

City of Kodiak Regular Council Meeting Agenda for February 27, 2020
7:30 p.m., at 710 Mill Bay Road, Assembly Chambers (Room 232)

- I. Call to Order/Roll Call**
Invocation/Pledge of Allegiance

- II. Previous Minutes**
Approval of Minutes of the February 13, 2020, Regular Council Meeting.....1

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

- IV. Unfinished Business**

- V. New Business**
 - a. First Reading, Ordinance No. 1393 Amending Chapter 3.08 Sales Tax Amending Title 3 And Chapter 3.08 Sales Tax To: 1) Adopt The Alaska Remote Sellers Sales Tax Code By Reference; 2) To Add And Amend Definitions In Section 3.08.270; 3) To Extend The Time For Filing A Final Return By 15 Days In Section 3.08.140(G); 4) To Eliminate The Registration Deposit In Section 3.08.080; 5) To Add A Late Filing Penalty Of Twenty Five Dollars To Section 3.08.170; And 6) To Provide For Extensions Of Time For Filing Returns, Repayment Plans, And Amended Returns8
 - b. First Reading, Ordinance No. 1394 Amending Title 5 Business Licenses and Regulations, Chapter 5.24 Marijuana Regulation by Repealing Section 5.24.040 Manufacture and Sale of Marijuana Edibles Prohibited60
 - c. Resolution No. 2020–10, Approving the City Council’s Budget Goals for FY202164
 - d. Authorization to Award a Light Rescue Vehicle Purchase for the City of Kodiak Fire Department to Braun Northwest72
 - e. Authorization of Payment to Highmark Marine Fabrication, LLC for the Operation of the Marine Travelift for the Kodiak Shipyard82
 - f. Authorization of a Professional Services Agreement with ECI Alaska Architecture for Design Work on Project #9018 Baranof Park Improvements92

- VI. Staff Reports**
 - a. City Manager
 - b. City Clerk

- VII. Mayor’s Comments**

- VIII. Council Comments**

- IX. Audience Comments** (limited to 3 minutes) (486-3231)

- X. Adjournment**

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DRAFT

**MINUTES OF THE REGULAR COUNCIL MEETING
OF THE CITY OF KODIAK
HELD THURSDAY, FEBRUARY 13, 2020
IN THE BOROUGH ASSEMBLY CHAMBERS**

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

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

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

II. PREVIOUS MINUTES

Councilmember Arboleda MOVED to approve the minutes of the January 23, 2020, 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

Lawrence Anderson thanked the Council for the park, he said the school is amazing, and he shared that he was proud to be born and raised in Kodiak. He began his quarterly report for the Senior Citizens of Kodiak, Inc. by providing a summary in which he shared statistics for the adult care services, meal delivery, handicap accessible rides from KATS, the general information that was provided to seniors, and respite care. He said home and community based services are very important to seniors.

IV. UNFINISHED BUSINESS

a. Second Reading and Public Hearing, Ordinance No. 1392, Authorization of a 25-Year Lease of Certain Real Property in Trident Basin to Redemption, Incorporated d/b/a Island Air Service

Deputy Mayor Whiddon read Ordinance No. 1392 by title. Island Air has leased two parcels of land at the Trident Basin Float Plane facility since the summer of 2011. In November 2019, the City received a request to expand the lease agreement in connection with its merger of operations with Andrew Airways, Inc. The proposed lease agreement includes two smaller parcels used for the placement of company aircraft fueling tanks. The larger parcels are used for the company's flight crew and customers. This ordinance will authorize the twenty-five year lease with Redemption Inc. d/b/a Island Air Service

Councilmember Bishop MOVED to adopt Ordinance No. 1392.

Eric Howard thanked Mike and Josie for their work on the lease and he also thanked the Council.

Deputy Mayor Whiddon closed the regular meeting for public testimony and reopened the meeting after the public testimony.

Councilmember Davidson asked clarifying questions about the rural traffic and servicing remote locations at Trident Basin. Mr. Howard clarified that the Trident Basin will primarily be used for those in remote locations that will be traveling by float plane.

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

V. NEW BUSINESS

a. **Resolution No. 2020–06, Adopting an Alternative Method for the FY2020 Shared Fisheries Business Tax Program and Certifying That This Allocation Method Fairly Represents the Distribution of Significant Effects of Fisheries Business Activity in Fisheries Management Area 13: Kodiak Area**

Deputy Mayor Whiddon read Resolution No. 2020–06 by title. The State of Alaska Shared Fisheries Business Tax Program was created in 1990 to help municipalities impacted by the effects of the rapidly expanding offshore fish processing industry. A previously existing fish tax sharing program (commonly referred to as the Raw Fish Tax Program), administered by the Department of Revenue, shares back to municipalities half of the state fisheries business tax collected from fish processors operating inside municipal boundaries. The Department’s program extends tax sharing to include a sharing of fish taxes collected outside of municipal boundaries, primarily from floating processors.

Resolution No. 2020–06 adopts an alternative allocation method and certifies the allocation method fairly represents the distribution of significant effects of Fisheries Business activity in Fishing Management Area (FMA) 13. This resolution adopts an alternative allocation from the long form, which was used in the past. The decision to use the short or alternative form is agreed upon by the Kodiak Island Borough, other Kodiak local governments, and the City each year by resolution.

Councilmember Bishop MOVED to adopt Resolution No. 2020–06.

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

b. **Resolution No. 2020–07, Appointing a Member to the Kodiak Fisheries Development Association**

Deputy Mayor Whiddon read Resolution No. 2020–07 by title. The City designated board seats on the Kodiak Fisheries Development Association (KFDA) are both vacant and the City Crab Processor Representative seat with a term to expire July 2022 has been vacant for a while. Mr.

John Whiddon submitted his application and staff recommends the Council approve his appointment to the board by adopting this resolution.

Councilmember Davidson MOVED to adopt Resolution No. 2020–07.

Councilmember Davidson stated this position has been vacant for a while; he said he appreciated Mr. Whiddon’s willingness to fill the vacancy.

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

c. Resolution No. 2020–08, Rescinding Resolution No. 2012–05 and Re-Establishing Standing and Special Rules of the Council

Deputy Mayor Whiddon read Resolution No. 2020–08 by title. In accordance with City Code, the most current edition of *Robert’s Rules of Order Newly Revised* (RRNR) is the Council’s parliamentary authority. RRNR permits special and standing rules be adopted via resolution. Special rules supersede rules in the parliamentary authority (RRNR), and standing rules relate to the details of administration of the Council. The Council reviewed its special and standing rules at the January 25, 2020 planning work session and voiced a consensus to amend Section 8, City of Kodiak Membership Organization by taking advantage of an affiliate membership to the National League of Cities (NLC) through the Alaska Municipal League (AML). Resolution No. 2020–08 includes the changes discussed at the January 25 planning work session, and staff recommends the Council adopt Resolution No. 2020–08.

Councilmember Haines MOVED to adopt Resolution No. 2020–08.

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

d. Approval of Vertical Bridge Sublease to Cellco Partnership, D/B/A Verizon Wireless

Vertical Bridge S3 Assets, LLC (Vertical Bridge) is the City’s current tenant at Pillar Mountain Communication Site #3 under a land lease agreement dated November 1, 2009. Vertical Bridge has requested consent to sublease approximately 80 square feet of ground space and a ten foot contiguous vertical envelope of space on Vertical Bridge’s tower to Cellco Partnership d/b/a Verizon Wireless.

Councilmember Walker MOVED to approve the Vertical Bridge sublease to Cellco Partnership, d/b/a/ Verizon Wireless and authorize the City Manager to execute 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. Acceptance of the FY 2019 Comprehensive Annual Financial Report and Audit

Each year, the City Council retains an independent accounting firm to perform an annual audit of the City's financial records and accounting practices. The City Charter and City Code require the Council to accept the comprehensive annual financial report. Council typically accepts the report and results of the audit by motion. Staff recommends Council approve the results of the financial statement audit for Fiscal Year 2019 in accordance with KCC 3.24.020 and accept the Fiscal Year 2019 Comprehensive Annual Financial Report.

Councilmember Haines MOVED to accept the City's Fiscal Year 2019 audited Comprehensive Annual Financial Report.

Councilmember Walker commended Kelly Mayes for her expertise.

Councilmember Haines commended the Finance staff.

Councilmember Whiddon stated Altman & Rogers said the City of Kodiak exceeds many municipalities reporting standards, and he complimented Finance Director Mayes.

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

e. Authorization of Payment to Golden Alaska Excavating, LLC for Equipment/Operator Cost Contracted Work at the Snow Dump

The City of Kodiak hired Golden Alaska Excavating LLC to mobilize and operate a loader and a dozer at the city's snow dump off Pillar Mountain road. Golden Alaska Excavating provided a loader, a dozer and an operator. They were instructed to stack snow as high as their equipment could reach as all of our equipment and personnel were very busy. The city does not own a dozer. The invoice received from Golden Alaska Excavating exceeded the manager's authority of \$35,000 and it is due and payable within thirty (30) calendar days of the effective date of January 16. I recommend Council approve this authorization of payment and direct the City Manager to issue payment.

Councilmember Walker MOVED to authorize the payment of the Equipment/Operator Cost Contracted Work at the snow dump to Golden Alaska Excavating, LLC in the amount of \$36,050 with funds coming from General Fund-Streets-Equipment Rental.

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 stated that the City has received, signed, and submitted the State of Alaska Loan Agreement No. 503031 for the WWTP Ultraviolet Effluent Disinfection Facility. He shared that this is a \$5,435,000 loan payable at 1.5 percent over 20 years. He said the project is required under a DEC Permit mandate and completion is required by June 2023. He said the project is to be advertised beginning next week.

Manager Tvenge said the City and Borough Tsunami Siren Request for Proposal (RFP) is also advertising next week with a mandatory pre-proposal meeting to be held in Kodiak on March 12, 2020 with the proposals due by March 27. He said they still have a lot of snow to remove from city streets. He urged citizens to help out the City's Public Works crews by moving vehicles, which will help get this snow off the streets before it creates a tight restriction for vehicle traffic and emergency vehicles.

b. City Clerk

City Clerk Javier informed the public that the City offices will be closed on February 17, 2020, in observance of President's Day. She shared the schedule of the next scheduled Council work session and regular meeting.

VII. MAYOR'S COMMENTS

The Deputy Mayor Whiddon stated Mayor Branson was absent.

VIII. COUNCIL COMMENTS

Councilmember Arboleda stated it is great to be back on the dais. She thanked everyone for the thoughtfulness of their warm wishes during the birth of her son.

Councilmember Walker thanked Public Works for the work keeping the City streets clear. He thanked the Manager for his work on the WWTP loan. He stated that he looks forward to the upgrades. He thanked all the City employees for their work.

Councilmember Davidson encouraged citizens to move their vehicles off the road for the Public Works crew to clear the roads. He thanked the Finance department staff for their work.

Councilmember Bishop said he appreciated discussion on Marijuana edibles at the work session.

Councilmember Haines said it is very important to advocate for the ferry services and encouraged citizens be involved. He shared that there are some narrow driving lanes and he encouraged citizens to watch for pedestrians.

Councilmember Whiddon said the USCG dinner was a fine event and it was well attended. He said he is really proud of the Finance department; and commented that it was world class performance. He said the City is well managed and stated there is a lot of work behind the scenes. He stated there is a high volume of work performed at Public Works, the Harbor, and Fire Departments' respond to a high level of call outs. He announced that the Mayor, Council members, and the manager will travel to Juneau for the AML Conference this month.

IX. AUDIENCE COMMENTS

None

X. EXECUTIVE SESSION

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

Councilmember Davidson 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.

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

Deputy Mayor Whiddon recessed the regular meeting at 8:06 p.m.

The meeting was called back to order at 8:32 p.m.

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

XI. ADJOURNMENT

Councilmember Davidson MOVED to adjourn the meeting.

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

The meeting adjourned at 8:33 p.m.

CITY OF ODIAK

MAYOR


ATTEST:

CITY CLERK

Minutes Approved:

NEW BUSINESS

MEMORANDUM TO COUNCIL

To: Mayor Branson and City Councilmembers
From: Mike Tvenge, City Manager 
Date: February 27, 2020

Agenda Item: V. a. First Reading, Ordinance No. 1393, Amending Chapter 3.08 Sales Tax Amending Title 3 And Chapter 3.08 Sales Tax To: 1) Adopt The Alaska Remote Sellers Sales Tax Code By Reference; 2) To Add And Amend Definitions In Section 3.08.270; 3) To Extend The Time For Filing A Final Return By 15 Days In Section 3.08.140(G); 4) To Eliminate The Registration Deposit In Section 3.08.080; 5) To Add A Late Filing Penalty Of Twenty Five Dollars To Section 3.08.170; And 6) To Provide For Extensions Of Time For Filing Returns, Repayment Plans, And Amended Returns

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.

On November 14, 2019, the Council adopted Resolution No. 2019-23 which authorized 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. Resolution No. 2019-23 also authorized the City Manager to enter into the Alaska Intergovernmental Remote Sellers Sales Tax Agreement and per Article V of the intergovernmental agreement, the next step for the City is to delegate the remote seller sales tax registration, exemption certification, collection, remittance, and audit authority to the "Commission" by ordinance or resolution. This ordinance meets the terms of the agreement which also require adoption of certain uniform provisions by reference for collection and remittance of municipal sales tax applicable to sales made by remote sellers.

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.
- On November 14, 2019, work session – Council adopted 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 (Finance Director) to the Commission
- January 7, 2020, work session – verbal update/discussed online sales tax code update
- February 11, 2020, work session – a status update was given by the manager on Alaska Remote Sales Commission. Manager advised Council that an ordinance is forthcoming.

ALTERNATIVES:

- 1) Pass Ordinance No. 1393 in the first reading and advanced it to public hearing.
- 2) Do not pass Ordinance No. 1393.

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. The City attorney drafted the ordinance and attachment B is a memo explaining the ordinance.

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.

ATTACHMENTS:

- Attachment A: Ordinance No. 1393
- Attachment B: Remote Sellers Sales Tax Memo from City Attorney
- Attachment C: Alaska Remote Sellers Sales Tax Code
- Attachment D: Alaska Intergovernmental Remote Sellers Sales Tax Agreement
- Attachment E: Resolution No. 2019-23

PROPOSED MOTION:

Move to pass Ordinance No. 1393 in first reading to advance to second reading and public hearing at the next regular or special Council meeting.

**CITY OF KODIAK
ORDINANCE NUMBER 1393**

AN ORDINANCE OF THE COUNCIL OF THE CITY OF KODIAK AMENDING TITLE 3 AND CHAPTER 3.08 SALES TAX TO: 1) ADOPT THE ALASKA REMOTE SELLERS SALES TAX CODE BY REFERENCE; 2) TO ADD AND AMEND DEFINITIONS IN SECTION 3.08.270; 3) TO EXTEND THE TIME FOR FILING A FINAL RETURN BY 15 DAYS IN SECTION 3.08.140(G); 4) TO ELIMINATE THE REGISTRATION DEPOSIT IN SECTION 3.08.080; 5) TO ADD A LATE FILING PENALTY OF TWENTY FIVE DOLLARS TO SECTION 3.08.170; AND 6) TO PROVIDE FOR EXTENSIONS OF TIME FOR FILING RETURNS, REPAYMENT PLANS, AND AMENDED RETURNS

WHEREAS, the inability to effectively collect sales tax on sales of property, products or services transferred or delivered into Alaska 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 income tax, and sales tax revenues are one of the primary sources of funding for services provided by local governments; and

WHEREAS, the failure to collect sales tax on remote sales creates market distortions by creating an unfair tax advantage for businesses that limit their physical presence in the taxing jurisdictions but still sell goods and services to consumers, which becomes easier and more prevalent as technology advances; and

WHEREAS, the failure to tax remote sales results in the creation of incentives for businesses to avoid a physical presence in the state and its respective communities, resulting in fewer jobs and increasing the share of taxes to those consumers who buy from competitors with a physical presence in the state and its cities; 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

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 as well as burdening local infrastructure and services; and

WHEREAS, delivery of goods and services into local municipalities rely on and burden local transportation systems, emergency and police services, waste disposal, utilities and other infrastructure and services; 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, due to a recent decision by the United States Supreme Court and the lack of a state sales tax it is appropriate for the municipalities to collectively amend their sales tax codes to account for remote sellers who do not have a physical presence either in the State of Alaska or in a specific taxing jurisdiction, but do have a taxable connection with the State of Alaska or taxing jurisdiction; and

WHEREAS, this ordinance is not retroactive in its application; and

WHEREAS, this ordinance provides a safe harbor to those who transact limited sales in Alaska; and

WHEREAS, amending local sales tax codes reflects the 2018 Supreme Court “Wayfair” decision to allow for the application of the taxing jurisdiction’s sales tax code requirements to sellers without a physical presence in the State of Alaska or taxing jurisdiction; and

WHEREAS, the intent is to levy municipal sales tax to the maximum limit of federal and state constitutional doctrines; and

WHEREAS, the City of Kodiak has entered into a cooperative agreement with other local governments called the Alaska Intergovernmental Remote Seller Sales Tax Agreement (“the Agreement”); and

WHEREAS, the terms of the Agreement require adoption of certain uniform provisions for collection and remittance of municipal sales tax applicable to sales made by remote sellers similar to the Streamlined Sales and Use Tax Agreement.

NOW, THEREFORE, BE IT ORDAINED by the Council of the city of Kodiak, Alaska that the following is enacted as follows:

Section 1: Amendment of Subsection 3.08.010(c). Section 3.08.010(c). of the City of Kodiak Code of Ordinances is hereby amended to read as follows: [new language is underlined, deleted language is overstruck]

(c) For the purposes of the tax levied by this section, a sale of tangible personal property is made within the city if:

(1) The sale is made by a business located within the city and delivery occurs within the city;

(2) The sale is made by a business located within the city, the order is received or solicited within the city or payment is received within the city, and delivery is made to a purchaser within the Kodiak Island Borough; or

(3) The sale is made by a business located outside of the city as a result of solicitation inside of the city and payment or delivery occurs within the city. Or

(4) The sale is made by a remote seller or marketplace facilitator required to register with the Commission and delivery occurs within the city.

Section 2: Amendment of Subsections 3.08.040(b) and 3.08.040(j). Sections 3.08.040(b) and 3.08.040 (j) of the City of Kodiak Code of Ordinances are hereby amended to read as follows: [new language is underlined, deleted language is overstruck]

(b) ~~Medical services performed by licensed medical doctors, dentists, osteopaths, optometrists, psychiatrists, psychologists, and chiropractors; sales of medicinal preparations and drugs prescribed by medical doctors; and hospital services;~~

(j) Funeral fees charges;

Section 3: Amendment of Subsections 3.08.080(a) and 3.08.080(b). Sections 3.08.080(a) and 3.08.080 (b) of the City of Kodiak Code of Ordinances are hereby amended to read as follows: [deleted language is overstruck]

(a) All persons engaged in selling or renting property or rendering services subject to the tax imposed by this chapter shall file an application for a certificate of registration not later than the date of commencing business in the city or opening a place of business within the city. ~~An application for a new business not previously registered to collect sales taxes shall be accompanied by a \$100.00 deposit, or, in the case of a person who does not maintain a permanent place of business within the city or who is not a local resident residing within the Kodiak Island Borough, a \$200.00 deposit which the registrant may recover by a deduction from the remittance submitted with the first quarterly return filed or, if that return is insufficient, the balance shall be refunded. If applicant has established credit with the city, the finance director may waive the required deposit.~~

(b) Upon receipt of a properly executed application, on a form provided by the city clerk, ~~accompanied by the required deposit,~~ the city clerk shall issue the applicant a certificate of registration, stating the address of the place of business to which it is applicable and authorizing such person to collect the sales tax. The certificate shall be prominently displayed at the place of business named on the certificate or, if there is no regular place of business, the certificate shall be attached to the stand, truck, or other merchandising or service device.

Section 4: Amendment of Subsection 3.08.140(g). Section 3.08.140(g) of the City of Kodiak Code of Ordinances are hereby amended to read as follows: [new language is underlined, deleted language is overstruck]

(g) A final sales tax return shall be filed and the tax due remitted within ~~15~~ 30 days after the date of selling or terminating a business. The purchaser of the business shall withhold a portion of the purchase money sufficient to pay any sales tax, penalties, and interest that may be due until

seller displays a receipt from the city evidencing total payment of the tax, interest, and penalties due. If the purchaser fails to withhold the required sum from the payment due to the seller, the purchaser shall also be liable for the taxes, penalties, and interest owed by the seller to the city.

