

**City of Kodiak Regular Council Meeting Agenda for November 14, 2019**  
**7:30 p.m., at 710 Mill Bay Road, Assembly Chambers (Room 232)**

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- I. Call to Order/Roll Call**  
Invocation/Pledge of Allegiance
  
- II. Previous Minutes**  
Approval of Minutes of the October 24, 2019, Regular Council Meeting .....1
  
- III. Persons to Be Heard**
  - a. Public Comments (limited to 3 minutes) (486-3231)
  
- IV. Unfinished Business**  
None.
  
- V. New Business**
  - a. Resolution No. 2019–22, Accepting an Edward Byrne Memorial Justice Assistance Grant (JAG) From the U. S. Department of Justice.....7
  - b. Resolution No. 2019–23, Authorizing the City of Kodiak to Join the Alaska Remote Seller Sales Tax Commission for the Purpose of Developing, Implementing, and Enforcing a Remote Sellers Sale Tax Code, Authorizing the Manager to Execute Documents on Behalf of the city, and Designating a City Representative to the Commission.....11
  - c. Approval of Third Amendment to Near Island Communications Site Sublease Between Kodiak Island Broadcasting, Inc. and New Cingular Wireless PCS, LLC.....28
  - d. Authorization to Award a Vehicle Purchase for a 1 ½ Ton Regular Chassis Cab for Public Works Department to Kodiak Motors.....46
  - e. Non-objection to Transfer of Location of El Chicano Inc. Liquor License 3299.....50
  
- VI. Staff Reports**
  - a. City Manager
  - b. City Clerk
  
- VII. Mayor’s Comments**
  
- VIII. Council Comments**
  
- IX. Audience Comments** (limited to 3 minutes) (486-3231)
  
- X. Adjournment**

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**MINUTES OF THE REGULAR COUNCIL MEETING  
OF THE CITY OF KODIAK  
HELD THURSDAY, OCTOBER 24, 2019  
IN THE BOROUGH ASSEMBLY CHAMBERS**

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

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

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

**II. PREVIOUS MINUTES**

Councilmember Whiddon MOVED to approve the minutes of the October 10, 2019, regular meeting, as presented.

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

**III. PERSONS TO BE HEARD**

**a. Public Comments**

**Major Dave Davis from the Salvation Army** reported on the Food Bank's relocation stating there have been volunteers and contractors working on the Salvation Army's building. He shared the coolers were relocated and new freezers were added. He announced that Tuesday, October 22 was the first food distribution and Tuesday and Friday afternoons would be when food distribution is scheduled to occur.

Councilmember Whiddon expressed that processors may have donations and he inquired what the freezer capacity is for the Salvation Army. Major Davis said the Coast Guard Petty Officers assisted in dealing with the frozen food. He stated he did not have the details on the freezer capacity; however, he could gather and present that information at a future work session.

**IV. UNFINISHED BUSINESS**

None

**V. NEW BUSINESS**

- a. Resolution No. 2019-20, Authorizing the Borrowing From the Alaska Clean Water Fund of an Aggregate Amount Not to Exceed Five Million Four Hundred Thirty Five Thousand (\$5,435,000) to Pay For the Cost of an Upgrade to the City of Kodiak Wastewater Treatment Plant Ultraviolet Effluent Disinfection Facility**

Deputy Mayor Arboleda read Resolution No. 2019–20 by title. The last Wastewater Treatment Plant (WWTP) upgrade was completed in 1999. Generally, wastewater treatment plants are evaluated and upgraded approximately every 20 years. Originally, the City developed a concept plan using four phases to complete the project, this has been put on temporary hold. Based on the ADEC mandated schedule of compliance for the City’s new APEDS Permit No. AK0021555 issued July 1, 2018, the City is required to secure project construction funding and submit its proposed construction schedule to ADEC by July 2020 and complete construction by June 30, 2023. Staff is requesting Council adopt Resolution No. 2019–20, which authorizes the application for a \$5,435,000 dollar loan from the Alaska Clean Water Fund (ACWF) loan program to complete the WWTP UV Facility requirement.

Councilmember Davidson MOVED to adopt Resolution No. 2019–20.

Councilmember Whiddon suggested a further analysis for the difference between 20-year versus a 30-year loan.

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

**b. Resolution No. 2019–21, Accepting a 2019 State Homeland Security Grant From the State of Alaska Division of Homeland Security and Emergency Management for ALMR Compliant Capability Radios, Replacement Tsunami Sirens, and Emergency Shelter Bedding**

Deputy Mayor Arboleda read Resolution No. 2019–21 by title. The City has been awarded a State Homeland Security Program Grant in the amount of \$586,063.12 to provide funding for the following three requested projects. The first project is \$250,690 to purchase and install replacement portable radios to bring the City of Kodiak up to Alaska Land Mobile Radio (ALMR) compliant capability radios. The second project is \$272,873.12 to purchase and install replacement Tsunami Sirens for the City of Kodiak. The final project is \$62,500 to purchase emergency shelter bedding of 500 cots for the Kodiak Emergency Shelter for the housing of displaced residents during emergency events.

Councilmember Walker MOVED to adopt Resolution No. 2019–21.

Councilmembers Haines and Whiddon thanked Chief of Police Putney and Fire Chief Mullican for their work in obtaining the grant.

Councilmember Whiddon stated that the City has received funding for half of the sirens needed for the City.

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

**c. Authorization of Professional Services Agreement for State Legislative Lobbying Services with Diane Blumer of Blumer & Associates**

The Council would like to continue a professional service agreement for a lobbyist with sound knowledge of public policy, clear understanding of the legislative and state administrative processes, and effective communication skills. The professional service agreement recommended would start on January 1, 2020, with a term ending December 31, 2020. The cost of this agreement is \$ 43,450, which includes Lobbying services of \$43,200 and APOC registration fee of \$250. This cost amount excludes travel or other expenses, which require advanced approval by the City of Kodiak.

Councilmember Haines MOVED to authorize Professional Services Agreement No. 247157 with Dianne Blumer, dba Blumer & Associates from January 1 through December 31, 2020, in the amount of \$43,450 with funds coming from the General Fund Legislative Professional Services account and authorize the City Manager to sign the documents on behalf of the City.

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

**d. Authorization to Cancel the November 28, and December 26, 2019, Regular Meetings and Authorize the City Manager to Schedule Special Meetings if Needed**

The regularly scheduled Council meetings for November and December may be cancelled to reflect the holidays and elected official and staff travel schedules. Elected officials and staff attend the Annual Alaska Municipal League Conference November 18 through November 22. Thanksgiving is on November 28 and December 26 is following the Christmas holiday, these are both regular meeting days. Staff discussed the meeting schedule with the Council at the October 8, 2019, work session, and Council recommended cancelling the work sessions and the November 28 and December 26, 2019, regular meetings and authorizing the City Manager to schedule special meetings if needed.

Councilmember Bishop MOVED to cancel the November 28, and December 26, 2019, regular meetings and authorize the City Manager to schedule additional special meetings if needed.

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

**e. Certification of Election**

The City of Kodiak held a regular election October 1, 2019, and voters casted ballots for the two-year Mayoral position and the two three-year City Council positions. The Canvass Board met on October 9, 2019, to tally the votes of the admissible questioned, personal representative, and absentee ballots, together with votes counted on election night. The final results of the October 1, 2019, Municipal City election are below:

<b>Mayor—One Two-Year Term</b>	
Pat Branson .....	398
Write-ins .....	19

**City Council—Two Three-Year Terms**

Charles Davidson .....	365
John Whiddon .....	342
Write-Ins .....	24

Of the 4,056 registered City voters, 454 cast eligible City ballots, for an 11 % voter turnout, which is 1% higher than last year.

Councilmember Walker MOVED to certify the results of the October 1, 2019, regular election and declare Pat Branson elected Mayor for a two-year term and Charles Davidson and John Whiddon elected to the City Council for three-year terms.

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

**VI. STAFF REPORTS**

**a. City Manager**

Manager Tvenge said the City received award notification for the Edward Byrne Memorial Justice Assistance Grant (JAG). He stated that he, the Fire Chief, and Chief of Police met with Homeland Security’s Program Manager Dan Belanger to discuss Tsunami sirens procurement. He informed the public that the water reservoir is full.

**b. City Clerk**

Clerk Javier gave an overview of the upcoming work session and regular Council meetings. She said the City offices will be closed on November 11 in observance of Veterans Day.

**VII. MAYOR’S COMMENTS**

Deputy Mayor Arboleda congratulated Mayor Branson and Councilmembers Davidson and Whiddon on re-election and she thanked the election workers.

**VIII. COUNCIL COMMENTS**

Councilmember Walker congratulated Mayor Branson and Councilmembers Davidson and Whiddon. He said there is still is a bear problem and reminded everyone to be bear aware especially during the Halloween holiday.

Councilmember Davidson thanked everyone that voted in the election and stated that he hopes that voter turnout will increase next year.

Councilmember Whiddon thanked everyone that voted and stated it is a privilege to serve as an elected official for the City. He said they continue to move forward and make progress. He shared that Pollock season will be closing.

Councilmember Bishop congratulated the re-elected officials for their time and dedication noting that it is an honor to serve with them. He highlighted that there will be a downtown Halloween trick or treat event and thanked the downtown businesses for participating in the activity.

Councilmember Haines congratulated the re-elected officials and encouraged citizens to get involved and participate in local government.

**IX. OATH OF OFFICE**

Clerk Javier administered the Oath of Office to Councilmembers Whiddon and Davidson.

**X. EXECUTIVE SESSION**

**a. Discussion With the City Attorney About the City of Kodiak-Ocean Beauty Lease Agreement Post Termination Issues**

The City Council will enter into executive session to discuss post termination issues regarding the Ocean Beauty lease agreement with the City Attorney.

Councilmember Haines MOVED to enter into executive session pursuant to KCC 2.04.100(b)(1) and (c) to discuss legal matters, the immediate knowledge of which would clearly have an adverse effect upon the finances of the City.a

Councilmember Whiddon stated he could have a potential conflict of interest since he works for one of the local processors.

Deputy Mayor Arboleda declared Councilmember Whiddon had no conflict of interest and stated he should be able to participate in the executive session.

Deputy Mayor recessed the regular meeting at 8:02 p.m. and entered into executive session.

Deputy Mayor reconvened the regular meeting at 9:02 p.m.

Deputy Mayor stated the Council discussed the City of Kodiak-Ocean Beauty Lease Agreement Post Termination issues and no action was taken in executive session other than to provide direction to the manager and attorney.

**XI. AUDIENCE COMMENTS**

None

**XII. ADJOURNMENT**

Councilmember Davidson MOVED to adjourn the meeting.

The meeting adjourned at 9:03 p.m.

The roll call vote was Councilmembers Arboleda, Bishop, Davidson, Haines, Walker, and Whid-  
don in favor. Councilmember Bishop was absent.

CITY OF KODIAK

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MAYOR

ATTEST:

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CITY CLERK

Minutes Approved:




# **NEW BUSINESS**

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## MEMORANDUM TO COUNCIL

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**To:** Mayor Branson and City Councilmembers  
**From:** Mike Tvenge, City Manager   
**Thru:** Timothy Putney, Chief of Police  
**Date:** November 14, 2019  
**Agenda Item:** V. a. **Resolution No. 2019–22, Accepting an Edward Byrne Memorial Justice Assistance Grant (JAG) From the U. S. Department of Justice**

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**SUMMARY:** The City of Kodiak has been awarded an Edward Byrne Memorial Justice Assistance Grant (JAG), by the Office of Justice Programs to provide funding for approved purchases. This grant will reimburse the purchase of 19 new ballistic helmets and new hard armor rifle plates with carriers; protective gear for 19 commissioned Kodiak Police Officers at a cost of \$39,349. Staff recommends Council accept this grant by adopting Resolution No. 2019–22.

**PREVIOUS COUNCIL ACTION:**

- Council routinely accepts grants from federal and state agencies by resolution.

**DISCUSSION:** The City of Kodiak has been informed that a grant application submitted for FFY2018 Byrne Memorial Justice Assistance Grant (JAG) Program has been approved. The grant, totaling \$39,349 will fund the purchase of 19 new ballistic helmets and new hard armor rifle plates with carriers.

Currently all KPD officers are issued new soft body armor which is replaced every five (5) years, and an older style ballistic helmet manufactured in 2003. The helmets are a decade beyond their five (5) year warranty and need to be replaced. Previously the department has not supplied officers with hard armor rifle plates. The purpose of the new helmets and hard armor rifle plates is to increase officer survival when they are responding to an active threat from a firearm, especially high powered rifles.

The department can begin acquiring this equipment at current NASPO (National Association of State Procurement Officials) pricing after formal acceptance of the grant. NASPO agreements are competitively solicited and meet City procurement guidelines set forth in KCC 3.12.

**ALTERNATIVES:**

- 1) Adopt Resolution No. 2019–22, which is the recommendation of staff and it will offset the costs of equipment purchases.
- 2) Do not adopt Resolution No. 2019–22. This alternative is not recommended, because it will shift the burden of cost solely to the City.

**FINANCIAL IMPLICATIONS:** The grant amount of \$39,349 will be used for reimbursement of City costs to purchase protective equipment for 19 police officers.

**STAFF RECOMMENDATION:** Staff recommends Council adopt Resolution No. 2019–22 to accept the Byrne Memorial Justice Assistance Grant (JAG) awarded by the office of Justice Programs at the U.S. Department of Justice; GMS Award 2018-DJ-BX-0235. The City benefits from the financial support.

**CITY MANAGER’S COMMENTS:** The Kodiak Police Department had previously received this grant for a lesser amount. Recently an amendment of \$ 5,301.00 was awarded bringing the total to \$39,349.00. This award will further protect our dedicated officers and allow them to enter into situations with confidence in their protective gear.

