUND OF THE PURCHASE PRICE UNDER SECTION 5. SELLER SHALL NOT BE LIABLE FOR DAMAGES CAUSED BY DELAY IN PERFORMANCE AND THE REMEDIES OF BUYER SET FORTH IN THIS AGREEMENT ARE EXCLUSIVE. IN NO EVENT, REGARDLESS OF THE FORM OF THE CLAIM OR CAUSE OF ACTION (WHETHER BASED IN CONTRACT, INFRINGEMENT, NEGLIGENCE, STRICT LIABILITY, OTHER TORT OR OTHERWISE), SHALL SELLER'S LIABILITY TO BUYER AND/OR ITS CUSTOMERS EXCEED THE PRICE PAID BY BUYER FOR THE SPECIFIC GOODS, PARTS, AND/OR SOFTWARE PROVIDED BY SELLER GIVING RISE TO THE CLAIM OR CAUSE OF ACTION.

BUYER AGREES THAT SELLER'S LIABILITY TO BUYER AND/OR ITS CUSTOMERS SHALL NOT EXTEND TO INCLUDE INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES. The term "consequential damages" shall include, but not be limited to, loss of anticipated profits, business interruption, loss of use, revenue, reputation and data, costs incurred, including without limitation, for capital, fuel, power and loss or damage to property or equipment. It is expressly understood that any technical advice furnished by Seller with respect to the use of the Goods, Parts and/or Software is given without charge, and Seller assumes no obligation or liability for the advice given, or results obtained, all such advice being given and accepted at Buyer's risk.

7. **INSURANCE:** Seller shall maintain the following insurance or self-insurance coverage: **Worker's Compensation** in accordance with the statutory requirements of the state in which the work is performed. **Employer's Liability** with a limit of liability of \$2,000,000 per occurrence for bodily injury by accident or bodily injury by disease. **Commercial General Liability (CGL)** for bodily injury and property damage with a limit of \$2,000,000 per occurrence and per location aggregate. **Automobile Liability** insurance that covers usage of all owned, non-owned and leased vehicles and which is subject to a combined single limit per occurrence of \$2,000,000. Automobile Liability insurance includes Contractual Liability, but no special endorsements. **Buyer expressly acknowledges and agrees that Seller has set its prices and entered into this Agreement in reliance upon the**

limitations of liability, insurance coverage, and other terms and conditions specified herein, which allocate the risk between Seller and Buyer and form a basis of this bargain between the parties.

8. **PATENTS AND COPYRIGHTS:** Subject to the limitations of the second paragraph of Section 6 and any and all associated terms, conditions and documents incorporated by specific reference by Seller, Seller warrants that the Goods and/or Software sold, except as are made specifically for Buyer according to Buyer's specifications, do not infringe any valid U.S. patent or copyright in existence as of the date of shipment. This warranty is given upon the condition that Buyer promptly notify Seller of any claim or suit involving Buyer in which such infringement is alleged and cooperate fully with Seller and permit Seller to control completely the defense, settlement or compromise of any such allegation of infringement. Seller's warranty as to utility patents only applies to infringement arising solely out of Buyer's operation according to Seller's specifications and instructions of such Goods and/or Software. In the event (i) such Goods and/or Software are held to infringe such a U.S. patent or copyright in such suit, and the use of such Goods and/or Software is enjoined, or (ii) a compromise or settlement is made by Seller, Seller shall have the right, at its option and expense, to procure for Buyer the right to continue using such Goods and/or Software, or replace them with non-infringing Goods and/or Software, or modify same to become non-infringing, or grant Buyer a credit for the depreciated value of such Goods and/or Software and accept return of them. In the event of the foregoing, Seller may also, at its option, cancel the agreement as to future deliveries of such Goods and/or Software, without liability. Except as otherwise provided herein, Seller or applicable third party licensor to Seller maintains all right, title and interest in and to the intellectual property in the Goods, Parts, and/or Software.

