

City of Kodiak Regular Council Meeting Agenda for May 14, 2015
7:30 p.m., at 710 Mill Bay Road, Assembly Chambers (Room 232)

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

- II. Previous Minutes**
 - Approval of Minutes of the April 9, 2015, and April 23, 2015, Regular Council Meetings1

- III. Persons to Be Heard**
 - a. Presentation of Government Finance Officers Association Budget Award10
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 - c. Proclamation: Declaring Peace Officers Memorial Day and Police Week14
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 - e. Proclamation: Declaring Older Americans Month18
 - f. Public Comments (limited to 3 minutes) (486-3231)

- IV. Unfinished Business**
 - a. None

- V. New Business**
 - a. First Reading, Ordinance No. 1332, Authorizing a Lease of Space in the Pier I Building to Kodiak Area Chamber of Commerce, Inc.22
 - b. First Reading, Ordinance No. 1333, Authorizing a Lease of the Head Start Building to Rural Alaska Community Action Program, Inc, d/b/a Kodiak Head Start.....36
 - c. Resolution No. 2015–14, Authorizing the Issuance of a Permit to the Kodiak Garden Club for Use of Public Property for its Annual Plant Sale48
 - d. Resolution No. 2015–15, Authorizing the Issuance of a Permit to the Filipino-American Association of Kodiak for the Use of Public Property for a Dance to Fund the Filipino-American Basketball Team’s Travel Expenses52
 - e. Authorization of ABC Board Restaurant Designation Permit and Transfer of Ownership From Kodiak Harbor Convention Center to Island Hotels, LLC 56
 - f. Authorization of Purchase/Replacement of HVAC Controller at Wastewater Treatment Plant.70
 - g. Authorization of Extension of the Professional Services Contract for Legal Services With BIRCH, HORTON, BITTNER, and CHEROT 80

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

- VII. Mayor’s Comments**

- VIII. Council Comments**

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

- X. Adjournment**

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<p>DRAFT</p>

**MINUTES OF THE REGULAR COUNCIL MEETING
OF THE CITY OF KODIAK
HELD THURSDAY, APRIL 9, 2015
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 Randall C. Bishop, Charles E. Davidson, Terry J. Haines, Gabriel T. Saravia, and John B. Whiddon were present and constituted a quorum. Councilmember Richard H. Walker was absent. City Clerk Debra L. Marlar, Public Works Director Mark Kozak, Parks and Recreation Director Corey Gronn, interim Finance Director Karl Swanson, Engineer Glenn Melvin, 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 March 17 and March 19, 2015, special meetings as presented.

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

III. PERSONS TO BE HEARD

a. Proclamation: Week of the Young Child

Councilmember Bishop read the proclamation, which encourages all citizens to work to make a good investment in early childhood education.

Velma Vining, Child Development Services program, USCG and Patricia Studley, KANA ILP accepted the proclamation. Ms. Vining thanked Mayor Branson for acknowledging the week of the young child and announced the annual fair on April 11 at the Kodiak Baptist Mission and another event on April 15 at the Kodiak Public Library. She encouraged the public to get involved in these activities.

b. Proclamation: Month of the Military Child

Councilmember Whiddon read the proclamation, which encourages all citizens to show appreciation and understanding to the military children in our communities, and recognize their commitment, courage, sacrifice, and continued resilience.

The Noe family accepted the proclamation. Mr. Noe said Kodiak has been great to his family, and they have enjoyed living in the community.

c. Proclamation: Child Abuse Prevention

Councilmember Saravia read the proclamation, which urges all citizens to increase their participation in efforts to prevent child abuse, thereby strengthening the communities in which we live.

Lauren Humphrey, KWRCC accepted the proclamation.

d. Proclamation: Sexual Assault Awareness Month

Councilmember Davidson read the proclamation, which encourages all Alaskans to support local activities and programs that assist victims of sexual assault and to learn more about the pervasiveness of sexual assault in Alaska, so we may eliminate this terrible crime.

Lauren Humphrey, KWRCC accepted the proclamation. She thanked the Mayor and Council for their support. She shared there will be a Run for Respect 5K on April 18 at 10 a.m.

e. Presentation of GFOA Award to the Finance Department

The award of this certificate represents one of the highest levels of achievement in governmental financial reporting for the Finance Department and the City.

Karl Swanson, interim Finance Director accepted the award.

f. Public Comments

Jonathan Strong with the Senior Citizens of Kodiak said Kodiak Area Transit System has been a coordinated system for 15 different local nonprofits. He shared they have received survey results on public transportation and he provided a handout. He shared that people getting to work, shopping, and medical appointments demonstrated some of the highest need for transportation. He read some of the comments by citizens and businesses that responded to the survey. He thanked the Mayor and Council for their support of the transit system.

Capri Pruitt distributed Girl Scout cookies and thanked the Mayor and Council for their support.

IV. UNFINISHED BUSINESS

None

V. NEW BUSINESS**a. Resolution No. 2015–10, Authorizing the Issuance of a Permit to the Kodiak Chamber of Commerce for Use of Public Property in Conjunction With the Kodiak Crab Festival**

Mayor Branson read Resolution No. 2015–10 by title. The Kodiak Chamber of Commerce is the local organization that manages the annual Kodiak Crab Festival, one of Kodiak’s premiere events. It promotes Kodiak, gives a boost to the local economy, and provides fundraising oppor-

tunities for many local organizations and non-profits. This year the festival will run from May 21 through May 25, 2015. As in past years, Council must authorize a permit for the activities associated with Kodiak Crab Festival by adoption of a resolution.

Councilmember Haines MOVED to adopt Resolution No. 2015–10.

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

b. Resolution No. 2015–11, Authorizing the Issuance of a Permit to Kodiak Little League for the Use of Public Property for Its Baseball Camp Fundraiser and to Sell Concessions During Games

Mayor Branson read Resolution No. 2015–11 by title. The Kodiak Little League (KLL), a local non-profit organization, has requested the use the Baranof Park baseball field to sponsor a baseball camp for youth on June 1 through June 6, 2015. The camp will raise funds and teach participants the techniques and fundamentals of baseball. Also, KLL has requested permission to sell concessions at its games at East Addition and Baranof Park from April 15 through July 15.

Councilmember Bishop MOVED to Resolution No. 2015–11.

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

c. Resolution No. 2015–12, Authorizing the Issuance of a Permit to Kodiak High School Soccer Team to Sell Concessions and to Collect Gate Fees During Home Games

Mayor Branson read Resolution No. 2015–12 by title. The high school soccer coach, Eric Waltenbaugh, requested the use the Baranof Park turf field to sell concessions and collect gate fees as a fundraiser for the high school soccer program from April 9 through May 31, with home games held on April 10, 11, 24, and 25. The soccer team is a high school club sport that is completely self-funded. The team raises money to cover the cost of travel and other costs associated with the sport.

Councilmember Davidson MOVED to adopt Resolution No. 2015–12.

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

d. Resolution No. 2015–13, Appropriating Funds for Additional Construction Expenses Related the Biosolids Management Project No. 08-06/7517

Mayor Branson read Resolution No. 2015–13 by title. The City has been working on a solution for long term disposal of biosolids for multiple years. Council authorized the borrowing of up to \$3 million from the Alaska Clean Water Fund (ACWF) loan program for construction of the Compost Facility project with Resolution No. 2015–05. The project was advertised and bids were opened on March 31, 2015. The lowest bid is over the available funds in the current budget.

In order to award the project, funding needs to be increased to include an ACWF loan of up to \$3 million.

Councilmember Haines MOVED to adopt Resolution No. 2015-13.

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

e. Authorization of a Professional Services Contract for Alaska Pollution Discharge Elimination System and Mixing Zone Permitting for the Wastewater Treatment Plant, Project No. 15-07

The Alaska Pollution Discharge Elimination System (APDES) permit the City currently operates under is an extension of the permit that expired in August 2004. Staff submitted the request for permit reissuance in February 2004 and received notice the permit application was accepted as complete and on time. The EPA provided direction that the City was to continue to operate under the expired permit requirements. The Alaska Department of Environmental Conservation (ADEC) would notify the City when they were ready to begin work on reissuing the City's APDES permit for the Wastewater Treatment Plant (WWTP). CH2MHill worked on the City's previous mixing zone application in 1999. Staff requested a proposal from them because of the complex technical support required to resubmit the permit application, as the mixing zone is being reduced in size and to assist in submitting the APDES permit.

Councilmember Haines MOVED to authorize a professional services contract with CH2MHill for assistance with Phase I of the City's Alaska Pollution Discharge Elimination System and mixing zone permitting for the Wastewater Treatment Plant for a lump sum amount of \$50,000, with funds coming from the Sewer Utility Fund, Wastewater professional services account and authorize the City Manager to execute the documents on behalf of the City.

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

f. Authorization of Bid Award for Construction of the Composting Facility, Project No. 08-06/7517

The City has been working on a solution for long term disposal of biosolids for multiple years. Since 2008, the City has completed a composting pilot project, entered into a public/private partnership for the composting of biosolids, completed a design of a Class A, EQ Composting Facility, and bid the project. In addition, staff has worked with the Kodiak Island Borough to obtain property on which to build this facility and applied for and received a State of Alaska Sewage Solid Treatment Permit. Three bids were received and opened on March 31.

Councilmember Whiddon MOVED to authorize the bid award for construction of the composting facility, Project No. 08-06/7517, to Brechan Construction, LLC in the amount of \$3,390,350 with funds coming from the Sewer Capital Improvement Fund, Biosolids Management, Project No. 08-06/ 7517 and authorize the City Manager to execute the documents on behalf of the City.

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

g. Authorization of a Professional Services Contract for Construction Management Services for the Composting Facility, Project No. 08-06/75

The City has been working on a solution for long term disposal of biosolids for multiple years. Since 2008, the City completed a composting pilot project, entered into a public/private partnership for the composting of biosolids, completed the design of a Class A, Excellent Quality (EQ) composting facility, and bid the project. In addition, staff and Council worked with the Kodiak Island Borough to acquire property on which to build this facility and applied for and received a State of Alaska Sewage Solid Treatment Permit.

Councilmember Davidson MOVED to authorize a professional services contract with CH2MHill in the amount of \$394,000 for construction management services for the compost facility, with funds coming from the Sewer Capital Improvement Fund, Biosolids Management, Project No. 08-06/7517 and authorize the City Manager to execute the documents on behalf of the City.

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

VI. STAFF REPORTS

a. City Manager

Manager Kniazowski was absent and will provide a comprehensive report at the next meeting.

b. City Clerk

City Clerk Marljar informed the public of the next scheduled Council strategic planning meeting, work session, and regular meeting.

VII. MAYOR'S COMMENTS

Mayor Branson reported on her attendance at the MTAB meeting in Juneau earlier in the week, which occurred the same time as the work session; she thanked Deputy Mayor Haines for chairing. She said a number of individuals participated in a Business Retention and Expansion training and said action steps were developed with the Chamber of Commerce and a community Economic Summit will be planned and a vision has been set. She thanked Manager Kniazowski for putting the training together. She congratulated and thanked the Finance department for obtaining the GFOA award. She said the legislative meetings in Juneau went well; the Manager and a few Councilmembers met with Governor Walker, Lieutenant Governor Mallot and staff, Department of Fish and Game Commissioner Cotten, Director of Office Management and Budget Pat Pitney, and the Commissioner of Corrections regarding the jail services and funding. She said they also met with Senator Gary Stevens and Representative Louise Stutes. She said she met with Senator Micciche regarding the ferry cuts, on which he worked with DOT, and there is a cut of \$25 million. She was informed by Commissioner Luiken that the Governor added funds back to the Marine Highway budget and the Senate made cuts. She said some southeast reporters dis-

seminated information regarding the effect this will have on tourism. She shared the cuts in service also mean a cut in revenue with the reduced ferry schedules. She said the Kennecott will be filling in for the Tustumena this winter, and she commended Deputy Commissioner Neussl for helping to maintain the Kodiak services. She was told that Pier 1 will be completed by June 2016.

VIII. COUNCIL COMMENTS

Councilmember Bishop congratulated interim Finance Director Swanson, and thanked Engineer Melvin and Director Gronn for the Parks and Recreation services. He said he attended the BRE training and indicated the work in the community for the next generation starts now and has to be done.

Councilmember Haines expressed appreciation for staff support during the Mayor's absence. He said he is proud the City Council represents many ideas. He said the Council and Assembly members met in Juneau together for the community of Kodiak, which was a positive endeavor. He said the two municipal governments working together for composting is a reflection of community collaboration.

Councilmember Saravia thanked interim Finance Director Swanson and also thanked Director Gronn for the Parks and Recreation services.

Councilmember Davidson said the Mayor gave a good and thorough overview of the trip to Juneau. He shared some thoughts on jail funding and stated Kodiak should be able to maintain funding due to high utilization of the jail. He spoke of the importance of networking during conferences to collaborate with other entities. He thanked staff for moving the composting facility forward.

Councilmember Whiddon congratulated interim Finance Director Karl Swanson for the GFOA award. He spoke about the trip to Juneau and the budgetary shortfall occurring statewide. He said there will be ongoing discussion on revenue and referenced the Governor's transition team that will work on a plan. He said he was pleased with the Governor's staff. He gave an update on the Fisheries Work Group meeting and shared there will be a community forum on May 12 to discuss Gulf Trawl Bycatch measures at the Convention Center. He referenced that as a follow up to the Business Retention and Expansion training, a few individuals will continue to discuss economic needs and plan to meet on May 6.

IX. AUDIENCE COMMENTS

None

X. ADJOURNMENT

Councilmember Haines MOVED to adjourn the meeting.

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

The meeting adjourned at 8:26 p.m.

CITY OF KODIAK

MAYOR

ATTEST:

CITY CLERK

Minutes Approved:

DRAFT

**MINUTES OF THE REGULAR COUNCIL MEETING
OF THE CITY OF KODIAK
HELD THURSDAY, APRIL 23, 2015
IN THE BOROUGH ASSEMBLY CHAMBERS**

I. MEETING CALLED TO ORDER

Mayor Pat Branson called the meeting to order at 7:33 p.m.

Councilmembers Charles E. Davidson, Gabriel T. Saravia, and Richard H. Walker were present. Councilmembers Randall C. Bishop, Terry J. Haines, and John B. Whiddon were absent. A quorum was not present. City Manager Aimée Kniazowski, City Clerk Debra L. Marlar, and Deputy Clerk Michelle Shuravloff-Nelson were also present.

X. ADJOURNMENT

Councilmember Davidson MOVED to adjourn the meeting.

The roll call vote was Councilmembers Davidson, Saravia, and Walker in favor.

The meeting adjourned at 7:34 p.m.

Mayor Branson stated the business from the meeting will be incorporated into the May 14, 2015, regular meeting.

CITY OF KODIAK

MAYOR

ATTEST:

CITY CLERK

Minutes Approved:

PERSONS TO BE HEARD

MEMORANDUM TO COUNCIL

To: Mayor Branson and City Councilmembers

From: Aimée Kniaziowski, City Manager 

Date: May 14, 2015

Agenda Item: III. a. Presentation of Government Finance Officers Association Budget Award

SUMMARY: The Government Finance Officers Association has awarded the City of Kodiak a Distinguished Budget Presentation Award for its FY2014 budget. This award represents the highest form of recognition in governmental accounting and financial reporting.

ATTACHMENTS:

Attachment A: Distinguished Budget Presentation Award



GOVERNMENT FINANCE OFFICERS ASSOCIATION

*Distinguished
Budget Presentation
Award*

PRESENTED TO

**City of Kodiak
Alaska**

For the Fiscal Year Beginning

July 1, 2014

Executive Director

MEMORANDUM TO COUNCIL

Date: May 14, 2015

Agenda Item: III. b. Proclamation: Declaring Library Week

SUMMARY: This proclamation encourages all residents to visit the library to take advantage of the range of library resources available at Kodiak Public Library and discover the unlimited possibilities at your library.

ATTACHMENTS:

Attachment A: Proclamation: Declaring Library Week

PROCLAMATION

Declaring Library Week

WHEREAS, libraries create potential and possibilities within their communities, campuses and schools; and

WHEREAS; libraries level the playing field for all who seek information and access to technologies; and

WHEREAS, libraries continuously grow and evolve in how they provide for the needs of every member of their communities; and

WHEREAS, libraries and librarians open up a world of possibilities through innovative science, math and art programming, Makerspaces, job-seeking resources and diverse collections; and

WHEREAS, librarians and library staff offer technology training and access to downloadable content like e-books; and

WHEREAS, libraries support democracy and effect social change through their commitment to provide equitable access to information for all library users regardless of race, ethnicity, creed, ability, sexual orientation, gender identity or socio-economic status; and

WHEREAS, last month libraries, librarians, library staff, volunteers and supporters across America celebrated National Library Week, and it is important to also celebrate Library Week in Kodiak.

NOW, THEREFORE, I, Pat Branson, Mayor of the City of Kodiak, Alaska, do hereby proclaim May 17-23, 2015, as

Library Week

in Kodiak and encourage all residents to visit the library this week to take advantage of the range of library resources available at Kodiak Public Library and discover the unlimited possibilities at your library.

Dated this 14th day of May 2015.

City of Kodiak

Pat Branson, Mayor

MEMORANDUM TO COUNCIL

Date: May 14, 2015

Agenda Item: III. c. **Proclamation: Declaring Peace Officers Memorial Day and Police Week**

SUMMARY: This proclamation urges all citizens and patriotic, civic, and educational organizations to recognize police officers, past and present, who by their faithful and loyal devotion to their responsibilities, have rendered a dedicated service to their community and, in so doing, have established for themselves an enviable and enduring reputation for preserving the rights and security of all citizens.