**ATTACHMENTS:**

Attachment A: Resolution No. 2019–22

Attachment B: Byrne Memorial Justice Assistance Grant award notice  
and supporting documents

**PROPOSED MOTION:**

Move to adopt Resolution No. 2019–22.

**CITY OF KODIAK  
RESOLUTION NUMBER 2019–22**

**A RESOLUTION OF THE COUNCIL OF THE CITY OF KODIAK ACCEPTING  
AN EDWARD BYRNE MEMORIAL JUSTICE ASSISTANCE GRANT (JAG) FROM  
THE U.S. DEPARTMENT OF JUSTICE**

WHEREAS, the Edward Byrne Memorial Justice Assistance Grant (JAG) program is the primary provider of federal criminal justice funding to state and local jurisdictions; and

WHEREAS, the City of Kodiak Police Department (KPD) was awarded \$39,349 through the JAG program; and

WHEREAS, KPD intends to use these funds for law enforcement equipment; and

WHEREAS, these funds do not require any local match.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Kodiak, Alaska, that an FFY2018 Edward Byrne Memorial Justice Assistance Grant in the amount of \$39,349 is hereby accepted.

BE IT FURTHER RESOLVED by the Council of the City of Kodiak that the City Manager is hereby authorized to execute and administer any and all documents required for the acceptance and management of this grant award.

CITY OF KODIAK

\_\_\_\_\_  
MAYOR

ATTEST:

\_\_\_\_\_  
CITY CLERK

Adopted:

**STATE OF ALASKA**  
**Department of Public Safety**  
**Office of the Commissioner**  
**Grants Administration**


**GRANT AMENDMENT**

<b>GRANTEE</b>		<b>DEPARTMENT</b>			
NAME: City of Kodiak		NAME: Department of Public Safety			
ADDRESS: 710 Mill Bay Road		ADDRESS: 5700 E. Tudor Road			
CITY: Kodiak, AK 99615		CITY: Anchorage, AK 99502			
CONTACT: Chief Timothy Putney		CONTACT: April Carlson			
TITLE: Chief of Police		TITLE: Grants Manager			
PHONE: 907-486-8000		PHONE: 907-269-5082			
EMAIL: <a href="mailto:tputney@city.kodiak.ak.us">tputney@city.kodiak.ak.us</a>		EMAIL: <a href="mailto:april.carlson@alaska.gov">april.carlson@alaska.gov</a>			
<b>AWARD INFORMATION</b>					
PROJECT NAME: Multi-jurisdictional Task Force		GRANTEE DUNS: 078191970			
PROGRAM NAME: Edward Byrne Memorial Justice Assistance Grant (JAG)		GRANTEE TAX ID: 92-6000083			
FEDERAL AWARD: 2018-DJ-BX-0235		CFDA: 16.738			
AWARD AMOUNT: <b>\$39,349.00</b>		GRANT NUMBER: 20-18JAG-02			
EXTEND DATE:		REQUIRED MATCH: No			
PROJECT START: October 1, 2019		PROJECT END: December 31, 2019			
		RISK ASSESSMENT: Yes			
<b>BUDGET AMENDMENT</b>					
Purpose Area: Law Enforcement					
Cost Category	Original AMOUNT	Amend One	Amend Two	Amend Three	Amended Budget
Equipment	34,048.00	5,301.00	-	-	39,349.00
			-	-	-
<b>TOTAL</b>	<b>\$ 34,048.00</b>	<b>\$ 5,301.00</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 39,349.00</b>
<b>AMENDMENT JUSTIFICATION</b>					
<b>Amend One:</b> Increase budget to include rear hard armor plates for the plate carriers that were not included in the original budget request.					
<b>GRANTEE AUTHORIZATION</b>			<b>DEPARTMENT AUTHORIZATION</b>		
NAME/TITLE:			NAME/TITLE:		
Mike Tvenge, City Manager			Colonel Barry Wilson, Director, AST		
SIGNATURE:			SIGNATURE:		
DATE:			DATE:		

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## MEMORANDUM TO COUNCIL

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**To:** Mayor and City Councilmembers  
**From:** Mike Tvenge, City Manager   
**Thru:** Kelly Mayes, Finance Director  
**Date:** November 14, 2019

**Agenda Item: V. b. Resolution 2019– 23, Authorizing the City of Kodiak, Alaska to Join the Alaska Remote Seller Sales Tax Commission for the Purpose of Developing, Implementing, and Enforcing a Remote Sellers Sale Tax Code, Authorizing the Manager to Execute Documents on Behalf of the City, and Designating a City Representative to the Commission**

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**SUMMARY:** The South Dakota vs. Wayfair U.S. Supreme Court case redefined sales tax across many states and local governments. On June 21, 2018, the U.S. Supreme Court upheld the state of South Dakota’s right to require online sellers to collect and remit sales tax on orders delivered to that state. Resolution No. 2019–23 authorizes the City to enter into an intergovernmental agreement to form a commission for a centralized administration of collection of sales tax imposed by remote sellers. Staff recommends the Council to enter into the Alaska Intergovernmental Remote Sellers Sales Tax Agreement and requests that the Council designate a representative on the newly created Commission.

### **PREVIOUS COUNCIL ACTION:**

- On January 8, 2019, Council discussed online sales tax research efforts by the Alaska Municipal League and contributing \$5,000 to research efforts for a streamlined approach for the administration of sales tax collected and remitted by remote sellers;
- On February 26, 2019, Council discussed online sales tax with the City Attorney, Brooks Chandler, and reviewed draft ordinances for changes to the City Code;
- On March 12, 2019, Council discussed the draft ordinances prepared by the City Attorney and authorized a contribution to the Alaska Municipal League for a contribution to research online sales tax;
- On March 26, 2019, Council discussed and authorized the City Manager and Finance Director to participate in conference calls with Alaska Municipal League to further the discussions of online sales tax and research for implementation;
- On April 23, 2019, the Finance Director provided an update memo to the Council regarding the conference call with Alaska Municipal League, forward direction, and attendance at the June 6 meeting in Anchorage;
- On August 20, 2019, the Finance Director provided an update to the Council regarding the formation of the Commission, the intergovernmental agreement, centralized administration, timelines for implementation, and committee activities for the Finance Director and City Manager;

- On September 24, 2019, the Finance Director provided an update to the Council on the draft documents and committee activities for the Finance Director and City Manager.

**BACKGROUND:** Alaska is the only state that allows municipal sales taxes without an overriding set of rules in a state sales tax. Therefore, the City of Kodiak sales tax code governs all sales tax for the City of Kodiak. Based on the Supreme Court decision, the City has to abide by the following governing criteria: Are the City's online sales and use tax practices discriminatory against interstate commerce? Do these pose an undue burden on interstate commerce? Are these administered fairly to all parties?

The City is facing many challenges with this implementation including updated tax definitions, rules, exemptions, and administrative procedures to adhere to the Supreme Court decision. These challenges also include educating the online merchants to proper exemption procedures, zip codes and jurisdictional boundaries, point of taxation, and tax caps.

In reference to the South Dakota vs. Wayfair U.S. Supreme Court case, "remote sellers" and "marketplace facilitators" have become commonly used terms in the sales tax arena. In a proactive effort to abide by the regulations set forth in the U.S. Supreme Court case (i.e. not placing undue burden on interstate commerce), AML held a conference call on April 5, 2019 to discuss the beginning stages of this initiative. At that time, an in-person meeting was scheduled for June 6 in Anchorage.

On April 23, 2019, Finance Director Kelly Mayes provided an update through the City Manager to the Mayor and City Council. This memo discussed future challenges in implementation and the upcoming June 6 meeting.

At the June 6 meeting, city managers, finance directors, city clerks, and attorneys from many municipalities throughout the state of Alaska convened to discuss the best way to move forward. AML executive director, Nils Andreassen, facilitated this meeting. Takeaways from the June 6 meeting are noted below:

1. Sales tax for remote sellers would be administered by a new organization, facilitated through the Alaska Municipal League. This group is herein after referred to as the "Commission".
2. A Governance Committee was formed to discuss the structure of the Commission – including but not limited to the board of directors, executive committee, by-laws, articles, and powers of the newly formed organization.
3. A Drafting Committee was formed to discuss common definitions to be used for remote sellers in implementing the process for the Commission.
4. Software would be developed for the Commission. This software will allow taxing jurisdictions to maintain their existing exemptions.

**DISCUSSION:** The City has been working with the City attorney, Boyd, Chandler, Falconer and Munson, LLP and the Alaska Municipal League (AML) to address these challenges. The Alaska Municipal League has been assisting municipalities in the collection and remittance of online sales tax through conference calls and joint meetings with city managers, finance directors, and other city officials. It is AML's goal to

streamline sales tax to work together toward a single-level, statewide administration of online sales tax collection and administration. AML believes that the single-level statewide administration would adhere to the Supreme Court's decision to alleviate any undue burden on interstate commerce.

The committees established at the June 6 meeting held regular conference calls from June 2019 through October 2019. The facilitator of these calls is the AML executive director. Mike Tvenge, City Manager, and Kelly Mayes, Finance Director, have been included on the Governance Committee conference calls. Kelly Mayes, Finance Director, has also been included on the Drafting Committee calls. Recent discussions from these conference calls have included the following draft deliverables:

*Model Code:*

During the discussion of common definitions, it was suggested that a Model Code be written and adopted by the Commission. Each participating municipality would adopt the language to include in their respective Codes for aspects pertaining to remote sellers. A copy of the draft Model Code has been attached. This is the preliminary draft and is currently still being updated as we continue to move through forming the Commission.

*Common Definitions:*

Many municipalities will have aspects of definitions that pertain specifically to their sales tax model. In order to facilitate a more uniform approach, the drafting committee has pulled all definitions from the Streamlined Sales and Use Tax (SSUTA) definitions that have been adopted in the contiguous United States by member-states. While all definitions may not be required for each municipality, it has been suggested that these definitions could either be (a) adopted into the individual Code for each municipality; or (b) adopted by the Commission and each respective municipality will point to the Common Definitions within their respective Codes. These are in draft form and will be finalized as we continue to move through with forming the Commission.

*Technical White Papers (or Guidance Documents):*

These would include further guidance on implementing common definitions, clarification on cumbersome definitions, clarifications on the Model Code, or clarifications of any other aspect of the Commission. Determinations for white papers to be constructed are currently being explored by the various committees and will be finalized as we continue to move through with forming the Commission.

*Intergovernmental Agreement (i.e. Compact):*

The Governance Committee structured the Commission by drafting an Intergovernmental Agreement document. This document outlines the formation of the Commission, the duties and responsibilities of the Board, executive committee, articles, and by-laws. Each participating municipality would need to sign on to the Agreement for inclusion in the Commission.

Staff believes that this single-level statewide administration of online sales tax and collection and administration would be beneficial in the following ways:

- A coordinated approach with other Alaska municipalities and boroughs will help the City succeed in implementation of proper online sales tax collection and remittance.
- There are 105 taxing jurisdictions within the State of Alaska. There is not an overriding set of rules for state sales tax; therefore, each taxing jurisdiction has its own set of rule-s. As the Supreme



Court decision cited undue burden on interstate commerce, an individual approach from the City to administer online sales tax could become extremely complex.

- This coordinated approach would alleviate the additional administrative complexities placed on the finance department staff.

**ALTERNATIVES:**

- 1) Enter into the Alaska Intergovernmental Remote Seller Sales Tax Agreement.
- 2) Do not enter into the Alaska Intergovernmental Remote Seller Sales Tax Agreement. This could potentially cause the City to face many challenges from remote sellers claiming undue burden on interstate commerce.

**FINANCIAL IMPLICATIONS:** Administrative fees for sales taxes collected and administered by the Commission under the Agreement would be funded through collections of sales tax from remote sellers at the Commission level. The City potentially could increase sales tax revenue from remote sellers through this single-level approach.

**LEGAL:** Kodiak City Code allows for the collection of sales tax, federal law taxation of remote sellers is now allowable, therefore collection of this tax revenue is not prohibited under city code.

**STAFF RECOMMENDATION:** Staff recommends entering into the Alaska Intergovernmental Remote Sellers Sales Tax Agreement and recommends the Mayor/Manager/Finance Director/Sales Tax Officer as the City's representative on the newly formed Commission.

**CITY MANAGER'S COMMENTS:** The South Dakota vs Wayfair decision changes the sales tax collection and remittance by remote sellers. In order to accomplish the city's collection of online sale tax would be laborious without the services of "MuniRevs". The fee for this service is deducted from the total sales tax remitted from remote sellers and therefore is cost effective.

**NOTES/ATTACHMENTS:**

Attachment A: Resolution No. 2019-23

Attachment B: Alaska Intergovernmental Remote Seller Sales Tax Agreement

**PROPOSED MOTION:**

Move to adopt Resolution No. 2019-23.