9. **EXCUSE OF PERFORMANCE:** Seller shall not be liable for delays in performance or for non-performance due to acts of God; acts of Buyer; war; epidemic; fire; flood; weather; sabotage; strikes or labor disputes; civil disturbances or riots; governmental requests, restrictions, allocations, laws, regulations, orders or actions; unavailability of or delays in transportation; default of suppliers; or unforeseen circumstances, acts or omissions of Buyer, or any events or causes beyond Seller's reasonable control. Deliveries or other performance may be suspended for an appropriate period of time or canceled by Seller upon notice to Buyer in the event of any of the foregoing, but the balance of this Agreement shall otherwise remain unaffected as a result of the foregoing. If Seller determines that its ability to supply the total demand for the Goods, Parts, and/or Software, or to obtain material used directly or indirectly in the manufacture of the Goods, Parts, and/or Software, is hindered, limited or made impracticable due to causes set forth in the preceding paragraph, Seller may delay performance and/or allocate its available supply of the Goods, Parts, Software, and/or such material (without obligation to acquire other supplies of any such Goods, Parts, Software, or material) among its purchasers on such basis as Seller determines to be equitable without liability for any failure of performance which may result therefrom.

10. **CANCELLATION:** Buyer may cancel orders only upon reasonable advance written notice and upon payment to Seller of Seller's cancellation charges which include, among other things, all costs and expenses incurred, and, to cover commitments made, by the Seller and a reasonable profit thereon. Seller's determination of such cancellation charges shall be conclusive.

11. **CHANGES:** Buyer may request changes or additions to the Goods, Parts, and/or Software consistent with Seller's specifications and criteria. In the event such changes or additions are accepted by Seller, Seller may revise the price, license fees, and dates of delivery and/or performance dates. Seller reserves the right to change designs and specifications for the Goods, Parts, and/or Software without prior notice to Buyer, except with respect to Goods, Parts, and/or Software being made-to-order for Buyer. Seller shall have no obligation to install or make such change in any Goods, Parts, and/or Software manufactured prior to the date of such change.

12. **NUCLEAR/MEDICAL:** GOODS, PARTS, AND SOFTWARE SOLD HEREUNDER ARE NOT FOR USE IN CONNECTION WITH ANY NUCLEAR, MEDICAL, LIFE-SUPPORT AND RELATED APPLICATIONS. Buyer accepts Goods, Parts, and Software with the foregoing understanding, agrees to communicate the same in writing to any subsequent purchasers or users and to defend, indemnify and hold harmless Seller from any claims, losses, suits, judgments and damages, including incidental and consequential damages, arising from such use, whether the cause of action be based in tort, contract or otherwise, including allegations that the Seller's liability is based on negligence or strict liability.

13. **ASSIGNMENT:** Buyer shall not assign its rights or delegate its duties hereunder or any interest herein without the prior written consent of Seller, and any such assignment, without such consent, shall be void.

14. **SOFTWARE:** Notwithstanding any other provision herein to the contrary, Seller or applicable third party licensor to Seller shall retain all rights of ownership and title in its respective Software, including without limitation all rights of ownership and title in its respective copies of such Software. Except as otherwise provided herein, Buyer is hereby granted a nonexclusive, non-transferable royalty free license to use the Software incorporated into the Goods solely for purposes of Buyer properly utilizing such Goods purchased from Seller. All other Software shall be furnished to, and used by, Buyer only after execution of Seller's (or the licensor's) applicable standard license agreement, the terms of which are incorporated herein by reference.

15. **TOOLING:** Tool, die, and pattern charges, if any, are in addition to the price of the Goods and are due and payable upon completion of the tooling. All such tools, dies and patterns shall be and remain the property of Seller. Charges for tools, dies, and patterns do not convey to Buyer, title, ownership interest in, or rights to possession or removal, or prevent their use by Seller for other purchasers, except as otherwise expressly provided by Seller and Buyer in writing with reference to this provision.

16. **DOCUMENTATION:** Seller shall provide Buyer with that data/documentation which is specifically identified in Seller's quotation. If additional copies of data/documentation are to be provided by Seller, it shall be provided to Buyer at Seller's applicable prices then in effect.

