

**City of Kodiak Regular Council Meeting Agenda for August 28, 2014**  
**7:30 p.m., at 710 Mill Bay Road, Assembly Chambers (Room 232)**

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<b>I. Call to Order/Roll Call</b>	
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k.	Authorization to Purchase Vehicle for Kodiak Police Department .....	188

**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**

<b>DRAFT</b>
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**MINUTES OF THE REGULAR COUNCIL MEETING  
OF THE CITY OF KODIAK  
HELD THURSDAY, JULY 24, 2014  
IN THE BOROUGH ASSEMBLY CHAMBERS**

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

Mayor Pat Branson called the meeting to order at 7:30 p.m. Councilmembers Charles E. Davidson, Terry J. Haines, Richard H. Walker, and John B. Whiddon were present and constituted a quorum. Councilmembers Randall C. Bishop and Gabriel T. Saravia were absent. City Manager Aimée Kniaziowski, City Clerk Debra L. Marlar, and Deputy Clerk Michelle Shuravloff-Nelson were also present.

After the Pledge of Allegiance, Salvation Army Sergeant Major Dave Blacketer gave the invocation.

**II. PREVIOUS MINUTES**

Councilmember Whiddon MOVED to approve the minutes of the June 12, 2014, regular meeting as presented.

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

**III. PERSONS TO BE HEARD**

**a. Public Comments**

**Jamie Fagan** thanked the Council for scheduling the PANDA's presentation against the National Defense Authorization Act (NDAA). He gave an update on the number of towns that have passed resolutions against the NDAA and stated that the members of the group are funding their own advertising.

**Betty MacTavish** said sections 10-21 and 10-22 in the NDAA concern her, and she asked the Council to review those sections. She thanked the Council for inviting PANDA to present on Tuesday. She said the increase in City sales tax concerns her, and she spoke against the Assistant City Manager position. She informed the public that Relay for Life was occurring during the weekend.

**Susan Brockman** and **Beverly Cole** from Senior Citizens of Kodiak performed a song sharing the benefits of the Senior Center services.

**IV. UNFINISHED BUSINESS**

None

**V. NEW BUSINESS**

**a. First Reading, Ordinance 1320, Authorizing a Lease of Property Adjacent to Pier II With Petro Star, Inc., D/B/A North Pacific Fuel**

Mayor Branson read Ordinance No. 1320 by title. This ordinance would authorize the City of Kodiak to lease a portion of Pier II uplands known as Van Rows 11 and 12 (easterly), to Petro Star Inc, D/B/A North Pacific Fuel. Petro Star has leased the parcel for five year terms continuously since 1999 and desires to renew the lease for an additional five years. The current lease expires July 30, 2014.

Councilmember Haines MOVED to pass Ordinance No. 1320 in the first reading and advance to second reading and public hearing at the next regular or special Council meeting.

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

**b. First Reading, Ordinance No. 1321, Authorizing the Grant to Kodiak Electric Association, Inc, of an Approximately 5,000 Square Foot Easement on a Portion of Alaska State Land Survey No. 89-10, USS 2539 TR A Located in the Vicinity of Gibson Cove; and a 40-Foot Wide by Approximately 4,997 Foot-Long Easement Traversing Pillar Mountain Across City Properties Described as USS 2538a TR B and USS 3945; for a Flywheel System and Power Line to Support the Operation of a New Crane at Pier III**

Mayor Branson read Ordinance No. 1321 by title. This ordinance recommends Council approve two electrical easements to KEA, which will allow them to install and maintain equipment related to providing medium voltage power to the Pier III project. One easement is on Pillar Mountain and will be used for a new 12.47 kVA power distribution line, which will serve existing utility customers currently on the Pier III electrical circuit. The second easement is for the two flywheels and is in Gibson Cove. These easements are related to the three party agreement executed with KEA and Horizon Lines that was structured to provide medium voltage electrical service for the new 100 gauge crane to be installed on the Pier III project.

Councilmember Davidson MOVED to pass Ordinance No. 1321 in the first reading and advance to second reading and public hearing at the next regular or special Council meeting.

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

**c. First Reading, Ordinance No. 1322, Enacting Kodiak City Code 2.08.065, Assistant City Manager—Appointment, Powers and Duties; Amending Chapters 2, 4 and 10 of the City Personnel Rules and Regulations; Amending the Definitions in the City Personnel Rules and Regulations; and Adopting New Schedules I and II to the Personnel Rules and Regulations; to Provide for the Appointment, Duties, and Compensation of an Assistant City Manager**

Mayor Branson read Ordinance No. 1322 by title. The City Council and City Manager have discussed ways to even out the Manager's workload given the multiple job requirements. If passed, Ordinance No. 1322 would create an Assistant City Manager position, which would provide a transitional senior management position that can fill in for the Manager when necessary and take



on many of the operational tasks, especially human resource related functions. The Manager consulted with the City Attorney who advised that a portion of Title 2 of the City Code must be amended to identify the position and its main duties, and the Personnel Rules and Regulations (PR&R) must also be amended to include references to the position and new salary band and grade consistent with assistant city managers and the City's new classification and pay system.

Councilmember Davidson MOVED to pass Ordinance No. 1322 in the first reading and advance to second reading and public hearing at the next regular or special Council meeting.

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

**d. Resolution No. 2014–26, Amending Section 14, Utilities (Sewer), of the Schedule of Fees, Charges, and Tariffs and Authorizing Implementation of a Five-Year Rate Structure and Repealing Resolution No. 2014–22**

Mayor Branson read Resolution No. 2014–26 by title. CH2MHill has prepared several water and sewer rate studies for the City of Kodiak going back to 1982. In March 2014 staff requested that CH2MHill complete a new sewer rate structure and make recommendations if rates needed to be adjusted. The study showed rates needed to be increased over a five-year period to meet operational and capital improvement needs. The Council adopted Resolution No. 2014–22 at the May 22, 2014, meeting, which amended Section 14 of the City's Schedule of Fees, Charges and Tariffs to reflect the proposed five-year, five percent per year rate increase for City sewer services. When the Clerk's Office updated the fee schedule to reflect the new rates, a copy error was discovered. The sewer rate for apartments outside the City was inadvertently omitted from Resolution No. 2014–22. Resolution No. 2014–26 corrects this omission.

Councilmember Haines MOVED to adopt Resolution No. 2014–26.

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

**e. Resolution No. 2014–27, Authorizing the Issuance of a Permit to the Filipino American Association of Kodiak for the Use of Public Property to Host Its Philippine Consulate Outreach Program**

Mayor Branson read Resolution No. 2014–27 by title. The Filipino-American Association of Kodiak has requested use of the Teen Center on August 1-2, 2014, to host the consular outreach program during the visit of the Philippine Consulate General from San Francisco. The purpose of the visit is to provide consular outreach services to Filipino Americans in Kodiak. The Philippine Consulate will collect fees for services rendered, and the Filipino-American Association will also ask for donations from participants to help offset costs associated with the outreach program.

Councilmember Whiddon MOVED to adopt Resolution No. 2014–27.

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

**f. Resolution No. 2014–28, Authorizing Payment of Fiscal Year 2015 Nonprofit Organization Grants**

Mayor Branson read Resolution No. 2014–28 by title. Each year the City Council authorizes grant payments to local nonprofit organizations. The types and levels of funding are based on the City Council’s nonprofit funding policy guidelines adopted by Resolution No. 2014–19. The policy resolution stipulates the total amount available for nonprofit grants in a given fiscal year is one percent of budgeted general fund revenues, exclusive of any fund balance appropriations. The amount budgeted for FY2015 for nonprofit grant payments is \$168,100. This year the policy also grants agencies the ability to apply for one-time only non-operational funds for special projects. The City received twenty-one applications for FY2015 from nonprofit organizations that serve Kodiak, up from seventeen applications last fiscal year, for a total amount requested of \$173,334. Council reviewed the applications at the July 22 work session, and their support for the applicants is reflected in Resolution No. 2014–28.

Councilmember Walker MOVED to adopt Resolution No. 2014–28.

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

**g. Resolution No. 2014–29, Authorizing the Kodiak Football League to Collect Admission Fees for High School Football and Youth League Football Games at Baranof Park**

Mayor Branson read Resolution No. 2014–29 by title. For the past several years the City Council has authorized the non-profit Kodiak Football League to charge admission fees for youth and high school football games at Baranof Park. This effort helps pay for the teams’ expenses. Because the games are held on City property, the League must receive permission from the City Council. Resolution No. 2014–29 will authorize the League to collect fees during the football season from August 1 through October 31, 2014.

Councilmember Whiddon MOVED to adopt Resolution No. 2014–29.

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

**h. Authorization of Bid Award for Annual Sidewalk, Curb, and Gutter Repairs, Project No. 5003/15-01**

Annually, the City issues bids for the repair and replacement of damaged sections of sidewalk, curb, and gutters at various locations throughout the City. Actual quantities of each bid item will vary in response to need and approval in the FY2015 budget. Bids were issued in June 11 and opened on July 11, 2014. Two bids were received. Staff recommends Council authorize the bid award to DRW Construction, the low bidder, in the amount of \$53,600.

Councilmember Davidson MOVED to authorize the bid award for the annual sidewalk, curb, and gutter repairs project to DRW Construction in the amount of \$53,600, with funds coming from the Street Improvement Capital Fund, Annual Sidewalk Curb and Gutter Project, Project No.

5003/15-01 and authorize the City Manager to execute the award documents on behalf of the City.

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

**i. Authorization of Professional Services Contract for Kodiak Police Department Boiler Repair**

In January of 2012 shortly after the warranty period expired, leaks were detected in the Kodiak Police Department boiler system. Within a period of six weeks, the impeller seals in the boiler pumps began to fail. John's Heating Service was brought in to do immediate repairs and help identify the problem. John's Heating Service found the leaks and failures resulted from contaminated glycol, which is the product used in the system to prevent freezing of the lines and facilitate heating and cooling. Due to continued contamination of the glycol system and the cost of ongoing maintenance, the recommendation is to convert the glycol system to water. The cost of the system repair was included in the FY2015 budget, and staff recommends a contract for needed repairs be awarded to John's Heating Service without a competitive bid process, per KCC 3.12.070(a)(2).

Councilmember Walker MOVED to authorize a professional services contract to John's Heating Service in an amount not to exceed \$94,000, with funds coming from the General Fund, Police Department, Administration repair and maintenance line item, and authorize the City Manager to execute the documents on behalf of the City.

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

**j. Authorization of Memorandum of Understanding to Establish the Safe Streets Task Force**

The Kodiak Police Department collaborating with the FBI to create the Kodiak Safe Streets Task Force (KSSTF) would allow select officers to become deputized Task Force Officers (TFOs). The KSSTF would be able to work outside the City limits to begin investigations in import areas of known heavy drug trafficking to Kodiak Island.

Councilmember Walker MOVED to authorize the Memorandum of Understanding between the City of Kodiak and the Federal Bureau of Investigation to create the Kodiak Safe Streets Task Force and authorize the City Manager to sign the agreement for the City.

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

**k. Authorization of Borrow Material Permit No. 14-1 for B&R Fish By-Products, Inc., for the Breakwater Quarry**

The City's borrow permit with B&R Fish By-Products for rock extraction at the Breakwater Quarry site expired. The new permit has been reviewed by the City Attorney and insurance company and was revised to reflect current legal and insurance requirements.

Councilmember Haines MOVED to approve Borrow Material Permit No. 14-1 to B&R Fish By-Products, Inc. for the Breakwater Quarry for a five-year period commencing in July 2014 and authorize the City Manager to sign the permit for the City.

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

**l. Authorization of Borrow Material Permit No. 14-2 to Brechan Enterprises, Inc., for the Breakwater Quarry**

The City's borrow permit with Brechan Enterprises Inc. for rock extraction at the Breakwater Quarry site expired. The new permit has been reviewed by the City Attorney and insurance company and revised to reflect current legal and insurance requirements.

Councilmember Whiddon MOVED to approve Borrow Material Permit No. 14-2 to Brechan Enterprises, Inc. for the Breakwater Quarry for period of five years commencing in July 2014 and authorize the City Manager to sign the permit for the City.

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

**m. Authorization of FY2015 Pavement Repairs, Project No. 15-02/5025**

This project will repair areas of asphalt damaged by wear and water erosion. Brechan Enterprises, Inc. is the only asphalt pavement producer and large paver in Kodiak. Staff recommended the Council authorize the FY2015 pavement repairs project to Brechan as a sole source contract.

Councilmember Haines MOVED to authorize the award of the FY2015 Pavement Repair, Project No. 15-02/5025 to Brechan Enterprises Inc. as a sole source contract for the total amount of \$430,000, with funds coming from the Streets Capital Improvement Fund Project No. 5025, Pavement Repairs and authorize the City Manager to execute the documents on behalf of the City.

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

**VI. STAFF REPORTS**

**a. City Manager**

Manager Kniazowski gave an update on capital projects. She said material will be moved to Pier III and the composting plan is 95 percent complete. She shared a public meeting will be scheduled with Sara Barton to provide facts to the public about composting. She indicated the Aleutian Homes Phase V, Segment B project is progressing, and the storm drains will be next. She stated

there will be an Aleutian Homes Phase VI project beginning, which will be the design piece. She said the Monashka Pumphouse project is underway. She provided an update that the City Engineer is working on the skate park, and the bid process should occur in late September. She said that the City has over \$50 million in active projects. Manager Kniazowski gave an update on City personnel matters and highlighted Sexual Harassment training was provided for all staff and Reasonable Suspicion for Drugs and Alcohol training was provided for supervisors. She shared that the Safety Committee is working to update the safety manual. She thanked the Council for attending the emergency preparedness training for elected officials in June. She stated that Department Heads have reviewed the Downtown Revitalization Committee recommendations and provided feedback that she will summarize and present to the Council in August. She stated the new fire truck was outside and available for viewing after the meeting. Manager Kniazowski said she will attend the Alaska Municipal League meeting in Nome in August.

**b. City Clerk**

City Clerk Marlar informed the public that nominating petitions for two Councilmember seats are available, and the petitions will be accepted in Clerk's Office from August 1 until August 15. She provided an update of the next scheduled Council work session and regular meeting.

**VII. MAYOR'S COMMENTS**

Mayor Branson said there is \$50 million of capital projects occurring at this time, which are improving the City's infrastructure. She said she is excited that the Pier III and Monashka Pumphouse projects are underway, and she thanked the legislature for their support. She thanked the Council for supporting the nonprofit grants and allocating funds. She is pleased the Phillippine Consulate is coming to Kodiak this summer. She explained that the Downtown Revitalization Committee gave recommendations to the City staff and the staff is working on the recommendations to bring back to the Council for review and approval. She shared that Relay for Life was scheduled for the upcoming weekend and voiced support of the worthy event.

**VIII. COUNCIL COMMENTS**

Councilmember Whiddon thanked Chief Wallace for her work to establish the Safe Streets Task Force. He stated the visit from Eileen Sobek, NMFS Administrator, during the Fisheries Work Group meeting was very productive, and she listened to elected officials and stakeholder comments during her visit.

Councilmember Davidson commented the community lost a valuable member with the passing of Iver Malutin.

Councilmember Haines said that Iver Malutin was unique and was thankful for the contributions he made to the community. He thanked the PANDA group for their presentation and attending the meeting. He thanked Mayor Branson and Betty MacTavish for reminding the community that Relay for Life was occurring during the weekend. He opined the Aleutian Homes Phase V project is a benefit to the City-wide infrastructure, and he commented on the large pipe that supplies water to the community. He said he appreciated Eileen Sobek's time during the Fisheries Work Group meeting.

Councilmember Walker thanked the PANDA group and he commented on the Patriot Act.

**IX. AUDIENCE COMMENTS**

None

**X. ADJOURNMENT**

Councilmember Davidson MOVED to adjourn the meeting.

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

The meeting adjourned at 8:54 p.m.

CITY OF KODIAK

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MAYOR

ATTEST:

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CITY CLERK

Minutes Approved:

## **PERSONS TO BE HEARD**

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**MEMORANDUM TO COUNCIL**

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**Date:** August 28, 2014

**Agenda Item: III. a. Proclamation: Recognizing Kodiak's Seafood Processing Workers**

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**SUMMARY:** This proclamation recognizes the hard work of seafood processing workers and the positive contribution they make to the community.

**ATTACHMENTS:**

Attachment A: Proclamation: Recognizing Kodiak's Seafood Processing Workers



# PROCLAMATION

## RECOGNIZING KODIAK'S SEAFOOD PROCESSING WORKERS

WHEREAS, the commercial fishing industry is the backbone of the Kodiak economy; and

WHEREAS, Kodiak is among the top fishing ports in the nation; and

WHEREAS, approximately 437 million pounds of seafood crossed Kodiak's docks in 2013, with an ex-vessel dollar value that exceeded \$309 million as reported by the Alaska Department of Fish and Game; and

WHEREAS, approximately one fifth of Kodiak's workforce is employed in the seafood processing sector; and

WHEREAS, Kodiak Island seafood processing workers handled the 437 million pounds of the seafood harvested, as well as a significant amount of sport/recreational-caught seafood; and

WHEREAS, the City of Kodiak acknowledges the monumental contribution of its seafood processing workers.

NOW, THEREFORE, I, Pat Branson, Mayor of the City of Kodiak, do hereby proclaim August 28, 2014, as

### Seafood Processing Workers Day

in Kodiak and urge all citizens to acknowledge the extraordinary efforts and dedication of Kodiak's seafood workers.

Dated this 28th day of August 2014.

City of Kodiak

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Pat Branson, Mayor

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**MEMORANDUM TO COUNCIL**

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**Date:** August 28, 2014

**Agenda Item: III. b. Proclamation: Suicide Prevention Week**

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**SUMMARY:** This proclamation recognizes suicide as a significant public problem in Kodiak and declares suicide prevention a priority.

**ATTACHMENTS:**

Attachment A: Proclamation: Suicide Prevention Week

## PROCLAMATION Declaring Suicide Prevention Week

WHEREAS, in the United States, one person dies by suicide every 13.3 minutes, with 39,518 deaths by suicide in our country during 2011; and

WHEREAS, in 2011, 143 Alaskans died by suicide, and several thousand friends and family members were changed forever by loving those people; and

WHEREAS many of those people who died never received effective behavioral health services; and

WHEREAS, supporting the development of accessible behavioral health services implementing national best practices in reducing suicide risk for people of all ages and backgrounds; and

WHEREAS, encouraging initiatives based on the goals and activities contain in the National Strategy for Suicide Prevention, Zero Suicide of the National Action Alliance for Suicide Prevention, and The Way Forward by the Action Alliances suicide attempt survivor task force; and

WHEREAS, the Alaska Suicide Prevention Council is dedicated to reducing the frequency of suicide attempts and deaths, and the pain for those affected by suicide deaths, through research projects, educational programs, intervention services, and bereavement services.

NOW THEREFORE, I, Pat Branson, Mayor of the City of Kodiak, do hereby proclaim September 8 through 14, 2014 as

### SUICIDE PREVENTION WEEK

in Kodiak, and call upon all citizens to recognize suicide as a significant public problem in Kodiak and declare suicide prevention a priority.

Dated this 28th day of August 2014.

City of Kodiak

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Pat Branson, Mayor

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# **UNFINISHED BUSINESS**

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## MEMORANDUM TO COUNCIL

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**To:** Mayor Branson and City Councilmembers

**From:** Aimée Kniaziowski, City Manager 

**Thru:** Lon White, Harbormaster 

**Date:** August 28, 2014

**Agenda Item:** **IV. a. Second Reading and Public Hearing, Ordinance No. 1320, Authorizing a Lease of Property Adjacent to Pier II With Petro Star, Inc. D/B/A North Pacific Fuel**

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**SUMMARY:** Ordinance No. 1320 would authorize the City of Kodiak to lease a portion of Pier II uplands known as Van Rows 11 and 12 (easterly), to Petro Star Inc, D/B/A North Pacific Fuel. Petro Star has leased the parcel for five year terms continuously since 1999 and desires to renew the lease for an additional five years. The current lease expired on July 30, 2014. The ordinance was introduced and advanced to second reading at the July 24, 2014, regular meeting. Staff recommends Council adopt Ordinance No. 1320.

**PREVIOUS COUNCIL ACTION:** Council has renewed the lease with Petro Star for three terms since in 1999. This lease was introduced for first reading at the July 24, 2014, regular Council meeting and advanced to second reading at the next regular or special Council meeting.

**DISCUSSION:** The parcel leased by Petro Star is located on the northwest corner of the Pier II property, immediately adjacent to Petro Star's bulk oil facility at 715 Shelikof St. The 8,300 square foot (sf) area is used for storage, staging and parking in support of their bulk fuel facility operations. The area is paved with a security fence around the perimeter. The total lease area of 8,300 sf represents the current condition, which is 200 sf less than in previous years due to the Shelikof St. road realignment that accommodated the pedestrian walkway.

The majority of the uplands at Pier II were historically leased by commercial freight carriers for the storage of container vans on chassis. In the early 1990s, carriers transitioned to a "dry stack" method of container storage and consolidated their operations, primarily at Pier III. Currently only a small portion of the Pier II uplands are used for container storage. Most of the uplands are now used to support other marine related business such as commercial fishing, staging for ferries and cruise ships, and ground leases to NOAA and Petro Star. The use of the area leased by Petro Star is appropriate and works in concert with other users in the area. The City's Used Oil Facility is located directly adjacent to Petro Star's lease area, making the handling of oil products between the facilities very efficient.

**ALTERNATIVES:**

- 1) Renew the lease to Petro Star for another five-year term by approving Ordinance No. 1320. Use of the area is beneficial to both parties and essential to Petro Star operations. This is the recommendation of staff.
- 2) Do not renew the lease and seek other uses for the area. It is unlikely the City will find a more suitable tenant or use for the property; therefore, staff does not recommend this option.

**FINANCIAL IMPLICATIONS:** In 2013 an appraisal of the Pier II warehouse and uplands was conducted. The proposed rates are consistent with the appraisers recommended rates and fair market value. Petro Star has agreed to lease the 8,300 sf parcel at the current rate plus a 2.5 percent increase each year of the contract. The total revenue for the lease term is \$64,484.75. The annual rate is:

August 1, 2014 to July 31, 2015	\$12,268.02
August 1, 2015 to July 31, 2016	\$12,574.72
August 1, 2016 to July 31, 2017	\$12,889.09
August 1, 2017 to July 31, 2018	\$13,211.32
August 1, 2018 to July 31, 2019	\$13,541.60

**LEGAL:** The City attorney and insurance broker reviewed all documents for compliance. The attorney also prepared the ordinance.

**STAFF RECOMMENDATION:** Staff recommends Council approve the lease as negotiated with Petro Star, Inc. for a five-year term commencing on August 1, 2014, and ending on July 31, 2019, by adopting Ordinance No. 1320 in the second reading.

**CITY MANAGER’S COMMENTS:** The Harbormaster discussed the renewal of the lease with Petro Star and negotiated the terms of the agreement. The lease benefits Petro Star and the Harbor Department and provides revenues to the City. I support Lon White’s recommendation and ask Council to adopt Ordinance No. 1320 in the second reading following a public hearing.

**ATTACHMENTS:**

- Attachment A: Ordinance No. 1320
- Attachment B: Five-year lease between City and Petro Star

**PROPOSED MOTION:**

Move to adopt Ordinance No.1320.

**CITY OF KODIAK  
ORDINANCE NUMBER 1320**

**AN ORDINANCE OF THE COUNCIL OF THE CITY OF KODIAK AUTHORIZING A LEASE OF PROPERTY ADJACENT TO PIER II WITH PETRO STAR, INC. d/b/a NORTH PACIFIC FUEL**

WHEREAS, the City of Kodiak (“City”) the City is the owner of certain land adjacent to Pier II, more particularly described as the easterly 8,300 square feet of Van Storage Rows 11 and 12, combined (“Premises”); and

WHEREAS, Petro Star, Inc. d/b/a North Pacific Fuel desires to renew its existing lease of the Premises for purposes that are directly related to its use of the Pier II port facilities, for a term expiring July 31, 2019.

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

**Section 1:** The Council finds that it is in the best interest of the City of Kodiak to renew the Ground Lease Agreement with Petro Star, Inc. d/b/a North Pacific Fuel, for the use of 8,300 square feet of space in the area adjacent to Pier II. Notwithstanding any provision of Kodiak City Code Chapter 18.20 to the contrary, the renewal of such Ground Lease Agreement hereby is authorized.

**Section 2:** The form and content of the Ground Lease Agreement between the City and Petro Star, Inc. d/b/a North Pacific Fuel, hereby are in all respects authorized, approved, and confirmed; and the City Manager hereby is authorized, empowered, and directed to execute and deliver the Ground Lease Agreement to Petro Star, Inc., d/b/a North Pacific Fuel, on behalf of the City, in substantially the form and content now before this meeting but with such changes, modifications, additions, and deletions therein as she shall deem necessary, desirable, or appropriate, the execution thereof to constitute conclusive evidence of approval of any and all changes, modifications, additions, or deletions therein from the form and content of said document now before this meeting, and from and after the execution and delivery of said document, the City Manager hereby is authorized, empowered, and directed to do all acts and things and to execute all documents as may be necessary to carry out and comply with the provisions of the Ground Lease Agreement as executed.

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



CITY OF KODIAK

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MAYOR

ATTEST:

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CITY CLERK

First Reading: July 24, 2014  
Second Reading:  
Effective Date:

**GROUND LEASE AGREEMENT  
PETRO STAR AND CITY OF KODIAK  
FOR A PORTION OF VAN STORAGE ROWS ADJACENT TO PIER 2  
CONTRACT NO. 216262**

THIS LEASE, made as of the 1<sup>st</sup> day of August 2014, by and between the **City of Kodiak**, an Alaska municipal corporation ("City"), and **Petro Star, Inc.**, an Alaska corporation, d/b/a North Pacific Fuel ("Lessee"), provides as follows:

**1. Leased Premises.** Upon the terms and conditions set forth herein and subject to the prompt payment and performance by Lessee of each and every sum and other obligation herein, the City does hereby lease, let, and demise to the Lessee, and the Lessee does hereby lease from the City the following described premises: that portion of Van Storage Rows 11 and 12, near Pier II in Kodiak, Alaska, extending seventy-five feet from the easterly end of those rows along the curbs defining the rows, and terminating at a line drawn between the curbs at the seventy-five-foot limit, comprising 8,300 square feet more or less, and further identified on the schematic drawing attached hereto as Exhibit A ("Premises").

**2. Term.** This Lease shall be effective from August 1, 2014, through July 31, 2019, unless terminated earlier as provided below. The provisions of Kodiak City Code section 18.20.350 in effect on the day and year first above written shall govern the Lessee's re-lease rights.

**3. Rental.** Lessee agrees to pay as and for rent the sum of TWELVE THOUSAND TWO HUNDRED SIXTY EIGHT DOLLARS AND TWO CENTS (\$12,268.02) per year in the first year, in one annual installment which is due in advance on the first day of August 2014. The rental amount will be increased for each subsequent year of this lease, effective with the rental payment due August 1 of each year, by an amount equal to 2.5% of the prior year's rental. The annual rentals shall be as follows:

August 1, 2014 to July 31, 2015	\$12,268.02 per year
August 1, 2015 to July 31, 2016	\$12,574.72 per year
August 1, 2016 to July 31, 2017	\$12,889.09 per year
August 1, 2017 to July 31, 2018	\$13,211.32 per year
August 1, 2018 to July 31, 2019	\$13,541.60 per year

**4. Conditions of Lease.** The Premises shall be used solely for the following purposes:  
(a) Storage of spill response supplies and equipment  
(b) Unloading cargo container vans  
(c) Parking of company and employee vehicles  
(d) General storage  
(e) Storage of lube oils and kerosene in barrels

**5. Improvements.** City shall have the right to make additions, alterations, or improvements to the Premises which will not impede Lessee's access to or use of the Premises. Lessee shall

have the right to erect or construct a suitable fence necessary for securing the property placed in the area leased, a bulk lube oil system, asphalt curbing, and parked cargo container vans for inventory storage. Any improvements constructed by Lessee shall be consistent with the limited use of the Premises authorized by this Lease and shall be constructed at Lessee's expense. Upon termination of this Lease, such improvements shall be removed by Lessee at its sole expense.

**6. Maintenance.** Except as otherwise specifically provided herein, Lessee shall at all times at its sole expense maintain the Premises in good repair and in a neat and orderly condition. Lessee shall not cause or permit any litter, debris, or refuse to be accumulated or stored upon the Premises and shall promptly remove all such materials without cost to City.

**7. Indemnity.** Lessee shall defend, indemnify, and hold City, its officers, agents, and employees harmless against any and all actions, suits, proceedings, claims, loss, liens, costs, expense, and liability of every kind and nature whatsoever, including, but not limited to, attorney's fees reasonably incurred for response or defense, for injury to or death of persons or loss of or damage to property, including property owned by the City, caused by or incurred as a result of Lessee's use and occupancy of the Premises under this Lease. This provision shall not apply to claims, actions, damages, losses, or proceedings caused solely by the negligence of officers, agents, or employees of City.

**8. Insurance.** (a) Lessee shall procure and maintain at its sole expense, and shall keep in full force and effect throughout the term of this Lease, the following policies of insurance:

(1) Commercial General Liability Insurance, \$1,000,000 combined single limit per occurrence for bodily injury and property damage claims arising from all operations related to this Lease. The general aggregate limit shall be \$2,000,000.

(2) Commercial Automobile Liability Insurance, \$1,000,000 combined single limit per accident for bodily injury and property damage.

(3) Worker's Compensation and Employers Liability. Worker's Compensation shall be statutory as required by the State of Alaska. Employers Liability shall be endorsed to the following minimum limits and contain USL&H coverage endorsement, if applicable: (i) bodily injury by accident--\$1,000,000 each accident; and (ii) bodily injury by disease--\$1,000,000 each employee, \$1,000,000 policy limit.

(4) A policy of public and property damage liability insurance in an amount of not less than \$1,000,000 or the amount required for Lessee to demonstrate financial responsibility under 18 AAC 75.205, *et seq.*, whichever amount is greater. Such policy shall include coverage for all claims, damages, fines, or penalties which may arise by reason of any federal, state, or local law or regulation, including but not limited to AS 46.04, as a result of any discharge of petroleum products from Lessee's items stored on or other use of the Premises. The insurance coverage requirements of this subparagraph are intended to be in addition to the insurance and other financial responsibility requirements set forth in 18 AAC 75, and nothing in this Lease shall be construed as a waiver of the City's right to insist upon strict compliance with those requirements.

(b) Other Insurance Provisions. The policies are to contain, or be endorsed to contain, the following provisions:

(1) Commercial General Liability and Automobile Liability

(i) City, its officers, officials, employees and volunteers are to be covered as additional insureds. The coverage shall contain no special limitation on the

scope of protection afforded to City, its officers, officials, employees and volunteers.

(ii) Lessee's insurance coverage shall be primary insurance as respects City, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by City, its officers, officials, employees and volunteers shall be excess of Lessee's insurance and shall not contribute to it.

(iii) Lessee's insurer shall agree to waive all rights of subrogation against City, its officers, officials, employees and volunteers for losses arising from work performed by Lessee or any sublessee for City.

(2) Worker's Compensation and Employer's Liability. Lessee's insurer shall agree to waive all rights of subrogation against City, its officers, officials, employees and volunteers for losses arising from work performed by Lessee or any sublessee for City.

(3) All Insurance. Each insurance policy required by this Lease 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 Lessee, or 60 days prior written notice for any other reason, has been given to by the Insurer to City by certified mail, return receipt requested.

(c) Acceptability of Insurers. Insurance is to be placed with insurers with a Best's rating of no less than A-: VII.

(d) Verification of Coverage. Lessee shall furnish City with approved certificates of insurance and with certified copies of all endorsements effecting coverage required by this Section. 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 which meet industry standard. City reserves the right to require complete, certified copies of all required insurance policies, at any time.

**9. Utility Charges and Taxes.** All utility charges shall be borne and paid for by Lessee, together with all personal or real property taxes or assessments that may be levied against the Lessee by reasons of its occupancy of the Premises or its rights hereunder.

**10. Operation of Equipment.** In installing, operating, or maintaining any equipment on the Premises and in its general management of the Premises, the Lessee will act in accordance with applicable laws and regulations and so as not to cause interference with any other authorized use of Van Storage Rows, Pier II, and other City property. Lessee will not do, attempt, or permit any acts in connection with this Lease which could be construed as a violation of law.

**11. Condition of Premises.** Lessee takes the Premises in its present condition and City shall have no responsibility for its condition, or for any damage suffered by Lessee or any other person due to such conditions.

**12. Assignment and Subleasing.** Lessee shall not assign its rights or delegate its duties under this Lease, or sublease all or any part of the Premises, without the prior written consent of City.

**13. Termination, Default and Re-Entry.** (a) Either party may terminate this Lease prior to the end of the Term by written notice delivered to the other party. Such termination shall be

effective no earlier than ninety (90) days after the first day of the month immediately following such notice.

(b) If Lessee fails to cure any default of the conditions of this Lease within thirty (30) days after written notice thereof by City, or in the event insolvency proceedings should be instituted by or against Lessee, then City may terminate the Lease as of such date and re-enter the premises and remove all property therefrom and Lessee shall remain liable for the payment of rental to the extent provided by law.

**14. Notice.** Any notice under this Lease shall be in writing and shall be given when delivered in person or deposited in the United States mail, certified and postage prepaid, and addressed to the other party at the address set forth above its signature on this Lease. The address to which any notice under this Lease shall be given to a party may be changed by written notice given by such party as above provided.

**15. Applicable Law.** Lessee shall, at all times, in its use and occupancy of the Premises and in the conduct of its operations thereon, comply with all applicable federal, state, and local laws, ordinances, and regulations.

IN WITNESS WHEREOF, the parties executed this instrument as of the day and month first above written.

CITY OF KODIAK  
710 Mill Bay Road  
Kodiak, AK 99615

PETRO STAR, INC. (DBA North Pacific Fuel)  
P. O. Box 1487  
Kodiak, AK 99615

\_\_\_\_\_  
Aimée Kniazowski, Manager

\_\_\_\_\_  
Donald Castle, Vice President

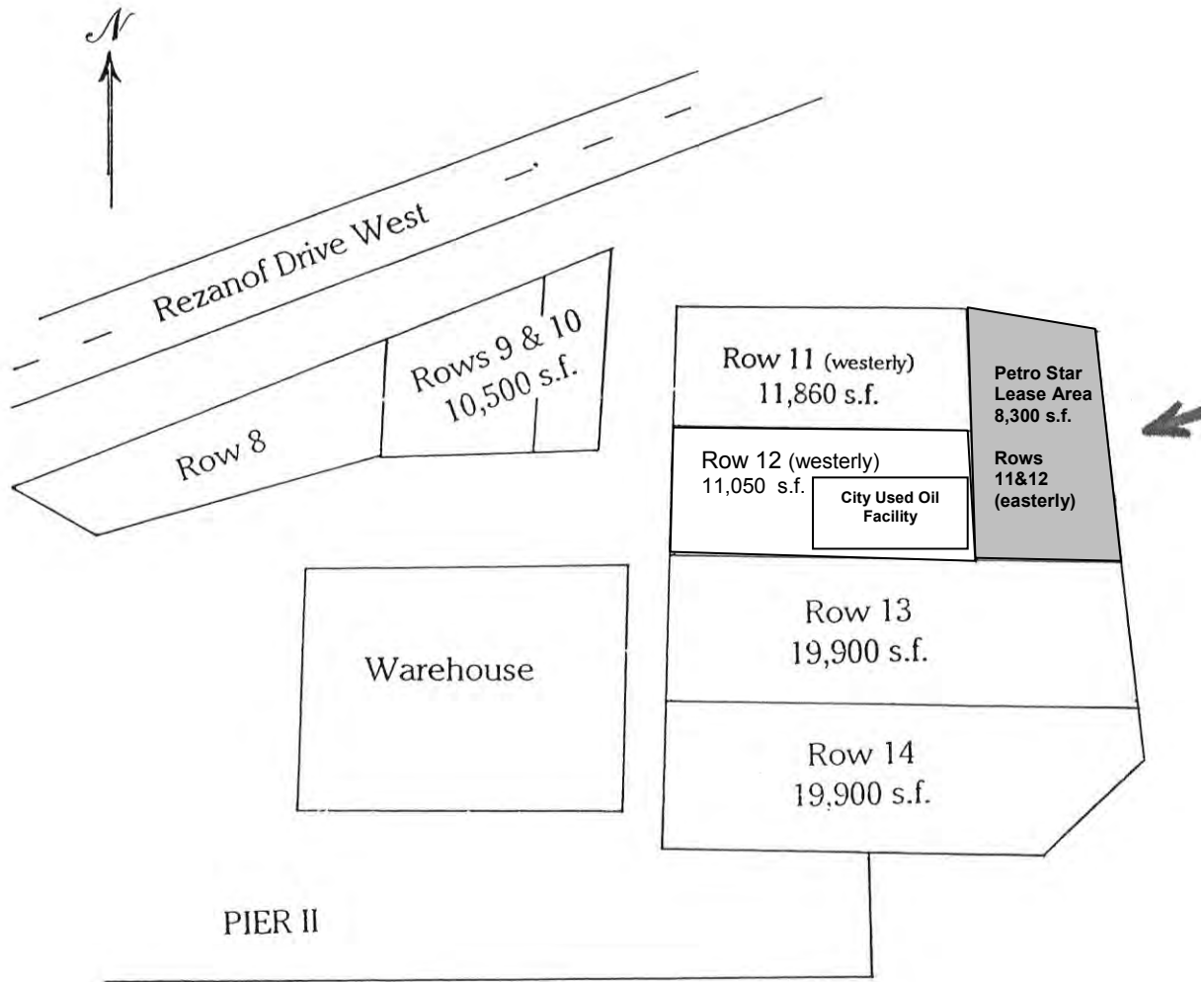
Attest:

Witness:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_

**EXHIBIT A**  
**Petro Star Lease Area**  
**Pier II, Kodiak, Alaska**




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**MEMORANDUM TO COUNCIL**

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**To:** Mayor Branson and City Councilmembers  
**From:** Aimée Kniaziowski, City Manager  
**Thru:** Glenn Melvin, City Engineer   
**Date:** August 28, 2014

**Agenda Item:** **IV. b. Second Reading and Public Hearing, Ordinance No. 1321, Authorizing the Grant to Kodiak Electric Association, Inc, of an Approximately 5,000 Square Foot Easement on a Portion of Alaska State Land Survey No. 89-10, USS 2539 TR A Located in the Vicinity of Gibson Cove; and a 40-Foot Wide by Approximately 4,997 Foot-Long Easement Traversing Pillar Mountain Across City Properties Described as USS 2538a TR B and USS 3945; for a Flywheel System and Power Line to Support the Operation of a New Crane at Pier III**

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**SUMMARY:** This memo and ordinance recommends Council approve the two attached electrical easements to KEA, which will allow them to install and maintain equipment related to providing medium voltage power to the Pier III project. One easement is on Pillar Mountain and will be used for a new 12.47 kVA power distribution line, which will serve existing utility customers currently on the Pier III electrical circuit. The second easement is for the two flywheels and is in Gibson Cove.

**PREVIOUS COUNCIL ACTION:**

- February 13, 2014, Council authorized an agreement with Kodiak Electric Association and Horizon lines of Alaska, LLC for Electrical Improvements to the Pier III Replacement Project No. 11-07/8024
- July 24, 2014, Council advanced Ordinance No. 1321 to second reading and public hearing to allow the City to grant two easements to KEA

**DISCUSSION:** This recommends Council approval of the two attached electrical easements to KEA, which will allow them to install and maintain equipment related to providing medium voltage power to the Pier III project. One easement is on Pillar Mountain and will be used for a new 12.47 kVA power distribution line, which will serve existing utility customers currently on the Pier III electrical circuit. The second easement is for the two flywheels and is in Gibson Cove.

These easements are related to the three-party agreement executed with KEA and Horizon structured to provide medium voltage electrical service for the new 100 gauge crane to be installed on the Pier III project. Some of the major provisions of this agreement are:



- By September 1, 2014, the City will provide all necessary easements for power line and flywheel work on City property or rights of way and will perform all site grading work needed for the flywheel installation.
- By July 1, 2015, KEA will complete the power line extension and will have acquired and installed the flywheels needed for the operation of the new crane.
- By December 31, 2015, Horizon will have placed the crane in operation.

These easements fulfill the initial City obligation to provide easements to facilitate the Pier III electrical service. While the Pillar Mountain distribution line was fully contemplated in the three-party agreement, the flywheels and support equipment had been contemplated to be installed at Pier III in the agreement. Subsequent to execution of the agreement, KEA proposed relocating the flywheels to Gibson Cove for multiple reasons. The shift offers advantages to all parties:

- Increase limited operations space at Pier III for terminal operations
- Enhance access and security to flywheel installation
- Reduce flywheel maintenance costs with lower corrosion potential
- Maintain all performance parameters of the installation

KEA acknowledged that the alternative flywheel location is being done at their request and has agreed to extend the City's easement timing obligation to accommodate the extra effort. They have also agreed to provide any required site prep.

The general proposed location of the flywheels is on a hillside with limited development potential. The majority of the requested Gibson Cove easement is on the former roadbed access to the Bio Dry facility. The road was moved outside the platted ROW a number of years ago. A short form replat is being performed to align the existing travel way with the ROW and allow granting of an easement.

The general locations of the two easements are shown on the attached three pages. More detailed descriptions follow:

- At Gibson Cove, for installation of the flywheels and certain electrical equipment, a portion of Alaska State Land Survey No. 89-10, files as Plat (re-platting in process) (Kodiak Borough Assessor's Property I.D. 15213, Legal Description USS 2539 TR A GIBSON COVE) comprising approximately 5,000 square feet;
- At Pillar Mountain, for installation of a new (40' wide x 4,512' long overhead and 40' wide x 207' long underground) power line alignment through City property with Kodiak Borough Assessor's Property I.D. 16427, Legal Description USS 3945 T28S R19W;
- At Pillar Mountain, for installation of new (40' wide x 278' long underground) power line alignment through City property with Kodiak Borough Assessor's Property I.D. 16205, Legal Description USS 2538A TR B.

The ordinance and these two easements are attached. Final locations will be provided after surveying.

**ALTERNATIVES:** Council may consider the following:

- 1) Adopt Ordinance No. 1321 in the second reading to authorize the two easements. This alternative allows the City to move forward with electric improvements for the Pier III Replacement project as agreed to per the three-party agreement with KEA and Horizon Lines at the February 13, 2014, meeting.
- 2) Delay authorization of the easements by postponing adoption of the ordinance. This alternative would likely cause significant schedule delay impact to the project and increase project cost to the City.
- 3) Do not adopt Ordinance No. 1321 to issue the easements. This alternative would have major negative impacts to the Pier III Replacement project that would likely involve redesign, significant cost increases to the project, and likely present legal complications that would negatively impact the City.

**FINANCIAL IMPLICATIONS:** The City previously agreed to a three-party agreement with KEA and Horizon Lines in which the City funded \$400,000 for the proposed electrical improvements, including the new 12.47 kVA power line from Pillar Mountain and the flywheel. The approval of easements will not result in any direct costs to the City, but are part of the Pier III Replacement project.

**LEGAL:** The Grant of Easement documents and Ordinance No. 1321 were prepared by the City Attorney and are consistent with City practice of issuing utility easements on City property.

**STAFF RECOMMENDATION:** Staff recommends Council approve Ordinance No. 1321 in the second reading. This action will move the authorization of the easements for the 12.47 kVA power line located on Pillar Mountain and the flywheel located at Gibson Cove forward along a timeline consistent with the needs of the Pier III project.

**CITY MANAGER'S RECOMMENDATION AND COMMENTS:** The decision by KEA to locate the flywheel on the property at Gibson Cove is good for the City in that it frees up dock surface at the new Pier III facility and utilizes a portion of City property that has limited potential. The power line easement will benefit KEA customers, including the City at Pier III. I support Glenn and this approach and encourage Council to grant the easements by adopting Ordinance No. 1321.