**CITY OF KODIAK  
RESOLUTION NUMBER 2019-23**

**A RESOLUTION OF THE COUNCIL OF THE CITY OF KODIAK AUTHORIZING THE CITY OF KODIAK TO JOIN THE ALASKA REMOTE SELLER SALES TAX COMMISSION FOR THE PURPOSE OF DEVELOPING, IMPLEMENTING, AND ENFORCING A REMOTE SELLERS SALE TAX CODE, AUTHORIZING THE MANAGER TO EXECUTE DOCUMENTS ON BEHALF OF THE CITY, AND DESIGNATING A CITY REPRESENTATIVE TO THE COMMISSION**

WHEREAS, the inability to effectively collect sales tax on sales of property, products or services transferred or delivered into Alaska in response to orders placed electronically by consumers with remote sellers, is seriously eroding the sales tax base of communities, causing revenue losses and imminent harm to residents through the loss of critical funding for local public services and infrastructure; and

WHEREAS, the harm from the loss of revenue is especially serious in Alaska because the state has no broad-based tax, and sales tax revenues are essential in funding the provision of services by local governments; and

WHEREAS, the failure to collect tax on remote sales creates market distortions by creating tax shelters for businesses that limit their physical presence in the state or cities and boroughs but still sell their goods and services to their consumers, something that becomes easier and more prevalent as technology continues to advance; and

WHEREAS, the structural advantages for remote sellers, including the absence of point-of-sale tax collection, along with the general growth of online retail, make clear that erosion of the sales tax base is and has been occurring and is a growing problem that is likely to only worsen in the near future; and

WHEREAS, remote sellers who make a substantial number of deliveries into or have large gross revenues from Alaska benefit extensively from the Alaska market, affecting the economy generally, as well as local infrastructure; and

WHEREAS, given modern computing and software options, it is neither unusually difficult nor burdensome for remote sellers to collect and remit sales taxes associated with sales into Alaska taxing jurisdictions; and

WHEREAS, the recent decision by the United States Supreme Court in *South Dakota v. Wayfair* allows for the amendment of the sales tax code to account for remote sellers who do not have

a physical presence in either the state of Alaska or within the City of Kodiak, but do have a taxable connection with the state of Alaska and City of Kodiak; and

WHEREAS, the decision in *South Dakota v. Wayfair* provided guidance that included the defensibility of a single-level statewide administration of remote sales tax collection and remittance; and

WHEREAS, in order to implement a single-level statewide sales tax administration, it is the intent of local taxing jurisdictions within Alaska to establish an intergovernmental entity known as the Alaska Remote Seller Sales Tax Commission (the “Commission”); and

WHEREAS, the function and powers of the Commission will be set forth under the Alaska Intergovernmental Remote Seller Sales Tax Agreement (the “Agreement”), a cooperative agreement between Commission members; and

WHEREAS, under the terms of the Agreement, in order to maintain membership in the Commission, the City of Kodiak will be required to adopt certain uniform code provisions for the collection and remittance of municipal sales tax applicable to sales made by remote seller; and

WHEREAS, the uniform remote sales tax code will be presented to the Council of the City of Kodiak, Alaska for consideration once adopted by the Commission; and

WHEREAS, once adopted, the administration of remote sales tax collection and remittance will be delegated to the Commission; and

WHEREAS, the intent of the Agreement is to enable Alaska’s taxing jurisdictions to levy their municipal sales tax to the maximum limit of federal and state constitutional doctrines; and

WHEREAS, the City of Kodiak Charter Article XII-1, *Cooperation with other units of government-transfer of powers and functions*, states that “Agreements, including those for cooperative or joint administration of any function or power, may be made by the Council with any other local government, with the State, or with the United States unless otherwise provided by law or by the Charter”. Based on this provision of the Charter, the Council has authority to enter into intergovernmental agreements.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY OF KODIAK:

**Section 1. Authorization.** The Council authorizes the Manager/Mayor to negotiate, execute, and submit all necessary documents to obtain and maintain membership in the Alaska Remote Seller Sales Tax Commission.

**Section 2. Representation.** The Council designates the (Manager, Mayor, or Finance Director/STO) as the City of Kodiak’s representative on the Commission.

**Section 3. Scope of Agreement.** The Alaska Intergovernmental Remote Seller Sales Tax Agreement is included as Attachment A.

**Section 4. Effective Date.** This resolution shall be effective immediately after its adoption.

CITY OF KODIAK

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MAYOR

ATTEST:

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CITY CLERK

Adopted:

# Alaska Intergovernmental Remote Seller Sales Tax Agreement

FINAL

October 11, 2019

## **Alaska Intergovernmental Remote Seller Sales Tax Agreement**

This Agreement is made and entered into by the signatories representing Alaska's cities and boroughs to enable them to implement single-level, statewide administration of remote sales tax collection and remittance. The provisions of the Agreement do not apply to administration and collection of sales taxes for the sales of goods and services originating from within the boundaries of a member municipality nor does this Agreement restrict how a member municipality administers and collects sales tax on such sales, nor on sales made by those retailers with a physical presence in the municipality. The authority to set rates and exemptions is maintained by the member municipality.

### **Article I. Background Principles.**

1. The signatories wish to enable local governments to benefit from opportunities for collection of existing sales tax on sales made by remote sellers. Remote sellers are sellers who sell, often through the internet, products or services in a taxing jurisdiction without having a physical presence in the taxing jurisdiction.
2. The collection of remote sales tax provides a level playing field for local businesses and strengthens the ability of local governments to provide public services and infrastructure.
3. The signatories are particularly mindful of the specific holding in, and implications of, the Supreme Court's *South Dakota v. Wayfair* decision, which provides guidance relative to nexus and the legal defensibility of a single-level statewide administration that reduces or removes potential burdens to interstate commerce.
4. Alaska's local governments have the authority to enter into intergovernmental agreements and applicable taxing authority has been delegated to organized boroughs and cities.
5. The signatories desire to establish an intergovernmental entity to enable cooperative centralized administration of sales tax collection, remittance, and enforcement on sales made by remote sellers.

### **Article II. Purpose.**

The purpose of this Agreement is to:

1. Enable cooperative centralized administration of sales tax collection, remittance, and enforcement on sales made by remote sellers using a single statewide intergovernmental entity;
2. Provide for and promote reasonable uniformity and compatibility in significant components of local sales tax levy and collection on sales made by remote sellers and marketplace facilitators in order to facilitate streamlined joint administration; and
3. Facilitate taxpayer and tax collector convenience and compliance in the filing of tax returns, the payment of tax, and in other phases of tax administration of sales made and services provided by remote sellers and marketplace facilitators.

### **Article III. Definitions.**

As used in this Agreement:

1. “Commission” means the Alaska Remote Seller Sales Tax Commission established pursuant to this Agreement.
2. “Local Government” means any home rule, first class, or second class borough, or any home rule, first class, or second class city, or unified municipality in Alaska.
3. “Member” means a Local Government signatory to this Agreement.
4. “Remote seller” means any corporation, partnership, firm, association, governmental unit or agency, or person acting as a business entity that sells property or products or performs services in the State of Alaska or a taxing municipality in the state, using the internet, mail order, or telephone, without having a physical presence in the state or taxing municipality.
5. “Sales tax” means a tax imposed with respect to the transfer for a consideration of ownership, possession, or custody of property or the rendering of services measured by the price of the property transferred or services provided.
6. “Marketplace facilitator” means a person that provides for sellers a platform to facilitate for consideration, regardless of whether deducted as fees from the transaction, the sale of the seller’s products or services (excluding lodging and rentals) through a physical or electronic marketplace operated by the person, and engages:
  - a. Directly or indirectly, through one or more affiliated persons in any of the following:
    - i. Transmitting or otherwise communicating the offer or acceptance between the buyer and seller;
    - ii. Owning or operating the infrastructure, electronic or physical, or technology that brings buyers and sellers together;
    - iii. Providing a virtual currency that buyers are allowed or required to use to purchase products from the seller; or
    - iv. Software development or research and development activities related to any of the activities described in (b) of this subsection (6), if such activities are directly related to a physical or electronic marketplace operated by the person or an affiliated person;
  - b. In any of the following activities with respect to the seller's products:
    - i. Payment processing services;

- ii. Fulfillment or storage services;
- iii. Listing products for sale;
- iv. Setting prices;
- v. Branding sales as those of the marketplace facilitator;
- vi. Order taking;
- vii. Advertising or promotion; or
- viii. Providing customer service or accepting or assisting with returns or exchanges.

#### **Article IV. The Commission.**

##### **1. Organization and Management.**

- a. The Alaska Remote Seller Sales Tax Commission (the “Commission”) is hereby established as an intergovernmental entity in the state of Alaska. It will be comprised of one designated representative from each Member, who shall have the authority to act on the Member’s behalf.
- b. Each Member will be entitled to one vote.
- c. To assist conducting business when the full Commission is not meeting, the Commission will annually elect a Board of Directors of seven members, including officers. The Board of Directors will act subject to the provisions of this Agreement and as provided in the bylaws of the Commission, as ratified by the members.
- d. No action will be binding unless approved by a majority of the Directors present at a meeting.
- e. The Commission will adopt an official logo.
- f. The Commission will hold an annual meeting rotating the location of the meeting each year, with telephonic participation provided for, in addition to scheduled regular meetings and special meetings as provided by its bylaws. Notices of special meetings must include the reasons for the meeting and the items to be considered.
- g. The Commission will elect annually, from among its members, a Chairman, a Vice Chairman, and a Secretary/Treasurer. The bylaws of the Commission shall provide for nomination and election of officers.
- h. The Commission will contract at formation for support and administrative



functions with the Alaska Municipal League (AML). The Executive Director of the AML will serve as a liaison between the Commission and AML and may appoint necessary staff support. This provision will be revisited within three years of legal formation of the Commission.

- i. The Commission may contract for supplies and professional services, and delegates to AML the same ability on its behalf.
- j. To carry out any purpose or function, the Commission may accept and utilize donations and grants of money, equipment, supplies, materials and services, conditional or otherwise, from any Member or governmental entity.
- k. The Commission may establish one or more offices for the transacting of its business. Upon formation, its registered office and place of business will be the Alaska Municipal League at One Sealaska Plaza, Suite 200, Juneau, AK 99801.
- l. The Members will adopt the initial bylaws of the Commission. The Commission will make its bylaws easily accessible for Members and prospective members. The power to adopt, alter, amend or repeal bylaws is vested in the Board of Directors unless it is reserved to the Members per the bylaws. The bylaws shall contain provisions for the regulation and management of the affairs of the Commission not inconsistent with this Agreement.
- m. The Commission will provide annual reports to its members covering its activities for the preceding fiscal year. The Commission may make additional reports.

## 2. Committees.

- a. In furtherance of its activities, the Commission may establish advisory and technical committees by a majority vote of the membership body. Membership on a technical committee, may include private persons and public officials. Committees may consider any matter of concern to the Commission, including issues of special interest to any member and issues pertaining to collection of sales tax on behalf of members.
- b. The Commission may establish additional committees by a majority vote of the membership or Board of Directors as its bylaws may provide.
- c. Committees may not take any action but may recommend action to the Board of Directors for consideration.

## 3. Powers.

In addition to powers conferred elsewhere in this Agreement and in the bylaws, the Commission may:

- a. Study federal, state and local sales tax systems, and particular types of state and local taxes.

- b. Develop and recommend proposals to promote uniformity and compatibility of local sales tax laws with a view toward encouraging the simplification and improvement of local tax law and administration.
- c. Compile and publish information to support and assist members in implementing the Agreement or assist taxpayers in complying with local government sales tax laws.
- d. Do all things necessary and incidental to the administration of its functions pursuant to this Agreement, including:
  - i. Sue and be sued.
  - ii. Administer provisions of uniform sales tax ordinances pursuant to authority delegated by Members
- f. The Commission may create and adopt policies and procedures for any phase of the administration of sales tax collection and remittance in accordance with this Agreement and the Commission's bylaws, including delegated authority to administer taxation or prescribing uniform tax forms. Prior to the adoption of any policy, the Commission will:
  - 1. As provided in its bylaws, hold at least one meeting after due notice to all members and to all taxpayers and other persons who have made timely requests to the Commission for advance notice of its policy-making proceedings.
  - 2. Afford all affected members and interested persons an opportunity to submit relevant written comments, which will be considered fully by the Commission.
- g. The Commission will submit any policy adopted by it to the designated representative of all Members to which they might apply. Each such Member will in turn consider any such policy for adoption in accordance with its own laws and procedures.
- h. Amend this Agreement by majority vote of the Members.

4. Finance.

- a. At least 90 days prior to the start of a new fiscal year, the Board of Directors will adopt a budget of its estimated expenditures for the upcoming fiscal year and submit to Members.
- b. The Commission will follow a July 1 to June 30 fiscal year.
- c. The Commission's budgets must contain specific recommendations for service fees built into statewide administration. Service fees will account for direct staff and software costs, and indirect costs, as justifiable to the Board of Directors.

- d. The Commission will not pledge the credit of any member. The Commission may meet any of its obligations in whole or in part with funds available to it, provided that it takes specific action to set aside such funds prior to incurring any obligation to be met in whole or in part in such manner. Except where the Commission makes use of funds available to it, the Commission may not incur any obligation prior to the allocation and commitment of funds adequate to meet the same.
- e. The Commission must keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the Commission will be subject to the audit and accounting procedures established under its bylaws. All receipts and disbursements of funds handled by the Commission will be audited annually by a certified public accountant and the report of the audit will be included in and become part of the annual report of the Commission to Members.
- f. The accounts of the Commission will be open at any reasonable time for inspection by duly constituted officers of the Members, the State of Alaska, and by any persons authorized by the Commission.
- g. Nothing contained in this Article may be construed to prevent Commission compliance with laws relating to audit or inspection of accounts by or on behalf of any government contributing to the support of the Commission.

**Article V. Membership Requirements; Remote Seller Sales Tax Code.**

- 1. To obtain and retain full membership, the Local Government must submit either an Ordinance or Resolution authorizing entry into the Agreement, including to:
  - a. Designate the individual at the municipality that may execute initial binding documents on behalf of the municipality and who will be the Member’s representative on the Commission.
- 2. Once the Commission adopts its bylaws and adopts a uniform Remote Sellers Sales Tax Code, members must submit an Ordinance or Resolution that:
  - a. Delegates remote seller sales tax registration, exemption certification, collection, remittance, and audit authority to the Commission.
  - b. Within one hundred twenty (120) days, adopts, by reference or otherwise, the Remote Seller Sales Tax Code in its entirety as it pertains to collection of sales tax from remote sellers and marketplace facilitators. The Remote Seller Sales Tax Code is provided as “Addendum A”.
- 3. To retain full membership status, changes made to the Agreement or Code should be ratified by the Member within one hundred twenty (120) days of the date the Commission adopts the change.
- 4. The Member must provide notice of tax or boundary changes to the Commission and must

assure the Commission of the accuracy of rates and exemptions. Rate and exemption changes will take effect within thirty (30) days of the date the Commission receives notice of the tax or boundary change.