Section 5: Amendment of Section 3.08.170. Section 3.08.170 of the City of Kodiak Code of Ordinances is hereby amended by adding new subsections (d) and (e) to read as follows:

(d) A late filing fee of twenty-five dollars (\$25) per quarter shall be added to all late-filed sales tax reports in addition to interest and penalties.

(e) A penalty assessed under this section for the delinquent remittance of sales tax or failure to file a sales tax return may be waived by the city manager, upon written application of the seller accompanied by a payment of all delinquent sales tax, interest and penalty otherwise owed by the seller, within forty-five (45) calendar days after the date of delinquency. A seller may not be granted more than one (1) waiver of penalty under this subsection in any one calendar year. The city manager shall report such waivers of penalty to the city council, in writing.

Section 6: Amendment of Chapter 3.08. Chapter 3.08 of the City of Kodiak Code of Ordinances is hereby amended by adding sections 3.08.160 , 3.08.162 and 3.08.165 to read as follows:

3.08.160. – Amended Returns

(a) A seller may file an amended sales tax return, with supporting documentation, and the Commission may accept the amended return, but only in the following circumstances:

- i. The amended return is filed within one (1) year of the original due date for the return; and
- ii. The seller provides a written justification for requesting approval of the amended return; and
- iii. The seller agrees to submit to an audit upon request of the Commission.

(b) The Commission shall notify the seller in writing (by email or otherwise) whether the Commission accepts or rejects an amended return, including the reasons for any rejection.

(c) The Commission may adjust a return for a seller if, after investigation, the Commission determines the figure included in the original returns are incorrect; and the Commission adjusts the return within two (2) years of the original due date for the return.

(d) A seller may file a supplemental sales tax return, with supporting documentation, and the Commission may accept the supplemental return, but only in the following circumstances:

- i. The seller provides a written justification for requesting approval of the supplemental return; and
- ii. The seller agrees to submit to an audit upon request of the Commission.

3.08.162 – Extension of Time to File Tax Return

Upon written application of a seller other than a seller, stating the reasons therefor, the city clerk may extend the time to file a sales tax return but only if the city clerk finds each of the following:

1. For reasons beyond the seller's control, the seller has been unable to maintain in a current condition the books and records that contain the information required to complete the return;
2. Such extension is a dire necessity for bookkeeping reasons and would avert undue hardship upon the seller;
3. The seller has a plan to cure the problem that caused the seller to apply for an extension and the seller agrees to proceed with diligence to cure the problem;
4. At the time of the application, the seller is not delinquent in filing any other sales tax return, in remitting sales tax or otherwise in violation of this chapter;
5. No such extension shall be made retroactively to cover existing delinquencies.

3.08.165 – Repayment Plans

- (a) The City may agree to enter into a repayment plan with a delinquent seller. No repayment plan shall be valid unless agreed to by both parties in writing.
- (b) A seller shall not be eligible to enter into a repayment plan with the City if the seller has defaulted on a repayment plan in the previous two (2) calendar years.
- (c) The repayment plan shall include a secured promissory note that substantially complies with the following terms:
 - i. The seller agrees to pay a minimum of ten percent (10%) down payment on the tax, interest and penalty amount due. The down payment shall be applied first to penalty, then to accumulated interest, and then to the tax owed.
 - ii. The seller agrees to pay the balance of the tax, penalty and interest owed in monthly installments over a period not to exceed two (2) years.
 - iii. Interest at a rate of fifteen percent (15%) per annum shall accrue on the principal sum due. Interest shall not apply to penalties owed or to interest accrued at the time the repayment plan is executed or accruing during the term of the repayment plan.
 - iv. If the seller is a corporation or a limited liability entity the seller agrees to provide a personal guarantee of the obligations under the repayment plan.
 - v. The seller agrees to pay all future tax bills in accordance with the provisions of this chapter.
 - vi. The seller agrees to provide a security interest in the form of a sales tax lien for the entire unpaid balance of the promissory note to be recorded by the City at the time the repayment plan is signed. The seller shall be responsible for the cost of recording the tax lien.
- (d) If a seller fails to pay two (2) or more payments as required by the repayment plan agreement, the seller shall be in default and the entire amount owed at the time of default shall become immediately due. The city clerk will send the seller a notice of default. The City may immediately foreclose on the sales tax lien or take any other remedy available under the law.

Section 7: Amendment of Subsection 3.08.280. Section 3.08.280 of the City of Kodiak Code of Ordinances are hereby amended to read as follows: [new language is underlined, deleted language is overstruck]

As used in this chapter and chapter 3.10 the following definitions shall apply:

Bargain purchase option. A “bargain purchase option” exists with respect to leased property when the lessee can buy the property some time during the term of the lease at an amount substantially less than its estimated fair value at the time the option is exercised. If there is reasonable assurance at the inception of the lease that the purchase option will be exercised, the option shall be considered a bargain purchase option.

“Buyer” or “purchaser” means a person to whom a sale of property or product is made or to whom a service is furnished. ~~who acquires an interest in real or personal property, or the right to use real or personal property, or who acquires services for consideration.~~

“Capital lease” means a lease which is in substance a purchase and wherein substantially all of the risks and benefits of ownership are assumed by a lessee. A lease which meets any one or more of the following criteria shall be considered a capital lease:

(1) The lease transfers ownership of the leased property to the lessee by the end of the lease term.

(2) The lease contains a bargain purchase option.

(3) The lease term is equal to 75 percent or more of the estimated economic life of the leased property. However, if the beginning of the lease term falls within the last 25 percent of the total estimated economic life of the leased property, including earlier years of use, this criterion shall not be used for purposes of classifying the lease.

(4) The present value at the beginning of the lease term of the minimum lease payments, excluding that portion of the payments representing executory costs, to be paid by the lessor, including any profit thereon, equals or exceeds 90 percent of the excess of the fair value of the leased property to the lessor at the inception of the lease over any related investment tax credit retained by the lessor and expected to be realized by the lessor. However, if the beginning of the lease term falls within the last 25 percent of the total estimated economic life of the leased property, including earlier years of use, this criterion shall not be used for purposes of classifying the lease.

“Charitable organization” means an organization having as its primary purpose relief of the poor and distressed or of the underprivileged.

“Food” means any food or food product for home consumption except alcoholic beverages, tobacco, and prepared food. Food or food products includes property, whether in liquid, concentrated, solid, frozen, dried, or dehydrated form, that are sold for ingestion or chewing by humans and are consumed for their taste or nutritional value.

“Funeral fees” means those services normally performed and merchandise normally provided by funeral establishments, including the sale of burial supplies and equipment, but excluding the sale by a cemetery of lands or interests therein, services incidental thereto, markers, memorials, monuments, equipment, crypts, niches, or vaults.

“Hotel-motel” means a structure or portion of a structure which is occupied or intended for occupancy by transients for dwelling, lodging, or sleeping purposes and includes any hotel, motel, inn, or similar structure.

“Insurance” means a contract whereby one undertakes to indemnify another or pay or provide a specified or determinable amount or benefit upon determinable contingencies.

“Legal holiday” means a holiday on which the city finance offices are closed to business, which holidays are enumerated in the city’s personnel rules and regulations.

“Marketplace facilitator” means a person that contracts with remote sellers to facilitate for consideration, regardless of whether deducted as fees from the transaction, the sale of the remote seller’s property or services 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 remote seller;
 - (ii) Owning or operating the infrastructure, electronic or physical, or technology that brings buyers and remote sellers together;
 - (iii) Providing a virtual currency that buyers are allowed or required to use to purchase products from the remote seller; or
 - (iv) Software development or research and development activities related to any of the activities described in (b) of this subsection (3), if such activities are directly related to a physical or electronic marketplace operated by the person or an affiliated person; and

(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.

“Medical services” means those professional services rendered by persons duly licensed under the laws of this state to practice medicine, surgery, chiropractic, podiatry, dentistry, and other professional services rendered by a licensed midwife, certified registered nurse practitioners, and psychiatric and mental health nurse clinical specialists, and appliances, drugs, medicines, supplies, and nursing care necessary in connection with the services, or the expense indemnity for the services, appliances, drugs, medicines, supplies, and care, as may be specified in any nonprofit medical service plan. “Medical services” include hospital services.

“Newspaper” means a publication of general circulation bearing a title, issued regularly at stated intervals at a minimum of not more than two weeks, and formed of printed paper sheets without substantial binding. It must be of general interest, containing information of current events. The word does not include publications devoted solely to a specialized field. It shall include school newspapers, regardless of the frequency of the publication, where such newspapers are distributed regularly to a paid subscription list.

“Nonprofit organization” means a business that has been granted tax-exempt status by the Internal Revenue Service (IRS); means an association, corporation, or other organization where no part of the net earnings of the organization inures to the benefit of any member, shareholder, or other individual, as certified by registration with the IRS.

“Periodical” means any bound publication other than a newspaper that appears at stated intervals, each issue of which contains news or information of general interest to the public, or to some particular organization or group of persons. Each issue must bear a relationship to prior or subsequent issues with respect to continuity of literary character or similarity of subject matter, and sufficiently similar in style and format to make it evident that it is one of a series.

“Remote seller” means a seller or marketplace facilitator making sales of goods or services delivered within the State of Alaska, without having a physical presence in a taxing jurisdiction, or conducting business between taxing jurisdictions, when sales are made by internet, mail order, phone or other remote means. A marketplace facilitator shall be considered the remote seller for each sale facilitated through its marketplace.

“Rental” means permitting the use or occupancy of real or personal property for consideration other than by means of a capital lease.

“Residential unit” means one or more rooms and a single kitchen in a dwelling designed as a unit for occupancy by not more than one family for living or sleeping purposes.

“Residential uses” means for use within a residential unit.

“Sale” or “Retail Sale” means any transfer of property for consideration for any purpose other than for resale or exchange of any property of every kind and description, or the right to use or occupy such property, for consideration.

“Sales or purchase price” or “charge” means the total amount of consideration, including cash, credit, property, products, and services, for which property, products, or services are sold, leased, or rented, valued in money, whether received in money or otherwise, without any deduction for the following:

- A. The seller’s cost of the property or product sold;
- B. The cost of materials used, labor or service cost, interest, losses, all costs of transportation to the seller, all taxes imposed on the seller, and any other expense of the seller;
- C. Charges by the seller for any services necessary to complete the sale, other than delivery and installation charges;

- D. Delivery charges;
- E. Installation charges; and
- F. Credit for any trade-in, as determined by state law.

~~consideration, whether money, credit, or other property or interest in property, without deduction for delivery costs, taxes, or any other expense. The receipt of property or an interest in property as consideration, the “sales price” or “charge” shall be based on the fair market value of the property or interest in property.~~

“Seller” means a person, making sales of property, products, or services, or a marketplace facilitator facilitating sales on behalf of a seller.

~~whether acting as a principal, agent, or broker, who sells, leases, or rents real or personal property or provides services to another for consideration.~~

“Services” means all services of every manner and description, which are performed or furnished for compensation, and delivered electronically or otherwise outside the taxing jurisdiction (but excluding any that are rendered physically within the taxing jurisdiction, including but not limited to:

- A. Professional services;
- B. Services in which a sale of property or product may be involved, including property or products made to order;
- C. Utilities and utility services not constituting a sale of property or products, including but not limited to sewer, water, solid waste collection or disposal, electrical, telephone services and repair, natural gas, cable or satellite television, and Internet services;
- D. The sale of transportation services;
- E. Services rendered for compensation by any person who furnishes any such services in the course of his trade, business, or occupation, including all services rendered for commission;
- F. Advertising, maintenance, recreation, amusement, and craftsman services.

“Transient” means a person who occupies or rents and has available for the person’s own occupancy or occupancy by any other person a suite, room, or rooms in a hotel-motel for fewer than 30 consecutive days. An employee who occupies or has available for fewer than 30 days a suite, room, or rooms rented or leased for more than 30 consecutive days by an employer for use on a rotating basis by employees is not a transient.

Section 8: Adoption by Reference of Alaska Remote Sellers Sales Tax Code. Title 3 of the City of Kodiak Code of Ordinances is hereby amended by adopting a new Chapter 3.10 to read as follows:

**Chapter 3.10
SALES MADE BY REMOTE SELLERS**

Sections

- 3.10.010 Scope**
- 3.10.020 Adoption of Alaska Remote Sellers Sales Tax Code**

- 3.10.030** **Delegation of Authority**
- 3.10.040** **Copies on file**
- 3.10.010** **Scope**

This chapter applies only to sales made by remote sellers as defined herein and in Section 3.08.280.

3.10.020 **Adoption of Alaska Remote Sellers Sales Tax Code**

The City adopts by reference the January 6, 2020 edition of all provisions of the Alaska Remote Sellers Sales Tax Code (including the definitional section and definitions included in section 3.08.280) and that portion of the Supplemental Definitions thereto not included in section 3.08.280.

3.10.030 **Delegation of Authority**

The City hereby delegates the authority to administer and collect tax on sales made by remote sellers to the Commission including remote seller sales tax registration, exemption certification, collection, remittance, and audit authority. This delegation of authority does not include administration of applications for certificates of exemption which shall be administered by the City as provided in sections 3.08.060 and 3.08.070.

3.10.040 **Copies on file**

(a) At least five copies of the Alaska Remote Sellers Sales Tax Code shall be made available for public inspection at least fifteen days prior to the public hearing for adoption of this Chapter at the time and place set out in the notice published for the hearing of the ordinance. Copies shall be available for public review at the following locations: one copy at the office of the city clerk; one copy at the city finance department; one copy at the city manager’s office; and, two copies at the city library. A person may request, and the city clerk shall provide, a copy of the code at no more than cost.

(b) After adoption, at least five copies of the Remote Sellers Sales Tax Code and the Supplemental Definitions adopted by reference in KCC 3.10.020 shall be kept at the finance department office. The finance director shall provide for sale of copies of all codes adopted pursuant to KCC 3.10.020 to those interested.

Section 9: Effective Date. This ordinance shall be effective one month after final passage and publication. No obligation to collect tax resulting from adoption of this ordinance shall be applied retroactively.

ENACTED THIS ___ DAY OF _____, 2020.

CITY OF KODIAK

MAYOR

ATTEST:

CITY CLERK

First Reading:
Second Reading:
Effective Date:

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MEMORANDUM

TO: Mike Tvenge
City Manager
City of Kodiak



FROM: Brooks W. Chandler
City Attorney

RE: Taxation of Internet Sales

DATE: February 14, 2020

This memorandum summarizes the draft of the sales tax ordinance which will fulfill Kodiak's obligation to adopt the Alaska Remote Seller Sales Tax Code. This obligation flows from the City Council authorizing Kodiak to become a member of the Alaska Remote Sellers Sales Tax Commission and sign the Alaska Intergovernmental Remote Sellers Sales Tax Agreement. Article V of that Agreement requires Kodiak to adopt "by reference or otherwise, the Remote Sellers Sales Tax Code ("the Code") in its entirety" within 120 days after the Commission adopts the Code. Article V of the Agreement also requires Kodiak to delegate "remote seller sales tax registration, exemption certification, collection, remittance, and audit authority to the Commission". This delegation will only apply to internet sales. The City will continue to administer Chapter 3.08.

The draft ordinance follows a modified version of adopting the Code "by reference". The Code included extensive definitions. Some of those definitions included words or phrases already defined in Chapter 3.08. Some of those definitions included words used in Chapter 3.08 but not currently defined in Section 3.08.280. Some Uniform Code definitions required

adjustment to existing exemptions. To ensure uniformity in application of definitions to on line and “brick and mortar” sellers these categories of definitions have been adopted by amending Section 3.08.280 (and by making this section applicable the new Chapter 3.10) and by changing wording used in existing exemptions to “match” the Uniform Code definitions. This is done in Sections 2 and 7 of the draft ordinance.

Not all definitions in the Code were applicable to Kodiak and many definitions are only relevant to internet/remote sellers. Definitions relevant only to remote sellers or not applicable to Kodiak are adopted by reference in the proposed section 3.10.020 with the exception of the fundamental definitions of “remote seller” and “marketplace facilitator” which are incorporated into existing section 3.08.280.

The alternative to the “adoption by reference” format is to set out all the provisions of the Code in the body of the proposed ordinance. We choose not to do this because the City will not be administering the Code and the merchants to which it applies will have easy access to the Code through the Commission. But if you prefer the provisions could easily be included in the draft ordinance.

The changes to Chapter 3.08 made in sections 1, 3, 4, 5 and 6 of the draft ordinance are recommended. The Intergovernmental Agreement does not require these changes to city code. The changes are recommended because we believe it is important for the City to treat local businesses and remote businesses equally. If remote sellers were treated more harshly than local sellers there is a possible basis to challenge applying the Code to remote sellers. Here are the changes.

Inclusion of remote sellers and marketplace facilitators in the scope of sales “made within the city” (Section 1). The Commission chose the point of delivery as the defining element of taxability.

Elimination of the \$100 and \$200 registration deposit. A similar deposit is not required for remote sellers. Local sellers should be treated identically and not required to make the deposit. Section 3.

Changing the due date for a final return after the sale of a business from 15 to 30 days. This matches the time allowed remote sellers to file a final return. So this change will result in sellers subject to Chapter 3.08 (local sellers) being treated the same as sellers subject to Chapter 3.10 (remote sellers). Section 4.

Section 5 implements the same late filing fee as appears in the Uniform Code and adds the possibility of waiving this penalty for a seller who is less than forty-five days late in remitting tax. Again this will result in local sellers being treated the same as remote sellers.

Section 6 adds provisions to Chapter 3.08 that were included in the Uniform Code. These pertain to repayment plans, amended returns and an extension of time for filing returns. It is simpler to duplicate these Uniform Code provisions in existing Chapter 3.08 than it is to amend the Uniform Code to make it apply to local sales as well as remote sales.

Adoption of codes by reference is allowed under state law subject to special procedures. AS 29.25.040 and authorized by KCC 2.04.060. Although the state law procedures do not apply to home rule municipalities they have been included to avoid disputes. At least five copies of the Code must be available to the public for a period of 15 days before the public hearing on the ordinance. The hearing notice must say where the public can review the Code. Compliance with these requirements has been included as proposed section 3.10.040. This section is modeled on KCC 14.04.020 enacted when Kodiak adopted uniform building codes.

The deadline for adoption of the Code is May 5, 2020. Let me know if there are any questions about the draft ordinance.

**ADDENDUM A
REMOTE SELLER SALES TAX CODE & COMMON DEFINITIONS**

WHEREAS, the inability to effectively collect sales tax on sales of property, products or services transferred or delivered into Alaska 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 income tax, and sales tax revenues are one of the primary sources of funding for services provided by local governments; and

WHEREAS, the failure to collect sales tax on remote sales creates market distortions by creating an unfair tax advantage for businesses that limit their physical presence in the taxing jurisdictions but still sell goods and services to consumers, which becomes easier and more prevalent as technology advances; and

WHEREAS, the failure to tax remote sales results in the creation of incentives for businesses to avoid a physical presence in the state and its respective communities, resulting in fewer jobs and increasing the share of taxes to those consumers who buy from competitors with a physical presence in the state and its cities; 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

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 as well as burdening local infrastructure and services; and

WHEREAS, delivery of goods and services into local municipalities rely on and burden local transportation systems, emergency and police services, waste disposal, utilities and other infrastructure and services; 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, due to a recent decision by the United States Supreme Court and the lack of a state sales tax it is appropriate for the municipalities to collectively amend their sales tax codes to account for remote sellers who do not have a physical presence either in the State of Alaska or in a specific taxing jurisdiction, but do have a taxable connection with the State of Alaska or taxing jurisdiction; and

WHEREAS, this ordinance is not retroactive in its application; and

WHEREAS, this ordinance provides a safe harbor to those who transact limited sales in Alaska; and

WHEREAS, amending local sales tax codes reflects the 2018 Supreme Court “*Wayfair*” decision to allow for the application of the taxing jurisdiction’s sales tax code requirements to sellers without a physical presence in the State of Alaska or taxing jurisdiction; and

WHEREAS, the intent is to levy municipal sales tax to the maximum limit of federal and state constitutional doctrines; and

WHEREAS, the [insert name of municipality] has entered into a cooperative agreement with other local governments called the Alaska Intergovernmental Remote Seller Sales Tax Agreement (“the Agreement”); and

WHEREAS, the terms of the Agreement require adoption of certain uniform provisions for collection and remittance of municipal sales tax applicable to sales made by remote sellers similar to the Streamlined Sales and Use Tax Agreement.