ATTACHMENTS:

Attachment A: Proclamation: Declaring Peace Officers Memorial Day and Police Week

PROCLAMATION
Declaring May 15, 2015, Peace Officers Memorial Day and
May 10 through 16, 2015, Police Week

WHEREAS, the Congress and President of the United States have designated May 15 as Peace Officers' Memorial Day, and the week in which May 15 falls is National Police Week; and

WHEREAS, the members of the Kodiak Police Department play an essential role in safeguarding the rights and freedoms of Kodiak citizens; and

WHEREAS, it is important that all citizens know and understand the duties, responsibilities, hazards, and sacrifices of the Kodiak Police Department, and that members of the Department recognize their duty to serve the people by safeguarding life and property, by protecting them against violence and disorder, and by protecting the innocent against deception and the weak against oppression; and

WHEREAS, the men and women of the Kodiak Police Department unceasingly provide a vital public service, and it is appropriate that we recognize their accomplishments and sacrifices.

NOW, THEREFORE, I, Pat Branson, Mayor of the City of Kodiak, do hereby proclaim May 15, 2015, as

PEACE OFFICERS' MEMORIAL DAY

in Kodiak and encourage all citizens to honor those law enforcement officers who, through their courageous deeds, have made the ultimate sacrifice in service to their community or have become disabled in the performance of duty, and let us recognize and pay respect to the survivors of our fallen heroes.

I further proclaim the week of May 10 through 16, 2015, as

POLICE WEEK

in Kodiak and urge all citizens and patriotic, civic, and educational organizations to recognize police officers, past and present, who by their faithful and loyal devotion to their responsibilities, have rendered a dedicated service to their community and, in so doing, have established for themselves an enviable and enduring reputation for preserving the rights and security of all citizens.

Dated this 14th day of May 2015.

City of Kodiak

Pat Branson, Mayor

MEMORANDUM TO COUNCIL

Date: May 14, 2015

Agenda Item: III. d. Proclamation: Declaring Emergency Medical Services Week

SUMMARY: This proclamation urges residents to recognize the value and the accomplishments of emergency medical services providers.

ATTACHMENTS:

Attachment A: Proclamation: Declaring Emergency Medical Services Week

PROCLAMATION
Declaring Emergency Medical Services Week
May 17 – May 23, 2015

WHEREAS, emergency medical services are a vital public service; and

WHEREAS, the members of emergency medical services teams are ready to provide lifesaving care to those in need 24 hours a day, seven days a week; and

WHEREAS, access to quality emergency care dramatically improves the survival and recovery rate of those who experience sudden illness or injury; and

WHEREAS, the emergency medical services system consists of emergency physicians, emergency nurses, emergency medical technicians, paramedics, firefighters, first responders, educators, administrators and others; and

WHEREAS, the members of emergency medical services teams, whether career or volunteer, engage in thousands of hours of specialized training and continuing education to enhance their lifesaving skills; and

WHEREAS, it is appropriate to recognize the value and the accomplishments of emergency medical services providers by designating Emergency Medical Services Week.

NOW, THEREFORE, I, Pat Branson, do hereby proclaim the week of May 17 through May 23, 2015, as

EMERGENCY MEDICAL SERVICES WEEK

in Kodiak and with the theme, “EMS STRONG,” I encourage the community to observe this week with appropriate programs, ceremonies, and activities.

Dated this 14th day of May 2015.

City of Kodiak

Pat Branson, Mayor

MEMORANDUM TO COUNCIL

Date: May 14, 2015

Agenda Item: III. e. **Proclamation: Declaring Older Americans Month**

SUMMARY: This proclamation recognizes the important role of older Americans in our community urges citizens to celebrate older adults and the people who serve and support them as powerful and vital citizens who greatly contribute to the community.

ATTACHMENTS:

Attachment A: Proclamation: Declaring Older Americans Month

PROCLAMATION Declaring Older Americans Month

WHEREAS, Kodiak is committed to helping all individuals maintain their health and independence in later life; and

WHEREAS, the older adults in Kodiak have an important role in sharing knowledge, wisdom, and understanding of the history of our community through interactions with children, youth, and adults from other generations; and

WHEREAS, Kodiak's older adults play an important role by continuing to contribute experience, knowledge, wisdom, and accomplishments; and

WHEREAS, our older adults are active community members involved in volunteering, mentorship, arts and culture, and civic engagement; and

WHEREAS, our community can provide opportunities to allow older citizens to continue to flourish by:

- Emphasizing the importance of elders and their leadership by publicly recognizing their continued achievements;
- Presenting opportunities for older Americans to share their wisdom, experience, and skills; and
- Recognizing older adults as a valuable asset in strengthening American communities.

NOW, THEREFORE, I, Pat Branson, Mayor of the City of Kodiak, do hereby proclaim May 2015 as

OLDER AMERICANS MONTH

in Kodiak and urge every citizen to recognize this year's theme "Get Into the Act," focusing on community engagement, and take time this month to celebrate older adults and the people who serve and support them as powerful and vital citizens who greatly contribute to the community.

Dated this 14th day of May 2015.


City of Kodiak

Pat Branson, Mayor

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NEW BUSINESS

MEMORANDUM TO COUNCIL

To: Mayor Branson and City Councilmembers
From: Aimée Kniaziowski, City Manager 
Thru: Lon White, Harbormaster
Date: May 14, 2015

Agenda Item: V. a. First Reading, Ordinance No. 1332, Authorizing a Lease of Space in the Pier I Building to Kodiak Area Chamber of Commerce, Inc.

SUMMARY: Ordinance No. 1332 authorizes a ten-year lease of space in the Pier I building to the Kodiak Chamber of Commerce. The Chamber of Commerce, a nonprofit organization, promotes the economic, commercial, and industrial development of Kodiak, including tourism and tourism related activities. Their services are of great value to the community, and the location is convenient meeting space for businesses, groups, and organizations involved in promoting Kodiak. The current ten-year lease expires June 30, 2015. Staff recommends renewal of the lease for a ten-year term, beginning July 1, 2015.

PREVIOUS COUNCIL ACTION:

- May 2005, Council authorized the most current lease with the Kodiak Chamber of Commerce by Ordinance 1191

DISCUSSION: The City owns the Pier I building described as Lot 4-A, Block 18, New Kodiak Subdivision, as shown on Plat 76-31, Kodiak Recording District, State of Alaska. The portion of the building leased to the Chamber of Commerce consists of approximately 2,700 square feet and is designated in the lease as Exhibit "A." In lieu of rent, the Chamber of Commerce is responsible for all maintenance, repair, and management costs for the building.

The new lease agreement contains essentially the same terms and conditions as the previous, except the option for a ten-year extension has been removed, and the insurance requirements are updated to meet current City standards.

ALTERNATIVES:

- 1) Pass Ordinance No.1332 in the first reading, which is staff's recommendation. This would allow uninterrupted Chamber of Commerce operations.
- 2) Postpone or choose not to pass Ordinance No.1332. These alternatives are not recommended due to the impact to the Chamber of Commerce and the services they provide.

FINANCIAL IMPLICATIONS: This lease will not generate revenue for the City, because the property will be made available in exchange for maintenance, repairs, and building management provided by the Chamber of Commerce. The City also provides in-kind water and sewer utilities. Including the utilities and the value of the property, the City provides a total of \$45,810. The term of the lease exceeds five years, and the value of the property and in-kind utilities exceeds \$30,000 and is, therefore, subject to the requirements of City Charter, Article V, Section 17 and requires Council to approve the lease by ordinance.

LEGAL: The City Attorney reviewed and updated the lease language and drafted the attached ordinance.

STAFF RECOMMENDATION: Staff recommends Council pass Ordinance No. 1332 in the first reading and advance to second reading and public hearing at the next regular or special Council meeting.

CITY MANAGER'S COMMENTS: The City Council has supported the Chamber of Commerce and its services for the last 20 years through the building lease and in-kind donations of water and sewer fees. This new lease allows the Chamber of Commerce to continue to promote business and economic development in Kodiak. I support staff's recommendation to renew the lease to the Chamber of Commerce and recommend Council pass the ordinance in the first reading.

ATTACHMENTS:

Attachment A: Ordinance No. 1332

Attachment B: Lease between the City and Kodiak Chamber of Commerce, Inc

Attachment C: Exhibit "A"

PROPOSED MOTION:

Move to pass Ordinance No.1332 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 1332**

**AN ORDINANCE OF THE COUNCIL OF THE CITY OF KODIAK
AUTHORIZING A LEASE OF SPACE IN THE PIER 1 BUILDING TO KODIAK AREA
CHAMBER OF COMMERCE, INC.**

WHEREAS, the City owns the property known as the Pier 1 Building, described as Lot 4-A, Block 18, New Kodiak Subdivision, as shown on Plat 76-31, Kodiak Recording District, Third Judicial District, State of Alaska; and

WHEREAS, Kodiak Area Chamber of Commerce, Inc. desires to continue leasing space in the Pier 1 Building (the "Premises"), as more particularly described in the form of lease (the "Lease") that has been presented to the Council with this ordinance, to house its offices, and offices of other tourism related businesses or organizations; and

WHEREAS, in accordance with KCC 18.20.030(b), the Council finds it to be for a public purpose and in the best interest of the public to lease the Premises for consideration less than one-tenth of its approved appraised market value per year to Kodiak Area Chamber of Commerce, Inc., a nonprofit corporation.

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 a ten-year lease with Kodiak Area Chamber of Commerce, Inc. in the form that has been presented to this meeting, of the Premises described in the Lease, located on property described as Lot 4-A, Block 18, New Kodiak Subdivision, as shown on Plat 76-31, Kodiak Recording District, Third Judicial District, State of Alaska, more commonly known as the Pier 1 Building.

Section 2: The Council of the City of Kodiak hereby authorizes Kodiak Area Chamber of Commerce, Inc. to sublease space in the Premises to Kodiak Island Convention and Visitors Bureau. d/b/a Discover Kodiak.

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

CITY OF KODIAK

MAYOR

ATTEST:

CITY CLERK

First Reading:
Second Reading:
Effective Date:

AGREEMENT NUMBER 218842 FOR LEASE, MAINTENANCE, AND OPERATION OF SPACE IN THE CITY OF KODIAK PIER I BUILDING WITH THE CHAMBER OF COMMERCE

AGREEMENT dated as of July 1, 2015 between the City of Kodiak, a municipal corporation organized under the constitution and laws of the State of Alaska (the "City"), whose address is 710 Mill Bay Road, Room 220, Kodiak, Alaska 99615, and Kodiak Area Chamber of Commerce, Inc., an Alaska nonprofit corporation (the "Chamber"), whose address is 100 East Marine Way, Suite 300, Kodiak, Alaska 99615.

WHEREAS, the City owns real property and improvements (the "Property") described as follows:

Lot 4-A, Block 18, NEW KODIAK SUBDIVISION, as shown on Plat 76-31, Kodiak Recording District, Third Judicial District, State of Alaska;

and

WHEREAS, in accordance with KCC 18.20.030(b), the City Council has determined that the leasing of the space (described herein as the "Premises") in the building that is located on the Property (the "Building") for use by the Chamber and certain tourism related businesses or organizations is for a public purpose and in the best interest of the public; and

WHEREAS, the City wishes to be relieved of the cost and expense of maintaining, repairing, and managing the Building.

NOW, THEREFORE, for and in consideration of the premises and the mutual covenants herein, the parties hereto agree as follows:

1. Purpose. It is the purpose and intent of the parties in entering into this Agreement to promote the economic, commercial, and industrial development of Kodiak and to promote tourism and tourism-related activities by providing a conveniently located and properly maintained and managed building that will provide office and meeting space for businesses, groups, and organizations involved in or desiring to promote the activities described above.

2. Lease. The City hereby leases to the Chamber, and the Chamber hereby leases from the City, a portion of the Building consisting of approximately 2,700 square feet, and designated on the floor plan attached hereto and incorporated herein as Exhibit A (the "Premises").

3. Term. The term of this Agreement (the "Term") shall be for ten (10) years, commencing on July 1, 2015 and expiring on June 30, 2025.

4. Maintenance and Repair. (a) Except as this section provides otherwise, throughout the Term and any Extended Term the Chamber, at its sole cost and expense, shall perform all

maintenance, repairs and replacements to the Property, including the interior and exterior of the Building, that are necessary to preserve the Building in sanitary, presentable and habitable condition. The opinion of the City Engineer or such other individual as may be designated in writing by the City Manager shall be conclusive as to the necessity for any maintenance, repair or replacement. The obligations of the Chamber under this section shall include without limitation the following: (i) general janitorial and cleaning services for the Building, including upon the request of the City or the Alaska Marine Highway System (AMHS), those parts of the Building being leased by the AMHS, five days per week, excluding holidays; (ii) light bulb replacement in the Building; (iii) exterior window cleaning, snow, and ice removal for the parking areas and walkways serving the Building; and (iv) maintenance and servicing of lavatory facilities, toilets, sinks, and faucets located within the Building. All such services shall be provided in a manner that is consistent with those services provided in comparable office buildings of similar size and age that are located within the local community.

(b) The obligations of the Chamber under this section shall be for ordinary maintenance and repairs of a non-capital nature. If such maintenance, repair or replacement is necessitated by an incident or occurrence as a result of which the City has received any payments arising out of fire or other casualty insurance maintained on the Building, then said insurance proceeds shall be contributed toward the cost of maintenance, repair or reconstruction otherwise borne by the Chamber. Major reconstruction or replacement caused by acts of God shall be the responsibility of neither the Chamber nor the City, but shall be considered and determined by the parties in the light of circumstances prevailing at that time.

5. The City's Option to Terminate Agreement. If the Premises are (a) rendered wholly untenantable, or (b) damaged as a result of any cause which is not covered by the City's insurance, or (c) damaged or destroyed in whole or in part during the last year of the Term, or if the Building is damaged to the extent of fifty percent (50%) or more of its floor area, the City may elect to terminate this Agreement by giving the Chamber written notice of such election within ninety (90) days after the occurrence of such event. If such notice is given, the rights and obligations of the parties hereunder shall cease as of the date of such notice.

6. Alterations and Modifications. (a) The Chamber shall be solely responsible for the cost of partitioning and otherwise improving the downstairs space within the Building in order to make such space suitable for offices, meeting rooms, and similar uses. The plans for such improvements shall be subject to the advance approval of the City throughout the Term of this Agreement.

(b) The Chamber may not make any structural alterations to the Building without the prior written approval of the City, and such alterations shall be accomplished at the expense of the Chamber, unless the City agrees otherwise in writing.

(c) The Chamber shall perform all alteration work promptly, efficiently, competently and in a good and workmanlike manner by duly qualified or licensed persons or entities, using first grade materials, without interference with or disruption to the operations of the Building. All such work shall comply with all applicable governmental codes, rules, regulations and ordinances.

7. Utility Service. The City shall provide water and sewer service to the Premises free of charge. The Chamber shall provide all other utility services to the Premises at its own expense.

8. Reservation for Sublease. The Chamber shall provide up to 600 square feet of space on the upper level of the Premises for sublease to an organization designated by the Council whose purpose is the promotion of convention and tourism activities in Kodiak. This sublease shall include the nonexclusive use of the downstairs meeting room by members and staff of the sublessee organization, as well as other common and designated (storage) areas on both floors of the Building. The rent under this sublease shall not exceed the rate per square foot that is charged to other tenants of the Building.

9. Additional Subleases. In addition to the sublease authorized in Section 8, the Chamber, with the advance written approval by the City, which approval may be withheld at the City's sole discretion, may sublet other portions of the Premises that are not immediately needed for Chamber functions to persons or organizations involved in promoting tourism and the tourist trade. Notwithstanding anything in this Agreement to the contrary, the Chamber may not enter into a sublease with any profit-making person, business or entity except upon the express approval of the City after explicit notice to the City of the profit-making nature of the proposed subtenant. All subleases under this section shall be limited to an initial period of no more than one (1) year and the renewal or extension of any such sublease shall be made only upon the further renewed approval of the City

10. Application of Rent Payments. (a) The Chamber may retain any and all rent that it receives under the subleases authorized under Sections 8 and 9. The Chamber shall set aside out of any such sublease rent payments a reasonable amount for a reserve for maintenance and repair expenses. The City currently leases the part of the Building that is not included within the Premises to the Alaska Marine Highway System (AMHS). During any part of the Term or the Extended Term that the City leases space in the Building to AMHS, the City shall remit annually to the Chamber the amount that the City receives from AMHS as rent for space in the Chamber of Commerce Building. The Chamber shall reserve ten percent (10%) of the amounts that it receives under this section for future improvements to the Building.

(b) No less frequently than quarterly, the Chamber shall provide to the City an accounting of the reserves that it maintains under (a) of this section. Upon reasonable advance notice, the Chamber shall make available to the City its books and financial records which apply to the operation of the Building for inspection to assure reasonable compliance with (a) of this section.

11. Compliance with Laws, Etc. The Chamber shall use the Premises solely for office purposes. The Chamber shall act in accordance with and not violate any restrictions or covenants of record affecting the Premises or the Building. The Chamber shall not use or occupy the Premises in violation of law or the Certificate of Occupancy issued for the Building, and shall immediately discontinue any use of the Premises which is declared by either any governmental authority having jurisdiction or the City to be a violation of any law, code, regulation or a violation of said Certificate of Occupancy. The Chamber shall comply with any direction of any governmental authority having jurisdiction that shall, by reason of the nature of the Chamber's

use or occupancy of the Premises, impose any duty upon the Chamber or the City with respect to the Premises or with respect to the use or occupancy thereof.