## **Article VI. Sales Tax Collection and Administration.**

### **1. Collection; Registration; Remittance.**

- a. Every remote seller and marketplace facilitator meeting the Threshold Criteria of one hundred thousand (\$100,000) in annual sales or 100 annual transactions occurring in Alaska during the current or previous calendar year, shall collect sales taxes from the buyer at the time of sale or service and shall transmit the sales taxes collected to the Commission on a monthly or quarterly basis.
- b. The Commission will remit and report to Members by the last business day of the month.
- c. A remote seller or marketplace facilitator meeting the Threshold Criteria shall apply for a certificate of sales tax registration within thirty (30) calendar days of the adoption of this Remote Seller Sales Tax Code and/or within thirty (30) calendar days of meeting the threshold, whichever occurs later. Registration shall be to the Commission on forms prescribed by the Commission as set out in the remote seller sales tax code.
- d. Upon receipt of a properly executed application, the Commission shall issue the applicant a certificate of registration, stating the legal name of the seller, the primary address, and the primary sales tax contact name and corresponding title. A list of registered sellers in good standing shall be distributed to Members, made public and available on the Commission's webpage.

### **2. Returns; Confidentiality.**

- a. The Commission will provide all sales tax return information to the taxing jurisdiction, consistent with local tax codes.
- b. All returns, reports and information required to be filed with the Commission under this Code, and all information contained therein, shall be kept confidential and shall be subject to inspection only by:
  - i. Employees and agents of the Commission and taxing jurisdiction whose job responsibilities are directly related to such returns, reports and information;
  - ii. The person supplying such returns, reports and information; or
  - iii. Persons authorized in writing by the person supplying such returns, reports and information.

**3. Title; Penalty and Interest; Overpayment.**

- a. Upon collection by the seller, title to the sales tax vests in the Commission and the member on whose behalf the original tax arose. The Commission shall act as a third-party trustee and remit taxes collected on behalf of the member no later than thirty (30) days after each filing deadline.
- b. The Remote Sellers Sales Tax Code shall establish the per annum interest rate and any applicable penalties for late or non-compliant remote sellers.
- c. Upon request from a buyer or remote seller the Commission shall provide a determination of correct tax rate and amount applicable to the transaction. In the case of an overpayment of taxes, the remote seller shall process the refund and amend any returns accordingly.

**4. Audit; Compliance and Enforcement.**

- a. The Commission shall have sole audit authority and will make final determinations regarding: (1) whether a remote seller or marketplace facilitator meets Threshold criteria; (2) the accuracy of returns filed by a remote seller or marketplace facilitator with the Commission; and (3) whether a remote seller or marketplace facilitator filing returns with the Commission is in compliance with collection and remittance obligations.
- b. The Commission shall have authority to enforce issues relating to the Remote Sellers Sales Tax Code including, but not limited to, the collection of late fees and penalties, and filing of civil suits and injunctions.

**Article VII. Entry into Force and Withdrawal.**

1. This Agreement will be in force and effective when formally approved by any seven signatories and will terminate if membership falls below seven.
2. Any Member may withdraw from this Agreement through ordinance or resolution rescinding signatory action and giving notice to the Commission of the effective date of the ordinance, with a minimum of 30 days' notice. Withdrawal will not affect any liability already incurred by or chargeable to a Member prior to the effective date of such withdrawal. The obligations of the Commission to remit and report remain until no longer necessary.

**Article VIII. Effect on Other Laws and Jurisdiction.**

Nothing in this Agreement may be construed to:

1. Affect the power of any local government to fix rates or tax exemptions, except that all members must adopt and implement the Commission's common definitions and tax code

changes or demonstrate parity or non-applicability.

2. Withdraw or limit the authority of local government with respect to any person, corporation, or other entity or subject matter, except to the extent that such authority is expressly conferred by or pursuant to this Agreement upon another agency or body.
3. Supersede or limit the jurisdiction of any court of the State of Alaska.

**Article IX. Construction and Severability.**

This Agreement shall be liberally construed so as to effectuate its purposes. The provisions of this Agreement shall be severable and if any phrase, clause, sentence, or provision is declared or held invalid by a court of competent jurisdiction, the validity of the remainder of this Agreement and its applicability to any government, agency, person or circumstance will not be affected. If any provision of this Agreement is held contrary to the charter of any member, the Agreement will remain in full force and effect as to the remaining members and in full force and effect as to the Member affected in all other provisions not contrary to charter.

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## MEMORANDUM TO COUNCIL

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**To:** Mayor Branson and City Councilmembers

**From:** Mike Tvenge, City Manager *MT*

**Date:** November 14, 2019

**Agenda Item:** V. c. **Approval of Third Amendment to Near Island Communications Site Sublease Between Kodiak Island Broadcasting, Inc. and New Cingular Wireless PCS, LLC**

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**SUMMARY:** Kodiak Island Broadcasting Co., Inc. is requesting an amendment to the sublease held with New Cingular Wireless PCS LLC (Attachment A). Any communication sublease must be approved by Council per City Code Title 18, Section 18.20.230. This amendment, if approved, will be the third amendment to the sublease between Kodiak Island Broadcasting Co., Inc. and New Cingular Wireless PCS LLC.

**PREVIOUS COUNCIL ACTION:**

- Council approved the five-year renewal of the primary lease with Kodiak Island Broadcasting effective April 1, 2016, which authorized the subleasing to New Cingular Wireless PCS LLC and Alaska Wireless Network LLC.
- On April 13, 2017, Council approved the second amendment between Kodiak Island Broadcasting, Inc. and New Cingular Wireless PCS, LLC for Near Island Communications Site Lease 221887.

**DISCUSSION:** The request by New Singular Wireless PCS, LLC (Lessee) to Kodiak Island Broadcasting Co., Inc. (Lessor of the sublease) includes these concerns. Lessee wishes to construct a generator building on the property leased by the City. In order to invest in this building the Lessee would like assurances of a lease beyond year 2026; however, the sublease cannot exceed the prime lease term. Therefore, this third amendment is aligned with the prime lease expiring on March 31, 2021 with the option to renew until March 31, 2026. In order for the sublease to extend beyond March 31, 2021 the prime lease would also need to extend. The Exhibit C-2 reflects these changes.

**ALTERNATIVES:**

- 1) Council may approve the third amendment to the Kodiak Island Broadcasting Co., Inc. sublease with New Cingular Wireless, which is recommended by staff, because it provides benefits to both the City and the community.
- 2) Council can deny the third amendment, which is not recommended.

**FINANCIAL IMPLICATIONS:** The construction and operational costs will be borne by the Lessee. The City will not see an increase in revenue from this amendment.



**LEGAL:** The City Attorney reviewed the third amendment, and supports the sublease terms and conditions.

**STAFF RECOMMENDATION:** Staff recommends approval of the third amendment of the sublease.

**CITY MANAGER'S COMMENTS:** The Third amendment is required by City Code and must be approved by Council. This will allow KIB to continue this sublease and NCW to construct the generator building. Currently the City owns radio equipment inside the KIB building and antennae on the KIB tower, all on Near Island. This action benefits all parties involved. The prime lease with KIB Co. Inc. does not transfer any rent proceeds from this sublease as long as the city has equipment in the KIB building on Near Island.

**ATTACHMENTS:**

Attachment A: Third Amendment to Sublease between Kodiak Island Broadcasting Co., Inc.  
and New Cingular Wireless PCS LLC

Attachment B: Second Amendment to Sublease between Kodiak Island Broadcasting Co., Inc.  
and New Cingular Wireless PCS LLC

Attachment C: Ordinance No. 1343

**PROPOSED MOTION:**

Move to approve the third amendment between Kodiak Island Broadcasting, Inc. and New Cingular Wireless PCS, LLC for Near Island Communications Site Lease and authorize the City Manager to execute documents on behalf of the City.

Cell Site No.: AN2425  
 Cell Site Name: Near Island  
 Fixed Asset No.: 10125247  
 Market: Seattle / OR / N.ID  
 Address: 201 Trident Way, Kodiak, AK

### THIRD AMENDMENT TO SUBLEASE OF LAND AND TOWER SPACE LEASE

THIS THIRD AMENDMENT TO SUBLEASE OF LAND AND TOWER SPACE LEASE (“**Third Amendment**”), dated as of the latter of the signature dates below (the “**Effective Date**”), is by and between Kodiak Island Broadcasting Co., Inc., an Alaska corporation, having a mailing address of 1315 Mill Bay Road, Kodiak, AK 99615 (hereinafter referred to as “**Lessor**”), and New Cingular Wireless PCS, LLC, a Delaware limited liability company, having a mailing address of 1025 Lenox Park Blvd. NE, 3<sup>rd</sup> Floor, Atlanta, GA 30319 (hereinafter referred to as “**Lessee**”).

**WHEREAS**, Lessor and Lessee entered into a Sublease of Land and Tower Space Lease dated March 1, 2006, as amended by First Amendment to Sublease of Land and Tower Space Lease dated September 30, 2009, and as further amended by Second Amendment to Sublease of Land and Tower Space Lease dated May 25, 2017, (hereinafter, collectively, the “**Lease**”), whereby Lessor leased to Lessee certain Tower Premises, therein described, that are a portion of the Real Property located at 201 Trident Way, Kodiak, AK; and

**WHEREAS**, the Term of the Lease will expire on February 28, 2021, and the parties mutually desire to renew the Lease, memorialize such renewal period and modify the Lease in certain other respects, all on the terms and conditions contained herein; and

**WHEREAS**, Lessor and the City of Kodiak, an Alaska municipal corporation (“**Owner**”), entered into a Near Island Communication Site Lease (“**Prime Lease**”) dated April 1, 2016, whereby City leased to Lessor certain premises described therein;

**WHEREAS**, Lessor and Lessee desire to amend the Lease to extend the Term of the Lease to be co-terminous with the Prime Lease; and

**WHEREAS**, Lessor and Lessee desire to amend the Lease to correct Exhibit C-1 to the Lease; and

**WHEREAS**, Lessor and Lessee desire to amend the Lease to adjust the rent (as defined below) in conjunction with the modifications to the Lease contained herein; and

**WHEREAS**, Lessor and Lessee, in their mutual interest, wish to amend the Lease as set forth below accordingly.

**NOW THEREFORE**, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Lessor and Lessee agree that the recitals set forth above are incorporated herein as if set forth in their entirety and further agree as follows:

Cell Site No.: AN2425  
Cell Site Name: Near Island  
Fixed Asset No.: 10125247  
Market: Seattle / OR / N.ID  
Address: 201 Trident Way, Kodiak, AK

1. **Extension of Term.**

(a) The Term of the Lease is amended so that the current Term, which commenced on March 1, 2016, shall now expire on March 31, 2021 (“Current Term”) such that it is co-terminous with the Prime Lease. Provided that the Prime Lease is renewed for an additional five (5) years commencing on April 1, 2021, the Term will be automatically renewed, upon the same terms and conditions, for one (1) additional period of five (5) years (such five (5) year extension period is hereinafter referred to as an “**Extension Term**”), without further action by Lessee unless Lessee notifies Lessor in writing of Lessee’s intention not to renew the Lease at least sixty (60) days prior to the expiration of the Current Term. The Current Term, Extension Term, and Additional Extension Terms (as defined below), if any, are collectively referred to as the Term (“**Term**”).

(b) Notwithstanding the forgoing and subject to Lessee’s right to provide, in writing, Lessee’s intent not to renew at least sixty (60) days prior to expiration of the Current Term, Additional Term, and any Additional Extension Term, the Term of this Lease shall be co-terminous with the Prime Lease and automatically terminate or extend in accordance with the term of the Prime Lease, including the terms of any new or amended Prime Lease entered into by Owner and Lessor. “Additional Extension Term” means any extension or renewal of the Prime Lease beyond the Extension Term.

2. **Tower Premises.** Lessor and Lessee acknowledge that the Exhibit C-1 drawing attached to the Second Amendment to Sublease of Land and Tower Space, which replaced Exhibit C to the Lease, was incorrect and is hereby replaced and superseded by Exhibit C-2, attached hereto.

3. **Prime Lease.** Lessor leases Real Property from the Owner on which the Tower currently used by Lessee for transmission pursuant to the Prime Lease is located. Notwithstanding Section 1 above, if the Prime Lease between Lessor and Owner is not renewed for any reason or for no reason, the Lease may be terminated by Lessor on twelve (12) months' written notice to Lessee.

4. **Rent.** Commencing on March 1, 2021, the current rent payable under the Lease shall be One Thousand Fifty-Five and 51/100 Dollars (\$1,055.51) per month (the "**Rent**"), and shall continue during the Term, subject to adjustment as provided herein. Section 2(ii) of the Lease shall be amended to provide that Rent shall be adjusted as follows: in year two (2) of the Extension Term and each year thereafter on March 1st, including throughout any Additional Extension Term exercised, the monthly Rent will increase by two percent (2%) over the Rent paid during the previous year.

5. **Charges.** All charges payable under the Lease such as utilities and taxes shall be billed by Lessor within one (1) year from the end of the calendar year in which the charges were incurred; any charges beyond such period shall not be billed by Lessor, and shall not be payable by Lessee. The foregoing shall not apply to monthly Rent which is due and payable without a requirement that it be billed by Lessor. The provisions of this subparagraph shall survive the termination or expiration of the Lease.