**ATTACHMENTS:**

- Attachment A: Ordinance No. 1321
- Attachment B: ARCADIS Memorandum dated July 10, 2014
- Attachment C: Grant of Easement (Power Line)
- Attachment D: Pillar Mountain Exhibit B

Attachment E: Grant of Easement (Flywheel)  
Attachment F: Gibson Cove Easement Exhibit A

**PROPOSED MOTION:**

Move to adopt Ordinance No. 1321.

AUGUST 28, 2014  
Agenda Item IV. b. Memo Page 4 of 4

**CITY OF KODIAK  
ORDINANCE NUMBER 1321**

**AN ORDINANCE OF THE COUNCIL OF THE CITY OF KODIAK AUTHORIZING THE GRANT TO KODIAK ELECTRIC ASSOCIATION, INC OF AN APPROXIMATELY 5,000 SQUARE FOOT EASEMENT ON A PORTION OF ALASKA STATE LAND SURVEY NO. 89-10, USS 2539 TR A LOCATED IN THE VICINITY OF GIBSON COVE; AND A 40 FOOT WIDE BY APPROXIMATELY 4,997 FOOT LONG EASMENT TRAVERSING PILLAR MOUNTAIN ACROSS CITY PROPERTIES DESCRIBED AS USS 2538A TR B AND USS 3945; FOR A FLYWHEEL SYSTEM AND POWER LINE TO SUPPORT THE OPERATION OF A NEW CRANE AT PIER III**

WHEREAS, the City of Kodiak (“City”) owns a parcel of real property located in the vicinity of Gibson Cove known as Alaska State Land Survey No. 89-10, filed as Plat 90-28 in the Kodiak Recording District (“Property A”); and

WHEREAS, the City owns a parcels of real property on Pillar Mountain known as USS 2538A TR B (“Property B”) and USS 3945 (“Property C”); and

WHEREAS, the City, Kodiak Electric Association (“KEA”) and Horizon Lines have entered into an agreement under which KEA will provide a power line and flywheel system to support the operation of the new Horizon Lines crane to be installed at Pier III; and

WHEREAS, the City has agreed to provide KEA with a site for the power line and flywheel system; and

WHEREAS, the City and KEA have determined that an approximately 5,000 square foot easement (“Easement A”) on Property A, located near the intersection of the northern boundary of the Property with the western boundary of the Gibson Cove Road right-of-way, would be the most appropriate location for the flywheel system; and

WHEREAS, the City and KEA have determined that a 40-foot wide easement (“Easement B”) across Property B and Property C between KEA facilities on Pillar Mountain Road and on Rezanof Drive in the vicinity of Pier III would be the most appropriate location for the power line; and

WHEREAS, the City is preparing a replat of Property A for the purpose, among others, of conforming the Gibson Cove Road right-of-way on Property A to the as-built location of Gibson Cove Road; and

WHEREAS, the precise location and dimensions of Easement A cannot be determined until the approved replat of Property A relocates the Gibson Cove right-of-way, and it is in the best interest of the City to delegate to the City Manager the authority to determine the precise location and dimensions of Easement A after the replat of Property A has been prepared, and

WHEREAS, a survey will be required to determine the precise location of Easement B, and it is in the best interest of the City to delegate to the City Manager the authority to determine the precise location of Easement B after the survey has been prepared.

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

**Section 1:** Notwithstanding anything to the contrary in Kodiak City Code Chapter 18.20, the Council of the City of Kodiak hereby authorizes the grant of Easements A and B described in the recitals above to KEA in the form now before this meeting, and the City Manager hereby is authorized, empowered and directed to execute and deliver grants of Easements A and B on behalf of the City, in substantially the form and content now before this meeting but with such changes, modifications, additions and deletions therein as shall to her seem necessary, desirable or appropriate (including without limitation adjustments to the boundaries and dimensions of the Easements that result from a survey), the execution thereof to constitute conclusive evidence of approval of any and all changes, modifications, additions or deletions therein from the form and content of said document now before this meeting, and from and after the execution and delivery of said document, the City Manager and City Clerk, and their respective designees, each hereby is authorized, empowered and directed to do all acts and things and to execute all documents as may be necessary to carry out and comply with the provisions of said document as executed.

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

CITY OF KODIAK

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MAYOR

ATTEST:

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CITY CLERK

First Reading: July 24, 2014

Second Reading:

Effective Date:



## Memorandum

**TO:** Aimee Kniazowski  
**FROM:** Roe Sturgulewski  
**DATE:** July 10, 2014  
**RE:** Kodiak Pier III  
 KEA Easements for Installation of Power Line and Flywheels

This recommends Council approval of the two attached electrical easements to KEA which will allow them to install and maintain equipment related to providing medium voltage power to the Pier III project. One easement is on Pillar Mountain and will be used for a new 12.47 kVA power distribution line which will serve existing utility customers currently on the Pier III electrical circuit. The second easement is for the two flywheels and is in Gibson Cove.

These easements are related to the three party agreement executed with KEA and Horizon structured to provide medium voltage electrical service for the new 100 gauge crane to be installed on the Pier III project. Some of the major provisions of this agreement are:

- By September 1, 2014, the City will provide all necessary easements for power line and flywheel work on City property or rights of way and will perform all site grading work needed for the flywheel installation;
- By July 1, 2015, KEA will complete the power line extension and will have acquired and installed the flywheels needed for the operation of the new crane;
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These easements fulfill the initial City obligation to provide easements to facilitate the Pier III electrical service. While the Pillar Mountain distribution line was fully contemplated in the three party agreement the flywheels and support equipment had been contemplated to be installed at Pier III in the agreement. Subsequent to execution of the agreement, KEA proposed relocating the flywheels to Gibson Cove for multiple reasons. The shift offers advantages to all parties:

- Increase limited operations space at Pier III for terminal operations;
- Enhance access and security to flywheel installation;
- Reduce flywheel maintenance costs with lower corrosion potential;
- Maintain all performance parameters of the installation.

KEA has acknowledged that the alternative flywheel location is being done at their request and has agreed to extend the City's easement timing obligation to accommodate the extra effort. They have also agreed to provide any required site prep.

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The general locations of the two easements are shown on the attached three pages. More detailed descriptions follow:

- At Gibson Cove, for installation of the flywheels and certain electrical equipment, a portion of Alaska State Land Survey No. 89-10, files as Plat (re-platting in process) (Kodiak Borough Assessor's Property I.D. 15213, Legal Description USS 2539 TR A GIBSON COVE) comprising approximately 5,000 square feet;
- At Pillar Mountain, for installation of a new (40' wide x 4,512' long overhead and 40' wide x 207' long underground) power line alignment through City property with Kodiak Borough Assessor's Property I.D. 16427, Legal Description USS 3945 T28S R19W;
- At Pillar Mountain, for installation of new (40' wide x 278' long underground) power line alignment through City property with Kodiak Borough Assessor's Property I.D. 16205, Legal Description USS 2538A TR B.

These two easements and the associated ordinances are attached. Final locations will be provided after surveying.

Please contact me at 343-3013 if you have any questions.

**KODIAK RECORDING DISTRICT**

**Recording requested by and  
after recording, return to:**

City of Kodiak  
Attn: City Manager  
710 Mill Bay Road  
Kodiak, AK 99615

**GRANT OF EASEMENT**

This GRANT OF EASEMENT is entered into this \_\_\_\_ day of \_\_\_\_\_, 2014, by and between the City of Kodiak, Alaska, an Alaska municipal corporation (“GRANTOR”), whose address is 710 Mill Bay Road, Kodiak, Alaska 99615, and Kodiak Electric Association, Inc., an Alaska corporation (“GRANTEE”), whose address is P. O. Box 787, Kodiak, Alaska 99615.

GRANTOR, in consideration of value received from GRANTEE, the adequacy and receipt of which are hereby acknowledged by GRANTOR, hereby grants to GRANTEE, its successors and assigns, an easement to erect, lay, construct, install, operate, inspect, repair, maintain, replace, improve and remove a power line (“Easement”) over, upon and through certain property of the GRANTOR (“Property”) located in the Kodiak Recording District, Third Judicial District, State of Alaska, being more particularly described as follows:

A portion of USS 3945 along a linear alignment approximately 40’ feet wide and 4,510 feet long (overhead) and 40 feet wide by 209 feet long (underground); and

A portion of USS 2538A TR B along a linear alignment approximately 40 feet wide by 87 feet long (overhead) and 40 feet wide by 147 feet long (underground).

The Easement is more particularly described in Exhibit “B” which is incorporated herein by reference.

1. Any improvements constructed by GRANTEE shall be consistent with the limited use of the Easement authorized herein and shall be constructed at GRANTEE’s sole cost and expense. GRANTEE shall, at all times and at its sole expense, keep and maintain the Easement and GRANTEE’s improvements thereon in good repair, and in neat, orderly, and slightly condition. GRANTEE shall not cause or permit any litter,



debris, or refuse to be accumulated or stored upon the Easement and shall promptly remove all such materials without cost to GRANTOR.

2. GRANTEE may not permit any lien, including without limitation a mechanic's or materialman's lien, to be recorded against the Property. If any such lien is recorded against the Property, GRANTEE shall cause the same to be removed; or in the case of a mechanic's or materialman's lien, furnish the bond required in AS 34.35.072 (or any comparable statute hereafter enacted). GRANTEE shall indemnify and save GRANTOR harmless from all liability for damages, together with all costs and expenses (including attorneys' fees) occasioned by any such lien.

3. If GRANTEE ceases to use the Easement for power line and flywheel system purposes for a continuous period of not less than two (2) years, GRANTEE shall, upon a written request from GRANTOR, abandon the Easement and execute a quitclaim deed to GRANTOR. Upon abandonment of the Easement, any improvements constructed by GRANTEE shall become the property of GRANTOR or, at GRANTOR's option, shall be removed by GRANTEE at its sole expense.

4. GRANTEE shall defend, indemnify, and hold GRANTOR, its officers, agents, and employees harmless against any and all actions, suits, proceedings, claims, losses, liens, costs, expenses, and liabilities of every kind and nature whatsoever, including without limitation attorney's fees, arising from injury to or death of persons or loss of or damage to property, including property owned by GRANTOR, caused by or incurred as a result of GRANTEE's use and occupancy of the Easement. This provision shall not apply to claims, actions, damages, losses, or proceedings caused solely by the negligence of officers, agents, or employees of GRANTOR. The provisions of this Paragraph 4 shall survive termination of the Easement.

5. GRANTEE shall procure and maintain at its sole expense, and keep in full force and effect, policies of public liability insurance in an amount not less than One Million Dollars (\$1,000,000) for death or bodily injury or loss of or damage to property, sustained by any one person in any one occurrence. GRANTOR and its officers and employees shall be named as insureds in all such policies. GRANTEE shall give at least thirty (30) days advance written notice to GRANTOR before any cancellation or non-renewal of any such policy during the term of this Easement. GRANTEE shall provide GRANTOR with proof of such insurance prior to the effective date of this Easement and this Easement shall not become effective until and unless such proof is made. All insurance coverage required to be obtained under this Paragraph 5 shall be placed with a carrier licensed to do business in the State of Alaska. No insurance coverage required by this Easement shall be obtained pursuant to a "claims made" policy unless, at the time such insurance is procured a "tail" policy covering all insured risks is also obtained.

6. At all times during the term of this Easement, GRANTEE shall conduct its activities at the Easement in strict compliance with all applicable Environmental

Requirements. GRANTEE shall indemnify and hold harmless GRANTOR, its officers, agents, and employees from and against any and all Environmental Liabilities which GRANTOR or any of its officers, agents, and employees may hereafter suffer, incur, be responsible for or disburse as a result of any Environmental Hazard at the Easement to the extent caused by or attributable to GRANTEE or GRANTEE's activities. The provisions of this Paragraph 6 shall survive termination of the Easement. For purposes of this Paragraph 6:

(a) "Environmental Hazard" shall mean Hazardous Materials, or the storage, handling, production, disposal, treatment, or release thereof.

(b) "Environmental Liabilities" shall mean any liability, penalties, fines, forfeitures, demands, damages, losses, claims, causes of action, suits, judgments, and costs and expenses incidental thereto (including cost of defense, settlement, reasonable attorneys' fees, reasonable consultant fees and reasonable expert fees), arising from or based on environmental contamination or the threat of environmental contamination or noncompliance, or violation of, any Environmental Requirement, and shall include without limitation liability arising from:

(1) Any governmental action, order, directive, administrative proceeding, or ruling.

(2) Personal or bodily injuries (including death) or damages to any property (including loss of use) or natural resources.

(3) Clean-up, remediation, investigation, monitoring, or other response action.

(c) "Environmental Requirement" shall mean any law, regulation or legal requirement relating to health, safety, or the environment, now in effect or hereafter enacted, including without limitation the Comprehensive Environmental Response Compensation and Liability Act (CERCLA), the Toxic Substances Control Act (TSCA), the Federal Insecticide Fungicide and Rodenticide Act (FIFRA), the Resource Conservation and Recovery Act (RCRA), the Clean Air Act (CAA) and the Clean Water Act (CWA), the Occupational Safety and Health Act (OSHA), and all similar state and local laws, rules, regulations, and guidance, now in existence or hereafter enacted, as each such law, rule, or regulation may be amended from time to time.

(d) "Hazardous Material" shall mean any hazardous waste, hazardous substance, toxic substance, pollutant, or word of similar import, as used in any of the statutes cited above, or any other material, substance, or waste subject to environmental regulation under any applicable federal, state, or local law, regulation, or ordinance now or hereafter in effect.

7. Either party may give notice to the other by nationally recognized overnight courier service or United States mail, registered or certified, postage prepaid

and return receipt requested, addressed to the other party at its address set forth above, or at such other address as such party designates by written notice. Service of any notice shall be deemed received at the time of delivery or at the time delivery is refused.

8. This Grant of Easement shall be construed and governed in accordance with the laws of the State of Alaska. This Grant of Easement may not be modified in any respect whatsoever except with the mutual consent of all parties hereto, and then only by written instrument duly executed in recordable form.

IN WITNESS WHEREOF, the parties have executed this Grant of Easement as of the date first set forth above.

GRANTOR: CITY OF KODIAK

By: \_\_\_\_\_  
Aimée Kniaziowski, City Manager

GRANTEE: KODIAK ELECTRIC ASSOCIATION, INC.

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

STATE OF ALASKA )  
 ) ss:  
THIRD JUDICIAL DISTRICT )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2014, by Aimée Kniaziowski, City Manager of the CITY OF KODIAK, an Alaska municipal corporation, on behalf of the City.

\_\_\_\_\_  
Notary Public in and for Alaska  
My commission expires: \_\_\_\_\_

STATE OF ALASKA            )  
                                          ) ss:  
THIRD JUDICIAL DISTRICT )

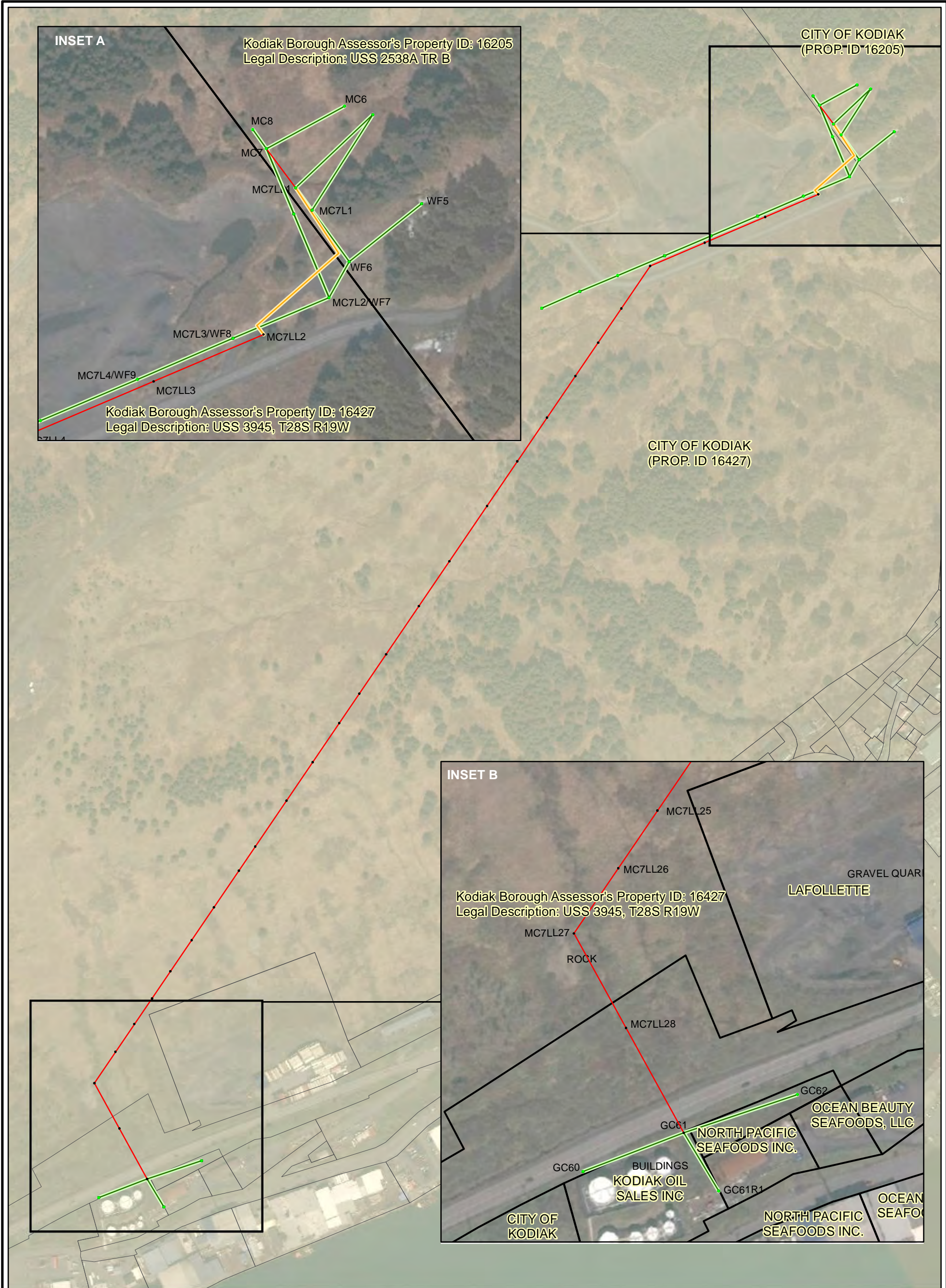
The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2014, by \_\_\_\_\_, the \_\_\_\_\_, of KODIAK ELECTRIC ASSOCIATION, INC., an Alaska corporation, on behalf of the corporation.

\_\_\_\_\_  
Notary Public in and for Alaska  
My commission expires: \_\_\_\_\_

**Exhibit "B"**  
**to Grant of Easement**

Legal Description and Drawing of Easement



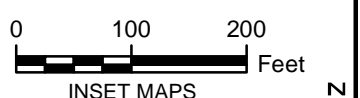


**Alignments**

- Proposed Overhead
- New Underground
- Existing Overhead

**Power Poles**

- Existing Powerpoles
- Proposed Powerpoles
- Parcels



CITY OF KODIAK  
KODIAK, ALASKA

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**PILLAR MOUNTAIN EASEMENT**

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EXHIBIT  
**B**

Service Layer Credits: Source: Esri, DigitalGlobe, GeoEye, i-cubed, USDA, USGS, AEX, Getmapping, Aerogrid, IGN, IGP, swisstopo, and the GIS User Community



**KODIAK RECORDING DISTRICT**

**Recording requested by and  
after recording, return to:**

City of Kodiak  
Attn: City Manager  
710 Mill Bay Road  
Kodiak, AK 99615

**GRANT OF EASEMENT**

This GRANT OF EASEMENT is entered into this \_\_\_\_ day of \_\_\_\_\_, 2014, by and between the City of Kodiak, Alaska, an Alaska municipal corporation (“GRANTOR”), whose address is 710 Mill Bay Road, Kodiak, Alaska 99615, and Kodiak Electric Association, Inc., an Alaska corporation (“GRANTEE”), whose address is P. O. Box 787, Kodiak, Alaska 99615.

GRANTOR, in consideration of value received from GRANTEE, the adequacy and receipt of which are hereby acknowledged by GRANTOR, hereby grants to GRANTEE, its successors and assigns, an easement to erect, lay, construct, install, operate, inspect, repair, maintain, replace, improve and remove a power line and flywheel system (“Easement”) over, upon and through certain property of the GRANTOR (“Property”) located in the Kodiak Recording District, Third Judicial District, State of Alaska, being more particularly described as follows:

A portion of Alaska State Land Survey No. 89-10, filed as Plat No. \_\_\_\_\_, USS 2539 TR A, comprising approximately 5,000 square feet;

The Easement is more particularly described in Exhibit “A” which is incorporated herein by reference.

1. Any improvements constructed by GRANTEE shall be consistent with the limited use of the Easement authorized herein and shall be constructed at GRANTEE’s sole cost and expense. GRANTEE shall, at all times and at its sole expense, keep and maintain the Easement and GRANTEE’s improvements thereon in good repair, and in neat, orderly, and sightly condition. GRANTEE shall not cause or permit any litter, debris, or refuse to be accumulated or stored upon the Easement and shall promptly remove all such materials without cost to GRANTOR.

2. GRANTEE may not permit any lien, including without limitation a mechanic's or materialman's lien, to be recorded against the Property. If any such lien is recorded against the Property, GRANTEE shall cause the same to be removed; or in the case of a mechanic's or materialman's lien, furnish the bond required in AS 34.35.072 (or any comparable statute hereafter enacted). GRANTEE shall indemnify and save GRANTOR harmless from all liability for damages, together with all costs and expenses (including attorneys' fees) occasioned by any such lien.

3. If GRANTEE ceases to use the Easement for power line and flywheel system purposes for a continuous period of not less than two (2) years, GRANTEE shall, upon a written request from GRANTOR, abandon the Easement and execute a quitclaim deed to GRANTOR. Upon abandonment of the Easement, any improvements constructed by GRANTEE shall become the property of GRANTOR or, at GRANTOR's option, shall be removed by GRANTEE at its sole expense.

4. GRANTEE shall defend, indemnify, and hold GRANTOR, its officers, agents, and employees harmless against any and all actions, suits, proceedings, claims, losses, liens, costs, expenses, and liabilities of every kind and nature whatsoever, including without limitation attorney's fees, arising from injury to or death of persons or loss of or damage to property, including property owned by GRANTOR, caused by or incurred as a result of GRANTEE's use and occupancy of the Easement. This provision shall not apply to claims, actions, damages, losses, or proceedings caused solely by the negligence of officers, agents, or employees of GRANTOR. The provisions of this Paragraph 4 shall survive termination of the Easement.

5. GRANTEE shall procure and maintain at its sole expense, and keep in full force and effect, policies of public liability insurance in an amount not less than One Million Dollars (\$1,000,000) for death or bodily injury or loss of or damage to property, sustained by any one person in any one occurrence. GRANTOR and its officers and employees shall be named as insureds in all such policies. GRANTEE shall give at least thirty (30) days advance written notice to GRANTOR before any cancellation or non-renewal of any such policy during the term of this Easement. GRANTEE shall provide GRANTOR with proof of such insurance prior to the effective date of this Easement and this Easement shall not become effective until and unless such proof is made. All insurance coverage required to be obtained under this Paragraph 5 shall be placed with a carrier licensed to do business in the State of Alaska. No insurance coverage required by this Easement shall be obtained pursuant to a "claims made" policy unless, at the time such insurance is procured a "tail" policy covering all insured risks is also obtained.

6. At all times during the term of this Easement, GRANTEE shall conduct its activities at the Easement in strict compliance with all applicable Environmental Requirements. GRANTEE shall indemnify and hold harmless GRANTOR, its officers, agents, and employees from and against any and all Environmental Liabilities which GRANTOR or any of its officers, agents, and employees may hereafter suffer, incur, be



responsible for or disburse as a result of any Environmental Hazard at the Easement to the extent caused by or attributable to GRANTEE or GRANTEE's activities. The provisions of this Paragraph 6 shall survive termination of the Easement. For purposes of this Paragraph 6:

(a) "Environmental Hazard" shall mean Hazardous Materials, or the storage, handling, production, disposal, treatment, or release thereof.

(b) "Environmental Liabilities" shall mean any liability, penalties, fines, forfeitures, demands, damages, losses, claims, causes of action, suits, judgments, and costs and expenses incidental thereto (including cost of defense, settlement, reasonable attorneys' fees, reasonable consultant fees and reasonable expert fees), arising from or based on environmental contamination or the threat of environmental contamination or noncompliance, or violation of, any Environmental Requirement, and shall include without limitation liability arising from:

(1) Any governmental action, order, directive, administrative proceeding, or ruling.

(2) Personal or bodily injuries (including death) or damages to any property (including loss of use) or natural resources.

(3) Clean-up, remediation, investigation, monitoring, or other response action.

(c) "Environmental Requirement" shall mean any law, regulation or legal requirement relating to health, safety, or the environment, now in effect or hereafter enacted, including without limitation the Comprehensive Environmental Response Compensation and Liability Act (CERCLA), the Toxic Substances Control Act (TSCA), the Federal Insecticide Fungicide and Rodenticide Act (FIFRA), the Resource Conservation and Recovery Act (RCRA), the Clean Air Act (CAA) and the Clean Water Act (CWA), the Occupational Safety and Health Act (OSHA), and all similar state and local laws, rules, regulations, and guidance, now in existence or hereafter enacted, as each such law, rule, or regulation may be amended from time to time.

(d) "Hazardous Material" shall mean any hazardous waste, hazardous substance, toxic substance, pollutant, or word of similar import, as used in any of the statutes cited above, or any other material, substance, or waste subject to environmental regulation under any applicable federal, state, or local law, regulation, or ordinance now or hereafter in effect.

7. Either party may give notice to the other by nationally recognized overnight courier service or United States mail, registered or certified, postage prepaid and return receipt requested, addressed to the other party at its address set forth above, or at such other address as such party designates by written notice. Service of

any notice shall be deemed received at the time of delivery or at the time delivery is refused.

8. This Grant of Easement shall be construed and governed in accordance with the laws of the State of Alaska. This Grant of Easement may not be modified in any respect whatsoever except with the mutual consent of all parties hereto, and then only by written instrument duly executed in recordable form.

IN WITNESS WHEREOF, the parties have executed this Grant of Easement as of the date first set forth above.

GRANTOR: CITY OF KODIAK

By: \_\_\_\_\_  
Aimée Kniazowski, City Manager

GRANTEE: KODIAK ELECTRIC ASSOCIATION, INC.

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

STATE OF ALASKA )  
 ) ss:  
THIRD JUDICIAL DISTRICT )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2014, by Aimée Kniazowski, City Manager of the CITY OF KODIAK, an Alaska municipal corporation, on behalf of the City.

\_\_\_\_\_  
Notary Public in and for Alaska  
My commission expires: \_\_\_\_\_

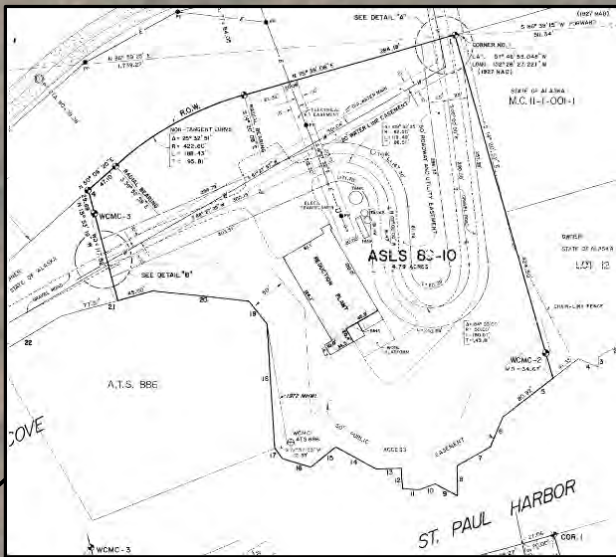
STATE OF ALASKA            )  
                                          ) ss:  
THIRD JUDICIAL DISTRICT )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2014, by \_\_\_\_\_, the \_\_\_\_\_, of KODIAK ELECTRIC ASSOCIATION, INC., an Alaska corporation, on behalf of the corporation.

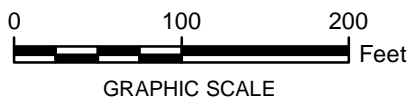
\_\_\_\_\_  
Notary Public in and for Alaska  
My commission expires: \_\_\_\_\_

**Exhibit "A"**  
**to Grant of Easement**

Legal Description and Drawing of Easement



- Engineered Layout. Approximate
- Parcels



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CITY OF KODIAK  
KODIAK, ALASKA

**GIBSON COVE EASEMENT**




EXHIBIT  
**A**

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**MEMORANDUM TO COUNCIL**

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**To:** Mayor Branson and City Councilmembers  
**From:** Aimée Kniaziowski, City Manager   
**Date:** August 28, 2014

**Agenda Item:** IV. c. **Second Reading and Public Hearing, Ordinance No. 1322, Enacting Kodiak City Code 2.08.065, ~~Assistant~~ Deputy City Manager—Appointment, Powers and Duties; Amending Chapters 2, 4 and 10 of the City Personnel Rules and Regulations; Amending the Definitions in the City Personnel Rules and Regulations; and Adopting New Schedules I And II to the Personnel Rules and Regulations; to Provide for the Appointment, Duties, and Compensation of an ~~Assistant~~ Deputy City Manager**

---

**SUMMARY:** The City Council and City Manager have discussed ways to even out the Manager’s workload given the multiple job requirements. The most effective way to do this is by creating a deputy city manager position. By doing so, the City will have a transitional senior management position that can fill in for the Manager when necessary and one who can take on many of the operational tasks, especially human resource related functions. The Manager consulted with the City Attorney who advised that a portion of Title 2 of the City Code must be amended to identify the position and its main duties, and the Personnel Rules and Regulations (PR&R) must also be amended to include references to the position and to amend the salary band and grade consistent with deputy city managers and the City’s new classification and pay system. Staff recommends Council adopt Ordinance No. 1322.

**PREVIOUS COUNCIL ACTION:**

- Council adopts changes to the City Code and the Personnel Rules and Regulations as needed.
- Council discussed Ordinance No. 1322 and changes to the PR&R and Code at the July 22 work session and the July 24, 2014, regular meeting and advanced to the second reading and public hearing.
- Council reviewed Ordinance No. 1322 at the August 26 work session along with the staff recommendation to change the title of assistant city manager to deputy city manager in the ordinance, code, and PR&R.

**DISCUSSION:** Over the past several years, the Mayor and Council have discussed the need for an additional position to even out the distribution of work of the City Manager position. The City Manager has standard responsibilities to manage the City’s day-to-day operations, to develop and manage the budget, to directly supervise eight department heads, and to ensure Council policies are implemented and maintained. The Manager is also responsible for long- and short-term planning for the City, public

outreach, development and completion of capital and other projects, and identification of funding sources needed to maintain City services and infrastructure.

In addition to the standard city manager responsibilities, the Kodiak Manager has additional responsibilities such as functioning as the City's sole human resource manager, including direct involvement in and oversight of the employee grievance process; providing planning for land development and land use; and serving as the Director of Emergency Services for the Kodiak Island Borough, which includes management of the emergency operations center and development of adequately trained emergency services team members. When a department head retires or resigns, the Manager also functions as the acting department director until a new director can be hired.

The addition of a deputy city manager to the staff will help level out this workload, which is excessive. It will provide a much-needed back-up position for the Manager in the Manager's absence, will be responsible for assigned projects and lead project teams as assigned, provide for the management of human resource functions, and assume the Manager's duties and be acting department head if assigned to do so. The position will provide additional help with finding funding sources, identifying and conducting staff trainings, and help with risk management functions, which are currently the Manager and Finance Director's responsibility. Most importantly, the position will provide important transitional help to the City, something that has not been available.

According to the City Attorney, both the City Code and the PR&R require amendments that create and define this position's roles and responsibilities. What follows is a summary of the Code and PR&R changes as outlined in the attached ordinance.

- A new section will be added to KCC 2.08.065 identifying the Deputy City Manager position deputy chief administrator for the City appointed by the City Manager and lists all major functions of the position (Attachment A).

Five sections of the PR&R will be amended.

- Chapter 2, 2034.3 is amended by renumbering certain references, adds a new section delineating the personnel duties of the Deputy City Manager, and renumbers the following sections of the chapter to reflect the newly inserted section.
- Chapter 4, Section 401 will be amended to reference the addition of a new pay band and grade.
- Chapter 10 will be amended to add City Manager discretion to adjust the initial leave accrual rate when hiring department heads.
- The Definition section of the PR&R will be amended to identify the Deputy City Manager position.
- Pay Schedules I (annual salary schedule) and II (hourly pay schedule) will be amended to add the new band, grade, and sub-grade (E84) to reflect the Deputy City Manager position as the senior-most managerial position in the classified service.

**ALTERNATIVES:**

- 1) Adopt Ordinance No. 1322 in the second reading, which is staff's recommendation, because it will improve work distribution and flow for the Manager, create a position that can fill in for the Manager when needed, and can take over the complexities of day-to-day human resource management.
- 2) Delay, amend, or do not adopt Ordinance No. 1322. This is not recommended, because there will be no benefits without this help and there will continue to be the lack of a key transitional position in the event of an emergency.

**FINANCIAL IMPLICATIONS:** As can be seen from the salary band and grade amendment to the PR&R, the position is classified as an E84, the most senior management position in the classified service. The salary will fall somewhere within the range, depending on qualifications and experience of the successful appointee.

**LEGAL:** The City Attorney advised that the Personnel Rules and Regulations and Chapter 2 of the City Code need to be amended to include the duties, responsibilities, and classification band and grade for the new Deputy City Manager position as outlined above. The attorney prepared the ordinance as well.

**CITY MANAGER'S RECOMMENDATION AND COMMENTS:** It is a good decision to add a deputy city manager position to the City's organizational structure. It will allow me to have a senior manager available to help complete projects, organize training, oversee human resource issues, provide oversight and participate in short- and long-term planning, help research and develop policies and prepare reports and studies, as well as other tasks. A deputy city manager will also be assigned to act on my behalf when I'm out of the office, on vacation, or if I'm ill, and be assigned as an acting department head in the event of a resignation or retirement. The position will also provide some transitional stability to the City as there will be a senior manager on staff who understands the full scope of the organization and can see that Council and City policies are implemented correctly and followed. Per my recommendation, the new position title as reflected in the ordinance, PR&R and City Code, should be changed to deputy city manager from assistant city manager to maintain the job titles already in place within the City of Kodiak. The discussion was had during the August 26 work session and the changes are reflected in this memo and the attachment.

I appreciate Council's support in authorizing this position. Kodiak's Manager has some unique requirements and duties not usually associated with city managers, which create the need for long work hours and lack of back-up in my absence. And, Kodiak is large enough and complex enough that a deputy will be very beneficial and provide the City with a succession plan for the Administration Department or at least someone to provide stability during periods of transition.



**ATTACHMENTS:**

Attachment A: Ordinance No. 1322

*Clerk's Note: the proposed motions should be made in the following order*

**PROPOSED MOTION:**

1. Move to adopt Ordinance No. 1322.
2. Move to amend Ordinance No. 1322 by substituting the word "assistant" with the word "deputy" throughout the ordinance.

AUGUST 28, 2014  
Agenda Item IV. c. Memo Page 4 of 4

**CITY OF KODIAK  
ORDINANCE NUMBER 1322**

**AN ORDINANCE OF THE COUNCIL OF THE CITY OF KODIAK ENACTING KODIAK CITY CODE 2.08.065, ~~ASSISTANT~~DEPUTY CITY MANAGER—APPOINTMENT, POWERS AND DUTIES; AMENDING CHAPTERS 2, 4 AND 10 OF THE CITY PERSONNEL RULES AND REGULATIONS; AMENDING THE DEFINITIONS IN THE CITY PERSONNEL RULES AND REGULATIONS; AND ADOPTING NEW SCHEDULES I AND II TO THE PERSONNEL RULES AND REGULATIONS; TO PROVIDE FOR THE APPOINTMENT, DUTIES AND COMPENSATION OF AN ~~ASSISTANT~~DEPUTY CITY MANAGER**

WHEREAS, the City has decided to establish a new position of ~~Assistant~~Deputy City Manager; and

WHEREAS, it is necessary to amend the Kodiak City Code and the Personnel Rules and Regulations to provide for the duties and compensation of the ~~Assistant~~Deputy City Manager position.

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

**Section 1:** Kodiak City Code 2.08.065, ~~Assistant~~Deputy City Manager—appointment, powers and duties, is hereby enacted to read as follows:

**2.08.065 ~~Assistant~~Deputy City Manager—appointment, powers and duties.**

(a) There shall be an ~~assistant~~deputy city manager who shall be appointed for an indefinite term by the city manager.

(b) The ~~assistant~~deputy city manager shall:

(1) Serve as the deputy chief administrative officer and senior manager and department head of the administrative branch of the city government who reports to the city manager;

(2) Assist the city manager in providing administrative oversight of daily operations of the city, ensuring implementation of and adherence to policies established by the city council by functioning as head of the senior management team;

(3) Ensure organizational compliance with applicable laws, codes, regulations and standards and provide direct management and oversight of assigned functional areas;

(4) Oversee all human resource functions and assist the city manager in administering all aspects of the city’s human resources program including the maintenance of personnel records;

(5) Provide oversight and participate in the development and implementation of short and long range strategic plans, programs, policies and procedures for the city;

- (6) Research, analyze, prepare and present management studies, reports, plans, resolutions, ordinances and other information;
- (7) Manage and participate in project activities as assigned by the city manager; and
- (8) Perform functions of the city manager when assigned.

**Section 2:** The following sections in Chapter 2 of the Personnel Rules and Regulations are amended or enacted as set forth below. Except as it is amended by this section, Chapter 2 of the Personnel Rules and Regulations is retained in its current form.

**203.3 City Manager.** The City Manager shall have the responsibility and authority to:

- (a) administer the personnel policies and procedures as approved by the City Council;
- (b) establish and maintain records of all employees in the City service, which shall include all pertinent personnel records (departments may retain copies of those personnel records necessary to comply with regulatory agencies, but originals of all records shall be maintained in the City Manager's office, and upon employee termination, all departmental records shall be forwarded immediately to the primary file);
- (c) develop and administer an affirmative action program to provide for equal opportunity in all aspects of City personnel administration;
- (d) foster and develop, in cooperation with appointing authorities and others, programs for the improvement of employees' effectiveness and productivity, including training, safety, health, counseling, and welfare;
- (e) maintain the classification and pay plans;
- (f) administer the City's recruitment and selection program except for staff identified below under heading 203.~~64.5~~ City Clerk;
- (g) insure uniformity in the application of discipline and processing of employee grievances;
- (h) appoint and dismiss all employees under the department heads' jurisdiction other than staff identified below under heading 203.~~64.5~~ City Clerk;
- (i) prepare and adopt such forms, reports, and procedures as may be necessary to carry out the City's personnel program;
- (j) establish personnel policies and procedures where needed in order to ensure consistency with state and federal requirements and to provide a more precise and consistent execution of the Personnel Rules and Regulations;
- (k) appoint and dismiss all City personnel except those appointed by the Council as stated in the Charter and those identified below under heading 203.~~64.5~~ City Clerk;
- (l) notwithstanding any of these policies and procedures may, in an emergency, request interdepartmental assistance be provided; and see that adopted changes to the Personnel Rules and Regulations or changes to position descriptions are distributed in writing to all affected employees in a timely manner.

**203.4 ~~Assistant-Deputy~~ City Manager.** The ~~Assistant-Deputy~~ City Manager shall have the responsibility and authority to:

- (a) serve as the deputy chief administrative officer and senior manager and department head of the administrative branch of the City government who reports to the City Manager.
- (b) oversee all human resource functions and assist the City Manager in administering all aspects of the City's human resources program including the maintenance of personnel records;
- (c) enforce the Personnel Rules and Regulations;
- (d) assist department heads and the City Manager in making all hiring, termination, and disciplinary recommendations;
- (d) perform functions of the City Manager when assigned.

**203.54 Department Heads.** Department heads shall have the responsibility and authority to:

- (a) enforce the Personnel Rules and Regulations;
- (b) keep employees in their departments informed of current personnel policies and procedures;
- (c) participate in the grievance procedures as specified (see Chapter 9);
- (d) if approved by the City Manager, appoint employees to vacant positions within their respective departments in accordance with established personnel rules and procedures;
- (e) develop training programs for employees within their respective departments;
- (f) under the supervision of the City Manager, administer discipline within their respective departments ~~and delegate such authority to supervisory personnel as deemed appropriate;~~
- (g) conduct orientation for all new employees, and have issued to each a copy of current personnel regulations and position description which outlines job duties; such orientation shall include introductions to fellow workers, work standards, safety regulations, break periods, supplies, etc.; and
- (h) under the direct supervision of the City Manager, be involved in the appointment or dismissal of departmental employees under the department head's jurisdiction.

**203.64.5 City Clerk.** As the head of the Clerk's department, the City Clerk shall have the responsibility and authority to:

- (a) enforce the Personnel Rules and Regulations;
- (b) keep employees in the Clerk's department informed of current personnel policies and procedures;
- (c) participate in the grievance procedures as specified (see Chapter 9);
- (d) recruit and appoint employees to vacant positions within the Clerk's department in accordance with established personnel rules and procedures;
- (e) develop training programs for employees within the Clerk's department;
- (f) administer discipline within the Clerk's department and delegate such authority to supervisory personnel as deemed appropriate;

- (g) conduct orientation for all new employees, and have issued to each a copy of current personnel regulations and position description which outlines job duties; such orientation shall include introductions to fellow workers, work standards, safety regulations, break periods, supplies, etc.;
- (h) have discipline and dismissal authority over all employees in the Clerk's department;
- (i) classify positions in the Clerk's department, subject to approval of the City Council

**203.75 Supervisory Personnel.** Supervisory personnel shall have the responsibility to:

- (a) implement personnel policies, rules and regulations in the units under their supervision;
- (b) supervise the administration of discipline to employees under their supervision and recommend termination (see Sections 708 and 1303);
- (c) train new employees and participate in the development of other employees;
- (d) evaluate employee performance and participate in the development of position descriptions (see Chapter 7); and
- (e) participate in the grievance procedures as specified (see Chapter 9).

**203.86 All Employees.** Employees of the City shall be presented with, and sign for, a copy of the personnel rules in effect on the hiring date and subsequently shall have the responsibility to:

- (a) read and understand these rules and ask the immediate supervisor to explain these rules if questions arise;
- (b) understand the function of the department assigned and how that function relates to the total mission of the City and all of its departments;
- (c) discuss with the immediate supervisor any questions relating to the interpretation or application of these rules either informally or formally through the grievance procedure;
- (d) bring to the attention of the immediate supervisor any change in duties as outlined in the position description form given to the employee at hiring;
- (e) submit in writing recommended changes to the rules through the appropriate supervisory channels to the City Manager; and
- (f) all employees shall have access to their personnel files.

**Section 3:** The following section in Chapter 4 of the Personnel Rules and Regulations is amended as set forth below. Except as it is amended by this section, Chapter 4 of the Personnel Rules and Regulations is retained in its current form.

#### **401 PAY PLAN**

The pay plan shall include the schedule of pay for ~~nineteen~~ **twenty** pay bands, grades, and sub-grades from A11 through ~~E83~~ **E84**, each with a minimum, midpoint, and maximum rate of pay for all positions in the classified service. The objectives of the pay plan shall be to:

- (a) provide an appropriate salary structure to recruit and retain an adequate number of competent employees; and
- (b) provide appropriate pay incentives for high employee productivity.

**Section 4:** The following sections in Chapter 10 of the Personnel Rules and Regulations are amended as set forth below. Except as it is amended by this section, Chapter 10 of the Personnel Rules and Regulations is retained in its current form.