NOW, THEREFORE, it is enacted as follows:

Chapter __ of the [fill in name] Code of Ordinances is hereby amended by adopting a new Chapter __ to read as follows:

Sales Made by Remote Sellers: The Alaska Remote Sellers Sales Tax Code is an ordinance prepared by the Alaska Remote Seller Sales Tax Commission and hereby adopted by reference.

ALASKA REMOTE SELLER SALES TAX CODE

SECTION 010 – Interpretation

- A. In order to prevent evasion of the sales taxes and to aid in its administration, it is presumed that all sales and services by a person or entity engaging in business are subject to the sales tax.
- B. The application of the tax levied under this Code shall be broadly construed and shall favor inclusion rather than exclusion.
- C. Exemptions from the tax levied under this Code or from the taxing jurisdiction shall be narrowly construed against the claimant and allowed only when such exemption clearly falls within an exemption defined in this Code or the taxing jurisdiction's Code.
- D. The scope of this Code shall apply to remote sellers or marketplace facilitators, delivering products or services to Member municipalities adopting this Code, within the state of Alaska.

SECTION 020 – Title to Collected Sales Tax

Upon collection by the remote seller or marketplace facilitator, title to collected sales tax vests in the Commission for remittance to the taxing jurisdiction. The remote seller or marketplace facilitator remits collected sales tax to the Commission on behalf of the taxing jurisdiction, from whom that power is delegated, in trust for the taxing jurisdiction and is accountable to the Commission and taxing jurisdiction.

SECTION 030 – Imposition – Rate

- A. To the fullest extent permitted by law, a sales tax is levied and assessed on all remote sales where delivery is made within the local taxing jurisdiction(s) that is a Member, within the state of Alaska.
- B. The applicable tax shall be added to the sales price.
- C. The tax rate added to the sale price shall be the tax rate for the taxing jurisdiction(s) where the property or product is sold, or service that was rendered is received, and based on the date the property or product was sold or the date the service rendered was received.
- D. An Address and Tax Rate Database will be made available to remote sellers and marketplace facilitators, indicating the appropriate tax rate to be applied.
- E. The tax assessed shall be consistent with relevant jurisdictional tax caps, single unit sales, and exemptions.
- F. When a sale is made on an installment basis, the applicable sales tax shall be collected at each payment, calculated at the sales tax rate in effect, and with the cap applied, at the time of the original sale or the date the service is rendered, based on the local jurisdictions' Code(s).
- G. When a sales transaction involves placement of a single order with multiple deliveries made at different points in time that are separately invoiced, the applicable sales tax shall be collected on each separately invoiced delivery, calculated at the sales tax rate in effect, and with the cap applied, at the time of the original sale or the date the service is rendered.

SECTION 040 – Obligation to Collect Tax - Threshold Criteria

- A. Any remote seller or marketplace facilitator must collect and remit sales tax in compliance

with all applicable procedures and requirements of law, provided the remote seller or marketplace facilitator has met one of the following Threshold Criteria (“Threshold Criteria”) in the previous calendar year:

1. The remote seller’s statewide gross sales, including the seller’s marketplace facilitator’s statewide gross sales, from the sale(s) of property, products or services delivered into the state meets or exceeds one hundred thousand dollars (\$100,000);
or
 2. The remote seller, including the seller’s marketplace facilitator, sold property, products, or services delivered into the state in two hundred (200) or more separate transactions.
- B. For purposes of determining whether the Threshold Criteria are met, remote sellers or marketplace facilitators shall include all gross sales, from all sales of goods, property, products, or services rendered within the state of Alaska.

SECTION 050. – No Retroactive Application

The obligations to collect and remit sales tax required by this chapter are applicable at the effective date of the ordinance adopting the Alaska Remote Seller Sales Tax Code.

SECTION 060 – Payment and Collection

Pursuant to this Code, taxes imposed shall be due and paid by the buyer to the remote seller or marketplace facilitator at the time of the sale of property or product or date service is rendered, or with respect to credit transactions, at the time of collection. It shall be the duty of each remote seller or marketplace facilitator to collect the taxes from the buyer and to hold those taxes in trust for the taxing authority of the taxing jurisdiction. Failure by the remote seller or marketplace facilitator to collect the tax shall not affect the remote seller’s, or marketplace facilitator’s, responsibility for payment to the Commission.

SECTION 070 – Remote Seller and Marketplace Facilitator Registration Requirement

- A. If a remote seller’s gross statewide sales within the last calendar year meets or exceeds the Threshold Criteria, the remote seller shall register with the Commission. If a marketplace facilitator’s gross statewide sales within the last calendar year meets or exceeds the Threshold Criteria, the marketplace facilitator shall register with the Commission.
- B. 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 effective date of this Code or within thirty (30) calendar days of meeting the Threshold Criteria whichever occurs second. Registration shall be to the Commission on forms prescribed by the Commission.
- C. An extension may be applied for and granted based on criteria established by the Commission, based on evidence produced to describe time necessary to update software or other technical needs, not to exceed ninety (90) days.
- D. Upon receipt of a properly executed application, the Commission shall confirm registration, stating the legal name of the remote seller or marketplace facilitator, the primary address, and the primary sales tax contact name and corresponding title. The failure of the Commission to confirm registration does not relieve the remote seller or marketplace facilitator of its duty to collect and remit sales tax.

- E. Each business entity shall have a sales tax registration under the advertised name.
- F. The sales tax certificate is non-assignable and non-transferable.

SECTION 080 – Tax Filing Schedule

- A. All remote sellers or marketplace facilitators subject to this Code shall file a return on a form or in a format prescribed by the Commission and shall pay the tax due.
- B. Filing of sales tax returns are due monthly; quarterly filing is optional upon application and approval by the Commission, consistent with the code of the local jurisdiction.
- C. A remote seller or marketplace facilitator who has filed a sales tax return will be presumed to be making sales in successive periods unless the remote seller or marketplace facilitator files a return showing a termination or sale of the business in accordance with this Code.
- D. The completed and executed return, together with the remittance in full for the tax due, shall be transmitted to and must be received by the Commission on or before midnight Alaska Standard Time on the due date. Monthly returns are due the last day of the immediate subsequent month. Quarterly returns are due as follows:

Quarter 1 (January – March)	April 30
Quarter 2 (April – June)	July 31
Quarter 3 (July – September)	October 31
Quarter 4 (October – December)	January 31
- E. If the last day of the month following the end of the filing period falls on a Saturday, Sunday, federal holiday or Alaska state holiday, the due date will be extended until the next business day immediately following.
- F. Any remote seller or marketplace facilitator holding a remote seller registration shall file a sales tax return even though no tax may be due. This return shall show why no tax is due. If the remote seller or marketplace facilitator intends to continue doing business a return shall be filed reflecting no sales and a confirmation of the intent to continue doing business and shall continue to do so each filing period until the entity ceases doing business or sells the business. If the remote seller or marketplace facilitator intends to cease doing business, a final return shall be filed along with a statement of business closure.
- G. The remote seller or marketplace facilitator shall prepare the return and remit sales tax to the Commission on the same basis, cash or accrual, which the remote seller or marketplace facilitator uses in preparing its federal income tax return. The remote seller or marketplace facilitator shall sign the return, and transmit the return, with the amount of sales tax and any applicable penalty, interest or fees that it shows to be due, to the Commission.
- H. Remote sellers and marketplace facilitators failing to comply with the provisions of this Code shall, if required by the Commission and if quarterly filing has been chosen, file and transmit collected sales taxes more frequently until such time as they have demonstrated to the Commission that they are or will be able to comply with the provisions of this Code. Six (6) consecutive on-time sales tax filings, with full remittance of the sales taxes collected, shall establish the presumption of compliance and return to quarterly filing.
- I. The preparer of the sales tax return shall keep and maintain all documentation

supporting any and all claims of exempted sales and purchases. Documentation for exempted sales should include the number of the exemption authorization card presented by the buyer at the time of the purchase; the date of the purchase; the name of the person making the purchase; the organization making the purchase; the total amount of the purchase; and the amount of sales tax exempted. This documentation shall be made available to the Commission upon request. Failure to provide such documentation may invalidate that portion of the claim of exemption for which no documentation is provided.

SECTION 090 – Estimated Tax

- A. In the event the Commission is unable to ascertain the tax due from a remote seller or marketplace facilitator by reason of the failure of the remote seller or marketplace facilitator to keep accurate books, allow inspection, or file a return, or by reason of the remote seller or marketplace facilitator filing a false or inaccurate return, the Commission may make an estimate of the tax due based on any evidence in their possession.
- B. Sales taxes may also be estimated, based on any information available, whenever the Commission has reasonable cause to believe that any information on a sales tax return is not accurate.
- C. A remote seller's or marketplace facilitator's tax liability under this Code may be determined and assessed for a period of six (6) years after the date the return was filed or due to be filed with the Commission. No civil action for the collection of such tax may be commenced after the expiration of the six- (6-) year period except an action for taxes, penalties and interest due from those filing periods that are the subject of a written demand or assessment made within the six- (6-) year period, unless the remote seller or marketplace facilitator waives the protection of this section.
- D. The Commission shall notify the remote seller or marketplace facilitator, in writing, that the Commission has estimated the amount of sales tax that is due from the remote seller or marketplace facilitator. The Commission shall serve the notice on the remote seller or marketplace facilitator by delivering the notice to the remote seller's or marketplace facilitator's place of business, or by mailing the notice by certified mail, return receipt requested, to the remote seller's or marketplace facilitator's last known mailing address. A remote seller or marketplace facilitator who refuses the certified mail will be considered to have accepted the certified mail for purposes of service.
- E. The Commission's estimate of the amount of sales tax that is due from a remote seller or marketplace facilitator shall become a final determination of the amount that is due unless the remote seller or marketplace facilitator, within thirty (30) calendar days after service of notice of the estimated tax:
 1. Files a complete and accurate sales tax return for the delinquent periods supported by satisfactory records and accompanied by a full remittance of all taxes, interest, penalties, costs and other charges due; or
 2. Files a written notice with the Commission appealing the estimated tax amount in accordance with the appeal procedures.
 3. Arguments or reasons for failure to timely file a return and remit taxes collected shall not be considered a valid basis or grounds for granting an appeal. The basis and grounds for granting an appeal of an assessment are:
 - a. The identity of the remote seller or marketplace facilitator is in error;

- b. The amount of the debt is erroneous due to a clerical error (and the nature and extent of the error is specified in the request for appeal); or
 - c. The remote seller or marketplace facilitator disputes the denial of exemption(s) for certain sales.
- F. The amount of sales tax finally determined to be due under this section shall bear interest and penalty from the date that the sales tax originally was due, plus an additional civil penalty of fifty dollars (\$50) for each calendar month or partial month for which the amount of sales tax that is due has been determined.

SECTION 100 – Returns – Filing Contents

- A. Every remote seller or marketplace facilitator required by this chapter to collect sales tax shall file with the Commission upon forms furnished by the Commission a return setting forth the following information with totals rounded to the nearest dollar:
- 1. Gross sales;
 - 2. The nontaxable portions separately stating the amount of sales revenue attributable to each class of exemption;
 - 3. Computation of taxes to be remitted;
 - 4. Calculated discount (if applicable) based on taxing jurisdiction’s code; and
 - 5. Such other information as may be required by the Commission.
- B. Each tax return remitted by a remote seller or marketplace facilitator shall be signed (digital or otherwise) by a responsible individual who shall attest to the completeness and accuracy of the information on the tax return.
- C. The Commission reserves the right to reject a filed return for failure to comply with the requirements of this Code for up to three (3) months from the date of filing. The Commission shall give written notice to a remote seller or marketplace facilitator that a return has been rejected, including the reason for the rejection.

SECTION 110 – Refunds

- A. Upon request from a buyer or remote seller or marketplace facilitator 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 or marketplace facilitator shall process the refund and amend any returns accordingly.
- B. If the claimant is a remote seller or marketplace facilitator, and the tax refund is owed to any buyer, the remote seller or marketplace facilitator submits, and the Commission approves, a refund plan to all affected buyers.
- C. The Taxing Jurisdictions may allow a buyer to request a refund directly from the Taxing Jurisdiction.

SECTION 120 – Amended Returns

- A. A remote seller or marketplace facilitator may file an amended sales tax return, with supporting documentation, and the Commission may accept the amended return, but only in the following circumstances:
- i. The amended return is filed within one (1) year of the original due date for the return; and
 - ii. The remote seller or marketplace facilitator provides a written justification for requesting approval of the amended return; and
 - iii. The remote seller or marketplace facilitator agrees to submit to an audit upon request

- of the Commission.
- B. The Commission shall notify the remote seller or marketplace facilitator in writing (by email or otherwise) whether the Commission accepts or rejects an amended return, including the reasons for any rejection.
 - C. The Commission may adjust a return for a remote seller or marketplace facilitator if, after investigation, the Commission determines the figure included in the original returns are incorrect; and the Commission adjusts the return within two (2) years of the original due date for the return.
 - D. A remote seller or marketplace facilitator may file a supplemental sales tax return, with supporting documentation, and the Commission may accept the supplemental return, but only in the following circumstances:
 - i. The remote seller or marketplace facilitator provides a written justification for requesting approval of the supplemental return; and
 - ii. The remote seller or marketplace facilitator agrees to submit to an audit upon request of the Commission.

SECTION 130 – Extension of Time to File Tax Return

Upon written application of a remote seller or marketplace facilitator, stating the reasons therefor, the Commission may extend the time to file a sales tax return but only if the Commission finds each of the following:

1. For reasons beyond the remote seller’s or marketplace facilitator’s control, the remote seller or marketplace facilitator has been unable to maintain in a current condition the books and records that contain the information required to complete the return;
2. Such extension is a dire necessity for bookkeeping reasons and would avert undue hardship upon the remote seller or marketplace facilitator;
3. The remote seller or marketplace facilitator has a plan to cure the problem that caused the remote seller or marketplace facilitator to apply for an extension and the remote seller or marketplace facilitator agrees to proceed with diligence to cure the problem;
4. At the time of the application, the remote seller or marketplace facilitator is not delinquent in filing any other sales tax return, in remitting sales tax to the Commission or otherwise in violation of this chapter;
5. No such extension shall be made retroactively to cover existing delinquencies.

SECTION 140 – Audits

- A. Any remote seller or marketplace facilitator who has registered with the Commission, who is required to collect and remit sales tax, or who is required to submit a sales tax return is subject to a discretionary sales tax audit at any time. The purpose of such an audit is to examine the business records of the remote seller or marketplace facilitator in order to determine whether appropriate amounts of sales tax revenue have been collected by the remote seller or marketplace facilitator and remitted to the Commission.
- B. The Commission is not bound to accept a sales tax return as correct. The Commission may make an independent investigation of all retail sales or transactions conducted within the State or taxing jurisdiction.
- C. The records that a remote seller or marketplace facilitator is required to maintain under this chapter shall be subject to inspection and copying by authorized employees or agents of the Commission for the purpose of auditing any return filed under this chapter, or to

determine the remote seller's or marketplace facilitator's liability for sales tax where no return has been filed.

- D. In addition to the information required on returns, the Commission may request, and the remote seller or marketplace facilitator must furnish, any reasonable information deemed necessary for a correct computation of the tax.
- E. The Commission may adjust a return for a remote seller or marketplace facilitator if, after investigation or audit, the Commission determines that the figures included in the original return are incorrect, and that additional sales taxes are due; and the Commission adjusts the return within two (2) years of the original due date for the return.
- F. For the purpose of ascertaining the correctness of a return or the amount of taxes owed when a return has not been filed, the Commission may conduct investigations, hearings and audits and may examine any relevant books, papers, statements, memoranda, records, accounts or other writings of any remote seller or marketplace facilitator at any reasonable hour on the premises of the remote seller or marketplace facilitator and may require the attendance of any officer or employee of the remote seller or marketplace facilitator. Upon written demand by the Commission, the remote seller or marketplace facilitator shall present for examination, in the office of the Commission, such books, papers, statements, memoranda, records, accounts and other written material as may be set out in the demand unless the Commission and the person upon whom the demand is made agree to presentation of such materials at a different place.
- G. The Commission may issue subpoenas to compel attendance or to require production of relevant books, papers, records or memoranda. If any remote seller or marketplace facilitator refuses to obey any such subpoena, the Commissioner may refer the matter to the Commission's attorney for an application to the superior court for an order requiring the remote seller or marketplace facilitator to comply therewith.
- H. Any remote seller, marketplace facilitator, or person engaged in business who is unable or unwilling to submit their records to the Commission shall be required to pay the Commission for all necessary expenses incurred for the examination and inspection of their records maintained outside the Commission.
- I. After the completion of a sales tax audit, the results of the audit will be sent to the business owner's address of record.
- J. In the event the Commission, upon completion of an audit, discovers more than five hundred dollars (\$500) in additional sales tax due from a remote seller or marketplace facilitator resulting from a remote seller's or marketplace facilitator's failure to accurately report sales and taxes due thereupon, the remote seller or marketplace facilitator shall bear responsibility for the full cost of the audit. The audit fee assessment will be in addition to interest and penalties applicable to amounts deemed to be delinquent by the Commission at the time of the conclusion of the audit.

SECTION 150 – Audit protest

- A. If the remote seller or marketplace facilitator wishes to dispute the amount of the estimate, or the results of an examination or audit, the remote seller or marketplace facilitator must file a written protest with the Commission, within thirty (30) calendar days of the date of the notice of estimated tax or results of an audit or examination. The protest must set forth:
 - 1. The remote seller's or marketplace facilitator's justification for reducing or

- increasing the estimated tax amount, including any missing sales tax returns for the periods estimated; or
2. The remote seller's or marketplace facilitator's reasons for challenging the examination or audit results.
- B. In processing the protest, the Commission may hold an informal meeting or hearing with the remote seller or marketplace facilitator, either on its own or upon request of the remote seller or marketplace facilitator, and may also require that the remote seller or marketplace facilitator submit to an audit, if one was not previously conducted or a more formal audit, if an estimation audit was previously performed.
 - C. The Commission shall make a final written determination on the remote seller's or marketplace facilitator's protest and mail a copy of the determination to the remote seller or marketplace facilitator.
 - D. If a written protest is not filed within thirty (30) days of the date of the notice of estimated tax or the result of a review, audit or examination, then the estimated tax, review, audit or examination result shall be final, due and payable to the Commission.

SECTION 160 – Penalties and Interest for Late Filing

- A. A late filing fee of twenty-five dollars (\$25) per month (or quarter) shall be added to all late-filed sales tax reports in addition to interest and penalties.
- B. Delinquent sales tax bear interest at the rate of fifteen percent (15%) per annum until paid.
- C. In addition, delinquent sales tax shall be subject to an additional penalty of 5% per month, or fraction thereof, until a total of 20% of delinquent tax has been reached. The penalty does not bear interest.
- D. Fees, penalties and interest shall be assessed and collected in the same manner as the tax is assessed and collected, and applied first to fees, penalties and interest, second to past due sales tax.
- E. The filing of an incomplete return, or the failure to remit all tax, shall be treated as the filing of no return.
- F. A penalty assessed under this section for the delinquent remittance of sales tax or failure to file a sales tax return may be waived by the Commission, upon written application of the remote seller or marketplace facilitator accompanied by a payment of all delinquent sales tax, interest and penalty otherwise owed by the remote seller or marketplace facilitator, within forty-five (45) calendar days after the date of delinquency. A remote seller or marketplace facilitator may not be granted more than one (1) waiver of penalty under this subsection in any one calendar year. The Commission shall report such waivers of penalty to the taxing jurisdiction, in writing.