**Cell Site No.:** AN2425  
**Cell Site Name:** Near Island  
**Fixed Asset No.:** 10125247  
**Market:** Seattle / OR / N.ID  
**Address:** 201 Trident Way, Kodiak, AK

6. **Owner Services.** Lessor and Lessee acknowledge that Owner keeps equipment on the rack space of the building on the Tower Premises. Lessor and Lessee agree to permit Owner to continue using this rack space, if needed for its equipment, throughout the Term.

7. **Acknowledgement.** Lessor acknowledges that: 1) this Third Amendment is entered into of the Lessor's free will and volition; 2) Lessor has read and understands this Third Amendment and the underlying Lease and, prior to execution of this Third Amendment, was free to consult with counsel of its choosing regarding Lessor's decision to enter into this Third Amendment and to have counsel review the terms and conditions of this Third Amendment; 3) Lessor has been advised and is informed that should Lessor not enter into this Third Amendment, the underlying Lease between Lessor and Lessee, including any termination or non-renewal provision therein, would remain in full force and effect.

8. **Notices.** Lessor's and Lessee's notice addresses are hereby revised as follows:

If to Lessee: New Cingular Wireless PCS, LLC  
Attn: Network Real Estate Administration  
Re: Cell Site #: AN2425; Cell Site Name: Near Island (AK)  
Fixed Asset #: 10125247  
1025 Lenox Park Blvd. NE  
3<sup>rd</sup> Floor  
Atlanta, GA 30319

With a copy to: New Cingular Wireless PCS, LLC  
Attn.: Legal Dept – Network Operations  
Re: Cell Site #: AN2425; Cell Site Name: Near Island (AK)  
Fixed Asset #: 10125247  
208 S. Akard Street  
Dallas, TX 75202-4206

If to Lessor: Kodiak Island Broadcasting Co., Inc.  
1315 Mill Bay Road  
Kodiak, AK 99615

9. **Other Terms and Conditions Remain** In the event of any inconsistencies between the Lease and this Third Amendment, the terms of this Third Amendment shall control. Except as expressly set forth in this Third Amendment, the Lease otherwise is unmodified and remains in full force and effect. Each reference in the Lease to itself shall be deemed also to refer to this Third Amendment.

10. **Capitalized Terms.** All capitalized terms used but not defined herein shall have the same meanings as defined in the Lease.

**Cell Site No.:** AN2425  
**Cell Site Name:** Near Island  
**Fixed Asset No.:** 10125247  
**Market:** Seattle / OR / N.ID  
**Address:** 201 Trident Way, Kodiak, AK

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**Cell Site No.:** AN2425  
**Cell Site Name:** Near Island  
**Fixed Asset No.:** 10125247  
**Market:** Seattle / OR / N.ID  
**Address:** 201 Trident Way, Kodiak, AK

**IN WITNESS WHEREOF**, the parties have caused their properly authorized representatives to execute this Third Amendment on the dates set forth below.

**LESSOR:**  
Kodiak Island Broadcasting Co., Inc.,  
an Alaska corporation

**LESSEE:**  
New Cingular Wireless PCS, LLC,  
a Delaware limited liability company

By: AT&T Mobility Corporation  
Its: Manager

By: \_\_\_\_\_  
Dennis W. Bookey, Vice President

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Date: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

[ACKNOWLEDGMENTS APPEAR ON THE NEXT PAGE]

Cell Site No.: AN2425  
Cell Site Name: Near Island  
Fixed Asset No.: 10125247  
Market: Seattle / OR / N.ID  
Address: 201 Trident Way, Kodiak, AK

### LESSOR ACKNOWLEDGMENT

STATE OF \_\_\_\_\_)

\_\_\_\_\_)

COUNTY OF \_\_\_\_\_)

I CERTIFY that on \_\_\_\_\_, 201\_\_, **Dennis W. Bookey** personally came before me and acknowledged under oath that he:

- (a) is the **Vice President** of **Kodiak Island Broadcasting Co., Inc.**, an Alaska corporation, the corporation named in the attached instrument,
- (b) was authorized to execute this instrument on behalf of the corporation and
- (c) executed the instrument as the act of the corporation.

\_\_\_\_\_  
Notary Public: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

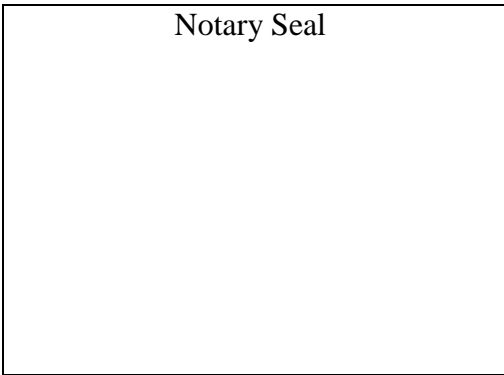
Cell Site No.: AN2425  
Cell Site Name: Near Island  
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Market: Seattle / OR / N.ID  
Address: 201 Trident Way, Kodiak, AK

**LESSEE ACKNOWLEDGMENT**

STATE OF \_\_\_\_\_ )  
 ) SS.  
COUNTY OF \_\_\_\_\_ )

I certify that I know or have satisfactory evidence that \_\_\_\_\_ is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as the \_\_\_\_\_ of AT&T Mobility Corporation, the Manager of **New Cingular Wireless PCS, LLC, a Delaware limited liability company**, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: \_\_\_\_\_.



\_\_\_\_\_  
(Signature of Notary)

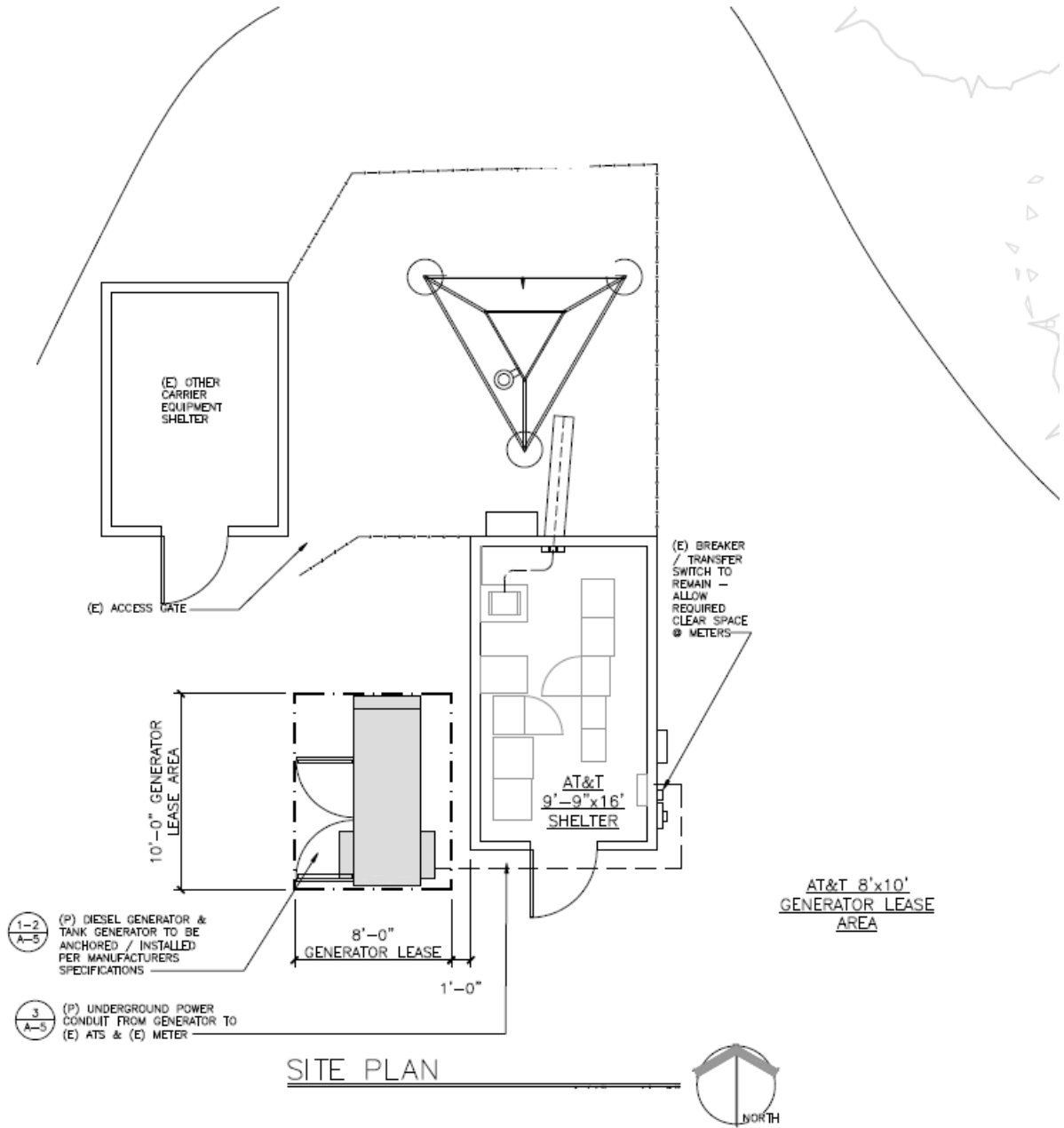
\_\_\_\_\_  
(Legibly Print or Stamp Name of Notary)  
Notary Public in and for the State of

\_\_\_\_\_  
My appointment expires: \_\_\_\_\_



**Cell Site No.:** AN2425  
**Cell Site Name:** Near Island  
**Fixed Asset No.:** 10125247  
**Market:** Seattle / OR / N.ID  
**Address:** 201 Trident Way, Kodiak, AK

EXHIBIT C-2



SITE PLAN

Market: Alaska  
Cell Site Number: AN2425  
Cell Site Name: Near Island  
Fixed Asset Number: 10125247

**SECOND AMENDMENT TO SUBLEASE OF LAND AND TOWER SPACE LEASE**

THIS SECOND AMENDMENT TO SUBLEASE OF TOWER SPACE LEASE AGREEMENT ("**Amendment**"), dated as of the latter of the signature dates below, is by and between Kodiak Island Broadcasting, Inc., an Alaska corporation, having a mailing address of 9740 Jupiter Drive, Anchorage, AK 99507 ("**Lessor**") and New Cingular Wireless PCS, LLC, a Delaware limited liability company, having a mailing address of 575 Morosgo Drive, Atlanta, GA 30324 ("**Lessee**").

WHEREAS, Lessor and Lessee's predecessor in interest entered into a Sublease of Land and Tower Space Lease dated March 1, 2006, as amended by that certain First Amendment to Sublease of Land and Tower Space Lease dated September 30, 2009, whereby Lessor leased to Lessee certain Tower Premises, therein described, that are a portion of the Real Property located at Tract "D", Near Island, Plat Number 92-10, Kodiak Recording District, Third Judicial District, State of Alaska 99615 (collectively the "**Lease**"); and

WHEREAS, Lessor and Lessee desire to amend the Lease to increase the size of the Tower Premises and

WHEREAS, Lessor and Lessee desire to adjust the payment in conjunction with the modifications to the Lease contained herein; and

WHEREAS, Lessor and Lessee desire to amend the Lease to modify the notice section thereof; and

WHEREAS, Lessor and Lessee, in their mutual interest, wish to amend the Lease as set forth below accordingly.

NOW THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Lessor and Lessee agree as follows:

1. **Tower Premises.** Lessor agrees to increase the size of the Tower Premises to accommodate Lessee's needs. Upon execution of this Amendment, Lessor leases to Lessee the Tower Premises as more completely described on attached Exhibit C-1. Lessor's execution of this Amendment will signify Lessor's approval of Exhibit C-1. Exhibit C-1 hereby replaces Exhibit C, to the Lease.

2. **Rent.** Commencing upon the earlier of construction start or June, 1 2018, the payment shall be increased by Two Hundred Fifty and No/100 Dollars (\$250.00) per month, subject to further adjustments as provided in the Lease.

3. **Notices.** Section 13 of the Lease is hereby deleted in its entirety and replaced with the following:

(A) All notices, requests, demands and communications hereunder will be given by first class certified or registered mail, return receipt requested, or by a nationally recognized overnight courier, postage prepaid, to be effective when properly sent and received, refused or returned undelivered. Notices will be addressed to the parties as follows.

If to LESSOR: Dennis Bookey  
Vice President  
Kodiak Island  
Broadcasting  
P.O. Box 708  
Kodiak, AK 99615  
\_\_\_\_\_  
\_\_\_\_\_

If to LESSEE: New Cingular Wireless PCS, LLC  
Attn: Network Real Estate Administration  
Re: Cell Site # AN2425  
  
Cell Site Name: Near Island (AK)  
Fixed Asset #: 10125247  
575 Morosgo Drive  
Atlanta, GA 30324

With copy to: New Cingular Wireless PCS, LLC  
Attn: Legal Department - Network  
Re: Cell Site # AN2425  
Cell Site Name: Near Island (AK)  
Fixed Asset #: 10125247  
208 S. Akard Street  
Dallas, Texas 75202-4206

The copy sent to the Legal Department is an administrative step which alone does not constitute legal notice. Either party hereto may change the place for the giving of notice to it by thirty (30) days prior written notice to the other as provided herein.

B) In the event of a change of ownership, transfer or sale of the Tower Premises, within ten (10) days of such transfer, Lessor will send the below documents to Lessee. In the event Lessee does not receive such appropriate documents, Lessee shall not be responsible for any failure to pay the current Lessor:

- (i) Old deed to the Real Property
- (ii) New deed to Real Property
- (iii) Bill of Sale or Transfer
- (iv) Copy of current Tax Bill
- (v) New W-9

4. **Emergency 911 Service.** In the future, without the payment of any additional payment and at a location mutually acceptable to Lessor and Lessee, Lessor agrees that Lessee may add, modify and/or replace equipment in order to be in compliance with any current or future federal, state or local mandated application, including but not limited to emergency 911 communication services.