**1002 ANNUAL LEAVE ACCRUAL RATE**

Annual Leave accrues according to the following schedule for all classified employees not enrolled in the Combined Personal Leave Program, except Fire Department personnel on the platoon system (*see Section 1603*). **The City Manager may increase the initial annual leave accrual rate of 4.62 hours per pay period when appointing new department heads, but movement to the next accrual rate must be consistent with required time in service.**

- 4.62 hours per pay period—first through twenty-fourth month
- 6.47 hours per pay period—twenty-fifth through sixtieth month
- 7.39 hours per pay period—sixty-first through one hundred twentieth month
- 8.31 hours per pay period—after the one hundred twentieth month

**Section 5:** The following definition is added to the Personnel Rules and Regulations. Except as it is amended by this section, the definitions in the Personnel Rules and Regulations are retained in their current form.

**~~ASSISTANT-DEPUTY CITY MANAGER.~~ The deputy chief administrative officer and senior manager and department head of the administrative branch of the City government who reports to the City Manager and assists in the proper administration of all affairs of the City.**

**Section 6:** Schedules I and II to the Personnel Rules and Regulations are deleted, and replaced with Schedules I and II attached hereto.

**Section 7:** This ordinance shall be effective one month after its final passage and publication in accordance with Kodiak Charter Section 2-13.

CITY OF KODIAK

\_\_\_\_\_  
MAYOR

ATTEST:

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CITY CLERK

First Reading: July 24, 2014

Second Reading:

Effective Date:

**Schedule I  
General Annual Salary Structure**

	Min to Max 50% Increase			
	Min to Mid 25% Increase		Mid to Max 20% Increase	
DBM*	Minimum	Midpoint	Maximum	
A11	\$ 31,411	\$ 39,264	\$ 47,116	
A12	\$ 33,658	\$ 42,072	\$ 50,486	
A13	\$ 35,904	\$ 44,880	\$ 53,856	
B21	\$ 38,157	\$ 47,697	\$ 57,236	
B22	\$ 40,404	\$ 50,505	\$ 60,606	
B23	\$ 42,650	\$ 53,313	\$ 63,976	
B24/B31	\$ 44,904	\$ 56,130	\$ 67,355	
B25/B32	\$ 47,150	\$ 58,938	\$ 70,725	
C41	\$ 51,650	\$ 64,562	\$ 77,475	
C42	\$ 53,896	\$ 67,371	\$ 80,845	
C43	\$ 56,143	\$ 70,179	\$ 84,215	
C44/C51	\$ 58,396	\$ 72,995	\$ 87,594	
C45/C52	\$ 60,643	\$ 75,804	\$ 90,964	
D61	\$ 65,143	\$ 81,428	\$ 97,714	
D62	\$ 67,389	\$ 84,236	\$ 101,084	
D63	\$ 69,636	\$ 87,045	\$ 104,453	
E81	\$ 78,635	\$ 98,294	\$ 117,953	
E82	\$ 80,882	\$ 101,102	\$ 121,323	
E83	\$ 83,128	\$ 103,910	\$ 124,692	
E84	\$ 87,298	\$ 109,117	\$ 130,936	

\*DBM: Decision Band Method of Classification



**Schedule II  
General Per Hour Salary Structure**

2080	Hours	Min to Max 50% Increase				
Regualr Employees		Min to Mid 25% Increase				
				Mid to Max 20% Increase		
DBM*		Minimum		Midpoint		Maximum
A11		\$ 15.10		\$ 18.88		\$ 22.65
A12		\$ 16.18		\$ 20.23		\$ 24.27
A13		\$ 17.26		\$ 21.58		\$ 25.89
B21		\$ 18.34		\$ 22.93		\$ 27.52
B22		\$ 19.43		\$ 24.28		\$ 29.14
B23		\$ 20.50		\$ 25.63		\$ 30.76
B24/B31		\$ 21.59		\$ 26.99		\$ 32.38
B25/B32		\$ 22.67		\$ 28.34		\$ 34.00
C41		\$ 24.83		\$ 31.04		\$ 37.25
C42		\$ 25.91		\$ 32.39		\$ 38.87
C43		\$ 26.99		\$ 33.74		\$ 40.49
C44/C51		\$ 28.08		\$ 35.09		\$ 42.11
C45/C52		\$ 29.16		\$ 36.44		\$ 43.73
D61		\$ 31.32		\$ 39.15		\$ 46.98
D62		\$ 32.40		\$ 40.50		\$ 48.60
D63		\$ 33.48		\$ 41.85		\$ 50.22
E81		\$ 37.81		\$ 47.26		\$ 56.71
E82		\$ 38.89		\$ 48.61		\$ 58.33
E83		\$ 39.97		\$ 49.96		\$ 59.95
E84		\$ 41.97		\$ 52.46		\$ 62.95

\*DMB: Decision Band Method of Classification

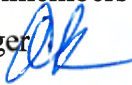
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# **NEW BUSINESS**

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## MEMORANDUM TO COUNCIL

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**To:** Mayor Branson and City Councilmembers  
**From:** Aimée Kniazowski, City Manager   
**Date:** August 28, 2014

**Agenda Item:** V. a. **First Reading, Ordinance 1323, Authorizing a Lease Renewal of a Communication Site in U.S. Survey 3945 on Pillar Mountain to NCWPCS MPL 31 – Year Sites Tower Holdings LLC**

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**SUMMARY:** The City has issued a lease for the Pillar Mountain Communication Site No. 11 with AT&T and affiliates since 2010. The current lease for Site No. 11 with CCATT, LLC, will expire in December of this year. Its successor, NCWPCS MPL 31- Year Sites Tower Holdings, LLC, through Crown Castle, requested the lease be renewed. The lease requires approval by ordinance due to the value of the lease, the termination clause, and the five-year duration of the lease. Staff recommends Council advance Ordinance No. 1323 to second reading and public hearing at the next regular or special Council meeting.

**PREVIOUS COUNCIL ACTION:**

- Council entered a lease for Pillar Mountain Site No.11 with AT&T on January 1, 2010.
- Council authorized a sublet of the Pillar Mountain Site #11 from AT&T to CCATT, LLC on January 16, 2014.

**DISCUSSION:** The Pillar Mountain Communications Site No. 11 is used to support AT&T's communication services in Kodiak. The five-year lease between the City and the AT&T cell tower management company, CCATT, for that site expires at the end of 2014. The City received a letter from Crown Castle (CCATT) in July requesting a renewal of the lease. The letter included several proposed provisions that were not acceptable to the City. However, a renewal of the lease would be in the City's and the community's best interest, so City staff requested help from the City Attorney to research the offer and develop more standard communication lease language.

The new lease (Attachment B) is between the City and CCATT LLC's successor, NCWPCS MPL 31 – Year Sites Tower Holdings LLC. It is for a five-year term from January 1, 2015, through December 31, 2019, with a six-month cancellation clause. The lease allows one five-year term extension if the lessee provides the required written notice of intent and is not in default with lease terms. The first year's annual payment would be \$13,577 with a 2.5% annual rate increase each year thereafter.

The lease requires Council approval by ordinance (Attachment A) due to the value and terms of the lease per the City's Charter, Article V-17. Therefore, staff requests Council approve the lease by passing Ordinance No. 1323 in the first reading and advancing to second reading and public hearing.

AUGUST 28, 2014  
Agenda Item V. a. Memo Page 1 of 2

**ALTERNATIVES:**

- 1) Pass Ordinance No. 1323 in the first reading and advance to second reading and public hearing at the next regular or special Council meeting. This is staff's recommendation, because it will provide income to the City and allow the site to continue to be used as a communications site for the community.
- 2) Do not pass the ordinance, which is not recommended, because it would result in a loss of revenue and would affect communications in Kodiak.

**FINANCIAL IMPLICATIONS:** There is a financial benefit each year of the lease through receipt of lease payments into the General Fund starting at \$13,577 per year with a 2.5% increase in rent payments each subsequent year of the lease. The successor to CCATT, LLC, NCWPCS MPL 31 – Year Sites Tower Holdings, LLC, will be responsible for site management, maintenance, insurance, and rental payments.

**LEGAL:** The City Attorney worked with staff to develop the lease and drafted the attached ordinance to meet the requirements of the City Charter, Article V-17.

**STAFF RECOMMENDATION:** Staff recommends Council adopt Ordinance No. 1323 in the first reading and advance to the second reading and public hearing at the next regular or special Council meeting.

**CITY MANAGER'S COMMENTS:** I support the renewal of the lease for the Pillar Mountain Communications Site No. 11 with CCATT, LLC's successor, NCWPCS MPL 31 – Year Sites Tower Holdings, LLC. This will provide some income for the General Fund, and the site will continue to provide a communications service to the community of Kodiak. I recommend Council pass Ordinance No. 1323 in the first reading and advance to the second reading and public hearing at the next regular or special Council meeting.

**ATTACHMENTS:**

- Attachment A: Ordinance 1323
- Attachment B: Lease for Pillar Mountain Communications Site No.11
- Attachment C: Letter from Crown Castle requesting renewal, dated 7/2/14

**PROPOSED MOTION:**

Move to pass Ordinance No. 1323 in the first reading and advance to second reading and public hearing at the next regular or special Council meeting.

**CITY OF KODIAK  
ORDINANCE NUMBER 1323**

**AN ORDINANCE OF THE COUNCIL OF THE CITY OF KODIAK  
AUTHORIZING A LEASE OF A COMMUNICATION SITE IN U.S. SURVEY 3945 ON  
PILLAR MOUNTAIN TO NCWPCS MPL 31 – YEAR SITES TOWER HOLDINGS, LLC**

WHEREAS, the City owns property on Pillar Mountain known as Pillar Mountain Communication Site No. 11 that it has leased to New Cingular Wireless PCS, LLC (“New Cingular”), for a communications site; and

WHEREAS, the City approved the assignment of the lease by New Cingular to CCATT, LLC (“CCATT”) by Resolution No. 2014–05 on January 16, 2014; and

WHEREAS, the lease to CCATT will expire on December 31, 2014; and

WHEREAS, NCWPCS MPL 31 – Year Sites Tower Holdings, LLC, a Delaware limited liability company (“NCWPCS”), is the successor to CCATT, and NCWPCS has requested that the City Council authorize the Lease Agreement – Pillar Mountain Communications Site No. 11 ("Lease") that now is before this meeting; and

WHEREAS, it is in the best interest of the City that the Lease be authorized.

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

**Section 1:** Notwithstanding anything to the contrary in Kodiak City Code Chapter 18.20, the Council of the City of Kodiak hereby authorizes the Lease with NCWPCS for a term commencing January 1, 2015, and ending December 31, 2019, of the communications site described in the Lease, located on U.S. Survey 3945 on Pillar Mountain in the City of Kodiak.

**Section 2:** The form and content of the Lease between the City and NCWPCS hereby are in all respects authorized, approved and confirmed, and the City Manager hereby is authorized, empowered and directed to execute and deliver the Lease to NCWPCS on behalf of the City, in substantially the form and content now before this meeting but with such changes, modifications, additions and deletions therein as she shall deem necessary, desirable or appropriate, the execution thereof to constitute conclusive evidence of approval of any and all changes, modifications, additions or deletions therein from the form and content of said document now before this meeting, and from and after the execution and delivery of said document, the City Manager hereby is authorized, empowered and directed to do all acts and things and to execute all documents as may be necessary to carry out and comply with the provisions of the Lease as executed.

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

CITY OF KODIAK

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MAYOR

ATTEST:

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CITY CLERK

First Reading:  
Second Reading:  
Effective Date:

LEASE AGREEMENT

PILLAR MOUNTAIN COMMUNICATION SITE NO. 11  
NCWPCS MPL 31 – YEAR SITES  
TOWER HOLDINGS, LLC

LEASE made as of the 1st day of January 2015, by and between the CITY OF KODIAK, an Alaska municipal corporation ("Lessor"), and NCWPCS MPL 31 – YEAR SITES TOWER HOLDINGS LLC, a Delaware limited liability company ("Lessee"):

1. **Leased Premises.** Upon the terms and conditions set forth herein and subject to the prompt payment and performance by Lessee of each and every sum and other obligation hereinafter referred to, Lessor does hereby lease, let, and demise to Lessee, and Lessee does hereby lease from Lessor the following described premises within U.S. Survey 3945 in the Kodiak Recording District, Third Judicial District, State of Alaska, more particularly described as follows:

Commencing at a brass cap monument set in a gun turret, "U.S. Army Corp of Engineers Alkod Rm 2;"  
Thence N 51° 20' 30" E 2433.41' to the true point of beginning;  
Thence S 88° 17' 08" E, 80.00 feet;  
Thence S 01° 42' 52" W, 40.00 feet;  
Thence N 88° 17' 08" W, 80.00 feet;  
Thence N 01° 42' 52" E, 40.00 feet to the true point of beginning;  
Containing 3200.0 square feet more or less

These leased premises are hereinafter referred to as the "Site."

2. **Term.** A. This Lease shall continue in effect for a period of (5) five years from January 1, 2015, through December 31, 2019 ("Term"), provided, however, that either party shall have the right to cancel this Lease upon [six (6) months'] [one (1) year's] written notice in advance of the date of such cancellation, such notice to be by certified mail sent to the usual mailing address of the party to be notified.

B. Lessee has the option to extend the Term for one (1) additional five (5) year period ("Extended Term"), provided that:

(1) Lessee gives Lessor written notice of its exercise of the option not more than one (1) year and not less than one hundred twenty (120) days before the last day of the initial Term.

(2) At the time Lessee exercises the option, and at all times thereafter until the Extended Term commences, Lessee is not materially in default of any term or condition of this Lease.

Lessee's failure to exercise the option to extend the Term in strict compliance with all the requirements in this section renders that option null and void.

3. **Rental.** A. Lessee agrees to pay as and for rent in equal monthly installments which fall due on the first of each calendar month the annual sum of \$13,577 for the first year of



the Lease Term and according to the following schedule for the remaining four years of the Term.

<u>Year</u>	<u>Rental</u>
2	102.5% of Year 1
3	105.0% of Year 1
4	107.5% of Year 1
5	110.0% of Year 1

B. If Lessee exercises its option in Section 2(B) to extend the Term of this Lease, the annual rent in the first year of the Extended Term shall be 102.5% of the annual rent in the fifth year of the initial Term, and the annual rent in subsequent years of the Extended Term shall be determined by the formula that is provided for determining the annual rent in the initial Term.

C. If a monthly installment is not paid by the fifth of the month in which it becomes due, a penalty of \$30 will be added to the rental amount; and, in addition, simple interest shall accrue and be added to the rental amount at the rate of 12% per annum from the due date until paid.

**4. Conditions of Lease.** The Site shall be used solely as a communications site for a cellular telephone system. The Site will house a 100' self-supporting radio tower, a 10' x 20' communications equipment shelter, and propane powered backup generator.

**5. Improvements.** Lessor shall have the right to make additions, alterations, or improvements to the Site which will not impede Lessee's access to or use of the Site. Lessee shall have the right to erect or construct a suitable building and/or associated structures as provided in Section 4. Any improvements constructed by Lessee shall be consistent with the limited use of the Site authorized by this Lease and shall be constructed at Lessee's expense. Upon termination of this Lease, such improvements shall become the property of Lessor or, at Lessee's option, removed by Lessee at its sole expense. Lessee shall permit Lessor, at Lessor's expense, to connect the equipment shelter for Lessor's public safety communications system to the backup power supply in the communications shelter that Lessee has constructed on the Site. Notwithstanding anything in Section 6 to the contrary, Lessor shall be solely responsible for maintaining the connection, and Lessee shall provide Lessor with reasonable access to Lessee's communications equipment shelter for that purpose.

**6. Maintenance.** Except as otherwise specifically provided herein, Lessee shall, at all times and at its sole expense, keep and maintain the Site and its improvements in good repair, and in neat, orderly, and slightly condition. Lessee shall not cause or permit any litter, debris, or refuse to be accumulated or stored upon the Site and shall promptly remove all such materials without cost to Lessor.

**7. Indemnity.** Lessee shall defend, indemnify, and hold Lessor, its officers, agents, and employees harmless against any and all actions, suits, proceedings, claims, loss, liens, costs, expense, and liability of every kind and nature whatsoever arising from injury to or death of persons or loss of or damage to property, including property owned by the Lessor, caused by or incurred as a result of Lessee's use and occupancy of the Site under this Lease, including, but not limited to, attorney's fees reasonably incurred for defense thereof. This provision shall not apply

to claims, actions, damages, losses, or proceedings caused solely by the negligence of officers, agents, or employees of Lessor.

**8. Insurance.** A. Lessee shall procure and maintain at its sole expense, and shall keep in full force and effect throughout the Term of this Lease, the following policies of insurance:

(1) Commercial General Liability Insurance, \$1,000,000 combined single limit per occurrence for bodily injury and property damage claims arising from all operations related to this Lease. The general aggregate limit shall be \$2,000,000.

(2) Commercial Automobile Liability Insurance, \$1,000,000 combined single limit per accident for bodily injury and property damage.

(3) Worker's Compensation and Employers Liability. Worker's Compensation shall be statutory as required by the State of Alaska. Employers Liability shall be endorsed to the following minimum limits and contain USL&H coverage endorsement, if applicable: bodily injury by accident--\$1,000,000 each accident; and bodily injury by disease--\$1,000,000 each employee, \$1,000,000 policy limit.

B. Other Insurance Provisions. The policies shall contain, or be endorsed to contain, the following provisions:

(1) Commercial General Liability and Automobile Liability

(i) Lessor, its officers, officials, employees and volunteers are to be covered as additional insureds. The coverage shall contain no special limitation on the scope of protection afforded to Lessor, its officers, officials, employees and volunteers.

(ii) Lessee's insurance coverage shall be primary insurance as respects Lessor, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by Lessor, its officers, officials, employees and volunteers shall be excess of Lessee's insurance and shall not contribute to it.

(iii) Lessee's insurer shall agree to waive all rights of subrogation against Lessor, its officers, officials, employees and volunteers for losses arising from work performed by Lessee or any sublessee for Lessor.

(2) Worker's Compensation and Employer's Liability. Lessee's insurer shall agree to waive all rights of subrogation against Lessor, its officers, officials, employees and volunteers for losses arising from work performed by Lessee or any sublessee for Lessor.

(3) All Insurance. Each insurance policy required by this Lease 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 Lessee, or 60 days prior written notice for any other reason, has been given to by the insurer to Lessor by certified mail, return receipt requested.

C. Acceptability of Insurers. Insurance is to be placed with insurers with a Best's rating of no less than A-: VII.

D. Verification of Coverage. Lessee shall furnish Lessor with approved certificates of insurance and with certified copies of all endorsements effecting coverage required by this section. 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

which meet industry standard. Lessor reserves the right to require complete, certified copies of all required insurance policies, at any time.

**9. Environmental.** A. For purposes of this section:

(1) Environmental Requirement shall mean any law, regulation, or legal requirement relating to health, safety, or the environment, now in effect or hereinafter enacted, including but not limited to the Comprehensive Environmental Response Compensation and Liability Act (CERCLA), the Toxic Substances Control Act (TSCA), the Federal Insecticide Fungicide and Rodenticide Act (FIFRA), the Resource Conservation and Recovery Act (RCRA), the Clean Air Act (CAA) and the Clean Water Act (CWA), the Occupational Safety and Health Act (OSHA) and all similar state and local laws, rules, regulations, and guidance, now in existence or hereinafter enacted, as each such law, rule, or regulation may be amended from time to time.

(2) Environmental Hazard shall mean Hazardous Materials (as defined hereinafter), or the storage, handling, production, disposal, treatment, or release thereof.

(3) Hazardous Material shall mean

(i) any hazardous waste, any extremely hazardous waste, or any restricted hazardous waste, or words of similar import, as defined in the Resource Conservation and Recovery Act (42 USC §6901 *et seq.*)

(ii) any hazardous substances as defined in the Comprehensive Environmental Response, Compensation and Liability Act (42 USC §9601 *et seq.*)

(iii) any toxic substances as defined in the Toxic Substances Control Act (15 USC §2601 *et seq.*)

(iv) any pollutant as defined in the Clean Water Act (33 USC §1251 *et seq.*)

(v) gasoline, petroleum, or other hydrocarbon products or by-products

(vi) asbestos

(vii) any other materials, substances, or wastes subject to environmental regulation under any applicable federal, state, or local law, regulation, or ordinance now or hereafter in effect

(4) Environmental Liabilities shall mean any liability, penalties, fines, forfeitures, demands, damages, losses, claims, causes of action, suits, judgments, and costs and expenses incidental thereto (including cost of defense, settlement, reasonable attorneys' fees, reasonable consultant fees, and reasonable expert fees), arising from or based on environmental contamination or the threat of environmental contamination, or noncompliance, or violation of, any Environmental Requirement and shall include, but not be limited to, liability arising from

(i) any governmental action, order, directive, administrative proceeding, or ruling

(ii) personal or bodily injuries (including death) or damages to any property (including loss of use) or natural resources

(iii) clean-up, remediation, investigation, monitoring, or other response action

(5) Environmental Release shall mean any release, spill, leak, discharge, injection, disposal, or emission of any Hazardous materials into the environment.

B. At all times during the term of the Lease, Lessee shall conduct its activities at the Site, and shall ensure that any invitee of Lessee conducts its activities at the Site in strict compliance with all applicable Environmental Requirements.

C. Notwithstanding any other provision of this Lease, Lessee agrees to indemnify and hold harmless Lessor, Lessor's successors and assigns, and Lessor's present and future officers, directors, employees, and agents, (collectively "Lessor Indemnitees") from and against any and all Environmental Liabilities which Lessor or any or all of the Lessor Indemnitees may hereafter suffer, incur, be responsible for, or disburse as a result of any Environmental Hazard at the Site to the extent caused by or attributable to Lessee or Lessee's activities, or by any invitee of Lessee or by the activities of any invitee of Lessee.

D. Notwithstanding any other provision of the Lease, Lessor agrees to indemnify and hold harmless Lessee, Lessee's successors and assigns, and Lessee's present and future officers, directors, employees and agents (collectively "Lessee Indemnitees") from and against any and all Environmental Liabilities which Lessee or any of the Lessee Indemnitees may hereafter suffer, incur, be responsible for, or disburse as a result of any Environmental Hazard at the Site to the extent caused by or attributable to Lessor or Lessor's activities, or by any invitee of Lessor or by the activities of any invitee of Lessor.

E. The provisions of this section shall survive termination of this Lease.

**10. Utility Charges and Taxes.** All utility charges shall be borne and paid for by Lessee, together with all personal or real property taxes or assessments that may be levied against the Lessee by reasons of its occupancy of the Site or its rights hereunder.

**11. Operation of Equipment.** In installing, operating, or maintaining any equipment on the Site and in its general management of the Site, Lessee will act in accordance with applicable laws and regulations and so as not to cause interference with any other radio or television transmitting or receiving equipment whether located on the Site or not. Lessee will at all times protect from interference all frequencies assigned to Lessor whether or not such frequencies are in use. Before altering, replacing or adding any transmission equipment at the Site, Lessee shall, at Lessee's sole expense, arrange for an inter-modulation analysis so as to verify that no unacceptable signal interference will result from the alteration, replacement or addition. Lessee shall provide Lessor with a copy of the inter-modulation analysis. Lessee will not do, attempt, or permit any acts in connection with this Lease, which could be construed as a violation of law.

**12. Condition of Site.** Lessee takes the Site in its present condition and Lessor shall have no responsibility for its condition, or for any damage suffered by Lessee or any other person due to such conditions.

**13. Assignment and Subleasing.** A. Except as provided in this section, Lessee may not sublease the Site, either in whole or in any portion, without first obtaining the written approval of the City Council. Lessee may not assign, mortgage, pledge, or otherwise encumber all or any portion of this Lease or the Site without first obtaining the written approval of the City Council. Any assignment, pledge, or encumbrance approved by the Council shall be subject to all terms and provisions of this Lease. Any assignment, pledge, or encumbrance executed without the proper approval of the Council shall be void and of no force and effect.

B. Notwithstanding the provisions of subsection A of this section, Lessor authorizes Lessee to sublease to Port Graham Development Corporation and ACS Wireless, Inc. under the following conditions:

(1) Approval of the subleases does not release Lessee from any of its obligations under this Lease.

(2) The sublessees agree to comply with all terms of this Lease regarding the use of the Site, insurance, and environmental requirements.

(3) The insurance provided by Lessee must cover the activities of the sublessees.

(4) Lessee shall remit to Lessor 30% of any revenues collected monthly.

C. Notwithstanding the provisions of subsection A of this section, Lessee will have the right to assign, sell, or transfer its interest under this Lease without the approval or consent of Lessor, to Lessee's parent or member company or any affiliate or subsidiary of, or partner in, Lessee or its parent or member company or to any entity which acquires all or substantially all of Lessee's assets in the market defined by the Federal Communications Commission in which the Site is located by reason of a merger, acquisition, or other business reorganization. Upon notification to Lessor of such assignment, transfer, or sale, Lessee will be relieved of all future performance, liabilities, and obligations under this Lease.

**14. Default and Re-Entry.** If Lessee fails to cure any default of the conditions of this Lease within thirty (30) days after written notice thereof by Lessor, or in the event insolvency proceedings should be instituted by or against Lessee, then Lessor may terminate the Lease as of such date and re-enter the Site and remove all property therefrom and Lessee shall remain liable for the payment of rental to the extent provided by law.

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

If to LESSOR:

City of Kodiak  
Attn: City Clerk  
710 Mill Bay Road  
Kodiak, Alaska 99615

If to LESSEE:

NCWPCS MPL 31 – Year Sites Tower  
Holdings LLC  
c/o Crown Castle USA Inc.  
E. Blake Hawk, General Counsel  
Attn: Legal Department  
2000 Corporate Drive  
Canonsburg, PA 15317

**16. Applicable Law.** Lessee shall, at all times, in its use and occupancy of the Site and in the conduct of its operations thereon, comply with all applicable federal, state, and local laws, ordinances, and regulations.

IN WITNESS WHEREOF, the parties have executed this Lease as of the date first written above.

CITY OF KODIAK  
710 Mill Bay Road  
Kodiak, Alaska 99615

NCWPCS MPL 31 – Year Sites Tower  
Holdings LLC, by and through CCATT  
LLC, its attorney in fact.

\_\_\_\_\_  
Aimée Kniazowski, City Manager

\_\_\_\_\_

Attest:

\_\_\_\_\_  
Debra L. Marlar, City Clerk

July 2, 2014

Debra Marlar  
City of Kodiak  
710 Mill Bay Road, Room 216/217  
Kodiak, AK 99615

RE: Business Unit #: 857449  
Site Location: Pillar Mountain Road

Dear Ms. Marlar:

Thank you for taking the time to consider renewing our existing Lease Agreement. As a company, we desire to operate our towers well into the future and we are highly focused on managing our sites to their fullest potential. The proposals outlined below will allow the City of Kodiak to capitalize on the lucrative opportunities presently available.

Lease Extension (bonus payment)

- 1) Our lease agreement is expiring on 12/31/2014. We would like our new agreement to have an initial term of 5 years with 2 renewal terms of 5 years each, for a final lease expiration date of 2029. We can add language stating that prior to the commencement of each renewal term; the City has the option to obtain an independent valuation of the leased premises to determine an appropriate rental rate. The appraisal shall be made by a professional independent real estate appraiser selected by the City, at Crown Castle's sole cost and expense, not to exceed \$3,000.00. However, the rental rate increase shall not increase more than 5% of the rental rate for the previous year.
- 2) We have competitors active in your area who may approach you to purchase our Lease Agreement. We would like to add a provision stating that you need to let us know if you are approached by a competitor, and Crown Castle has the ability to match their offer.
- 3) Both the City and Crown Castle have the ability to terminate our agreement with 6 months' notice; however, it would take at least a year for us to find a relocation site. Therefore, we would like to modify our termination language to state that both parties can terminate with 1 year's notice.
- 4) As consideration for extending the agreement and agreeing to the terms outlined above, we would like to offer a \$5,000.00 bonus payment upon execution of our lease renewal document.

Lease Extension (pre-payment)

- 1) Same as 1-3 above.
- 2) We can offer pre-paid rent for up to 5 years. If we pre-pay the next 5 years up front, we can give you \$64,000.00, and then after the 5 years (2019) we will start to make the monthly rent payments at the same amount as if all of the scheduled rent escalations had occurred. During this time, we will continue to send you the separate monthly revenue share payments.

Perpetual Easement

- 1) We are proposing to acquire a perpetual easement for \$250,000.00. We can also give you part of that amount up front and then continue to send you monthly payments for the next 10 years.

There are several ways we can put together an agreement that will maximize the City's financial income, and ensure the continued success of the Site. Please let me know if you have any questions or concerns. I am confident that we can reach a mutually beneficial agreement that supports the City's interests and allows us to continue to serve the community.

Please contact me at (206) 336-7386. I look forward to hearing from you.

Sincerely,



Tamara Erickson  
Government Site Specialist



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## MEMORANDUM TO COUNCIL

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**To:** Mayor Branson and City Councilmembers  
**From:** Aimée Kniazowski, City Manager and Debra Marlar, City Clerk *DM*  
**Date:** August 28, 2014

**Agenda Item:** V. b. First Reading, Ordinance No. 1324, Amending Kodiak City Code 2.08.025, Compensation of Councilmembers, and Kodiak City Code 2.08.034, Compensation of Mayor, to Increase Monthly Compensation for Councilmembers From \$200 to \$400, and to Increase Monthly Compensation for the Mayor From \$250 to \$500

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**SUMMARY:** If Council wants to increase their monthly stipend, they would pass Ordinance No. 1324 in the first reading and advance to second reading and public hearing at the next regular or special Council meeting. Once adopted, the ordinance will take effect November 1, 2014.

**PREVIOUS COUNCIL ACTION:**

- February 2014, Council asked staff to research stipend increases for Council and Mayor in preparation for future discussions.
- March 2014, Council discussed the process to increase the stipend in keeping with City Charter and City Code requirements and agreed to discuss again in the summer.
- July 2014, Council discussed the process to bring the issue forward and voiced consensus to bring an ordinance forward at the August regular meeting.

**BACKGROUND:** The compensation for elected officials is governed by the City Charter and Code. The Charter states:

**II-3 Compensation**

The compensation of the Mayor and Councilmembers shall be determined by a non-emergency or initiated ordinance; but no increase in the compensation, except when made by ordinance enacted by the qualified voters by initiative, shall become effective until after a regular city election has been held. The Mayor and Councilmembers shall not receive any other compensation for any personal service rendered the City, but may be reimbursed for expenses incurred in the discharge of their official duties. [Ord. 694, 1984; election held October 2, 1984; passage ratified October 10, 1984]

In addition, KCC 2.08.025 sets the rate of compensation for Council at \$200 per month, and KCC 2.08.034 states the Mayor is compensated at the rate of \$250 per month.

**DISCUSSION:** Council members initiated discussion of the possibility of increasing the elected officials' stipend in February of this year. Staff researched the issue in preparation for discussion at the March 25, 2014, work session.

The City Attorney explained that Council would enact an ordinance increasing the compensation for the Mayor and Council with the increase becoming effective after the date of the next regular City election on October 7, 2014. Two sections of the City Code, KCC 2.08.025 and 2.08.034 would also need to be amended to reflect a new amount.

The information was discussed at the March 25, 2014, work session. Council voiced a consensus to put it on an upcoming agenda for approval but did not specify when. Council briefly discussed the ordinance again at the July 22, 2014, work session and voiced a consensus to bring the ordinance forward for first reading at the August meeting.

**ALTERNATIVES:** Council may pass Ordinance No. 1324 in the first reading and advance to second reading and public hearing at the next regular or special Council meeting. Council may also amend the ordinance, postpone it, or decide not to advance it to second reading.

**FINANCIAL IMPLICATIONS:** The compensation increase is reflected in the FY2015 operating budget effective October 2014.

**LEGAL:** The City Attorney was consulted and explained the Charter provision required a change in compensation to be done by ordinance, which would be introduced and passed before the election in October, but take effect after the election. The Attorney also drafted the ordinance to amend the appropriate sections of Kodiak City Code Chapter 2 and to have an effective date of November 1, 2014, which is after the election.

**ATTACHMENTS:**

Attachment A: Ordinance No. 1324

Attachment B: Selection of compensation amounts for elected officials from AML  
FY2014 Salary and Benefit Survey

**PROPOSED MOTION:**

Move to pass Ordinance No. 1324 in the first reading and advance to second reading and public hearing at the next regular or special Council meeting.

**CITY OF KODIAK  
ORDINANCE NUMBER 1324**

**AN ORDINANCE AMENDING KODIAK CITY CODE 2.08.025, COMPENSATION OF COUNCILMEMBERS, AND KODIAK CITY CODE 2.08.034, COMPENSATION OF MAYOR, TO INCREASE MONTHLY COMPENSATION FOR COUNCILMEMBERS FROM \$200.00 TO \$400.00, AND TO INCREASE MONTHLY COMPENSATION FOR THE MAYOR FROM \$250.00 TO \$500.00**

BE IT ORDAINED by the Council of the City of Kodiak, Alaska, that:

**Section 1:** Kodiak City Code 2.08.025, Compensation of councilmembers, is hereby amended to read as follows:

**2.08.025 Compensation of councilmembers.** Each councilmember shall be compensated at the rate of \$400.00 ~~\$200.00~~ per month, to be paid on a monthly basis.

**Section 2:** Kodiak City Code 2.08.034, Compensation of mayor, is hereby amended to read as follows:

**2.08.034 Compensation of mayor.** The mayor shall be compensated at the rate of \$500.00 ~~\$250.00~~ per month, to be paid on a monthly basis.

**Section 3:** This ordinance shall be effective upon the date that is one month after its final passage and publication in accordance with Kodiak Charter Section 2-13, and shall apply to the monthly compensation of councilmembers and the mayor commencing November 1, 2014.

CITY OF KODIAK

\_\_\_\_\_  
MAYOR

ATTEST:

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

First Reading:  
Second Reading:  
Effective Date:

**Council or Assembly Member**

This is an elected position.

Municipality	Population	Specific Working Title	Job Match	# of Employees	Union or Nonunion	Work Wk	Lowest Wage	Average Wage	Highest Wage	Note:
Fairbanks North Star Borough	100,272	Assembly Member	Same	7	Non		\$0.00	\$0.00	\$0.00	\$900/month, \$1100/month for pres.
Matanuska-Susitna Borough	93,500	Assembly Member	Same	7	Non		\$0.00	\$0.00	\$0.00	\$1108.33 per month
Kenai Peninsula Borough	51,900	Assembly Member	Same	9	Non		\$0.00	\$0.00	\$0.00	Pres. \$500/mo, Members \$400/mo; Plus Car Allowance
Juneau	32,164	Assembly Member	More	8	Non		\$0.00	\$0.00	\$0.00	\$6,000.00 per month + Health Insurance Coverage
Fairbanks	31,182	Council Member	Same	6	Non		\$0.00	\$0.00	\$0.00	\$500 per month

Kodiak Island Borough	13,592	Assembly Member	Same	7	Non	\$0.00	\$0.00	\$0.00	\$300 per month
Ketchikan Gateway Borough	13,477	Assembly Member	Same	7	Non	Varies	\$0.00	\$50.00	\$150/month + \$75/meeting
Sitka	8,627	Assembly Member	Same	6	Non		\$0.00	\$0.00	\$300 per month - No PERS participation
Wasilla	8,064	Council Member	Same	6	Non		\$0.00	\$0.00	\$6,000 per year
Ketchikan	7,503	Council Member	Same	7	Non	Varies	\$0.00	\$15.00	\$0.00
Palmer	6,117	Council Member	Same	6	Non	Varies	\$0.00	\$0.00	\$0.00
Kodiak	5,974	Council Member	Same	6	Non		\$0.00	\$0.00	\$200.00 monthly salary
Homer	5,551	Council Member	Same	6	Non		\$0.00	\$0.00	\$100 per month
Unalaska	4,297	Council Member	Same	6	Non	Varies	\$0.00	\$0.00	\$250 per meeting
Nome	3,598	Council Member	Same	6	Non		\$0.00	\$0.00	\$50 per month
North Pole	2,256	Council Member	Same	6	Non		\$0.00	\$0.00	\$125 per meeting, \$75 per special meeting
Houston	1,912	Council Member	Same	6	Non		\$0.00	\$0.00	\$25 per meeting
Denali Borough	1,826	Assembly Member	Same	9	Non		\$0.00	\$0.00	\$200 per month/chaor \$250 month
Craig	1,201	Council Member	Same	6	Non		\$0.00	\$0.00	\$50 per month
Bristol Bay Borough	1,073	Assembly Member	Same	5	Non	2	\$20.00	\$20.00	\$20/meeting
Skagway	862	Assembly Member	Same	7	Non		\$0.00	\$0.00	\$80 per meeting
Quinhagak	689	Council Member	More	6	Non	4	\$30.00	\$0.00	removed as was a duplicate
Saxman	405	Council Member	Same	7	Non		\$0.00	\$0.00	Paid per meeting
Brevig Mission	388	Council Member	Same	7	Non	2per month	\$75.00	\$75.00	Council meets twice per month \$75 per meeting.
Kaktovik	239	Council Member	Same	7	Non	Once a mth	\$0.00	\$0.00	\$100 per monthly meeting
White Mountain	199	Council Member	Same		Non	Varies	\$0.00	\$0.00	Not Paid
Cold Bay	89	Council Member	Same	7	Non		\$0.00	\$0.00	\$50 per meeting

## Mayor

Most mayors are part-time. This is an elected position.

Municipality	Population	Specific Working Title	Job Match	# of Employees	Union or Nonunion	Work Wk	Lowest Wage	Average Wage	Highest Wage	Note:
Fairbanks North Star Borough	100,272	Mayor	Same	1	Non	40	\$0.00	\$44.47	\$0.00	
Matanuska-Susitna Borough	93,500	Mayor	Same	1	Non	40	\$0.00	\$0.00	\$0.00	\$1610.42 per month
Kenai Peninsula Borough	51,900	Mayor	More	1	Non	40	\$0.00	\$47.60	\$0.00	Salary to increase to \$47.60, effective 10/2011 with New Mayor (\$99,000/yr)
Juneau	32,164	Mayor	More	1	Non		\$0.00	\$0.00	\$0.00	\$3,106.35 Stipend/year
Fairbanks	31,182	Mayor	Same	1	Non		\$0.00	\$37.50	\$0.00	
Kodiak Island Borough	13,592	Mayor	Same	1	Non		\$0.00	\$0.00	\$0.00	\$500 per month
North Slope Borough	9,643	Mayor	Same	1	Non	37.5	\$85.98	\$107.47	\$128.97	
Sitka	8,627	Mayor	Same	1	Non		\$0.00	\$0.00	\$0.00	\$500 per month - No PERS participation
Wasilla	8,064	Mayor	Same	1	Non	40+	\$43.20	\$47.80	\$57.47	Elected Official
Ketchikan	7,503	City Mayor	Same	1	Non	Varies	\$0.00	\$16.50	\$0.00	
Palmer	6,117	Mayor	Same	1	Non	20	\$0.00	\$23.08	\$0.00	
Kodiak	5,974	Mayor	Same	1	Non		\$0.00	\$0.00	\$250.00	monthly salary
Homer	5,551	Mayor	Same	1	Non	Varies	\$0.00	\$0.00	\$0.00	\$150 per month
Unalaska	4,297	Mayor	Same	1	Non	40	\$0.00	\$0.00	\$0.00	\$700 per month
Nome	3,598	Mayor	Same	1	Non		\$0.00	\$0.00	\$0.00	\$75 per month
North Pole	2,256	Mayor	Same	1	Non	40	\$0.00	\$0.00	\$0.00	\$69,000 per year Plus 2% per year of service
Houston	1,912	Mayor	Same	1	Non		\$0.00	\$0.00	\$0.00	\$1,500/month; Works minimum 80 hrs/month @ \$15
Denali Borough	1,826	Mayor	More	1	Non	40	\$0.00	\$0.00	\$0.00	\$65,000 Annually

Craig	1,201	Mayor	Same	1	Non	\$0.00	\$0.00	\$0.00	\$925.00 per month for 12 months
Bristol Bay Borough	1,073	Mayor	Same	1	Non	\$20.00	\$20.00	\$20.00	
Sand Point	983	Mayor	Same	1	Non	Part Time	\$0.00	\$0.00	\$3,000.00-Monthly salary
King Cove	953	Mayor	Same	1	Non	Varies	\$0.00	\$0.00	\$33,000 per year
Skagway	862	Mayor	Same	1	Non		\$0.00	\$0.00	\$100 per meeting
Quinhagak	689	Mayor	Same	1	Non	20	\$15.00	\$0.00	\$25.00
Nenana	479	Mayor	More	1	Non	40	\$0.00	\$31.25	\$0.00
Saxman	405	Mayor	Less	1	Non	40	\$0.00	\$0.00	\$1,000 per month
Brevig Mission	388	Mayor	Same	1	Non	1/month	\$250.00	\$250.00	\$250 - \$600 per month
Atkasuk	250	Mayor	More	1	Non	30	\$0.00	\$0.00	\$0.00
Kaktovik	239	Mayor	Same	1	Non	Once a mth	\$0.00	\$0.00	\$1.50 per monthly meeting
White Mountain	199	Mayor	More	1	Non	Varies	\$0.00	\$0.00	Not paid
Ouzinkie	178	Mayor	More	1	Non	25	\$0.00	\$0.00	\$600 salary, pay period every 2 wks
Cold Bay	89	Mayor	Less	1	Non		\$0.00	\$0.00	\$500 per month
Nikolai	88	Mayor	More	1	Non	Varies	\$15.00	\$15.00	\$15.00





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**MEMORANDUM TO COUNCIL**

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**To:** Mayor Branson and City Councilmembers  
**From:** Aimée Kniaziowski, City Manager   
**Thru:** Lon White, Harbormaster   
**Date:** August 28, 2014

**Agenda Item: V. c. First Reading, Ordinance, No. 1325, Authorizing an Amendment to the Lease Between the City of Kodiak and NOAA for Office and Warehouse Space on Pier II**

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**SUMMARY:** Ordinance No. 1325 authorizes Amendment No. 1 to the existing NOAA Warehouse Lease at Pier II, which excludes a 147 square foot (sf) office on the second floor. Currently NOAA leases warehouse and office space totaling 5,547 sf at \$17.55 per square foot per year. NOAA desires to exclude the office space from the lease. Exclusion of the office space will result in a reduction in rent of \$2,580.33 annually, or \$215.03 per month. The current lease allows for this amendment and is recommended by the Harbormaster.

**PREVIOUS COUNCIL ACTION:** In March 2009 Council approved a ten-year lease to NOAA that included 5,400 sf of Pier II warehouse space on the ground floor, 147 sf of office space on the second floor and parking adjacent to the warehouse.

**DISCUSSION:** NOAA has a long-term commitment with the City of Kodiak to homeport the research vessel OSCAR DYSON at Pier II. In exchange for funding that was provided by NOAA to rebuild Pier II, the vessel is exempt from dock fees. To support vessel operations, NOAA leased warehouse and office space in the Pier II warehouse. The warehouse space is used extensively by NOAA, but the office space has never been utilized. Initially, NOAA intended to have permanent administrative staff in Kodiak to support the vessel OSCAR DYSON, but the position was never filled. Provisions in the lease allow for amendments after the first five years. The original lease was approved in 2009, and the first five-year period started in March 2014. NOAA continues to use the warehouse space for its intended purpose, but no longer needs the office space as originally planned. It is fair and reasonable to allow them to forfeit the office space. The office space could be better utilized by Horizon Lines, the other primary tenant in the facility, or as a temporary office space for the contractor or project engineers working on the adjacent Pier III replacement project.

**ALTERNATIVES:**

- 1) Approve the amendment to the NOAA warehouse lease excluding the 147 sf office space on the second floor. The space would then be available for lease by others. This is the recommendation of staff.
- 2) Do not approve the amendment. NOAA could elect to forfeit the entire lease or ask to re-negotiate the terms. This would not be beneficial to the City. NOAA pays a premium rate for the facility, and the exclusion of the office space has minimal impact to the overall warehouse revenues.