17. **INSPECTION/TESTING:** Buyer, at its option and expense, may observe the inspection and testing by Seller of the Goods and/or Software for compliance with Seller's standard test procedures prior to shipment, which inspection and testing shall be conducted at Seller's plant at such reasonable time as is specified by Seller. Any rejection of the Goods and/or Software must be made promptly by Buyer before shipment. Tests shall be deemed to be satisfactorily completed and the test fully met when the Goods and/or Software meet Seller's criteria for such procedures. If Buyer does not inspect the Goods and/or Software at Seller's plant as provided herein, Buyer shall have ten (10) days from

(i) the date of delivery of Goods, Parts, and/or Software and (ii) from the date of completion of each portion of the services to inspect the Goods, Parts, and/or Software, and in the event of any non-conformity, Buyer must give written notice to Seller within said period stating why the Goods, Parts, and/or Software are not conforming. Failure by Buyer to give such notice constitutes unqualified acceptance of the Goods, Parts, and/or Software. Buyer's sole remedy for non-conforming services shall be correct performance of services incorrectly performed by Seller.

18. **RETURNED GOODS:** Advance written permission to return Goods, Parts, and/or Software must be obtained from Seller in accordance with Seller's then current Return Material Authorization (RMA) procedures and a return authorization number issued. Such Goods, Parts, and/or Software must be (i) current, unused, catalogued Goods, Parts, and/or Software, still in original packaging (ii) free of all liens, encumbrances, or other claims, and (iii) shipped, transportation prepaid, to Seller's specified location. Returns made without proper written permission will not be accepted by Seller. Seller reserves the right to inspect Goods, Parts, and/or Software prior to authorizing return.

19. **BILLABLE SERVICES:** Additional charges will be billed to Buyer at Seller's then prevailing labor rates and Parts prices for any of the following: a) any services not specified in Seller's quotation, Seller's order acknowledgement, Seller's scope of work, or other documents referenced herein and therein; b) any services performed at times other than Seller's normal service hours; c) if timely and reasonable site and/or equipment access is denied the Seller service representative; d) if it is necessary, due to local circumstances, to use union labor or hire an outside contractor, Seller service personnel will provide supervision only and the cost of such union or contract labor will be charged to Buyer; (e) if Service or repair is necessary to return equipment to proper operating condition as a result of other than Seller (i) maintenance, repair, or modification (including, without limitation, changes in specifications or incorporation of attachments or other features), (ii) misuse or neglect, (including, without limitation, failure to maintain facilities and equipment in a reasonable manner), (iii) failure to operate equipment in accordance with applicable specifications, and (iv) catastrophe, accident, or other causes external to equipment; (f) Seller's performance is made more burdensome or costly as a result of Buyer's failure to comply with its obligations herein, or (g) any additional obligations or requirements, including but not limited to those related to insurance requirements, service delivery, building entry or technical training.

20. **DRAWINGS:** Seller's documentation, prints and drawings (including without limitation, the underlying technology) furnished by Seller to Buyer in connection with this Agreement are the property of Seller and Seller retains all rights, including without limitation, exclusive rights of use, licensing and sale. Possession of such prints or drawings does not convey to Buyer any rights or license, and Buyer shall return all copies (in whatever medium) of such prints or drawings to Seller immediately upon request therefor. Notwithstanding the foregoing, Buyer may use the documentation, prints and drawings in connection with the use of the Goods, Parts, and/or Software.

21. **BUYER SUPPLIED DATA:** To the extent that Seller has been provided by, or on behalf of, Buyer any specifications, description of operating conditions or other data and information in connection with the selection or design of the Goods, Parts, and/or Software, and/or the provision of services, and the actual operating conditions or other circumstances differ from those provided by Buyer and relied upon by Seller, any warranties or other provisions contained herein which are affected by such conditions shall be null and void.

22. **EXPORT/IMPORT:** Buyer agrees that all applicable import and export control laws, regulations, orders and requirements, including without limitation those of the United States and the European Union, and the jurisdictions in which the Seller and Buyer are established or from which Goods, Parts, Software, and services may be supplied, will apply to their receipt and use. In no event shall Buyer use, transfer, release, import, export, Goods, Parts, or Software in violation of such applicable laws, regulations, orders or requirements.