12. Nuisances Prohibited. The Chamber shall not do nor permit anything to be done in, on or about the Premises which would in any way obstruct or interfere with the rights of other tenants or occupants of the Building, or use or allow the Premises to be used for any immoral or unlawful purpose, nor shall the Chamber maintain or permit any nuisance or commit or suffer to be committed any waste in, on or about the Premises.

13. Hazardous Substances. The Chamber shall not cause or permit the release or disposal of any hazardous substances, wastes, or materials on or about the Premises or the Building, and the Chamber shall be solely responsible for and shall promptly pay the cost of removing all such hazardous substances, wastes and materials from the Premises, which removal shall be in accordance with all applicable governmental requirements. Hazardous substances, wastes or materials shall include those which are defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. §9601, *et seq.*; the Resource Conservation and Recovery Act, as amended, 42 U.S.C. §6901, *et seq.*; the Toxic Substances Control Act, as amended, 15 U.S.C. §2601, *et seq.* The Chamber shall comply with all rules and policies set by the City, and with all federal, state and local laws, regulations and ordinances which govern the use, storage, handling and disposal of hazardous substances, wastes or materials.

14. No Discrimination. It is intended that all tenants and users of the Building, and all customers, employees, licensees and invitees of all the tenants shall have the opportunity to obtain all the goods, services, accommodations, advantages, facilities and privileges of the Building without discrimination because of race, creed, color, sex, age, national origin or ancestry. To that end, the Chamber shall not discriminate in the conduct and operation of its business in the Premises against any person or group of persons because of the race, creed, color, sex, age, national origin or ancestry of such person or group of persons.

15. Indemnification. The Chamber shall indemnify, hold harmless and defend the City from and against any and all claims, actions, damages, liability and expense, including without limitation attorney's and other professional fees, in connection with death or injury to persons and damage to property arising from or out of the occupancy or use by the Chamber of the Premises or any part thereof or any other part of the Building, occasioned wholly or in part by any act or omission of the Chamber, its officers, agents, contractors, employees or invitees; however, this provision shall not apply to any claim to the extent the claim arises from the negligence or intentional act of the City or the City's officers, agents, contractors, or employees.

16. Insurance. At all times during the Term the Chamber shall procure and maintain the following insurance:

- (a) Minimum Scope of Insurance.
 - (1) Commercial General Liability Insurance.
 - (2) Commercial Automobile Liability Insurance.

(3) Worker's Compensation insurance as required by the State of Alaska and Employers Liability Insurance.

(b) Minimum Limits of Insurance. The Chamber shall maintain limits no less than:

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

(2) Auto Liability: \$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; (ii) bodily injury by disease - \$1,000,000 each employee; bodily injury by disease - \$1,000,000 policy limit.

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

(1) Commercial General 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 Chamber; products and completed operations of the Chamber, premises owned, occupied or used by the Chamber, or automobiles owned, leased, hired or borrowed by the Chamber. 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 Chamber'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 Chamber'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 Chamber or any subconsultant for the City.

(2) Worker's Compensation and Employer's Liability: The Chamber'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 Chamber 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 Chamber 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 Chamber'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: The Chamber 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.

17. Notices. Any notice, request, demand, approval or consent given or required to be given under this Agreement shall be in writing and shall be addressed as follows:

To the City: City of Kodiak
 Attn: City Manager
 710 Mill Bay Road, Room 220
 Kodiak, Alaska 99615

To the Chamber: Kodiak Area Chamber of Commerce, Inc.
 100 East Marine Way, Suite 300
 Kodiak, Alaska 99615

Either party may, at any time, change its notice address for the above purposes by sending a notice to the other party stating the change and setting forth the new address.

18. Inspections and Access by the City. The Chamber will permit the City, its agents, employees and contractors to enter all parts of the Premises during the Chamber's business hours, upon 24 hours' notice, to inspect the same and to enforce or carry out any provision of this Agreement; provided, however, that, in an emergency situation, such access shall be at any time upon the City's oral request.

19. Successors and Assigns. This Agreement and the covenants and conditions contained herein shall inure to the benefit of and be binding upon the City, its successors and assigns, and shall be binding upon the Chamber, its successors and assigns and shall inure to the benefit of the Chamber and only such assigns of the Chamber to whom the assignment of this Agreement by the Chamber has been consented to by the City.

20. Relationship of Parties. Nothing contained herein shall be deemed or construed to make the parties hereto partners or joint venturers, or to render either party liable for any of the debts or obligations of the other, it being the intent of the parties to create only the relationship of landlord and tenant herein.

21. Captions and Headings. The section captions and headings herein are for convenience of reference only and in no way shall be used to construe or modify the provisions set forth in this Agreement.

22. Severability. If any provision of this Agreement is deemed unenforceable in whole or part, such provision shall be limited to the extent necessary to render the same valid or shall be deemed excised from this Agreement and replaced by a valid provision as close in meaning and intent as the excised provision, as circumstances require, and this Agreement shall be construed as if said provision had been incorporated herein as so limited or as so replaced, as the case may be.

23. No Third Party Beneficiaries. Nothing in this Agreement, express or implied, is intended or shall be construed to give to any person, other than the City and the Chamber, any right, remedy or claim under or by reason of this Agreement. The covenants, stipulations and agreements contained in this Agreement are and shall be for the sole and exclusive benefit of the City and the Chamber, and their permitted successors and assigns.

24. Entire Agreement. This Agreement, including all exhibits attached hereto, constitutes the entire agreement and understanding of the parties with respect to the subject matter hereof, and there are no other prior or contemporaneous written or oral agreements, undertakings, promises, warranties, or covenants with respect thereto not contained herein.

25. Amendment. This Agreement may be amended only by a written instrument executed by all of the parties hereto.

26. Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Alaska.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed in their respective corporate names all as of the date first above written.

CITY OF KODIAK

KODIAK AREA CHAMBER OF
COMMERCE, INC.

Aimée Kniazowski, City Manager

Name: _____
Title: _____

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me this ____ day of _____ 2015, by Aimée Kniazowski, City Manager of the City of Kodiak, an Alaska municipal corporation, on behalf of the City.

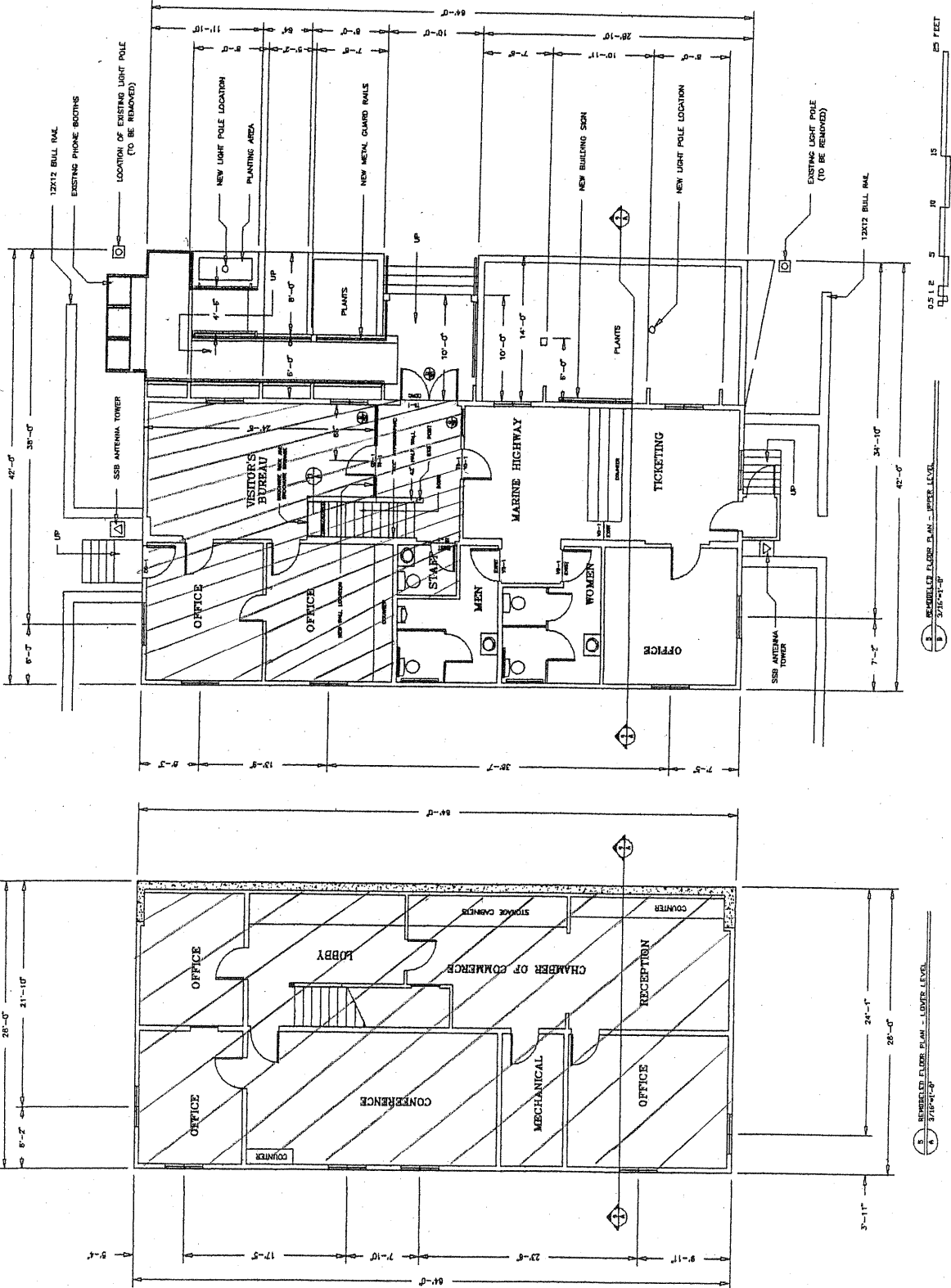
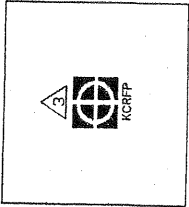
Notary Public in and for Alaska
My Commission Expires:_____

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me this ____ day of _____ 2015, by _____, _____ of Kodiak Area Chamber of Commerce, Inc., an Alaska nonprofit corporation, on behalf of the corporation.


Notary Public in and for Alaska
My Commission Expires:_____

EXHIBIT A
CITY/CHAMBER LEASE



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MEMORANDUM TO COUNCIL

To: Mayor Branson and City Councilmembers
From: Aimée Kniazowski, City Manager 
Date: May 14, 2015

Agenda Item: V. b. First Reading, Ordinance No. 1333, Authorizing a Lease of the Head Start Building to Rural Alaska Community Action Program, Inc, D/B/A Kodiak Head Start

SUMMARY: The City has provided a no-cost lease to the Rural Alaska Community Action Program, Inc. (RurAL CAP), for the local Head Start Program since 1994. The program leases the property at 419 Hillside Drive. The lease term is for five years at the rate of \$1.00 per year, and the City provides in-kind water and sewer services. RurAL CAP notified the City on April 22, 2015, that it would like to renew its lease. Due to the terms, the lease must be approved by ordinance. Staff recommends Council approve this lease by adopting Ordinance No. 1333 in the first reading and advancing to the second reading and public hearing at the next regular or special meeting.

PREVIOUS COUNCIL ACTION:

- June 1994, adopted Ordinance No. 992, authorizing a five-year lease with RurAL CAP for the Kodiak Head Start Program
- July 1995, adopted Ordinance No. 1015, authorizing amendments to the Head Start Program lease, including extension for six years through June 30, 2005
- June 2005, adopted Ordinance No. 1194, authorizing a five-year lease with RurAL CAP for the Head Start Program
- August 2010, adopted Ordinance No. 1277, authorizing a five-year lease with RurAL CAP for the Head Start Program

DISCUSSION: The Head Start Program is a nationally recognized program that promotes early childhood development and education. The City of Kodiak has long recognized the value of having a Head Start program in Kodiak and has supported it by providing a series of long-term, no-cost leases for the property at 419 Hillside Drive. RurAL CAP indicated it wishes to continue the program and renew its lease with the City in the attached letter, dated April 22, 2015 (Attachment C).

The combined value of the City property on Hillside Drive and the in-kind utility services provided under the terms of the lease exceed \$30,000. This requires Council to approve the lease through an ordinance, per the City Charter.

ALTERNATIVES: Council may pass Ordinance No. 1333 in the first reading, which is staff's recommendation. Council may also amend the ordinance or fail to advance the ordinance to second reading. Staff does not recommend these alternatives, because it would affect the Head Start Program, possibly requiring them to relocate their program.

FINANCIAL IMPLICATIONS: This lease will not generate revenue for the City, because the property will be made available for the nominal amount of \$1.00 per year. The City also provides in-kind water and sewer utilities for an estimated value of \$2,810 per year. The value of the property, which is \$43,416, and in-kind utilities exceed \$30,000 and subject to the requirements of City Charter Section V-17. This requires Council to approve the lease by ordinance.

LEGAL: The City attorney drafted the lease and the attached ordinance.

STAFF RECOMMENDATION: Staff recommend Council pass Ordinance No. 1333 in the first reading and advance to public hearing and second reading at the next regular or special meeting.

CITY MANAGER'S COMMENTS: This is a valuable program for Kodiak's children, and I am pleased that Council has supported it for so many years. I recommend Council agree to enter into another five-year lease with RurAL CAP and request Council pass Ordinance No. 1333 in the first reading and advance to second reading and public hearing at the next special or regular meeting.

NOTES/ATTACHMENTS:

Attachment A: Ordinance No. 1333

Attachment B: Lease Between the City of Kodiak and the Rural Alaska Community Action Program

Attachment C: Letter of intent to renew lease from RurAL CAP, dated April 22, 2015

PROPOSED MOTION:

Move to pass Ordinance No. 1333 in the first reading and advance to second reading and a public hearing at the next regular or special meeting.

**CITY OF KODIAK
ORDINANCE NUMBER 1333**

**AN ORDINANCE OF THE COUNCIL OF THE CITY OF KODIAK
AUTHORIZING A LEASE OF THE HEAD START BUILDING TO RURAL ALASKA
COMMUNITY ACTION PROGRAM, INC, d/b/a KODIAK HEAD START**

WHEREAS, the City owns the building known as the Head Start Building on the property described below (the "Premises"), located at 419 Hillside Drive; and

WHEREAS, Rural Alaska Community Action Program, Inc. d/b/a Kodiak Head Start desires to continue leasing the Premises to house the Kodiak Head Start program; and

WHEREAS, in accordance with KCC 18.20.030(b), the Council finds it to be for a public purpose and in the best interest of the public to lease the Premises for consideration less than one-tenth of its approved appraised market value per year to Rural Alaska Community Action Program, Inc., d/b/a Kodiak Head Start, a nonprofit corporation.

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 a five-year lease with Rural Alaska Community Action Program, Inc. d/b/a Kodiak Head Start, in the form that has been presented to this meeting (the "Lease"), of the following Premises: that portion of U.S. Survey 2538A, Tract B, more particularly described as that parcel bound on the easterly side by Hillside Drive, on the northerly side by the southerly boundary of Hillside Park defined by a drainage ditch, on the westerly side by the bluff, and on the southerly side by a line approximately three hundred sixty (360) feet southerly of and parallel to the southerly boundary of Hillside Park, located in the Kodiak Recording District, Third Judicial District, State of Alaska.

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

CITY OF KODIAK

MAYOR

ATTEST:

CITY CLERK

First Reading
Second Reading
Effective Date:

**LEASE AGREEMENT NO. 218843
City of Kodiak/ Kodiak Head Start**

LEASE AGREEMENT dated as of July 1, 2015, between the City of Kodiak, a municipal corporation organized under the constitution and laws of the State of Alaska (the "City"), whose address is 710 Mill Bay Road, Kodiak, Alaska 99615, and Rural Alaska Community Action Program, Inc. d/b/a Kodiak Head Start, an Alaska nonprofit corporation (the "Lessee"), whose address is P. O. Box 200908, Anchorage, Alaska 99520.

WHEREAS, the City owns real property and improvements (the "Premises") described as follows:

That portion of U.S. Survey 2538A, Tract B, more particularly described as that parcel bound on the easterly side by Hillside Drive, on the northerly side by the southerly boundary of Hillside Park defined by a drainage ditch, on the westerly side by the bluff, and on the southerly side by a line approximately three hundred sixty (360) feet southerly of and parallel to the southerly boundary of Hillside Park, located in the Kodiak Recording District, Third Judicial District, State of Alaska;

and

WHEREAS, in accordance with KCC 18.20.030(b), the City Council has determined that the leasing of the Premises for use by Lessee is for a public purpose and in the best interest of the public.

NOW, THEREFORE, for and in consideration of the premises and the mutual covenants herein, the parties hereto agree as follows:

1. Lease. The City hereby leases to the Lessee, and the Lessee hereby leases from the City, the Premises.

2. Term; Extension. The term of this Lease (the "Term") shall be for five (5) years, and shall commence on July 1, 2015. The City may, in its discretion, offer to extend the Term for an additional five (5) year period ("Extended Term"). The City shall give the Lessee written notice of an offer to extend the Term at least ninety (90) days before the expiration of the Term. The Lessee may accept an offer to extend the Term by giving the City written notice of acceptance not later than thirty (30) days after the date of the City's notice of the offer to extend. If the Lessee accepts the City's offer to extend the Term, all of the terms and conditions of this Lease shall remain in full force and effect during the Extended Term.

3. Rent. On or before the commencement of the Term, Lessee shall to pay as rent to the City the sum of Five Dollars (\$5.00), constituting rent for the Term at the rate of One Dollar (\$1.00) per annum.