**FINANCIAL IMPLICATIONS:** The current lease for the office and warehouse space is \$97,386 annually, or \$8,114 per month. Excluding the office space would reduce the lease rate to \$94,787.97 annually or \$7,898.97 per month, a reduction in revenue to the Harbor's Cargo Fund of \$2,580.33 annually or \$215.03 per month.

**LEGAL:** The ordinance was prepared by the City Attorney.

**STAFF RECOMMENDATION:** Staff recommends Council approve Ordinance No. 1325 in the first reading and advance to the second reading in support of amending the NOAA Warehouse Lease for Pier II to exclude 147 sf of office space for the remainder of the lease term, effective August 1, 2014.

**CITY MANAGER'S COMMENTS:** I support NOAA's request and Lon White's recommendation to authorize the amendment of the lease for Pier II warehouse office space. NOAA is a good tenant and as mentioned above, they have no need for the office space. Therefore, I recommend Council pass Ordinance No. 1325 in the first reading and advance it to second reading and public hearing at the next regular or special Council meeting.

**ATTACHMENTS:**

- Attachment A: Ordinance No. 1325
- Attachment B: NOAA lease 2009-2019
- Attachment C: Amendment No. 1 to NOAA lease
- Attachment D: NOAA e-mail requesting amendment, dated July 7, 2014

**PROPOSED MOTION:**

Move to pass Ordinance No. 1325 in the first reading and advance it to second reading and public hearing at the next regular or special Council meeting.

**CITY OF KODIAK  
ORDINANCE NUMBER 1325**

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

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

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

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

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

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

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

**Section 2:** The form and content of the Amendment hereby are in all respects authorized, approved and confirmed, and the City Manager hereby is authorized, empowered and directed to execute and deliver the Amendment to the U.S. Department of Commerce, National Oceanic and Atmospheric Administration on behalf of the City in substantially the form and content now before this meeting but with such changes, modifications, additions and deletions therein as she shall deem necessary, desirable or appropriate, the execution thereof to constitute conclusive evidence of approval of any and all changes, modifications, additions or deletions therein from the form and content of said document now before this meeting; and from and after the execution and delivery of said document the City Manager hereby is authorized, empowered and directed to do all acts and things and to execute all documents as may be necessary to carry out and comply with the provisions of the Amendment as executed.

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

CITY OF KODIAK

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MAYOR

ATTEST:

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CITY CLERK

First Reading:  
Second Reading:  
Effective Date:

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

LEASE NUMBER  
GS-10B-07054  
Bldg Number AK3475

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

**A. REQUIREMENTS**

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

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

**B. STANDARD CONDITIONS AND REQUIREMENTS**

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

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

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

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

**6. OTHER REQUIREMENTS**

24/7 Access, Use of Dock facilities.

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

Offeror should also include the following with their offers:

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

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

**8. BASIS OF AWARD**

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

*AK/ASM*



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

**A. LOCATION AND DESCRIPTION OF PREMISES OFFERED FOR LEASE BY GOVERNMENT**

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

**B. TERM**

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

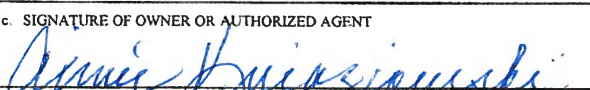
**C. RENTAL**

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

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

9a. NAME AND ADDRESS OF OWNER (Include ZIP code. If requested by the Government and the owner is a partnership or joint venture, list all General Partners, using a separate sheet, if necessary.)

City of Kodiak, 710 Mill Bay Road, Kodiak, AK 99615

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

**PART III - AWARD (To be completed by Government)**

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


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

Exhibit A: Pier 2 Warehouse floor plan

Exhibit B: Pier 2 Site Plan

Lessor DUNS #: 078191970

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

a NAME OF CONTRACTING OFFICER (Type or Print) <b>ANDREW S. MOHL</b>	b SIGNATURE OF CONTRACTING OFFICER 	c DATE <b>NOV 19 2009</b>
------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------	------------------------------

GENERAL SERVICES ADMINISTRATION PUBLIC BUILDINGS SERVICE LEASE AMENDMENT	LEASE AMENDMENT NO. 1
	TO LEASE NO. <b>GS-10B-07054</b> BLDG NO. <b>AK3475ZZ</b>

ADDRESS OF PREMISES

Pier 2 Warehouse, 727 Shellkof Street, Kodiak, AK 99615

THIS AGREEMENT, made and entered into this date by and between City of Kodiak

Whose address is 710 Mill Bay Road, Kodiak, AK 99615

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

WHEREAS, the parties hereto desire to amend the above Lease

NOW THEREFORE, these parties for the considerations hereinafter mentioned covenant and agree that the said lease is amended, effective June 30, 2014 as follows:

Lease Amendment (LA) Number 1 has been prepared to reduce the square footage by giving up the 147 rentable square foot office located on the second floor, see attachment Exhibit A. To accomplish this, Part II OFFER Blocks A, C, and D are deleted in their entirety and replaced below, Part II C RENTAL 5 and 6 are deleted and replaced with the following:

Part II OFFER A :	Part II OFFER C:	Part II OFFER D:
2a FLOOR(s)	c. SQ FT	d. TYPE
1 <sup>st</sup> Floor – 5,400 RSF	RENTABLES 5,400	(X) WAREHOUSE
	ABOA 5,400	(X) OTHER (Specify) Ship Doc Facilities
	Common Area Factor 1.000	

Part II C RENTAL 5:  
5. AMOUNT OF ANNUAL RENT  
\$94,787.67

Part II C RENTAL 6:  
6. RATE PER MONTH  
\$7,898.97

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

Use of the GSA form 276, Supplemental Lease Agreement has been discontinued. All references in the lease to "GSA form 276" or "Supplemental Lease Agreement" shall now be hereby construed to mean "Lease Amendment."

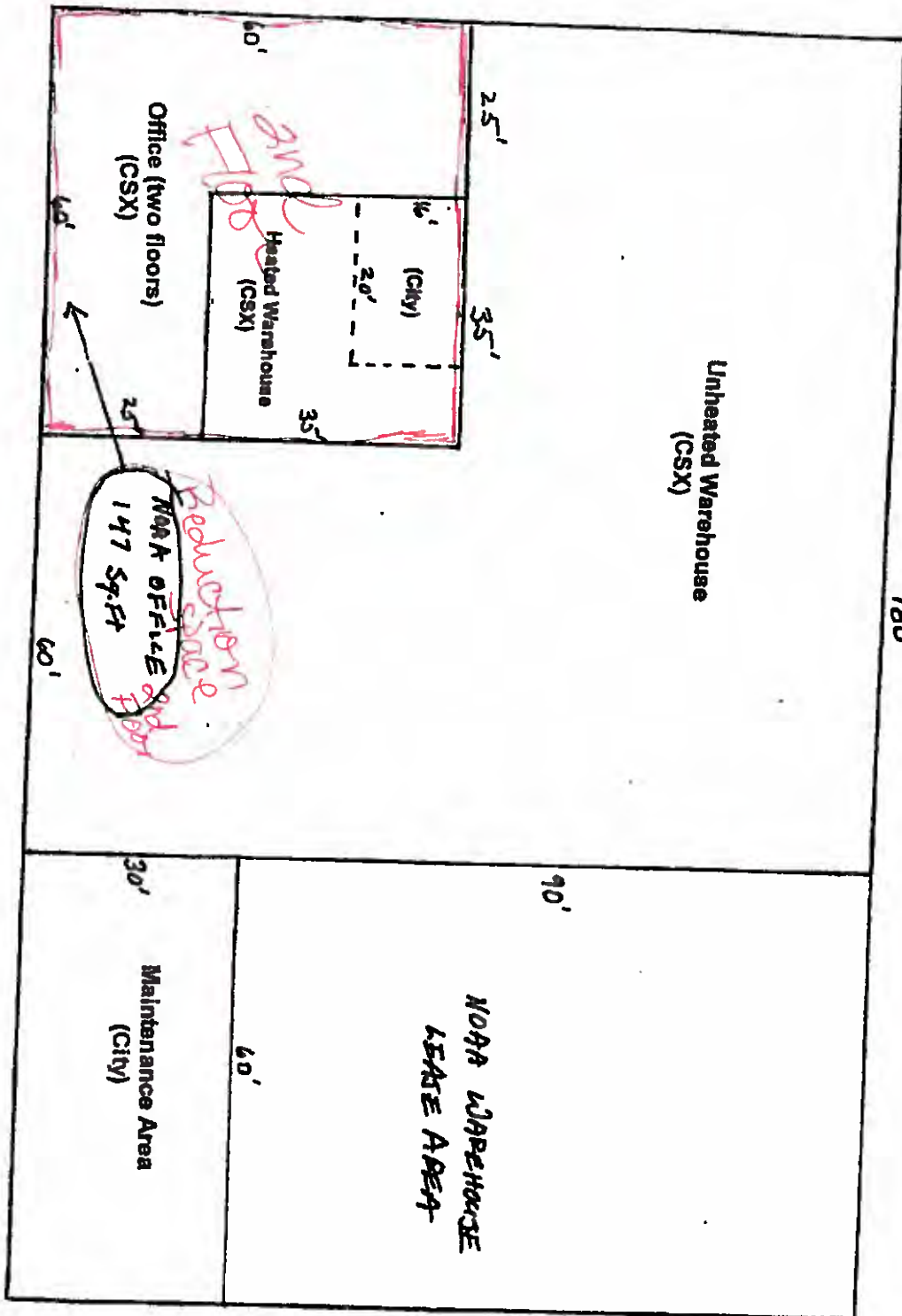
IN WITNESS WHEREOF, the parties subscribed their names as of the date below.

FOR THE LESSOR: Signature: _____ Name: _____ Title: _____ Entity Name: _____ Date: _____	FOR THE GOVERNMENT: Signature: _____ Name: _____ Title: Lease Contracting Officer Entity Name: GSA, Public Building Service Date: _____
---------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------

WITNESSED FOR THE LESSOR BY: Signature: _____ Name: _____	Title: _____ Date: _____
-----------------------------------------------------------------	-----------------------------



**EXHIBIT A**



City/ Port of Kodlak Pier II Warehouse

Unheated Warehouse (CSX)

Office (two floors) (CSX)

Heated Warehouse (CSX)

Reduction Space  
NORTH OFFICE  
147 Sq. Ft.

NORTH WAREHOUSE  
LEASE AREA

Maintenance Area (City)

**INITIALS & Lessor/Government**

**From:** [Nancy Naumann](#)  
**To:** [Owen, Martin](#); [Kniazowski, Aimee](#)  
**Cc:** [Teri Hudgins](#); [Terria Heinlein - 10PRAA](#)  
**Subject:** Lease Amendment to reduce square footage  
**Date:** Monday, July 07, 2014 10:07:15 AM  
**Attachments:** [LA 1 for reducing off space only w ex A.pdf](#)

---

Ms. Kniazowski and Mr. Owen,

Attached is Lease Amendment (LA) to reduce square footage by giving up the 2nd floor office space. The warehouse space remains the same. Please submit to the council for approval as soon as possible. When approved please sign two copies (signature on page and initials on page 2) and send both copies to Terria for her signature at the address below.

Terria Heinlein  
General Services Administration  
400 15th Street SW  
Auburn, WA 98001-6505

We will send you an executed copy of LA1 for your lease files. Call me at 907-271-4211 or Teri Hudgins (907-271-3150) if you have any questions.

Thank you  
Nancy Naumann  
Post Occupancy Specialist - S.Brooks & Associates Inc.  
Contractor - General Services Administration  
Northern Service Center, Anchorage, Alaska  
Phone 907-271-4211  
Fax 907-271-3020

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**MEMORANDUM TO COUNCIL**

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**To:** Mayor Branson and City Councilmembers  
**From:** Aimée Kniazowski, City Manager  
**Thru:** Ronda Wallace, Chief of Police  
**Date:** August 28, 2014

**Agenda Item:** V. d. **Resolution No. 2014–30, Authorizing and Directing the Chief of Police to Place Signs Prohibiting Parking on the Northwest Side of Mission Road Between Erskine Avenue and 12<sup>th</sup> Avenue**

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**SUMMARY:** The Kodiak Police and Public Works Departments have fielded many complaints regarding drainage, traffic congestion, and snow removal over the last several years. Complaints have come from area residents as well as pedestrians and motorists using Mission Road. Staff has found the only solution is to post the section of Mission Road from 12<sup>th</sup> Avenue south, to the intersection of Erskine Avenue with “No Parking This Side of Street” signs along the northwest side of the street. Staff recommends Council authorize the Police Chief to take action to post and enforce no parking signs on this portion of Mission Road by adopting Resolution No. 2014–30.

**PREVIOUS COUNCIL ACTION:** Information was presented to the City Council during the August 26, 2014, work session.

**DISCUSSION:** The residents of the area are well aware of the problems that on-street parking creates with drainage, which overflows the street onto private lots, and the road being so narrow during the winter that two-way traffic is difficult. Both of these issues could be improved by not having parking on the northwest side of the street through this section. Staff recognizes this will not completely correct the problems, but do believe it will improve the safety of the area and reduce the drainage problems affecting the properties on the southeast side of the street.

The southeast side of the street will not be signed. Although many residents do park within the right of way, they either have parking decks or are outside of the guardrail. In order to keep the width of the street as wide as possible during the winter, Public Works crews try and move the snow to the northwest side of the street as soon as practical to improve traffic safety.

This section of the street has very limited shoulders or open drainage ditches. Parking in the area creates significant problems with access to keep the drainage working as well as having a place to put the snow.

Once the “No Parking This Side of Street” signs are posted, Public Works crews will clean the drainage ditch and replace the storm drain culvert crossing Mission Road at the bottom of 11<sup>th</sup> Avenue.

**ALTERNATIVES:**

- 1) Council may approve placement of the sign “No Parking This Side of Street” by adopting Resolution No. 2014–30. This would allow Public Works crews to clean the drainage ditches, which allows for better drainage and safer flow of traffic during the winter months. Staff believes it is in the best interest of public safety in that area of Mission Road.
- 2) Council may choose not adopt the resolution and sign placement. If the posting of the “No Parking This Side of Street” is not approved, the situation of drainage affecting the properties on the southeast side of the street, snow removal, and narrow roadway during winter months remains static. Staff does not recommend this.

**FINANCIAL IMPLICATIONS:** Public Works estimates the cost of installation is roughly \$1,000 for signs, post and bases and roughly \$5,300 for installation. The large labor cost has to do with Mission road being so narrow that staff must use two flaggers to safely control traffic. Staff will use the Public Works Streets supply account to purchase the materials.

**LEGAL:** According to the City Attorney, the City Code, KCC 10.16.010 adopts by reference state stopping, standing and parking regulations, including 13 AAC 02.340(d)(1)(K), which prohibits stopping, standing or parking a vehicle at a place where official traffic-control devices prohibit stopping, standing, or parking. He recommended Council adopt a resolution authorizing and directing the Chief of Police to post signs prohibiting parking in the area along Mission Road where staff wants to prohibit parking to alleviate traffic congestion. The Attorney drafted the attached resolution.

**STAFF RECOMMENDATION:** Staff recommends Council authorize and direct the Chief of Police to place no parking signage along the northwest side of Mission Road from 12<sup>th</sup> Avenue to Erskine Avenue to improve drainage and public safety by adopting Resolution No. 2014–30.

**CITY MANAGER’S COMMENTS:** Residents along this stretch of Mission Road have complained about safety issues relating to people parking on the northwest side of the road for several years. The cars and equipment parked in the ROW cause snow removal problems, drainage problems, and other safety related problems that cannot be addressed except by prohibiting parking along this stretch of roadway. After conferring with the City Attorney, who explained the City can place traffic control devices (signs) that prohibit parking in specific areas, staff sent out letters (see attached) to all residents who could be affected. The resolution, which was drafted by the Attorney, has an effective date of October 1, 2014, to give people in the area a chance to relocate their vehicles and equipment before the signs are posted and the parking violations enforced. I support this action as the only immediately available solution to the problem along this stretch of Mission Road and ask Council to adopt Resolution No. 2014–30.

**ATTACHMENTS:**

Attachment A: Resolution No. 2014–30

Attachment B: Map of Mission Road area where the “No Parking This Side of Street” signage is to be placed

Attachment C: Sample letter to affected residents mailed the week of August 11, 2014

**PROPOSED MOTION:**

Move to adopt Resolution No. 2014–30.

AUGUST 28, 2014  
Agenda Item V. d. Memo Page 3 of 3

**CITY OF KODIAK  
RESOLUTION NUMBER 2014-30**

**A RESOLUTION OF THE COUNCIL OF THE CITY OF KODIAK AUTHORIZING AND DIRECTING THE CHIEF OF POLICE TO PLACE SIGNS PROHIBITING PARKING ON THE NORTHWEST SIDE OF MISSION ROAD BETWEEN ERSKINE AVENUE AND 12<sup>TH</sup> AVENUE**

WHEREAS, Mission Road between Erskine Avenue and 12<sup>th</sup> Avenue is exceptionally narrow, and carries a high volume of traffic; and

WHEREAS, the parking of vehicles on both sides of Mission Road between Erskine Avenue and 12<sup>th</sup> Avenue causes traffic congestion and delays, and is a public safety hazard; and

WHEREAS, the best means to reduce traffic congestion and the public safety hazard in this area is to prohibit parking on the Northwest side of Mission Road between Erskine Avenue and 12<sup>th</sup> Avenue.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Kodiak, Alaska, that:

Section 1. The Chief of Police is authorized and directed to place signs stating “No Parking” on the Northwest side of Mission Road between Erskine Avenue and 12<sup>th</sup> Avenue.

Section 2. This resolution shall become effective October 1, 2014.

CITY OF KODIAK

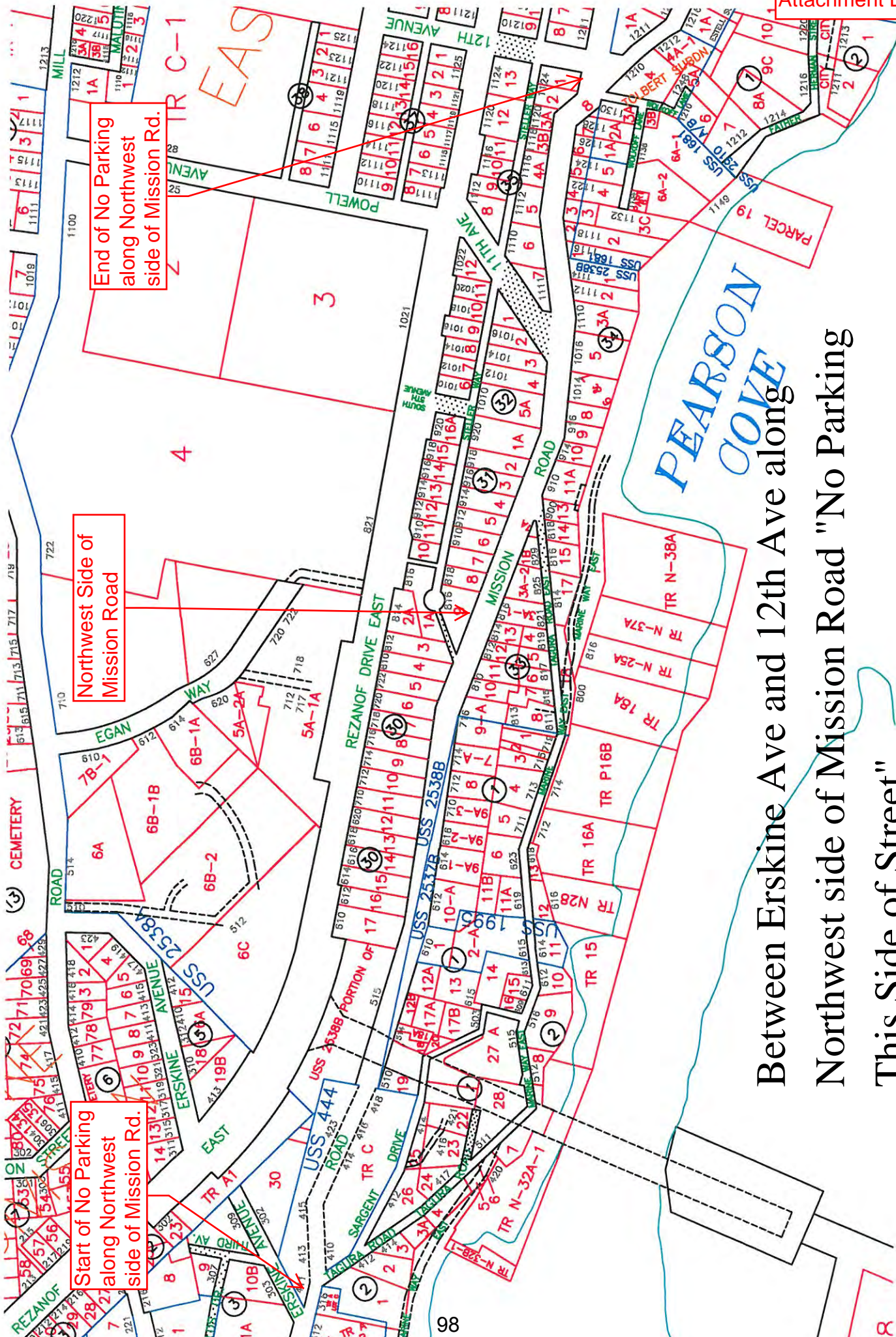
\_\_\_\_\_  
MAYOR

ATTEST:

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

Adopted:





Between Erskine Ave and 12th Ave along  
 Northwest side of Mission Road "No Parking  
 This Side of Street"





CITY OF KODIAK  
2410 Mill Bay Road, Kodiak, AK 99615  
Public Works Department  
(907) 486-8060 Fax: (907) 486-8066

August 12, 2014

Name  
Address  
Kodiak AK 99615

Subject: Notice “No Parking this Side of Street”

Dear Mission Road Resident:

If you have received this letter, you have property that is within the area that will be affected by this proposed “No Parking This Side of Street” along Mission Road. Due to many complaints from area residents as well as others using Mission Road about drainage, traffic congestion and snow removal problems we have found the only solution is to post the section of Mission Road from 12<sup>th</sup> Avenue south to the intersection of Erskine Avenue “No Parking This Side of Street” along the northwest side of the street.

As you the residents of the area are well aware of the problems, the on-street parking creates drainage that overflows the street onto private lots and the road is so narrow during the winter two vehicles have a difficult time passing. Both of these issues can be improved by not having parking on the northwest side of the street through this section. We recognize that this will not completely correct the problems but do believe it will improve the safety of the area and reduce the drainage problems affecting the properties on the southeast side of the street.

The southeast side of the street will not be signed because although many residents do park within the Right of Way they either have parking decks or are outside of the guardrail. You may have noticed that in order to keep the width of the street as wide as we can during the winter we try and move the snow to the northwest side of the street as soon as practical to improve traffic safety.

This section of the street has very limited shoulders or open drainage ditch and parking in the area creates significant problems with access to keep the drainage working as well as having a place to put the snow.

Once the “No Parking This Side of Street” signs are posted Public Works crews will be cleaning the drainage ditch and replacing the storm drain culvert crossing Mission Road at the bottom of 11<sup>th</sup> Avenue.

This topic will be in front of the City Council at their work Session on August 26 and is scheduled for Council approval at their regular meeting August 28. If you have comments or concerns, you are welcome to attend the work session or regular City Council meetings on those dates.



CITY OF KODIAK  
2410 Mill Bay Road, Kodiak, AK 99615  
Public Works Department  
(907) 486-8060 Fax: (907) 486-8066

Sincerely,

Mark Kozak  
Public Works Director

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## MEMORANDUM TO COUNCIL

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**To:** Mayor Branson and City Councilmembers

**From:** Aimée Kniaziowski, City Manager 

**Date:** August 28, 2014

**Agenda Item:** V. e. Resolution No. 2014–31, Appointing Members to the Kodiak Fisheries Development Association

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**SUMMARY:** There are three board members on the Kodiak Fisheries Development Association (KFDA) board of directors whose terms have expired and are willing to be reappointed to the board. The attached resolution names Linda Freed and Albert Tyler Schmeil to joint City-Borough seats and Jeff Stephan to a City seat as a crab harvester representative. The Borough Assembly appointed Linda Freed at its August 7, 2014, meeting and plans to reappoint Albert Tyler Schmeil at its September 4, 2014, meeting. Staff recommends Council authorize the one City seat and two joint seat appointments by adopting Resolution No. 2014–31.

**PREVIOUS COUNCIL ACTION:** The City Council makes appointments to the KFDA board by resolution.

- August 22, 2009, adopted Resolution No. 2009–22, appointing Linda Freed to a vacant joint City-Borough seat
- September 24, 2009, adopted Resolution No. 2009–26, appointing Albert Tyler Schmeil to a vacant joint City-Borough seat
- August 26, 2010, adopted Resolution No. 2010–25, reappointing Mike Woodruff to the City’s crab processor seat
- October 28, 2010, adopted Resolution No. 2010–28, reappointing Stosh Anderson to the joint City-Borough seat
- August 25, 2011, adopted Resolution No. 2011–29, reappointing Jeff Stephan to a City seat and Albert Tyler Schmeil to a joint City-Borough seat
- August 9, 2012, adopted Resolution No. 2012–23, reappointing Linda Freed to the joint City-Borough seat
- September 12, 2013, adopted Resolution No. 2013–26, reappointing Stosh Anderson and Mike Woodruff to the KFDA board

**DISCUSSION:** The Kodiak Fisheries Development Association was created jointly by the City of Kodiak and the Kodiak Island Borough in 2007 as the region’s eligible crab community entity (ECCE). The KFDA is made up of seven directors who serve staggered three-year terms: two appointed by the City, two appointed by the Borough, and three appointed jointly.

AUGUST 28, 2014  
Agenda Item V. e. Memo Page 1 of 2

Linda Freed was reappointed in August 2012 and Albert Tyler Schmeil was reappointed in August 2011. The Borough and City received confirmation that Mr. Schmeil and Ms. Freed were willing to be reappointed. The Borough Assembly authorized the reappointment of Ms. Freed on August 7, 2014 and plan to authorize Mr. Schmeil's appointment at their September 4, 2014, meeting. Jeff Stephan indicated his interest in continuing to serve as the City's representative from the crab harvester representative.

**ALTERNATIVES:** Council may approve, amend, or fail the resolution and continue to recruit for applicants.

**STAFF RECOMMENDATION:** Staff recommends Council adopt Resolution No. 2014-31.

**CITY MANAGER'S COMMENTS:** The terms for each of the appointees expired in July 2014. The three directors are willing to be reappointed, and I recommend the City Council adopt this resolution. With this appointment, KFDA will have a full complement of Directors.

**ATTACHMENTS:**

Attachment A: Resolution No. 2014-31

Attachment B: E-mail information on reappointments for Linda Freed, Tyler Schmeil, and Jeff Stephan

Attachment C: KFDA Member List

**PROPOSED MOTION:**

Move to adopt Resolution No. 2014-31.

**CITY OF KODIAK  
RESOLUTION NUMBER 2014–31**

**A RESOLUTION OF THE COUNCIL OF THE CITY OF KODIAK APPOINTING MEMBERS TO THE KODIAK FISHERIES DEVELOPMENT ASSOCIATION**

WHEREAS, the North Pacific Fishery Management Council adopted the Bering Sea/Aleutian Islands Crab Rationalization Program as Amendments 18 and 19 to the Fishery Management Plan for Bering Sea/Aleutian Islands King and Tanner Crabs; and

WHEREAS, under the Program, Kodiak was designated as an eligible crab community (ECC) and in connection with such designation, the City of Kodiak and the Kodiak Island Borough have the authority to jointly exercise certain rights of first refusal (ROFR) with respect to processor quota shares (PQS) allocated under the Program; and

WHEREAS, to exercise the ECC ROFR, the City of Kodiak and the Kodiak Island Borough have jointly designated the Kodiak Fisheries Development Association (KFDA) as the region's eligible crab community entity (ECCE) having the authority to do so on their behalf; and

WHEREAS, the bylaws of the Kodiak Fisheries Development Association provide for appointment of Directors to the Board of the KFDA by the Kodiak City Council and the Kodiak Island Borough Assembly; and

WHEREAS, the bylaws of the KFDA state, in part, that Directors shall serve until their successors are appointed and qualified; and

WHEREAS, the terms for two joint appointee seats and one City appointee seat have expired; and

WHEREAS, Jeff Stephan has requested reappointment to the City's crab harvester representative seat and Linda Freed and Albert Tyler Schmeil have requested reappointment to joint appointee seats on the KFDA board; and

WHEREAS, the Kodiak Island Borough reappointed Linda Freed at its August 7, 2014, regular meeting and are scheduled to reappoint Albert Tyler Schmeil at its September 4, 2014, meeting.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Kodiak, Alaska, that the following individuals are appointed as Directors of the Kodiak Fisheries Development Association, with the noted terms:

City Appointees

Crab Processor Rep. – Mike Woodruff (7/16)

**Crab Harvester Rep. – Jeff Stephan (7/17)**

Joint Appointees

Stosh Anderson (7/16) (joint appointment)

**Linda Freed (07/17) (joint appointment)**

**Albert Tyler Schmeil (07/17) (joint appointment)**

Borough Appointees

Crab Processor Rep. – Tuck Bonney (07/15)

Crab Harvester Rep. – Jerry Bongen (07/15)

CITY OF KODIAK

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MAYOR

ATTEST:

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CITY CLERK

Adopted:

Subject: FW: KFDA Appointments

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**From:** Nicolas, Nenita  
**Sent:** Friday, August 08, 2014 9:25 AM  
**To:** 'Nova Javier'; Marlar, Debra  
**Cc:** Kniaziowski, Aimee  
**Subject:** RE: KFDA Appointments

Good morning,

Mr. Albert Schmeil just came back from fishing, he will serve another term.

Thank you.  
Nita

---

**From:** Nova Javier [<mailto:njavier@kodiakak.us>]  
**Sent:** Thursday, July 31, 2014 9:28 AM  
**To:** Marlar, Debra  
**Cc:** Nicolas, Nenita  
**Subject:** RE: KFDA Appointments

Hi Deb,

We have the appointment of Linda Freed on the August 7 agenda. Nita is supposed to let us know once she is able to verify with Albert if he is willing to serve. I believe he is out fishing.

Thank you,  
Nova



**From:** Nicolas, Nenita  
**Sent:** Tuesday, July 01, 2014 2:50 PM  
**To:** Nova Javier  
**Cc:** Bud Cassidy; Kniazowski, Aimee; Marlar, Debra; 'Linda Freed'; 'Tyler Schmeil'; 'Jeff Stephan'  
**Subject:** RE: Appointees to KFDA

Hi Nova,

FYI, Mr. Stephan and Ms. Freed will do another term. I left a message to Mr. Schmeil; he's out fishing.

Thank you.

Nenita Nicolas  
Administrative Specialist  
City of Kodiak  
(907) 486-8640

---

**From:** Marlar, Debra  
**Sent:** Monday, June 23, 2014 10:42 AM  
**To:** Nova Javier; Kniazowski, Aimee; Nicolas, Nenita  
**Cc:** Bud Cassidy  
**Subject:** RE: Appointees to KFDA

Mike was reappointed at the same time as Stosh via the attached resolution.

Deb

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**From:** Nova Javier [<mailto:njavier@kodiakak.us>]  
**Sent:** Monday, June 23, 2014 10:31 AM  
**To:** Kniazowski, Aimee; Marlar, Debra; Nicolas, Nenita  
**Cc:** Bud Cassidy  
**Subject:** Appointees to KFDA

Hi Aimee,

I am wondering if Mike was reappointed on the City seat until 2016? Also, Jeff's seat is about to expire.

Does your office contact the Joint Appointees? We have Linda's and Albert seats expiring next month.

Thank you,  
Nova

Ms. Nova M. Javier, MMC  
Borough Clerk  
710 Mill Bay Road  
Kodiak, AK 99615

**PUBLIC RECORDS DISCLOSURE:** This email and responses to this email are subject to provisions of the Alaska Statutes and may be made available to the public upon request.



KODIAK ISLAND BOROUGH / CITY OF KODIAK

KODIAK FISHERIES DEVELOPMENT ASSOCIATION BOARD OF DIRECTORS



NAME	TERM	PHONE	EMAIL
<b>CITY APPOINTEES</b>			
<b>Crab Processors Representative</b>			
Mike Woodruff	7/2016	486-8100	<a href="mailto:mwoodruff62@yahoo.com">mwoodruff62@yahoo.com</a>
<b>Crab Harvester Representative</b>			
Jeff Stephan	7/2014	486-4568	<a href="mailto:jstephan@ptialaska.net">jstephan@ptialaska.net</a>
<b>JOINT APPOINTEES</b>			
Stosh Anderson	7/2016	486-3673	<a href="mailto:stosh_a@hotmail.com">stosh_a@hotmail.com</a>
Linda Freed	7/2014	486-5314	<a href="mailto:freed@gci.net">freed@gci.net</a>
Albert Tyler Schmeil	7/2014	486-8587	<a href="mailto:tmschmeil@gci.net">tmschmeil@gci.net</a>
<b>BOROUGH APPOINTEES</b>			
<b>Crab Processors Representative</b>			
Tuck Bonney	7/2015	486-3329	<a href="mailto:tbonney@npsi.us">tbonney@npsi.us</a>
<b>Crab Harvester Representative</b>			
Jerry Bongen	7/2015	486-6245	<a href="mailto:jbongen@mac.com">jbongen@mac.com</a>

KFDA bylaws state: Directors shall be appointed by joint resolution of the Borough Assembly and City Council. Appointments shall take place annually at July meetings of the Borough Assembly and City Council. Directors shall have staggered three (3) year terms of office, assigned by a random selection method at the first Board meeting, such that as close as possible to one third (1/3) of the Board is up for appointment each year. Directors shall serve until their successors are appointed and qualified.

**STAFF:**

CITY MANAGER, AIMEE KNIAZIEWSKI    486-8640    [akniaziewski@city.kodiak.ak.us](mailto:akniaziewski@city.kodiak.ak.us)


OFFICE OF THE CITY MANAGER  
710 MILL BAY ROAD, ROOM 219  
KODIAK, AK 99615

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## MEMORANDUM TO COUNCIL

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**To:** Mayor Branson and City Councilmembers  
**From:** Aimée Kniaziowski, City Manager   
**Date:** August 28, 2014

**Agenda Item: V. f. Resolution 2014-32, Opposing Section 1021 of the National Defense Authorization Act**

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**SUMMARY:** If Council wants to adopt the attached resolution requested by the local People Against the National Defense Authorization Act (PANDA) opposing sections of the National Defense Authorization Act (NDAA), they may adopt Resolution No. 2014–32, which is attached. If adopted, the resolution will be forwarded to the City’s federal lobbyist, Brad Gilman, and members of the Alaska congressional delegation. It will also be forwarded to the state lobbyist, Ray Gillespie, and the Kodiak delegation per the resolution language.

**PREVIOUS COUNCIL ACTION:**

- A local citizen group representing PANDA who are in opposition to sections of the NDAA, came to several Council meetings and spoke under public comments regarding the City Council’s need to take a stand against the NDAA.
- Two Council members requested a presentation by PANDA for the July 24 work session agenda and several requested the proposed PANDA resolution be on the August 28, 2014, regular meeting agenda.

**DISCUSSION:** As mentioned above, there was support from Council for the local PANDA group to make a presentation at the July 24 work session and to place the PANDA supported resolution (Attachment B) on the regular meeting for August 28. Other elected officials also requested additional information about the NDAA and possible presentation(s) from groups with a different view.

Staff researched the request for additional information. The City Attorney provided a memo (Attachment C) explaining that aspects of the resolution presented by PANDA were inaccurate so he provided a corrected version (Attachment A) that removes references to Section 1021 of the NDAA.

Staff found no group to make a counter presentation to Council. However, staff was provided with three articles on the NDAA. One is a Wikipedia article on the NDAA for FY2012. Another is a nine-page fact sheet on the FY2014 NDAA from the congressional Armed Services Committee. A third article is from *Civil Liberties 2013* explaining that Section 1021 of the NDAA does not, in fact, create or expand “federal authority to detain US citizens indefinitely and without due process.” (*Civil Liberties, 2013*)

**ALTERNATIVES:** Council may adopt, amend, postpone, or fail Resolution No. 2014–32.

**FINANCIAL IMPLICATIONS:** None

**LEGAL:** Staff requested the City Attorney to review the resolution PANDA presented to the City Council at the July 24 meeting. His memo and formatted resolution are attached.

**ATTACHMENTS:**

Attachment A: Resolution No. 2014–32

Attachment B: PANDA submitted resolution “Restoring Constitutional Governance”

Attachment C: Memo from Tom Klinkner, dated August 4, 2014

Attachment D: Wikipedia article on NDAA for Fiscal Year 2012

Attachment E: Fact Sheet: FY2014 NDAA Summary, Armed Services Committee

Attachment F: Civil Liberties, 2013, “The Military Should be Allowed to Detain Non-Citizen Terrorist Suspects”

**PROPOSED MOTION:**

Move to adopt Resolution No. 2014–32.

**CITY OF KODIAK  
RESOLUTION NUMBER 2014-32**

**A RESOLUTION OF THE COUNCIL OF THE CITY OF KODIAK OPPOSING  
SECTION 1021 OF THE 2012 NATIONAL DEFENSE AUTHORIZATION ACT**

WHEREAS, the City of Kodiak, Alaska is not a “battlefield” subject to the “laws of war;” and

WHEREAS, the U.S. Supreme Court has ruled that neither Congress nor the President can constitutionally authorize the detention and/or disposition of any person in the United States, or citizen of the United States “under the law of war” who is not serving “in the land or naval forces, or in the Militia, when in actual service in time of War or public danger” (Ex Parte Milligan, 71 U.S. 2, 1866); and

WHEREAS, for the purposes of this resolution, the terms “arrest,” “capture,” “detention under the law of war,” “disposition under the law of war,” and “law of war” are used in the same sense and shall have the same meaning as such terms have in the 2012 NDAA, Section 1021.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Kodiak, Alaska, that:

Section 1. Notwithstanding any treaty, federal, state, or local law or authority, enacted or claimed, including, but not limited to, an authorization for use of military force, national defense authorization act, or any similar law or authority enacted or claimed by Congress or the Office of the President directed at any person in Kodiak, Alaska who is not serving “in the land or naval forces, or in the Militia, when in actual service in time of War or public danger,” the Council finds that it would be unconstitutional, and therefore unlawful for any person to:

- a. arrest or capture any person in Kodiak, Alaska, or citizen of Kodiak, Alaska within the United States, with the intent of “detention under the law of war,” or
  - b. actually subject a person in Kodiak, Alaska to “disposition under the law of war,”
- or
- c. subject to targeted killing any person in Kodiak, Alaska or any citizen of Kodiak, Alaska within the United States.

Section 2. The Council of Kodiak, Alaska requests that the Alaska State Legislature recognize the duty of the state of Alaska to interpose itself between unconstitutional usurpations by the federal government or its agents and the people of this state, as well as the duty to defend the unalienable natural rights of the people, all of which is consistent with our oaths to defend the Constitution of the United States and the constitution of Alaska against all enemies, foreign and domestic.

Section 3. The Council of Kodiak, Alaska requests that our Congressional delegation commence immediately with efforts to repeal the unconstitutional sections of the 2012 NDAA,

to-wit, sections 1021 and 1022, and any other section or provision which will have the same or substantially the same effect on any person in the United States not serving “in the land or naval forces, or in the Militia, when in actual service in time of War or public danger.”

Section 4. The Council of Kodiak, Alaska requests our Congressional delegation introduce, support, and secure the passage of legislation which clearly states that Congress not only does not authorize, but in fact prohibits the use of military force, military detention, military trial, extraordinary rendition, or any other power of the “law of war” against any person in the United States not serving “in the land or naval forces, or in the Militia, when in actual service in time of War or public danger.”

Section 5. This resolution shall become effective upon adoption by the Council.

CITY OF KODIAK

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MAYOR

ATTEST:

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CITY CLERK

Adopted:

## RESTORING CONSTITUTIONAL GOVERNANCE RESOLUTION OF KODIAK, ALASKA

**WHEREAS**, the City of Kodiak, Alaska is not a “battlefield” subject to the “laws of war;” and

**WHEREAS**, Federal Judge Katherine Forrest has ruled Section 1021 of the 2012 NDAA is unconstitutional; and

**WHEREAS**, the U.S. Supreme Court has ruled that neither Congress nor the President can constitutionally authorize the detention and/or disposition of any person in the United States, or citizen of the United States “under the law of war” who is not serving “in the land or naval forces, or in the Militia, when in actual service in time of War or public danger;” and

(Ex Parte Milligan, 71 U.S. 2, 1866)

**WHEREAS**, for the purposes of this resolution, the terms “arrest,” “capture,” “detention under the law of war,” “disposition under the law of war,” and “law of war” are used in the same sense and shall have the same meaning as such terms have in the 2012 NDAA, Section 1021; and therefore

**BE IT RESOLVED**, that notwithstanding any treaty, federal, state, or local law or authority, enacted or claimed, including, but not limited to, an authorization for use of military force, national defense authorization act, or any similar law or authority enacted or claimed by Congress or the Office of the President directed at any person in Kodiak, Alaska who is not serving “in the land or naval forces, or in the Militia, when in actual service in time of War or public danger,” it is unconstitutional, and therefore unlawful for any person to:

- a. arrest or capture any person in Kodiak, Alaska, or citizen of Kodiak, Alaska within the United States, with the intent of “detention under the law of war,” or



## **RESTORING CONSTITUTIONAL GOVERNANCE RESOLUTION OF KODIAK, ALASKA**

- b. actually subject a person in Kodiak, Alaska to “disposition under the law of war,” or
- c. subject any person to targeted killing in Kodiak, Alaska, or citizen of Kodiak, Alaska  
within the United States; and be it further

**RESOLVED**, that Kodiak, Alaska requests the Alaska State Legislature recognize the duty of the state of Alaska to interpose itself between unconstitutional usurpations by the federal government or its agents and the people of this state, as well as the duty to defend the unalienable natural rights of the people, all of which is consistent with our oaths to defend the Constitution of the United States and the constitution of Alaska against all enemies, foreign and domestic; and be it further

**RESOLVED**, that Kodiak, Alaska requests our Congressional delegation commence immediately with efforts to repeal the unconstitutional sections of the 2012 NDAA, to-wit, sections 1021 and 1022, and any other section or provision which will have the same or substantially the same effect on any person in the United States not serving “in the land or naval forces, or in the Militia, when in actual service in time of War or public danger;” and be it finally

**RESOLVED**, that Kodiak, Alaska requests our Congressional delegation introduce, support, and secure the passage of legislation which clearly states that Congress not only does not authorize, but in fact prohibits the use of military force, military detention, military trial, extraordinary rendition, or any other power of the “law of war” against any person in the United States not serving “in the land or naval forces, or in the Militia, when in actual service in time of War or public danger.”