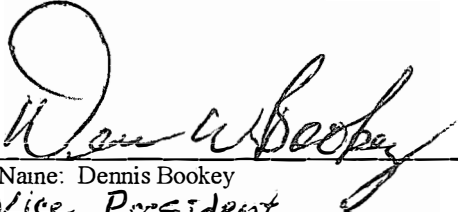
5. **Other Terms and Conditions Remain.** In the event of any inconsistencies between the Lease and this Amendment, the terms of this Amendment shall control. Except as expressly set forth in this Amendment, the Lease otherwise is unmodified and remains in full force and effect. Each reference in the Lease to itself shall be deemed also to refer to this Amendment.

6. **Capitalized Terms.** All capitalized terms used but not defined herein shall have the same meanings as defined in the Lease.

**IN WITNESS WHEREOF**, the parties have caused this Amendment to be effective as of the last date written below.

**LESSOR:**

Kodiak Island Broadcasting, Inc,  
an Alaskan corporation

By:   
Print Name: Dennis Bookey  
Its: Vice President  
Date:

**LESSEE:**

New Cingular Wireless PCS, LLC,

a Delaware limited liability company

By: AT&T Mobility Corporation  
Its: Manager


By:   
Print Name: WAYNE WOOTEN  
Its: DIRECTOR  
Date: 5-25-17

EXHIBIT C-1

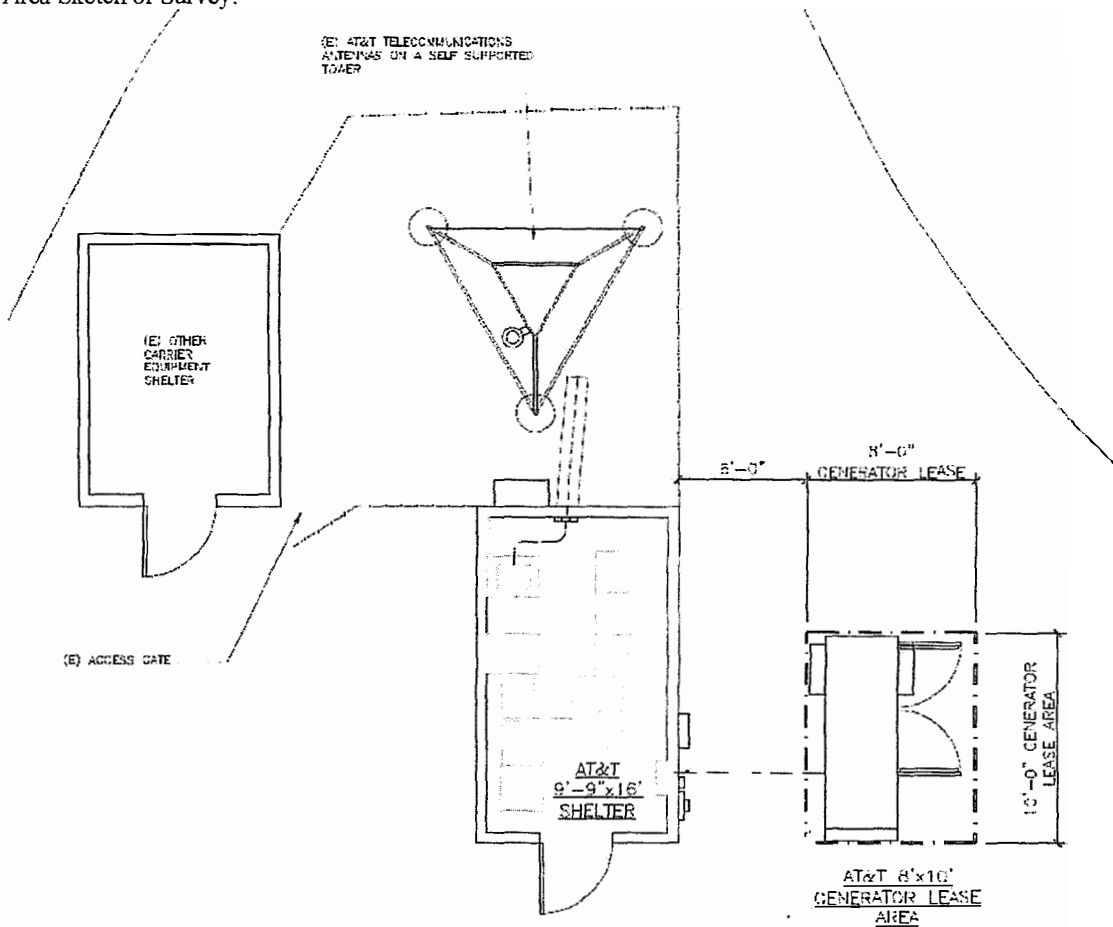
DESCRIPTION OF TOWER PREMISES

Page 1 of 1

to the Second Amendment to Sublease of Land and Tower Space Lease dated 5/25/, 2017, by and between Kodiak Island Broadcasting, Inc., as Lessor, and New Cingular Wireless PCS, LLC, as Lessee.

The Tower Premises are described and/or depicted as follows:

Lease Area Sketch or Survey:



Notes:

1. This Exhibit may be replaced by a land survey and/or construction drawings of the Tower Premises once received by Lessee.
2. Any setback of the Tower Premises from the Property's boundaries shall be the distance required by the applicable governmental authorities.
3. Width of access road shall be the width required by the applicable governmental authorities, including police and fire departments.
4. The type, number and mounting positions and locations of antennas and transmission lines are illustrative only. Actual types, numbers and mounting positions may vary from what is shown above.

3-2010 Amendment

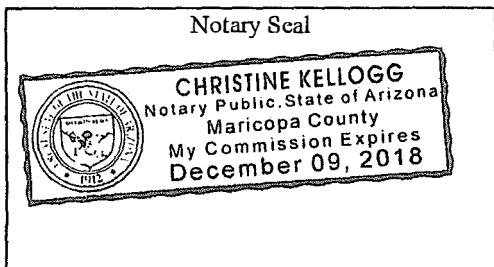
FOR LESSOR SIGNATURES IN ARIZONA

**REPRESENTATIVE CAPACITY:**

STATE OF ARIZONA            )  
  )     SS.  
COUNTY OF MARICOPA    )

I certify that I know or have satisfactory evidence that Dennis Burke is the person who appeared before me, and said person acknowledged that said person signed this instrument, on oath stated that said person was authorized to execute the instrument and acknowledged it as the Vice President of Kohak Island Broadcasting to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: 4/26/11

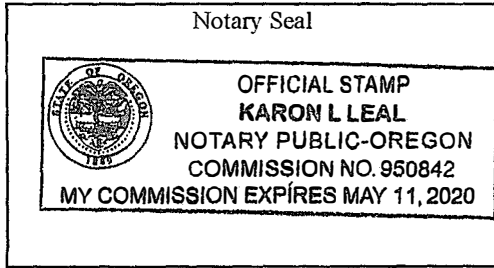


Christine Kellogg  
(Signature of Notary)  
Christine Kellogg  
(Legibly Print or Stamp Name of Notary)  
Notary Public in and for the State of Arizona  
My appointment expires: 12/09/13

FOR LESSEE SIGNATURES IN OREGON STATE

STATE OF OREGON                    )  
  ) SS.  
COUNTY OF WASHINGTON)

This instrument was acknowledged before me on MAY 05, 2017 by  
WAYNE WOOSTEN as DIRECTOR of AT&T Mobility Corporation.



K Leal  
(Signature of Notary)  
KARON L LEAL  
(Legibly Print or Stamp Name of Notary)  
Notary Public in and for the State of Oregon  
My Commission expires: 5-11-2020

**CITY OF KODIAK  
ORDINANCE NUMBER 1343**

**AN ORDINANCE OF THE COUNCIL OF THE CITY OF KODIAK AUTHORIZING A LEASE OF A COMMUNICATION SITE ON AN UNSUBDIVIDED PORTION OF U.S. SURVEY 4947 ON NEAR ISLAND TO KODIAK ISLAND BROADCASTING CO., INC.**

WHEREAS, the City owns property on Near Island that it has leased to Kodiak Island Broadcasting Co., Inc. as a communication site since before 2000; and

WHEREAS, Kodiak Island Broadcasting Co., Inc. desires to continue leasing the communications site, and has requested that the City Council authorize the Near Island Communications Site Lease (“Lease”) that now is before this meeting, and it is in the best interest of the City that the Lease be authorized; and

WHEREAS, the City intends to continue to exercise its right to access to the communications tower permitted under Section 4 of the Lease; and

WHEREAS, the sublease to New Cingular Wireless PCS, LLC identified in Section 13 of the Lease will be approved at no cost, based on New Cingular Wireless PCS, LLC’s permission for the City to install communications equipment in its building on the Lease site; and

WHEREAS, the approval of subleases does not release Kodiak Island Broadcasting from any of its obligations under its Lease with the City; the sublessees agree to comply with all the terms of the City’s Lease with Kodiak Island Broadcasting regarding the use of the premises, insurance and environmental requirements; and the insurance provided by Kodiak Island Broadcasting must cover the activities of the sublessees.

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

**Section 1:** Notwithstanding anything to the contrary in Kodiak City Code Chapter 18.20, the Council of the City of Kodiak hereby authorizes the Lease with Kodiak Island Broadcasting Co., Inc., for a term commencing April 1, 2016, and ending March 31, 2021, with an option for the Lessee to renew the Lease for an additional five (5) years upon the written request of the Lessee with all the terms and conditions of the 2016 Lease applying to the additional terms of the communications site described in the Lease, located on an unsubdivided portion of U.S. Survey 4947 on Near Island in the City of Kodiak.

**Section 2:** The form and content of the Lease between the City and Kodiak Island Broadcasting Co., Inc. hereby are in all respects authorized, approved and confirmed, and the City Manager hereby is authorized, empowered and directed to execute and deliver the Lease to Kodiak Island Broadcasting Co., Inc. 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 Lease as executed.

**Section 3:** The Lease authorized by this ordinance is subject to the requirements of City Charter Section V-17. Therefore, if one or more referendum petitions with signatures are properly filed within one month after the passage and publication of this ordinance, this ordinance shall not go into effect until the petition or petitions are finally found to be illegal and/or insufficient, or, if any such petition is found legal and sufficient, until the ordinance is approved at an election by a majority of the qualified voters voting on the question. If no referendum petition with signatures is filed, this ordinance shall go into effect one month after its passage and publication.



CITY OF KODIAK

MAYOR

ATTEST:

CITY CLERK

First Reading: February 11, 2016


Second Reading: February 25, 2016

Effective Date: April 2, 2016

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## MEMORANDUM TO COUNCIL

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**To:** Mayor and City Councilmembers  
**From:** Mike Tvenge, City Manager   
**Thru:** Craig Walton, Public Works Director  
**Date:** November 14, 2019

**Agenda Item:** V. d. Authorization to Award a Vehicle Purchase for a 1 ½ Ton Chassis Cab for Public Works Department to Kodiak Motors

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**SUMMARY:** The Public Works Department budgeted for four vehicles in fiscal year 2020. We have received three of the vehicles already and we were not able to bid for the fourth one at that time as this vehicle was not available at the dealer. Once this vehicle became available, the City advertised for bids. Staff recommends the 1 ½ ton chassis cab for Public Works Department be awarded to Kodiak Motors as the qualifying bidder in Bid No. 2020-003.

**PREVIOUS COUNCIL ACTION:** On February 11, 2010, a special City Council work session was held to discuss vehicle replacement processes. It was determined that a committee including Councilmember Walters, Councilmember Whiddon, and several City Staff would meet to discuss and formulate a vehicle replacement policy for the City departments.

**BACKGROUND:** Approximately 10 to 15 years ago, the City created a vehicle and equipment replacement process. The process was based on research that created an estimated life of service before a vehicle or piece of heavy equipment would need replacing. The idea was to create a system that kept equipment or vehicles from becoming extremely expensive to keep operating. At the same time, prevent having a fleet of equipment all needing replacement at the same time. As a piece of equipment or vehicle approaches its scheduled replacement it is evaluated by the City Public Works mechanics to determine if we should recommend replacing or extend its time in service.

**DISCUSSION:** The Public Works Shop does mechanical evaluations on all City vehicles and equipment up for replacement. By using a mechanical and structural evaluation process each piece is evaluated first for safety issues and second for significant mechanical issues requiring major investment in repairs. We then weigh the estimated repair or component replacement cost against the potential additional years of service. In our environment, structural deterioration of the frames on smaller vehicles typically determine the remaining time in service. As each vehicle or piece of heavy equipment is evaluated we also weigh the risk of extending the time in service. We evaluate the equipment and vehicles prior to the department preparing their budgets. This means that most vehicles or equipment would be evaluated by April for the following year's budget preparation. If a piece of equipment or vehicle is extended one year, that piece

typically remains in service for 18 months to two years before we actually replace it. We have modified our bid specs to accept current year models in an effort to save cost and improve delivery times.

**ALTERNATIVES:**

- 1) Award the bid to the sole responsible bidder in the amount of \$40,465 for the vehicle.
- 2) Reject the bid and not purchase the new vehicle. This is not recommended, because the mechanical evaluations of this vehicle has identified numerous mechanical and structural issues.

**FINANCIAL IMPLICATIONS:** The funding for replacing the vehicles was approved in the FY2020 budget. One pickup was funded in the Public Works Department-Streets, machinery and equipment greater than \$5,000 account.

**LEGAL:** KCC 3.12 was followed in this vehicle procurement.

**STAFF RECOMMENDATION:** Staff reviewed the bid submitted for Bid #2020-003 and recommends vehicle bid # 2020-003 be awarded to Kodiak Motors in the amount of \$40,465 for a 1 1/2 Ton Chassis cab.