SECTION 170 – Repayment Plans

- A. The Commission may agree to enter into a repayment plan with a delinquent remote seller or marketplace facilitator. No repayment plan shall be valid unless agreed to by both parties in writing.
- B. A remote seller or marketplace facilitator shall not be eligible to enter into a repayment plan with the Commission if the remote seller or marketplace facilitator has defaulted on a repayment plan in the previous two (2) calendar years.
- C. The repayment plan shall include a secured promissory note that substantially complies

with the following terms:

- i. The remote seller or marketplace facilitator agrees to pay a minimum of ten percent (10%) down payment on the tax, interest and penalty amount due. The down payment shall be applied first to penalty, then to accumulated interest, and then to the tax owed.
 - ii. The remote seller or marketplace facilitator agrees to pay the balance of the tax, penalty and interest owed in monthly installments over a period not to exceed two (2) years.
 - iii. Interest at a rate of fifteen percent (15%) per annum shall accrue on the principal sum due. Interest shall not apply to penalties owed or to interest accrued at the time the repayment plan is executed or accruing during the term of the repayment plan.
 - iv. If the remote seller or marketplace facilitator is a corporation or a limited liability entity the remote seller or marketplace facilitator agrees to provide a personal guarantee of the obligations under the repayment plan.
 - v. The remote seller or marketplace facilitator agrees to pay all future tax bills in accordance with the provisions of this chapter.
 - vi. The remote seller or marketplace facilitator agrees to provide a security interest in the form of a sales tax lien for the entire unpaid balance of the promissory note to be recorded by the Commission at the time the repayment plan is signed. The remote seller or marketplace facilitator shall be responsible for the cost of recording the tax lien.
- D. If a remote seller or marketplace facilitator fails to pay two (2) or more payments as required by the repayment plan agreement, the remote seller or marketplace facilitator shall be in default and the entire amount owed at the time of default shall become immediately due. The Commission will send the remote seller or marketplace facilitator a notice of default. The Commission may immediately foreclose on the sales tax lien or take any other remedy available under the law.

SECTION 180 – Remote Seller or Marketplace Facilitator Record Retention

Remote sellers or marketplace facilitators shall keep and preserve suitable records of all sales made and such other books or accounts as may be necessary to determine the amount of tax which the remote seller or marketplace facilitator is obliged to collect. Remote sellers or marketplace facilitators shall preserve suitable records of sales for a period of six (6) years from the date of the return reporting such sales, and shall preserve for a period of six (6) years all invoices of goods and merchandise purchased for resale, and all such other books, invoices and records as may be necessary to accurately determine the amount of taxes which the remote seller or marketplace facilitator was obliged to collect under this chapter.

SECTION 190 – Cessation or Transfer of Business

- A. A remote seller or marketplace facilitator who sells, leases, conveys, forfeits, transfers or assigns the majority of their business interest, including a creditor or secured party, shall make a final sales tax return within thirty (30) days after the date of such conveyance.
- B. At least ten (10) business days before any such sale is completed, the remote seller or marketplace facilitator shall send to the Commission, by approved communication (email confirmation, certified first-class mail, postage prepaid) a notice that the remote

seller's or marketplace facilitator's interest is to be conveyed and shall include the name, address and telephone number of the person or entity to whom the interest is to be conveyed.

- C. Upon notice of sale and disclosure of buyer, the Commission shall be authorized to disclose the status of the remote seller's or marketplace facilitator's sales tax account to the named buyer or assignee.
- D. Upon receipt of notice of a sale or transfer, the Commission shall send the transferee a copy of this Code with this section highlighted.
- E. Neither the Commission's failure to give the notice nor the transferee's failure to receive the notice shall relieve the transferee of any obligations under this section.
- F. Following receipt of the notice, the Commission shall have sixty (60) days in which to perform a final sales tax audit and assess sales tax liability against the seller of the business. If the notice is not mailed at least ten (10) business days before the sale is completed, the Commission shall have twelve (12) months from the date of the completion of the sale or the Commission's knowledge of the completion of the sale within which to begin a final sales tax audit and assess sales tax liability against the seller of the business. The Commission may also initiate an estimated assessment if the requirements for such an assessment exist.
- G. A person acquiring any interest of a remote seller or marketplace facilitator in a business required to collect the tax under this chapter assumes the liability of the remote seller or marketplace facilitator for all taxes due the Commission, whether current or delinquent, whether known to the Commission or discovered later, and for all interest, penalties, costs and charges on such taxes.
- H. Before the effective date of the transfer, the transferee of a business shall obtain from the Commission an estimate of the delinquent sales tax, penalty and interest, if any, owed by the remote seller or marketplace facilitator as of the date of the transfer, and shall withhold that amount from the consideration payable for the transfer, until the remote seller or marketplace facilitator has produced a receipt from the Commission showing that all tax obligations imposed by this chapter have been paid. A transferee that fails to withhold the amount required under this subsection shall be liable to the Commission and taxing jurisdiction for the lesser of the amount of delinquent sales tax, penalty and interest due from the remote seller or marketplace facilitator as of the date of transfer, and the amount that the transferee was required to withhold.
- I. In this section, the term "transfer" includes the following:
 - 1. A change in voting control, or in more than fifty percent (50%) of the ownership interest in a remote seller or marketplace facilitator that is a corporation, limited liability company or partnership; or
 - 2. A sale of all or substantially all the assets used in the business of the remote seller or marketplace facilitator; or
 - 3. The initiation of a lease, management agreement or other arrangement under which another person becomes entitled to the remote seller's or marketplace facilitator's gross receipts from sales, rentals or services.
- J. Subsection H of this section shall not apply to any person who acquires their ownership interest in the ongoing business as a result of the foreclosure of a lien that has priority over the Commission's sales tax lien.
- K. Upon termination, dissolution or abandonment of a corporate business, any officer

having control or supervision of sales tax funds collected, or who is charged with responsibility for the filing of returns or the payment of sales tax funds collected, shall be personally liable for any unpaid taxes, interest, administrative costs and penalties on those taxes if such officer willfully fails to pay or cause to be paid any taxes due from the corporation. In addition, regardless of willfulness, each director of the corporation shall be jointly and severally liable for unpaid amounts. The officer shall be liable only for taxes collected which became due during the period he or she had the control, supervision, responsibility or duty to act for the corporation. This section does not relieve the corporation of other tax liabilities or otherwise impair other tax collection remedies afforded by law.

- L. A remote seller or marketplace facilitator who terminates the business without the benefit of a purchaser, successor or assign shall make a final tax return and settlement of tax obligations within thirty (30) days after such termination. If a final return and settlement are not received within thirty (30) days of the termination, the remote seller or marketplace facilitator shall pay a penalty of one hundred dollars (\$100), plus an additional penalty of twenty-five dollars (\$25) for each additional thirty- (30-) day period, or part of such a period, during which the final return and settlement have not been made, for a maximum of six (6) additional periods.

SECTION 200 – Use of Information on Tax Returns

- A. Except as otherwise provided in this chapter, 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:
 - 1. Employees and agents of the Commission and taxing jurisdiction whose job responsibilities are directly related to such returns, reports and information;
 - 2. The person supplying such returns, reports and information; and
 - 3. Persons authorized in writing by the person supplying such returns, reports and information.
- B. The Commission will release information described in subsection A of this section pursuant to subpoena, order of a court or administrative agency of competent jurisdiction, and where otherwise required by law to do so.
- C. Notwithstanding subsection A of this section, the following information is available for public inspection:
 - 1. The name and address of sellers;
 - 2. Whether a business is registered to collect taxes under this chapter;
 - 3. The name and address of businesses that are sixty (60) days or more delinquent in filing returns or in remitting sales tax, or both filing returns and remitting sales tax; and, if so delinquent, the amount of estimated sales tax due, and the number of returns not filed.
- D. The Commission may provide the public statistical information related to sales tax collections, provided that no information identifiable to a particular remote seller or marketplace facilitator is disclosed.
- E. Nothing contained in this section shall be construed to prohibit the delivery to a person, or their duly authorized representative, of a copy of any return or report filed by them, nor to prohibit the publication of statistics so classified as to prevent the identification of particular buyers, remote sellers, or marketplace facilitators, nor to prohibit the furnishing

of information on a reciprocal basis to other agencies or political subdivisions of the state or the United States concerned with the enforcement of tax laws.

- F. Nothing contained in this section shall be construed to prohibit the disclosure through enforcement action proceedings or by public inspection or publication of the name, estimated balance due, and current status of payments, and filings of any remote seller or marketplace facilitator or agent of any remote seller or marketplace facilitator required to collect sales taxes or file returns under this chapter, who fails to file any return and/or remit in full all sales taxes due within thirty (30) days after the required date for that business. Entry into any agreement whether pursuant to the provisions of this chapter or otherwise shall not act as any prohibition to disclosure of the records of that remote seller or marketplace facilitator as otherwise provided in this chapter.
- G. A prospective lessee or purchaser of any business or business interest may inquire as to the obligation or tax status of any business upon presenting to the Commission a release of tax information request signed by the authorized agent of the business.
- H. All returns referred to in this chapter, and all data taken therefrom, shall be kept secure from public inspection, and from all private inspection.

SECTION 210 – Violations

- A. A remote seller or marketplace facilitator that fails to file a sales tax return or remit sales tax when due, in addition to any other liability imposed by this Code, shall pay to the Commission all costs incurred by the Commission to determine the amount of the remote seller's or marketplace facilitator's liability or to collect the sales tax, including, without limitation, reviewing and auditing the remote seller's or marketplace facilitator's business records, collection agency fees, and actual reasonable attorney's fees.
- B. A person who causes or permits a corporation of which the person is an officer or director, a limited liability company of which the person is a member or manager, or a partnership of which the person is a partner, to fail to collect sales tax or to remit sales tax to the Commission as required by this Code shall be liable to the Commission for the amount that should have been collected or remitted, plus any applicable interest and penalty.
- C. Notwithstanding any other provision of law, and whether or not the Commission initiates an audit or other tax collection procedure, the Commission may bring a declaratory judgment action against a remote seller or marketplace facilitator believed to meet the criteria to establish that the obligation to remit sales tax is applicable and valid under local, state and federal law. The action shall be brought in the judicial district of the taxing jurisdiction.
- D. The Commission may cause a sales tax lien to be filed and recorded against all real and personal property of a remote seller or marketplace facilitator where the remote seller or marketplace facilitator has:
 - 1. Failed to file sales tax returns for two (2) consecutive filing periods as required by the Code; or
 - 2. Failed within sixty (60) days of the end of the filing period from which taxes were due to either (a) remit all amounts due or (b) to enter into a secured payment agreement as provided in this Code.
 - 3. Prior to filing a sales tax lien, the Commission shall cause a written notice of intent to file to be mailed to the last known address of the delinquent remote seller or marketplace facilitator.

- E. In addition to other remedies discussed in this Code, the Commission may bring a civil action to:
 - 1. Enjoin a violation of this Code. On application for injunctive relief and a finding of a violation or threatened violation, the superior court shall enjoin the violation.
 - 2. Collect delinquent sales tax, penalty, interest and costs of collection, either before or after estimating the amount of sales tax due.
 - 3. Foreclose a recorded sales tax lien as provided by law.
- F. All remedies hereunder are cumulative and are in addition to those existing at law or equity.

SECTION 220 – Penalties for Violations

- A. A buyer, remote seller, or marketplace facilitator who knowingly or negligently submits false information in a document filed with the Commission pursuant to this Code is subject to a penalty of five hundred dollars (\$500).
- B. A remote seller or marketplace facilitator who knowingly or negligently falsifies or conceals information related to its business activities with the Commission or taxing jurisdiction is subject to a penalty of five hundred dollars (\$500).
- C. A person who knowingly or negligently provides false information when applying for a certificate of exemption is subject to a penalty of five hundred dollars (\$500).
- D. Any remote seller or marketplace facilitator who fails to file a return by the due date required under this chapter, regardless of whether any taxes were due for the reporting period for which the return was required, shall be subject to a penalty of twenty-five dollars (\$25) for the first sales tax return not timely filed. The filing of an incomplete return shall be treated as the filing of no return.
- E. A remote seller or marketplace facilitator who fails or refuses to produce requested records or to allow inspection of their books and records shall pay to the Commission a penalty equal to three (3) times any deficiency found or estimated by the Commission with a minimum penalty of five hundred dollars (\$500).
- F. A remote seller or marketplace facilitator who falsifies or misrepresents any record filed with the Commission is guilty of an infraction and subject to a penalty of five hundred dollars (\$500) per record.
- G. Misuse of an exemption card is a violation and subject to a penalty of fifty dollars (\$50) per incident of misuse;
- H. Nothing in this chapter shall be construed as preventing the Commission from filing and maintaining an action at law to recover any taxes, penalties, interest and/or fees due from a remote seller or marketplace facilitator. The Commission may also recover attorney’s fees in any action against a delinquent remote seller or marketplace facilitator.

SECTION 230 – Sellers with a physical presence in the taxing jurisdiction.

- A. Sellers with a physical presence in a Taxing Jurisdiction and no remote or internet-based sales shall report, remit, and comply with standards, including audit authority, of the Taxing Jurisdiction.
- B. Sellers with a physical presence in a Taxing Jurisdiction that also have remote or internet-based sales where the Point of Delivery is in a different Taxing Jurisdictions shall (i)

report and remit the remote or internet sales to the Commission; and ii) report and remit the in-store sales to the Taxing Jurisdiction.

- C. Sellers with a physical presence in a Taxing Jurisdiction that also have remote or internet-based sales where the Point of Delivery is in the same Taxing Jurisdictions shall report and remit those remote sales to the Taxing Jurisdiction.
- D. Sellers and marketplace facilitators that do not have a physical presence in a Taxing Jurisdiction must report and remit all remote sales to the Commission.
- E. For all purchases the tax rate added to the sale price shall be as provided in the Taxing Jurisdiction's sales tax code, based on point of delivery.
- F. A marketplace facilitator is considered the remote seller for each sale facilitated through its marketplace and shall collect, report, and remit sales tax to the Commission. A marketplace facilitator is not considered to be the remote seller for each sale or rental of lodging facilitated through its marketplace, wherein the seller is considered to have a physical presence in the Taxing Jurisdiction.

SECTION 240 – Remittance of Tax; Remote Seller Held Harmless

- A. Any remote seller or marketplace facilitator that collects and remits sales tax to the Commission as provided by law may use an electronic database of state addresses that is certified by the Commission pursuant to subsection (C) of this section to determine the jurisdictions to which tax is owed.
- B. Any remote seller or marketplace facilitator that uses the data contained in an electronic database certified by the Commission pursuant to subsection (C) of this section to determine the jurisdictions to which tax is owed shall be held harmless for any tax, charge, or fee liability to any taxing jurisdiction that otherwise would be due solely as a result of an error or omission in the database.
- C. Any electronic database provider may apply to the Commission to be certified for use by remote sellers or marketplace facilitators pursuant to this section. Such certification shall be valid for three years. In order to be certified, an electronic database provider shall have a database that satisfies the following criteria:
 - 1. The database shall designate each address in the state, including, to the extent practicable, any multiple postal address applicable to one location and the taxing jurisdictions that have the authority to impose a tax on purchases made by purchasers at each address in the state.
 - 2. The information contained in the electronic database shall be updated as necessary and maintained in an accurate condition. In order to keep the database accurate, the database provider shall provide a convenient method for taxing jurisdictions that may be affected by the use of the database to inform the provider of apparent errors in the database. The provider shall have a process in place to promptly correct any errors brought to the provider's attention.

SECTION 250 – Definitions

Adoption of definitions does not compel an individual municipality to exempt certain defined items. Each municipality should specifically adopt definitions necessary for consistency to implement both brick-and-mortar sales tax code and provisions related to remote sellers or marketplace facilitators. For definitions that have no applicability to brick-and-mortar sales tax code, municipality may choose either to include definitions in the definitional section of general sales tax ordinance or adopt the common definitions by reference.

“Buyer or purchaser” means a person to whom a sale of property or product is made or to whom a service is furnished.

“Commission” means the Alaska Intergovernmental Remote Sales Tax Commission established by Agreement between local government taxing jurisdictions within Alaska, and delegated tax collection authority.

“Delivered electronically” means delivered to the purchaser by means other than tangible storage media.

“Entity-based exemption” means an exemption based on who purchases the product or who sells the product. An exemption that is available to all individuals shall not be considered an entity-based exemption.

“Goods for resale” means:

- A. the sale of goods by a manufacturer, wholesaler or distributor to a retail vendor; sales to a wholesale or retail dealer who deals in the property sold, for the purpose of resale by the dealer.
- B. Sales of personal property as raw material to a person engaged in manufacturing components for sale, where the property sold is consumed in the manufacturing process of, or becomes an ingredient or component part of, a product manufactured for sale by the manufacturer.
- C. Sale of personal property as construction material to a licensed building contractor where the property sold becomes part of the permanent structure.

“Marketplace facilitator” means a person that contracts with remote sellers to facilitate for consideration, regardless of whether deducted as fees from the transaction, the sale of the remote seller’s property or services 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 remote seller;
 - (ii) Owning or operating the infrastructure, electronic or physical, or technology that brings buyers and remote sellers together;
 - (iii) Providing a virtual currency that buyers are allowed or required to use to purchase products from the remote seller; or

(iv) Software development or research and development activities related to any of the activities described in (b) of this subsection (3), if such activities are directly related to a physical or electronic marketplace operated by the person or an affiliated person; and

(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.

“Member” means a taxing jurisdiction that is a signatory of the Alaska Remote Sales Tax Intergovernmental Agreement, thereby members of the Commission, and who have adopted the Remote Seller Sales Tax Code.

“Monthly” means occurring once per calendar month.

“Nonprofit organization” means a business that has been granted tax-exempt status by the Internal Revenue Service (IRS); means an association, corporation, or other organization where no part of the net earnings of the organization inures to the benefit of any member, shareholder, or other individual, as certified by registration with the IRS.

“Person” means an individual, trust, estate, fiduciary, partnership, limited liability company, limited liability partnership, corporation, or any other legal entity.

“Physical presence” means a seller who establishes any one or more of the following within a local taxing jurisdiction:

1. Has any office, distribution or sales house, warehouse, storefront, or any other place of business within the boundaries of the local taxing jurisdiction;
2. Solicits business or receiving orders through any employee, agent, salesman, or other representative within the boundaries of the local taxing jurisdiction or engages in activities in this state that are significantly associated with the seller's ability to establish or maintain a market for its products in this state.
3. Provides services or holds inventory within the boundaries of the local taxing jurisdiction;
4. Rents or Leases property located within the boundaries of the local taxing jurisdiction.

A seller that establishes a physical presence within the local taxing jurisdiction in any calendar year will be deemed to have a physical presence within the local taxing jurisdiction for the following calendar year.

“Point of delivery” means the location at which property or a product is delivered or service rendered.

- A. When the product is not received or paid for by the purchaser at a business location of a

remote seller in a Taxing Jurisdiction, the sale is considered delivered to the location where receipt by the purchaser (or the purchaser's recipient, designated as such by the purchaser) occurs, including the location indicated by instructions for delivery as supplied by the purchaser (or recipient) and as known to the seller.

- B. When the product is received or paid for by a purchaser who is physically present at a business location of a Remote Seller in a Taxing Jurisdiction the sale is considered to have been made in the Taxing Jurisdiction where the purchaser is present even if delivery of the product takes place in another Taxing Jurisdiction. Such sales are reported and tax remitted directly to the Taxing Jurisdiction not to the Commission.
- C. For products transferred electronically, or other sales where the remote seller or marketplace facilitator lacks a delivery address for the purchaser, the remote seller or marketplace facilitator shall consider the point of delivery the sale to the billing address of the buyer.

“Product-based exemptions” means an exemption based on the description of the product and not based on who purchases the product or how the purchaser intends to use the product.

“Property” and **“product”** means both tangible property, an item that can be seen, weighed, measured, felt, or touched, or that is in any other manner perceptible to the senses; and intangible property, anything that is not physical in nature (i.e.; intellectual property, brand recognition, goodwill, trade, copyright and patents).

“Quarter” means trimonthly periods of a calendar year; January-March, April-June, July-September, and October-December.

“Receive or receipt” means

- A. Taking possession of property;
- B. Making first use of services;
- C. Taking possession or making first use of digital goods, whichever comes first.

The terms “receive” and “receipt” do not include temporary possession by a shipping company on behalf of the purchaser.

“Remote sales” means sales of goods or services by a remote seller or marketplace facilitator.

“Remote seller” means a seller or marketplace facilitator making sales of goods or services delivered within the State of Alaska, without having a physical presence in a taxing jurisdiction, or conducting business between taxing jurisdictions, when sales are made by internet, mail order, phone or other remote means. A marketplace facilitator shall be considered the remote seller for each sale facilitated through its marketplace.

“Resale of services” means sales of intermediate services to a business the charge for which will be passed directly by that business to a specific buyer.

“Sale” or “retail sale” means any transfer of property for consideration for any purpose other than for resale.