\* \* \* **END** \* \* \*

# RESTORING CONSTITUTIONAL GOVERNANCE RESOLUTION OF KODIAK, ALASKA

## REFERENCES AND SOURCE DOCUMENTS

NDAAs Resolutions for State Legislators, County Commissioners, Sheriffs, City Councils, etc...  
<http://theintolerableacts.org/wordpress/ndaas-resolutions/>

HR1540 Conference Report as Approved by the United States Congress  
<http://www.gpo.gov/fdsys/pkg/CREC-2011-12-12/pdf/CREC-2011-12-12-pt1-PgH8356-5.pdf>  
**Alternate source:** <http://patriotcoalition.com/docs/HR1540conf.pdf>

Authorization of Use of Military Force (See bottom of page 6 for final version as signed into law.)  
<http://patriotcoalition.com/docs/Authorization-of-Use-of-Military-Force.pdf>

**President Obama's Signing Statement: Dec. 31, 2011**  
<http://www.whitehouse.gov/the-press-office/2011/12/31/statement-president-hr-1540>

Declaration of Independence: (See Freedom Documents tab)  
[http://nccs.net/freedom\\_defined/index.htm?const.html&2](http://nccs.net/freedom_defined/index.htm?const.html&2)

Constitution of the United States of America: (See Freedom Documents tab)  
[http://www.nccs.net/freedom\\_defined/index.htm?const.html&2](http://www.nccs.net/freedom_defined/index.htm?const.html&2)

House Voting Record for final version of 2012 NADA  
<http://clerk.house.gov/evs/2011/roll932.xml>

Senate Voting Record for final version of 2012 NADA  
[http://www.senate.gov/legislative/LIS/roll\\_call\\_lists/roll\\_call\\_vote\\_cfm.cfm?congress=112&session=1&vote=00230](http://www.senate.gov/legislative/LIS/roll_call_lists/roll_call_vote_cfm.cfm?congress=112&session=1&vote=00230)

2012 NDAA, SECTIONS: 1021, 1022, 1023  
[http://patriotcoalition.com/docs/NDAA FOR FISCAL YEAR 2012 \(1021-1022-1023\).doc](http://patriotcoalition.com/docs/NDAA FOR FISCAL YEAR 2012 (1021-1022-1023).doc)

Judge Katherine Forrest places permanent injunction against NDAA in Hedges v. Obama  
<http://theintolerableacts.org/docs/Hedges-v-Obama-Permanent-Injunction.pdf>



**The Intolerable Acts ACTION CENTER** is a joint project of [Patriot Coalition](#) and [Oath Keepers](#). The project logo is derived directly from [American history](#), particularly that relating to abuses of the colonists by King George. The "skull and crossbones" image is from a [1765 Stamp Act protest cartoon](#), which pre-dates the "*Intolerable (Coercive) Acts*" and is super-imposed over the actual hand-written Bill of Rights as proposed by the 1st Congress and sent to the States for ratification.

**MEMORANDUM**

**TO: AIMÉE KNIAZIEWSKI, CITY MANAGER  
CITY OF KODIAK**

**FROM: THOMAS F. KLINKNER**

**RE: RESOLUTION OPPOSING SECTION 1021 OF THE 2012 NATIONAL  
DEFENSE AUTHORIZATION ACT**

**FILE NO.: 505,786.78**

**DATE: AUGUST 4, 2014**

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You have asked that I comment on a proposed Council resolution opposing Section 1021 of the 2012 National Defense Authorization Act (“Section 1021”). The resolution opposes Section 1021 on the ground that it authorizes the unconstitutional military detention of American citizens. A federal appeals court ruled in 2013 that Section 1021 does not authorize the military detention of American citizens. Therefore the resolution is based on an inaccurate premise.

Shortly after the terrorist attacks of September 11, 2001, Congress enacted the Authorization for Use of Military Force (“AUMF”), which empowered the President of the United States to use all necessary and appropriate force against those nations, organizations, and persons responsible for the attacks and those who harbored such organizations or persons. There continues to be considerable controversy and litigation regarding the extent to which the AUMF authorizes military detention of American citizens.

In 2011, Congress enacted Section 1021 in an effort to clarify the extent of military detention authority under the AUMF. Opponents of Section 1021 assert that it significantly—and unconstitutionally—broadened that authority. The materials presented by proponents of the resolution rely heavily on a 2012 decision by Federal District Judge Katherine B. Forrest that Section 1021 is unconstitutional. However, the U.S. Court of Appeals reversed Judge Forrest’s decision in *Hedges v. Obama*, 724 F.3d 170 (2<sup>nd</sup> Cir. 2013). The Court of Appeals held that Section 1021 had no effect on whatever authority existed under the AUMF for military detention of American citizens. Thus, regardless of whether one agrees with military detention of American citizens under the authority of the AUMF, a repeal of Section 1021 would have no effect on that authority.

TFK/TFK

# National Defense Authorization Act for Fiscal Year 2012

From Wikipedia, the free encyclopedia

The **National Defense Authorization Act (NDAA) for Fiscal Year 2012**<sup>[1][2]</sup> is a United States federal law which besides other provisions specifies the budget and expenditures of the United States Department of Defense. The bill passed the U.S. House on December 14, 2011, the U.S. Senate on December 15, 2011, and was signed into United States law on December 31, 2011, by President Barack Obama.<sup>[3][4]</sup>

The Act authorizes \$662 billion in funding, among other things "for the defense of the United States and its interests abroad".<sup>[5]</sup> In a signing statement, President Obama described the Act as addressing national security programs, Department of Defense health care costs, counter-terrorism within the United States and abroad, and military modernization.<sup>[6][7]</sup> The Act also imposes new economic sanctions against Iran (section 1045), commissions appraisals of the military capabilities of countries such as Iran, China, and Russia,<sup>[8]</sup> and refocuses the strategic goals of NATO towards "energy security".<sup>[9]</sup> The Act also increases pay and healthcare costs for military service members<sup>[10]</sup> and gives governors the ability to request the help of military reservists in the event of a hurricane, earthquake, flood, terrorist attack, or other disaster.<sup>[11]</sup>

The most controversial provisions to receive wide attention were contained in subsections 1021–1022 of Title X, Subtitle D, entitled "Counter-Terrorism", authorizing the indefinite military detention of persons the government suspects of involvement in terrorism, including U.S. citizens arrested on American soil. Although the White House<sup>[12]</sup> and Senate sponsors<sup>[13]</sup> maintain that the Authorization for Use of Military Force (AUMF) already grants presidential authority for indefinite detention, the Act states that Congress "affirms" this authority and makes specific provisions as to the exercise of that authority.<sup>[14][15]</sup> The detention provisions of the Act have received critical attention by, among others, the American Civil Liberties Union (ACLU), the Bill of Rights Defense Committee, and some media sources which are concerned about the scope of the President's authority, including contentions that those whom they claim may be held indefinitely could include U.S. citizens arrested on American soil, including arrests by members of the Armed Forces.<sup>[16][17][18][19][20]</sup> The detention powers currently face legal challenge.

## Contents

- 1 Indefinite detention without trial: Section 1021
- 2 Requirement for military custody: Section 1022
- 3 Actions from the White House and Senate leading to the vote
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  - 5.2 Views of the Obama Administration
  - 5.3 Legal arguments that the legislation does not allow the indefinite detention of U.S. citizens
  - 5.4 Legal arguments that the legislation allows indefinite detention
  - 5.5 Proposed legislative reforms
- 6 Legal challenges to indefinite detention
  - 6.1 *Hedges v. Obama*
  - 6.2 States taking action against indefinite detention sections of NDAA
  - 6.3 Counties and municipalities taking action against indefinite detention sections of NDAA
- 7 Sanctions targeting the Iranian Central Bank
- 8 Military pay and benefits

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## Indefinite detention without trial: Section 1021

The detention sections of the NDAA begin by "affirm[ing]" that the authority of the President under the Authorization for Use of Military Force Against Terrorists (AUMF), a joint resolution passed in the immediate aftermath of the September 11, 2001 attacks, includes the power to detain, via the Armed Forces, any person, including a U.S. citizen,<sup>[13][21]</sup> "who was part of or substantially supported al-Qaeda, the Taliban, or associated forces that are engaged in hostilities against the United States or its coalition partners", and anyone who commits a "belligerent act" against the United States or its coalition allies in aid of such enemy forces, under the law of war, "without trial, until the end of the hostilities authorized by the [AUMF]". The text authorizes trial by military tribunal, or "transfer to the custody or control of the person's country of origin", or transfer to "any other foreign country, or any other foreign entity".<sup>[22]</sup>

Addressing previous conflicts with the Obama Administration regarding the wording of the Senate text, the Senate-House compromise text, in sub-section 1021(d), also affirms that nothing in the Act "is intended to limit or expand the authority of the President or the scope of the Authorization for Use of Military Force". The final version of the bill also provides, in sub-section(e), that "Nothing in this section shall be construed to affect existing law or authorities relating to the detention of United States citizens, lawful resident aliens of the United States, or any other persons who are captured or arrested in the United States". As reflected in Senate debate over the bill, there is a great deal of controversy over the status of existing law.<sup>[17]</sup>

An amendment to the Act that would have replaced current text with a requirement for executive clarification of detention authorities was rejected by the Senate.<sup>[23]</sup> According to Senator Carl Levin, "the language which precluded the application of section 1031 to American Citizens was in the bill that we originally approved in the Armed Services Committee and the Administration asked us to remove the language which says that U.S. citizens and lawful residents would not be subject to this section".<sup>[24]</sup> The Senator refers to section 1021 as "1031" because it was section 1031 at the time of his speaking.

## Requirement for military custody: Section 1022



Detainees upon arrival at Camp X-Ray, January 2002. In May 2006, the UN Committee against Torture condemned prisoners' treatment at Guantánamo Bay, noting that indefinite detention constitutes per se a violation of the UN Convention Against Torture.

All persons arrested and detained according to the provisions of section 1021, including those detained on U.S. soil, whether detained indefinitely or not, are required to be held by the United States Armed Forces. The law affords the option to have U.S. citizens detained by the armed forces but this requirement does not extend to them, as with foreign persons. Lawful resident aliens may or may not be required to be detained by the Armed Forces, "on the basis of conduct taking place within the United States".<sup>[25][26]</sup>

During debate on the senate floor, Levin stated that "Administration officials reviewed the draft language for this provision and recommended additional changes. We were able to accommodate those recommendations, except for the Administration request that the provision apply only to detainees captured overseas and there's a good reason for that. Even here, the difference is modest, because the provision already excludes all U.S. citizens. It also excludes lawful residents of United States, except to extent permitted by the constitution. The only covered persons left are those who are illegally in this country or on a tourist visa or other short-term basis. Contrary to some press statements, the detainee provisions in our bill do not include new authority for the permanent detention of suspected terrorists. Rather, the bill uses language provided by the Administration to codify existing authority that has been upheld in federal courts".<sup>[27]</sup>



A Presidential Policy Directive entitled "Requirements of the National Defense Authorization Act"<sup>[28][29]</sup> regarding the procedures for implementing §1022 of the NDAA was issued on February 28, 2012, by the White House.<sup>[30][31]</sup> The directive consists of eleven pages of specific implementation procedures including defining scope and limitations. Judge Kathrine B. Forrest wrote in *Hedges v. Obama*: "That directive provides specific guidance as to the 'Scope of Procedures and Standard for Covered Persons Determinations.' Specifically, it states that 'covered persons' applies only to a person who is not a citizen of the United States and who is a member or part of al-Qaeda or an associated force that acts in coordination with or pursuant to the direction of al-Qaeda; and "who participated in the course of planning or carrying out an attack or attempted attack against the United States or its coalition partners" (see p. 11–12).<sup>[32]</sup> Under procedures released by the White House the military custody requirement can be waived in a wide variety of cases.<sup>[30]</sup> Among the waiver possibilities are the following:<sup>[33]</sup>

- The suspect's home country objects to military custody
- The suspect is arrested for conduct conducted in the United States
- The suspect is originally charged with a non-terrorism offense
- The suspect was originally arrested by state or local law enforcement
- A transfer to military custody could interfere with efforts to secure cooperation or confession
- A transfer would interfere with a joint trial

## Actions from the White House and Senate leading to the vote

The White House threatened to veto the Senate version of the Act,<sup>[12]</sup> arguing in an executive statement on November 17, 2011, that while "the authorities granted by the Authorization for Use of Military Force Against Terrorists, including the detention authority...are essential to our ability to protect the American people...(and) Because the authorities codified in this section already exist, the Administration does not believe codification is necessary and poses some risk".

The statement furthermore objected to the mandate for "military custody for a certain class of terrorism suspects", which it called inconsistent with "the fundamental American principle that our military does not patrol our streets".<sup>[12]</sup> The White House may now waive the requirement for military custody for some detainees following a review by appointed officials including the Attorney General, the secretaries of state, defense and homeland security, the chairman of the military's Joint Chiefs of Staff and the director of national intelligence.<sup>[34]</sup>

During debate within the Senate and before the Act's passage, Senator Mark Udall introduced an amendment interpreted by the ACLU<sup>[16]</sup> and some news sources<sup>[35]</sup> as an effort to limit military detention of American citizens indefinitely and without trial. The amendment proposed to strike the section "Detainee Matters" from the bill, and replace section 1021 (then titled 103 I) with a provision requiring the Administration to clarify the Executive's authority to detain suspects on the basis of the 2001 Authorization for Use of Military Force Against Terrorists.<sup>[36]</sup> The amendment was rejected by a vote of 60–38 (with 2 abstaining).<sup>[37]</sup> Udall subsequently voted for the Act in the joint session of Congress that passed it, and though he remained "extremely troubled" by the detainee provisions, he promised to "push Congress to conduct the maximum amount of oversight possible".<sup>[35]</sup>

The Senate later adopted by a 98 to 1 vote a compromise amendment, based upon a proposal by Senator Dianne Feinstein, which preserves current law concerning U.S. citizens and lawful resident aliens detained within the United States.<sup>[38]</sup> After a Senate-House compromise text explicitly ruled out any limitation of the President's authorities, but also removed the *requirement* of military detention for terrorism suspects arrested in the United States, the White House issued a statement saying that it would not veto the bill.<sup>[39]</sup>

In his Signing Statement, President Obama explained: "I have signed the Act chiefly because it authorizes funding for the defense of the United States and its interests abroad, crucial services for service members and their families, and vital national security programs that must be renewed...I have signed this bill despite having serious reservations with certain provisions that regulate the detention, interrogation, and prosecution of suspected terrorists".<sup>[40]</sup>

## The vote

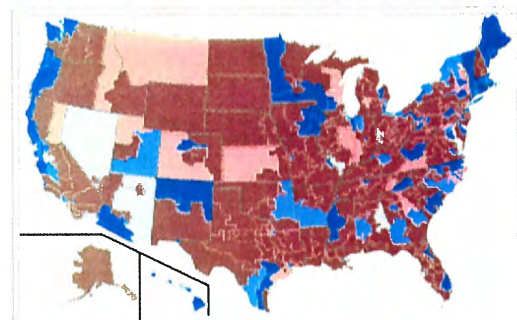
On December 14, 2011, the bill passed the U.S. House by a vote of 283 to 136, with 19 representatives not voting,<sup>[41]</sup> and passed by the U.S. Senate on December 15, 2011, by a vote of 86 to 13.<sup>[42]</sup>

## Controversy over indefinite detention

### American and international reactions

Section 1021 and 1022 have been called a violation of constitutional principles and of the Bill of Rights.<sup>[46]</sup> Internationally, the UK-based newspaper *The Guardian* has described the legislation as allowing indefinite detention "without trial [of] American terrorism suspects arrested on U.S. soil who could then be shipped to Guantánamo Bay;"<sup>[47]</sup> *Al Jazeera* has written that the Act "gives the U.S. military the option to detain U.S. citizens suspected of participating or aiding in terrorist activities without a trial, indefinitely".<sup>[48]</sup> The official Russian international radio broadcasting service *Voice of Russia* has been highly

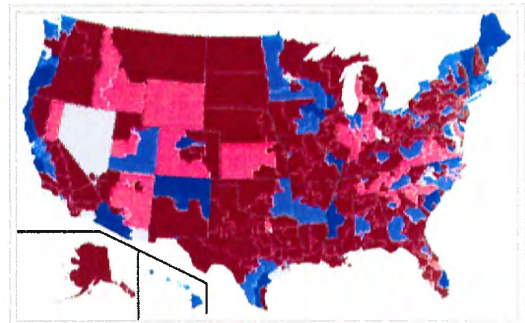
critical of the legislation, writing that under its authority "the U.S. military will have the power to detain Americans suspected of involvement in terrorism without charge or trial and imprison them for an indefinite period of time"; it has furthermore written that "the most radical analysts are comparing the new law to the edicts of the 'Third Reich' or 'Muslim tyrannies'".



**H Amdt 1127 Repeals Indefinite Military Detention Provisions**

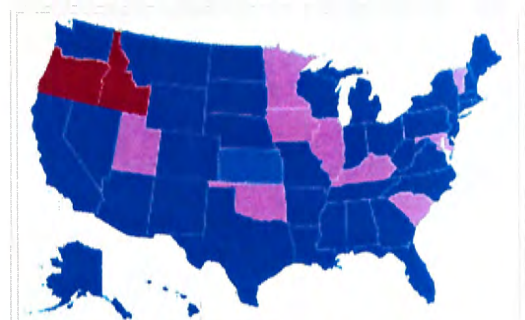
House vote by congressional district.<sup>[43]</sup>

- Democratic yeas
- Democratic nays
- Republican yeas
- Republican nays
- Absent or no representative seated



House vote by congressional district.

- Democratic nay
- Democratic yeas
- Republican yeas
- Republican nay
- Absent or no representative seated



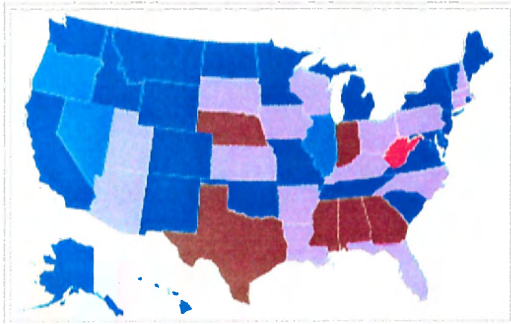
Senate vote by state.

- Both yeas
- One yeas, one didn't vote
- One yeas, one no
- One no, one didn't vote
- Both nos

<sup>[49]</sup> The Act was strongly opposed by the ACLU, Amnesty International, Human Rights First, Human Rights Watch, The Center for Constitutional Rights, the Cato Institute, *Reason Magazine*, and The Council on American-Islamic Relations, and was criticized in editorials published in the *New York Times*<sup>[50]</sup> and other news organizations.<sup>[51][52]</sup>

Americans have sought resistance of the NDAA through successful resolution campaigns in various states and municipalities. The states of Rhode Island and Michigan, the Colorado counties of Wade, El Paso, and Fremont, as well as the municipalities of Northampton, MA. and Fairfax, CA, have all passed resolutions rejecting the indefinite detention provisions of the NDAA.

<sup>[53]</sup> The Bill of Rights Defense Committee has launched a national campaign (<http://constitutioncampaign.org/campaigns/dueprocess/>) to mobilize individuals at the grassroots level to pass local and state resolutions voicing opposition to the NDAA. Campaigns have begun to grow in New York City, Miami and San Diego, among other cities and states.<sup>[54]</sup>



### S Amdt 3018 - Prohibits the Indefinite Detention of Citizens and Lawful Permanent Residents

Senate vote by state.<sup>[44]</sup>

- Both yes
- One yes, one didn't vote
- One yes, one no
- One no, one didn't vote
- Both no

"Section 1021.... Congress affirms that the authority of the President to use all necessary and appropriate force pursuant to the Authorization for Use of Military Force ... includes the authority for the Armed Forces of the United States to detain covered persons (as defined in subsection (b)) pending disposition under the law of war. ... Section 1022. .... Except as provided in paragraph (4), the Armed Forces of the United States shall hold a person described in paragraph (2) who is captured in the course of hostilities authorized by the Authorization for Use of Military Force ... in military custody pending disposition under the law of war."

—Excerpts from NDAA 2012, sections 1021 and 1022.<sup>[45]</sup>

Attorneys Carl J. Mayer and Bruce I. Afran filed a complaint January 13, 2012, in the Southern U.S. District Court in New York City on the behalf of Chris Hedges against Barack Obama and Secretary of Defense Leon Panetta to challenge the legality of the Authorization for Use of Military Force as embedded in the latest version of the National Defense

Authorization Act, signed by the president December 31.<sup>[55]</sup> Lt. Col. Barry Wingard, a military attorney representing prisoners at Guantanamo Bay Detention Camp, noted that under the NDAA "an American citizen can be detained forever without trial, while the allegations against you go

uncontested because you have no right to see them".<sup>[56]</sup>

### Views of the Obama Administration

On December 31, 2011, and after signing the National Defense Authorization Act for Fiscal Year 2012 into law, President Obama issued a statement on it addressing "certain provisions that regulate the detention, interrogation, and prosecution of terrorism suspects". In the statement the President maintains that "the legislation does nothing more than confirm authorities that the Federal courts have recognized as lawful under the 2001 AUMF". The statement also maintains that the "Administration will not authorize the indefinite military detention without trial of American citizens", and that it "will interpret section 1021 in a manner that ensures that any detention it authorizes complies with the Constitution, the laws of war, and all other applicable law". Referring to the applicability of civilian versus military detention, the statement argued that "the only responsible way to combat the threat al-Qa'ida poses is to remain relentlessly practical, guided by the factual and legal complexities of each case and the relative strengths and weaknesses of each system. Otherwise, investigations could be compromised, our authorities to hold dangerous individuals could be jeopardized, and intelligence could be lost".<sup>[57]</sup>

On February 22, 2012, the Administration represented by Jeh Charles Johnson, General Counsel of the U.S. Department of Defense defined the term "associated forces". Johnson stated in a speech at Yale Law School:

"An "associated force," as we interpret the phrase, has two characteristics to it: (1) an organized, armed group that has entered the fight alongside al Qaeda, and (2) is a co-belligerent with al Qaeda in hostilities against the United States or its coalition partners. In other words, the group must not only be aligned with al Qaeda. It must have also entered the fight against the United States or its coalition partners. Thus, an "associated force" is not any terrorist group in the world that merely embraces the al Qaeda ideology."<sup>[58]</sup>

On February 28, 2012, the administration announced that it would waive the requirement for military detention in "any case in which officials [believe] that placing a detainee in military custody could impede counterterrorism cooperation with the detainee's home government or interfere with efforts to secure the person's cooperation or confession".<sup>[34]</sup> Application of military custody to any suspect is determined by a national security team including the attorney general, the secretaries of state, defense, and homeland security, the chairman of the Joint Chiefs of Staff, and the Director of National Intelligence.<sup>[34]</sup>

On September 12, 2012, U.S. District Judge Katherine B. Forrest issued an injunction against the indefinite detention provisions of the NDAA (section 1021(b)(2)) on the grounds of unconstitutionality; however, this injunction was appealed to the U.S. Court of Appeals for the Second Circuit the following day and was later reversed.<sup>[59][60]</sup>



The Administration explained on November 6, 2012, the terms "substantially supported" and "associated forces" in its opening brief before the U.S. Second Court of Appeals in *Hedges v. Obama*.<sup>[61]</sup> With respect to the term "substantially supported" the Obama administration stated:

**"The term "substantial support" covers support that, in analogous circumstances in a traditional international armed conflict, is sufficient to justify detention. The term thus encompasses individuals who, even if not considered part of the irregular enemy forces at issue in the current conflict, bear sufficiently close ties to those forces and provide them support that warrants their detention in prosecution of the conflict. See, e.g., Geneva Convention III, Art. 4.A(4) (encompassing detention of individuals who "accompany the armed forces without actually being members thereof, such as civilian members of military aircraft crews, war correspondents, supply contractors, members of labour units or of services responsible for the welfare of the armed forces, provided that they have received authorization from the armed forces which they accompany"); Int'l Comm. Of the Red Cross Commentary on Third Geneva Convention 64 (Pictet, ed. 1960) (Art. 4(a)(4) intended to encompass certain "classes of persons who were more or less part of the armed force" while not members thereof); see also, e.g., *Gov't Br. in Al Bihani v. Obama*, No. 99-5051, 2009 WL 2957826, at 41-42 (D.C. Cir. Sept. 15, 2009) (explaining that petitioner "was unequivocally part of" an enemy force, but even if he "was not part of enemy forces, he accompanied those forces on the battlefield and performed services (e.g. cooking, guard duty)" for them that justified military detention). Under those principles, the term "substantially support" cannot give rise to any reasonable fear that it will be applied to the types of independent journalism or advocacy at issue here. See March 2009 Mem. at 2 ("substantially support" does not include those who provide "unwitting or insignificant support" to al-Qaeda); cf. *Bensayah*, 610 F.3d at 722, 725 ("purely independent conduct of a freelancer is not enough"). [...] the "substantial support" prong addresses actions like "plan[ning] to take up arms against the United States" on behalf of al-Qaeda and "facilitat[ing] the travel of unnamed**

others to do the same." Page 35-37, 61 in<sup>[61]</sup>

And with respect to the term "associated forces", the Administration cited the above mentioned Jeh Johnson's remarks on February 22, 2012:

**"That term [associated forces] is well understood to cover cobelligerent groups that fight together with al-Qaeda or Taliban forces in the armed conflict against the United States or its coalition partners. [...] after carefully considering how traditional law-of-war concepts apply in this armed conflict against non-state armed groups, the government has made clear that an "associated force" . . . has two characteristics": (1) an organized, armed group that has entered the fight alongside al Qaeda, [that] (2) is a co-belligerent with al Qaeda in hostilities against the United States or its coalition partners."<sup>[61]</sup>**

The Administration summarized later in its brief that:

"an associated force is an "organized, armed group that has entered the fight alongside al Qaeda" or the Taliban and is "a cobelligerent with al Qaeda [or the Taliban] in hostilities against the United States or its coalition partners." Page 60-61 in<sup>[61]</sup>

## **Legal arguments that the legislation does not allow the indefinite detention of U.S. citizens**

*Mother Jones* wrote that the Act "is the first concrete gesture Congress has made towards turning the homeland into the battlefield", arguing that "codifying indefinite detention on American soil is a very dangerous step". The magazine has nevertheless contested claims by *The Guardian* and the *New York Times* that the Act "allows the military to indefinitely detain without trial American terrorism suspects arrested on U.S. soil who could then be shipped to Guantánamo Bay", writing that "they're simply wrong...It allows people who think the 2001 Authorization to Use Military Force against the perpetrators of the 9/11 attacks gives the president the authority to detain U.S. citizens without charge or trial to say that, but it also allows people who can read the Constitution of the United States to argue something else".<sup>[62]</sup> Legal commentator Joanne Mariner has noted in *Verdict* that the scope of existing detention power under the AUMF is "subject to vociferous debate and continuing litigation".<sup>[63]</sup> In the years that followed the September 11 attacks, the AUMF was interpreted to allow the indefinite detention of both citizens and non-citizens arrested far from any traditional battlefield, including in the United States.

Other legal commentators argue that the NDAA does not permit truly "indefinite" detention, given that the period of detention is limited by the duration of the armed conflict. In making this claim, they emphasize the difference between (1) detention pursuant to the "laws of war" and (2) detention pursuant to domestic criminal law authorities.<sup>[64]</sup> David B. Rivkin and Lee Casey, for example, argue that detention under the AUMF is authorized under the laws of war and is not indefinite because the authority to detain ends with the cessation of hostilities. They argue that the NDAA invokes "existing Supreme Court precedent...that clearly permits the military detention (and even trial) of citizens who have themselves engaged in hostile acts or have supported such acts to the extent that they are properly classified as 'combatants' or 'belligerents'". This reflects the fact that, in their view, the United States is, pursuant to the AUMF, at war with al-Qaeda, and detention of enemy combatants in accordance with the laws of war is authorized. In their view, this does not preclude trial in civilian courts, but it does not require that the detainee be charged and tried. If the detainee is an enemy combatant who has not violated the laws of war, he is not chargeable with any triable offense. Commentators who share this view emphasize the need not to blur the distinction between domestic criminal law and the laws of war.<sup>[64][65]</sup>

### Legal arguments that the legislation allows indefinite detention

The American Civil Liberties Union has stated that "While President Obama issued a signing statement saying he had 'serious reservations' about the provisions, the statement only applies to how his administration would use the authorities granted by the NDAA", and, despite claims to the contrary, "The statute contains a sweeping worldwide indefinite detention provision... [without] temporal or geographic limitations, and can be used by this and future presidents to militarily detain people captured far from any battlefield". The ACLU also maintains that "the breadth of the NDAA's detention authority violates international law because it is not limited to people captured in the context of an actual armed conflict as required by the laws of war".<sup>[66]</sup>

### Proposed legislative reforms

Following the passage of the NDAA, various proposals have been offered to clarify the detainee provisions. One example, H.R. 3676 (<http://hdl.loc.gov/loc.uscongress/legislation.112hr3676>), sponsored by U.S. Representative Jeff Landry of Louisiana, would amend the NDAA "to specify that no U.S. citizen may be detained against his or her will without all the rights of due process".<sup>[67]</sup> Other similar bills in the U.S. House of Representatives have been introduced by Representatives John Garamendi of California and Chris Gibson of New York.

The Feinstein-Lee Amendment that would have explicitly barred the military from holding American citizens and permanent residents in indefinite detention without trial as terrorism suspects was dropped on December 18, 2012, during the merging of the House and Senate versions of the 2013 National Defense Authorization Act.<sup>[68][69][70]</sup>

## Legal challenges to indefinite detention

### *Hedges v. Obama*

A lawsuit was filed January 13, 2012, against the Obama Administration and Members of the U.S. Congress by a group including former *New York Times* reporter Christopher Hedges challenging the National Defense Authorization Act for Fiscal Year 2012.<sup>[59]</sup> The plaintiffs contend that Section 1021(b)(2) of the law allows the detention of citizens and permanent residents taken into custody in the United States on "suspicion of providing substantial support" to groups engaged in hostilities against the United States such as al-Qaeda and the Taliban.<sup>[59]</sup>

In May 2012, a federal court in New York issued a preliminary injunction which temporarily blocked the indefinite detention powers of NDAA Section 1021(b)(2) on the grounds of unconstitutionality.<sup>[71]</sup> On August 6, 2012, federal prosecutors representing President Obama and Defense Secretary Leon Panetta filed a notice of appeal with the United States Court of Appeals for the Second Circuit, hoping to eliminate the ban.<sup>[72][73]</sup> The following day arguments from both sides were heard by U.S. District Judge Katherine B. Forrest during a hearing to determine whether to make her preliminary injunction permanent or not.<sup>[74]</sup> On September 12, 2012, Judge Forrest issued a permanent injunction,<sup>[75]</sup> but this was appealed by the Obama Administration on September 13, 2012.<sup>[59][60]</sup> A federal appeals court granted a U.S. Justice Department's request for an interim stay of the permanent injunction, pending the Second Circuit's consideration of the government's motion to stay the injunction throughout its appeal.<sup>[76][77][78]</sup> The court also said that a Second Circuit motions panel will take up the

government's motion for stay pending appeal on September 28, 2012.<sup>[76][77][78]</sup> On October 2, 2012, the Second Circuit Court of Appeals ruled that the ban on indefinite detention will not go into effect until a decision on the Obama Administration's appeal is rendered.<sup>[79][80]</sup> The U.S. Supreme Court refused on December 14, 2012, to lift the stay pending appeal order issued by the U.S. Court of Appeals for the Second Circuit on October 2, 2012.<sup>[81]</sup> The Second Circuit Court of Appeals overturned on July 17, 2013, the district court's ruling which struck down § 1021(b)(2) of NDAA as unconstitutional because the plaintiffs lacked legal standing to challenge it.<sup>[82]</sup> The Supreme Court denied certiorari in an order issued April 28, 2014.<sup>[83][84]</sup>

### **States taking action against indefinite detention sections of NDAA**

As of April 2013, four states have passed resolutions through committee to adjust or block the detention provisions of the 2012 NDAA and now await a vote. These states are: Arizona, Colorado, Montana, and South Carolina.<sup>[85]</sup> Anti-NDAA legislation has passed the full senate in Indiana by a vote of 31–17.<sup>[85]</sup> In Kansas, legislation is waiting for a vote.<sup>[85]</sup> An additional 13 states have introduced legislation against the detention provisions: California, Georgia, Maryland, Massachusetts, Michigan, Missouri, Nevada, New Hampshire, North Carolina, Oklahoma, Tennessee, Texas, and West Virginia.<sup>[86]</sup>

### **Counties and municipalities taking action against indefinite detention sections of NDAA**

Nine counties have passed resolutions against sections 1021 and 1022 of the NDAA. They are: Moffat, Weld, and Fremont counties in Colorado; Harper County, Kansas; Allegan and Oakland counties in Michigan; Alleghany County in North Carolina; and Fulton and Elk counties in Pennsylvania.<sup>[85]</sup> Resolutions have been introduced in three counties: Barber County, Kansas; Montgomery County, Maryland; and Lycoming County, Pennsylvania.<sup>[85]</sup>

Eleven municipalities have passed resolutions as well. They are: Berkeley, Fairfax, San Francisco, and Santa Cruz, California; Cherokee City, Kansas; Northampton, Massachusetts; Takoma Park, Maryland; Macomb, New York; New Shorehampton, Rhode Island; League City, Texas; and Las Vegas, Nevada (currently waiting on the county to pass a joint resolution).<sup>[85]</sup> An additional 13 municipalities have introduced anti-NDAA resolutions: San Diego, California; Miami, Florida; Portland, Maine; Chapel Hill, Durham, and Raleigh, North Carolina; Albuquerque, New Mexico; Albany and New York City, New York; Tulsa, Oklahoma; Dallas, Texas; Springfield, Virginia; and Tacoma, Washington.<sup>[85]</sup>

Northampton, Massachusetts, became the first city in New England to pass a resolution rejecting the NDAA on February 16, 2012.<sup>[85]</sup> William Newman, Director of the ACLU in western Massachusetts, said, "We have a country based on laws and process and fairness. This law is an absolute affront to those principles that make America a free nation".<sup>[87]</sup>

### **Sanctions targeting the Iranian Central Bank**

As part of the ongoing dispute over Iranian uranium enrichment, section 1245 of the NDAA imposes unilateral sanctions against the Central Bank of Iran, effectively blocking Iranian oil exports to countries which do business with the United States.<sup>[88][89]</sup> The new sanctions impose penalties against entities—including corporations and foreign central banks—which engage in transactions with the Iranian central bank. Sanctions on transactions unrelated to petroleum take effect 60 days after the bill is signed into law, while sanctions on transactions related to petroleum take effect a minimum of six months after the bill's signing.<sup>[89]</sup> The bill grants the U.S. President authority to grant waivers in cases in which petroleum purchasers are unable, due to supply or cost, to significantly reduce their purchases of Iranian oil, or in which American national security is threatened by implementation of the sanctions.<sup>[89][90]</sup> Following the signing into law of the NDAA, the Iranian rial fell significantly against the U.S. dollar, reaching a record low two days after the bill's enactment, a change widely attributed to the expected impact of the new sanctions on the Iranian economy.<sup>[91][92][93][94]</sup> Officials within the Iranian government have threatened to close the Strait of Hormuz, an important passageway for Middle East oil exports, should the United States press forward with the new sanctions as planned.<sup>[92][95]</sup>

### **Military pay and benefits**

Amendments made to the bill following its passage include a 1.6 percent pay increase for all service members, and an increase in military healthcare enrollment and copay fees. The changes were unanimously endorsed by the Senate Armed Services Committee.<sup>[10]</sup>

## See also

- *Hedges v. Obama*
- Authorization for Use of Military Force Against Terrorists
- Enemy Expatriation Act
- *Hamdan v. Rumsfeld*
- *Hamdi v. Rumsfeld*
- *Marbury v. Madison*
- Military Commissions Act of 2006
- National Defense Authorization Act
- Posse Comitatus Act
- *Ex parte Quirin*
- Smith Act
- Unlawful combatant
- National Defense Authorization Act for Fiscal Year 2013

## References

- <sup>1</sup> ^ 112th Congress, 1st Session, H1540CR.HSE: "National Defense Authorization Act for Fiscal Year 2012." (<http://www.gpo.gov/fdsys/pkg/BILLS-112hr1540enr/pdf/BILLS-112hr1540enr.pdf>)
- <sup>2</sup> ^ "H.R. 1540 (112th): National Defense Authorization Act for Fiscal Year 2012" (<https://www.govtrack.us/congress/bills/112/hr1540>). govtrack.us. Retrieved 26 July 2014.
- <sup>3</sup> ^ Nakamura, David (2 January 2012). "Obama signs defense bill, pledges to maintain legal rights of terror suspects" ([http://www.washingtonpost.com/politics/obama-signs-defense-bill-pledges-to-maintain-legal-rights-of-terror-suspects/2011/12/31/gIQTzkbSP\\_story.html](http://www.washingtonpost.com/politics/obama-signs-defense-bill-pledges-to-maintain-legal-rights-of-terror-suspects/2011/12/31/gIQTzkbSP_story.html)). Washington Post. Retrieved December 31, 2011.
- <sup>4</sup> ^ "Obama Signs NDAA" (<http://www.aclu.org/national-security/president-obama-signs-indefinite-detention-bill-law>). ACLU. 31 November 2011. Retrieved 2011-12-31.
- <sup>5</sup> ^ Wolverton, J., "Obama Signs National Defense Authorization Act into Law," *The New American*, [1] (<http://www.thenewamerican.com/usnews/constitution/item/8141-obama-signs-national-defense-authorization-act-into-law>).
- <sup>6</sup> ^ "President Obama's signing statement" (<http://www.whitehouse.gov/the-press-office/2011/12/31/statement-president-hr-1540>), "White House Press Office", December 31, 2011
- <sup>7</sup> ^ "Barack Obama: Statement on Signing the National Defense Authorization Act for Fiscal Year 2012" (<http://www.presidency.ucsb.edu/ws/index.php?pid=98513&st=&st1=#axzz1iE5qy7a3>). John T. Woolley and Gerhard Peters, The American Presidency Project [online]. December 31, 2011. Retrieved 2012-01-03.
- <sup>8</sup> ^ Sections 1232 and 1240.
- <sup>9</sup> ^ Section 1233 from H1540CR.HSE: "National Defense Authorization Act for Fiscal Year 2012." (<http://www.gpo.gov/fdsys/pkg/BILLS-112hr1540enr/pdf/BILLS-112hr1540enr.pdf>).
- <sup>10</sup> <sup>a</sup> <sup>b</sup> Howell, Terry (20 June 2011). "2012 Defense Act – Pay Increase, Changes to Special Pay and TRICARE" (<http://militaryadvantage.military.com/2011/06/senate-okays-pay-and-tricare-fee-increase/>). Military.com. Retrieved 3 August 2012.

11. ^ "New US law lets reservists respond to disasters" (<http://www.foxnews.com/us/2012/08/30/new-fed-law-lets-reservists-respond-to-disasters/>). *Associated Press* (Fox News). 30 August 2012. Retrieved 7 September 2012.
12. ^ <sup>a</sup> <sup>b</sup> <sup>c</sup> "STATEMENT OF ADMINISTRATION POLICY" ([http://www.whitehouse.gov/sites/default/files/omb/legislative/sap/112/saps1867s\\_20111117.pdf](http://www.whitehouse.gov/sites/default/files/omb/legislative/sap/112/saps1867s_20111117.pdf)). 17 November 2011. Retrieved 2011-12-14.
13. ^ <sup>a</sup> <sup>b</sup> Knickerbocker, Brad (3 December 2011). "Guantánamo for US citizens? Senate bill raises questions" (<http://www.csmonitor.com/USA/Justice/2011/1203/Guantanamo-for-US-citizens-Senate-bill-raises-questions>). *The Christian Science Monitor*. Retrieved December 18, 2011.
14. ^ Khalek, Rania, "Global Battlefield' Provision Allowing Indefinite Detention of Citizens Accused of Terror Could Pass This Week" ([http://www.alternet.org/rights/153421/%27global\\_battlefield%27\\_provision\\_allowing\\_indefinite\\_detention\\_of\\_citizens\\_accused\\_of\\_terror\\_could\\_pass\\_this\\_week](http://www.alternet.org/rights/153421/%27global_battlefield%27_provision_allowing_indefinite_detention_of_citizens_accused_of_terror_could_pass_this_week)), *Alternet*, December 13, 2011.
15. ^ Library of Congress THOMAS. H.R. 1540 – National Defense Authorization Act for fiscal year 2012 Versions of H.R.1540 (<http://thomas.loc.gov/cgi-bin/query/z?c112:H.R.1540>:).
16. ^ <sup>a</sup> <sup>b</sup> Khaki, Ateqah (November 29, 2011). "Senate Rejects Amendment Banning Indefinite Detention" (<http://www.aclu.org/blog/national-security/senate-rejects-amendment-banning-indefinite-detention>). *ACLU Blog of Rights* (American Civil Liberties Union).
17. ^ <sup>a</sup> <sup>b</sup> Savage, Charlie (December 1, 2011). "Senate Declines to Clarify Rights of American Qaeda Suspects Arrested in U.S." (<http://www.nytimes.com/2011/12/02/us/senate-declines-to-resolve-issue-of-american-qaeda-suspects-arrested-in-us.html>). *The New York Times*.
18. ^ Carter, Tom "US Senators back law authorizing indefinite military detention without trial or charge," (<http://www.wsws.org/articles/2011/dec2011/sena-d02.shtml>) *World Socialist Web Site*, December 2, 2011.
19. ^ "H.R.1540: National Defense Authorization Act for Fiscal Year 2012 – U.S. Congress" (<http://www.opencongress.org/bill/112-h1540/>). OpenCongress. Retrieved 2011-12-14.
20. ^ "S.1867: National Defense Authorization Act for Fiscal Year 2012 – U.S. Congress" (<http://www.opencongress.org/bill/112-s1867/>). OpenCongress. Retrieved 2011-12-14.
21. ^ Greenwald, Glenn (16 December 2012). "Three myths about the detention bill" ([http://www.salon.com/2011/12/16/three\\_myths\\_about\\_the\\_detention\\_bill/](http://www.salon.com/2011/12/16/three_myths_about_the_detention_bill/)). Salon (website). Retrieved 16 November 2012. "Section 1021, authorizes indefinite detention for the broad definition of “covered persons” [...]. And that section does provide that “Nothing in this section shall be construed to affect existing law or authorities relating to the detention of United States citizens, lawful resident aliens of the United States, or any other persons who are captured or arrested in the United States.” So that section contains a disclaimer regarding an intention to expand detention powers for U.S. citizens, but does so only for the powers vested by that specific section. More important, the exclusion appears to extend only to U.S. citizens “captured or arrested in the United States” — meaning that the powers of indefinite detention vested by that section apply to U.S. citizens captured anywhere abroad (there is some grammatical vagueness on this point, but at the very least, there is a viable argument that the detention power in this section applies to U.S. citizens captured abroad)."
22. ^ 112th Congress, 1st Session, H1540CR.HSE: "National Defense Authorization Act for Fiscal Year 2012." (<http://www.gpo.gov/fdsys/pkg/BILLS-112hr1540enr/pdf/BILLS-112hr1540enr.pdf>) pp. 265-266.
23. ^ "Senate Poised to Pass Indefinite Detention Without Charge or Trial" (<http://www.aclu.org/national-security/senate-poised-pass-indefinite-detention-without-charge-or-trial>), *American Civil Liberties Union*, December 1, 2011.
24. ^ Senate Session - C-SPAN Video Library (<http://www.c-spanvideo.org/program/302754-1>)
25. ^ McGreal, Chris, "Military given go-ahead to detain US terrorist suspects without trial," *The Guardian*, 14 December 2011: [2] (<http://www.guardian.co.uk/world/2011/dec/15/americans-face-guantanamo-detention-obama?newsfeed=true>).
26. ^ Greenwald, Glenn, "Obama to sign indefinite detention bill into law," *Salon.com*, 14 December 2011: [3] ([http://www.salon.com/2011/12/15/obama\\_to\\_sign\\_indefinite\\_detention\\_bill\\_into\\_law/](http://www.salon.com/2011/12/15/obama_to_sign_indefinite_detention_bill_into_law/)).
27. ^ "Senate Session Nov. 17, 2011" (<http://www.c-spanvideo.org/program/302754-1>). C-Span. 17 November 2012. Retrieved 16 June 2012.