23. **NON-SOLICITATION:** Buyer shall not solicit, directly or indirectly, or employ any employee of Seller during the period any Goods are being provided to Buyer and for a period of one (1) year after the last provision of Goods.

24. **GENERAL PROVISIONS:** These terms and conditions supersede all other communications, negotiations and prior oral or written statements regarding the subject matter of this Agreement. No change, modification, rescission, discharge, abandonment, or waiver of these terms and conditions shall be binding upon the Seller unless made in writing and signed on its behalf by a duly authorized representative of Seller. No conditions, usage of trade, course of dealing or performance, understanding or agreement purporting to modify, vary, explain, or supplement this Agreement shall be binding unless hereafter made in writing and signed by the party to be bound, and no modification or additional terms shall be applicable to this Agreement by Seller's receipt, acknowledgment, or acceptance of purchase orders, shipping instruction forms, or other documentation containing terms at variance with or in addition to those set forth herein. Any such modifications or additional terms are specifically rejected and deemed a material alteration hereof. If this document shall be deemed an acceptance of a prior offer by Buyer, such acceptance is expressly conditional upon Buyer's assent to any additional or different terms set forth herein. Seller reserves the right to subcontract Services to others. No waiver by either party with respect to any breach or default or of any right or remedy, and no course of dealing, shall be deemed to constitute a continuing waiver of any other breach or default or of any other right or remedy, unless such waiver be expressed in writing and signed by the party to be bound. All typographical or clerical errors made by Seller in any quotation, acknowledgment or publication are subject to correction.

The validity, performance, and all other matters relating to the interpretation and effect of this Agreement shall be governed by the law of the state of Ohio without regard to its conflict of laws principles. Buyer and Seller agree that the proper venue for all actions arising in connection herewith shall be only in Ohio and the parties agree to submit to such jurisdiction. No action, regardless of form, arising out of transactions relating to this contract, may be brought by either party more than two (2) years after the cause of action has accrued. The U.N. Convention on Contracts for the International Sales of Goods shall not apply to this agreement.

25. **DATA COLLECTION AND USE:** By using the Goods, Parts and/or Software, Buyer grants Seller, its affiliates, subsidiaries, and service providers, a non-exclusive, irrevocable, royalty free, worldwide right and license to collect, compile, retain, use, reproduce, and create derivative works of, your non-personal information and data, which includes without limitation, all data, materials, reports, text, sound, video, image files, software or any other information ("Service Data") that is provided by, or on behalf of, Buyer, or collected or compiled by Seller, its affiliates, subsidiaries, or service providers through the Goods, Parts, and/or Software. Seller, its affiliates, subsidiaries, and service providers may collect, compile, retain, use, reproduce, and create derivative works of Service Data: (i) to provide services, support, and maintenance; (ii) to develop and improve products, software, and

services; and (iii) for scientific and technical research and marketing purposes. Buyer is solely responsible for the Service Data, and Buyer will secure and maintain all rights necessary for Seller, its affiliates, subsidiaries, and service providers to process and use Service Data as described in this paragraph without violating the rights of any third party or otherwise obligating Seller, its affiliates, subsidiaries, and service providers to Buyer or any third party. The Service Data will be aggregated with other information, materials, or data collected or compiled by, or provided to, Seller, its affiliates, subsidiaries, or service providers and anonymized, such that the Service Data will not intentionally reveal Buyer's identity. In accordance with applicable law, Service Data may be transferred, transmitted, or distributed to, stored, and processed in, cloud computing environments in the United States or any other country in which Seller, its affiliates, subsidiaries, or service providers maintain operations. By using the Goods, Parts, and/or Software, Buyer agrees to such use, transfer, transmission, distribution, storage, and processing of the Service Data. Seller, its affiliates, subsidiaries, and service providers will retain Service Data for as long as is necessary for Seller and its affiliates and subsidiaries business purposes in accordance with applicable law. The rights and licenses granted herein to Seller's service providers shall only be granted to the extent service providers are providing goods and services on Seller's and its affiliates and subsidiaries behalf.