“Sales or purchase price” means the total amount of consideration, including cash, credit, property, products, and services, for which property, products, or services are sold, leased, or rented, valued in money, whether received in money or otherwise, without any deduction for the following:

- A. The seller’s cost of the property or product sold;
- B. The cost of materials used, labor or service cost, interest, losses, all costs of transportation to the seller, all taxes imposed on the seller, and any other expense of the seller;
- C. Charges by the seller for any services necessary to complete the sale, other than delivery and installation charges;
- D. Delivery charges;
- E. Installation charges; and
- F. Credit for any trade-in, as determined by state law.

“Seller” means a person making sales of property, products, or services, or a marketplace facilitator facilitating sales on behalf of a seller.

“Services” means all services of every manner and description, which are performed or furnished for compensation, and delivered electronically or otherwise outside the taxing jurisdiction (but excluding any that are rendered physically within the taxing jurisdiction, including but not limited to:

- A. Professional services;
- B. Services in which a sale of property or product may be involved, including property or products made to order;
- C. Utilities and utility services not constituting a sale of property or products, including but not limited to sewer, water, solid waste collection or disposal, electrical, telephone services and repair, natural gas, cable or satellite television, and Internet services;
- D. The sale of transportation services;
- E. Services rendered for compensation by any person who furnishes any such services in the course of his trade, business, or occupation, including all services rendered for commission;
- F. Advertising, maintenance, recreation, amusement, and craftsman services.

“Tax cap” means a maximum taxable transaction.

“Taxing jurisdiction” means a local government in Alaska that has a sales tax and is a member of the Alaska Remote Sellers Sales Tax Commission.

“Transferred electronically” means obtained by the purchaser by means other than tangible storage media.

SECTION 260 – Supplemental Definitions

The Commission shall promulgate Supplemental Definitions that are incorporated into this Remote Seller Sales Tax Code. Supplemental Definitions are available at www.arsstc.org. Provisions of the Supplemental Definitions that are amended, deleted, or added prior to or after the effective date of the latest amendment to this chapter shall be applicable for purposes of this chapter on the effective date provided for such amendments, deletions, or additions, including retroactive provisions.

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.

**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 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 Finance Director 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



MAYOR

ATTEST:




CITY CLERK

Adopted: November 14, 2019



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MEMORANDUM TO COUNCIL

To: Mayor Branson and City Councilmembers
From: Mike Tvenge, City Manager and Nova M. Javier, City Clerk 
Date: February 27, 2020

Agenda Item: V. b. **First Reading, Ordinance No. 1394 Amending Title 5 Business Licenses and Regulations, Chapter 5.24 Marijuana Regulations by Repealing Section 5.24.040 Manufacture and Sale of Marijuana Edibles Prohibited**

SUMMARY: On November 4, 2014, Alaska voters passed Ballot Measure 2, An Act to Tax and Regulate the Production, Use, and Sale of Marijuana, which initiated the State and Statewide municipalities to begin to determine how to regulate marijuana on both State and municipal levels. Subsequently, the Council adopted Resolution No. 2016–16, Establishing a Marijuana Advisory Special Committee, to recommend guidelines for implementing taxation, regulation, production, sale, and use of marijuana within the Kodiak City limit. The Committee met nine times from June 2016 through April 2017 and brought forward for Council consideration regulations and policies governing marijuana establishments within the Kodiak City limit. One of the regulatory recommendations of the Committee was to prohibit the sale of edibles within the City of Kodiak and, along with the recommendation, advocated to the Council to revisit the topic again within a year. The City Council desires to get substantial public input before lifting the prohibition and before allowing the sale of marijuana edibles within the City limits.

PREVIOUS COUNCIL ACTION:

- January 27, 2016, joint work session – Cynthia Franklin, Director of the Marijuana Control Board presented information about marijuana laws to the Council and Assembly.
- April 12, 2016, City work session – City attorney Holly Wells presented marijuana information to the Council.
- April 26, 2016, City work session – the Council voiced a consensus and directed staff to prepare an ordinance to opt out of marijuana establishments within the Kodiak City limit for not more than six months and directed that a resolution be brought forth to establish a marijuana advisory committee appointed by the Council to be comprised of two Councilmembers, two Kodiak business owners, and two City resident at-large members to review and recommend regulations and policies for establishing marijuana establishments within the Kodiak City limit.
- May 10, 2016, City work session – the Council reviewed applications from City business owners and City resident at large members for appointment to the Marijuana Advisory Special Committee.
- May 12, 2016, regular meeting – the Council adopted Resolution No. 2016–16, Establishing a Marijuana Advisory Special Committee.
- May 26, 2016, regular meeting – the Council adopted Ordinance No. 1350, Enacting Kodiak City Code Chapter 5.52 Prohibiting Marijuana Establishments in the City.

- November 10, 2016, work session – Councilmembers Bishop and Arboleda presented the Marijuana Committee’s recommendations to the Council.
- September 28, 2017, regular meeting – the Council adopted Ordinance No. 1365, Amending Kodiak Municipal Code Title 7 Entitled "Health and Sanitation" to Adopt Chapter 7.40 Entitled "Marijuana Regulation," and Designating the Kodiak City Council as the City's Local Regulatory Authority on Marijuana.
- September 28, 2017, regular meeting – the Council adopted Ordinance No. 1366, Amending Kodiak Municipal Code Title 8 Entitled "Public Peace, Safety, And Morals" to Adopt Kodiak City Code 8.40, "Prohibited Acts Regarding Marijuana," to Prohibit the Extraction of Tetrahydrocannabinol ("The") or any Cannabinoid by Use of Materials or Methods Deemed Dangerous to Public Health and Safety, Unless Otherwise Permitted By Law.
- October 12, 2017, regular meeting – the Council accepted the recommendations from the City Marijuana Advisory Special Committee.
- May 8, 2018, work session – the Council reviewed a draft ordinance to implement recommendations of the City Marijuana Advisory Special Committee.
- May 24, 2018, regular meeting – the Council passed Ordinance No. 1378 in the first reading and moved to second reading and public hearing at the next regular or special Council meeting.
- June 14, 2018, work session – the City Council adopted Ordinance No. 1378 adding new Sections in the City Code to reflect Alaska Marijuana Law and Ordinance No. 1378 included Section 5.24.040 which prohibited sale of marijuana edibles
- February 11, 2020, work session – along with public comments received during the work session, considerable public comments and emails were submitted to the Kodiak City Council encouraging the deletion of Section 5.24.040

ALTERNATIVES:

- 1) Pass Ordinance No. 1394 in first reading to advance it to public hearing at the next meeting of the Council.
- 2) Postpone Ordinance No. 1394 to allow for amendments or to allow for more public input.
- 3) Do not pass Ordinance No. 1394.

FINANCIAL IMPLICATIONS: N/A

LEGAL: The City attorney reviewed Ordinance No. 1394.

CITY MANAGER’S COMMENTS: No comment at this time. Comments will be added for second reading and public hearing.

ATTACHMENTS:

Attachment A: Ordinance No. 1394

PROPOSED MOTION:

Move to pass Ordinance No. 1394 in first reading to advance to second reading and public hearing at the next regular or special Council meeting.

**CITY OF KODIAK
ORDINANCE NUMBER 1394**

**AN ORDINANCE OF THE COUNCIL OF THE CITY OF KODIAK AMENDING
TITLE 5 BUSINESS LICENSES AND REGULATIONS, CHAPTER 5.24 MARIJUANA
REGULATION BY REPEALING SECTION 5.24.040 MANUFACTURE AND SALE OF
MARIJUANA EDIBLES PROHIBITED**

WHEREAS, in 2018, the Marijuana Advisory Committee, formed by Council resolution, made a regulatory recommendation to prohibit the sale of edibles within the City of Kodiak and, along with the recommendation, advocated to the Council to revisit the topic again within a year; and

WHEREAS, on June 14, 2018, the City Council adopted Ordinance No. 1378 Adding New Sections in the City Code to reflect Alaska Marijuana Law and Ordinance No. 1378 included Section 5.24.040 which prohibited sale of marijuana edibles; and

WHEREAS, considerable public comments and emails were submitted to the Kodiak City Council encouraging the deletion of Section 5.24.040; and

WHEREAS, the City Council desires to get substantial public input before lifting the prohibition on the sale of marijuana edibles within the City limits;

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

Section 1: This ordinance is of a permanent and general nature and shall be included in the Kodiak City Code.

Section 2: Section 5.24.040 of the Kodiak City Code is hereby repealed.

Section 3: Section 5.24.005 of the Kodiak City Code is hereby amended to read as follows [**Bold and underlined added**; ~~deleted language stricken through~~]:

5.24.005 Definitions

As used in this chapter the following definitions shall apply:

~~“Edible marijuana product” means a marijuana product that is intended to be consumed orally, whether as food or drink.~~

“Licensed premises” means any or all designated portions of a building or structure, or rooms or enclosures in the building or structure, at the specific address for which a marijuana establishment license is issued, and used, controlled, or operated by the marijuana establishment to carry out the business for which it is licensed.

“School ground” means any facility operated by a school board or private school, as defined by AS 14.45.200, to provide educational, athletic, or recreational activities for persons under 18 years of age and shall include facilities providing post-secondary education and child care facilities licensed under AS 47.32.010.

Section 4: This ordinance shall be effective one month after final passage and publication.

CITY OF KODIAK


MAYOR

ATTEST:

CITY CLERK

First Reading:
Second Reading:
Effective Date:

MEMORANDUM TO COUNCIL

To: Mayor Branson and City Councilmembers
From: Mike Tvenge, City Manager 
Date: February 27, 2020

Agenda Item: V. c. Resolution No. 2020-10, Approving the City Council's Budget Goals for FY2021

SUMMARY: The Council reviewed and discussed the proposed budget goals for FY2021 (Attachment A) at the annual planning meeting on January 25, 2020. The goals are similar to those of FY2020 with some changes to the following sections: enterprise funds and economic development. Staff will use the approved goals during the development of the FY2021 City budget and future operations. Staff recommends Council approve the budget goals as discussed on January 25, 2020, by adopting Resolution No. 2020-10.

PREVIOUS COUNCIL ACTION: Council has adopted annual budget goals each year following discussions at the annual planning session. The goals are used in development of the City's operating and capital budget.

- March 3, 2011, adopted FY2012 budget goals by Resolution No. 2011-04
- February 23, 2012, adopted FY2013 budget goals by Resolution No. 2012-04
- February 28, 2013, adopted FY2014 budget goals by Resolution No. 2013-04
- February 13, 2014, adopted FY2015 budget goals by Resolution No. 2014-08
- February 12, 2015, adopted FY2016 budget goals by Resolution No. 2015-03
- February 11, 2016, adopted FY2017 budget goals by Resolution No. 2016-07
- February 28, 2017, adopted FY2018 budget goals by Resolution No. 2017-05
- January 6, 2018, discussed proposed FY 2019 budget goals at annual planning meeting
- January 25, 2018, adopted FY2019 budget goals by Resolution No. 2018-04
- January 26, 2019, discussed proposed FY 2020 budget goals at annual planning meeting
- February 14, 2019, adopted FY2020 budget goals by Resolution No. 2019-05
- January 25, 2020, discussed proposed FY2021 budget goals at annual planning meeting

DISCUSSION: For the past ten fiscal years, the Mayor and Council have reviewed and discussed annual budget goals at the Council planning meeting and then adopted final goals by resolution at a regular meeting. The goals reflect Council's philosophy and direction for the upcoming fiscal year. The process of adopting formal budget goals gives the elected officials the opportunity to define the budget direction at the outset of the budget cycle. The City Manager then uses the goals as a guide in preparation of the City's operating and capital budget. The goals focus on specific areas of the budget, such as revenue, personnel, operating expenses, capital expenditures, enterprise fund performance, and debt service.

FEBRUARY 27, 2020
Agenda Item V. c. Memo Page 1 of 3

Goals like these provide guidance to management as operating and capital budgets are prepared for the new fiscal year. The departmental budgets should reflect the overall budget goals with written justification provided if variations are needed for operational reasons. Written justifications are reviewed internally and presented to the Council during budget presentations.

The budget goals are the elected officials' policy statement that tells the Manager how to utilize the City's resources and provision of services for the next fiscal year. They are goals and therefore are both a policy statement and a planning tool. They may be accomplished in a single year or two as some have, or they can carry over from year to year because they are needed each year, or because they have not yet been completed. Management uses the goals as a template in preparation of the City's operating and capital budget. This process improves accountability by making the management staff and employees aware of Council's concerns and gives staff the direction necessary to help work toward and achieve the goals.

When Council adopts the resolution, the Manager will provide a copy to department heads and review the process to be used in the development of the departmental operating and capital budgets.

ALTERNATIVES: There are three primary alternatives for Council to consider.

- 1) Adopt the budget goals as identified. This is staff's recommendation because the goals reflect Council's budgetary philosophy and will provide guidance to management and improve budget accountability.
- 2) Amend the list of budget goals.
- 3) Decide not to adopt budget goals for FY2021.

FINANCIAL IMPLICATIONS: The use of formal budget goals does not have a direct financial impact to the City. However, increased Council participation at the outset provides clear guidance to staff on areas of importance to the Council. Budget goals improve planning at the departmental level, provide important information on how departmental budgets interrelate to the entire budget, and provide a means for staff at all levels to understand and work toward reaching Council's goals.

LEGAL: N/A

CITY MANAGER'S RECOMMENDATION AND COMMENTS: The process of adopting formal budget goals gives Council the opportunity to define its direction at the outset of the budget cycle. This process improves accountability by making the management staff and employees aware of Council's concerns and gives them the direction necessary to help achieve the goals. I recommend Council adopt the FY2021 budget goals by resolution, which will help us set the right course as we begin work on the upcoming budget.

ATTACHMENTS:

Attachment A: Resolution No. 2020-10, FY2021 Budget Goals

Attachment B: FY 2021 City Council & Manager Strategic Priorities

PROPOSED MOTION:

Move to adopt Resolution No. 2020-10.

**CITY OF KODIAK
RESOLUTION NUMBER 2020–10**

**A RESOLUTION OF THE COUNCIL OF THE CITY OF KODIAK APPROVING
THE CITY COUNCIL’S BUDGET GOALS FOR FY2021**

WHEREAS, budget guidelines help ensure that the City’s budget is prepared in a manner consistent with City Council desires; and

WHEREAS, the City Council discussed and selected the list of budget goals at their January 25, 2020, planning work session; and

WHEREAS, management will use the listed budget goals as a framework when developing the FY2021 budget.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Kodiak, Alaska, that the following budget goals will be used in the development of the City of Kodiak’s FY2021 budget:

Revenue

Revenues will continue to be estimated conservatively using an analytical and objective approach.

One-time revenues will be used only for one-time expenditures. The City will avoid using temporary revenues or grants to fund routine City services or positions.

Charges for Fees and Services will be reviewed and updated annually to ensure quality service delivery and adequate revenues.

Operating Expenses

General Fund operating (non-personnel) expenses for FY2021 will endeavor to match FY2021 projected revenues. Increases will be justified to the City Manager in writing and, if approved, presented by department heads to the City Council for final consideration during budget presentations.

Review existing programs and services to assess how well budgeted performance indicators met goals and objectives. The City Council will receive quarterly financial updates.

City management will continue to examine ways to maintain efficiencies of expenditures without significant impact to level and quality of services provided to residents.

Personnel Goals

The City will maintain adequate staffing in accordance with the approved FY2021 budget. FTEs will not increase unless new operational needs or mandates require additional employee positions.

Sections of the PR&R will continue to be reviewed and amended to improve practices that reflect recognized Human Resources standards.

General Fund

Council will review ways to increase revenues in the General Fund to help offset increases in operating expenses, meet infrastructure needs, and increase the fund balance, per the plan outlined in "Setting the Course for the Future," 1/14/12.

General Fund revenues will be forecast conservatively and take into consideration possible state funding policies that may affect City revenues such as community assistance program, shared fisheries and other shared business taxes, Medicaid, pension costs and liabilities, and the required allocation of sales tax.

The General Fund will be budgeted without a deficit and with a goal to maintain up to six months' operating reserves in fund balance. Council may appropriate additional funds for capital projects.

Enterprise Funds

The major enterprise funds will develop long-term plans to include maintenance and repairs, needed facility replacement or expansion, and a schedule for rate reviews.

Enterprise Funds will continue to conduct rate studies every five years and present them to the City Council for implementation.

To maximize revenues, the Shipyard operations will be contracted out through a competitive proposal process that includes a business plan and marketing campaign to meet debt service payments. This plan will be reviewed annually for marketing effectiveness.

Ensure adequate revenues are established to continue to maintain and improve Harbor facilities that support fisheries and support sector services and activities.

Community Support

The total cash amount available to fund nonprofit organizations is a maximum of one percent of budgeted general fund revenues, not to exceed \$175,000 until such time as the fund balance of the General fund reaches an accumulation of six months of operating expenditures, exclusive of any fund balance appropriation and transfers to capital project funds. In-kind contributions shall be subject to Council approval.

Capital

Within resources available, the City will maintain capital assets and infrastructure at a level that is adequate to protect its investment, to minimize future replacement and maintenance costs, and to maintain existing service levels.

The City Manager and management staff developed the City's first formal five-year capital improvement plan (CIP) that identifies and ranks projects for capital and major maintenance projects. The plan has additional information for ten-year expense projec-

tions for all departments and funds. The City will utilize the planning document and develop policies and procedures identifying criteria and steps for implementation. The capital budget will link to, and flow from, the multi-year capital improvement plan.

Debt Service

The City will not incur new debt without appropriate analysis to:

- Show impacts on rates or taxpayers, or
- Analyze financial capacity for proposed capital projects, or
- Determine if the debt is required for projects mandated by the state or federal government, needed for economic development, environmental, aesthetic or quality of life, or health and safety improvements.

Quality of Life

The City will provide adequate services that meet the community needs, priorities, challenges and opportunities with consideration given to the condition of the economy, the composition of the population, technology, legal or regulatory issues, intergovernmental issues, and physical or environmental issues.

Economic Development

The City will promote and support economic development to help ensure a diverse, sustainable, and healthy economy for Kodiak. The City will explore sustainable and healthy public private partnerships.

CITY OF KODIAK

MAYOR

ATTEST:

CLERK

Adopted:




FY 2021 City Council & Manager Strategic Priorities

Envisioned Future:	Kodiak is a thriving, engaging, and diverse island-community that cares for all					
Core Values:	Leadership, Integrity, Collaboration, Innovation, Stewardship					
Council & Manager Priorities	Maintain Sustainable Fiscal Policy	Reliable, Well Maintained Infrastructure	Safe Community	Vibrant Local Economy	Quality of Life, Family Oriented Community	Attract & Retain Brightest Minds
	Update 10-year Capital Improvement Plan Implement Remote Seller Sales Tax Improve Revenues w/ changes to Title 3 Strengthen contract mgmt. practices to avoid litigation	Construct upgrades to aging water & sewer system (incl. UV Facility) Sustain City facilities w/ building operations and maintenance program Explore annexation to promote cost-effective extension of public services	Design and Plan for Construction of New Fire Station Replace Tsunami Sirens Establish citywide snow removal policy & procedures Pursue AHFC Public Safety Housing Program grant funding	Collaborate with Chamber of Commerce to allow Business on City Property. Pursue public/private partnerships for capital projects and land leases Support all Tourism activities	Maintain 'Coast Guard City' designation w/ recertification Establish Local Govt. Certification in Historic Preservation Construct Baranof Park Improvements (Ice Rink/ Indoor Track/Parking) Land Use Planning & Acquisition Improve and Beautify Kodiak Environment	Evaluate recruitment incentives Research & Implement an employee wellness program Improve employment application process with new software Create Admin. Manual to guide employees in policy, procedures, and processes Deliver training for all staff

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MEMORANDUM TO COUNCIL

To: Mayor and City Councilmembers
From: Mike Tvenge, City Manager 
Thru: Jim Mullican, Fire Chief
Date: February 27, 2020

Agenda Item: V. d. Authorization to Award a Light Rescue Vehicle Purchase for the City of Kodiak Fire Department to Braun Northwest

SUMMARY: The Fire Department budgeted for one vehicle in fiscal year 2020 and issued a request for sealed bids for a 2020 model or newer Light Rescue Vehicle. Bids were due on Friday, February 14 and one sealed bid was received. Staff recommends the Light Rescue Vehicle for Kodiak Fire Department be awarded to Braun Northwest as the qualifying bidder in Bid No. 2020-004.

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.