**CITY MANAGER'S COMMENTS:** I support the purchase of this vehicle for use by the Public Works Department.

**NOTES/ATTACHMENTS:**

Attachment A: Submitted Bid from Kodiak Motors

**PROPOSED MOTION:**

Move to authorize the award for the purchase of a 1 ½ Ton Chassis Cab in an amount not to exceed \$40,465 with funds coming from the Public Works-Streets, Machinery and Equipment greater than >\$5,000 account to Kodiak Motors and authorize the City Manager to execute documents on behalf of the City.

# BID FORM

TO: Mike Tvenge, City Manager  
 City of Kodiak  
 710 Mill Bay Road, Room #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. 2020-003 dated September 25, 2019, the undersigned hereby proposes to provide the following:

One (1), 2020, 1 ½ Ton Regular Chassis Cab 4x4 DRW Truck.

Bid amount  
\$40,465

The City requires that all shall be standard factory equipped with the bid specifications.

(Turn in pages 2 and 5 as part of your bid)

Bid price valid for 30 days.

Submitted by: \_\_\_\_\_ Dated: 10/25/19

[Signature] \_\_\_\_\_ Kodiak Motors, Inc.  
 Signature Business Name

President \_\_\_\_\_ 201 Center Ave  
 Title Address

907-486-3204 \_\_\_\_\_ Kodiak, AK 99615  
 Telephone City, State, Zip

Invitation to Bid No. 2020-003

September 25, 2019



# KODIAK MOTORS, INC.

201 CENTER STREET  
KODIAK, ALASKA 99615  
TEL (907) 486-3204  
~~FAX (907) 486-3204~~

City of Kodiak  
Box 1397  
Kodiak, Ak 99615

Bid #2020-003

The following exceptions to the vehicle bid:

1. NO OEM Trailer Hitch Package is available. A Trailer Tow package is available but no hitch.
2. Upfitter Switches are not available. Upfitter Interface Module is available.
3. Rear View Camera Prep Kit (Loose Camer and Wiring Bundle) is available as an option. Camera is not standard.

Thank you,

A handwritten signature in dark ink, appearing to read "Debora Refior", is written over a faint, circular stamp or watermark.

Debora Refior

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## MEMORANDUM TO COUNCIL

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**To:** Mayor Branson and City Councilmembers

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

**Date:** November 14, 2019 <sup>TK</sup>

**Agenda Item:** V. e. Non-objection to Transfer of Location of El Chicano Inc. Liquor License 3299

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**SUMMARY:** El Chicano Inc. filed an application for the transfer of location licenses with the State of Alaska Alcoholic & Marijuana Control Office for their alcohol liquor license 3299. The new address will be 402 Marine Way Suite 100; the previous address was 103 Center Ave. State regulations require the Alcohol & Marijuana Control Office forward the applications to the City Council for the option to protest the approval of the applications for the transfer of the alcoholic beverage license location.

**DISCUSSION:** State regulations outlined in AS 04.11.520 and AS 04.11.480 require that an application for transfer license designation must be sent to a governing body having jurisdiction over the area in which the licensed premises exist; therefore, the Alcohol & Marijuana Control Office forwarded the application to the City Clerk for Council review. City staff was consulted and found no issues with nonpayment of taxes, criminal activity, fire code violations or any other valid reason for the City to file a protest of the transfer of the alcoholic beverage license applications.

**ALTERNATIVES:** Council may voice no objection to transfer the alcoholic beverage license or Council may protest the application pursuant to AS 04.11.480 by furnishing the board and applicant with clear and concise written reasons for the protest.

**LEGAL:** State regulations defined under AS 04.11.520 and AS 04.11.480 require that a local governing body receive notification of the transfer of license and they be offered the option to protest the approval of applications.

**ATTACHMENTS:**

- Attachment A: Notification Letter from AMCO
- Attachment B: Form AB-01 Transfer Application
- Attachment C: Premises Diagram

**PROPOSED MOTION:**

Move to voice non-objection to the Alcohol & Marijuana Control Office regarding the Transfer of Location El Chicano Inc. Liquor Licenses 3299.



THE STATE  
of **ALASKA**  
GOVERNOR MICHAEL J. DUNLEAVY

Department of Commerce, Community,  
and Economic Development

ALCOHOL & MARIJUANA CONTROL OFFICE  
550 West 7<sup>th</sup> Avenue, Suite 1600  
Anchorage, AK 99501  
Main: 907.269.0350

October 21, 2019

City of Kodiak

Attn: Nova Javier

VIA Email: [njavier@city.kodiak.ak.us](mailto:njavier@city.kodiak.ak.us)

[clerks@city.kodiak.ak.us](mailto:clerks@city.kodiak.ak.us)

[twelinsky@kodiakak.us](mailto:twelinsky@kodiakak.us)

[clerks@kodiakak.us](mailto:clerks@kodiakak.us)

<b>License Type:</b>	Beverage Dispensary	<b>License Number:</b>	3299
<b>Licensee:</b>	El Chicano Inc.		
<b>Doing Business As:</b>	El Chicano Mexican Restaurant		
<b>Premises Address:</b>	402 Marine Way, Suite 100		

**New Application**

**Transfer of Location Application**

**Transfer of Ownership Application**

**Transfer of Controlling Interest Application**

We have received a completed application for the above listed license (see attached application documents) within your jurisdiction. This is the notice required under AS 04.11.480.

A local governing body may protest the approval of an application(s) pursuant to AS 04.11.480 by furnishing the director **and** the applicant with a clear and concise written statement of reasons for the protest within 60 days of receipt of this notice, and by allowing the applicant a reasonable opportunity to defend the application before a meeting of the local governing body, as required by 3 AAC 304.145(d). If a protest is filed, the board will deny the application unless the board finds that the protest is arbitrary, capricious, and unreasonable. To protest the application referenced above, please submit your protest within 60 days and show proof of service upon the applicant.

AS 04.11.491 – AS 04.11.509 provide that the board will deny a license application if the board finds that the license is prohibited under as a result of an election conducted under AS 04.11.507.

AS 04.11.420 provides that the board will not issue a license when a local governing body protests an application on the grounds that the applicant's proposed licensed premises are located in a place within the local government where a local zoning ordinance prohibits the alcohol establishment, unless the local government has approved a variance from the local ordinance.

Sincerely,

*Erika McConnell*

Erika McConnell, Director

[amco.localgovernmentonly@alaska.gov](mailto:amco.localgovernmentonly@alaska.gov)



Alaska Alcoholic Beverage Control Board

## Form AB-01: Transfer License Application

Alcohol and Marijuana Control Office

550 W 7<sup>th</sup> Avenue, Suite 1600

Anchorage, AK 99501

alcohol.licensing@alaska.gov

<https://www.commerce.alaska.gov/web/amco>

Phone: 907.269.0350

### What is this form?

This transfer license application form is required for all individuals or entities seeking to apply for the transfer of ownership and/or location of an existing liquor license. Applicants should review **Title 04 of Alaska Statutes** and **Chapter 304 of the Alaska Administrative Code**. All fields of this form must be completed, per AS 04.11.260, AS 04.11.280, AS 04.11.290, and 3 AAC 304.105.

This form must be completed and submitted to AMCO's main office, along with all other required forms and documents, before any license application will be considered complete.

### Section 1 – Transferor Information

Enter information for the **current** licensee and licensed establishment.

Licensee:	El Chicano Inc		License #:	3299	
License Type:	Beverage Dispensary		Statutory Reference:	04.11.070	
Doing Business As:	El Chicano Mexican Restaurant				
Premises Address:	103 Center Ave				
City:	Kodiak	State:	AK	ZIP:	99615
Local Governing Body:	City of Kodiak				

#### Transfer Type:

- Regular transfer
- Transfer with security interest
- Involuntary retransfer

OFFICE USE ONLY			
Complete Date:	10/21/19	Transaction #:	1087240, 1147955
Board Meeting Date:	11/12/19	License Years:	19/20
Issue Date:		BRE:	CDC





Alaska Alcoholic Beverage Control Board

**Form AB-01: Transfer License Application**

**Section 2 – Transferee Information**

Enter information for the **new** applicant and/or location seeking to be licensed.

Licensee:	EL Chicano LLC		
Doing Business As:	EL Chicano Mexican Restaurant		
Premises Address:	402 Marine Way Suite 100		
City:	Kodiak	State:	AK ZIP: 99615
Community Council:			

Mailing Address:	103 Center Ave		
City:	Kodiak	State:	AK ZIP: 99615

Designated Licensee:	Filomeno G BRAVO		
Contact Phone:	907-942-0680	Business Phone:	907-486-3334
Contact Email:	EL Chicano AK@hotmail.com		

Seasonal License?  Yes  No  If "Yes", write your six-month operating period: \_\_\_\_\_

**Section 3 – Premises Information**

Premises to be licensed is:

an existing facility  a new building  a proposed building

The next two questions must be completed by beverage dispensary (including tourism) and package store applicants only:

What is the distance of the shortest pedestrian route from the public entrance of the building of your proposed premises to the outer boundaries of the nearest school grounds? Include the unit of measurement in your answer.

1/2 MILE

What is the distance of the shortest pedestrian route from the public entrance of the building of your proposed premises to the public entrance of the nearest church building? Include the unit of measurement in your answer.

1/4 MILE



Alaska Alcoholic Beverage Control Board  
**Form AB-01: Transfer License Application**

**Section 4 – Sole Proprietor Ownership Information**

This section must be completed by any sole proprietor who is applying for a license. Entities should skip to Section 5. If more space is needed, please attach a separate sheet with the required information. The following information must be completed for each licensee and each affiliate (spouse).

This individual is an:  applicant  affiliate

Name:				
Address:				
City:		State:		ZIP:

This individual is an:  applicant  affiliate

Name:				
Address:				
City:		State:		ZIP:

**Section 5 – Entity Ownership Information**

This section must be completed by any entity, including a corporation, limited liability company (LLC), partnership, or limited partnership, that is applying for a license. Sole proprietors should skip to Section 6. If more space is needed, please attach a separate sheet with the required information.

- If the applicant is a corporation, the following information must be completed for each *stockholder who owns 10% or more* of the stock in the corporation, and for each *president, vice-president, secretary, and managing officer*.
- If the applicant is a limited liability organization, the following information must be completed for each *member with an ownership interest of 10% or more*, and for each *manager*.
- If the applicant is a partnership, including a limited partnership, the following information must be completed for each *partner with an interest of 10% or more*, and for each *general partner*.

Entity Official:	Filomena Q BRAVO			
Title(s):	President	Phone:	907.942.0680	% Owned: 50%
Address:	103 Center Ave			
City:	Kodiak	State:	AK	ZIP: 99615



Alaska Alcoholic Beverage Control Board

**Form AB-01: Transfer License Application**

Entity Official:	ANA M BRAVO				
Title(s):	SECRETARY	Phone:	907-942-0262	% Owned:	52%
Address:	103 CENTER AVE				
City:	KODIAK	State:	AK	ZIP:	99615

Entity Official:					
Title(s):		Phone:		% Owned:	
Address:					
City:		State:		ZIP:	

Entity Official:					
Title(s):		Phone:		% Owned:	
Address:					
City:		State:		ZIP:	

This subsection must be completed by any applicant that is a corporation or LLC. Corporations and LLCs are required to be in good standing with the Alaska Division of Corporations (DOC) and have a registered agent who is an individual resident of the state of Alaska.

DOC Entity #:	59239D	AK Formed Date:	6-10-1982	Home State:	AK
Registered Agent:	FILomeno Q BRAVO	Agent's Phone:	907-942-0680		
Agent's Mailing Address:	103 CENTER AVE				
City:	KODIAK	State:	AK	ZIP:	99615

Residency of Agent: Yes No

Is your corporation or LLC's registered agent an individual resident of the state of Alaska?



## Alaska Alcoholic Beverage Control Board Form AB-01: Transfer License Application

### Section 6 – Other Licenses

Ownership and financial interest in other alcoholic beverage businesses:

Yes No

Does any representative or owner named as a transferee in this application have any direct or indirect financial interest in any other alcoholic beverage business that does business in or is licensed in Alaska?

If "Yes", disclose which individual(s) has the financial interest, what the type of business is, and if licensed in Alaska, which license number(s) and license type(s):

### Section 7 – Authorization

Communication with AMCO staff:

Yes No

Does any person other than a licensee named in this application have authority to discuss this license with AMCO staff?

If "Yes", disclose the name of the individual and the reason for this authorization:



# Alaska Alcoholic Beverage Control Board Form AB-01: Transfer License Application

## Section 8 – Transferor Certifications

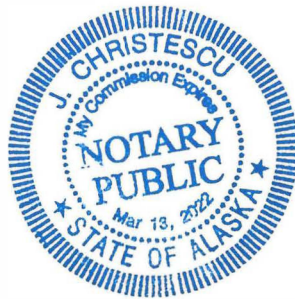
Additional copies of this page may be attached, as needed, for the controlling interest of the current licensee to be represented.

I declare under penalty of perjury that the undersigned represents a **controlling interest** of the current licensee. I additionally certify that I, as the current licensee (either the sole proprietor or the controlling interest of the currently licensed entity) have examined this application, approve of the transfer of this license, and find the information on this application to be true, correct, and complete.

[Signature]  
Signature of transferor

Ava M Bravo  
Printed name of transferor

Subscribed and sworn to before me this 2nd day of April, 2019.



[Signature]  
Signature of Notary Public

Notary Public in and for the State of Alaska

My commission expires: 03-13-22

\_\_\_\_\_  
Signature of transferor

\_\_\_\_\_  
Printed name of transferor

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
Signature of Notary Public

Notary Public in and for the State of \_\_\_\_\_

My commission expires: \_\_\_\_\_



Alcohol and Marijuana Control Office  
 550 W 7<sup>th</sup> Avenue, Suite 1600  
 Anchorage, AK 99501  
[alcohol.licensing@alaska.gov](mailto:alcohol.licensing@alaska.gov)  
<https://www.commerce.alaska.gov/web/amco>  
 Phone: 907.269.0350

Alaska Alcoholic Beverage Control Board

**Form AB-01: Transfer License Application**

**Section 8 – Transferor Certifications**

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Filomeno Q Bravo  
 Signature of transferor

Filomeno Q BRAVO  
 Printed name of transferor

Subscribed and sworn to before me this 25 day of September, 20 19.