26. **ADDITIONAL SERVICE CONDITIONS:** The Buyer shall furnish to Seller, at no cost, suitable working space, storage space, adequate heat, telephone, light, ventilation, regulated electric power and outlets for testing purposes. The facilities shall be within a reasonable distance from where the Goods are to be provided. Seller and its representatives shall have full and free access to the equipment in order to provide the necessary Goods. Buyer authorizes Seller to send a service technician or an authorized agent to access any site requested by Buyer to perform services, including services on different scopes of work and equipment as requested by Buyer. Buyer shall provide the means to shut-off and secure electric power to the equipment and provide safe working conditions. Seller is under no obligation to remove or dispose of Parts or equipment unless specifically agreed upon in Seller's scope of work. Buyer shall immediately inform Seller, in writing, at the time of order placement and thereafter, of any unsafe or hazardous substance or condition at the

site, including, but not limited to, the presence of asbestos or asbestos-containing materials, and shall provide Seller with any applicable Material Data Safety Sheets regarding the same. Any losses, costs, damages, claims and expenses incurred by Seller as a result of Buyer's failure to so advise Seller shall be borne by Buyer. Seller, in its sole discretion and without cost or penalty, reserves the right to cancel its performance under this Agreement or any order immediately upon written notice to Buyer following Seller discovery of unsafe or hazardous site substance or condition or any other circumstance altering Seller's performance hereunder. Buyer shall appoint a representative familiar with the site and the nature of Seller's performance to be accessible at all times that Seller personnel are at the site. Seller shall not be liable for any expenses incurred by Buyer in removing, replacing or refurbishing any Buyer equipment or any part of Buyer's building structure that restricts Seller access. Buyer personnel shall cooperate with and provide all necessary assistance to Seller. Seller shall not be liable or responsible for any work performed by Buyer.

27. **INDEMNITY:** Each party shall indemnify and hold the other party harmless from loss, damage, liability or expense resulting from damage to personal property of a third party, or injuries, including death, to third parties to the extent caused by a negligent act or omission of the party providing indemnification or a party's subcontractors, agents or employees during performance of services hereunder. Such indemnification shall be reduced to the extent damage or injuries are attributable to others and in no event shall the indemnifying party be obligated to indemnify or insure the other party for the indemnitee's own fault or negligence. The indemnifying party shall defend the other party in accordance with and to the extent of the above indemnification, provided that the indemnifying party is: i) promptly notified by the other party, in writing, of any claims, demands or suits for such damages or injuries; ii) given all reasonable information and assistance by the other party; iii) given full control over any resulting negotiation, arbitration or litigation, including the right to choose counsel and settle claims, or the indemnifying party's obligations herein shall be deemed waived.

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 8, 2019

Agenda Item: V. h. Authorization of FY2020 Pavement Repairs for Von Scheele Drive, Project No. 20-01/5039 to Brechan Construction LLC

SUMMARY: To keep City streets in safe driving condition requires a continual asphalt maintenance program. This project will utilize the available funding in the project budget to remove and replace paving on Von Scheele Drive that has deteriorated to a level that requires complete removal and replacement. Brechan Construction LLC is the only asphalt pavement producer and large project paver in Kodiak and no other large paving contractors are mobilized in Kodiak this year, therefore staff recommends Council authorize FY19 pavement repairs project No. 20-01/5039 to Brechan Construction L.L.C. as a sole source unit price contract in the amount of \$407,558.00.

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.

On August 9, 2018, Council awarded the FY19 Pavement Repairs project to Brechan Construction L.L.C.

BACKGROUND: FY 15, 16, and 17 Annual Pavement Repairs were focused on repaving Mill Bay Road. In FY 2018, we requested \$250,000 of the designated street funding to go toward pavement repair. We ultimately decided to forgo paving in FY 2018 and defer the work to the FY 2019 construction season. FY 2019 Annual Pavement Repairs was performed on Alimaq Drive on Near Island. Over the years Von Scheele Drive and Larch Street have deteriorated and need to be replaced.