4. Use of Premises. Lessee may use the Premises only for the operation of a Head Start program and activities directly related thereto. Lessee shall not use or occupy the Premises in violation of law or of the certificate of occupancy issued for the Premises, and shall immediately discontinue any use of the Premises which is declared by either any governmental authority having jurisdiction or the City to be a violation of any law, code, regulation, or a violation of said certificate of occupancy. Lessee shall comply with any direction of any governmental authority having jurisdiction which shall, by reason of the nature of Lessee's use or occupancy of the Premises, impose any duty upon Lessee or City with respect to the Premises or with respect to the use or occupancy thereof.

5. Utility Service. City shall provide water and sewer service to the Premises free of charge. Lessee shall provide all other utility services to the Premises at its own expense.

6. Lessee's Acceptance of Premises. Lessee agrees that it has inspected the Premises, knows the condition thereof, and accepts the Premises in the condition in which they now are, and City shall be under no obligation to repair, maintain, or improve the Premises. At the expiration of the Term, Lessee shall surrender the Premises to City in as good a condition as when received, reasonable wear and tear excepted. In no event shall City be liable for any defect, present or future, on or in the Premises.

7. Liens and Encumbrances. During the Term, Lessee shall not allow any mechanic's or materialmen's liens or any other encumbrances to attach against the Premises. Lessee shall discharge, bond over, or otherwise satisfy any mechanic's or materialmen's lien which has been filed against the Premises arising out of work done for, or materials furnished to Lessee within ten (10) days after the lien has been filed. If Lessee fails to discharge, bond over, or otherwise satisfy any such lien, City may do so at Lessee's expense, and Lessee shall pay the amount expended by City, including reasonable attorneys' fees, within ten (10) days following Lessee's receipt of a bill from City.

8. Insurance. (a) At all times during the Term and any Extended Term, Lessee, at its expense, shall provide the following insurance coverages, and shall provide to City certificates of insurance and/or policies acceptable to City therefor at the time this Lease is executed:

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

(2) Workers' Compensation Insurance. Lessee shall provide and maintain, for all employees of Lessee engaged in work under this contract, Workers' Compensation Insurance as required by AS 23.30.045 or any other applicable statutes or regulations. Lessee shall be responsible for Workers' Compensation Insurance for any contractor who directly or indirectly provides services under this Lease.

(b) Additional Insurance Requirements. Each policy of insurance that Lessee provides under this section shall:

(1) List the as additional insureds City, including all elected and appointed City officials, all City employees and volunteers, all City boards, commissions and/or authorities and their board members, employees, and volunteers, and waive subrogation in favor of the foregoing;

(2) Provide coverage that is primary to City and not contributing with any other insurance or similar protection available to City, whether other available coverage be primary, contributing, or excess;

(3) Require sixty (60) days written notice of cancellation non-renewal, reduction and/or material change addressed to: City Clerk, 710 Mill Bay Road, Kodiak, Alaska 99615.

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

9. Indemnification. Lessee shall indemnify, hold harmless and defend City from and against any and all claims, actions, damages, liability and expense, including without limitation attorney's and other professional fees, in connection with death or injury to persons and damage to property arising from or out of the occupancy or use by Lessee of the Premises or any part thereof; however, this provision shall not apply to any claim to the extent the claim arises from the negligence or intentional act of the City or the City's officers, agents, contractors, or employees.

10. Assignment and Subleasing. Lessee may not assign this Lease or sublet any part of the Premises without the advance written approval by City, which approval may be withheld at City's sole discretion.

11. Taxes and Charges. In addition to the rentals provided in this Lease, Lessee shall pay when due all taxes and other charges which are levied at any time during the term of this Lease upon the leasehold interest and any improvements on the Premises.

12. Inspections and Access by the City. Lessee will permit City, its agents, employees and contractors to enter all parts of the Premises during Lessee's business hours, upon 24 hours' notice, to inspect the same and to enforce or carry out any provision of this Lease; provided, however, that, in an emergency situation, such access shall be at any time upon City's oral request.

13. Care of Premises. Lessee shall not use or allow the Premises to be used for any immoral or unlawful purpose, nor shall Lessee maintain or permit any nuisance or commit or suffer to be committed any waste in, on or about the Premises. Lessee shall at all times and at Lessee's sole cost and expense, keep and maintain the Premises in a neat, orderly and sanitary condition, and shall not permit any junk, litter, debris, scrap, or garbage to accumulate thereon.

Lessee shall at all times preserve the Premises in as good a condition and repair as they are now or hereafter may be put into, reasonable use and wear and tear excepted. If Lessee shall fail to keep and preserve the Premises in said condition and state of repair, City may, at its option, put or cause the same to be put into the condition and state of repair agreed upon, and in such case Lessee, on demand, shall pay the cost thereof.

14. Hazardous Substances. Lessee shall not cause or permit the release or disposal of any hazardous substances, wastes or materials on or about the Premises, and Lessee shall be solely responsible for and shall promptly pay the cost of removing all such hazardous substances, wastes and materials from the Premises, which removal shall be in accordance with all applicable governmental requirements. Hazardous substances, wastes or materials shall include those which are defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. §9601, *et seq.*; the Resource Conservation and Recovery Act, as amended, 42 U.S.C. §6901, *et seq.*; the Toxic Substances Control Act, as amended, 15 U.S.C. §2601, *et seq.* Lessee shall comply with all rules and policies set by City, and with all federal, state and local laws, regulations and ordinances which govern the use, storage, handling and disposal of hazardous substances, wastes or materials.

15. Alterations and Modifications. (a) Lessee may not make any alterations to the Premises without the prior written approval of City, and such alterations shall be accomplished at the expense of Lessee, unless City agrees otherwise in writing. Upon the termination or expiration of this Lease, or any renewal thereof, any such alterations shall become the property of City.

(b) Lessee shall perform all alteration work promptly, efficiently, competently and in a good and workmanlike manner by duly qualified or licensed persons or entities, using first grade materials. All such work shall comply with all applicable governmental codes, rules, regulations and ordinances.

16. City's Option to Terminate Lease. If the Premises are (a) rendered wholly untenable, or (b) damaged as a result of any cause which is not covered by City's insurance, or (c) damaged or destroyed in whole or in part during the last year of the Term, City may elect to terminate this Lease by giving Lessee written notice of such election within ninety (90) days after the occurrence of such event. If such notice is given, the rights and obligations of the parties hereunder shall cease as of the date of such notice.

17. Default; Remedies. (a) The occurrence of any of the following shall constitute a material default and breach of this Lease:

- (i) The vacating or abandonment of the Premises by Lessee.
- (ii) A failure by Lessee to pay the rent or to make any other payment required to be made by Lessee hereunder, when due, or within ten (10) days thereafter.
- (iii) A failure by Lessee to observe and perform any other provision of this Lease to be observed or performed by Lessee; provided that Lessee has not either corrected such failure within thirty (30) days after City has given Lessee written notice thereof; or if more than thirty (30) days are required for its correction, Lessee shall have commenced such correction within such thirty (30) day period and thereafter diligently prosecuted the same to completion.

(iv) The making by Lessee of any general assignment for the benefit of creditors; the filing by or against Lessee of a petition to have Lessee adjudged a bankrupt or the filing of a petition for reorganization or arrangement under any law relating to bankruptcy (unless, in the case of a petition filed against Lessee, the same is dismissed within sixty (60) days); the appointment of a trustee or receiver to take possession of substantially all of Lessee's assets located at the Premises or of Lessee's interest in this Lease, where possession is not restored to Lessee within thirty (30) days; or the attachment, execution, or other judicial seizure of substantially all of Lessee's assets located at the Premises or of Lessee's interest in this Lease, where such seizure is not discharged within thirty (30) days.

(b) In the event Lessee commits an act of default as set forth in (a) of this section, City may exercise one or more of the following described remedies, in addition to all other rights and remedies available at law or in equity, whether or not stated in this Lease.

(i) City may continue this Lease in full force and effect and shall have the right to collect rent when due. During the period Lessee is in default, City may re-enter the Premises with or without legal process and relet them, or any part of them, to third parties for Lessee's account, and Lessee hereby expressly waives any and all claims for damages by reason of such re-entry, as well as any and all claims for damages by reason of any distress warrants or proceedings by way of sequestration which Lessor may employ to recover said rents. Lessee shall be liable immediately to City for all costs City incurs in reletting the Premises, including, without limitation, brokers' commissions, expenses of remodeling the Premises required by the reletting, and like costs. Reletting can be for a period shorter or longer than the remaining Term of this Lease, and in no event shall City be under any obligation to relet the Premises. On the dates such rent is due, Lessee shall pay to City a sum equal to the rent due under this Lease, less the rent City receives from the reletting. No act by City allowed by this paragraph shall terminate this Lease unless City notifies Lessee in writing that City elects to terminate this Lease.

(ii) City may terminate this Lease at any time. Upon termination, City shall have the right to collect an amount equal to: all expenses incurred by City in recovering possession of the Premises, including reasonable attorneys' fees; all reasonable costs and charges for the care of the Premises while vacant; all renovation costs incurred in connection with the preparation of the Premises for a new lessee; and an amount by which the entire rent for the remainder of the Term exceeds the loss of rent that Lessee proves could have been reasonably avoided.

18. Notices. Any notice, request, demand, approval or consent given or required to be given under this Lease shall be in writing and shall be addressed as follows:

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

To Lessee: RurAL CAP
 P. O. Box 200908
 Anchorage, Alaska 99520

Either party may, at any time, change its notice address for the above purposes by sending a notice to the other party stating the change and setting forth the new address.

19. Successors and Assigns. This Lease and the covenants and conditions contained herein shall inure to the benefit of and be binding upon City, its successors and assigns, and shall be binding upon Lessee, its successors and assigns and shall inure to the benefit of the Lessee and only such assigns of Lessee to whom the assignment of this Lease by the Lessee has been consented to by City.

20. Relationship of Parties. Nothing contained herein shall be deemed or construed to make the parties hereto partners or joint venturers, or to render either party liable for any of the debts or obligations of the other, it being the intent of the parties to create only the relationship of landlord and tenant herein.

21. Captions and Headings. The section captions and headings herein are for convenience of reference only and in no way shall be used to construe or modify the provisions set forth in this Lease.

22. Severability. If any provision of this Lease is deemed unenforceable in whole or part, such provision shall be limited to the extent necessary to render the same valid or shall be deemed excised from this Lease and replaced by a valid provision as close in meaning and intent as the excised provision, as circumstances require, and this Lease shall be construed as if said provision had been incorporated herein as so limited or as so replaced, as the case may be.

23. No Third Party Beneficiaries. Nothing in this Lease, express or implied, is intended or shall be construed to give to any person, other than the City and the Lessee, any right, remedy or claim under or by reason of this Lease. The covenants, stipulations and agreements contained in this Lease are and shall be for the sole and exclusive benefit of the City and the Lessee, and their permitted successors and assigns.

24. Entire Agreement. This Lease, including all exhibits attached hereto, constitutes the entire agreement and understanding of the parties with respect to the subject matter hereof, and there are no other prior or contemporaneous written or oral agreements, undertakings, promises, warranties, or covenants with respect thereto not contained herein.

25. Amendment. This Lease may be amended only by a written instrument executed by all of the parties hereto.

26. Applicable Law. This Lease shall be governed by and construed in accordance with the laws of the State of Alaska.

IN WITNESS WHEREOF, the parties have caused this Lease to be executed in their respective corporate names all as of the date first written above.

CITY OF KODIAK

RURAL ALASKA COMMUNITY
ACTION PROGRAM, INC.

Aimee Kniazowski, City Manager

Name

Title: _____

Attest:

Attest:

Debra Marlar, City Clerk

Name



Rural Alaska Community Action Program, Inc.

731 East 8th Avenue, Anchorage, AK 99501
(907) 279-2511 ♦ Fax: (907) 278-2309
www.ruralcap.com



April 22, 2015

Debra Marlar
City Clerk
Office of the City Clerk
710 Mill Bay Road, Room 216
Kodiak, AK 99615

Dear Ms. Marlar:

Rural Alaska Community Action Program Inc. would like to extend the lease of the Kodiak Head Start Facility which expires June 30, 2015. We would like to start the process of updating the lease agreement for the Kodiak Head Start facility.

Please contact me at (907) 875-7331 as confirmation you received the request to extend the lease. I can also be contacted at dhansen@ruralcap.com. If further information is needed please let me know.

Sincerely,

Drew Hansen
Head Start Regional Manager

MEMORANDUM TO COUNCIL

To: Mayor Branson and City Councilmembers

From: Aimée Kniaziowski, City Manager 

Through: Corey Gronn, Parks and Recreation Director

Date: May 14, 2015

Agenda Item: V. c. **Resolution No. 2015–14, Authorizing the Issuance of a Permit to the Kodiak Garden Club for Use of Public Property for its Annual Plant Sale**

SUMMARY: Resolution No. 2015–14 authorizes the issuance of a permit to the Kodiak Garden Club to use the covered area of the Baranof Park ice rink to hold its annual plant sale on June 6, 2015. Staff recommends Council adopt Resolution No. 2015–14.

PREVIOUS COUNCIL ACTION: Each year Council issues permits to non-profit organizations to allow them to conduct fundraising activities that benefit the community on City property.

DISCUSSION: The Kodiak Garden Club makes locally grown plants available to Kodiak gardeners through a plant sale each June. Besides the plants that are sold, the Garden Club provides educational materials to the public, including information on ways to identify and control invasive species, and they answer questions about gardening in Kodiak. The proceeds from the sale augment the small annual grant the club receives from the City to plant flowers and greenery at City facilities like the Baranof Museum, the Harbor, and the small grassy area at the “Y” intersection. Funds from this sale also help support a small grant program to the schools for related projects.

This year, the Garden Club has requested to use the covered area at the ice rink at Baranof Park to stage their sale. This spot works well as an indoor/outdoor space which accommodates unpredictable weather. The sale is planned for Saturday, June 6, 2015. The Garden Club is requesting permission to use the facility from 8 a.m. until the sale, which starts at 10 a.m., is over. The Garden Club ensures they will coordinate their activities with the Parks and Recreation Director and will provide clean up after the event. The resolution authorizes the use of the ice rink facility at Baranof Park for the plant sale from 8 a.m. through completion and cleanup, on June 6, 2015.

ALTERNATIVES:

- 1) Adopt Resolution No. 2015–14, which is staff’s recommendation.
- 2) Do not adopt Resolution No. 2015–14, which would require the Garden Club to find another suitable location for this fundraiser.

STAFF RECOMMENDATION: Staff recommends Council adopt Resolution No. 2015–14.

CITY MANAGER’S COMMENTS: The City and its residents both benefit from this annual plant sale. The Garden Club is an active and responsible non-profit that works to educate and beautify our community. The way the Garden Club uses the proceeds from the sale benefits the community. I support the request and recommend that Council adopts Resolution No. 2015–14.

ATTACHMENTS:

Attachment A: Resolution No. 2015–14

Attachment B: Letter of request from the Kodiak Garden Club, dated March 9, 2015

PROPOSED MOTION:

Move to adopt Resolution No. 2015–14.

**CITY OF KODIAK
RESOLUTION NUMBER 2015-14**

A RESOLUTION OF THE COUNCIL OF THE CITY OF KODIAK AUTHORIZING THE ISSUANCE OF A PERMIT TO THE KODIAK GARDEN CLUB FOR USE OF PUBLIC PROPERTY IN FOR ITS ANNUAL PLANT SALE

WHEREAS, for many years the Kodiak Garden Club has shared locally grown plants with Kodiak gardeners through a plant sale in June; and

WHEREAS, during the plant sale educational materials are distributed and questions answered about gardening in Kodiak, including methods to get rid of invasive weeds; and

WHEREAS, funds from the plant sale are used to make small grants to school groups working on growing projects; and

WHEREAS, funds from the sale are also used to supplement the small grant the Garden Club receives from the city for plantings throughout the city; and

WHEREAS, the Garden Club has requested use of the covered area at Baranof Park on Saturday, June 6, 2015, to stage the sale.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Kodiak, Alaska, that a permit be issued, with the permit fee waived, to the Kodiak Garden Club as provided in section 5.04.050(b) and (d) of the City Code for use of public property for 2015 plant sale on the condition that the Garden Club agrees to comply with the stipulations set forth in this section and section 5.04.060 of the City Code.

BE IT FURTHER RESOLVED that event sponsors shall coordinate the event with the Kodiak Parks and Recreation Director.

CITY OF KODIAK

MAYOR

ATTEST:

CITY CLERK

Adopted:



Kodiak Garden Club
 PO Box 8792
 Kodiak, Alaska 99615
 March 9, 2015

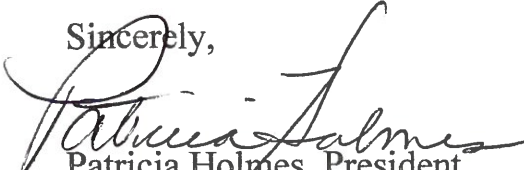


Dear Mayor Branson, and City Council Members:


For many years, the Kodiak Garden Club has shared locally grown plants with Kodiak gardeners through a plant sale in early June. During the sale, educational materials are distributed and questions answered about gardening in Kodiak. In addition, Blythe Brown of the Kodiak Soil and Water Conservation District distributes information about invasive weeds and other plants to attendees. Funds from this sale are used to make small grants for school groups working on growing projects and to supplement the small grant Garden Club receives from the city for work at Baranof Museum, the harbor area (especially the memorial area), and other areas around the city from year to year. This year the Garden Club would like to use the covered area at Baranof Park to stage the sale. This spot works very well as an indoor/outdoor space which adapts to Kodiak's unpredictable weather. The sale is planned for Saturday, June 6, starting at 10:00. However, we usually begin setting up about 8 am on that morning and so would need access to the space at that time. Garden Club members are very conscientious about clean up after the event and use tarps to protect the special flooring in the rink area. Questions about this request may be directed to Patty Holmes, 486-3074.