J Christescu  
 Signature of Notary Public

Notary Public in and for the State of Alaska

My commission expires: 03-13-2022

\_\_\_\_\_  
 Signature of transferor

\_\_\_\_\_  
 Printed name of transferor

Subscribed and sworn to before me this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

\_\_\_\_\_  
 Signature of Notary Public

Notary Public in and for the State of \_\_\_\_\_.

My commission expires: \_\_\_\_\_.



# Alaska Alcoholic Beverage Control Board Form AB-01: Transfer License Application

## Section 9 – Transferee Certifications

Read each line below, and then sign your initials in the box to the right of each statement:

Initials

I certify that all proposed licensees (as defined in AS 04.11.260) and affiliates have been listed on this application.

AB

I certify that all proposed licensees have been listed with the Division of Corporations.

AB

I certify that I understand that providing a false statement on this form or any other form provided by AMCO is grounds for rejection or denial of this application or revocation of any license issued.

AB

I certify that all licensees, agents, and employees who sell or serve alcoholic beverages or check the identification of a patron will complete an approved alcohol server education course, if required by AS 04.21.025, and, while selling or serving alcoholic beverages, will carry or have available to show a current course card or a photocopy of the card certifying completion of approved alcohol server education course, if required by 3 AAC 304.465.

AB

I agree to provide all information required by the Alcoholic Beverage Control Board in support of this application.

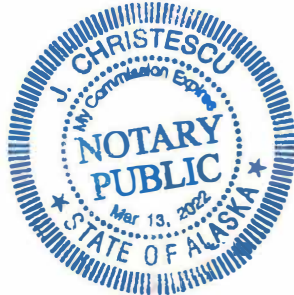
AB

As an applicant for a liquor license, I declare under penalty of perjury that I have read and am familiar with AS 04 and 3 AAC 304, and that this application, including all accompanying schedules and statements, is true, correct, and complete.

Signature of transferree

ANGIE BRAUN  
Printed name

Subscribed and sworn to before me this 2nd day of April, 2019.



Signature of Notary Public

Notary Public in and for the State of Alaska

My commission expires: 03-13-22

Alcohol and Marijuana Control Office  
 550 W 7<sup>th</sup> Avenue, Suite 1600  
 Anchorage, AK 99501  
[alcohol.licensing@alaska.gov](mailto:alcohol.licensing@alaska.gov)  
<https://www.commerce.alaska.gov/web/amco>  
 Phone: 907.269.0350



**Alaska Alcoholic Beverage Control Board**  
**Form AB-02: Premises Diagram**

**What is this form?**

A detailed diagram of the proposed licensed premises is required for all liquor license applications, per AS 04.11.260 and 3 AAC 304.185. Your diagram must include dimensions and must show all entrances and boundaries of the premises, walls, bars, fixtures, and areas of storage, service, consumption, and manufacturing. If your proposed premises is located within a building or building complex that contains multiple businesses and/or tenants, please provide an additional page that clearly shows the location of your proposed premises within the building or building complex, along with the addresses and/or suite numbers of the other businesses and/or tenants within the building or building complex.

The second page of this form is not required. Blueprints, CAD drawings, or other clearly drawn and marked diagrams may be submitted in lieu of the second page of this form. The first page must still be completed, attached to, and submitted with any supplemental diagrams. An AMCO employee may require you to complete the second page of this form if additional documentation for your premises diagram is needed.

This form must be completed and submitted to AMCO's main office before any license application will be considered complete.

Yes No

I have attached blueprints, CAD drawings, or other supporting documents in addition to, or in lieu of, the second page of this form.

**Section 1 – Establishment Information**

Enter information for the business seeking to be licensed, as identified on the license application.

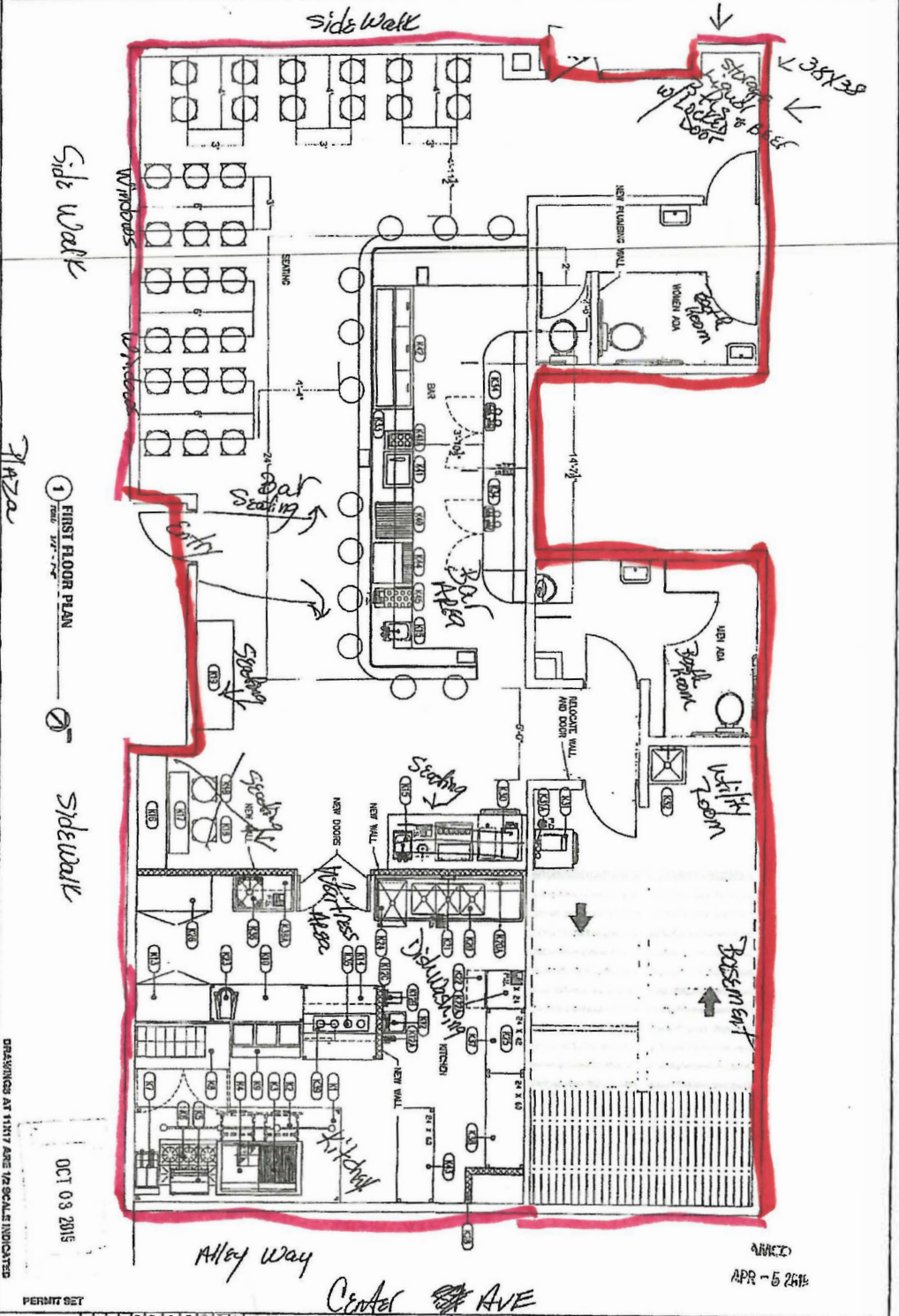
Licensee:	EL Chicano Inc		License Number:	3599	
License Type:	Beverage Dispensary				
Doing Business As:	EL Chicano Mexican Restaurant				
Premises Address:	402 MARINE WAY STE 100				
City:	Kodiak	State:	AK	ZIP:	99615





Marine Way

Feb 15, 2015 - 10:26am Drawing File: PROJECT-24 D 03:00 Kuba/Brady/Warby/Wrangel-SAL/UT/Thorby



1 FIRST FLOOR PLAN

Side Walk

DRAWINGS AT 1/8" = 1'-0" SCALE UNLESS INDICATED

OCT 03 2019

Alley Way

Center Ave

APR - 5 2019

PERMIT SET  
A1

NO.	DATE	BY	CHK	DESCRIPTION
1	10/3/2019	AS	AS	ISSUED FOR PERMIT SET

**EL CHICANO RESTAURANT**  
402 W. MARINE WAY  
KODIAK, ALASKA 99516

**RBA ENGINEERS, INC.**  
MECHANICAL & ELECTRICAL CONSULTANTS  
204 W. INTERNATIONAL AIRPORT ROAD, SUITE 200  
ANCHORAGE, ALASKA 99518  
Tel: (907) 226-2500  
www.rbaengineers.com  
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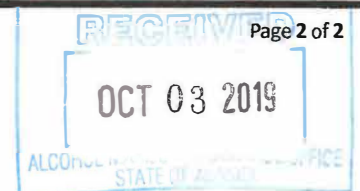




Alaska Alcoholic Beverage Control Board  
**Form AB-02: Premises Diagram**

**Section 2 – Detailed Premises Diagram**

Clearly indicate the boundaries of the premises and the proposed licensed area within that property. Clearly indicate the interior layout of any enclosed areas on the proposed premises. Clearly identify all entrances and exits, walls, bars, and fixtures, and outline in red the perimeter of the areas designated for alcohol storage, service, consumption, and manufacturing. Include dimensions, cross-streets, and points of reference in your drawing. You may attach blueprints or other detailed drawings that meet the requirements of this form.



Downstairs

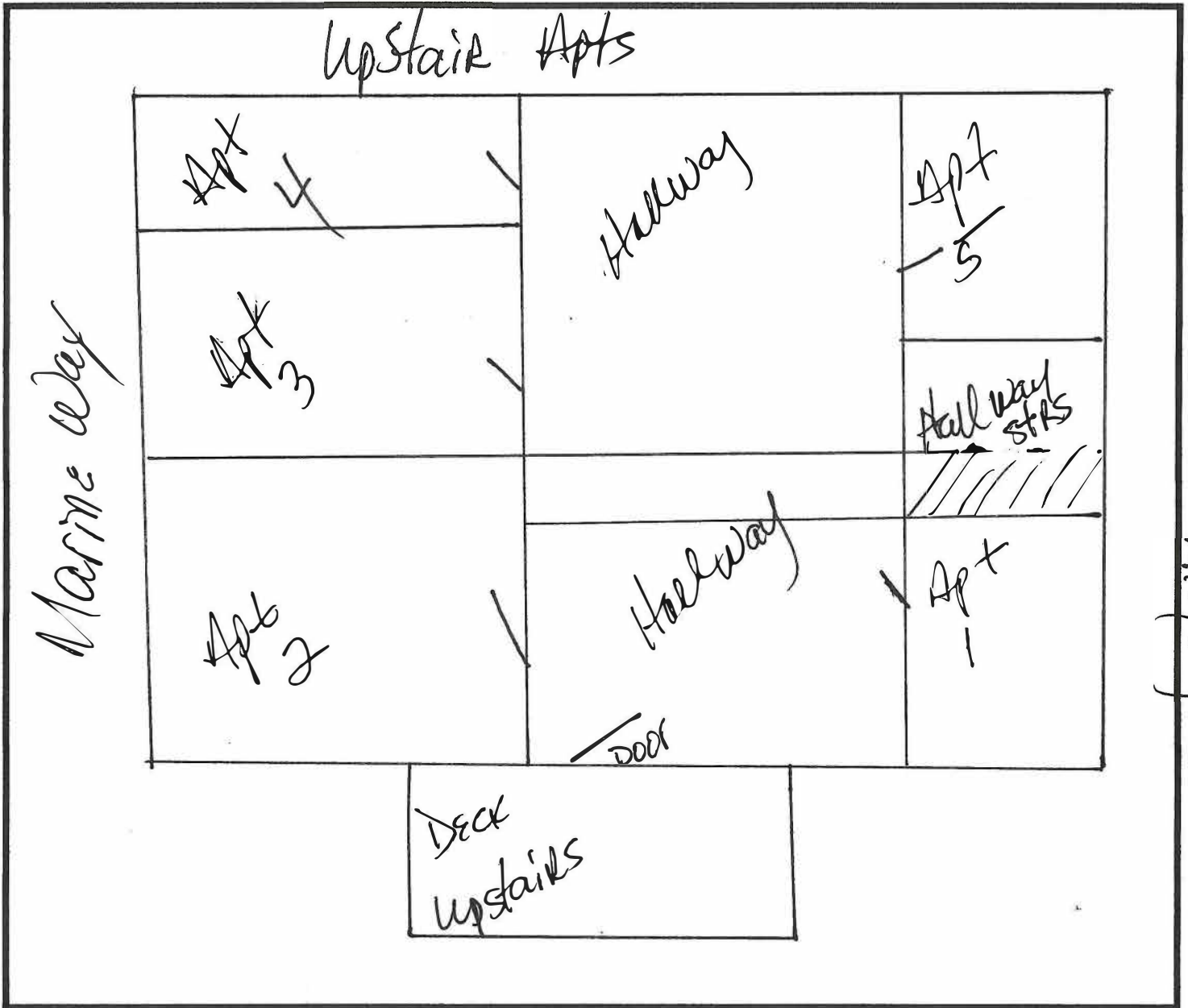




Alaska Alcoholic Beverage Control Board  
**Form AB-02: Premises Diagram**

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UPstairs