28. ^ "Presidential Policy Directive -- Requirements of the National Defense Authorization Act" (<http://www.whitehouse.gov/the-press-office/2012/02/28/presidential-policy-directive-requirements-national-defense-authorizatio>). The White House Office of the Press Secretary. 28 February 2012. Retrieved 5 January 2013.
29. ^ "PRESIDENTIAL POLICY DIRECTIVE/PPD-14" (<http://www.justice.gov/opa/documents/ppd-14.pdf>). *The White House*. justice.gov. 28 February 2012. Retrieved 5 January 2013.
30. ^ <sup>a</sup> <sup>b</sup> Jeralyn (28 February 2012). "Obama Issues Rules for Determining Civilian vs Military Custody of Detainees" (<http://www.talkleft.com/story/2012/2/28/195352/628>). TalkLeft: The Politics Of Crime. Retrieved 5 January 2013.
31. ^ "FACT SHEET: PROCEDURES IMPLEMENTING SECTION 1022 OF THE NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2012" ([http://www.whitehouse.gov/sites/default/files/ndaa\\_fact\\_sheet.pdf](http://www.whitehouse.gov/sites/default/files/ndaa_fact_sheet.pdf)). *The White House*. The White House. 28 February 2012. Retrieved 5 January 2013.
32. ^ *Hedges v. Obama*, 12-cv-00331 (<http://nysd.uscourts.gov/cases/show.php?db=special&id=174>) (U.S. District Court, Southern District of New York (Manhattan) May 16, 2012).
33. ^ Reilly, Ryan J. (4 January 2013). "NDAA Signed Into Law By Obama Despite Guantanamo Veto Threat, Indefinite Detention Provisions" ([http://www.huffingtonpost.com/2013/01/03/ndaa-obama-indefinite-detention\\_n\\_2402601.html?utm\\_hp\\_ref=mostpopular](http://www.huffingtonpost.com/2013/01/03/ndaa-obama-indefinite-detention_n_2402601.html?utm_hp_ref=mostpopular)). *The Huffington Post*. Retrieved 4 January 2013.
34. ^ <sup>a</sup> <sup>b</sup> <sup>c</sup> Savage, Charlie (February 28, 2012). "Obama Issues Waivers on Military Custody for Terror Suspects" (<http://www.nytimes.com/2012/02/29/us/politics/obama-issues-waivers-on-military-trials-for-foreign-qaeda-suspects.html>). *New York Times*. Retrieved March 18, 2012.
35. ^ <sup>a</sup> <sup>b</sup> "Despite concerns, Udall gives nod to Defense Authorization bill." (<http://blogs.denverpost.com/thespot/2011/12/15/beltway-blog-despite-concerns-udall-gives-nod-to-defense-authorization-bill/50286/>) *Denver Post*, December 15, 2011.
36. ^ Udall Amendment Text for SA 1107 (<http://www.gpo.gov/fdsys/pkg/CREC-2011-11-17/pdf/CREC-2011-11-17-pt1-PgS7716.pdf#page=13>).
37. ^ U.S. Senate Roll Call Votes 112th Congress – 1st Session ([https://www.senate.gov/legislative/LIS/roll\\_call\\_lists/roll\\_call\\_vote\\_cfm.cfm?congress=112&session=1&vote=00210](https://www.senate.gov/legislative/LIS/roll_call_lists/roll_call_vote_cfm.cfm?congress=112&session=1&vote=00210))
38. ^ Gerstein, Josh, "Senate Votes to Allow Indefinite Detention of Americans." ([http://www.politico.com/blogs/joshgerstein/1211/Senate\\_votes\\_to\\_allow\\_indefinite\\_detention\\_of\\_Americans.html](http://www.politico.com/blogs/joshgerstein/1211/Senate_votes_to_allow_indefinite_detention_of_Americans.html)) *Politico*, December 1, 2011.
39. ^ "White House issues statement saying it will not veto defense bill" ([http://www.washingtonpost.com/politics/white-house-issues-statement-saying-it-will-not-veto-defense-bill/2011/12/14/gIQApU7PuO\\_story.html](http://www.washingtonpost.com/politics/white-house-issues-statement-saying-it-will-not-veto-defense-bill/2011/12/14/gIQApU7PuO_story.html)). The Washington Post. December 14, 2011. Retrieved December 18, 2011.
40. ^ "Barack Obama: Statement on Signing the National Defense Authorization Act for Fiscal Year 2012" (<http://www.presidency.ucsb.edu/ws/index.php?pid=98513&st=&st1=#axzz1iF5qy7a3>). Presidency.ucsb.edu. 2011-12-31. Retrieved 2012-02-27.
41. ^ <http://votesmart.org/bill/votes/37467#.UK8rh4blI8M%7Ctitle=HR>
42. ^ <http://votesmart.org/bill/votes/37472#.UK8oqYblI8M%7Ctitle=HR>
43. ^ On Agreeing to the Amendment: Amendment 29 to H R 4310 (<https://www.govtrack.us/congress/votes/112-2012/h270>)
44. ^ On the Amendment S.Amdt. 3018 to S. 3254 (National Defense Authorization Act for Fiscal Year 2013) (<https://www.govtrack.us/congress/votes/112-2012/s213>)
45. ^ <http://www.gpo.gov/fdsys/pkg/PLAW-112publ81/pdf/PLAW-112publ81.pdf>
46. ^ "Commentary: trampling the bill of rights in defense's name." *The Kansas City Star*, 14 December 2011: [4] (<http://www.kansascity.com/2011/12/14/3315738/commentary-trampling-the-bill.html>).
47. ^ McGreal, C., "Military given go-ahead to detain US terrorist suspects without trial", *The Guardian*, 14 December 2011: [5] (<http://www.guardian.co.uk/world/2011/dec/15/americans-face-guantanamo-detention-obama>).
48. ^ Parvaz, D., "US lawmakers legalise indefinite detention", *Al Jazeera*, 16 December 2011: [6] (<http://www.aljazeera.com/indepth/features/2011/12/201112773810926474.html>).
49. ^ Kramnik, Ilya "New US Defense Act curtails liberties not military spending," *Voice of Russia*, 28 December 2011.



50. ^ Rosenthal, A., "President Obama: Veto the Defense Authorization Act," *The New York Times*, 30 November 2011: [7] (<http://loyalopposition.blogs.nytimes.com/2011/11/30/president-obama-veto-the-defense-authorization-act/>).
51. ^ Grey, B. and T. Carter, "The Nation and the National Defense Authorization Act", *World Socialist Web Site*, 27 December 2011: [8] (<http://www.wsws.org/articles/2011/dec2011/ndaa-d27.shtml>).
52. ^ E.D. Kain: *The National Defense Authorization Act is the Greatest Threat to Civil Liberties Americans Face* (<http://www.forbes.com/sites/erikkain/2011/12/05/the-national-defense-authorization-act-is-the-greatest-threat-to-civil-liberties-americans-face/>). In: *Forbes*. December 5, 2011
53. ^ "NDAA: Liberty Preservation Act Tracking" (<http://tenthamendmentcenter.com/nullification/ndaa/>). Tenth Amendment Center. Retrieved 29 May 2012.
54. ^ <http://constitutioncampaign.org/campaigns/dueprocess/maps.php>>
55. ^ Hedges, Chris (16 January 2012). "Why I'm Suing Barack Obama" (<http://www.commondreams.org/view/2012/01/16>). Common Dreams. Retrieved 29 May 2012.
56. ^ Thomas, Lillian (30 September 2012). "A military attorney's access to his Guantanamo client eroded" (<http://www.post-gazette.com/stories/news/world/a-military-attorneys-access-to-his-guantanamo-client-eroded-655532/>). *Pittsburgh Post-Gazette*. Retrieved 30 September 2012.
57. ^ "Barack Obama: Statement on Signing the National Defense Authorization Act for Fiscal Year 2012" (<http://www.presidency.ucsb.edu/ws/index.php?pid=98513&st=&st1=#axzz1iE5qy7a3>). John T. Woolley and Gerhard Peters, The American Presidency Project [online]. December 31, 2011. Retrieved 2012-01-01.
58. ^ Johnson, Jeh Charles (22 February 2012). "Jeh Johnson's Speech on "National Security Law, Lawyers and Lawyering in the Obama Administration" - Dean's Lecture at Yale Law School on February 22, 2012" (<http://www.cfr.org/national-security-and-defense/jeh-johnsons-speech-national-security-law-lawyers-lawyering-obama-administration/p27448>). Council on Foreign Relations. Retrieved 16 November 2012.
59. ^ <sup>a</sup> <sup>b</sup> <sup>c</sup> <sup>d</sup> Van Voris, Bob (13 September 2012). "U.S. Appeals Order Blocking U.S. Military Detention Law" (<http://www.bloomberg.com/news/2012-09-13/u-s-appeals-order-blocking-u-s-military-detention-law.html>). Bloomberg. Retrieved 14 September 2012.
60. ^ <sup>a</sup> <sup>b</sup> Katz, Basil (14 September 2012). "REFILE-U.S. calls ruling on military detention law harmful" (<http://www.reuters.com/article/2012/09/14/usa-security-lawsuit-idINL1E8KKEOP20120914?irpc=932>). Reuters. Retrieved 16 September 2012.
61. ^ <sup>a</sup> <sup>b</sup> <sup>c</sup> <sup>d</sup> Preet Bharara, Benjamin H. Torrance, Christopher B. Harwood, Jeh Charles Johnson, Stuart F. Delery, Beth S. Brinkmann, Robert M. Loeb and August E. Flentje (6 November 2012). "United States Court of Appeals for the Second Circuit Case: 12-3644 Document: 69 11/06/2012 761770 Brief for the Appellants" (<http://assets.fiercemarkets.net/public/sites/govit/hedges.pdf>). <http://assets.fiercemarkets.net>. Retrieved 16 November 2012.
62. ^ The Defense Bill Passed. So What Does It Do? (<http://motherjones.com/mojo/2011/12/defense-bill-passed-so-what-does-it-do-ndaa>)
63. ^ "The NDAA Explained" (<http://verdict.justia.com/2012/01/02/the-ndaa-explained>). *Verdict*. 2 January 2012.
64. ^ <sup>a</sup> <sup>b</sup> "Rivkin & Casey, Bill's detainee provisions reaffirm the laws of war." (<http://justourfreedom.wordpress.com/2011/11/02/bill%E2%80%99s-detainee-provisions-reaffirm-the-law-of-war/>)
65. ^ ICRC official statement: *The relevance of IHL in the context of terrorism* (<http://www.icrc.org/web/eng/siteeng0.nsf/html/terrorism-ihl-210705>), 21 July 2005
66. ^ "President Obama Signs Indefinite Detention Bill Into Law (<http://www.aclu.org/national-security/president-obama-signs-indefinite-detention-bill-law>)", ACLU, 31 December 2011.
67. ^ Library of Congress: Thomas (<http://thomas.loc.gov/cgi-bin/bdquery/z?d112:H.R.3676:@@D&summ2=m&>).
68. ^ Bell, Zachary (20 December 2012). "NDAA's indefinite detention without trial returns" ([http://www.salon.com/2012/12/19/ndaas\\_indefinite\\_detention\\_without\\_trial\\_returns/](http://www.salon.com/2012/12/19/ndaas_indefinite_detention_without_trial_returns/)). salon.com. Retrieved 20 December 2012.

69. ^ Savage, Charlie (18 December 2012). "Congressional Negotiators Drop Ban on Indefinite Detention of Citizens, Aides Say" ([http://www.nytimes.com/2012/12/19/us/politics/congressional-committee-is-said-to-drop-ban-on-indefinite-detention-of-citizens.html?\\_r=0](http://www.nytimes.com/2012/12/19/us/politics/congressional-committee-is-said-to-drop-ban-on-indefinite-detention-of-citizens.html?_r=0)). *New York Times*. Retrieved 20 December 2012.
70. ^ Kelley, Michael (19 December 2012). "Lawyers Fighting NDAA Indefinite Detention Slam Congress' Latest Decision" (<http://www.businessinsider.com/lawyers-mad-about-feinstein-amendment-2012-12>). Business Insider. Retrieved 20 December 2012.
71. ^ Bob Van Voris and Patricia Hurtado (17 May 2012). "Military Detention Law Blocked By New York Judge" (<http://www.bloomberg.com/news/2012-05-16/military-detention-law-blocked-by-new-york-judge.html>). Bloomberg. Retrieved 29 May 2012.
72. ^ "Obama fights ban on indefinite detention of Americans" (<http://rt.com/usa/news/obama-indefinite-detention-forrest-070/>). RT News. 7 August 2012. Retrieved 23 August 2012.
73. ^ "Indefinite Detention Ruling Appealed By Federal Prosecutors" ([http://www.huffingtonpost.com/2012/08/07/indefinite-detention-ruling\\_n\\_1749566.html#slide=more228606](http://www.huffingtonpost.com/2012/08/07/indefinite-detention-ruling_n_1749566.html#slide=more228606)). *Reuters* (The Huffington Post). 6 August 2012. Retrieved 23 August 2012.
74. ^ Pinto, Nick (7 August 2012). "NDAA Suit Argued In Federal Court Yesterday" ([http://blogs.villagevoice.com/runninscared/2012/08/nda\\_suit\\_argue.php](http://blogs.villagevoice.com/runninscared/2012/08/nda_suit_argue.php)). The Village Voice Blogs. Retrieved 23 August 2012.
75. ^ "Judge Permanently Blocks Indefinite Detention Provision in NDAA" ([http://www.democracynow.org/2012/9/13/headlines/judge\\_permanently\\_blocks\\_indefinite\\_detention\\_provision\\_in\\_ndaa](http://www.democracynow.org/2012/9/13/headlines/judge_permanently_blocks_indefinite_detention_provision_in_ndaa)). Democracy Now. 13 September 2012. Retrieved 14 September 2012.
76. ^ <sup>a</sup> <sup>b</sup> Bennett, Wells C. (18 September 2012). "Stay You, Stay Me: CA2 Enters Interim Stay Order in Hedges" (<http://www.lawfareblog.com/2012/09/stay-you-stay-me-ca2-enters-interim-stay-order-in-hedges/>). Lawfare: Hard National Security Choices. Retrieved 18 September 2012.
77. ^ <sup>a</sup> <sup>b</sup> Savage, Charlie (17 September 2012). "U.S. Warns Judge's Ruling Impedes Its Detention Powers" ([http://www.nytimes.com/2012/09/18/us/politics/us-warns-judges-ruling-impedes-its-detention-powers.html?\\_r=2&pagewanted=all](http://www.nytimes.com/2012/09/18/us/politics/us-warns-judges-ruling-impedes-its-detention-powers.html?_r=2&pagewanted=all)). *New York Times*. Retrieved 20 September 2012.
78. ^ <sup>a</sup> <sup>b</sup> Savage, Charlie (18 September 2012). "U.S. Appeals Judge Grants Stay of Ruling on Detention Law" (<http://www.nytimes.com/2012/09/19/us/politics/us-appeals-judge-grants-stay-of-ruling-on-detention-law.html?ref=charliesavage>). *The New York Times*. Retrieved 20 September 2012.
79. ^ Higgins, Alexander (2 October 2012). "District Court: Obama Can Continue NDAA Indefinite Detention" (<http://beforeitsnews.com/alternative/2012/10/district-court-obama-can-continue-nda-indefinite-detention-2474366.html?currentSplittedPage=0>). Before It's News. Retrieved 3 October 2012.
80. ^ Katz, Basil (2 October 2012). "U.S. appeals court to hear military detention case" ([http://newsandinsight.thomsonreuters.com/Legal/News/2012/10\\_-\\_October/U\\_S\\_appeals\\_court\\_to\\_hear\\_military\\_detention\\_case/](http://newsandinsight.thomsonreuters.com/Legal/News/2012/10_-_October/U_S_appeals_court_to_hear_military_detention_case/)). Reuters. Retrieved 3 October 2012.
81. ^ Bennett, Wells (13 December 2012). "Hedges Plaintiffs Ask SCOTUS to Vacate CA2 Stay" (<http://www.lawfareblog.com/2012/12/hedges-plaintiffs-ask-scotus-to-vacate-ca2-stay/>). Lawfare Blog - Hard National Security Choices. Retrieved 15 December 2012.
82. ^ Dolmetsch, Chris (17 July 2013). "Ruling That Struck Down Military Detention Power Rejected" (<http://www.bloomberg.com/news/2013-07-17/ruling-that-struck-down-military-detention-power-rejected.html>). *Bloomberg News*. Retrieved 20 July 2013.
83. ^ "Order List: 572 U. S. 13-758 HEDGES, CHRISTOPHER, ET AL. V. OBAMA, PRES. OF U.S., ET AL. - Certiorari Denied" ([http://www.supremecourt.gov/orders/courtorders/042814zor\\_6k47.pdf](http://www.supremecourt.gov/orders/courtorders/042814zor_6k47.pdf)). *United States Supreme Court*. United States Supreme Court. 29 April 2014. p. 7. Retrieved 29 April 2014.
84. ^ Denniston, Lyle (28 April 2014). "Detention challenge denied" (<http://www.scotusblog.com/2014/04/detention-challenge-denied/>). SCOTUSblog. Retrieved 29 April 2014.
85. ^ <sup>a</sup> <sup>b</sup> <sup>c</sup> <sup>d</sup> <sup>e</sup> <sup>f</sup> <sup>g</sup> <sup>h</sup> Retrieved 21 May 2013|www.pandaunite.org (<http://www.pandaunite.org/resources/anti-nda-legislativetracking>)
86. ^ [9] (<http://www.pandaunite.org/resources/anti-nda-legislativetracking%7Cwww.pandaunite.org>)



87. ^ Northampton "opts out" of federal law | WWLP.com (<http://www.wwlp.com/dpp/news/northampton-opts-out-of-federal-law>)
88. ^ MacInnis, Laura and Parisa Hafezi (31 December 2011). "U.S. steps up sanctions as Iran floats nuclear talks" (<http://ca.reuters.com/article/topNews/idCATRE7BU09420111231?sp=true>). Reuters Canada. Retrieved 2012-01-05.
89. ^ <sup>a</sup> <sup>b</sup> <sup>c</sup> Lee, Carol E. and Keith Johnson (4 January 2012). "U.S. Targets Iran's Central Bank" (<http://online.wsj.com/article/SB10001424052970204720204577132923798499772.html>). Wall Street Journal. Retrieved 2012-01-05.
90. ^ MacInnis, Laura (1 January 2012). "U.S. imposes sanctions on banks dealing with Iran" (<http://in.reuters.com/article/2012/01/01/iran-usa-obama-idINDEE80001720120101?feedType=RSS&feedName=globalCoverage2>). Reuters India. Retrieved 2012-01-05.
91. ^ Richter, Paul and Ramin Mostaghim (9 January 2012). "Sanctions begin taking a bigger toll on Iran" (<http://www.latimes.com/news/nationworld/world/la-fg-iran-obama-20120110,0,134568.story>). Los Angeles Times. Retrieved 2012-01-11.
92. ^ <sup>a</sup> <sup>b</sup> "Sanctions on Iran Whipsaw Currency" (<http://online.wsj.com/article/SB10001424052970203513604577140642815644090.html>). Wall Street Journal. 4 January 2012. Retrieved 2012-01-11.
93. ^ Gladstone, Rick (20 December 2011). "As Further Sanctions Loom, Plunge in Currency's Value Unsettles Iran" (<http://www.latimes.com/news/nationworld/world/la-fg-iran-obama-20120110,0,134568.story>). New York Times. Retrieved 2012-01-11.
94. ^ LaFranchi, Howard (2 January 2012). "Iran currency plummets: A sign US sanctions are taking hold?" (<http://www.csmonitor.com/USA/Foreign-Policy/2012/0102/Iran-currency-plummets-A-sign-US-sanctions-are-taking-hold>). Christian Science Monitor. Retrieved 2012-01-11.
95. ^ Sanger, David E. and Annie Lowrey (27 December 2011). "Iran Threatens to Block Oil Shipments, as U.S. Prepares Sanctions" (<http://www.nytimes.com/2011/12/28/world/middleeast/iran-threatens-to-block-oil-route-if-embargo-is-imposed.html?pagewanted=all>). *The New York Times*. Retrieved 2012-01-11.

## External links

- Full Text of the Act (Public Law 112-81) (<http://www.gpo.gov/fdsys/pkg/PLAW-112publ81/pdf/PLAW-112publ81.pdf>)
- Cutting through the Controversy about Indefinite Detention and the NDAA (ProPublica) (<http://www.propublica.org/article/cutting-through-the-controversy-about-indefinite-detention-and-the-ndaa>)

Retrieved from "http://en.wikipedia.org/w/index.php?

title=National\_Defense\_Authorization\_Act\_for\_Fiscal\_Year\_2012&oldid=619190368"

Categories: 2011 controversies | 2011 in the United States | 2012 controversies | 2012 in the United States

| Civil liberties in the United States | Human rights in the United States | Obama administration controversies

| U.S. National Defense Authorization Acts

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December 9, 2013

## Fact Sheet: FY14 NDAA Summary

### Highlights of the National Defense Authorization Act for Fiscal Year 2014

The National Defense Authorization Act (NDAA) for Fiscal Year 2014 is the key mechanism to provide necessary authorities and funding for America's military. This is the fifty-second consecutive NDAA. The legislation meets Chairman McKeon's goal of providing for a strong defense in an era of uncertain and declining resources. The total funding authorized reflects the will of the House to provide our troops the resources they need to meet a dangerous world. However, Chairman McKeon also recognizes that, more than ever, the impacts of rapid defense cuts, FY13 sequestration, and the prospect of future sequester cuts in the years to come, will force our warfighters to be not only keen stewards of our national security, but to maximize value for every taxpayer dollar. To that end, this legislation supports and protects our warfighters and their families; addresses ongoing and emerging conflicts with resolve and accountability; protects America today while preparing for future threats; and finally controls costs while making wise choices with restrained resources.

**Process:** This legislation is substantially based on two bills: (1) HR. 1960, the National Defense Authorization Act for FY14 which passed the House on June 14, 2013 by a vote of 315-108; and (2) S.1197, a product of the Senate Armed Services Committee which passed out of committee on the same day by a vote of 23-3. Because passing this legislation before the end of the calendar year is vital, these two products were merged through a series of negotiations at all levels of the House and Senate. Negotiators also considered, and in many cases included, a number of proposals offered by members of both parties that were intended for consideration by the full Senate. This legislation represents a broad bi-partisan consensus about America's national security goals, resources, and policies.

#### Featured Sections:

- I. Resources for a Dangerous World
- II. Support and Protect America's Warfighters and Military Families
- III. Facing Conflict with Resolve and Accountability
- IV. Controlling Costs and Making Wise Choices
- V. Protecting America Today While Preparing for Future Threats

#### RESOURCES FOR A DANGEROUS WORLD

*Members share Americans' concerns not only for their national security, but also their economic security. With this in mind, the NDAA funding is set at the common position for national defense, reflected in the House Budget (which funded our national defense at pre-sequester levels while complying with the overall sequester budget cap of \$967 billion for discretionary funding), the President's budget request, and the Senate Budget. The funding authorized by the NDAA is also consistent with the budget proposed by the Republican Study Committee, as well as House and Senate Appropriations bills. Chairman McKeon supports the House budget effort to offset defense sequester through cuts in lesser priority programs.*

**AUTHORIZED FUNDING LEVELS:** Consistent with the House budget, this legislation authorizes \$552.1 billion in spending for national defense and an additional \$80.7 billion for Overseas Contingency Operations. This is consistent with levels authorized in the FY 13 NDAA for the base budget and \$7.8 billion less for war spending. *(Funding Table Below)*

**FY14 NDAA Funding Levels**

<b>Purpose</b>	<b>Amount (\$ billions)</b>
DOD Discretionary Base Budget Request	\$526.8
DOE Discretionary Base Budget Request	\$17.6
FY 14 Discretionary NDAA Topline	\$544.4*
Defense Mandatory Spending	\$7.7**
FY14 NDAA Topline	\$552.1
Overseas Contingency Operations	\$80.7

\*Does not include \$7.6 billion of authorization not within the jurisdiction of the HASC (The Armed Services Committees)

\*\* Includes statutory requirements for Concurrent Receipt; does not include \$0.6 billion of obligations outside jurisdiction of HASC (The Armed Services Committees)

The NDAA is consistent with the House passed budget, which was careful to identify other non-defense sources to accommodate the needed funding in national security accounts while also reducing overall spending below the Budget Control Act cap. The House budget passed with 221 Republican votes on March 21, 2013.

**SUPPORT AND PROTECT AMERICA’S WARFIGHTERS AND MILITARY FAMILIES**

*The legislation provides our warfighters and their families with the care and support they need, deserve, and have earned; while protecting them not only from foreign enemies intent on doing them harm, but from the unacceptable risk of sexual assault from within the force. Vital provisions include:*

**Troop Pay:** The NDAA supports current law, which is intended to ensure pay for our troops keeps pace with the civilian sector, but provides the President with latitude to make exceptions by executive order. President Obama has notified Congress that he intends to use his authority to set the 2014 military pay increase at 1 percent. The NDAA neither affirms or rejects the President’s decision.

**ESSENTIAL PAY AND BENEFITS:** The NDAA also includes combat pay and other benefits promised to the troops.

**TRICARE:** HASC Members believe access to quality healthcare services during retirement is a benefit earned through prior service to our nation. Mindful of Congress’ commitment to servicemembers and their families, and endorsing the bi-partisan work of the military personnel subcommittee, the NDAA once again **rejects all Administration proposals to increase TRICARE fees or establish new TRICARE fees.** Congress has already put

TRICARE on a sustainable path through reforms in several recent NDAs. Those reforms connect TRICARE fee increases to retiree cost of living increases. DOD's record of incorrectly calculating TRICARE costs and their repeated requests to transfer billions in unused funds out of the program to cover other underfunded defense priorities raises questions about repeated claims by the Department of Defense that the Defense Health Program is unsustainable.

**Combatting Sexual Assault In The Military:** Members of the Armed Services Committees are deeply committed to making sexual assault prevention and prosecution a cornerstone of this year's NDAA. As a proud Army grandfather, the Chairman well understands the responsibility of Congress to protect our forces from external and internal dangers. The NDAA includes substantial bi-partisan reforms recommended by the subcommittee on military personnel; especially those measures introduced by Reps. Turner and Tsongas and Reps. Walorski, Noem, Castro, and Sanchez.

The legislation **includes over 30 provisions or reforms** to the Uniform Code of Military Justice related to combatting sexual assault in the military. These reforms would **strip commanders of their authority to dismiss a finding by a court martial**- a power they have held since the earliest days of our military. It would also **prohibit commanders from reducing guilty findings** to guilty of a lesser offence. Where servicemembers are found guilty of sexual assault related offenses the NDAA **establishes minimum sentencing guidelines**. Currently, such guidelines only exist in the military for the crimes of murder and espionage. **Personnel records will now include information on sex-related offenses**. Recognizing that victim support is as vital as prosecution, the NDAA would **allow victims of sexual assault to apply for a permanent change of station or unit transfer**, while authorizing the Secretary of Defense to inform commanders of their authority to **remove or temporarily reassign servicemembers who are the alleged perpetrators of sexual assault**. The NDAA requires the **provision of victims' counsels**, qualified and specially trained lawyers in each of the services, to be made available to provide legal assistance to the victims of sex-related offenses. The NDAA **adds rape, sexual assault, or other sexual misconduct to the protected communications of servicemembers**, with a Member of Congress or an Inspector General- and expands those protections for sexual assault crimes. The NDAA **eliminates the 5 year statute of limitations on rape and sexual assault**. To better protect victims' rights, the NDAA **reforms the Article 32 process to avoid destructive fishing expeditions** and properly focus on probable cause. A number of victim's rights **policies are enshrined in statute**. Finally, to ensure that the military is better positioned to deal with the crisis of sexual assault within its ranks, the NDAA requires the Secretary of Defense to assess the current role and authorities of commanders in the administration of military justice and the investigation, prosecution, and adjudication of offenses under the Uniform Code of Military Justice.

**Gender-Neutral Standards:** After a decade of honorable service in hostile environments, women have demonstrated a wide range of capabilities in combat operations. Chairman McKeon welcomes DoD's review of jobs within the military to see what new roles could be open to women, and appreciates the **use of gender-neutral standards as a means of entrance to individual military specialties**. The NDAA establishes a definition of a gender-neutral occupational standard that would be used by each military service to develop the standards required for all military career designers.

**Religious Liberties Protections:** The NDAA **expands religious freedom provisions** for chaplains and servicemembers to include beliefs and expression of beliefs.

**Protecting and Supporting Warfighters and Military Families:** Other provisions in the NDAA are designed to protect warfighters and their families from external threats, while ensuring that units and families are supported and prepared for deployments. The NDAA re-authorizes **personnel recovery** authorities used by military



commanders and Special Operations Forces to plan and execute the safe recovery of U.S. personnel isolated during military and contingency operations. The NDAA requires a **minimum 180 day notification before the cancellation of a deployment and a minimum 120 day notification before a deployment for individuals** for the operational reserves. It also authorizes the commander of U.S. Special Forces Command to provide additional family support services to **U.S. Special Operations Forces and their families**. Finally, the NDAA takes action on one of the most basic elements of protection provided to our troops - body armor. The NDAA **facilitates the development of ever more functional, lighter, and more protective body armor**. It will make body armor resemble a more traditional weapon system acquisition program that can build on successive generations of innovation and investment, rather than using the ad hoc procedures now in place. The NDAA also requires the Secretary of Defense to conduct a comprehensive study and assessment on ways to **improve body armor and personal protection equipment acquisition and development**.

### **FACING CONFLICT WITH RESOLVE AND ACCOUNTABILITY**

*The NDAA ensures that America's forces are ready, robust, flexible, and capable enough to face national security threats with resolve. The NDAA provides our warfighters with the resources and authorities they need to win the war in Afghanistan and keep up pressure on al Qaeda and its affiliates. It holds senior commanders, senior civilian officials, and the Commander-in-Chief accountable for their choices and actions in an ever changing and increasingly dangerous world.*

**Restoring Readiness To Our Armed Forces:** In order to face any of the manifold challenges to America's security, our Armed Forces must first be at an acceptable state of readiness. **The size, speed, and mechanism of recent defense cuts along with the systematic underfunding of contingency operations, have forced military readiness to historic lows and is already putting our warfighters at risk.** Heeding the repeated warnings of America's senior commanders, the NDAA **restores vital readiness accounts by replacing funds reprogrammed to cover underfunded combat operations** and addressing other vital operations and maintenance programs; while remaining consistent with House budget levels. **The NDAA meets the President's Overseas Contingency Operations (OCO) request, replenishing readiness accounts** raided in prior years to cover underfunded war costs. This includes restoring **Army and Air Force flying hour programs, facilities sustainment, ship depot maintenance for each service, Army OPTEMPO, depot maintenance, Navy critical spares and combat support forces** equipment and sustainment, and provides for the **stabilization of fuel rates**. While these steps will help, only a comprehensive solution to defense resources, strategy, and roles and missions, can fully resolve the issue.

**Winning The War In Afghanistan:** The NDAA reauthorizes vital authorities for our commanders on the ground and key programs to address the critical transition period between now and the end of calendar year 2014. It also reauthorizes vital **authorities for U.S. Special Operations Forces and counter-narcotics programs**. The most important element of the transition in Afghanistan is achieving a Bilateral Security Agreement (BSA) between the United States and the Government of Afghanistan. The NDAA fully funds a series of important authorities that support the Afghanistan and U.S. national security interest, including the Afghan Infrastructure Fund (AIF), the transition in Afghan Security Forces Fund (ASFF) and the Commander's Emergency Response Program (CERP). However, the NDAA **prohibits the use of half of the funds for those authorities until the Secretary of Defense certifies that the BSA is signed and is in the national security interests of the United States**. Priorities the Secretary must address include critical protections for U.S. servicemembers and U.S. interests. The NDAA also requires the Secretary to issue an **unclassified summary of information related to detainees held at the detention center at Parwan, Afghanistan**. Recognizing that coalition forces are at particular risk as they

withdraw from Afghanistan, the NDAA tasks GAO to **report on the composition of U.S. forces and their particular security requirements during the withdrawal of forces.** Before any public announcement on a post 2014 presence is made, the NDAA calls on the **President to consult with Congress regarding the size, mission and estimated duration of such a presence.** Additionally, the NDAA **requires a report on the plan to disrupt and degrade the Haqqani Network.**

**Pakistan:** The NDAA recognizes the strategic value of our relationship with Pakistan, as well as the challenges that accompany it. The NDAA requires the Secretary of Defense to report on the **terms and agreements associated with the movement of U.S. supplies and equipment through ground lines of communication (GLOC) with Pakistan.** While the NDAA reauthorizes important coalition support funds for Pakistan; **use of those funds will be restricted until the Secretary certifies that Pakistan is fully supporting the movement of supplies through the GLOCs in Pakistan** as well as **supporting counterterrorism operations** against terrorist groups that threaten the United States; disrupting cross-border attacks against the U.S. and coalition in Afghanistan; and countering the flow of IEDs into Afghanistan.

**Terrorist Attack In Benghazi:** While the House Armed Services Committee continues its inquiry into the tragic events in Benghazi on September 11-12, 2012, the NDAA will ensure that DOD applies the lessons already learned. The NDAA requires a report from the Secretary of Defense and the Joint Staff related to Benghazi. The report will cover the posture and **readiness of U.S. Armed Forces to respond to a request by the Department of State** to support embassy security in the event of a similar attack.

**Syria:** The NDAA provides **enhanced authority for the DOD's Cooperative Threat Reduction program to destroy Syria's chemical weapons** and requires the Department to develop a cooperative threat reduction strategy to **combat weapons of mass destruction in the Middle East and North Africa.** Understanding that unilateral response to the Syrian crisis is not in America's best interest, the NDAA **authorizes the Armed Forces to train and equip regional partners for WMD response.** Additionally, the NDAA authorizes support for Jordanian border security to secure that country's border with Syria.

**Iran:** The NDAA recognizes the continued threat posed by Iran. The annual Iran Military Power Report is expanded to include an **assessment of Iran's global network of terrorist and criminal groups as well as how such groups operate to support and reinforce Iran's grand strategy.** The NDAA also requires a report on military partnerships with Gulf Cooperation Council (GCC) countries, the impact of shifting programs from OCO funding to the DOD base budget and the steps that DOD has taken and is planning to take to improve coordination, effectiveness, and interoperability of regional missile defense systems. Finally the **NDAA authorizes integrated air and missile defense with GCC countries.**

**Accountability on the Battlefield:** The NDAA holds the Commander-in-Chief accountable for his policies on the battlefield. The bill requires the Secretary to **notify Congress of any new Status of Forces Agreements (SOFA)** and those that have been renewed, terminated, or amended. The NDAA also expands authorities **aimed at combating contracting with the enemy,** allowing programs that have worked well in the CENTCOM AOR to be implemented across all combatant commands. The NDAA requires the Secretary to **assess the affiliates and adherents of al Qaeda** and the evolving threat they pose to U.S. national security.

**Oversight of Targeted Operations:** The NDAA incorporates all of the key provisions of HASC Vice Chairman Mac Thornberry's **Oversight of Sensitive Military Operations Act (OSOMA),** as a vehicle for formalized and stringent oversight of targeted lethal or capture operations by the Armed Forces overseas.

**Accountability for Vital Strategic Programs and Assets:** In order to maintain America's vital strategic edge, the NDAA includes several provisions aimed at holding the Executive Branch accountable for critical systems. The NDAA prohibits the **transfer of some missile defense technology to Russia** and strengthens congressional oversight of Administration efforts with regard to U.S.- Russia missile defense cooperation generally. The NDAA requires a report on **Russian strategy, doctrine and training, force structure, and military-to-military contacts**. The NDAA also reforms DOD's business process with commercial satellite companies ensuring that **strategic competitors do not gain inadvertent access to vital systems or information**. Additionally, the NDAA requires the DOD to develop a strategy to **lower the cost, thorough through multi-year procurement, of commercial satellite services**. The NDAA also **ensures the Air Force maintains the capability to deploy multiple nuclear warheads on intercontinental ballistic missiles (ICBM)**, should technical problems or deteriorating international relations require doing so, and restricts efforts to unnecessarily reduce U.S. ICBM forces. In order to protect national security, the NDAA **prohibits the President from approving the installation of Russian satellite ground stations in the United States that pose a threat to U.S. national security**. The NDAA further **regulates the manner in which the President implements the New START treaty and protects the Nuclear TRIAD**. The NDAA also includes several provisions to **control costs, improve efficiency, and prioritize nuclear modernization programs within the nuclear security enterprise**. Additionally, the NDAA supports key national security space activities, including an **emphasis on space protection** and Operationally Responsive Space (ORS) programs in light of increasing foreign threats, as well as support for fair competition on the evolved expendable launch vehicle program.

**Institutional Accountability:** The NDAA also holds national security institutions accountable to strict oversight, especially those who are playing vital roles in defending America against the terrorist threat. The NDAA requires a **policy governing defense intelligence priorities and limits the funding for the Defense Clandestine Service (DCS)** until the Secretary certifies that the program primarily fills DOD's unique requirements. The NDAA directs the Secretary of Defense to review the **future roles and missions of SOCOM and U.S. Special Operations Forces**. In response to major security failures at America's nuclear facilities, the NDAA implements several initiatives to **improve security at the National Nuclear Security Administration (NNSA)**, including requiring the NNSA administrator to annually certify the security of nuclear weapons, materials, and classified information. The NDAA also expresses congressional concern about recent restructuring within the Office of the Secretary that makes the **Office of Net Assessment** subordinate to the Undersecretary for Policy.

### **CONTROLLING COSTS AND MAKING WISE CHOICES**

*In an era of constrained resources, the NDAA makes controlling costs a top priority. However, the NDAA also guards against achieving false short-term savings at the expense of vital long-term strategic capabilities.*

**Bureaucratic Reduction:** The NDAA requires several steps toward reducing wasteful bureaucracy within DOD. It requires the Secretary to develop a plan for the **future role of the Joint Improvised Explosive Device Defeat Organization (JIEDDO)**. Additionally the NDAA requires the Secretary to **determine if the Air Sea Battle Office is duplicative** of efforts more efficiently carried out by the Joint Staff. The NDAA also **reduces flag officer billets by 24**.

**Platform Accountability:** The NDAA recognizes that the taxpayer must be protected against poor choices and cost overruns from troubled acquisition programs. To that end the NDAA expresses concern with the design associated with the **Arleigh Burke class Destroyer Flight 3**, limits funding for the next stage of the Army's **Ground Combat Vehicle** development until the Secretary of the Army submits a status report to Congress, and requires the Secretary of the Army to report on a strategy to improve the fuel efficiency of the **M1 Abrams Tank**.



Two acquisition programs, the **Littoral Combat Ship (LCS)** and the **F-35 Joint Strike Fighter (JCS)** receive additional oversight. The NDAA requires an independent assessment of JSF software programs, as well as report on the long-term sustainment plan for the autonomic logistics information system. LCS also requires a lifetime sustainment plan, as well as improved oversight. The NDAA requires GAO to report on the procurement of a new **Presidential Helicopter**.

**Confidence in Cost Estimates in Reporting:** Select cost reports will be required to include data regarding confidence in data as an effort to predict cost overruns.

**Efficiency Studies:** The NDAA tasks GAO with carrying out several studies with intent to reduce bureaucracy. GAO will examine **US Central Command** along with **all functional combatant commands** and propose changes to **curtail the expansion of headquarters staff**. GAO will apply the same approach to the **Office of the Secretary of Defense (OSD), the Joint Staff (JCS), and the Service Secretaries**. The GAO is also tasked with examining the factors contributing to DOD's lack of compliance in conducting a Quadrennial Roles and Missions Review, as required in the FY08 NDAA, and submitting a capabilities-based budget. Additionally, the NDAA requires the DOD to develop a strategy to **lower the cost, thorough multi-year procurement, of commercial satellite services**.

**Naval Resources:** The NDAA supports the retention of **seven Navy cruisers and two amphibious ships** proposed for early retirement.

**BRAC:** Understanding that a round of base closures at this time would not only be costly, but reflect temporary budget pressures at the expense of long term strategic assets, the NDAA **prohibits DOD from initiating another round of BRAC**.

**Training Ranges:** The NDAA recognizes the twin pressures defense cuts and sequestration have already taken a heavy toll on military training. The NDAA will **ensure DOD has continued access to military training ranges** such as Naval Air Weapons Station China Lake and Chocolate Mountain Aerial Gunnery Range.

**Guantanamo Bay:** The NDAA maintains the **prohibition against transfer of detainees from Guantanamo Bay to the United States and the prohibition on construction of detainees facilities in the United States**. The NDAA also maintains limitations **on detainee transfers to third countries designed to forestall reengagement**.

**Executive Compensation Reform:** The NDAA recognizes the White House's formula for calculating allowable private sector compensation on DOD contracts has become dysfunctional and does little to protect the taxpayer or provide transparency in government contracting. The NDAA **rationalizes the cap to \$625,000 and does away with the flawed formula**. The NDAA **allows for the cap to be adjusted based on the Employment Cost Index**, which is commonly known and publically available index computed by the Bureau of Labor Statistics. The NDAA rejected calls by some to cap individual industry compensation at the President or Vice President's salary level, as such a standard represents an arbitrary comparison between compensation and salary and will only serve to drive critical talent from the nation's defense industrial base.

**Industrial Base Matters:** the NDAA includes a new title in the bill to **protect and secure defense industrial base capacity and security**. Included are provisions to assist small businesses and to strengthen the Procurement Technical Assistance Cooperative Agreement Program. The title also includes provisions to increase transparency in reporting of small business participation and strengthens the requirements for small business subcontracting plans, reporting and goals.



**Science and Technology:** The NDAA creates new authorities to strengthen the ability of DOD laboratories to support the continued development and expansion of its workforce and facilities. It extends authorities to **provide for the exchange of information technology personnel between private industry and DOD**. The NDAA also authorizes the ability to **award prizes for advanced technology achievements**. The NDAA supports Department-wide Science and Technology investments, including **workforce development for defense labs**, and defense-wide **directed energy programs**.

**Armor Brigade Combat Team Force Structure and Industrial Base:** The NDAA continues investment in the Army's combat vehicle industrial base by providing additional funding for **Abrams tank upgrades** and heavy equipment improved recovery vehicles. The additional funding will ensure we maintain a viable industrial base and **avoid unnecessary national risk from relying solely on foreign military sales** to sustain this critical national capability.

### **PROTECTING AMERICA TODAY WHILE PREPARING FOR FUTURE THREATS**

*The NDAA continues investment and oversight for vital systems while preserving our capacity to meet future challenges.*

**Defense Intelligence:** The NDAA authorizes critical national security activities and programs including **cyber security and operations, combatting weapons of mass destruction, counter terrorism, defense intelligence, and Special Operations Forces**. This includes a requirement that the Secretary of Defense create **a policy that governs defense intelligence priorities**. The NDAA requires an assessment by the Chairman of the Joint Chiefs of Staff on DOD input into the **National Intelligence Priorities Framework**. Recognizing that robust Intelligence, Surveillance, and Reconnaissance (ISR) capabilities are vital to current combat operations in Afghanistan, as well as emerging threats like the proliferation of al Qaeda affiliates in North Africa, the NDAA ensures ISR resources are maximized by requiring the Secretary to submit a plan related to the **drawdown of defense intelligence assets in Afghanistan**; and prevents the premature retirement of **Global Hawk block 30** unmanned aircraft through the end of 2014.

**Missile Defense:** Defending against ballistic or theater missile attack is an important priority for U.S. National Security. The NDAA increases missile defense spending above the President's budget request, while still well below planned missile defense funding when the President was first elected. It prohibits the use of **U.S. funding to allow Chinese missile defense systems to be integrated** with U.S. or NATO systems. The NDAA invests in proven and vital systems like **Iron Dome** – including providing new authority and resources for co-production of Iron Dome - and provides significant resources above the President's request for other Israeli Cooperative Missile Defense programs, like Arrow 2, Arrow 3, and the David's Sling Weapons System. The NDAA **provides funding for planning for the deployment of an East Coast missile defense site**, while the Missile Defense Agency undertakes siting and environmental studies- noting that both the Bush and Obama Administrations have supported an additional homeland missile defense site. Finally, the NDAA provides additional resources for new Homeland missile defense radar and a new Homeland missile defense interceptor kill vehicle.