FEBRUARY 27, 2020
Agenda Item V.d. Memo Page 1 of 2

ALTERNATIVES:

- 1) Award the bid to Braun Northwest in the amount of \$ 210,568.00 for the vehicle.
- 2) Reject the bid and not purchase vehicle, which is not recommended.

FINANCIAL IMPLICATIONS: The funding for replacing the vehicle was approved in the amount of \$225,000 in FY2020 budget under the Fire Department Machinery and Equipment Greater than \$5000.

LEGAL: KCC 3.12 was followed in this vehicle procurement.

STAFF RECOMMENDATION: Staff reviewed the bid submitted for Bid #2020-004 and recommends vehicle bid # 2020-004 be awarded to Braun Northwest in the amount of \$210,568.00 for a Light Rescue Vehicle.

CITY MANAGER'S COMMENTS: I support the purchase of this vehicle for use by the Kodiak Fire Department.

NOTES/ATTACHMENTS:

Attachment A: Submitted Bid from Braun Northwest

PROPOSED MOTION:

Move to authorize the award for the purchase of a Light Rescue Vehicle in an amount not to exceed \$210,568.00 with funds coming from the Fire Department Machinery and Equipment Greater than \$5000 account 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. 2020-004 dated December 31, 2019 the undersigned hereby proposes to provide the following:

- One (1) new, (2020 model, or newer) Fire Department Light Rescue Vehicle

Bid amount

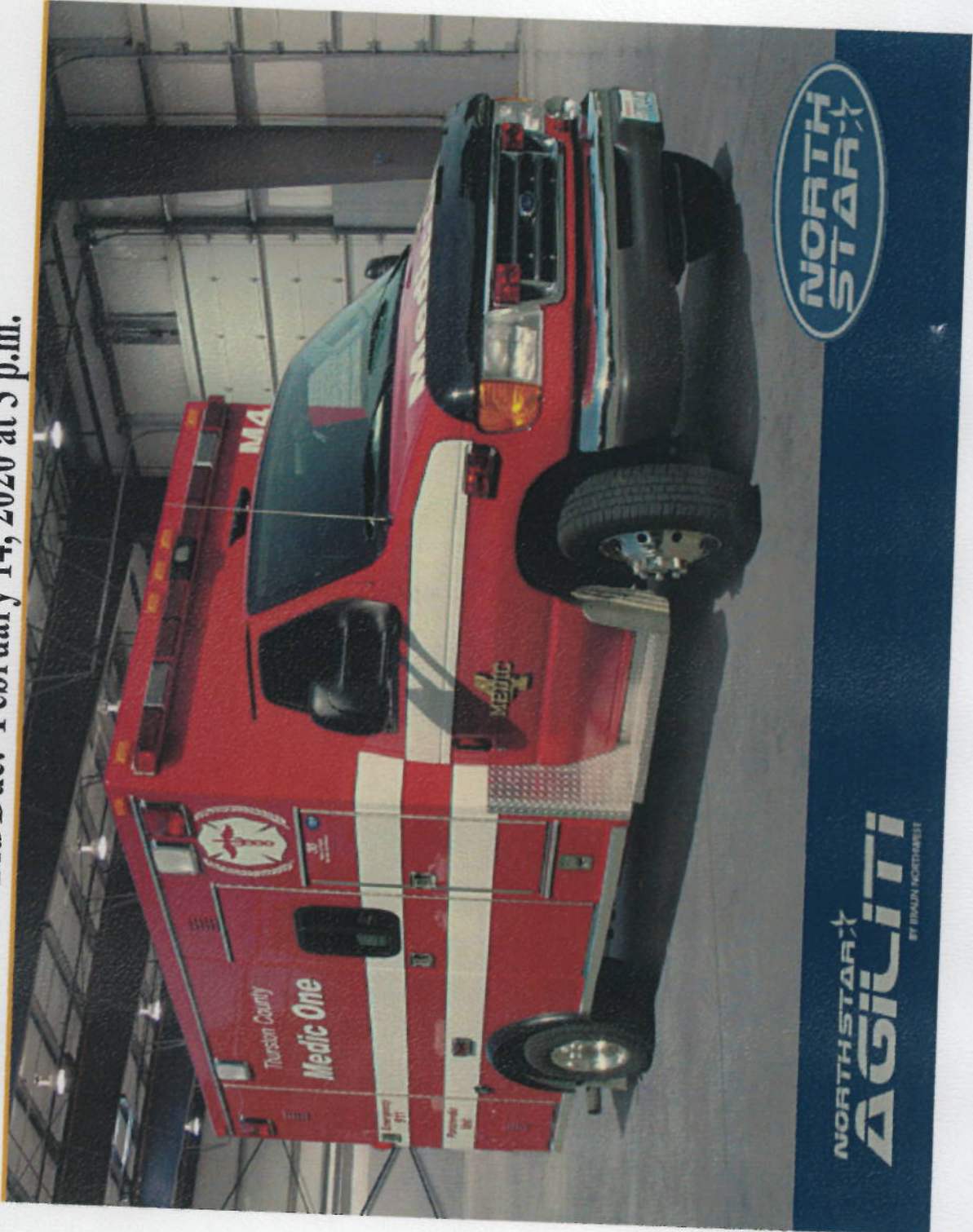
210,568.

*bid incl 51stax
of 14739.74 => Will negotiate*

225,307.74

Grand Total _____

CITY OF KODIAK
ITB NO.: 2020-004, ONE (1) NEW FIRE DEPARTMENT RESCUE VEHICLE
Bid Due: February 14, 2020 at 3 p.m.





.50 North Star Drive / PO Box 1204 / Chehalis, WA 98532 / 360.748.0195 / 800.245.6303 / fax 360.748.0256

February 6, 2020

City of Kodiak
City Manager's Office
Attn: Mike Tvenge, City Manager
710 Mill Bay Road, Room #114
Kodiak, AK 99615

RE: ITB NO.: 2020-004, ONE (1) NEW FIRE DEPARTMENT RESCUE VEHICLE

To Whom It May Concern:

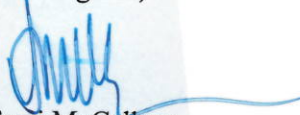
Thank you for the opportunity to make an offer on your next Emergency Vehicle. Enclosed is our complete offering in response the above referenced bid.

Braun Northwest, Inc. is located in Chehalis, Washington, and has been manufacturing Custom Emergency Vehicles for over 33 years. All vehicles are made right here in our Chehalis plant. Not only can you buy direct from Braun Northwest with no need for dealers, you can also count on us for repairs, painting, electrical work, remounting, and other maintenance. Braun Northwest, Inc., offers a full-service facility here as well. We also work directly with agencies to identify how we can best fit their needs when it comes to service. As a standard for additional service that is required, we will work with your agency on setting up a dealer of your choice. We also have mobile technicians that we dispatch for service if needed.

In various sections of this binder you will find additional information regarding testing, KKK, QVM, Licenses, and Insurance, etc. Should you have any questions at all, please don't hesitate to call us directly.

Thanks again and we look forward to hopefully having the opportunity to work with The City of Kodiak.

Best Regards,



Tami McCallum
Vice President Sales

TM/sel



BID PROPOSAL

FEBRUARY 6, 2020

**CITY OF KODIAK
CITY MANAGER'S OFFICE
ATTN: MIKE TVENGE, CITY MANAGER
710 MILL BAY ROAD, ROOM #114
KODIAK, AK 99615**

RE: ITB NO.: 2020-004, ONE (1) NEW FIRE DEPARTMENT RESCUE VEHICLE

BRAUN NORTHWEST IS PLEASED TO OFFER THE FOLLOWING PROPOSAL:

ONE (1) 2020 NORTH STAR 147-4 RESCUE VEHICLE ON A 2020 FORD F550 XLT CREW CAB, 4X4 FIRE RESCUE PREP PACKAGE DIESEL CHASSIS PER ENCLOSED SPECIFICATIONS DATED 1/24/20 AND DRAWINGS DATED 11/4/19.

**TOTAL AMOUNT \$210,568.00
Sales tax not included**

BID DUE: FEBRUARY 14, 2020 AT 3 PM

F.O.B.: KODIAK, ALASKA

DELIVERY: APPROXIMATELY 240 – 270 DAYS ARO.

TERMS: NINETY PERCENT (90%) PAYMENT DUE UPON RECEIPT OF VEHICLE. BALANCE DUE IN THIRTY (30) DAYS.

Braun Northwest, Inc. is an Alaska business (#706823).

Braun Northwest, Inc. is a Washington dealer (0991-A) with insurance information available upon request.

This bid shall remain open to additional purchases by this or other agencies for a period of three (3) years, with periodic cost adjustments based on actual manufacturer's price increases.

(Note: This bid is contingent on use of customer's Government Ford Fleet Identification Number.)

**Respectfully Submitted by:
BRAUN NORTHWEST, INC.**



Tami McCallum, V.P. Sales

Date: 2/6/20

**We agree to accept the above proposal:
CITY OF KODIAK**

Signature _____ Date _____

Printed Name _____ Title _____

TM/sel

Enclosures: Options, specifications, drawings, bid packet, and supporting documents



EMERGENCY VEHICLES

BID BOND**TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA**
Hartford, Connecticut 06183**CONTRACTOR:***(Name, legal status and address)*Braun Northwest, Inc.
150 North Star Drive, Chehalis, WA 98532**SURETY:***(Name, legal status and principal place of business)*Travelers Casualty and Surety Company of America
1501 4th Ave., Suite 1000, Seattle, WA 98101**OWNER:***(Name, legal status and address)*

City of Kodiak

BOND AMOUNT: 10% of Amount of Bid**PROJECT:**

(1) New Fire Department Light Rescue Vehicle

The Contractor and Surety are bound to the Owner in the amount set forth above, for the payment of which the Contractor and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, as provided herein. The conditions of this Bond are such that if the Owner accepts the bid of the Contractor within the time specified in the bid documents, or within such time period as may be agreed to by the Owner and Contractor, and the Contractor either (1) enters into a contract with the Owner in accordance with the terms of such bid, and gives such bond or bonds as may be specified in the bidding or Contract Documents, with a surety admitted in the jurisdiction of the Project and otherwise acceptable to the Owner, for the faithful performance of such Contract and for the prompt payment of labor and material furnished in the prosecution thereof; or (2) pays to the Owner the difference, not to exceed the amount of this Bond, between the amount specified in said bid and such larger amount for which the Owner may in good faith contract with another party to perform the work covered by said bid, then this obligation shall be null and void, otherwise to remain in full force and effect. The Surety hereby waives any notice of an agreement between the Owner and Contractor to extend the time in which the Owner may accept the bid. Waiver of notice by the Surety shall not apply to any extension exceeding sixty (60) days in the aggregate beyond the time for acceptance of bids specified in the bid documents, and the Owner and Contractor shall obtain the Surety's consent for an extension beyond sixty (60) days.

If this Bond is issued in connection with a subcontractor's bid to a Contractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

When this Bond has been furnished to comply with a statutory or other legal requirement in the location of the Project, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

Signed and sealed this 29th day of January, 2020

Melaina LK
(Witness)

Karen A Decker
(Witness)

Braun Northwest, Inc.
(Principal) (Seal)

Kent Johnson, Vice President Kent Johnson Vice President
(Title)

Travelers Casualty and Surety Company of America
(Surety) (Seal)

Sharon Cresafia, Attorney-in-Fact Sharon Cresafia
(Title)



**Travelers Casualty and Surety Company of America
Travelers Casualty and Surety Company
St. Paul Fire and Marine Insurance Company**

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS: That Travelers Casualty and Surety Company of America, Travelers Casualty and Surety Company, and St. Paul Fire and Marine Insurance Company are corporations duly organized under the laws of the State of Connecticut (herein collectively called the "Companies"), and that the Companies do hereby make, constitute and appoint **Sharon Cresalia** of **Lake Oswego Oregon**, their true and lawful Attorney-in-Fact to sign, execute, seal and acknowledge any and all bonds, recognizances, conditional undertakings and other writings obligatory in the nature thereof on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

IN WITNESS WHEREOF, the Companies have caused this instrument to be signed, and their corporate seals to be hereto affixed, this **3rd day of February, 2017**.



State of Connecticut

City of Hartford ss.

By: 
Robert L. Raney, Senior Vice President

On this the **3rd day of February, 2017**, before me personally appeared **Robert L. Raney**, who acknowledged himself to be the Senior Vice President of Travelers Casualty and Surety Company of America, Travelers Casualty and Surety Company, and St. Paul Fire and Marine Insurance Company, and that he, as such, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

In Witness Whereof, I hereunto set my hand and official seal.

My Commission expires the **30th day of June, 2021**




Marie C. Tetreault, Notary Public

This Power of Attorney is granted under and by the authority of the following resolutions adopted by the Boards of Directors of Travelers Casualty and Surety Company of America, Travelers Casualty and Surety Company, and St. Paul Fire and Marine Insurance Company, which resolutions are now in full force and effect, reading as follows:

RESOLVED, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President, any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary may appoint Attorneys-in-Fact and Agents to act for and on behalf of the Company and may give such appointee such authority as his or her certificate of authority may prescribe to sign with the Company's name and seal with the Company's seal bonds, recognizances, contracts of indemnity, and other writings obligatory in the nature of a bond, recognizance, or conditional undertaking, and any of said officers or the Board of Directors at any time may remove any such appointee and revoke the power given him or her; and it is

FURTHER RESOLVED, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President may delegate all or any part of the foregoing authority to one or more officers or employees of this Company, provided that each such delegation is in writing and a copy thereof is filed in the office of the Secretary; and it is

FURTHER RESOLVED, that any bond, recognizance, contract of indemnity, or writing obligatory in the nature of a bond, recognizance, or conditional undertaking shall be valid and binding upon the Company when (a) signed by the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary and duly attested and sealed with the Company's seal by a Secretary or Assistant Secretary; or (b) duly executed (under seal, if required) by one or more Attorneys-in-Fact and Agents pursuant to the power prescribed in his or her certificate or their certificates of authority or by one or more Company officers pursuant to a written delegation of authority; and it is

FURTHER RESOLVED, that the signature of each of the following officers: President, any Executive Vice President, any Senior Vice President, any Vice President, any Assistant Vice President, any Secretary, any Assistant Secretary, and the seal of the Company may be affixed by facsimile to any Power of Attorney or to any certificate relating thereto appointing Resident Vice Presidents, Resident Assistant Secretaries or Attorneys-in-Fact for purposes only of executing and attesting bonds and undertakings and other writings obligatory in the nature thereof, and any such Power of Attorney or certificate bearing such facsimile signature or facsimile seal shall be valid and binding upon the Company and any such power so executed and certified by such facsimile signature and facsimile seal shall be valid and binding on the Company in the future with respect to any bond or understanding to which it is attached.

I, **Kevin E. Hughes**, the undersigned, Assistant Secretary of Travelers Casualty and Surety Company of America, Travelers Casualty and Surety Company, and St. Paul Fire and Marine Insurance Company, do hereby certify that the above and foregoing is a true and correct copy of the Power of Attorney executed by said Companies, which remains in full force and effect.

Dated this **29th** day of **January**, **2020**




Kevin E. Hughes, Assistant Secretary

**To verify the authenticity of this Power of Attorney, please call us at 1-800-421-3880.
Please refer to the above-named Attorney-in-Fact and the details of the bond to which the power is attached.**

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MEMORANDUM TO COUNCIL

To: Mayor Branson and City Councilmembers

From: Mike Tvenge, City Manager 

Date: February 27, 2020

Agenda Item: V. e. **Authorization of Payment to Highmark Marine Fabrication, LLC for the Operation of the Marine Travelift for the Kodiak Shipyard**

SUMMARY: On May 22, 2019, the City of Kodiak entered into a technical service agreement with Highmark Marine Fabrication, LLC for the operation of the marine travelift for the Kodiak shipyard. The term and duration of the agreement began May 22, 2019 and ended on December 31, 2019. The scope of services in the service agreement as exhibit A.

During the term of the agreement, the invoice received from Highmark Marine Fabrication, LLC amounted to \$51,762.50 which exceeded the manager's authority of \$35,000. Since the nature of the agreement with Highmark Marine Fabrication, LLC is that of a professional service agreement, it is exempt from the bidding requirements in the City code.

PREVIOUS COUNCIL ACTION: N/A

BACKGROUND: In May 2019, the City was in need of a qualified marine travelift operator and an agreement was awarded to Highmark Marine Fabrication as a preferred provider. Mr. Cooper Curtis performed this service for the 2019 season. For the 2020 season, the City will be soliciting competitive proposals through an RFP process under KCC 3.12.070(a).

ALTERNATIVES:

- 1) I recommend Council authorize the payment reflected in the invoice.
- 2) Do not authorize this payment, which is not recommended.

FINANCIAL IMPLICATIONS: Highmark Marine Fabrication, LLC agreed to perform the work on a non-exclusive basis when requested at the rate of \$250 per hour for the duration of the agreement. Additional employees, when authorized by the City, shall be billed by Contractor at \$100 per hour for the duration of the agreement.

Funding will be provided from the Shipyard Administration Professional Services account and any necessary adjustments to the budget would be done during the supplemental process.

LEGAL:

3.12.020 Limitation on city manager's authority

The city manager may make an acquisition, sale, transfer, or contract authorized by KCC 3.12.010 without council approval, open market, or bidding procedures, if the value of the property, service, or contract does not exceed \$35,000.

3.12.070 Exceptions to bidding requirements

The requirements of this chapter relating to solicitation of competitive bids and award to the lowest responsible bidder shall not apply to:(a) Contracts for professional services, or where the city determines that it is not practicable to develop sufficiently detailed contract terms or specifications for competitive sealed bidding, or that either vendor qualifications or the means and methods that a vendor will use are material to vendor selection.

STAFF RECOMMENDATION: Staff recommends Council authorize payment to Highmark Marine Fabrication, LLC Agreement.

ATTACHMENTS:

Attachment A: Highmark Marine Fabrication, LLC Agreement

Attachment B: Highmark Marine Fabrication Invoices

PROPOSED MOTION:

Move to authorize the payment of the invoice for the operation of the marine travelift for the Kodiak shipyard to Highmark Marine Fabrication, LLC in the amount of \$51,762.50 with funds coming from the Shipyard Administration Professional Services.

CITY OF KODIAK
Technical Service Agreement
Marine Travelift Operator for Kodiak Shipyard
Agreement No. 244195

THIS AGREEMENT is entered into this **22nd day of May, 2019**, by and between **Highmark Marine Fabrication, LLC** (hereinafter called "Contractor"), and the **CITY OF KODIAK** (hereinafter called "City").

WITNESSETH THAT:

WHEREAS City desires to engage Contractor to be the lead operator of the 660-ton Marine Travelift for the shipyard operated by the City of Kodiak; and

WHEREAS Contractor is properly licensed and insured and has the experience and ability to perform such services; and

WHEREAS the parties hereto desire to enter into a basic agreement setting forth the terms under which Contractor will, as requested, perform such work.

NOW THEREFORE the parties hereto do mutually agree as follows:

1. *Employment of Contractor.* Contractor agrees to provide technical services in accordance with the provisions of this Agreement. A written description of the work to be performed is set out in the attached exhibit, a copy of which is attached hereto and incorporated by reference.
2. *Scope of Services.* The scope of services in **Exhibit A** describes and defines the services and responsibilities. The Contractor shall exercise independent professional judgment in performing its obligations and responsibilities under this Agreement. The Contractor services shall be available upon execution of the Agreement by the City. The Contractor shall perform the tasks as set forth in **Exhibit A**. The Contractor shall also attend or otherwise learn all necessary training required for effective shipyard and Travelift operations, including safety training, operating training, and environmental awareness.
3. *Term and Duration.* This agreement is beginning May 22, 2019, and ending December 31, 2019. It may be extended by the mutual written agreement of City and Contractor.
4. *Performance.* Contractor agrees to perform the work on a non-exclusive basis, when requested, as described in the Scope of Services at Exhibit A. The Contractor will not perform any work or incur any expense other than his own labor included in the Scope of Services in Exhibit A without the prior written approval of the City.
5. *Operator Compensation.* The City agrees to pay the Contractor for the services under this Agreement at \$250 per hour for the duration of the agreement. Additional employees, when authorized by the City, shall be billed by Contractor at \$100 per hour for the duration of the agreement. The Contractor will not be compensated by vessel owners for operation of the Travelift. Upon receipt of monthly invoices, City agrees to make payments to Contractor within 30 days during the term of this agreement.