Thank you for your consideration of Kodiak Garden Club's request to use the covered area at Baranof Park for the Kodiak Garden Club Annual Plant Sale on June 6.

Sincerely,


 Patricia Holmes, President
 Kodiak Garden Club

MEMORANDUM TO COUNCIL

To: Mayor Branson and City Councilmembers
From: Aimée Kniaziowski, City Manager 
Thru: Corey Gronn, Parks and Recreation Director
Date: May 14, 2015

Agenda Item: V. d Resolution No. 2015-15, Authorizing the Issuance of a Permit to the Filipino-American Association of Kodiak for the Use of Public Property for a Dance to Fund the Filipino-American Basketball Team's Travel Expenses

SUMMARY: The Filipino-American basketball program is taking a basketball trip to Wasilla May 15 through May 20 and is raising funds for this trip. They request the use of the Teen Center for a dance fundraiser on May 29. The Filipino-American Association of Kodiak (Fil-Am) is hosting the teen dance on May 29, 2015, from 7-11:30 p.m. The purpose of dance is to raise funds to pay travel costs for this competition. Fil-Am proposes to charge an entry fee of \$3 per participant or \$5 per couple.

PREVIOUS COUNCIL ACTION: Council issues permits to non-profit agencies periodically for fundraising on City property and does so by resolution. Student sports teams have held similar activities at the Teen Center. The most recent permit for such an activity was in 2012 for a fundraising dance for the high school basketball team.

DISCUSSION: The Filipino-American basketball team is a group of 11 middle school students who have been playing as a team for the past 18 months. The team has participated in City League Basketball and was C-Division champions. This will be the team's first off-island tournament they have been able to attend. In preparation for the tournament the team practices twice a week.

The Fil-Am Association requested permission to use the Teen Center to hold a fundraising dance to help the team raise travel money. The attached letter from Filipino-American sports coordinator Daisy Braga provides more details about the team and fundraiser.

ALTERNATIVES:

- 1) Adopt Resolution No. 2015-15, which staff supports, because it provides support for community youth and is consistent with past Council practice.
- 2) Do not adopt Resolution No. 2015-15, which is not recommended.

FINANCIAL IMPLICATIONS: The City will not generate any fees for this event and will not incur any expense.

LEGAL: N/A

STAFF RECOMMENDATION: Staff recommends Council adopt Resolution No. 2015–15 to allow the Fil-Am team’s use of the City’s Teen Center to host a fundraising dance.

CITY MANAGER’S COMMENTS: I support this request and ask Council to support it as well by adopting the resolution.

ATTACHMENTS:

Attachment A: Resolution No. 2015–15

Attachment B: Request letter from Daisy Braga, Fil-Am sports coordinator

PROPOSED MOTION:

Move to adopt Resolution No. 2015–15.

**CITY OF KODIAK
RESOLUTION NUMBER 2015-15**

A RESOLUTION OF THE COUNCIL OF THE CITY OF KODIAK AUTHORIZING THE ISSUANCE OF A PERMIT TO THE FILIPINO-AMERICAN ASSOCIATION OF KODIAK FOR THE USE OF PUBLIC PROPERTY FOR A DANCE TO FUND THE FILIPINO-AMERICAN BASKETBALL TEAM'S TRAVEL EXPENSES

WHEREAS, the Filipino-American Basketball team (Team) is affiliated with the Filipino-American Association; and

WHEREAS, the Team represents the Filipino-American Association at a basketball tournament in Wasilla, Alaska, May 15 through May 20, 2015; and

WHEREAS, the Team is sponsoring a dance to help raise money to cover travel expenses for the Wasilla event; and

WHEREAS, the Team has requested the use of the Teen Center to sponsor dances on May 29 from 7 p.m. through 11:30 p.m.; and

WHEREAS, the Team will supply chaperones, provide a DJ for music, ensure the facility is cleaned afterwards, and will charge a fee for attendees; and

WHEREAS, Kodiak City Code Section 5.04.010 prohibits business activities on City property, and Kodiak City Code Section 5.04.060 requires a permit for community festivities.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Kodiak, Alaska, that a permit be issued, with the permit fee waived, to the Kodiak Boys' Summer Basketball Program as provided in section 5.04.050(b) and (d) of the City Code for use of public property for its fundraising dance at the Teen Center on May 29, 2015, on the condition that the Team agrees to comply with the stipulations set forth in this section and section 5.04.060 of the City Code.

BE IT FURTHER RESOLVED that event sponsors shall coordinate the event with the Kodiak Parks and Recreation Director.

CITY OF KODIAK

MAYOR

ATTEST:

CITY CLERK

Adopted:

Filipino-American Youth Basketball Association
Daisy Braga
115 Birch Ave.
Kodiak, AK 99615

May 30th, 2015

City Council
710 Mill Bay Rd. RM #216
Kodiak, AK 99615

Dear Mayor Branson, and City Council Members:

For several years, the Filipino-American Association has helped youths in the community. About 10 years ago the association would run a basketball league for the youth and have them travel to Anchorage and play in a tournament. Last year we started this league again, the league has taught student-athletes to balance school and extracurricular activities, teach them responsibilities, and most importantly it gave them an alternative option for after school rather than turning to drugs or alcohol. We are looking to joining a tournament in May 2015 and would like to fundraise by hosting a dance at The Teen Center. The funds from this dance would help us get to Wasilla and participate in the upcoming tournament in May 2015. The Filipino-American Association has used The Teen Center for several events such as; The Fil-Am Coronation night hosted every May, the passport renewal for Filipinos in August, and other several association get-togethers. The Teen Center would be an excellent space for us to provide a dance for teens, because it is a place for teens to hang out, it could be well supervised with chaperones in different corners, and it has equipment we can use for a dance (Dj system/speakers, tables, and chairs). We've previously spoke with The Teen Center Management, Landon Durand, and he is allowing us to hold a dance on Friday, May 8th 2015 prior to our leaving. We would host the first part of the dance for middle school aged kids from 7:00—9:00 P.M. and the second part of the dance for high school aged kids from 9:15—11:30 P.M. The association will supply their own chaperones/DJ that will supervise children during the event and clean up after the event. We would like at least an hour to set up prior to event starting at 7:00 P.M. Questions about this request may be directed to Daisy Braga, 512-3201.


Thank you for your consideration of Kodiak's Filipino-American Youth Basketball Association's request to use The Teen Center to fundraise for our upcoming basketball tournament in May 2015.

Sincerely,



Daisy Braga, Sport's Coordinator
Filipino-American Youth Basketball Association

MEMORANDUM TO COUNCIL

To: Mayor Branson and City Councilmembers
From: Aimée Kniazowski, City Manager 
Debra Marlar, City Clerk

Date: May 14, 2015

Agenda Item: V. e. **Authorization of ABC Board Restaurant Designation Permit and Transfer of Ownership From Kodiak Harbor Convention Center to Island Hotels, LLC**

SUMMARY: Kodiak Harbor Convention Center filed an application for a restaurant designation permit and transfer of ownership with the State of Alaska Alcoholic Beverage Control (ABC) Board. The permit is currently held by Kodiak Harbor Convention Center, and the owners of the permit have requested the permit be transferred to Island Hotels, LLC dba Chart Room. State regulations require the ABC Board to forward the restaurant designation application to the City Council for approval before a permit can be issued. State regulations also provide an opportunity for the City Council to protest issuance of a liquor license.

PREVIOUS COUNCIL ACTION: From time to time, the City Council approves state restaurant designation applications for local restaurants. Council last approved a restaurant designation permit application for Aquamarine LLC in April 2014.

DISCUSSION: Island Hotels, LLC filed a Restaurant Designation Application with the Alcoholic Beverage Control Board that would permit persons sixteen to twenty years of age to dine unaccompanied, permit persons under sixteen years of age to dine there if accompanied by anyone twenty-one years of age or older, and would authorize the establishment to employ persons between sixteen and twenty years of age to serve food and bus tables. The restaurant designation permit is presently issued to Kodiak Harbor Convention Center dba Chart Room. Alaska Statutes 04.11.100 and 04.16.049, stipulate that an application for a new restaurant designation must be approved by the local governing body having jurisdiction over the area in which the licensed premises exists; therefore, the ABC Board forwarded the application to the City for Council approval.

ALTERNATIVES: Council may authorize the Restaurant Designation Application or decline to authorize the application.

LEGAL: State Statutes require local governments having jurisdiction in the area to approve restaurant designation applications.

CITY MANAGER’S COMMENTS: State regulations allow the local governing body an opportunity to weigh in on liquor license issuances, restaurant designations, and renewals. City staff has no concerns about this business or application to pass on to Council.

ATTACHMENTS:

Attachment A: Island Hotels, LLC Transfer of Ownership and Restaurant Designation Application

PROPOSED MOTION:

Move to approve the ABC Board Restaurant Designation Application and Transfer of Ownership for Island Hotels, LLC.



THE STATE of ALASKA

GOVERNOR BILL WALKER

Department of Commerce, Community, and Economic Development

ALCOHOLIC BEVERAGE CONTROL BOARD

2400 Viking Drive
Anchorage, Alaska 99501
Main: 907.269.0350
TDD: 907.465.5437
Fax: 907.334.2285

April 10, 2015

City of Kodiak
Attn: Debra Marlar, City Clerk
VIA Email : clerk@city.kodiak.ak.us
Cc: njavier@kodiakak.us

Island Hotels, LLC. – Beverage Dispensary-Tourism License #600 DBA Chart Room

- checkbox New Application
checkbox checked Transfer of Ownership
checkbox Transfer of Location
checkbox checked Restaurant Designation Permit
checkbox DBA Name Change

We have received an application for the above listed licenses (see attached application documents) within your jurisdiction. This is the notice as required under AS 04.11.520. Additional information concerning filing a "protest" by a local governing body under AS 04.11.480 is included in this letter.

A local governing body as defined under AS 04.21.080(11) may protest the approval of an application(s) pursuant to AS 04.11.480 by furnishing the board and the applicant with a clear and concise written statement of reasons in support of a protest within 60 days of receipt of this notice. If a protest is filed, the board will not approve the application unless it finds that the protest is "arbitrary, capricious and unreasonable". Instead, in accordance with AS 04.11.510(b), the board will notify the applicant that the application is denied for reasons stated in the protest. The applicant is entitled to an informal conference with either the director or the board and, if not satisfied by the informal conference, is entitled to a formal hearing in accordance with AS 44.62.330-44.62-630. IF THE APPLICANT REQUESTS A HEARING, THE LOCAL GOVERNING BODY MUST ASSIST IN OR UNDERTAKE THE DEFENSE OF ITS PROTEST.

Under AS 04.11.420(a), the board may not issue a license or permit for premises in a municipality where a zoning regulation or ordinance prohibits the sale or consumption of alcoholic beverages, unless a variance of the regulation or ordinance has been approved. Under AS 04.11.420(b) municipalities must inform the board of zoning regulations or ordinances which prohibit the sale or consumption of alcoholic beverages. If a municipal zoning regulation or ordinance prohibits the sale or consumption of alcoholic beverages at the proposed premises and no variance of the regulation or ordinance has been approved, please notify us and provide a certified copy of the regulation or ordinance if you have not previously done so.

Protest under AS 04.11.480 and the prohibition of sale or consumption of alcoholic beverages as required by zoning regulation or ordinance under AS 04.11.420(a) are two separate and distinct subjects. Please bear that in mind in responding to this notice.

AS 04.21.010(d), if applicable, requires the municipality to provide written notice to the appropriate community council(s).

If you wish to protest the application referenced above, please do so in the prescribed manner and within the prescribed time. Please show proof of service upon the applicant. For additional information please refer to 3 AAC 304.145, Local Governing Body Protest.

Note: Applications applied for under AS 04.11.400(g), 3 AAC 304.335(a)(3), AS 04.11.090(e), and 3 AAC 304.660(e) must be approved by the governing body.

Sincerely,



Jane Sawyer

Business Registration Examiner

907-269-0359

Jane.sawyer@alaska.gov

State of Alaska
Alcoholic Beverage Control Board

Date of Notice: April 10, 2015

Application Type: NEW _____ x **TRANSFER**
x Ownership
 _____ Location
 _____ Name Change

Governing Body: **City of Kodiak**
 Community Councils: None

License #: 600
 License Type: Beverage Dispensary-Tourism
 D.B.A.: Chart Room
 Licensee/Applicant: Island Hotels, LLC.
 Physical Location: 236 W Rezanof Drive, Kodiak, AK 99615
 Mail Address: 236 W Rezanof Drive, Kodiak, AK 99615
 Telephone #: 907-486-5712
 EIN: 47-2488349

Corp/LLC Agent:	Address	Phone	Date and State of Incorporation	Good standing?
Susan Johnson	236 W. Rezanof Drive Kodiak, AK 99615	907-486-5712	12/2/2014 Alaska	Yes

Please note: the Members/Officers/Directors/Shareholders (principals) listed below are the principal members. There may be additional members that we are not aware of because they are not primary members. We have listed all principal members and those who hold at least 10% shares.

Member/Officer/Director:	DOB	Address	Phone	Title/Shares (%)
Susan Johnson President	12/10/1974	406 Neva Way Kodiak, AK 99615	907-486-5712	51%
Daniel Gilbert Vice President	3/25/1974	406 Neva Way, Kodiak, AK 99615	907-486-5712	49%

If **transfer** application, current license information:

License #: 600
 Current D.B.A.: Chart Room
 Current Licensee: Kodiak Inn, Inc.
 Current Location: 236 W Rezanof Drive, Kodiak, AK 99615

Additional comments: **Restaurant Designation Permit Application attached.**

A local governing body as defined under AS 04.21.080(11) may protest the approval of an application(s) pursuant to AS 04.11.480 by furnishing the board and the applicant with a clear and concise written statement of reasons in support of a protest within 60 days of receipt of this notice. If a protest is filed, the board will not approve the application unless it finds that the protest is "arbitrary, capricious and unreasonable". Instead, in accordance with AS 04.11.510(b), the board will notify the applicant that the application is denied for reasons stated in the protest. The applicant is entitled to an informal conference with either the director or the board and, if not satisfied by the informal conference, is entitled to a formal hearing in accordance with AS 44.62.330-44.62-630. **IF THE APPLICANT REQUESTS A HEARING, THE LOCAL GOVERNING BODY MUST ASSIST IN OR UNDERTAKE THE DEFENSE OF ITS PROTEST.**

Under AS 04.11.420(a), the board may not issue a license or permit for premises in a municipality where a zoning regulation or ordinance prohibits the sale or consumption of alcoholic beverages, unless a variance of the regulation or ordinance has been approved. Under AS 04.11.420(b) municipalities must inform the board of zoning regulations or ordinances which prohibit the sale or consumption of alcoholic beverages. If a municipal zoning regulation or ordinance prohibits the sale or consumption of alcoholic beverages at the proposed premises and no variance of the regulation or ordinance has been approved, please notify us and provide a certified copy of the regulation or ordinance if you have not previously done so.

Protest under AS 04.11.480 and the prohibition of sale or consumption of alcoholic beverages as required by zoning regulation or ordinance under AS 04.11.420(a) are two separate and distinct subjects. Please bear that in mind in responding to this notice.

AS 04.21.010(d), if applicable, requires the municipality to provide written notice to the appropriate community council(s).

If you wish to protest the application referenced above, please do so in the prescribed manner and within the prescribed time. Please show proof of service upon the applicant. For additional information please refer to 3 AAC 304.145, Local Governing Body Protest.

Note: Applications applied for under AS 04.11.400(g), 3 AAC 304.335(a)(3), AS 04.11.090(e), and 3 AAC 304.660(e) must be approved by the governing body.

Sincerely,



Jane Sawyer
Business Registration Examiner
jane.sawyer@alaska.gov
907-269-0359

Alcoholic Beverage Control Board
2400 Viking Drive
Anchorage, AK 99501

Transfer Liquor License

(907) 269-0350
Fax: (907) 334-2285
<http://commerce.alaska.gov/dnn/abc/Home.aspx>

License is: Full Year OR Seasonal List Dates of Operation: _____

SECTION A - LICENSE INFORMATION			FEES
License Year: <u>2014/2015</u> <u>2015/16</u>	License Type: <u>Beverage Dispensary-Tourism</u>	Statute Reference: <u>Sec. 04.11.400(d)</u>	<u>12569</u> Filing Fee: \$100.00 Rest. Desig. Permit Fee: (\$50.00) \$ <u>50</u> Fingerprint: \$ (\$51.50 per person) TOTAL: <u>150.00</u>
License #: <u>600</u>	Local Governing Body: (City, Borough or Unorganized) <u>Kodiak City</u>	Community Council Name(s) & Mailing Address: <u>Kodiak City Council</u> <u>710 Mill Bay Rd</u> <u>Kodiak, AK 99615</u>	
Name of Applicant (Corp/LLC/LP/LLP/Individual/Partnership): <u>Island Hotels, LLC</u>	Doing Business As (Business Name): <u>Chart Room</u>	Business Telephone Number: <u>486-5712</u> Fax Number: <u>486-3430</u>	
Mailing Address: <u>236 W. Renzanof Drive</u>	Street Address or Location of Premises: <u>236 W. Renzanof Drive</u> <u>Kodiak, AK 99615</u>	Email Address: <u>info@kodiakinn.com</u>	
City, State, Zip: <u>Kodiak, AK 99615</u>			
Is any shareholder related to the current owner? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No If "yes" please state the relationship: <u>daughter</u>			
SECTION B - TRANSFER INFORMATION			
<input checked="" type="checkbox"/> Regular Transfer <input type="checkbox"/> Transfer with security interest: Any instrument executed under AS 04.11.670 for purposes of applying AS 04.11.360(4)(b) in a later involuntary transfer, must be filed with this Application. Real or personal property conveyed with this transfer must be described. Provide security interest documents. <input type="checkbox"/> Involuntary Transfer. Attach documents which evidence default under AS 04.11.670.		Name and Mailing Address of CURRENT Licensee: <u>236 W. Renzanof Dr.</u> <u>Kodiak Inn, Inc.</u> <u>Kodiak, AK 99615</u> Business Name (dba) BEFORE transfer: <u>Chart Room</u> Street Address or Location BEFORE transfer: <u>236 W. Renzanof Drive</u>	
SECTION C - PREMISES TO BE LICENSED			
Distance to closest school grounds: <u>N/A</u>	<i>Distance measured under:</i> <input type="checkbox"/> AS 04.11.410 OR <input type="checkbox"/> Local ordinance No.	<input type="checkbox"/> Premises is GREATER than 50 miles from the boundaries of an incorporated city, borough, or unified municipality. <input type="checkbox"/> Premises is LESS than 50 miles from the boundaries of an incorporated city, borough, or unified municipality. <input checked="" type="checkbox"/> Not applicable	
Distance to closest church: <u>N/A</u>	<i>Distance measured under:</i> <input type="checkbox"/> AS 04.11.410 OR <input type="checkbox"/> Local ordinance No.		
Premises to be licensed is: <input type="checkbox"/> Proposed building <input checked="" type="checkbox"/> Existing facility <input type="checkbox"/> New building		<input type="checkbox"/> Plans submitted to Fire Marshall (required for new & proposed buildings) <input checked="" type="checkbox"/> Diagram of premises attached	

Transfer Liquor License

SECTION D – LICENSEE INFORMATION

1. Does any individual, corporate officer, director, limited liability organization member, manager or partner named in this application have any direct or indirect interest in any other alcoholic beverage business licensed in Alaska or any other state?