DISCUSSION: This project will provide removal and replacement of pavement on Von Scheele Drive from the intersection of Mill Bay Road to the end of the City portion of Von Scheele located adjacent to the Recycle Center. The road will be replaced within the existing horizontal and vertical road alignment. The cross slope or "Crown" of the road will be increased from 2% to 3% which will improve drainage and increase the useful life of the road. We increased the "Crown" on Mill Bay Road on the last three projects and have noticed drainage improvements.

We requested and received pricing from Brechan Construction LLC to remove and replace the pavement on Von Scheele Drive and Larch Street. Both roads are top priorities for pavement replacement but we only have enough funds to do one project this year. We chose Von Scheele Drive because it is a higher travelled street than Larch Street and has deteriorated more than Larch Street. We will plan to replace Larch Street in FY 2021 if funding becomes available.

In order to develop an accurate "Engineers Estimate" for the FY20 project the City Engineer performed a cost comparison of the project based on the cost of the previous FY19 project performed by Brechan Construction on Near Island. The scope of work for the two projects is essentially the same. Both projects are of similar size and require (d) removal and replacement with 3" AC pavement. The cost comparison is based on "Square Yard" (SY) price. The engineers estimate for FY19 project on Near Island calculated to \$85.00/SY. The calculated cost for FY20 Von Scheele project is \$91.00/SY.

ALTERNATIVES: Council may consider the following:

- 1) Authorize the FY20 pavement repairs to Brechan Construction L.L.C. which is staff's recommendation.
- 2) Do not authorize the FY20 pavement project and patching work, which is not recommended because it would leave Alimaq Drive in a continuing worsening condition.

FINANCIAL IMPLICATIONS: In the FY 2020 budget, an additional \$430,000 was assigned to the project budget for project number 5039, Annual Pavement Repairs. The life-to-date total project budget is now \$805,000. The current unencumbered project balance is approximately \$476,974.73, which is sufficient to fund the project and leave a small contingency amount in the project.

LEGAL: KCC 3.12.070 (d) Contracts for supplies, materials, equipment or services for which the city manager determines in writing there is only one source. The city manager shall negotiate with the sole source to obtain contract terms that best serve the interests of the city.

STAFF RECOMMENDATION: Staff recommends Council authorize FY20 Pavement Repair, Project No. 20-01/5039 to Brechan Construction L.L.C. in amount of \$407,558.00 with funds coming from the Streets Capital Improvement Fund project number 5039, Annual Pavement Repairs.

CITY MANAGER'S COMMENTS: There is only one contractor available and interested in this resurfacing project. The Public Works Director solicited for interest from four other Alaska paving contractors that declined to perform this "small" paving project.

ATTACHMENTS:

Attachment A: Brechan Construction LLC Proposal

PROPOSED MOTION:

Move to authorize FY2020 Pavement Repair for Von Scheele Drive, Project No. 20-01/5039 to Brechan Construction L.L.C. in amount of \$407,558 with funds coming from the Streets Capital Improvement Fund project number 5039, Annual Pavement Repairs, and authorize the City Manager to execute documents on behalf of the City.

From: [Louis Rochleau](#)
To: [Walton, Craig](#); [Melvin, Glenn](#)
Cc: [Jim Graham](#); [Jascha Zbitnoff](#)
Subject: Von Scheele & Larch St Forecast of Costs to Re-Pave
Date: Monday, July 22, 2019 7:53:34 AM
Attachments: [image001.png](#)
[COK - 2019 Pavement Repairs Price Forecast.pdf](#)

EXTERNAL EMAIL: ***** If sender is unknown or email is unexpected, do not click on attachments/links.*****

Good Morning Glenn & Craig,

Please see attached forecast of costs for the Scope of Work that we discussed during our site visit. You will see that I have broken out costs for performing the Base Bid of Von Scheele from Mill Bay Road through the Selief Intersection as well as an Additive Alternate #1 which extends off of the Base Bid approximately 283 feet to the end of the City of Kodiak's portion of Von Scheele. Also included is a price breakdown for re-paving Larch Street from the Lynden Way Intersection to the end of the cul-de-sac.

We would like to perform this work beginning approximately September 1st, so please let us know which combination you'd like to perform this year so we can get oil ordered.

If you have any questions at all please feel free to contact me.