6. *Labor*
 - a. The City shall provide labor to assist the Contractor. Use of City personnel will be coordinated by the Harbormaster or the Deputy Harbormaster. Operations after normal business hours will be avoided unless deemed necessary and appropriate by the Harbormaster or Deputy Harbormaster.
 - b. Contractor will communicate with City personnel prior to movement of each vessel and clearly explain details of the operation, ensuring all involved personnel understand their role, their specific tasks and communication protocols.
 - c. As a safety precaution, Contractor agrees to not perform the lift or launch vessels without sufficient personnel (minimum three) to assist in such activities.
7. *Independent Contractor Status.* In performing under this Agreement, Contractor acts as an independent contractor and shall have responsibility for and control over the details and means for performing the services required hereunder. Contractor shall have the authority to direct activities of the additional personnel as described in Section 6 above, so long as such direction is intended for the safety of the vessels and personnel on-site and during training of a back-up Travelift operator.
8. *Assignment.* Contractor is selected for his individual expertise in operating a Marine Travelift and, therefore, shall not assign any of the duties of this Agreement without the prior written consent of City, which the City may withdraw at its sole discretion.
9. *Subcontracting.* Contractor may not subcontract its performance under this Agreement without prior written consent of City, which the City may withhold at its sole discretion.
10. *Designation of Representative.* The Parties agree, for the purposes of this Agreement, the City shall be represented by and may act only through the City Manager or Deputy City Manager or such other person as he/she may designate in writing.
11. *Termination.*
 - a. Either party shall have the right to terminate this Agreement in whole or in part at any time, by delivery of twenty (20) days written notice, specifying the extent and effective date hereof. After receipt of such notice, Contractor shall stop work hereunder to the extent and on the date specified in such notice, terminate all other commitments to the extent they relate to the work terminated, and deliver to City all computations and other material and information prepared or developed hereunder in connection with the work terminated.
 - b. In the event of any termination pursuant to this clause, Contractor shall be entitled to be paid as provided herein for direct labor hours expended and reimbursable costs incurred prior to the termination pursuant to Section 4 hereof, and for such direct labor hours and reimbursable costs as may be expended or incurred thereafter with City's approval in concluding the work terminated, it being understood that Contractor shall not be entitled to any compensation on anticipated services not performed. Except as provided in this clause, any such termination shall not alter or affect the rights or obligations of the parties under this Agreement.
12. *Ownership and Use of Documents.* Contractor agrees that all pertinent calculations, reports, data and other documents prepared for the City hereunder are the property of the City and the City shall have the right, without payment of additional compensation, to disclose, reproduce and use, and to authorize others to disclose, reproduce and use such documents for projects worked on.

13. *Performance Standard.* Services performed under this Agreement shall be in accordance with public sector administration requirements and Best Management Practices and shall comply with all applicable codes and standards.
14. *Compliance with Applicable Laws.* Contractor shall, in the performance of this Agreement, comply with all applicable federal, state and local laws, ordinances, order, rules and regulations applicable to its performance hereunder.
15. *Records and Audit.* The City, in cooperation with the Contractor, agrees to maintain sufficient and accurate records and books of hauls and launches, including detailed hauling profiles of each vessel, complete date and time records, showing all direct labor hours expended and all costs incurred and the same shall be provided in a timely fashion to the City for its record keeping.
16. *Notices.* Official notice that either party hereto desires to give the other shall be delivered through the United States mail by certified mail, return receipt requested, addressed as below. The addresses specified may be changed by either party by giving written notice thereof to the other party.

To City:
 Kodiak City Manager
 Mike Tvenge
 710 Mill Bay Rd, Room 114
 Kodiak, Alaska 99615

To Contractor:
 Cooper Curtis
 DBA Highmark Marine Fabrication, LLC
 2018 Mill Bay Road
 Kodiak, Alaska 99615

17. *Venue/Applicable Law.* The venue of any legal action between the parties arising as a result of this Agreement shall be laid in the Third Judicial District of the Superior Court of the State of Alaska and this contract shall be interpreted in accordance with the laws of the State of Alaska.
18. *Attorney's Fees.* In the event either party institutes any suit or action to enforce its right hereunder, the prevailing party shall be entitled to recover from the other party its reasonable attorney's fees and costs in such suit or action and on any appeal there from.
19. *Waiver.* No failure on the part of City to enforce any covenant or provisions herein contained, nor any waiver of any right hereunder by City, unless in writing and signed by the parties sought to be bound, shall discharge or invalidate such covenants or provisions or affect the right of City to enforce the same or any other provision in the event of any subsequent breach or default.
20. *Binding Effect.* The terms, conditions and covenants contained in this Agreement shall apply to, inure to the benefit of, and bind the parties and their respective successors.
21. *Entire Agreement/Modification.* This agreement constitutes the entire Agreement between the parties with respect to the subject matter hereof, and all prior negotiations and understandings are superseded and replaced by this Agreement and shall be of no further force and effect. No modification of this Agreement shall be of any force or effect unless reduced to writing, signed by both parties and expressly made a part of this Agreement.
22. *Indemnity.* Contractor agrees to indemnify, defend, and hold the City of Kodiak and its administrators, officers, agents, employees, volunteers and servants harmless from and against any and all claims, demands, actions, losses, expenses, and liabilities for, or related to, loss of or damage to property or injury to or death of any person relating to or arising or resulting in any way from the performance by the Contractor or any of its Subcontractors under the Agreement, or the WORK or SERVICES provided or

the condition or use thereof, regardless of any negligence of the City of Kodiak or their respective agents or employees, excepting only such loss, damage, injury or death which results solely from the negligence or willful misconduct of the City of Kodiak.

23. *Insurance.* The Contractor shall carry, at his sole expense, shall procure and maintain the following insurance:
- a. Minimum Scope of Insurance
 - (1) Commercial Marine Liability
 - (2) Commercial Automobile Liability Insurance
 - b. Minimum Limits of Insurance
 - Contractor shall maintain limits no less than:
 - (1) Commercial Marine Liability:
 - (A) \$1,000,000 combined single limit per occurrence for bodily injury and property damage claims arising from operation of the City of Kodiak 660-ton Marine Travelift. The general aggregate limit shall be \$5,000,000.
 - (2) Auto Liability:
 - (A) \$1,000,000 combined single limit per accident for bodily injury and property damage.
 - c. Other Insurance Provisions
 - The policies are to contain, or be endorsed to contain, the following provisions:
 - (1) Commercial Marine Liability and Automobile Liability
 - (A) The City of Kodiak, its Administrator, officers, officials, employees and volunteers are to be covered as additional insureds as respects: liability arising out of activities performed by or on behalf of the Contractor; products and completed operations of the Contractor, premises owned, occupied or used by the Contractor, or automobiles owned, leased, hired or borrowed by the Contractor. The coverage shall contain no special limitation on the scope of protection afforded to the City of Kodiak, its Administrator, officers, officials, employees and volunteers.
 - (B) The Contractor's insurance coverage shall be primary insurance as respects the City of Kodiak, its Administrator, officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the City of Kodiak, its Administrator, officers, officials, employees and volunteers shall be excess of the Contractor's insurance and shall not contribute to it.
 - (C) The Contractor's insurer shall agree to waive all rights of subrogation against the City, its Administrator, officers, officials, employees and volunteers for losses arising from work performed by the Contractor or any subconsultant for the City.
 - (2) Employer's Liability
 - The Contractor's insurer shall agree to waive all rights of subrogation against the City of Kodiak, its Administrator, officers, officials, employees and volunteers for losses arising from work performed by the Contractor or any subcontractor for the city of Kodiak.
 - (3) All Insurance
 - Each insurance policy required by this Agreement shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after 30 days prior written notice for nonpayment of premium or fraud on the part of the Contractor or 60 days prior written notice for any other reason by certified mail, return receipt requested, has been given to the City of Kodiak. Such notice shall be mailed by the Contractor's insurer(s) to the attention of the City of Kodiak City Manager.
 - d. Acceptability of Insurers
 - Insurance is to be placed with insurers with a Best's rating of no less than A-: VII.
 - e. Verification of Coverage
 - Contractor shall furnish the City of Kodiak with approved certificates of insurance and with certified copies of all endorsements effecting coverage required by this clause. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind

coverage on its behalf. The certificates are to be on forms provided by the City of Kodiak, or which meet industry standard. The City of Kodiak reserves the right to require complete, certified copies of all required insurance policies, at any time.

In witness whereof, the parties hereto have executed, or caused to be executed by their duly authorized officials, this Agreement in duplicate on the respective date indicated below.

CITY OF KODIAK

OPERATOR

Mike Tvenge

Cooper Curtis

Mike Tvenge, City Manager

Cooper Curtis, DBA Highmark Marine Fabrication, LLC

ATTEST:

Nova Javier FOR

Nova Javier, City Clerk



EXHIBIT A
Scope of Services
Kodiak Shipyard
Marine Travelift Operator


1. Operate the Marine Travelift 600C Mobile Boat Hoist, Z9368, SN 3433-0409, the Travelift, per the operation and maintenance manual as required for lifting, moving, blocking and launching vessels.
2. Be available, as scheduled by Harbor Staff, and/or his designee to lift, move, block, and launch vessels. Vessels shall be transported to the wash down pad and to dry moorage as directed by the Harbormaster.
3. The Contractor shall work closely with the Harbor Staff to schedule all lifts, moves and launches. No vessel shall be lifted without the owner or designee agreeing (in writing) to yard policies and the Kodiak Shipyard's best management practices. No vessel shall be launched without insuring that the vessel's shipyard fees have been paid.
4. Perform visual inspections of lift, straps and cables prior to, and after, each use per the Marine Travelift operation and maintenance manual.
5. Agree to use the highest level of safety precautions at all times while operating the Travelift.
6. Agree to use ground crew of no less than three additional City employees for every lift, launch or movement. City staff to be hired by Harbormaster or designee. Ground crew may be augmented with vessel crew members.
7. The Contractor shall train at-least one City employee (as designated by the Harbormaster), to be the back-up lift operator. Training shall be hands-on and include actual boat lifts and launches under the direct supervision of the Contractor. A record of such training shall be kept. Once trained, the back-up operator will maintain his skills by lifting and/or launching at least one boat per quarter under the Contractor's supervision and will operate the Travelift when the Contractor is on vacation, sick, or otherwise unavailable.
8. Keep the straps and cables clean and free of debris that may cause premature deterioration.
9. Check all fluid levels before use and maintain proper fuel levels and oil levels at all times.
10. Report to Harbormaster or designee any and all defects or repairs or maintenance needs on the day such needs are identified.
11. Non-routine maintenance expenses shall be approved, in advance by the Harbormaster.
12. All lifts and launches shall not exceed the recommended loads as is specified by Marine Travelift.
13. Loads must be properly distributed per the Travelift operator's manual.
14. All vessels being lifted for the first time must have a verifiable displacement provided to the operator. If displacement is unknown, and in the operators opinion may be projected to be within 15% of the limits of the machine, the operator shall require the vessel owner/operator to provide calculated displacement prior to lifting the vessel.
15. Owner/operators of all vessels to be lifted must identify the known underwater fixtures, transducers, bearing and shaft locations and any other underwater appendages that may affect the strap placement. If such cannot be specifically identified ahead of time, inspection by a diver must be required prior to lifting such vessel.

16. Contractor shall record weight and other data on each vessel lifted. A photograph or notes regarding strap locations and underwater appendages, as well as displacement reading of Travelift gauges shall be recorded. Notes shall record each vessel's load, including water, fuel, freight, etc.
17. Contractor must attend any training deemed necessary by the Harbormaster for effective shipyard and Marine Travelift operations, including safety training, operator training and environmental awareness. The Contractor may bill the City for training time at the rate specified in paragraph 5 of the contract. Travel expenses shall be paid by the operator.

Invoices attached separately.

MEMORANDUM TO COUNCIL

To: Mayor Branson and City Councilmembers

From: Mike Tvenge, City Manager 

Thru: Corey Gronn, Parks and Recreation Director and Glenn Melvin, City Engineer

Date: February 27, 2020

Agenda Item: V.f. Authorization of a Professional Services Agreement with ECI Alaska Architecture for Design Work on Project #9018 Baranof Park Improvements

SUMMARY: The Baranof Park Ice Rink enclosure project has been the No. 1 priority for the Parks and Recreation Advisory Board and the department. The ice rink improvements include enclosing the building, new bathrooms, adding changing rooms, office space, storage and skate rental space, and a ground level three lane walking area. To further advance this project, ECI Alaska Architecture has provided the City with a fee proposal (attachment A) that will detail out cost estimates, generate marketing images (for fundraising efforts), and bring the project to a 35% design. During this design work, ECI will also perform a structural and basic geotech analysis.

PREVIOUS COUNCIL ACTION:

- This project was placed on the City's capital project priority list submitted to the State the past two fiscal years.
- Baranof Park Improvement Project #9018 was officially opened July 1, 2019.
- At the January 23, 2020 council meeting, the council placed this project on the City's Federal and State CIP priority list for the \$3.1 million dollar design.

DISCUSSION:

In October of 2019, the City engaged with ECI Alaska Architecture to help assist through the pre-design and programming phase. The results of this work were presented to the City Council on January 7, 2020. In that meeting, the Council desired the 3.1 million dollar project; however, the Council wanted feedback from the fundraising group and the Parks and Recreation advisory board. The fundraising group met on January 14, 2020, and voted in favor of the 3.1 million dollar project. The P&R advisory board met on February 6, 2020, and also voted in favor of the 3.1 million dollar project. City Code section 3.12.070 (a) allows the City to engage in professional services agreements without going to bid.

ALTERNATIVES:

- 1) Approve the professional services agreement with ECI Alaska Architecture, (Attachment A) which is staff's recommendation.

- 2) Do not approve the professional services agreement with ECI Alaska Architecture. This is not recommended because this work is needed to further advance the project and assist in the fundraising efforts.

FINANCIAL IMPLICATIONS:

The Baranof Park improvements project was opened on July 1, 2019, with \$100,000. This project account has the necessary funding to move forward with the authorization to ECI Alaska Architecture.

LEGAL:

3.12.020 Limitation on city manager’s authority

The city manager may make an acquisition, sale, transfer, or contract authorized by KCC 3.12.010 without council approval, open market, or bidding procedures, if the value of the property, service, or contract does not exceed \$35,000.

3.12.070 Exceptions to bidding requirements

The requirements of this chapter relating to solicitation of competitive bids and award to the lowest responsible bidder shall not apply to:(a) Contracts for professional services, or where the city determines that it is not practicable to develop sufficiently detailed contract terms or specifications for competitive sealed bidding, or that either vendor qualifications or the means and methods that a vendor will use are material to vendor selection.

STAFF RECOMMENDATION: Staff recommends Council approve the professional services agreement in the amount of \$66,288 with funds coming from Baranof Park improvements account line item, professional services account number 309.380.918.470.726.

CITY MANAGER’S COMMENTS: The City has realized cost savings associated with design of by coordinating professional design services on multiple capital projects. The proposed Project Team has a wealth of experience on Kodiak Island and are well respected across Alaska. This fee proposal from ECI will produce a solid scope, a detailed cost estimate, and marketing images to support grant applications. The span of the work to be completed is estimated at five weeks.

ATTACHMENTS:

Attachment A: Fee proposal from ECI Alaska Architecture

PROPOSED MOTION:

Move to authorize the professional services agreement award with ECI Alaska Architecture for Design Work on Project #9018 Baranof Park Improvements agreement in the amount of \$66,288 with funds coming from the Baranof Park Improvements account line item, professional services account and authorize the City Manager to execute the documents on behalf of the City.

Josie Bahnke, Deputy City Manager
City of Kodiak
710 Mill Bay Road

February 17, 2020

**RE: Kodiak Sports
35% Design**

Dear Josie and City of Kodiak Representatives:

Thank you for this opportunity to provide 35% design services to enclose the existing structure, add a walking/running track and heated support spaces to the Baranof Ice Rink in Kodiak.

Schedule and Approach

We are proposing to take the Sports Center to a 35% design level so the scope can be solidified, a detailed cost estimate produced, and marketing images generated to support grant applications. We will prepare a 35% Narrative and 35% Drawings to describe the project scope. We will then develop the basic design for the project to identify the major systems and finishes. From the notice to proceed it will take approximately 5 weeks to produce the final documents.

Deliverables

- 35% Narrative will include:
 - Building Code Summary
 - Design and Function Narrative including:
 - Civil recommendations and geotechnical recommendations (based on desktop review of existing local data and soils recommendations).
 - Architectural general description of the building envelope and interior finishes.
 - Structural review of existing structure and description of new structural systems.
 - Mechanical description of building ventilation and heating
 - Electrical description of power and lighting.
 - Space Program List
 - Budget – Including 35% cost estimate by Estimations
 - Outline Specification Workbook

- 35% Drawings will include:
 - Civil
 - Architectural, including 2 marketing images
 - Structural
 - Mechanical
 - Electrical

Assumptions and Exclusions

- Site specific geotechnical investigation is not included in this phase; site specific investigation will be done in the DD phase.
- No land surveying will be done in this phase
- Seismic design of mechanical and electrical equipment support is not included and will be included in a later phase.

Project Team

- Architecture – ECI
- Civil – Bristol Engineering Services Company, LLC
- Structural – BBFM
- Mechanical and Electrical – RSA Engineering, Inc.
- Cost Estimate - Estimations

Proposed Services

Design Fee	\$63,122	Fixed Fee
Reimbursable Expenses	\$3,176	Expense
Total Fee	\$66,288	

Please reach out to me if you would like to review the fee proposal in more detail or modify any assumptions. Thank you again for this opportunity.

Sincerely,

Sean Carlson AIA, LEED BD+C
Architect
ECI

Attachments:

- Detailed breakdown of fee for proposed services*
- Consultant fee proposals*

Professional Services Cost Proposal



ECI Architecture | Planning | Interiors
 3809 Arctic Blvd., Suite 103
 Anchorage, Alaska 99503
 907.561.5543

Client City of Kodiak
Project Kodiak Sports
ECI # TBD
Terms: Fixed Fee and T&E - See Task Comments
Revision: 2/10/2020

Task	Task Description	Subconsultants							LABOR	EXPENSES	Comments/Assumptions	
		Architectural ECI	Structural BBFM	Mechanical RSA	Electrical RSA	Civil Bristol (Golder)	Cost Estimate Estimations	Markup (10%)				
100	Pre-design and Concept	\$ 5,960							\$ 5,960		Fixed Fee	
200	Schematic Design Documents	\$ 15,000	\$ 13,470	\$ 5,065	\$ 4,805	\$ 12,540	\$ 2,440	\$ 3,832	\$ 57,152		Fixed Fee	
LABOR TOTAL									\$ -			
EXP	Direct Expenses Estimate Budget Printing / Misc.	\$ 1,544	\$ 600	\$ 1,032					\$ 3,176			
PROJECT TOTAL									\$ 63,112	\$3,176		

Professional Services Cost Proposal



Client: City of Kodiak
Project: Kodiak Sports
ECI #: TBD
Terms: Fixed Fee and T&E - See Task Comments
Revision: 2/10/2020

Task	Task Description	ECI, Inc.					ECI Subtotal	Comments/Assumptions
		\$180	\$150		\$110			
		Principal / Project Manager	Project Manager / Project Architect		Architect / Designer II			
100	Pre-design and Concept							
	Site Investigation & Travel Time							
	Site Measurements							
	Update model and provide backgrounds to consultants		8		16			Update the Revit model with field measurements
	Code Review	2	8					
	Meeting in Kodiak	8						
	Subtask Total	10	16	0	16	0	\$ 5,960	Fixed Fee
200	Schematic Design Documents							
	Develop background image shots from Revit		12		24			
	Prepare Presentation Drawings		8		24			
	Outline Specification - identify major components		8					
	Project Narrative	2	12					
	Cost Estimate Coordination	4	8					
	Meeting in Kodiak	8						
	Subtask Total	14	48	0	48	0	\$ 15,000	Fixed Fee

EXP (T&E)	Direct Expenses			
	Airfare		2 -tickets	\$ 1,000
	ANC Airport Parking			\$ 64
	Hotel		2 nights	\$ 240
	Meals	\$ 60 per day	4	\$ 240
	TOTAL ESTIMATED EXPENSES			\$ 1,544

February 10, 2020

Sean Carlson AIA
ECI
3909 Arctic Boulevard, Suite 103
Anchorage, Alaska 99503

Subject: Baranof Park Ice Rink Addition Project

Bristol Engineering Services Company, LLC (Bristol) is pleased to submit a schematic design fee proposal for the Baranof Park Ice Rink addition. This proposal includes planning, schematic design, and geotechnical recommendations for the addition of heated changing rooms, administrative spaces, and bathroom facilities at the existing Baranof Park Ice Rink in Kodiak, Alaska. Bristol has developed the following scope of work and fee based on recent correspondence with ECI, past local projects, and independent research of our own.