Yes No If Yes, complete the following. Attach additional sheets if necessary.

Name	Name of Business	Type of License	Business Street Address	State
Susan Johnson	Kodiak Harbor Comm. Center	Beverage Dispensary	211 Reszanof W	AK (Kodiak)
Daniel Gilbert	Kodiak Harbor Comm. Center	Beverage Dispensary	211 Reszanof W	AK (Kodiak)

2. Has any individual, corporate officer, director, limited liability organization member, manager or partner named in this application been convicted of a felony, a violation of AS 04, or been convicted as a licensee or manager of licensed premises in another state of the liquor laws of that state?

Yes No If Yes, attach written explanation.

SECTION E – OWNERSHIP INFORMATION - CORPORATION

Corporations, LLCs, LLPs and LPs must be registered with the Dept. of Community and Economic Development.

Name of Entity (Corporation/LLC/LLP/LP) (or N/A if an Individual ownership): Island Hotels, LLC		Telephone Number: 907-486-5712	Fax Number: 907-486-3430
Corporate Mailing Address: 236 W Reszanof Drive	City: Kodiak	State: AK	Zip Code: 99615
Name, Mailing Address and Telephone Number of Registered Agent: Susan Johnson 236 W. Reszanof Drive Kodiak, AK 99615 907-486-5712		Date of Incorporation OR Certification with DCED: 12/11/14	State of Incorporation: AK
Is the Entity in "Good Standing" with the Alaska Division of Corporations? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No			
If no, attach written explanation. Your entity <i>must</i> be in compliance with Title 10 of the Alaska Statutes to be a valid liquor licensee.			

Entity Members (Must include President, Secretary, Treasurer, Vice-President, Manager and Shareholder/Member with at least 10%)

Name	Title	%	Home Address & Telephone Number	Work Telephone Number	Date of Birth
Susan Johnson	Pres.	51	406 Neva Way, Kodiak, AK 99615 907-486-4018	907-486-5712	12/10/74
Daniel Gilbert	V. Pres.	49	406 Neva Way, Kodiak, AK 99615 907-486-4018	907-486-5712	03/25/74

Alcoholic Beverage Control Board
 2400 Viking Drive
 Anchorage, AK 99501

Transfer Liquor License

(907) 269-0350
 Fax: (907) 334-2285
<http://commerce.alaska.gov/dnn/abc/Home.aspx>

NOTE: If you need additional space, please attach a separate sheet.

SECTION F – OWNERSHIP INFORMATION – SOLE PROPRIETORSHIP (INDIVIDUAL OWNER & SPOUSE)

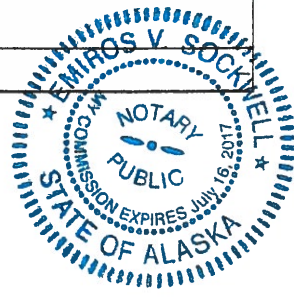
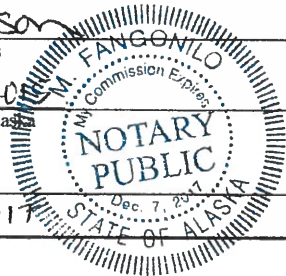
Individual Licensees/Affiliates (The ABC Board defines an "Affiliate" as the spouse or significant other of a licensee. Each Affiliate must be listed.)

Name: <i>Susan Johnson</i> Address: <i>406 Nava Way</i> <i>Kodiak, AK 99615</i> Home Phone: <i>907) 486-4018</i> Work Phone: <i>907) 486-5712</i>	Applicant <input checked="" type="checkbox"/> Affiliate <input type="checkbox"/> Date of Birth: <i>12/10/74</i>	Name: Address: Home Phone: Work Phone:	Applicant <input type="checkbox"/> Affiliate <input type="checkbox"/> Date of Birth:
Name: <i>Daniel Gilbert</i> Address: <i>406 Nava Way</i> <i>Kodiak, AK 99615</i> Home Phone: <i>907) 486-4018</i> Work Phone: <i>907) 486-5712</i>	Applicant <input checked="" type="checkbox"/> Affiliate <input type="checkbox"/> Date of Birth: <i>03/25/74</i>	Name: Address: Home Phone: Work Phone:	Applicant <input type="checkbox"/> Affiliate <input type="checkbox"/> Date of Birth:

Declaration

- I declare under penalty of perjury that I have examined this application, including the accompanying schedules and statements, and to the best of my knowledge and belief it is true, correct and complete, and this application is not in violation of any security interest or other contracted obligations.
- I hereby certify that there have been no changes in officers or stockholders that have not been reported to the Alcoholic Beverage Control Board. The undersigned certifies on behalf of the organized entity, it is understood that a misrepresentation of fact is cause for rejection of this application or revocation of any license issued.
- I further certify that I have read and am familiar with Title 4 of the Alaska statutes and its regulations, and that in accordance with AS 04.11.450, no person other than the licensee(s) has any direct or indirect financial interest in the licensed business.
- I agree to provide all information required by the Alcoholic Beverage Control Board in support of this application.

Signature of Current Licensee(s) Signature: <i>Judith Johnson</i> Signature: _____ Name & Title (Please Print): <i>Judith Johnson</i> Subscribed and sworn to before me this <i>27th</i> day of <i>March</i> , 20 <i>15</i> Notary Public in and for the State of Alaska <i>[Signature]</i> My commission expires: <i>12/7/2017</i>	Signature of Transferee(s) Signature: <i>Susan Johnson</i> Signature: _____ Name & Title (Please Print): <i>Susan Johnson, Treasurer</i> Subscribed and sworn to before me this <i>8th</i> day of <i>April</i> , 20 <i>15</i> Notary Public in and for the State of Alaska <i>[Signature]</i> My commission expires: <i>02/16/17</i>
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**STATE OF ALASKA
ALCOHOLIC BEVERAGE CONTROL BOARD
APPLICATION FOR RESTAURANT DESIGNATION PERMIT
AS 04.16.049 & 3 AAC 304.715 - 794**

The granting of this permit allows access of persons under 21 years of age to designated licensed premises for purposes of dining, and persons between the ages of 16 - 20 for employment. If for employment, please indicate in detail what the employment duties will be in question #3.

License Number: 600 Type: Beverage Dispensary - Tourism

This application is for designation of premises where: (Please check the appropriate items below)

- 1. Bona fide restaurant pursuant to 3 AAC 304.305 & 3 AAC 304.715-794.
- 2. Persons 16 - 20 years of age may dine unaccompanied.
- 3. Persons under 16 may dine accompanied by a person 21 years of age or older.
- 4. Persons between 16 - 20 years of age may be employed. *(See note below)

Licensee's Name: Island Hotels, LLC

Name of Business: Chart Room

Business Address: 236 W Rungof Drive City: Kodiak

1. Hours of operation 10am to 1am Telephone Number: 907-486-5712

2. Have police been called to your premises for any reason? Yes No
(If you answered yes, please explain below).

3. * Duties of employment: bussing, hostess, or dishwasher

4. Are video games available to the public on your premises? Yes No

5. Do you provide live entertainment, such as live music, pool tables, karaoke, dancing, sports or pin-ball?
 Yes No Friday + Saturday in the lounge

6. How is food served? Table Service Buffet Service Counter Service Other _____

7. Is an owner, manager or supervisor 21 years of age or older always present during business hours? Yes No

***** A MENU AND DETAILED PREMISES DIAGRAM MUST ACCOMPANY THIS APPLICATION *****

*Employees 16 and 17 years of age must have a valid work permit and a letter maintained in your files from a parent or guardian authorizing employment at your establishment.

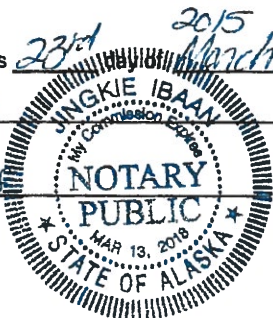
**Please attach additional sheets of paper if more space is needed to describe food service, entertainment, etc.

Licensee Signature Susan Johnson

Subscribed and sworn to before me this 23rd day of March 2015

Notary Public in and for Alaska

My Commission expires; 03-13-16



Local Governing Body Approval _____

Date _____

Director, ABC Board _____

Date _____

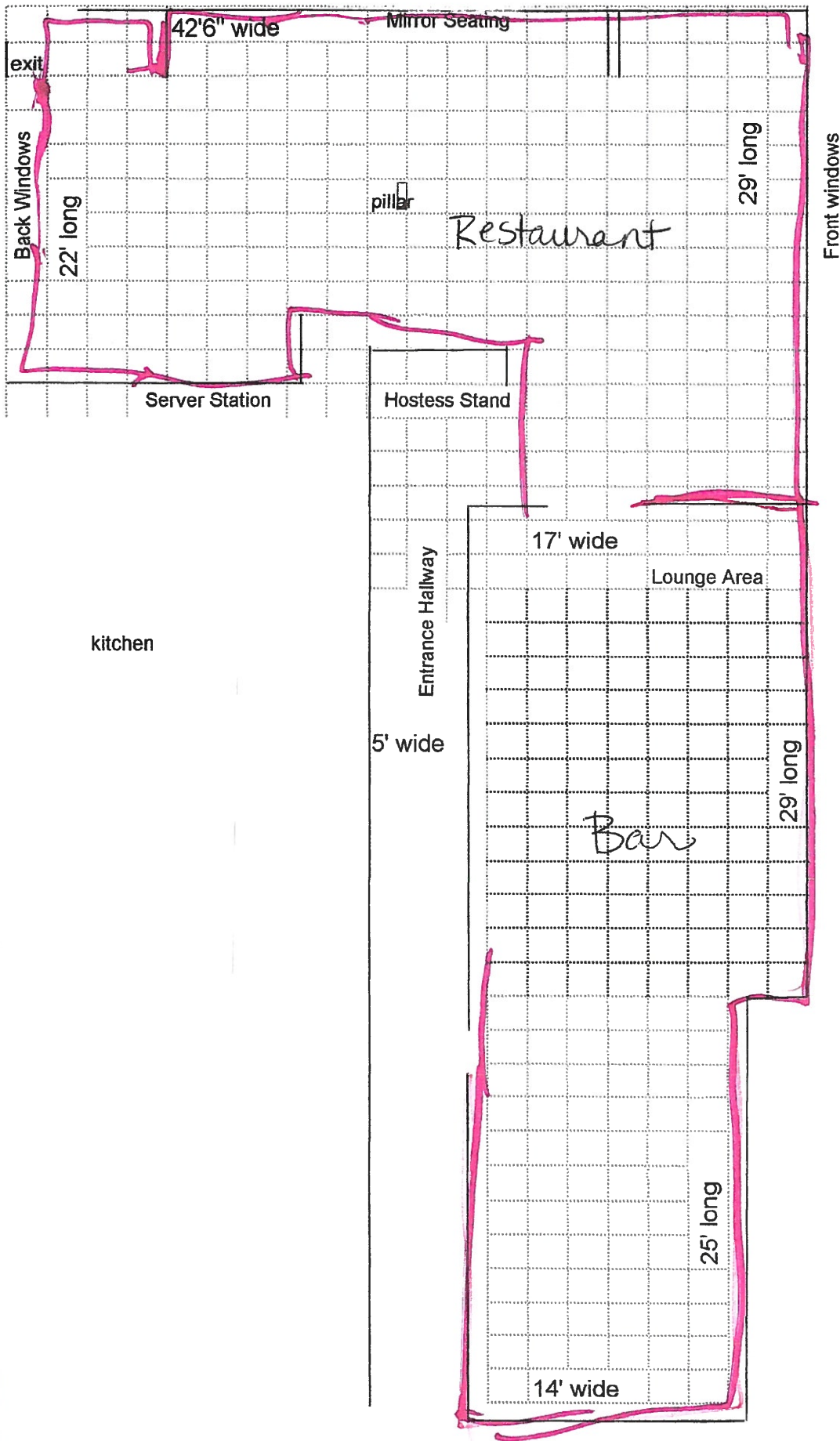


Chart
Room
Restaurant
+ Lounge

EXIT

waitstation

storage

pillar

pillar

BAR

area
(nothing stored
or set here
unless event
going on)

Reception
desk

Door
Entrance

**HARBOR
ROOM**

*below
restaurant*

STATE OF ALASKA
ALCOHOL BEVERAGE CONTROL BOARD
Licensed Premises Diagram

INSTRUCTIONS: Draw a detailed floor plan of your present or proposed licensed premises on the graph below; show all entrances and exits, and all fixtures such as tables, booths, games, counters, bars, coolers, stages, etc.

DBA: Chart Room (#600)

PREMISES LOCATION: Storage Room For Liquor on Premise

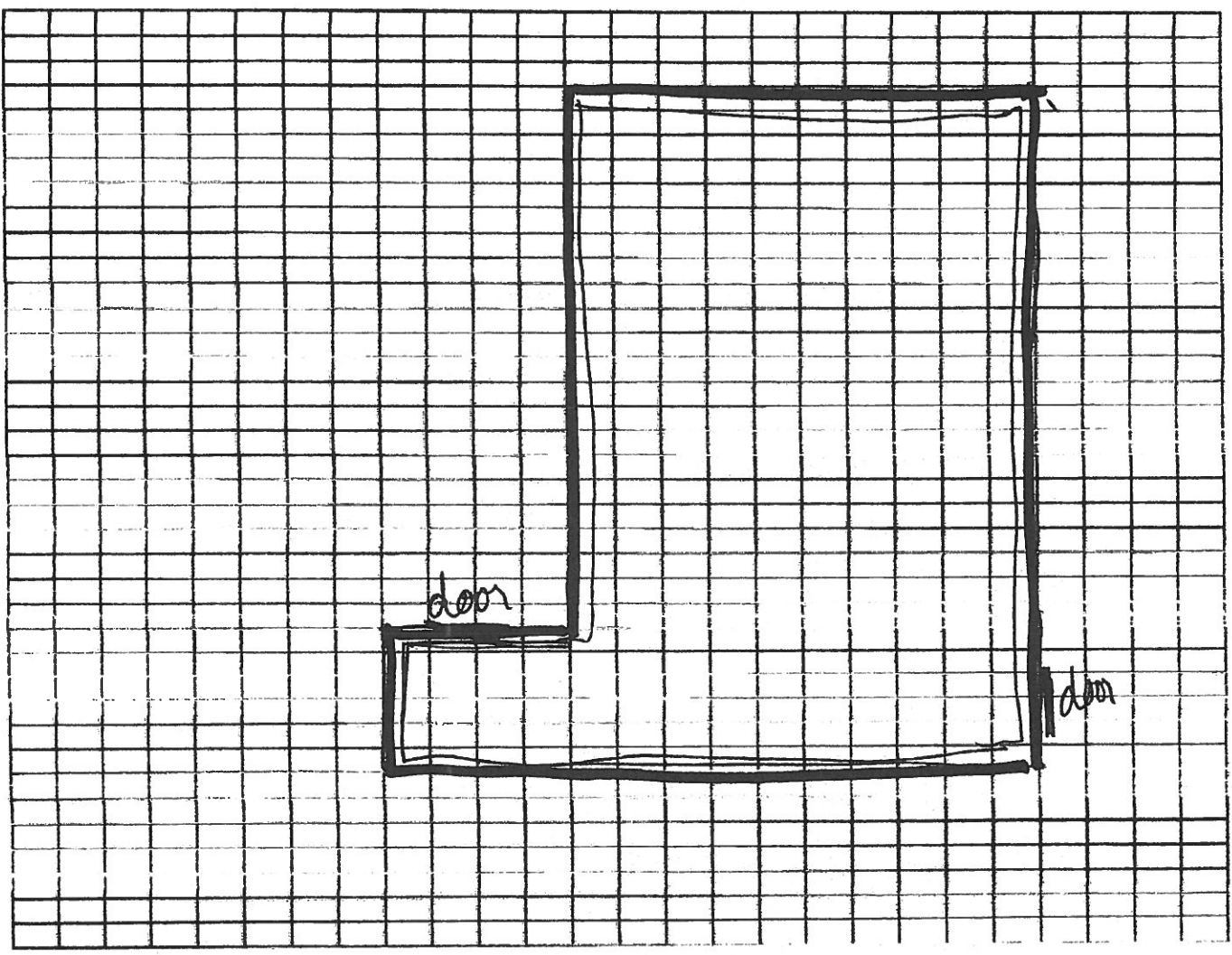
Indicate scale by x after appropriate statement or show length and width of premises. _____ 1 SQ. = 4 FT.