Thanks,



Louis Rocheleau, CPC

Project Manager

Brechan Construction, LLC

907-486-3215 (office)

907-942-5577 (cell)

907-486-4889 (fax)

rockkodiak@gci.net

**2019 City of Kodiak Mill Bay Rd Overlay - IDIQ
Unit Price Summary of Forecast of Costs**

Section	Forecast of Costs
Von Scheele Street - Base Bid	\$326,068.00
Von Scheele Street - Add Alt 1	\$81,490.00
Larch Street	\$356,328.00
Total	\$763,886.00

**2019 City of Kodiak Mill Bay Rd Overlay - IDIQ
Forecast of Costs**

Section: Von Scheele St. - Base Bid

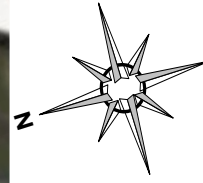
Item #	Description of Work	Units	Unit Price	Quantity	Price Extension
205(2)	Leveling Course	Ton	\$50.00	0	\$0.00
207(2)	Full Depth Removal of Pavement	square foot	\$2.00	32,114	\$64,228.00
402(2-b)	AC Pavement, Type IIB, New Full Depth, 3" Thickness	Ton	\$350.00	632	\$221,200.00
802(1)	Traffic Maintenance	Calendar Day	\$1,500.00	4	\$6,000.00
802(5)	Flagging	Hour	\$95.00	192	\$18,240.00
805(2)	Survey Monument Installed in Monument Case	Each	\$1,500.00	4	\$6,000.00
814(1)	Adjust Manhole to Finish Grade	Each	\$1,200.00	2	\$2,400.00
815(1)	Adjust Valve Box to Finish Grade	Each	\$800.00	10	\$8,000.00
			TOTALS		\$326,068.00

**2019 City of Kodiak Mill Bay Rd Overlay - IDIQ
Forecast of Costs
Section: Von Scheele St. - Additive Alternate #1**

Item #	Description of Work	Units	Unit Price	Quantity	Price Extension
205(2)	Leveling Course	Ton	\$50.00	0	\$0.00
207(2)	Full Depth Removal of Pavement	square foot	\$2.00	8,490	\$16,980.00
402(2-b)	AC Pavement, Type IIB, New Full Depth, 3" Thickness	Ton	\$350.00	167	\$58,450.00
802(1)	Traffic Maintenance	Calendar Day	\$1,500.00	0	\$0.00
802(5)	Flagging	Hour	\$95.00	48	\$4,560.00
805(2)	Survey Monument Installed in Monument Case	Each	\$1,500.00	1	\$1,500.00
814(1)	Adjust Manhole to Finish Grade	Each	\$1,200.00	0	\$0.00
815(1)	Adjust Valve Box to Finish Grade	Each	\$800.00	0	\$0.00
			TOTALS		\$81,490.00

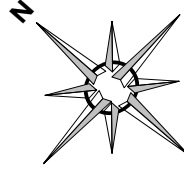
2019 City of Kodiak Mill Bay Rd Overlay - IDIQ
Forecast of Costs
Section: Larch Street


Item #	Description of Work	Units	Unit Price	Quantity	Price Extension
205(2)	Leveling Course	Ton	\$50.00	0	\$0.00
207(2)	Full Depth Removal of Pavement	square foot	\$2.00	37,454	\$74,908.00
402(2-b)	AC Pavement, Type IIB, New Full Depth, 3" Thickness	Ton	\$350.00	738	\$258,300.00
802(1)	Traffic Maintenance	Calendar Day	\$1,500.00	4	\$6,000.00
802(5)	Flagging	Hour	\$95.00	96	\$9,120.00
805(2)	Survey Monument Installed in Monument Case	Each	\$1,500.00	0	\$0.00
814(1)	Adjust Manhole to Finish Grade	Each	\$1,200.00	4	\$4,800.00
815(1)	Adjust Valve Box to Finish Grade	Each	\$800.00	4	\$3,200.00
			TOTALS		\$356,328.00



Legend

-  ADD ALT 1 PAVING AREA
-  BASE BID PAVING AREA



Legend	
	PAVING AREA