1.0 SCOPE OF SERVICES

Below is a detailed list of tasks associated with the scope of services for the schematic design package.

1.1 TASK 1: PROJECT MANAGEMENT

General project management will include project setup and closeout, contract management, scheduling, subconsultant fees, and invoicing.

1.2 TASK 3: DESIGN MEETINGS AND DESIGNER COORDINATION

Bristol will attend design meetings with the other designers as required. Bristol will work with our geotechnical subconsultant, Golder Inc., to obtain general recommendations for site and foundation work.

Golder will provide reviews of existing Geotechnical data, including the foundation engineering report for the existing covered ice rink if available (to be provided by owner), review of other, non-proprietary data that may be in the public domain or our files, and development of concept level understanding of site conditions and foundation recommendations based on the existing data, including discussion of potential risks associated with recommended foundation concept.

1.3 TASK 3: SCHEMATIC DESIGN NARRATIVE

The design narrative will include specific site discussion, civil and geotechnical recommendations, and material information. Bristol will provide the narrative to ECI to include in the overall project narrative, developed by ECI.

1.4 TASK 4: SCHEMATIC DESIGN PACKAGE

The schematic design package will include a site plan with grading based on available information, utility recommendations (if record drawings are available), civil details, and general material specification that can be used for pricing. No site design survey will be conducted at this time.

2.0 ASSUMPTIONS AND EXCLUSIONS

- Deliverables will be in electronic format.
- Geotechnical recommendations will consist of a desktop review of existing local data and soil recommendations. Specific site data will be obtained during the Design Development phases of the project.
- No land surveying for design or construction is included with this proposal.
- Specifications shall be sheet style.
- No site permitting is included at this phase.
- No site visits are included with this proposal.

3.0 SCHEDULE

Bristol will work with ECI to determine an appropriate design schedule after notice to proceed.

4.0 FEE PROPOSAL

Bristol is prepared to complete this project as outlined in the scope of services and in accordance with the schedule provided above for the **Time and Materials, Not to Exceed Fee of \$12,540**. We will keep you apprised when we come to 80 percent expenditure of this amount so that we can further discuss our scope of work and any necessary revisions to the budget. Bristol has provided an itemized fee as part of this proposal included as Attachment A.

Any work completed as part of this project, beyond the scope of services outlined in this proposal, will be invoiced on a time and expense basis using rates listed in our current Schedule of Charges, see Attachment B.

You can issue a notice to proceed by signing the Proposal Terms and Conditions of the work, Attachment C, and returning to Bristol. Thank you for the opportunity to work with you on this project. Please contact me at 907-563-0013 if you have any questions.

Regards,

Derek Tannahill
Bristol Project Manager

Attachments:

- Attachment A -- Fee Proposal
- Attachment B -- Bristol Schedule of Charges
- Attachment C -- Proposal Terms and Conditions

Attachment A
Fee Proposal

Attachment B
Schedule of Charges

2019-2020 Schedule of Charges

<u>Labor Category</u>	<u>Hourly Rate</u>
Senior Civil Engineer/Structural Engineer	\$135 - \$195
Senior Environmental Engineer	\$150 - \$170
Civil Engineer III/ Project Engineer	\$115 - \$145
Civil Engineer II/GIS Operator	\$75 - \$110
Civil Engineer I/Staff Env. Specialist	\$70 - \$90
Civil Engineering Intern	\$60 - \$75
Clerical/Technical Editor	\$55 - \$75

Update	Schedule of Charges and employee bill out rates will be updated at the end of June on an annual basis.
Travel time	Travel time will be charged as regular hourly rates for actual time involved. For fieldwork other than Anchorage sites, standby time for labor (up to eight hours per day per employee) will be charged when work is delayed or prevented, due to conditions beyond Bristol Engineering Services Company, LLC's control.
Outside Services	Travel expenses, printing, photographic work, rentals, mileage, subsistence, subcontractors, special delivery, and similar services will be billed at cost plus 10%.
Equipment Rentals	Equipment owned by Bristol Engineering Services Company, LLC will be rented according to a standard rate schedule, available on request.
Litigation Support	Expert testimony and preparation for testimony, depositions, hearings, mediation, and trials are at 200% of the above rates.
Contract Employees	Contract employees may be used from time-to-time, and will be billed at the regular schedule rates.
Terms	Bills are payable upon presentation, and are past due 30 days from the invoice date.

Attachment C
Proposal Terms and Conditions

Proposal: Kodiak Baranof Ice Rink
BESC No: N/A

Proposal Terms and Conditions

This agreement dated _____ day of _____, 2020 by and between Bristol Engineering Services Company, LLC (BRISTOL), and ECL (CLIENT).

Bristol agrees to perform services as set forth in this proposal subject to the terms and conditions stated herein.

PAYMENT

Invoices will be submitted monthly for services performed and expenses incurred during the previous month or upon completion of the Services or in portions thereof. Payment will be due upon receipt, interest will be added to the outstanding balance within 30 days of invoice date at the rate of one and one-half (1.5%) per month (18 percent per annum) or at the maximum rate allowed by law, whichever is less.

INSURANCE

Bristol will procure and maintain the following types and amounts of insurance for the duration of the Project: workers' compensation insurance as required by law, \$500,000 of employer's liability insurance, commercial general liability insurance of \$1,000,000 combined single limit for bodily injury and property damage, automobile liability insurance of \$1,000,000 combined single limit for bodily injury and property damage covering all vehicles, including hired cars, owned and non-owned vehicles, and professional liability insurance in the amount of \$1,000,000.

INDEMNIFICATION

Each party agrees to indemnify the other party, its present and future officers, directors, clients, agents, employees, successors and assigns from any and all liability, loss or damage, including, without limitation liability loss or damage arising from bodily injury illness and death, property damage or any other source and reasonable attorneys' fees and investigative discovery cost to the extent that it is cause by or arises out of the negligence or willful misconduct of the indemnifying party or a breach of this Agreement by the indemnifying party.

CHANGES

Client may at any time by written order of Client's authorized representative, make changes in, additions to, and deletions from the services to be performed under this Agreement, and Bristol shall promptly proceed with the performance as so changed. Client and Bristol shall attempt in good faith to reach agreement in writing as to any increase or decrease of the Agreement price or time resulting from such change or extra work and, if agreement is not possible, then the amount of additional time or change in compensation shall be determined as provided in the Disputes clause of this Agreement.

CONFIDENTIALITY

Client shall treat as confidential and not disclose to third parties, except as is necessary for the performance of the Work, or use for its own benefit, any of Bristol's developments, reports, calculations, designs, confidential information, and the like may be acquired in connection with the services provided herein. All proposals, reports, calculations, designs, estimates, and/or other documents shall remain Bristol's property and Bristol shall retain the rights to these materials. Any and all confidential, proprietary information, materials, data, reports, designs or recommendations provided under or resulting from this Agreement are intended for the purposes of this Agreement; and shall not be disclosed unless expressly agreed to and or authorized in writing by Bristol.

DISPUTES

All disputes shall be decided by arbitration. The arbitrator shall be appointed by mutual consent of the parties, or in the event the parties are unable to agree within ten (10) days of demand for arbitration, then the Superior Court of the State of Alaska shall appoint an arbitrator. The arbitration shall be governed in accordance with the Arbitration Rules of the American Arbitration Association then in effect. The award rendered by the arbitrators shall be final, and judgment may be entered upon and in accordance with applicable law in any court having jurisdiction thereof. It shall not interfere with the progress and performance of work required to be performed. This Agreement to arbitrate shall be specifically enforceable under the prevailing arbitration law.

TERMINATION, TAKEOVER, SUSPENSION

Except as provided herein, upon the occurrence of any of the following events, either party shall be entitled to terminate this Agreement prior to the end of the term then in effect, and except as to liabilities or claims that shall have accrued or arisen prior to the date of such termination, all obligations hereunder shall cease:

Either party may terminate this Agreement without cause and without further obligation with thirty-days of the commencement date.

Proposal: Kodiak Baranof Ice Rink
BESC No: N/A

The filing by the other party in any court pursuant to any statute of the United States or any state of a petition in bankruptcy or insolvency or for reorganization or for the appointment of a receiver or trustee of all or a substantial portion of such party's property or the making by such party of an assignment for or petition for an agreement for the benefit of creditor or the filing of a petition in bankruptcy against such party that is not discharged within ninety-days thereafter or the consent to sufferance of the application of any statute that obviates, restricts or suspends the rights of creditors generally.

Failure of a party to cure a material breach of agreement within thirty days following delivery of a notice from the non-breaching party setting forth the details of such alleged breach, or if such breach is of a nature that it cannot be cured within such thirty-day period, the breaching party has not within such thirty-day period commenced and at all times thereafter diligently proceeded with all acts required to cure such default. This Section shall not apply to any breach of agreement due to Client's failure to pay Bristol.

The failure of the Client to pay Bristol hereunder within three business days after Client's receipt of written demand for such payment.

In the event the work is terminated prior to Project completion, then an equitable settlement for work performed under this Agreement prior to such termination will be made as provided in the Disputes clause of this Agreement.

ENTIRE AGREEMENT AND ACCEPTANCE OF TERMS

This Agreement represents the entire and integrated agreement between the parties hereto and, unless specifically referenced herein, supersedes all prior negotiations, representations, or agreements, either written or oral. Client and Bristol agree that all terms and conditions were mutually negotiated and agreed to. By signing this Agreement, acceptance of supplies, reports, data, or Work acknowledged and performed under requirements indicated herein, Client agrees to comply with all the terms and conditions and all documents that this Agreement incorporates by reference or attachment. Bristol hereby objects to any terms and conditions contained in any acknowledgement of this Agreement that are different from or in addition to those mentioned in this document; unless mutually agreed to in writing. All rights and obligations shall survive final performance of this Agreement.

LAW AND VENUE

This Agreement shall be considered to have been made in and shall be interpreted under the laws of the State of Alaska. The location for any arbitration or venue for any lawsuit arising out of this Agreement or the work hereunder shall be Anchorage, Alaska.

This Agreement represents the final understanding of the parties hereto and Bristol assumes no responsibility for any understanding or representations made by any of its officers, agents or others prior to the execution of this Agreement, unless such understanding or representations by Bristol are expressly stated in this Agreement.

This Agreement is entered into as of the date first written above.

BRISTOL:
Bristol Engineering Services Company, LLC.

CLIENT:
ECI

BY

BY

PRINT NAME

PRINT NAME

PRINT TITLE

PRINT TITLE

Baranof Park Remodel - 35% Design

CLIENT: ECI

PREPARED BY: Colin Maynard, PE, SE

DATE: February 10, 2020

BBFM Engineers, Inc.
Structural Fee Proposal

COMMENTS:

- Lump Sum design fee
- Enclose existing pre-engineered steel building; upgrade steel frames, if necessary
- Will use steel frame drawings from manufacturer for sizes; site visit to verify accuracy of drawings & building condition
- Add stick-built single story structure with offices, retail, restrooms, and changing rooms
- Site visit assumes going to Kodiak on 7am flight and leaving on 1 pm flight
- Special Inspection by others
- Seismic design of mechanical and electrical equipment support not included in this proposal, but can be included as added scope with added fee.

TASKS	Senior Principal	Principal	Associate	Sr Project Engineer	Project Engineer	Structural Designer	CAD Tech	Office Manager	Clerical
Design									
Design Loads	0	2	0	0	0	0	0	0	0
Roof Framing	0	12	0	0	0	0	0	0	0
Floor Framing	0	0	0	0	0	0	0	0	0
Columns/Walls	0	4	0	0	0	0	0	0	0
Foundations	0	4	0	0	0	0	0	0	0
Misc Struct	0	0	0	0	0	0	0	0	0
Lateral Loads	0	12	0	0	0	0	0	0	0
A/M/E Minor Support	0	0	0	0	0	0	0	0	0
S1 Gen Notes & Abbrev	0	0	0	0	0	0	2	0	0
S2 Foundation Plan	0	0	0	0	0	0	6	0	0
S3 Roof Frmg Plan	0	0	0	0	0	0	6	0	0
S4 Foundation Details	0	0	0	0	0	0	6	0	0
S5 Framing Details	0	0	0	0	0	0	6	0	0
Design Meetings	0	2	0	0	0	0	0	0	0
Specifications	0	0	0	0	0	0	0	0	0
Quality Control	0	1	0	0	0	0	0	0	0
Permit/Govt Review	0	1	0	0	0	0	0	0	0
Site Visit	0	10							
TOTAL HOURS	0	48	0	0	0	0	26	0	0
RATE	\$245.00	\$195.00	\$170.00	\$145.00	\$130.00	\$105.00	\$135.00	\$75.00	\$175.00
HOURS * RATE	\$0	\$9,360	\$0	\$0	\$0	\$0	\$3,510	\$0	\$0
TOTAL LABOR	\$12,870								
EXPENSES									
Insurance	\$0								
Travel	\$450								
Food	\$30								
Lodging	\$0								
Auto	\$100								
Parking	\$20								
Reproduction	\$0								
Delivery	\$0								
TOTAL EXPENSES	\$600								
TOTAL FEE	\$13,470								

February 10, 2020

ECI Inc.
3909 Arctic Blvd, Suite 103
Anchorage, AK 99503

ATTENTION: Sean Carlson

Dear Sean,

**REFERENCE: Kodiak Sports Center Facility Expansion
Schematic Design Fee**

RSA Engineering is pleased to offer a fee proposal for mechanical and electrical engineering services for the referenced project. We have based our scope of work on your 2/6 email with concept drawings, along with the following assumptions:

General:

- Scope: Provide mechanical and electrical design for enclosing the existing ice rink at the Kodiak Sports Center and expanding it to include a 1-story addition with toilet and locker rooms, an office, and a skate rental area. The rink will also have a running track around the perimeter. We understand that the rink and track area will be unheated and ventilation will be provided with exhaust fans and louvers. We anticipate the addition will be heated with a boiler and radiant floor heating.
- Site Visits: Our proposal includes a site visit to as-built the existing conditions and determine what will be needed to enclose the building. We assume that this can be done as a day trip from Anchorage.
- Deliverables: This proposal includes development of a 35% schematic design only, which we assume will include drawings, narrative and outline specifications.

Exclusions:

- Travel delays are not included in our fee for site visits outside of Anchorage. Travel delays will be billed up to 8 hours per day of actual time including reimbursable expenses incurred.
- Our proposal does not include cost estimation services but we will work with the design team estimator to review costs and provide comments.
- Our proposal does not include any design services beyond the 35% level. If the project moves forward, we can provide a separate proposal to finish the design.

RSA proposes the following lump sum fee for this project:

<u>Project Deliverables</u>	<u>Mechanical</u>	<u>Electrical</u>	<u>Total</u>
Site Investigation	\$1,560.00	\$1,560.00	\$3,120.00
35% Schematic Design	\$3,505.00	\$3,245.00	\$6,750.00
Design Subtotal:	\$5,065.00	\$4,805.00	\$9,870.00

Reimbursable Expenses: **\$1,032.00**

Grand Total with Reimbursables: \$10,902.00

February 10, 2020

Please review and advise if this proposal is acceptable by signing below and returning a copy to our office as our notice to proceed. We have attached a copy of our Standard Terms and Conditions to provide guidelines for contractual issues in the absence of a formal contract for this project. We look forward to working with you on this project.

Sincerely,



Roger Weese, P.E., RCDD
President

rlw/bpp/cpl/lrg
20-0067/P20-045
Attachment

Accepted for ECI, Inc.

RSA Engineering, Inc – Standard Terms and Conditions

This document is intended to provide guidelines for contractual issues in the absence of a contract supplied by our client.

Performance:

RSA Engineering, Inc., herein known as RSA and its employees will exercise the degree of skill and care expected by customarily accepted practices and procedures. No warranties, expressed or implied, are made with respect to RSA's performance, unless agreed in writing. RSA is not a guarantor of the project to which its services are directed, and responsibility is limited to work performed for the client. RSA is not responsible for acts and omissions of the client, nor for third parties not under its direct control. RSA shall not be liable for any reason for any special, indirect or consequential damages including loss of use and/or loss of profit. RSA may rely upon information supplied by the client engaging RSA and its contractors or its consultants without independent verifications.

Ownership of Documents:

Documents prepared under this agreement are Instruments of Service for the sole use and benefit of the Owner. RSA retains a property interest in the work products including rights to copy and reuse. RSA grants the Owner a perpetual and non-transferrable license to reproduce the Instruments of Service for their intended use, including the right to reproduce for construction, upkeep, operation and maintenance. RSA will incur no liability from the unauthorized use or modification of the Instruments of Service for other than their original purpose without RSA's written permission. RSA's signatures, professional seals and dates shall be removed from the Instruments of Service when these documents are used for other than their intended purposes.

Governing Law:

This contract shall be governed by the laws of the State of Alaska, and any lawsuits brought thereon shall be filed at the Judicial District Court in Anchorage, Alaska.

Insurance:

RSA maintains errors and omission insurance (claims made basis), commercial general liability insurance, automobile liability insurance and workers compensation and employer's liability insurance for employees performing work under this contract.

Indemnity:

RSA shall indemnify, defend and hold the client, agents and employees harmless from and against any and all claims, demands, suits, liability of any nature under this agreement resulting from negligent acts, errors or omissions of RSA, RSA's officers, agents, and subconsultants who are directly responsible to RSA. RSA is not required to indemnify, defend or hold harmless the client for a claim of, or liability for, independent negligent acts, errors, or omissions of the

client. If there is a claim of, or liability for, a joint negligent act, error or omission of RSA and the Client, the indemnification, defense and hold harmless obligation of this agreement shall be apportioned on a comparative fault basis.

Dispute Resolution:

Prior to initiating court action, RSA and the client shall in good faith seek to settle or resolve the controversy by submitting the matter to mediation in Anchorage, Alaska. Such notice shall be within the statutory time limit for commencing a legal action involving the controversy. The independent third party Mediator will be selected by mutual consent of both Parties from a list of available members of the American Arbitration Association.

If the parties do not resolve a dispute through mediation, binding dispute resolution shall be through litigation in a court of competent jurisdiction in Anchorage, AK.

Proposals:

Proposals expire 90 days after submission to a client unless a different expiration limit is included in the proposal. RSA may withdraw or modify a proposal at any time prior to acceptance by the client.

Payments:

Payments for RSA Services shall be made after client's approval of RSA submission and invoice. Client shall review and approve each submission and invoice and shall pay the invoice amount within 30 days (or other agreed upon timetable) of approval. If the owner does not approve a submission it shall be returned to RSA for revision.

Invoicing:

RSA will invoice on a monthly basis. All invoices shall be due and payable upon receipt. Interest charges of 1.5% per month may be assessed for unpaid balances beyond 120 days past due unless other arrangements are made. In the event billing is on a pay when paid basis, RSA and the client agree to six months past due prior to assessing interest charges unless other arrangements are made. It is agreed that in the event of failure of the client to make payments in compliance with this agreement, RSA, at its option, may terminate all services in connection with this agreement.

Termination:

This contract may be terminated by either party upon 30 days written notice, should the other party fail to substantially perform in accordance with the terms and conditions herein. In the event of termination the consultant shall be paid compensation for services actually performed and for reimbursable expenses actually incurred. RSA reserves the right to complete analysis and records as are necessary to put files in order, and were considered by us necessary to protect our professional reputation.



February 10, 2020

Sean Carlson
ECI, Inc.
3909 Arctic Boulevard, #103
Anchorage, Alaska 99503

Re: Kodiak Sports Center - Siding Project & Expansion
Fee Proposal

Sean,

We can provide you with cost estimating services for this project for the fee, outlined below. We have based our proposal on the SOW and attachment in your email on 10FEB2020.

Our fee includes one estimate, with a revision based on your review comments. If scheduled in advance, allow 2 weeks for the development of the estimate for review.

This is a Fixed Fee proposal, and we reserve the right to re-negotiate if a change of scope occurs.

Item	Fixed Fee
Schematic Design Level Estimate One Option	\$2,440

We look forward to working with you on this project.

Sincerely,

Jay Lavoie
President