SCALE A: X 1 SQ. = 1 FT.

SCALE B:

Length and width of premises in feet: 10'x26'

Outline the area to be designated for sale, service storage and consumption of alcoholic beverages in red.
DO NOT USE BLUE INK OR PENCIL ON THIS DIAGRAM.



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MEMORANDUM TO COUNCIL

To: Mayor Branson and City Councilmembers

From: Aimée Kniaziowski, City Manager 

Thru: Mark Kozak, Public Works Director

Date: May 14, 2014

Agenda Item: V. f. **Authorization of Purchase/Replacement of HVAC Controller at Wastewater Treatment Plant**

SUMMARY: The heating, ventilation, and air conditioning (HVAC) controller failed at the WWTP quite a while back. The Utility staff has repeatedly tried to get quotes to replace the controller since it is no longer made or supported by the manufacturer. Staff requested and received two quotes to replace the controller, and staff recommends Council approve the purchase from CCI Automated Technologies in the amount of \$23,881.

PREVIOUS COUNCIL ACTION: Council approved the FY2015 operating budget for the WWTP, which included funding to replace the HVAC controller.

DISCUSSION: The HVAC controller failed at the WWTP several years ago. It was installed in 1999 and designed when heating fuel was only \$1.00/gallon. It has exceeded its expected life, and the current system is now ancient technology. Since the failure, the heating system has been operated in the default setting mode. This method works but is not fuel efficient and tends to use more fuel than would be necessary if the controller system was functioning correctly. With the replacement of the failed controller, staff expects to be able to reduce fuel consumption for heating. Both proposers said the City should be able to save between 10% to 20% of the heating bill by updating the WWTP HVAC programming.

Within the CCI quote is a caution that once the new controller is installed, it might indicate that some micro controllers within the system may need to be replaced if they do not work properly. However, the issues may not become apparent until after the controller is in place.

The current heating system does not allow flexibility in the operation of the heat system at the plant even with the new controller. Staff will look at ways to conserve heat and reduce costs as part of the full plant evaluation, which will begin in FY2017. Included in the CCI quote is mention of the potential to save considerably by putting the laboratory on its own heating system or control zone. The lab must be kept at a constant temperature, which is much warmer than the remaining portions of the building and could have a significant overall cost savings on fuel consumption.

MAY 14, 2015

Agenda Item V. f. Memo Page 1 of 2

ALTERNATIVES:

- 1) Authorize the replacement of the HVAC controller with a new serviceable system. This replacement would improve heating control within the WWTP with an estimated savings in heating costs of between 10% and up to 20%. Staff recommends this option to support energy savings.
- 2) Do not authorize the purchase and continue to operate in the default setting. Staff does not recommend this option because of lack of control resulting in increased fuel costs.

FINANCIAL IMPLICATIONS: The WWTP Repair and Maintenance budget line has funds to replace the HVAC controller. Replacement of the controller will, over a period of time, pay for itself in fuel savings. In 2014 the City spent over \$64,000 on heating fuel to heat the 10,000 square foot WWTP building. The price for heating fuel has come down significantly over the last year, and the City is currently paying \$2.78 per gallon for heating fuel.

LEGAL: N/A

STAFF RECOMMENDATION: Staff recommends Council authorize the purchase of the WWTP HVAC controller from CCI Automated Technologies in the amount of \$23,881, with funds coming from the WWTP repair and maintenance account 570-580-385-450-530.

CITY MANAGER'S COMMENTS: I appreciate staff's review and evaluation of potential cost savings and reduction in energy consumption at the WWTP facility. Therefore, I support Mark's recommendation that Council authorize the purchase of the HVAC controller from CCI Automated Technologies

ATTACHMENTS:

- Attachment A: CCI Automated Technologies Quote
- Attachment B: Johnson Controls Quote

PROPOSED MOTION:

Move to approve the purchase of a replacement HVAC controller from CCI Automated Technologies in the amount of \$23,881, with funds coming from the WWTP repair and maintenance account and authorize the City Manager to sign the necessary documents for the City.



Date: 3-4-15

Project: Kodiak WWTP and UV Facilities

Subject: HVAC DDC Control Upgrade

The following scopes of work and options are listed in order of importance.

Option 1: WWTP GCM to JACE Upgrade– Highest priority

The existing GCM and Network 8000 series of controls at the Kodiak WWTP are now considered legacy products and are no longer supported by the factory. The following scope of work is to replace and upgrade the existing GCM with a new JACE Network Controller. The JACE Network Controller supports the latest WEB based BACnet technology and has been developed by the factory to support and integrate to our legacy control systems such as the Network 8000 system. This allows a cost effective system migration to the newest WEB based technology and does not require replacement of the existing components until they fail. The new JACE Network Controller will communicate to all existing Network 8000 controllers and allows remote WEB access to the control system for alarm, trend and system management. Network 8000 controllers can be upgraded to new open protocol controllers as budgets allow. See optional pricing below.

Inclusions:

- Remove existing GCM in the Waste Water Treatment Plant
- Provide and install new JACE Network Controller to replace the existing GCM.
- Restore all communication and controller management functions to all existing Network 8000 controllers at the Waste Water Treatment Plant.
- Provide and install ENS Enterprise Server Software for local graphical user interface, control and comprehensive trending and alarming capabilities. This will be installed on an owner provided computer.
- System engineering, programming and configuration as required for the new JACE Network Controller located at the WWTP. Existing sequence of operations will be used for all HVAC equipment.
- Customized graphics development for all DDC controlled equipment at the WWTP. These graphics can be monitored from any computer with a standard WEB browser. Internet connection provided by owner.
- Provide revised control drawings showing all changes.
- 4 hours owner training

Exclusions:

- All labor and material to repair existing field devices found to be defective.
- Providing a computer to connect to the new JACE controller and run the new ENS Enterprise Server Software. (see minimum computer requirements in attached ENS documentation)
- Upgrading the existing Microzone controllers to open protocol BACnet controllers. See Option 3 Below.
- Bond cost and sales tax

Option 1 Price: \$23,881.00

Note 1: This system is designed to be expanded to allow control and alarming of additional HVAC systems in the WWT Facility and associated out buildings. This additional level of control will enable remote monitoring and alarming of equipment if desired. Pricing available on request.

Note 2: It was noted during a recent walkthrough at the WWTP that additional energy savings may be achieved by installing a small dedicated heat and vent system for the lab. Since the lab is in occupied mode 24/7, this would allow the rest of the facility to utilize unoccupied night setback temperature settings in areas controlled by the existing DDC system during off hours resulting in reduced energy consumption. We will be happy to provide design and installation assistance for this project.



Option 2: UV Facility UNC to JACE Upgrade– 2nd priority

The existing UNC-520-2 at the UV Disinfection Facility will become a legacy controller at the end of 2015 and will no longer be supported by the factory. The following scope of work is to replace and upgrade the existing UNC with a new JACE Network Controller. The JACE Network Controller supports the latest WEB based BACnet technology and will communicate to all existing BACnet controllers. It will also allow remote WEB access to the control system for alarm, trend and system management via a network connection.

Inclusions:

- Remove existing UNC-520-2 in the UV Disinfection Facility
- Provide and install new JACE Network Controller to replace the existing UNC.
- Restore all communication and controller management functions to all existing BACnet controllers at the UV disinfection.
- System engineering, programming and configuration as required for the new JACE Network Controller located at the UV Facility. Existing sequence of operations will be used for all HVAC equipment.
- Customized graphics development for all DDC controlled equipment at the UV Facility. These graphics can be monitored from any computer with a standard WEB browser. Internet connection provided by owner. This system will be connected to and managed the ENS Enterprise Network Server software that is provided under the Option 1 above. The ENS software will enable comprehensive trending and system management of multiple control systems at multiple locations using the existing network.
- Provide revised control drawings showing all changes.
- 4 Hrs. owner training

Exclusions:

- All labor and material to repair existing field devices found to be defective.
- Providing network connection at the JACE location. By owner.
- Bond cost and sales tax

Option 2 Price: \$17,572.00

Note: This system is designed to be expanded to allow control of additional HVAC systems in the UV Facility. This additional level of control will enable remote monitoring and alarming of equipment if desired. Pricing available on request.

Option 3: Upgrade existing WWTP Microzone field controllers to open protocol BACnet controllers– 3rd priority

The existing Microzone controllers at the WWTP are legacy controllers and are no longer supported by the factory. These existing controllers are not required to be replaced and upgraded until they fail.

Inclusions:

- Remove existing Microzone controllers at the WWTP.
- Provide and install new open protocol BACnet controllers to match those installed at the UV Facility.
- Restore all communication and controller management functions to all new BACnet controllers at the WWTP.



- Programming and reconfiguration as required to meet the existing sequence of operations. Existing field devices such as actuators, relays and sensors will remain.

Option 3 Price: \$8,786.00

Note: A 5% discount will be provided if options 1, 2, and 3 are all awarded as 1 project.

CURTIS HOLEMAN
Sr. Account Executive

CCI AUTOMATED TECHNOLOGIES
5660 B Street | Anchorage, Alaska | 99518
O 907-561-3044 | Ext: 2144 | D 907-550-2144 | C 907-242-6571



TERMS AND CONDITIONS

By accepting this proposal, Purchaser agrees to be bound by the following terms and conditions:

- Scope of Work.** Unless otherwise noted, this proposal is based upon the use of straight time labor only. Plastering, patching and painting are excluded. Purchaser agrees to provide CCI with required field utilities (electricity, toilets, drinking water, project hoist, elevator service, etc.) without charge. CCI agrees to keep the job site clean of debris arising out of its own operations. Purchaser shall not back charge CCI for any costs or expenses without CCI's written consent.
- Unless specifically noted in the statement of the scope of work or services undertaken by CCI under this agreement, CCI's obligations under this agreement expressly exclude any work or service of any nature associated or connected with the identification, abatement, clean up, control, removal, or disposal of environment Hazards or dangerous substances, to include but not limited to asbestos or PCBs, discovered in or on the premises. Any language or provision of the agreement elsewhere contained which may authorize or empower the Purchaser to change, modify, or alter the scope of work or services to be performed by CCI shall not operate to compel CCI to perform any work relating to Hazards without CCI's express written consent.
- Invoicing & Payments.** CCI may invoice Purchaser monthly for all materials delivered to the job site or to an off-site storage facility and for all work performed on-site and off-site. Purchaser shall pay CCI amounts invoiced immediately upon receipt of the invoice. Waivers of lien will be furnished upon request, as the work progresses; to the extent payments are received. Invoices more than 30 days delinquent (30 days from the date of the invoice) shall be subject to finance charges at 4% or the maximum rate applicable for the State in which the work was performed.**Materials.** If the materials or equipment included in this proposal become temporarily or permanently unavailable for reason beyond the control and without the fault of CCI, then in the case of such temporary unavailability, the time for performance of the work shall be extended to the extent thereof, and in the case of permanent unavailability, CCI shall (a) be excused from furnishing said materials or equipment, and (b) be reimbursed for the difference between the cost of the materials or equipment permanently unavailable and the cost of a reasonably available substitute therefore.
- Taxes.** The price of this proposal does not include duties, sales, use, excise, or other similar taxes, unless required by federal, state or local law. Purchaser shall pay, in addition to the stated price; all taxes not legally required to be paid by CCI or, alternatively, shall provide CCI with acceptable tax exemption certificates. CCI shall provide Purchaser with any tax payment certificate upon request and after completion and acceptance of work.
- Delays.** CCI shall not be liable for any delay in the performance of the work resulting from or attributed to acts or circumstances beyond CCI's control, including, but not limited to, acts of God, fire, riots, labor disputes, condition of the premises, acts or omissions of the Purchaser, Owner, or other Contractors or delays caused by suppliers or subcontractors of CCI, etc.
- Compliance with Laws.** CCI shall comply with all applicable federal, state and local laws and regulations and shall obtain all temporary licenses and permits required for the prosecution of the work. Licenses and permits of a permanent nature shall be procured and paid for by the Purchaser.
- Disputes.** All disputes involving more than \$15,000 shall be resolved by arbitration in accordance with the rules of the American Arbitration Association. The prevailing party shall recover all reasonable legal costs and attorney's fees incurred as a result. Nothing here shall limit any rights under construction lien laws.
- Insurance.** Insurance coverage in excess of CCI's standard limits will be furnished when requested and required. No credit will be given or premium paid by CCI for insurance afforded by others.
- Indemnity.** The Parties hereto agree to indemnify each other from any and all liabilities, claims, expenses, losses or damages, including attorneys' fees, which may arise in connection with the execution of the work herein specified and which are caused, in whole or in part, by the negligent act or omission of the Indemnifying Party.
- Occupational Safety and Health.** The Parties hereto agree to notify each other immediately upon becoming aware of an inspection under, or any alleged violation of, the Occupational Safety and Health Act relating in any way to the project site.
- Entire Agreement.** This proposal, upon acceptance, shall constitute the entire agreement between the parties and supersedes any prior representations or understandings.
- Changes.** No change or modification of any of the terms and conditions stated herein shall be binding upon CCI unless accepted by CCI in writing.
- Limitations of Liability.** Neither party's (including additional insured's) total cumulative liability hereunder for any claim or cause of action of any kind, regardless of whether such claim may be based on contract, warranty, tort (including negligence), strict liability, or any other legal or equitable principle, shall exceed an amount in excess of its primary general comprehensive policy limits under this Subcontract. Notwithstanding any provision of the Contract Documents to the contrary, neither party shall waive subrogation, or be liable to the other

CCI AUTOMATED TECHNOLOGIES

5660 B STREET, ANCHORAGE, AK 99518 | P: 907.561.3044 | F: 907.561.4225 | LIC: 37915 | DUNS: 052583630

party or any of its affiliates, employees or subcontractors for punitive, special, exemplary, incidental or consequential damages, damages for loss of profits, loss of use or loss of revenue, or losses associated with cost of capital in connection with or arising out of this Subcontract, regardless of whether such claim may be based on contract, warranty, tort (including negligence), strict liability, or any other legal or equitable principle, or for any condition that is beyond the reasonable control, and without the intentional misconduct or negligence, of that party. Such conditions include, but are not limited to: acts of God; acts of government entities; strikes; labor disputes; fire; explosions or other casualties; thefts; vandalism; riots or war; acts of terrorism; or unavailability of parts, materials or supplies.”

14. **Warranty.** CCI warrants that the materials and equipment furnished by CCI will be of good quality and new; that the Work will be free from defects not inherent in the quality required or permitted; and that the Work will conform to the requirements of the Contract Documents. CCI warrants that the Work shall be free from defects in material and workmanship arising from normal usage for a period of one (1) year from the Substantial Completion Date and that its Services will be free from defects in workmanship, design and material until the end of the Term, or for one (1) year, whichever is earlier. Upon written notice from the , CCI shall, at its option, repair or replace the defective Work or re-perform defective Services. These warranties shall not extend to any Work or Services that have been abused, altered, misused or repaired by the Purchaser or third parties without the supervision of and prior written approval of CCI or if CCI'sCCI serial numbers or warranty date decals have been removed or altered. The Purchaser must promptly report any failure of the equipment to CCI in writing. All replaced equipment becomes CCI'sCCI property.
15. **Hazardous Materials.** Asbestos-Containing Materials: Neither Purchaser nor CCI desires to or is licensed to undertake direct obligations relating to the identification, abatement, cleanup, control, removal, or disposal of asbestos-containing materials (“ACM”). Consistent with applicable laws, Purchaser shall supply CCI with any information in its possession relating to the presence of ACM at any of its facilities where CCI undertakes any Work or Services that may result in the disturbance of ACM. It is CCI's policy to seek certification for facilities constructed prior to 1982 that no ACM is present, and Purchaser shall provide such certification for buildings it owns, or aid CCI in receiving such certification from facility owners in the case of buildings that it does not own, if CCI will undertake Work or Services in the facility that could disturb ACM. If either Purchaser or CCI becomes aware of or suspects the presence of ACM that may be disturbed by CCI's Work or Services, it shall immediately stop the Work or Services in the affected area and notify the other's contacts. As between Purchaser and CCI, Purchaser shall be responsible at its sole expense for addressing the potential for or the presence of ACM in conformance with all applicable laws and addressing the impact of its disturbance before CCI continues with its Work or Services, unless CCI had actual knowledge that ACM was present and acted in disregard of that knowledge, in which case (i) CCI shall be responsible at its sole expense for remediation areas impacted by the disturbance of the ACM, and (ii) Purchaser shall resume its responsibilities for the ACM after CCI's remediation has been completed.
16. **Other Hazardous Materials:** CCI shall be responsible for removing or disposing of any Hazardous Materials that it uses in providing Work or Services (“CCI Hazardous Materials”) and for the remediation of any areas impacted by the release of CCI Hazardous Materials. For other Hazardous Materials that may be otherwise present at its facilities (“Non-CCI Hazardous Materials”), Purchaser shall supply CCI with any information in its possession relating to the presence of such materials if their presence may affect CCI's performance of the Work or Services. If either Purchaser or CCI becomes aware of or suspects the presence of Non-CCI Hazardous Materials that may interfere with CCI's Work or Services, it shall immediately stop the Work or Services in the affected area and notify the other's contacts. As between Purchaser and CCI, Purchaser shall be responsible at its sole expense for removing and disposing of Non-CCI Hazardous Materials from its facilities and the remediation of any areas impacted by the release of the Non-CCI Hazardous Materials, unless CCI had actual knowledge that Non-CCI Hazardous Materials were present and acted in disregard of that knowledge, in which case (i) CCI shall be responsible at its sole expense for the remediation of any areas impacted by its release of such Hazardous Materials, and (ii) Purchaser shall remain responsible at its sole expense for the removal of Hazardous Materials that have not been released and for releases not resulting from CCI's performance of the Work or Services.