**Cyber Threats:** Recent reports only enhance Congress' concern about the threat posed by cyber attack. The NDAA requires DOD to conduct a **mission analysis for cyber operations** and examine the proper balance of cyber capabilities across national security organization as well as a report on the **coordination of cyber and electronic warfare activities**. The NDAA would also require DOD to provide **congressional notification when investigations are initiated or completed** regarding network cyber intrusions that result in the compromise of critical information. Additionally, the NDAA would require the Defense Science Board to conduct an independent

assessment of the organization, missions and authorities of U.S. Cyber Command, and require DOD to create **standards for cyber operations training**. The NDAA provides **important authorities to the Department of Energy to ensure the integrity of its information technology supply chain** - this is similar to authority available to DOD and the Intelligence Community and is critical following the discovery of Chinese-supplied technology linked to the People's Liberation Army at one of the nation's most important nuclear weapons laboratories.

**Pacific Rebalance:** The NDAA recognizes the increasing strategic importance of **Guam** and reaffirms the PACOM Combatant Commander's request for **hardened facilities to deter future aggressive actions** from strategic competitors, and requires an analysis on **missile defense capabilities in Guam**. The NDAA also **prohibits the Department of the Navy from retiring certain ships that have over 10 years of hull life** available. The NDAA requires **expanded military power reports covering China and North Korea**.

**Forward basing** has been vital to the military's rapid response in defense of American interests. The NDAA **continues to invest in forward basing** and requires DOD to **report on the continued requirement of forward basing** - especially in Europe - in support of CENTCOM and AFRICOM missions.

**Building Partnership Capacity:** The NDAA provides **support and enhanced congressional oversight of key DOD building partnership capacity authorities**, including **expanded 1206 Global Train & Equip** authority to engage with security forces conducting counter terrorism operations, **improving Global Security Contingency Fund reporting requirements**, authorization for the National Guard's State Partnership Program, and extension and expansion of the **authority to support those forces countering the Lord's Resistance Army**.

**National Guard and Reserve Equipment Modernization:** The NDAA supports modernizing National Guard and Reserve Components by providing **additional funding in a National Guard and Reserve Component Equipment Account**.

**Vital Platforms:** The NDAA continues investment in weapons systems vital to addressing future threats including supporting the Navy's authorization request for a nuclear aircraft carrier, **CVN 78**; multi-year procurement for the **E-2D Hawkeye** and **C-130J Super Hercules**; modernization of the **C-130H** aircraft for the National Guard and Reserve; support for **KC-46** tanker, the **Long Range Strike Bomber (LRS-B)**, additional funding for advance procurement of the **F/A-18E/F Super Hornet** and the Marine Corps **Amphibious Combat Vehicle**, and additional investment in the Air Force **MQ-9 Reaper** unmanned aerial systems.

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*Courtesy of House Armed Services Committee Chairman Howard P. "Buck" McKeon*

For questions, please call the Committee at (202) 225-2539

# The Military Should Be Allowed to Detain Noncitizen Terrorist Suspects

*Civil Liberties*, 2013

"Section 1021 [of the National Defense Authorization Act] reaffirms the military's legal position on holding Guantanamo detainees who pose a threat to the [United States](#)."

In the following viewpoint, Charles D. Stimson argues that the US government was correct to codify the ability of the military to detain enemies without trial for the duration of the war on terror. Stimson claims that section 1021 of the 2012 National Defense Authorization Act only allows noncitizens to be prosecuted by military commission and therefore does not violate the constitutional rights of US citizens. Stimson is the chief of staff and a senior legal fellow at the Heritage Foundation in Washington, DC.

As you read, consider the following questions:

1. According to Stimson, which persons are allowed to be detained under section 1021 of the 2012 National Defense Authorization Act?
2. What is the primary statutory authority for the war against [terrorism](#), according to the author?
3. According to Stimson, why was section 1021 of the 2012 National Defense Authorization Act necessary?

For the 50th consecutive year, the National Defense Authorization Act (NDAA) for Fiscal Year 2012 provides funding and authorities for the U.S. military. It also includes several policy provisions regarding the handling of [al-Qaeda](#) and [Taliban terrorists](#). Although we have previously expressed concerns regarding NDAA provisions relating to transfer restrictions for foreign detainees held at Guantanamo [Bay, a U.S. naval base in Cuba], section 1021 of the NDAA contains important and constructive language that strengthens America's continuing fight against terrorists. Some organizations and individuals have criticized section 1021, and some have claimed that this bill creates or expands federal authority to detain U.S. citizens indefinitely and without due process. Those claims are false.

# The Detention of U.S. Citizens

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The NDAA has not impacted the conditions under which a U.S. citizen may (or may not) be detained. In fact, section 1021 of the NDAA is explicit: The law regarding how U.S. citizens are handled, including the right to *habeas corpus* [the right to seek judicial review of one's imprisonment], is the same today as it was the day before it was passed.

In order to understand fully why section 1021 does not create or expand authority to detain U.S. citizens, it is important to review briefly some important concepts, statutes, and case law.

Section 1021 of the NDAA states that "*[n]othing in this section shall be construed to affect existing law or authorities relating to the detention of United States citizens, lawful resident aliens of the United States, or any other persons who are captured or arrested in the United States.*"

## The Covered Persons

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Section 1021 also defines the universe of persons covered under the section and defines the universe of dispositions available to the government for each detainee.

Under the NDAA, covered persons include: (1) A person who planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001, or harbored those responsible for those attacks, and; (2) A person who was a part of or substantially supported al-Qaeda, the Taliban, or associated forces that are engaged in hostilities against the United States or its coalition partners, including any person who has committed a belligerent act or has directly supported such hostilities in aid of such enemy forces.

Under the law of armed conflict or the law of war, a nation engaged in armed conflict has the legal authority to detain enemies who have engaged in combatant actions, including acts of belligerence, until the end of hostilities. A nation, including the United States, may detain captured enemy fighters—not as punishment, but to keep them from returning to the battlefield. The law of war does not differentiate or discriminate between enemy combatants who are



citizens or non-citizens. History is replete with examples of citizens who became members of the opposing forces and were subject to detention when captured. These time-honored and humane principles existed prior to 9/11, after 9/11, and were the state of the law prior to the passage of the NDAA.

As for the notion that the NDAA allows for U.S. citizens to be prosecuted under the Military Commissions Act of 2009, the Act applies only to "alien unprivileged enemy belligerents." "Aliens" under the Act means non-citizens, and thus the Act does not allow for prosecution of U.S. citizens by military commission.

## The War Against Terrorism

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The primary statutory authority for the war against terrorism is the September 18, 2001, congressional "Authorization for Use of Military Force" (AUMF). It authorizes the President to use "all necessary and appropriate force against those nations, organizations, or persons he determines planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001." And although the AUMF language does not specifically include the word "detain" or "detention," lawmakers, policymakers, the [George W.] Bush and [Barack] Obama Administrations, and the courts have all interpreted the AUMF to necessarily include the ability to detain the enemy for the duration of hostilities.

In 2004, the U.S. Supreme Court held in *Hamdi v. Rumsfeld* that the AUMF provides authority for the military to detain a U.S. citizen captured overseas on the battlefield in [Afghanistan](#) on U.S. soil until the end of hostilities. However, the controlling plurality of the Court explicitly noted that "[a]ll agree that absent suspension, the writ of habeas corpus remains available to every individual detained within the United States." The plurality further noted that "[a]ll agree suspension of the writ has not occurred here." Thus, the writ of habeas corpus remains available to any individual detained in the United States.

Not only is habeas corpus review available to both citizens and non-citizens detained in the United States, but the Supreme Court has also extended the privilege to foreign detainees held at the U.S. Naval Station in Guantanamo Bay, Cuba. U.S. military and [national security](#) professionals have been

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litigating Guantanamo detainee habeas cases for several years. Section 1021 reaffirms the military's legal position on holding Guantanamo detainees who pose a threat to the United States. The Department of Justice is already citing section 1021 in its legal briefs to support the military's detention of foreign terrorists held at Guantanamo, as well as in Afghanistan.

## The Need for Authority to Detain

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So, why was section 1021 necessary, since it does not seem to change the status quo?

Despite the fact that the U.S. is drawing down its forces in Afghanistan, the enemy continues to engage in armed conflict against the United States and its allies. As the U.S. draws down forces, there is a legitimate concern that American courts may begin to chip away at the military's legal authority to detain al-Qaeda terrorists. Section 1021 essentially codifies the same detention language used by both the Bush and Obama Administrations that has been upheld by federal courts. Ten years after passage of the AUMF, this helps ensure that the military continues to have the authority to hunt down and detain al-Qaeda terrorists wherever they may hide.

In summary, the NDAA detainee provisions do not create or expand the government's ability to detain U.S. citizens. In no way does the NDAA negatively impact or change the constitutional rights of U.S. citizens. Instead, section 1021 strengthens the military's authority to detain individuals who are members of or substantially supporting al-Qaeda, the Taliban, and associated forces.

Misinformation regarding the impact of section 1021 should not detract from this significant step toward reinforcing the legal underpinnings of the war against terrorists.

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## Further Readings

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### Books

- Floyd Abrams *Speaking Freely: Trials of the First Amendment*. New York: Penguin, 2006.

- William P. Bloss *Under a Watchful Eye: Privacy Rights and Criminal Justice*. Santa Barbara, CA: Praeger, 2009.
- Michael D. Cicchini *Tried and Convicted: How Police, Prosecutors, and Judges Destroy Our Constitutional Rights*. Lanham, MD: Rowman & Littlefield, 2012.
- Kenneth Dautrich, David A. Yalof, and Mark Hugo Lopez *The Future of the First Amendment: The Digital Media, Civic Education, and Free Expression Rights in America's High Schools*. Lanham, MD: Rowman & Littlefield, 2008.
- John C. Domino *Civil Rights and Liberties in the 21st Century*. New York: Longman, 2010.
- Anne Proffitt Dupre *Speaking Up: The Unintended Costs of Free Speech in Public Schools*. Cambridge, MA: Harvard University Press, 2009.
- Noah Feldman *Divided by God: America's Church-State Problem—and What We Should Do About It*. New York: Farrar, Straus & Giroux, 2006.
- Stephen M. Feldman *Free Expression and Democracy in America: A History*. Chicago: University of Chicago Press, 2008.
- C. Welton Gaddy and Barry W. Lynn *First Freedom First: A Citizen's Guide to Protecting Religious Liberty and the Separation of Church and State*. Boston: Beacon, 2008.
- A.C. Grayling *Liberty in the Age of Terror: A Defence of Civil Liberties and Enlightenment Values*. London: Bloomsbury, 2011.
- Glenn Greenwald *With Liberty and Justice for Some: How the Law Is Used to Destroy Equality and Protect the Powerful*. New York: Metropolitan, 2011.
- Shane Harris *The Watchers: The Rise of America's Surveillance State*. New York: Penguin, 2010.
- Susan N. Herman *Taking Liberties: The War on Terror and the Erosion of American Democracy*. New York: Oxford University Press, 2011.
- Steven J. Heyman *Free Speech and Human Dignity*. New Haven, CT: Yale University Press, 2008.
- David L. Hudson *The Right to Privacy*. New York: Chelsea House, 2010.
- Thomas A. Jacobs *Teens Take It to Court: Young People Who Challenged the Law—and Changed Your Life*. Minneapolis: Free Spirit, 2006.
- Emile Lester *Teaching About Religions: A Democratic Approach for Public Schools*. Ann Arbor: University of Michigan Press, 2011.
- Saul Levmore and Martha C. Nussbaum *The Offensive Internet: Speech, Privacy, and Reputation*. Cambridge, MA: Harvard University Press, 2010.
- Anthony Lewis *Freedom for the Thought That We Hate: A Biography of the*

*First Amendment*. New York: MJF Books, 2011.

- Rebecca MacKinnon *Consent of the Networked: The Worldwide Struggle for Internet Freedom*. New York: Basic, 2012.
- Jon L. Mills *Privacy: The Lost Right*. New York: Oxford University Press, 2008.
- Dawn C. Nunziato *Virtual Freedom: Net Neutrality and Free Speech in the Internet Age*. Stanford, CA: Stanford Law Books, 2009.
- Brad O'Leary *Shut Up, America! The End of Free Speech*. Los Angeles: WND Books, 2009.
- David K. Shipler *Rights at Risk: The Limits of Liberty in Modern America*. New York: Knopf, 2012.
- Christopher Slobogin *Privacy at Risk: The New Government Surveillance and the Fourth Amendment*. Chicago: University of Chicago Press, 2007.
- Janet E. Smith *The Right to Privacy*. San Francisco: Ignatius Press, 2008.
- Daniel J. Solove *The Future of Reputation: Gossip, Rumor, and Privacy on the Internet*. New Haven, CT: Yale University Press, 2008.
- R. Murray Thomas *God in the Classroom: Religion and America's Public Schools*. Westport, CT: Praeger, 2007.
- Leigh Ann Wheeler *How Sex Became a Civil Liberty*. New York: Oxford University Press, 2012.

## Periodicals

- Mark Engler "Guantanamo Has Got to Go: Protesting Ten Years of Indefinite Detention," *Dissent*, January 12, 2012.
- John Griffing "Obama, the Hitman: Killing Due Process," *American Thinker*, October 5, 2011. [www.americanthinker.com](http://www.americanthinker.com).
- Murat Kurnaz "Notes from a Guantanamo Survivor," *New York Times*, January 7, 2012.
- Michelle Malkin "How Mexico Treats Illegal Aliens," *Human Events*, April 28, 2010.
- Wendy McElroy "Due Process in Jeopardy: The Supreme Court Takes Liberty Lightly," *The Freeman*, May 24, 2010.
- Andrew Napolitano "Can the President Kill You?," *Reason*, March 14, 2012.
- *New York Sun* "A Due Process in War," October 2, 2011.
- Tom Parker "10 Years On, 10 Reasons Guantanamo Must Be Closed," *Human Rights Now* (blog), January 11, 2012. <http://blog.amnestyusa.org>.



- Adam Serwer "When the Government Can Kill You, Explained," *Mother Jones*, March 5, 2012.
- Howard Slugh "Exclusionary Rule Unwarranted for GPS Searches," *National Review*, January 31, 2012.
- Joe Wolverton II "Is Julian Assange Being Denied Due Process?," *New American*, April 13, 2012.

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## MEMORANDUM TO COUNCIL

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**To:** Mayor Branson and City Councilmembers  
**From:** Aimée Kniaziowski, City Manager   
**Thru:** Lon White, Harbormaster   
**Date:** August 28, 2014

**Agenda Item:** V. g. **Authorization of a Technical Services Contract With Willard A. Fedá to Operate the Marine Travelift**

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**SUMMARY:** Willard (Bill) Fedá has been under contract with the City to operate the Marine Travelift since operations started in 2009. His contract expires on August 31, 2014. A new two-year contract with a continuation of the same terms was discussed with the contractor and is ready for Council approval. Staff recommends Council authorize a two-year technical services contract with Willard A. Fedá for boatlift operations at the boatyard.

**PREVIOUS COUNCIL ACTION:** The Council previously authorized technical services contracts with Mr. Fedá on July 23, 2009, August 26, 2010, and on September 13, 2012.

**DISCUSSION:** Mr. Fedá is the only person on Kodiak Island with the training and experience to operate the City's 660-ton Marine Travelift. Under the current contract, Mr. Fedá has successfully lifted over 240 vessels since the yard opened Oct 2, 2009. He has a clean safety record. Staff and customers work well with him, and he is a key member of the boatyard team. Without his expertise, the City would have a difficult time operating the boatyard.

The terms in the contract are unchanged from the previous contract, which expires at the end of August. The hourly rate of \$100/hour is comparable to the Group 1A Davis-Bacon heavy crane operator (\$55.04 plus workmen's compensation plus liability insurance). As a contractor, Mr. Fedá is required to provide his own commercial insurance package with the City of Kodiak named as an "additional insured." As an independent contractor, Mr. Fedá is not eligible for City benefits. He continues to agree to work on short notice call outs. Staff believes the rate of compensation is reasonable and a good value to the City. The Harbormaster proposes the new contract be for two years.

**ALTERNATIVES:**

- 1) Council may authorize the contract as negotiated, which is the recommendation of staff, since Mr. Fedá provides an essential operational service to the boatyard.
- 2) Council may amend or not approve the contract, neither of which is recommended. The Harbor Department does not have a position or an experienced employee to operate the lift. However, one of the harbor maintenance mechanics has sufficient training to lift a boat in an emergency should Mr. Fedá not be available.

**FINANCIAL IMPLICATIONS:** Funds for this contract are included in the FY2015 Boatyard/Lift Enterprise Fund budget approved by Council in June 2014.

**LEGAL:** Previous contracts with Mr. Fedra received legal and insurance review. The terms and wording have not changed.

**STAFF RECOMMENDATION:** The Harbormaster recommends Council authorize the technical services contract with Willard A. Fedra for Harbor Department boat lift operations for a two-year term at the rate of \$100/hr with funds coming from the Boat Yard/Vessel Lift Enterprise Fund, Professional Services Account.

**CITY MANAGER'S COMMENTS:** Bill Fedra has provided his expertise to the City and Harbor for the past five years. He is safe, responsible, and willing to meet the Harbormaster's need for an experienced lift operator. We are fortunate to have a local resident with this set of unique skills. I recommend Council approve this two-year contract and authorize me to execute the documents on behalf of the City.

**ATTACHMENTS:**

Attachment A: Technical Services Contract for Boatlift Operations

**PROPOSED MOTION:**

Move to approve a two-year technical services contract, Contract No. 216592, with Willard A. Fedra to operate the Harbor Marine Travelift, with funds coming from the Boat Yard/Vessel Lift Enterprise Fund, Professional Services Account and authorize the City Manager to execute the documents on behalf of the City.

**CITY OF KODIAK**  
**Technical Service Agreement**  
**Marine Travelift Operator for Kodiak Shipyard**  
**Contract No. 216592**

THIS AGREEMENT is entered into this **1 of September 2014**, by and between **Willard A. Feda** (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 for two (2) years, beginning September \_\_, 2014, and ending August \_\_, 2016. 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 is not authorized to perform any work or incur any expense other than his own labor 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 \$100 per hour for the duration of the contract. 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 two) 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 Harbormaster 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.* 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  
 Aimée Kniazowski  
 710 Mill Bay Rd, Room 219  
 Kodiak, Alaska 99615

To Contractor:  
 Willard A. Feda  
 P.O. Box 2933  
 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 ,with legal counsel approved by City of Kodiak, 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 \$2,000,000.
    - (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

\_\_\_\_\_  
Aimée Kniazowski, City Manager

\_\_\_\_\_  
Willard A. Feda

ATTEST:

WITNESS:

\_\_\_\_\_  
Debra Marlar, City Clerk

\_\_\_\_\_  
Lon A. White, Harbormaster



**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 Harbormaster, and/or his designee to lift, move, block, launch and 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 Harbormaster 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 two 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.

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## MEMORANDUM TO COUNCIL

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**To:** Mayor Branson and City Councilmembers

**From:** Aimée Kniazowski, City Manager *AK*

**Thru:** Mark Kozak, Public Works Director *MK* and Glenn Melvin, City Engineer *GM*

**Date:** August 28, 2014

**Agenda Item:** V. h. **Authorization of a Professional Services for Survey of Aleutian Homes Phase VI, Project No. 15-03/7037**

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**SUMMARY:** Aleutian Homes Water and Sewer Replacement Phase VI is a continuation of the upgrade of utilities, pavement, and sidewalks in the Aleutian Home Area. Phase VI will complete Birch Street from Thorsheim Street to Mill Bay Road. The first step in the engineering process for Phase VI is to prepare the survey base sheets and provide the topographic information to the engineer for design. This memorandum discusses the survey services required for design of Phase VI. Staff is recommending Council authorize the professional services contract with St. Denny Surveying Inc. to perform the survey for the lump sum amount \$38,500.

**PREVIOUS COUNCIL ACTION:** Council authorized funding for design of Aleutian Homes Phase VI in the FY2015 Budget.

**DISCUSSION:** The work includes upgrades to approximately 1,300 feet of Birch Street beginning at the intersection of Birch Street and Thorsheim Street and terminating at Mill Bay Road. This project will allow us to increase the size of the main water line on Birch from 8 inch to 20 inch connecting with the main located on Mill Bay Road. This will significantly improve the City water distribution system and fire protection as well as allow future improvements on Mill Bay Road and Upper Mill Bay.

The aging water and sewer mains and the storm drainage will be replaced as in the previous phases. Birch Street is in poor condition due to inadequate base and sub-base. The street section will be completely rebuilt. The sidewalks will be widened to five feet and new rolled curb and gutter will be installed.

Unlike previous phases, the City will contract directly with the surveyor. The two benefits to doing this is 1) it makes it easier to use a local firm and 2) it saves the mark-up cost if the survey were to be included in the engineering proposal. DOWL HKM has a surveyor on staff that will coordinate with St. Denny and provide oversight and quality control.

At our request, St. Denny provided staff with a fee proposal for survey services on this project. St. Denny has been involved in all of the previous Aleutian Homes Water and Sewer Upgrade projects. They prepared topographic base sheets for DOWL HKM and provided construction layout for the various contractors on past Phase I through Phase V projects. DOWL HKM provided a Survey Work

Request detailing the survey work format and deliverables needed for engineers to prepare design drawings. Staff met with Mark St Denny on Thursday August 14, 2014, and discussed at-length the scope of work and the City's level of expectations regarding quality of work required for the project.

**ALTERNATIVES:**

- 1) Authorize the professional services contract with St. Denny Surveying Inc. for work to be performed on a lump sum basis in the amount of \$38,500. Staff recommends this alternative, because it will save the City money by eliminating the mark up costs of having the design firm do the work.
- 2) Do not authorize the contract. This alternative is not recommended, because of the risk that continued deterioration of this project area.

**FINANCIAL IMPLICATIONS:** The current available funding for the Aleutian Homes Water and Sewer Project Phase VI in the FY2015 Budget is \$372,424. This is adequate to award the professional services contract with St. Denny Surveying Inc. for design services for the project in the amount of \$38,500.

**LEGAL:** N/A

**STAFF RECOMMENDATION:** Staff recommends Council approve the professional services contract with St. Denny Surveying Inc. for survey services of the Aleutian Homes Water and Sewer Replacement Phase VI project in the amount of \$38,500, with funds coming from the Water Capital Improvement Project No. 15-03/7037.

**CITY MANAGER'S COMMENTS:** This next phase of the project is important and, like the other phases, will be expensive to complete. However, a locally owned survey company can help us facilitate the needed replacement by taking care of this pre-engineering first step. I suggest Council approve the professional services contract with St Denny as recommended by staff.

**ATTACHMENTS:**

Attachment A: St. Denny Proposal dated August 18, 2014

Attachment B: Survey Work Request-Aleutian Homes Phase VI

**PROPOSED MOTION:**

Move to authorize a professional services contract with St. Denny Surveying Inc. to perform the survey work for the Aleutian Homes Phase VI Project in the amount of \$38,500, with funds coming from Aleutian Homes Water and Sewer Project, Phase IV, Project No. 15-03/7037 and authorize the City Manager to execute the documents for the City.

# St. Denny Surveying Inc

PO Box 388  
 Kodiak, AK 99615  
 (907) 481-3500

## Estimate

Date	Estimate #
8/18/2014	898

To:

Project

Description	Qty	Cost	Total
KODIAK ALEUTIAN HOMES PHASE VI  •RESEARCH •DEED PLOT •COMPUTATIONS •FIELD LOCATES – MONUMENTS •FIELD LOCATES – TOPOGRAPHY •FIELD LOCATES – UNDERGROUND LOCATES •LOT LINE DETERMINATION •RIGHT OF WAY DETERMINATION •MAPPING •DELIVERABLES  DOES NOT INCLUDE TITLE COMPANY FEES IF ANY CITY OR BOROUGH FEES IF ANY ADDITIONAL UNDERGROUND UTILITY EXPLORATION IF ANY	1	38,500.00	38,500.00

Total
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Signature \_\_\_\_\_

# St. Denny Surveying Inc

PO Box 388  
 Kodiak, AK 99615  
 (907) 481-3500

## Estimate

Date	Estimate #
8/18/2014	898

To:

Project

Description	Qty	Cost	Total
ESTIMATE DURATION OF PROJECT SIX WEEKS ESTIMATE IS VALID FOR 30 DAYS City Sales Tax		7.00%	0.00

<b>Total</b>	\$38,500.00
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Signature \_\_\_\_\_



**SURVEY WORK REQUEST - ALEUTIAN HOMES PHASE VI  
KODIAK, AK**

**NORTH**

**Contact Information:**

Mark Kozak, Public Works Director  
2410 Mill Bay Road  
City of Kodiak  
Ph: (907) 486 - 8060  
Fax: (907) 486 - 8066  
mkozak@city.kodiak.ak.us

Please provide a topographic survey for the area outlined in blue. The survey is to include the following;

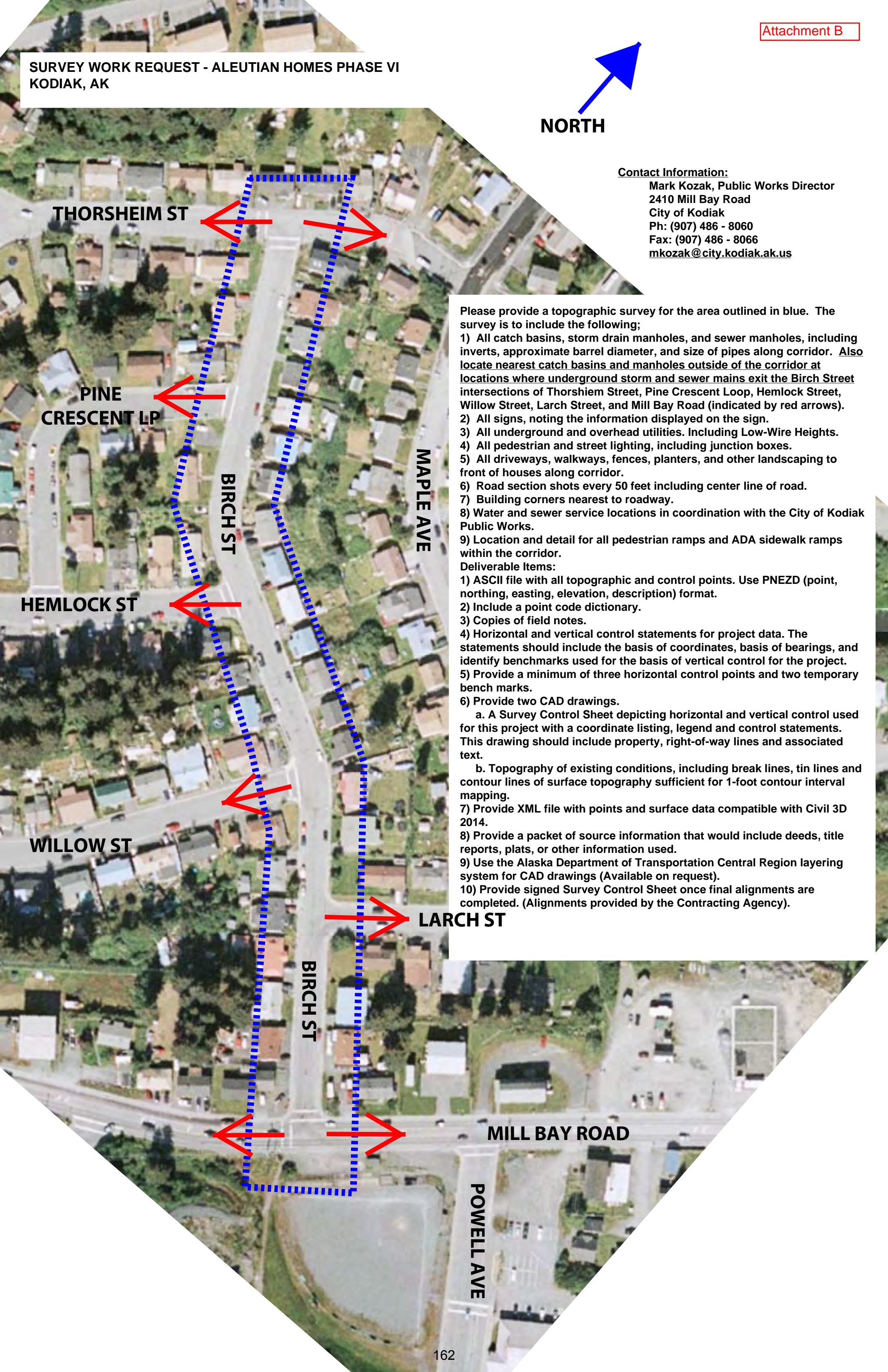
- 1) All catch basins, storm drain manholes, and sewer manholes, including inverts, approximate barrel diameter, and size of pipes along corridor. Also locate nearest catch basins and manholes outside of the corridor at locations where underground storm and sewer mains exit the Birch Street intersections of Thorshiem Street, Pine Crescent Loop, Hemlock Street, Willow Street, Larch Street, and Mill Bay Road (indicated by red arrows).
- 2) All signs, noting the information displayed on the sign.
- 3) All underground and overhead utilities. Including Low-Wire Heights.
- 4) All pedestrian and street lighting, including junction boxes.
- 5) All driveways, walkways, fences, planters, and other landscaping to front of houses along corridor.

- 6) Road section shots every 50 feet including center line of road.
- 7) Building corners nearest to roadway.
- 8) Water and sewer service locations in coordination with the City of Kodiak Public Works.

- 9) Location and detail for all pedestrian ramps and ADA sidewalk ramps within the corridor.

**Deliverable Items:**

- 1) ASCII file with all topographic and control points. Use PNEZD (point, northing, easting, elevation, description) format.
- 2) Include a point code dictionary.
- 3) Copies of field notes.
- 4) Horizontal and vertical control statements for project data. The statements should include the basis of coordinates, basis of bearings, and identify benchmarks used for the basis of vertical control for the project.
- 5) Provide a minimum of three horizontal control points and two temporary bench marks.
- 6) Provide two CAD drawings.
  - a. A Survey Control Sheet depicting horizontal and vertical control used for this project with a coordinate listing, legend and control statements. This drawing should include property, right-of-way lines and associated text.
  - b. Topography of existing conditions, including break lines, tin lines and contour lines of surface topography sufficient for 1-foot contour interval mapping.
- 7) Provide XML file with points and surface data compatible with Civil 3D 2014.
- 8) Provide a packet of source information that would include deeds, title reports, plats, or other information used.
- 9) Use the Alaska Department of Transportation Central Region layering system for CAD drawings (Available on request).
- 10) Provide signed Survey Control Sheet once final alignments are completed. (Alignments provided by the Contracting Agency).





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**MEMORANDUM TO COUNCIL**

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**To:** Mayor Branson and City Councilmembers

**From:** Aimée Kniazowski, City Manager *AK*

**Thru:** Mark Kozak, Public Works Director *MK* and Glenn Melvin, City Engineer *GM*

**Date:** August 28, 2014

**Agenda Item:** V. i. **Authorization of a Professional Services Contract for Design of Aleutian Homes Phase VI, Project No. 15-03/7037**

---

**SUMMARY:** Aleutian Homes Water and Sewer Replacement Phase VI is a continuation of the upgrade of utilities, pavement, and sidewalks in the Aleutian Homes area. Phase VI will complete Birch Street from Thorsheim Street to Mill Bay Road. This memorandum discusses the engineering design services for the Phase VI. Staff is recommending Council authorize the professional services contract with DOWL HKM to perform design services for \$114,071.

**PREVIOUS COUNCIL ACTION:** Council authorized funding for design of Aleutian Homes Phase VI in the FY2015 Budget.

**DISCUSSION:**

The work includes upgrades to approximately 1,300 feet of Birch Street beginning at the intersection of Birch Street and Thorsheim Street and terminating at Mill Bay Road. This project will allow us to increase the size of the main water line on Birch from 8 inch to 20 inch connecting with the main located on Mill Bay Road. This will significantly improve the City water distribution system and fire protection as well as allow improvements on Mill Bay Road and Upper Mill Bay.

The aging water and sewer mains and the storm drainage will be replaced as in the previous phases. Birch Street is in poor condition due to inadequate base and sub-base. The street section will be completely rebuilt. The sidewalks will be widened to five feet and new rolled curb and gutter will be installed.

At staff's request, DOWL HKM provided a scope and fee proposal for design services. DOWL HKM has designed all of the previous Aleutian Homes Water and Sewer Upgrade projects, and their design and the construction services have been quite satisfactory. DOWL HKM proposes a lump sum fee of \$114,071 for the design services. In an effort to save cost, the City will contract separately for the Base Map Topographic survey for this project. This survey work will be presented to Council at this meeting.

Staff asked DOWL HKM to review their fees for engineering services and compared this proposal to the budget and scope of past projects. They found the following positive results:

AUGUST 28, 2014

Agenda Item V. i. Memo Page 1 of 3

- Average actual cost per sheet has typically varied from \$4,500 to \$6,000, which included base map, geotechnical investigation, and design submittals. This proposal is \$4,000 per sheet for Phase VI.
- Based on past Aleutian Homes projects, construction costs have ranged from \$2,000 to \$3,000 per linear foot of roadway. With 1,300 feet of road for Phase VI, estimated construction cost using the upper end should be approximately \$3.9 million.
- Design cost as a percent of construction cost has varied between 3.5 percent and 6 percent.
- Proposed Phase VI design fees are approximately 3 percent of the estimated construction costs. This is well below industry standard for this type of project.

Authorization of this contract will allow the City to have the design completed and ready to submit to the State of Alaska for AMMG grant funding for construction in 2016. Having the design complete will increase our competitive scoring and place the City in a favorable position to receive grant funding.

**ALTERNATIVES:**

- 1) Authorize the professional services contract with DOWL HKM for work to be performed on a lump sum basis in the amount of \$114,071. Staff supports this alternative as the design is critical to beginning this phase of the Aleutian Homes project.
- 2) Do not authorize the contract. This alternative is not recommended because of the risk that continued deterioration of Birch Street pavement will wear through to the base gravel and result in significant cost of repairs.

**FINANCIAL IMPLICATIONS:** The current available funding for the Aleutian Homes Water and Sewer Project, Phase VI in the FY2015 Budget is \$372,424. This is adequate to award the professional services contract with DOWL HKM for design services for the project in the amount of \$114,071.

**LEGAL:** N/A

**STAFF RECOMMENDATION:** Staff recommends Council authorize the professional services contract with DOWL HKM for design services of the Aleutian Homes Water and Sewer Replacement Phase VI, project in the amount of \$114,071, with funds coming from the Water Capital Improvement Project No. 15-03/7037.

**CITY MANAGER’S COMMENTS:** Replacement of water and sewer and improvements to storm drainage and sidewalks continue to be important to the residents and the City’s utilities. It is time to begin this next phase of the replacement project and it’s none too soon. Birch Street is deteriorating at a rapid rate, and repairs don’t hold due to the lack of an adequate roadbed. Therefore, I support staff’s recommendation and ask Council to authorize the design services contract to DOWL as outlined in the memo.

**ATTACHMENTS:**

Attachment A: DOWL HKM Proposal dated July 16, 2014

**PROPOSED MOTION:**

Move to authorize a professional services contract with DOWL HKM for design services of the Aleutian Homes Water and Sewer Replacement Phase VI project in the amount of \$114,071, with funds coming from the Water Capital Improvement Project No. 15-03/7037 and authorize the City Manager to execute the documents for the City.

AUGUST 28, 2014  
Agenda Item V. i. Memo Page 3 of 3



July 16, 2014  
W.O. 71115

Mr. Mark Kozak, Director of Public Works  
City of Kodiak  
2410 Mill Bay Road  
Kodiak, Alaska 99615

Subject: City of Kodiak, Aleutian Homes Phase VI Water and Sewer Upgrades  
Proposal for Civil Engineering Services

Dear Mr. Kozak:

DOWL HKM is pleased to submit a proposed scope of work and budget to complete civil engineering services for Aleutian Homes Phase VI. The work includes completion of bid-ready documents that will include upgrades to approximately 1,280 feet of Birch Street beginning at the intersection of Birch Street and Thorsheim Street and terminating at Mill Bay Road. It is assumed that upgrades will include replacement of the existing roadway and all existing water, sewer, and storm sewer within the project limits. We understand that your schedule for the project is for construction in the summer of 2016.

## ASSUMPTIONS

This proposal is based on the following assumptions and qualifications. If further investigation into the project discloses conditions other than those assumed, we will advise you and assist in making appropriate adjustments to the scope of work and budget.

- The City of Kodiak (COK) will make provisions for legal entry and necessary site access for DOWL HKM, if required.
- DOWL HKM will be responsible for compiling the base map from the survey provided by the COK.
- All construction will be bid under a single contract, without alternatives, which require additional drawings.
- The COK will lead public involvement activities with technical support from DOWL HKM when requested.
- The COK Public Works will assist with all necessary utility locates.
- We will provide a drawing of proposed test boring locations, but final determination will be by the COK.
- Test borings will be backfilled with cuttings and restored as much as possible to original conditions before leaving the site. Test borings drilled in paved areas will be cold patched.
- If the COK, Public Works elects to patch the asphalt at each test boring location, deduct \$460.00 from the fees.

## SCOPE OF WORK

The scope of work to be completed is to provide bid ready plans, specifications and an engineer's cost estimate for the proposed upgrades for Aleutian Homes Phase VI. The scope will include review of the documents at 65% and 95% phases for each phase.

The Aleutian Homes Phase VI design will include the following lump sum phases:

- **Topographic Survey and Base Map QA/QC.** The COK will provide the survey information required for design and the selected surveyor will reduce the field survey and provide a base AutoCAD file. This file will be plotted for DOWL HKM review and then used in the preparation of design drawings. It will reflect information about underground utilities obtained from available record drawings, and the locations of the new test holes will be shown. DOWL HKM will back-check the base map and work with the surveyor to verify the information is complete. The COK selected surveyor will also sign the survey control drawing.
- **Geotechnical Investigation.** DOWL HKM will begin the soils investigation by obtaining and reviewing any existing information about the site from Phase IV and the COK. We will lay out four to five test boring locations at approximately 300 to 400-foot intervals within the right-of-way (ROW) corridor. The test borings will be drilled to depths of 15 feet or bedrock, whichever occurs first. Samples will be obtained in each test boring at 2.5-foot intervals to 10 feet and at 5-foot intervals thereafter using ASTM standard penetration test equipment and procedures, a modified sampler, or both. The test borings will be logged by a DOWL HKM geotechnical engineer. Beyond 15 feet, footage rates for drilling will apply. Once the investigation has been completed, we will issue copies of the field logs and a sketch of the test boring locations to the COK for their use. Once the laboratory testing has been completed, we will finalize the test boring logs and issue a memo, location map, boring logs, and laboratory test results.

**65% Design Submittal.** In this submittal we envision a total sheet count as follows:

Sheet count (24" x 36")	Estimated Number of Sheets
Cover Sheet	1
Index, Notes, Key Map, Legend, and Abbreviations	1
Survey Control Sheets	1
Demolition Sheets (20-Scale)	2
Typical Sections	1
Road and Drainage Plan and Profile Sheets (20-Scale)	3
Intersection Grading Details	3
Water Plan and Profile Sheets (20-Scale)	3
Sanitary Sewer Plan and Profile Sheets (20-Scale)	3
Signing and Striping Plans (20-Scale)	2
Notes and Details Sheets	5
Total	25

Drawings will be prepared in English Units.

Draft Special Provisions will be prepared based on the COK Standard Specifications (2012 edition).

We will participate in teleconference coordination meetings with your office and make one trip to Kodiak to perform a site visit, verify site conditions, discuss the 65% design submittal, and assist with public involvement activities if needed.

- **95% Design Submittal.** Upon written receipt of the 65% design review comments, we will prepare pre-final construction documents (plans, specifications, and construction estimate) that will be essentially complete, as we understand the project. This will be our final review of the project documents prior to preparing the final construction documents. We will perform an additional site visit following the 95% design submittal.
- **Final Design Submittal.** After review of the 95% submittal, recommended changes will be incorporated into the plan set and we will prepare the final bid documents.

The final submittal will consist of full-size plans. An engineer's construction estimate will be included with this submittal.

- **Traffic Control During Geotechnical Investigation (Time & Materials).** Traffic control will be required to perform the investigation due to ongoing construction on Thorsheim Street. Local flaggers will be used to eliminate mobilization and travel expenses.
- **DEC Permitting (Time & Materials).** DOWL HKM's Environmental Specialists will prepare a Categorical Exclusion (CatEx) document in general accordance with the DEC requirements (18 AAC 76.235), including an analysis of whether the project will have any direct, indirect, or cumulative impacts on the following:
  1. Cultural resource areas;
  2. Endangered or threatened species or their habitat; and
  3. Environmentally important natural areas.

The CatEx will document whether the project is expected to have adverse effects on the quality of the environment, either individually, cumulatively over time, or in conjunction with other federal, state, local, or private actions. Public notice will be provided in a local newspaper, once the CatEx is complete, and a 30-day comment period will be provided. Assuming the analysis supports that there will be no substantial impacts, the final CatEx document will be submitted to the DEC with a request for concurrence that the project is categorically excluded from the environmental review process.

At the 95% Design Submittal DOWL HKM will prepare and submit applications to the DEC for Approval to Construct the proposed water and sewer mains. Separate applications will be needed for the water and sanitary sewer extensions. We will also submit a DEC Approval to Operate application to the DEC at project completion.

- **Bidding Assistance and Construction Support Services (Time & Materials).** Services may include preparing agenda, answering contractor questions, preparing bid tabs, and other services as requested by the COK. We have included a budget amount in this fee proposal for performing these services.

- **Communications.** I will be DOWL HKM's Project Manager and your primary point of contact on all civil engineering matters concerning this project. If you have questions or concerns, please call at any time.
- **Reproduction.** We will prepare three sets of the half size plans, specifications, and engineer's cost estimate for each submittal.

**DELIVERABLE PRODUCTS**

- Memorandum with test boring logs, site map, and soil samples
- Topographic survey base map (Incorporated into the 65% design drawings)
- 65% submittal (Includes specifications, cost estimate, and design drawings)
- 95% submittal (Includes specifications, cost estimate, and design drawings)
- Final design submittal (Includes bid ready documents and drawings)

We are available to begin the soils investigation within 30 days after receipt of a Notice-to-Proceed. A base map can be expected within three weeks of receipt of the survey information. We assume that the bulk of the design will take place during the fall of 2014.

**FEE PROPOSAL**

We propose to furnish the above-described services for a total lump sum of \$99,250, plus Additional Services of \$14,821, for a project budget of \$114,071. This total fee consists of the following components, which is covered in detail on the attached estimates:

Phase Description (Basic Services)

Topographic Survey and Base Map QA/QC .....	\$ 8,490
Geotechnical Investigation .....	\$ 19,401
65% Design Submittal .....	\$ 32,067
95% Design Submittal .....	\$ 21,266
Final Design Documents.....	\$ 18,026

Phase Description (Additional Services)

Traffic Control During Geotechnical Investigation (T&M) .....	\$ 2,800
Department of Environmental Conservation Permitting (T&M).....	\$ 7,011
<u>Bidding Assistance (T&amp;M).....</u>	<u>\$ 5,010</u>
<b>TOTAL .....</b>	<b>\$114,071</b>

A monthly statement will be provided showing the approximate percentage completion of each of these phases. Payment will be expected within 30 days.

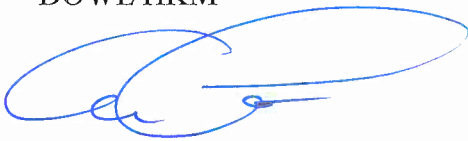


Mr. Mark Kozak, Director Public Works  
City of Kodiak  
July 16, 2014  
Page 5

Services performed by DOWL HKM under this agreement will be conducted in a manner consistent with that level of care and skill ordinarily exercised by members of the profession currently practicing in the same locality under similar conditions. No other representation, express or implied, and no warranty or guarantee is included or intended in this agreement, or in any report, opinion, document, or otherwise.

We trust this provided adequate information for evaluating our proposal. We look forward to working with you on this project and will be happy to answer any additional questions you may have.

Sincerely,  
DOWL HKM

A handwritten signature in blue ink, appearing to read 'Aaron R. Christie', with a large, sweeping flourish above the name.

Aaron R. Christie, P.E.  
Project Manager

D01100.Kozak.ARC.071414.saf

Attachments: As stated

**DOWL HKM  
ESTIMATE FOR PROFESSIONAL SERVICES**

<b>PROJECT:</b>	<b>Aleutian Homes Phase VI Water and Sewer Upgrade</b>	<b>WO#</b>	<b>D71115</b>
		<b>DATE:</b>	<b>7/16/2014</b>
		<b>Prepared by:</b>	<b>CCP/ARC</b>
<b>CLIENT:</b>	<b>City of Kodiak</b>		

<b>Tasks</b>	<b>Basic Services (Lump Sum)</b>	<b>Total Fees</b>
Task 1	Topographic Survey & Base Map QA/QC	\$8,490
Task 2	Geotechnical Exploration and Letter Report	\$19,401
Task 3	65% Design Submittal	\$32,067
Task 4	95% Design Submittal	\$21,266
Task 5	Final Design Submittal	\$18,026
	<i>Subtotal For Basic Services</i>	<b>\$99,250</b>

<b>Tasks</b>	<b>Additional Services (Time &amp; Materials)</b>	<b>Total Fees</b>
Task 6	Traffic Control During Geotechnical Investigation (T&M)	\$2,800
Task 7	DEC Permitting (T&M)	\$7,011
Task 8	Bidding Assistance (T&M)	\$5,010
	<i>Subtotal For Additional Services</i>	<b>\$14,821</b>

**Total Project Fees      \$114,071**

**DOWL HKM**  
**ESTIMATE FOR PROFESSIONAL SERVICES**

<b>PROJECT:</b>	<b>Aleutian Homes Phase VI Water and Sewer Upgrade</b>	WO#	D71115
		DATE:	7/16/2014
		Prepared by	CCP/ARC
<b>CLIENT:</b>	City of Kodiak		

	Labor Category	Survey Manager	Senior Technician	AutoCAD Technician	Contract Manager	Project Manager	Expenses	TOTALS
		A. Stoll			A. Christie	C. Pletnikoff		
	Hourly Rate	\$160.00	\$125.00	\$110.00	\$180.00	\$125.00	10% Markup	
	Task Description							
<b>Task 1</b>	<b>Topographic Survey &amp; Base Map QA/QC</b>							
	Survey Project Management	4						
	Subcontract Management	2						
	QC Review of Subcontractor Services	2	8		1	2		
	Create Basemap		10	24				
	Prepare Survey Control Diagram	1	1	8				
	Assemble deliverable products	1	1	4				
	<i>Subtotal - Hours</i>	10	20	36	1	2		35
	<i>Subtotal - Costs</i>	\$1,600.00	\$2,500.00	\$3,960.00	\$180.00	\$250.00	\$0.00	\$8,490.00

	Labor Category	Contract Manager	Geotechnical Engineer	Field Geologist/ Engineer	AutoCAD Technician	Admin Asst	Expenses	TOTALS
	Hourly Rate	\$180.00	\$165.00	\$100.00	\$110.00	\$75.00		
	Task Description							
<b>Task 2</b>	<b>Geotechnical Exploration and Letter Report (4 - 15' Test Borings)</b>							
	Geotechnical Project Management		1	2				
	Geotechnical Coordination			2				
	Geotechnical Mobilization and Demobilization			6				
	Geotechnical Travel			6				
	Geotechnical Utility Locates			4				
	Geotechnical Memo Preparation		2	6	4	2		
	Geotechnical Engineering		2	8				
	Geotechnical Research			2				
	Test Hole Logging			10				
	<b>Laboratory Testing</b>							
	Visual Clasifn, Moisture Cont, Dry Str. (24@\$13ea)						\$312.00	
	Sieve Analysis (4@\$130ea)						\$520.00	
	Atterberg - Liquid and Plastic Limits (1@\$110ea)						\$110.00	
	<b>Drilling Charges (Subconsultant - Denali Drilling, Ron 7/9/14)</b>							
	Drilling Mob/Demob Charges (includes travel and equipment shipping)						\$5,750.00	
	Drilling Charges (includes, permit, plan, cold patch)						\$4,600.00	
	<b>Reimbursables</b>							
	PVC Pipe @ \$1/foot						\$30.00	
	Parking, Misc						\$15.00	
	Airfare						\$600.00	
	Air Freight						\$150.00	
	Per Diem						\$68.00	
	Car Rental						\$150.00	
	10% Mark-up						\$1,081.30	
	<i>Subtotal - Hours</i>	0	5	46	4	2		57
	<i>Subtotal - Costs</i>	\$0.00	\$825.00	\$4,600.00	\$440.00	\$150.00	\$13,386.30	\$19,401.30

**DOWL HKM**  
**ESTIMATE FOR PROFESSIONAL SERVICES**

<b>PROJECT:</b>	<b>Aleutian Homes Phase VI Water and Sewer Upgrade</b>	WO#	D71115
		DATE:	7/16/2014
		Prepared by	CCP/ARC
<b>CLIENT:</b>	City of Kodiak		

	Labor Category	Contract Manager	Project Manager	Design Engineer	AutoCAD Technician	Admin Asst	Expenses	TOTALS
	Hourly Rate	A. Christie \$180.00	C. Pletnikoff \$125.00	\$95.00	\$110.00	\$75.00	10% Markup	
	Task Description							
<b>Task 3</b>	<b>65% Design Submittal</b>							
	Project Meetings (1 site visit)	2						
	Project Management, Budgeting, Schedule	2	4	2	2			
	65% Design Submittal							
	Cover/Index Sheets		1	2	2			
	Survey Control		1	1	1			
	Typical Sections		2	4	4			
	Demolition Sheets		4	8	8			
	Road and Storm P&P Sheets (1,200')		4	12	24			
	Intersection Grading Sheets		4	12	24			
	Water P&P Sheets (1,200' of water main)		4	12	24			
	Sewer P&P Sheets (1,200' of sewer main)		4	12	24			
	Details		4	2	8			
	Cost Estimate		4	8				
	Special Provisions		2	4		2		
	Evaluate/Limit Private Property Impacts		4	8	8			
	QA/QC Review	4	4	4	10			
	Reimbursable Expenses							
	Long Distance Phone Calls						\$200.00	
	Airfare (Anchorage to Kodiak) -1 person						\$350.00	
	Car Rental - 1 day						\$75.00	
	Per Diem @ \$35 per day						\$35.00	
	O/N Mail						\$60.00	
	<i>Subtotal - Hours</i>	8	46	91	139	2		286
	<i>Subtotal - Costs</i>	\$1,440.00	\$5,750.00	\$8,645.00	\$15,290.00	\$150.00	\$792.00	\$32,067.00

**DOWL HKM**  
**ESTIMATE FOR PROFESSIONAL SERVICES**

<b>PROJECT:</b>	<b>Aleutian Homes Phase VI Water and Sewer Upgrade</b>	WO#	D71115
		DATE:	7/16/2014
		Prepared by	CCP/ARC
<b>CLIENT:</b>	City of Kodiak		

	Labor Category	Contract Manager	Project Manager	Design Engineer	AutoCAD Technician	Admin Asst	Expenses	TOTALS
	Hourly Rate	\$180.00	\$125.00	\$95.00	\$110.00	\$75.00	10% Markup	
	Task Description							
<b>Task 4</b>	<b>95% Design Submittal</b>							
	Project Meetings	2	4	2	2			
	Project Management, Budgeting, Schedule	2	4	2	2			
	95% Design Submittal							
	Cover/Index Sheets		1	1	1			
	Survey Control				1			
	Typical Sections		1	1	1			
	Demolition Sheets		2	4	4			
	Road and Storm P&P Sheets (1,200')		2	4	16			
	Intersection Grading Sheets		2	4	8			
	Water P&P Sheets (1,200' of water main)		2	4	16			
	Sewer P&P Sheets (1,200' of sewer main)		2	4	16			
	Details		1	4	4			
	Cost Estimate		2	4	4			
	Special Provisions		1	4		2		
	Evaluate/Limit Private Property Impacts		2	8	8			
	QA/QC Review	2	4	4	4			
	Respond to Review Comments	2	6	6				
	Reimbursable Expenses							
	Long Distance Phone Calls						\$200.00	
	O/N Mail						\$60.00	
	<i>Subtotal - Hours</i>	8	36	56	87	2		189
	<i>Subtotal - Costs</i>	\$1,440.00	\$4,500.00	\$5,320.00	\$9,570.00	\$150.00	\$286.00	\$21,266.00

	Labor Category	Contract Manager	Project Manager	Design Engineer	AutoCAD Technician	Admin Asst	Expenses	TOTALS
	Hourly Rate	\$180.00	\$125.00	\$95.00	\$110.00	\$75.00	10% Markup	
	Task Description							
<b>Task 5</b>	<b>Final Design Submittal</b>							
	Project Meetings	2	4	2	2			
	Project Management, Budgeting, Schedule	2	4	2	2			
	Final Design Submittal							
	Cover/Index Sheets		1	1	1			
	Survey Control				1			
	Typical Sections		1	1	1			
	Demolition Sheets		1	2	2			
	Road and Storm P&P Sheets (1,200')		2	4	12			
	Intersection Grading Sheets		1	2	4			
	Water P&P Sheets (1,200' of water main)		2	4	12			
	Sewer P&P Sheets (1,200' of sewer main)		2	4	12			
	Details		1	2	2			
	Cost Estimate		2	4	2			
	Special Provisions		1	4		2		
	Evaluate/Limit Private Property Impacts		2	8	8			
	QA/QC Review	2	4	4	8			
	Respond to Review Comments	2	4	4				
	Reimbursable Expenses							
	Long Distance Phone Calls						\$200.00	
	O/N Mail						\$60.00	
	<i>Subtotal - Hours</i>	8	32	48	69	2		159
	<i>Subtotal - Costs</i>	\$1,440.00	\$4,000.00	\$4,560.00	\$7,590.00	\$150.00	\$286.00	\$18,026.00

**DOWL HKM**  
**ESTIMATE FOR PROFESSIONAL SERVICES**

<b>PROJECT:</b> Aleutian Homes Phase VI Water and Sewer Upgrade	WO#	D71115
	DATE:	7/16/2014
	Prepared by	CCP/ARC
<b>CLIENT:</b> City of Kodiak		

	Labor Category	Field Geologist/Engineer	Flagger Supervisor	Flagger	Flagger Supervisor	Flagger	Expenses	TOTALS
	Hourly Rate	DOWL HKM \$100.00	Regular \$93.50	Regular \$82.50	Overtime \$121.00	Overtime \$104.50	10% Markup	
	Task Description							
<b>Task 6</b>	<b>Traffic Control During Geotechnical Investigation (T&amp;M)</b>							
	Traffic Control Subconsultant						\$2,800.00	
	<i>Subtotal - Hours</i>	0	0	0	0	0		0
	<i>Subtotal - Costs</i>	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$2,800.00	\$2,800.00

	Labor Category	Contract Manager	Project Manager	Design Engineer	AutoCAD Technician	Admin Asst	Expenses	TOTALS
	Hourly Rate	A. Christie \$180.00	C. Pletnikoff \$125.00	\$95.00	\$110.00	\$75.00		
	Task Description							
<b>Task 7</b>	<b>DEC Permitting (T&amp;M)</b>							
	Approval to Construct	1	2	4	2	2		
	Interim Approval to Operate		1	1		2		
	Approval to Operate	1	2		2	1		
	Categorical Exclusion Checklist and Request							
	Project Meetings	1	2	1				
	Project Management, Budgeting, Schedule		1					
	CE Checklist							
	Research		1					
	Agency Coordination		1	1				
	QA/QC Review							
	Document Formulation & Submittal		1	1	8	12		
	Post-Submittal Coordination		2	1	6	6		
	Reimbursable Expenses							
	Long Distance Phone Calls						\$200.00	
	O/N Mail						\$60.00	
	<i>Subtotal - Hours</i>	3	13	9	18	23		66
	<i>Subtotal - Costs</i>	\$540.00	\$1,625.00	\$855.00	\$1,980.00	\$1,725.00	\$286.00	\$7,011.00

	Labor Category	Contract Manager	Project Manager	Design Engineer	AutoCAD Technician	Admin Asst	Expenses	TOTALS
	Hourly Rate	A. Christie \$180.00	C. Pletnikoff \$125.00	\$95.00	\$110.00	\$75.00		
	Task Description							
<b>Task 8</b>	<b>Bidding Assistance (T&amp;M)</b>							
	Project Meetings	2	4	2				
	Review Bid Tabs		8					
	Respond to Contractor Questions	2	16			8		
	<i>Subtotal - Hours</i>	4	28	2	0	8		42
	<i>Subtotal - Costs</i>	\$720.00	\$3,500.00	\$190.00	\$0.00	\$600.00	\$0.00	\$5,010.00

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**MEMORANDUM TO COUNCIL**

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**To:** Mayor Branson and City Councilmembers  
**From:** Aimée Kniazowski, City Manager *AK*  
**Thru:** Mark Kozak, Public Works Director *MK*  
**Date:** August 28, 2014

**Agenda Item: V. j. Authorization of a Trident Basin Fuel Facility and Pipeline Easement Agreement with Redemption, Incorporated d/b/a Island Air Service**

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**SUMMARY:** Island Air has leased two parcels of land at the Trident Basin Float Plane facility since the summer of 2011. The smaller parcel next to the top of Ramp B (center float) is used for the placement of a company aircraft fueling tank. The larger parcel is used for a temporary small structure for the company's flight crew with plans to build a larger office complex in the future. Staff recommends Council approve the renewal of the attached three-year lease and pipeline easement with Redemption d/b/a Island Air Service.

**PREVIOUS COUNCIL ACTION:** In previous years Council has approved leases to other air taxi services for both office buildings and fuel facilities at Trident Basin.

**DISCUSSION:** Bob Stanford of Island Air initiated a request to lease property at Trident Basin Float Plane Facility in August 2010. It took time to work through the survey and legal descriptions to prepare the lease documents. Mark Kozak worked with Bob Stanford and Horizon Survey to put the original lease request together. Council approved that three-year lease with Island Air Service in July 2011.

The smaller area is a 10 foot by 10 foot section just southwest of float ramp B. This lease begins 1 foot away from an existing small fuel shed. Because of building code and fire code requirements, any building would need to be separated from this fuel tank by a minimum of 25 feet. The area between the fuel and building site can still be used for parking as it is now. The larger area lease begins 25 feet southwest of the above fuel lease area and adjoins the northeastern edge of the existing Andrew Airways lease. The building lease site is approximately 2,539 square feet. The existing lease expired in July of this year and staff discussed the following terms for a three year renewal:

Year 1: \$ 8,436.84  
Year 2: \$ 8,647.76 (102.5% of Year 1 rate)  
Year 3: \$ 8,858.68 (105.0% of Year 1 rate)  
\$25,943.28 Total revenue



**ALTERNATIVES:**

- 1) Approve the lease renewal and pipeline easement with Island Air as identified in the attached lease and drawing (Attachment A), which is staff's recommendation, because ongoing leases at the City's airports are supported by Council and enhance revenues for the airports.
- 2) Do not authorize the lease. This is not recommended, because the goal of the Trident Basin Float Plane Facility is to support stability and future growth of the facility.

**FINANCIAL IMPLICATIONS:** The revenues from the lease will improve revenues in the Trident Basin Airport Enterprise Fund.

**LEGAL:** The lease proposal was discussed with the City Attorney, and he drafted the attached lease in 2011. No changes have been made, and this lease can be made by motion rather than ordinance because the term is for less than five years and the revenue is less than \$30,000.

**STAFF RECOMMENDATION:** Staff recommends approval of the renewal of the attached upland lease and fuel easement at Trident Basin to Island Air Service as described in the attach drawing and lease documents for an additional three years.

**CITY MANAGER'S COMMENTS:** Island Air wishes to renew their lease of uplands and a fuel easement with the City at Trident Basin where they have been doing business since 2011. They have worked with staff and want to renew their agreement for another three years. I support staff's recommendation. Island Air has been a good tenant, and I believe the terms of this agreement continue to benefit both the City and Island Air. Therefore, I recommend Council approve the lease and authorize me to complete the documents for the City.

**ATTACHMENTS:**

- Attachment A: Lease Agreement and location of current leased area site map
- Attachment B: Island Air email requesting renewal of the lease

**PROPOSED MOTION:**

Move to authorize Trident Basin Fuel Facility and Pipeline Easement Agreement No. 216595 with Redemption, Incorporated, d/b/a Island Air Service from September 1, 2014, through August 31, 2017, and authorize the City Manager to execute the documents on behalf of the City.

**LEASE AGREEMENT NO. 216595****ISLAND AIR SERVICE FACILITY**

THIS LEASE AGREEMENT, made this 1st day of September 2014, by and between the CITY OF KODIAK, an Alaska municipal corporation ("Lessor"), whose address is 710 Mill Bay Road, Kodiak, Alaska 99615, and REDEMPTION, INCORPORATED d/b/a Island Air Service ("Lessee"), whose address is P.O. Box 125, Kodiak, Alaska 99625, provides as follows:

**1. Premises.**

A. Upon the terms and conditions herein set forth and subject to the prompt payment and performance by Lessee of each and every sum and other obligation hereinafter referred to, the Lessor does hereby lease, let, and demise to the Lessee, and the Lessee does hereby lease from the Lessor that certain property located within the Kodiak Recording District, State of Alaska:

(i) Of a parcel of land on the easterly shore of Near Island, in the City of Kodiak in the area known as Trident Basin. Containing approximately 2,539 square feet, identified as Lot 3 on Attachment "A," and described as follows:

Beginning at a monument marked TDB-121 Reset, from which a monument marked TDB-119 bears South 22° 41' 06" West of the point thence South 25° 27' 10" West 353.23 feet to the TRUE POINT of BEGINNING of the parcel to be described:

Thence, South 25° 27' 08" West a distance of 72.55 feet;

Thence, South 64° 32' 52" East a distance of 35.00 feet;

Thence, North 25° 27' 08" East a distance of 72.55 feet;

Thence, North 64° 32' 52" West a distance of 35.00 feet to the TRUE POINT of BEGINNING

(ii) Of a parcel of land on the easterly shore of Near Island, in the City of Kodiak in the area known as Trident Basin. Containing approximately 100 square feet, identified as "proposed fuel tank area" on Attachment "A" and described as follows:

Beginning at a monument marked TDB-121 Reset; thence South 23° 23' 37" West 318.54 feet to the TRUE POINT of BEGINNING of the parcel as described:

Thence, South 25° 27' 08" West a distance of 10.00 feet;

Thence, South 64° 32' 52" East a distance of 10.00 feet;

Thence, North 25° 27' 08" East a distance of 10.00 feet;

Thence, North 64° 32' 52" West a distance of 10.00 feet to the TRUE POINT of BEGINNING.

These leased premises are hereinafter referred to as the "Site" and are subject to easements, covenants, and restrictions of record.

**2. Term.** This Lease shall continue in effect for a period of three years from September 1, 2014, through August 31, 2017, provided, however, that either party shall have the right to cancel this Lease upon thirty (30) days written notice in advance of the date of such cancellation, such notice to be by certified mail sent to the usual mailing address of the party to be notified.

**3. Rental.** Lessee agrees to pay as and for rent the sum of \$8,436.84 annually in monthly installments which fall due on the first of each calendar month of the Lease term, and according to the following schedule for the remaining two years.

YEAR	RENTAL
2	102.5% of Year 1
3	105.0% of Year 1

If a monthly installment is not paid by the fifth of the month in which it becomes due, a penalty of \$30 will be added to the rental amount; and, in addition, simple interest shall accrue and be added to the rental amount at the rate of 12% per annum from the due date until paid.

**4. Conditions of Lease.** The Site shall be used solely as an aviation facility.

**5. Availability of Service.** Lessee shall operate its aviation facility at the Site as a first class business of high quality and public service.

**6. Parties Interested Herein.** Nothing in this Lease, express or implied, is intended or shall be construed to give to any person, other than Lessor, any right, remedy or claim under or by reason of this Lease.

**7. Improvements.** Lessor shall have the right to make additions, alterations, or improvements to the Site which will not impede Lessee's access to or use of the Site. Lessee shall have the right to erect or construct a suitable building and/or associated structure(s) necessary for its aviation facility. Any improvements constructed by Lessee shall be consistent with the limited use of the Site authorized by this Lease and shall be constructed at Lessee's expense. Upon termination of this Lease, such improvements shall become the property of Lessor or, at Lessee's option, removed by Lessee at its sole expense.

**8. Maintenance.** Except as otherwise specifically provided herein, the Lessee shall, at all times and at its sole expense, keep and maintain the Site in good repair, and in neat, orderly, and slightly condition. Lessee shall not cause or permit any litter, debris, or refuse to be accumulated or stored upon the Site and shall promptly remove all such materials without cost to Lessor.

**9. Insurance/Indemnification.** The Lessee shall not commence with use of the city's land until the Lessee has obtained the insurance required under this contract. All coverage shall be with insurance carriers licensed and admitted to do business in the State of Alaska. All coverage shall be with carriers acceptable to the City of Kodiak. The required lines and limits of insurance are as follows:

A. General Liability Insurance: The Lessee shall procure and maintain during the life of this agreement, general liability insurance on an "occurrence basis" with limits of liability not less than \$1,000,000 per occurrence and/or aggregate combined single limit, personal injury, bodily injury and property damage.

B. Motor Vehicle Liability Insurance: The Lessee shall procure and maintain during the life of this agreement, motor vehicle liability insurance, including all applicable no fault coverages, with limits of liability of not less than \$1,000,000 per occurrence combined single limit.

C. Workers Compensation Insurance: The Lessee shall procure and maintain during the life of this contract, workers compensation insurance, including employer's liability coverage, in accordance with all applicable statutes of the State of Alaska.

D. Pollution Liability Insurance: The Lessee shall procure and maintain during the life of this contract, pollution liability insurance, on an "occurrence basis" with limits of liability not less than \$1,000,000 per occurrence.

E. Additional Insured: All insurance policies, as described above, shall include an endorsement stating the following shall be Additional Insured: The City of Kodiak, its elected and appointed officials, all employees and volunteers, all boards, commissions and/or authorities and board members, including employees and volunteers thereof.

This coverage shall be primary to the Additional Insured, and not contributing with any other insurance or similar protection available to the Additional Insured, whether the other available coverage be primary, contributing or excess.

Cancellation Notice: All insurance policies, as described above, shall include an endorsement stating the following: "Sixty (60) days advance written notice of cancellation, non-renewal, reduction and/or material change shall be sent to: City of Kodiak.

## 10. Environmental.

A. For purposes of this section:

(i) "Environmental Requirement" shall mean any law, regulation, or legal requirement relating to health, safety or the environment, now in effect or hereinafter enacted, including without limitation the Comprehensive Environmental Response Compensation and Liability Act (CERCLA), the Toxic Substances Control Act (TSCA), the Federal Insecticide Fungicide and Rodenticide Act (FIFRA), the Resource Conservation and Recovery Act (RCRA), the Clean Air Act (CAA) and the Clean Water Act (CWA), the Occupational Safety and Health Act (OSHA) and all similar state and local laws, rules, regulations, and guidance, now in existence or hereinafter enacted, as each such law, rule, or regulation may be amended from time to time.

(ii) "Environmental Hazard" shall mean Hazardous Materials (as defined hereinafter), or the storage, handling, production, disposal, treatment, or release thereof.

(iii) "Hazardous Material" shall mean

(a) any hazardous waste, any extremely hazardous waste, or any restricted hazardous waste, or words of similar import, as defined in the Resource Conservation and Recovery Act (42 USC §6901 *et seq.*)

(b) any hazardous substances as defined in the Comprehensive Environmental Response, Compensation and Liability Act (42 USC §9601 *et seq.*)

(c) any toxic substances as defined in the Toxic Substances Control Act (15 USC §2601 *et seq.*)

(d) any pollutant as defined in the Clean Water Act (33 USC §1251 *et seq.*)

(e) gasoline, petroleum, or other hydrocarbon products or by-products

(f) asbestos

(g) any other materials, substances, or wastes subject to environmental regulation under any applicable federal, state, or local law, regulation, or ordinance now or hereafter in effect

(iv) "Environmental Liabilities" shall mean any liability, penalties, fines, forfeitures, demands, damages, losses, claims, causes of action, suits, judgments, and costs and expenses incidental thereto (including cost of defense, settlement, reasonable

attorneys' fees, reasonable consultant fees, and reasonable expert fees), arising from or based on (I) environmental contamination or the threat of environmental contamination or (II) noncompliance, or violation of, any Environmental Requirement and shall include without limitation liability arising from

(a) any governmental action, order, directive, administrative proceeding, or ruling

(b) personal or bodily injuries (including death) or damages to any property (including loss of use) or natural resources

(c) clean-up, remediation, investigation, monitoring, or other response action.

(v) "Environmental Release" shall mean any release, spill, leak, discharge, injection, disposal, or emission of any Hazardous materials into the environment.

B. At all times during the term of the Lease, Lessee shall conduct its activities at the Site, and shall ensure that any invitee of Lessee conducts its activities at the Site in strict compliance with all applicable Environmental Requirements.

C. Notwithstanding any other provision of this Lease, Lessee agrees to indemnify and hold harmless Lessor, Lessor's successors and assigns, and Lessor's present and future officers, directors, employees, and agents, (collectively "Lessor Indemnitees") from and against any and all Environmental Liabilities which Lessor or any or all of the Lessor Indemnitees may hereafter suffer, incur, be responsible for, or disburse as a result of any Environmental Hazard at the Site to the extent caused by or attributable to Lessee or Lessee's activities, including any Environmental Hazard at the Site to the extent caused by or attributable to any invitee of Lessee or by the activities of any invitee of Lessee.

D. The provisions of this section shall survive termination of this Lease.

**11. Utility Charges and Taxes.** All utility charges shall be borne and paid for by Lessee, together with all personal or real property taxes or assessments that may be levied against the Lessee by reasons of its occupancy of the Site or its rights hereunder.

**12. Operation of Equipment.** In installing, operating, or maintaining any equipment on the Site and in its general management of the Site, the Lessee will act in accordance with applicable laws and regulations and will not do, attempt, or permit any acts in connection with this Lease which could be construed as a violation of law.

**13. Condition of Site.** The Lessee takes the Site in its present condition and the Lessor shall have no responsibility for its condition, or for any damage suffered by the Lessee or any other person due to such conditions.

**14. Assignment and Subleasing.** Lessee may not sublease the premises, either in whole or in any portion, without first obtaining the approval of the City Council in writing. Lessee may not assign, mortgage, pledge, or otherwise encumber all or any portion of this Lease or the Site without first obtaining the approval of the City Council. Any assignment, pledge, or encumbrance approved by the Council shall be subject to all terms and provisions of this Lease. Any assignment, pledge, or encumbrance executed without the proper approval of the Council shall be void and of no force and effect.

**15. Default and Re-Entry.** If Lessee fails to cure any default of the conditions of this Lease within thirty (30) days after written notice thereof by Lessor, or in the event insolvency proceedings should be instituted by or against Lessee, then Lessor may terminate this Lease as of

such date and re-enter the Site and remove all property therefrom and Lessee shall remain liable for the payment of rental to the extent provided by law.

**16. Applicable Law.** Lessee shall, at all times, in its use and occupancy of the premises and in the conduct of its operations thereon, comply with all applicable federal, state, and local laws, ordinances, and regulations.

IN WITNESS WHEREOF, the parties executed this instrument the day and month first above written.

LESSOR:  
CITY OF KODIAK

LESSEE:  
REDEMPTION, INCORPORATED d/b/a  
Island Air Service

\_\_\_\_\_  
Aimée Kniazowski, City Manager

\_\_\_\_\_  
Robert G. Stanford, President

Attest:

Witness:

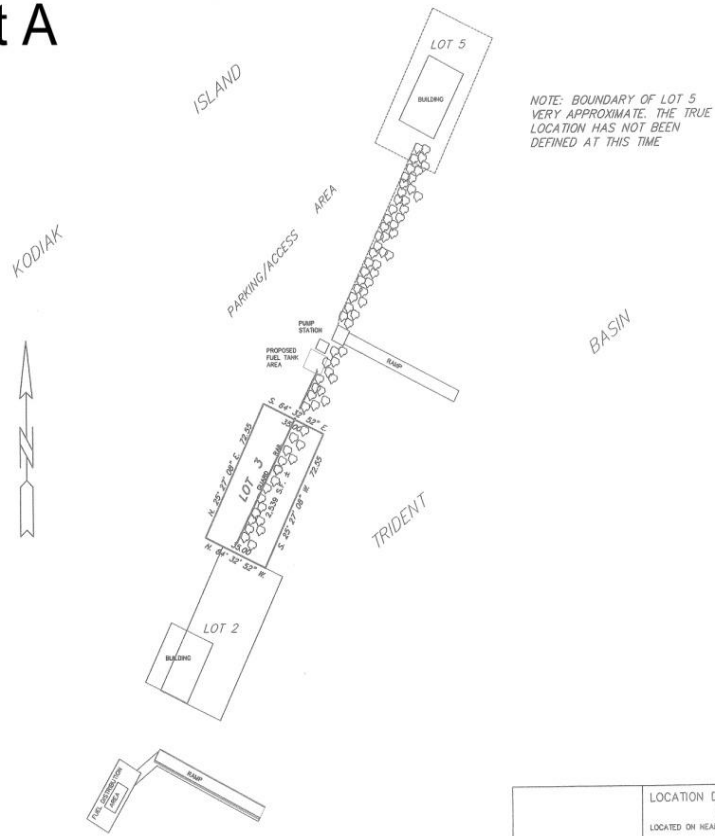
\_\_\_\_\_  
Debra L. Marlar, City Clerk

\_\_\_\_\_

Date \_\_\_\_\_

Date \_\_\_\_\_

# Attachment A



LOCATION DIAGRAM PROPOSED LEASE		
LOT 3		
LOCATED ON NEAR ISLAND AT THE FLOAT PLANE FACILITY ON TRIDENT BASIN		
FOR: MR. BOB SANFORD ISLAND AIR KODIAK, ALASKA		
HORIZON LAND SURVEYING INC. P.O. BOX 1945 KODIAK, ALASKA 99615 (907) 486-8506	SCALE: 1" = 30'	DATE: JULY 15th, 2011
	DRAWN BY: L.G.B.	SHEET: 1 OF 1

**Marlar, Debra**

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**From:** Marlar, Debra  
**Sent:** Tuesday, August 19, 2014 10:57 AM  
**To:** Kozak, Mark  
**Cc:** Kniazowski, Aimee  
**Subject:** FW: Island Air Office Lease Trident Basin

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**From:** BOB Stanford [<mailto:islandair@alaska.com>]  
**Sent:** Friday, August 01, 2014 3:34 PM  
**To:** Marlar, Debra  
**Subject:** Island Air Office Lease Trident Basin

City of Kodiak

Katherine,

We would like to renew our office lease space at Trident Basin.

Bob Stanford  
Island Air Service



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## MEMORANDUM TO COUNCIL

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**To:** Mayor Branson and City Council members  
**From:** Aimée Kniazowski, City Manager  
**Thru:** Ronda Wallace, Chief of Police  
**Date:** August 28, 2014

**Agenda Item: V. k. Authorization to Purchase Vehicle for Kodiak Police Department**

**SUMMARY:** This action authorizes the replacement of one older, high mileage Animal Control truck, which was recommended for replacement in FY2015 with a current model all wheel drive (AWD) police utility vehicle. The existing Animal Control truck has been in service well beyond its useful life and was evaluated for replacement. The replacement is consistent with the Council's Vehicle Replacement Policy, and the need to replace the truck was discussed with Council during the FY2015 budget process. Staff recommends Council authorize the City to attach to the State of Alaska contract with Kendall Ford to purchase a new Animal Control vehicle for \$26,229.

**PREVIOUS COUNCIL ACTION:**

- The replacement meets the evaluation and purchasing requirements established by the City's Vehicle Replacement Policy adopted by Resolution No. 2011-07 on March 31, 2011.
- The Council was briefed on the status of the Animal Control truck, as well as the recommendation to replace the truck at the May 10, 2014, budget presentation meeting.
- Council approved funds for the replacement of the Animal Control truck when the FY2015 budget was adopted.

**DISCUSSION:** The Kodiak Police Department (KPD) maintains a fleet of nine (9) marked police vehicles, one (1) Animal Control vehicle and one (1) Community Service van. These vehicles are equipped with safety equipment, radios, lights, sirens, provide transportation for Animal Control and police services, and are authorized for emergency response. Vehicle #15 (Animal Control) is a 2003 Ford F150 special service vehicle. This vehicle has in excess 114,513 miles and has been in service with the department's fleet, as a shared Animal Control/Emergency Response vehicle, since it was purchased in 2003. As a shared Animal Control/Emergency Response vehicle, it was assigned to Animal Control officers who utilized it for routine and emergency patrol related duties. Based upon the programmed hours of the Animal Control officer, staff estimates unit #15 accumulated a minimum of 80 engine hours per month since 2003. The combined effects of age and mileage have contributed to issues ranging from corrosion to mechanical problems.

Various units of the KPD fleet are evaluated by the Public Works Shop Supervisor (PWSS) annually. The PWSS performs an evaluation of vehicles using industry standards and criteria consistent with the City's vehicle replacement policy and makes recommendations about which vehicles can remain in service and which should be removed from service. The evaluation includes comprehensive physical inspection of the body, vehicle electronics, engine, transmission, frame and suspension. The PWSS also evaluates the economic benefit of replacing a vehicle or replacing or repairing damage to a vehicle.

The evaluation of Vehicle #15 (Animal Control), a 2003 Ford F150 special service vehicle with over 114,513 miles, revealed the vehicle was suffering from the combined effects of age, mileage, engine hours, and Kodiak's harsh environment (see attached photos). This vehicle received regular and emergency maintenance throughout its service life.

An evaluation conducted by the City PWMSS called for the replacement of this vehicle in FY2015 as a cost effective means for KPD to maintain a safe and mechanically reliable vehicle within its fleet.

The State of Alaska Department of Transportation and Public Facilities (DOT & PF), State Equipment Fleet maintains contracts with several light duty vehicle vendors in Alaska. Each vendor supplies pricing for basic vehicles with additional cost for added options. Cooperative purchasing is authorized on these contracts for qualified political subdivisions. The City of Kodiak is a qualified political subdivision and Kodiak City Code (KCC) 3.12.070 (c) permits attachment to this contract.

Staff researched replacement options and recommends Council authorize the City to attach to the State of Alaska Light Duty Contract to purchase one current model year Ford AWD police utility for \$26,229 through Kendall Ford.

**ALTERNATIVES:**

- 1) Authorize the City to attach to the State of Alaska bid to purchase a vehicle. This is staff's recommendation, as it will enable KPD to replace its Animal Control vehicle as planned.
- 2) Do not authorize this transaction. This alternative is not recommended, because it is not consistent with the City's Vehicle Replacement Policy, would impact Animal Control operations, and be contrary to the interest of the City.

**FINANCIAL IMPLICATIONS:** There is sufficient funding in the FY2015 KPD budget to cover the purchase cost of this vehicle and attaching to the State of Alaska's bid is in the City's best interest.

**LEGAL:** Kodiak City Code section 3.12.070(c) allows the City to purchase items with other units of government that have established the lowest responsible bidder and where the equipment meets or exceeds the City's needs or specifications. This provision permits the City to attach to the State of Alaska's bid and purchase the police vehicles through the State of Alaska contract.

**STAFF RECOMMENDATION:** Staff is recommending the Council authorize attachment to the State of Alaska contract to purchase this vehicle for \$26,229, with funds coming from the FY2015 Kodiak Police Department Operational Budget, Animal Control Sub-Department, Machinery and Equipment Greater than \$5000 line item.

**CITY MANAGER'S COMMENTS:** Our vehicles, especially those at KPD, are heavily used. This replacement vehicle will serve as the Animal Control vehicle and be available for emergency response use as well. KPD vehicle #15 has over 114,000 miles on it and is in poor condition. It was identified for replacement in FY2015 and was included in the FY2015 budget presentation and final budget document. I support staff's recommendation that we replace the old vehicle with a new Ford AWD utility vehicle and do so by attaching to the State's bid with Kendall Ford.

**ATTACHMENTS:**

Attachment A: State of Alaska DOT contract pricing schedule

Attachment B: CIP nomination forms for replacement of KPD Animal Control vehicle, including photos form replacement evaluation

**PROPOSED MOTION:**

Move to authorize the City to attach to the State of Alaska Light Duty Contract with Kendall Ford to purchase one current model year Ford all wheel drive police utility vehicle for \$26,229, per Kodiak City Code 3.12.070(c), with funds coming from the FY2015 Kodiak Police Department Operation Budget, Animal Control Sub-Department Machinery and Equipment Greater than \$5000 line item and authorize the City Manager to execute the purchasing documents.

## Price Schedule

## Kendall Ford SOA Contract for AWD Police Utility Vehicle

<u>Quantity</u>	<u>Description</u>	<u>Price</u>	<u>Total</u>
1	Ford All Wheel Drive Police Utility Vehicle, White Fuel Economy	\$26,047.00	
2	Spot Lamp, Driver Only (Package 51Y)	\$ 182.00	
Total:			<u>\$ 26,229.00</u>

**CITY OF KODIAK  
 FIVE-YEAR CAPITAL IMPROVEMENT PROGRAM  
 VEHICLE / EQUIPMENT **REPLACEMENT** NOMINATION  
 1 of 2 pages**

Costs are estimated at (check one)

- Less than \$10,000
- Greater than \$10,000

The Following Signatures are required:

Vehicle Maint. Supervisor \_\_\_\_\_  
 Department Head: \_\_\_\_\_  
 City Manger: \_\_\_\_\_

This purchase is requested to be funded in Fiscal Year	Fiscal Year : 2015
Prepared by: Ronda Wallace	Date: 03/27/2014
Department: Police	
Nomination Name: Replacement Vehicle Alpha	

REQUEST NEW UNIT DESCRIPTION (ATTACH PRICE QUOTES, DESCRIPTIONS, AND PHOTOS FROM THREE VENDORS)	
Unit ID Number	#15
Year – Make - Model	2003 Ford F150
Engine Size – Fuel Type	
Current Mileage	114,513
Body Condition	
License Plate No.	XXY743
VIN or Serial Number	1FTRF18243NB61489

**FUNCTION: WRITE A BRIEF SUMMARY OF HOW THIS UNIT HAS BEEN USED AND HOW OFTEN.**

The Kodiak Police Department maintains a fleet of nine (9) marked police vehicles, one (1) Animal Control Vehicle and one (1) Community Services Van. These vehicles are equipped with safety equipment, radios, lights, sirens and provide transportation for Animal Control and police services and are authorized for emergency response. Vehicle #15 is a 2003 Ford F150 Special Service Vehicle. This vehicle has in excess 114,513 miles, and has been in service with the departments fleet as a shared Animal Control/Emergency Response vehicle since it was purchased in 2003. As a shared Animal Control/Emergency Response vehicle it was assigned to multiple (but one at a time) Animal Control officers who utilized it for routine and emergency patrol related duties. Based upon the programmed hours of the Animal Control officer, we estimate unit #15 accumulated a minimum of 80 engine hours per month since 2003.



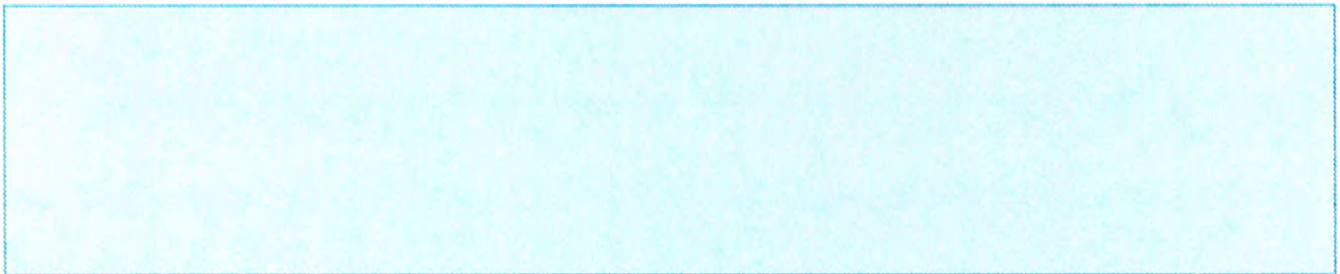
**JUSTIFICATION: WRITE A BRIEF SUMMARY OF WHY THIS UNTI IS BEING REPLACED. INCLUDE ITEMS SUCH AS HISTORY, CONDITION ASSESSMENT, COSTS, USES, PUBLIC WORKS EVALUATION REPORT, ETC.**

**Overall Mechanical Condition:**

Vehicle #15 has over 114,513 miles of Kodiak road miles. The vehicle is used primarily as an Animal Control vehicle and has substituted as a Community Services vehicle when there was not one; and when the current one was down for maintenance. Because Vehicle #15 is primarily an Animal Control vehicle, it has made multiple trips to both ends of the Kodiak Road System as part of our contract with the Kodiak Island Borough Animal Control contract.

**Maintenance Cost:**

Currently maintenance records are incomplete only dating as far back as 02/26/2010, for a cost of \$1,958.00 man



Attachment B

hours and \$1,839.69 parts price.

Out of Service Time:

This vehicle is presently in service, but its overall mechanical condition, age, engine miles and hours is of concern and makes the reliability questionable.

Parts Availability:

Parts are still available for this model year.

Associated Safety Concerns:

The overall mechanical condition coupled with the high mileage, make it unsuitable for continued use as an Animal Control Services vehicle.

Alternative Vehicles:

Staff continues to evaluate the feasibility of deploying alternative vehicles. Staff currently relies more on the Community Services van and having two employees who's shifts overlap, this is not the best solution.

CITY OF KODIAK  
FIVE-YEAR CAPITAL IMPROVEMENT PROGRAM  
VEHICLE / EQUIPMENT **REPLACEMENT** NOMINATION  
2 of 2 pages

Proposed Dispositions of Replaced Unit as Determined by Vehicle Maintenance Division (check one):

- To General Fleet
- To Surplus Sale

REQUEST NEW UNIT DESCRIPTION (ATTACH PRICE QUOTES, DESCRIPTIONS, AND PHOTOS FROM THREE VENDORS)	
Year – Make - Model	Current or new model year Ford Explorer Police SUV
Engine Size – Fuel Type	3.7L Ti-VCT V6 FFV 304HP/279 lb-ft Torque engine
Number of Doors	Four
Seating Capacity	Four
Specialty Items	Partial Police Package
Color , Police Package, Tires, Transmission, Etc.	Partial Police Package

REQUESTED NEW UNIT COSTS	
Basic Equipment Costs	\$26,229 (Negotiated Contract price with State of Alaska, Valid until 11/2014)
Specialty Equipment Cost	\$5,975



<b>Shipping Costs</b>	<b>\$650</b>
<b>Total Costs</b>	<b>\$32,854 (Estimate)</b>

**OPERATIONAL COSTS:**

Vehicle #15 has 114,513 miles on the odometer. This vehicle has been used as a shared Animal Control/Emergency Response patrol vehicle since it entered service with the police department in 2003. Driving periods for this vehicle were 8 consecutive hours of use in a single operational period 5 days a week.

This vehicle received regular and emergency maintenance throughout its service life. Still, at some point the combination of vehicle age, miles and engine hours, couple with Kodiak's harsh environment have contributed to ongoing maintenance issues. A cost benefit analysis supports replacement of this vehicle in FY15.

An evaluation conducted by the City Public Works Maintenance Shop Supervisor calls for the replacement of this vehicle in FY15 as a cost effective means for the police department to maintain a safe and mechanically reliable vehicle within its fleet.

While no longer suitable for police use, this vehicle may still have value for another entity that does not have the same operational requirements as the police department. Public works fleet mechanic, Jerry Pherson, suggest the vehicle be rotated to Parks and Recreation to replace a decrepit Dodge Ram they are using.