ATTACHMENT: B

Date April 17 2015
TO: City of Kodiak-Hap Heiberg
PROJECT: Kodiak Wastewater Plant

Johnson Controls, Inc. thanks you for the opportunity to present our proposal:

CONTROL SYSTEM	
Base Bid	\$25,000.00

Summary of Work:

Control of the following:

- 1) AHU-1 and 2
- 2) New NCE Controller
- 3) Programming
- 4) Installation
- 5) Engineering
- 6) Freight
- 7) Travel

Exclusions/Clarifications

- 1) Upon award, JCI will require 2 full sets of drawings (electronically is acceptable), complete specifications, and all mechanical submittal information
- 2) Permits are excluded
- 3) Assumes existing equipment, including dampers, is functional, repair or troubleshooting to be done by separate proposal
- 4) Underground conduit and trenching is excluded
- 5) Work relating to asbestos is excluded
- 6) Patching, Paint and ceiling tiles are excluded
- 7) Excludes all electrical work over 24 volts, includes only wiring related to JCI controls work.
- 8) Installation of valves, dampers, thermometers, wells, duct mounted gauges, or access panels provided by Div 15
- 9) Excludes installing, wiring, or startup of packaged units not provided by JCI unless otherwise noted.
- 10) Fire/Smoke dampers provided by others, duct detectors by Div 16.
- 11) JCI will provide training session per specifications.
- 12) Any work with asbestos abatement or removal is specifically EXCLUDED
- 13) All work to be performed during normal working hours
- 14) JCI to provide one-year warranty on parts provided and labor from date of installation
- 15) JCI not responsible for delays due to other trades or weather
- 16) Any labor not specifically mentioned herein is not included

Our goal is to be your partner through the process and allocate the necessary resources and coordinate with you to insure that we are in compliance with all your needs, including schedule requirements.

To assure the success of the project, we have organized our Project Management Team to manage the process and deliver the system on time and on budget. The management techniques and tools successfully used on other projects will be applied to this project.

This proposal is hereby accepted and Johnson Controls is authorized to proceed with the work; subject, however, to credit approval by Johnson Controls, Inc., Milwaukee, Wisconsin.

This Proposal is valid until: 17, May 2015

PURCHASER

Name: _____

Title: _____

Company: _____

Date: _____

JOHNSON CONTROLS, INC.

Name: Eric L. Franklin

Title: Account Executive

TERMS AND CONDITIONS

By accepting this proposal, Purchaser agrees to be bound by the following terms and conditions:

1. **SCOPE OF WORK.** This proposal is based upon the use of straight time labor only. Plastering, patching and painting are excluded. "In-line" duct and piping devices, including, but not limited to, valves, dampers, humidifiers, wells, taps, flow meters, orifices, etc., if required hereunder to be furnished by Johnson, shall be distributed and installed by others under Johnson's supervision but at no additional cost to Johnson. Purchaser agrees to provide Johnson with required field utilities (electricity, toilets, drinking water, project hoist, elevator service, etc.) without charge. Johnson agrees to keep the job site clean of debris arising out of its own operations. Purchaser shall not back charge Johnson for any costs or expenses without Johnson's written consent.

Unless specifically noted in the statement of the scope of work or services undertaken by JCI under this agreement, JCI's obligations under this agreement expressly exclude any work or service of any nature associated or connected with the identification, abatement, clean up, control, removal, or disposal of environment Hazards or dangerous substances, to include but not be limited to asbestos or PCBs, discovered in or on the premises. Any language or provision of the agreement elsewhere contained which may authorize or empower the Purchaser to change, modify, or alter the scope of work or services to be performed by JCI shall not operate to compel JCI to perform any work relating to Hazards without JCI's express written consent.
2. **INVOICING & PAYMENTS.** Johnson may invoice Purchaser monthly for all materials delivered to the job site or to an off-site storage facility and for all work performed on-site and off-site. Purchaser shall pay Johnson at the time purchaser signs this agreement **an advance payment equal to 10% of the contract price**, which advance payment shall be credited against the final payment (but not any progress payment) due hereunder and purchaser agrees to pay Johnson additional amounts invoiced upon receipt of the invoice. Waivers of lien will be furnished upon request, as the work progresses, to the extent payments are received. If Johnson's invoice is not paid within 30 days of its issuance, it is delinquent.
3. **MATERIALS.** If the materials or equipment included in this proposal become temporarily or permanently unavailable for reasons beyond the control and without the fault of Johnson, then in the case of such temporary unavailability, the time for performance of the work shall be extended to the extent thereof, and in the case of permanent unavailability, Johnson shall (a) be excused from furnishing said materials or equipment, and (b) be reimbursed for the difference between the cost of the materials or equipment permanently unavailable and the cost of a reasonably available substitute therefor.
4. **WARRANTY.** Johnson warrants that the equipment manufactured by it shall be free from defects in material and workmanship arising from normal usage for a period of one (1) year from delivery of said equipment, or if installed by Johnson, for a period of one (1) year from installation. Johnson warrants that for equipment furnished and or installed but not manufactured by Johnson, Johnson will extend the same warranty terms and conditions which Johnson receives from the manufacturer of said equipment. For equipment installed by Johnson, if Purchaser provides written notice to Johnson of any such defect within thirty (30) days after the appearance or discovery of such defect, Johnson shall, at its option, repair or replace the defective equipment. For equipment not installed by Johnson, if Purchaser returns the defective equipment to Johnson within thirty (30) days after appearance or discovery of such defect, Johnson shall, at its option, repair or replace the defective equipment and return said equipment to Purchaser. All transportation charges incurred in connection with the warranty for equipment not installed by Johnson shall be borne by Purchaser. These warranties do not extend to any equipment which has been repaired by others, abused, altered or misused, or which has not been properly and reasonably maintained. **THESE WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES. EXPRESS OR IMPLIED. INCLUDING, BUT NOT LIMITED TO, THOSE OF MERCHANTABILITY AND FITNESS FOR A SPECIFIC PURPOSE.**
5. **LIABILITY.** Johnson shall not be liable for any special, indirect or consequential damages arising in any manner from the equipment or material furnished or the work performed pursuant to this agreement.
6. **TAXES.** The price of this proposal does not include duties, sales, use, excise, or other similar taxes, unless required by federal, state or local law. Purchaser shall pay, in addition to the stated price, all taxes not legally required to be paid by Johnson or, alternatively, shall provide Johnson with acceptable tax exemption certificates. Johnson shall provide Purchaser with any tax payment certificate upon request and after completion and acceptance of the work.
7. **DELAYS.** Johnson shall not be liable for any delay in the performance of the work resulting from or attributed to acts or circumstances beyond Johnson's control, including, but not limited to, acts of God, fire, riots, labor disputes, conditions of the premises, acts or omissions of the Purchaser, Owner, or other Contractors or delays caused by suppliers or subcontractors of Johnson, etc.
8. **COMPLIANCE WITH LAWS.** Johnson shall comply with all applicable federal, state and local laws and regulations and shall obtain all temporary licenses and permits required for the prosecution of the work. Licenses and permits of a permanent nature shall be procured and paid for by the Purchaser.
9. **DISPUTES.** All disputes involving more than \$15,000 shall be resolved by arbitration in accordance with the rules of the American Arbitration Association. The prevailing party shall recover all legal costs and attorney's fees incurred as a result. Nothing here shall limit any rights under construction lien laws.
10. **INSURANCE.** Insurance coverage in excess of Johnson's standard limits will be furnished when requested and required. No credit will be given or premium paid by Johnson for insurance afforded by others.
11. **INDEMNITY.** The Parties hereto agree to indemnify each other from any and all liabilities, claims, expenses, losses or damages, including attorneys fees, which may arise in connection with the execution of the work herein specified and which are caused, in whole or in part by the negligent act or omission of the Indemnifying Party.
12. **OCCUPATIONAL SAFETY AND HEALTH.** The Parties hereto agree to notify each other immediately upon becoming aware of an inspection under, or any alleged violation of, the Occupational Safety and Health Act relating in any way to the project or project site.
13. **ENTIRE AGREEMENT.** This proposal, upon acceptance, shall constitute the entire agreement between the parties and supersedes any prior representations or understandings.
14. **CHANGES.** No change or modification of any of the terms and conditions stated herein shall be binding upon Johnson unless accepted by Johnson in writing

MEMORANDUM TO COUNCIL

To: Mayor Branson and City Councilmembers

From: Aimée Kniazowski, City Manager 

Date: May 14, 2015

Agenda Item: V. g. **Authorization of Extension of the Professional Services Contract With BIRCH, HORTON, BITTNER, and CHEROT for Legal Services**

SUMMARY: The firm of BIRCH, HORTON, BITTNER, and CHEROT was selected to provide legal services to the City in July 2000. The original contract was for a three-year period, with an option for three additional one-year extensions. The contract and nine extensions have been approved and renewed by Council since that time. The current contract extension is set to expire on June 30, 2015. The firm, and Tom Klinkner, the City's primary municipal attorney, wish to continue to serve the City of Kodiak and recommends a one-year contract extension. Staff recommends Council authorize this tenth contract amendment with BIRCH, HORTON, BITTNER, and CHEROT.

PREVIOUS COUNCIL ACTION:

- August 2000: Council authorized a three-year professional legal services contract with BIRCH, HORTON, BITTNER, and CHEROT.
- July 2003-2006: One-year contract extensions were approved by Council each year.
- July 2006: Council authorized a fourth amendment for a three-year contract and three additional one-year terms at the Council's option.
- July 2010-2012: One-year contract extensions were approved by Council each year.
- July 2012: Council authorized a ninth amendment for a three-year contract.

DISCUSSION: In July 2000 the Mayor and City Council members interviewed representatives of four firms under consideration as the City's primary legal counsel. As a result, a three-year professional services agreement for legal services was approved by the City Council with BIRCH, HORTON, BITTNER and CHEROT. The original contract was signed in 2000 and provided for a three-year term with three one-year extensions at the option of the City. This arrangement was renewed in 2006. Beginning in 2009, the contract was extended from year to year. In 2012 a three-year extension was authorized by Council. The current contract expires June 30, 2015.

ALTERNATIVES:

- 1) Authorize the extension and continue legal services with BIRCH, HORTON, BITTNER and CHEROT, which is staff's recommendation.
- 2) Do not authorize the extension, which would require issuance of a request for proposals for legal services.

FINANCIAL IMPLICATIONS: The approved FY2015 budget includes funds for legal services in the General Fund, Legislative, Legal, Professional Services account.

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

STAFF RECOMMENDATION: Staff recommends Council authorize the contract extension.

CITY MANAGER'S COMMENTS: The services provided by Tom Klinkner and other attorneys at Birch Horton Bittner and Cherot are very important to the City. I appreciate their legal diligence and support on behalf of the City and recommend Council authorize this contract amendment.

ATTACHMENTS:

Attachment A: Legal Services Extension Letter and Rates

Attachment B: Tenth Amendment to Contract for Professional Legal Services

Attachment C: Contract for Professional Legal Services

PROPOSED MOTION:

Move to authorize the tenth amendment to the contract dated August 22, 2000, with BIRCH, HORTON, BITTNER, and CHEROT for professional legal services.

LAW OFFICES

BIRCH HORTON BITTNER & CHEROT

A PROFESSIONAL CORPORATION

1127 WEST SEVENTH AVENUE • ANCHORAGE, ALASKA 99501-3301 • TELEPHONE 907.276.1550 • FACSIMILE 907.276.3680

HAL R. HORTON (1944 - 1998)

JENNIFER C. ALEXANDER
WILLIAM T.M. BAYNARD
RONALD G. BIRCH**
WILLIAM H. BITTNER
KATHRYN A. BLACK
SUZANNE CHEROT
ADAM W. COOK
KATHERINE S. DAVIES

JON M. DEVORE**
DOUGLAS S. FULLER*
MAX D. GARNER
DAVID KARL GROSS
STEPHEN H. HUTCHINGS
THOMAS F. KLINKNER
STANLEY T. LEWIS
AMY W. LIMERES

JAMES H. LISTER**†
MELINDA L. MEADE MEYERS*
MARA E. MICHALETZ
ZACHARIA D. OLSON*
ELISABETH H. ROSS**
CARISSA D. SIEBENECK*
AARON D. SPERBECK
HOLLY C. WELLS

OF COUNSEL:
WILLIAM P. HORN*

1158 15TH STREET, N.W.
SUITE 1020
WASHINGTON, D.C. 20005
TELEPHONE 202.658.5800
FACSIMILE 202.658.1027

** D.C. AND ALASKA BAR
† MARYLAND BAR
◊ VIRGINIA BAR
* D.C. BAR
ALL OTHERS ALASKA BAR

WRITER'S DIRECT DIAL 907.263.7219 • WRITER'S DIRECT FAX 907.276.3680 • tklinkner@bhb.com

April 7, 2015

Ms. Aimée Kniaziowski
City Manager
City of Kodiak
710 Mill Bay Road
Kodiak, AK 99615

RE: Hourly Rates for Legal Services

Dear Aimée:

It has been a pleasure to work with you and the City of Kodiak during the past fifteen years, and we look forward to continuing that association for many years to come. Part of any such successful association is a periodic review and evaluation of its terms. In anticipation of the next renewal of our contract on July 1, and adoption of a budget for the City's next fiscal year, we believe that this is an appropriate time to review and adjust the hourly rates that we charge for services to the City. This would be the first adjustment to our hourly rates for services to the City since 2008.

Effective July 1, 2015, we propose that our hourly rates for legal services to the City will be as follows:

1. For general municipal representation (all services except specialized services described below):

Shareholders/Members:	\$215.00 per hour
Associates:	200.00 per hour
Paralegals/Law Clerks:	150.00 per hour

2. Specialized services (such as employment and labor relations, pension and employee benefits, or construction claims):

Shareholders/Members:	\$250.00 per hour
Associates:	210.00 per hour
Paralegals/Law Clerks:	150.00 per hour

Ms. Aimée Kniaziowski
April 7, 2015
Page 2

The adjusted rates continue to represent a substantial discount from our current hourly rates, and are highly competitive in the Anchorage market. Currently, the hourly rates that the firm's shareholders and members typically propose to new clients range from \$300.00 to \$450.00.

I have enclosed a draft contract extension that incorporates the proposed rates. I would be pleased to answer any questions that you may have about this rate adjustment at your convenience.

Yours truly,

BIRCH HORTON BITTNER & CHEROT


Thomas F. Klinkner

TFK:lcj
Enclosure

**TENTH AMENDMENT TO CONTRACT
FOR PROFESSIONAL LEGAL SERVICES**

TENTH AMENDMENT (the "Amendment") to the Contract for Professional Legal Services (the "Contract") between the CITY OF KODIAK (the "City") and BIRCH HORTON BITTNER & CHEROT (the "Contractor"), dated August 1, 2000.

WHEREAS, the Contract was amended effective July 1, 2012, to provide for the Contractor to provide legal services to the City for a term of three years from the date of the amendment; and

WHEREAS, the Contract provides for renewal at the option of the City Council of the City for three additional one-year terms; and

WHEREAS, the City Council of the City desires to exercise the option to renew the Contract for an additional one-year term, and the Contractor has agreed to such an extension.

NOW, THEREFORE, in consideration of the premises and the mutual covenants herein, the parties agree as follows:

The term of the Contract shall be extended for a period of one year from its current date of expiration. Effective as of July 1, 2015, the hourly rates for legal services under the Contract shall be as follows:

1. For general municipal representation (all services except specialized services described below):

Shareholders/Members:	\$215.00 per hour
Associates:	200.00 per hour
Paralegals/Law Clerks:	150.00 per hour

2. Specialized services (such as employment and labor relations, pension and employee benefits, or construction claims):

Shareholders/Members:	\$250.00 per hour
Associates:	210.00 per hour
Paralegals/Law Clerks:	150.00 per hour

All other terms and provisions of the Contract shall remain unchanged.

DATED as of the 1st day of July, 2015.

CITY OF KODIAK

BIRCH HORTON BITTNER & CHEROT

By: _____
Aimée Kniazowski, City Manager

By: _____
Thomas F. Klinkner

CONTRACT FOR PROFESSIONAL LEGAL SERVICES

THIS CONTRACT ("Contract") is made this 1st day of August 2000, by and between the City of Kodiak, of P. O. Box 1397, Kodiak, Alaska 99615 ("City"), and Birch, Horton, Bittner, Inc., d/b/a Birch, Horton, Bittner and Cherot, an Alaska professional corporation, of 1127 West 7th Avenue, Anchorage, Alaska 99501 ("Contractor" or "City Attorney").

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

1. Scope of Services. The City Attorney shall act as legal advisor to the City Council, administration, and other officials of the City to include, without limitation, the following:

- a. To duly advise the Council, administration, and other officials at meetings of the Council and at other functions as may be designated;
- b. To draft opinion letters regarding, among other subjects, the interpretation of the City code, state and federal law, and policies;
- c. To draft municipal ordinances involving all municipal matters;
- d. To review and provide opinions on codes, contracts, resolutions, and other written instructions which are submitted to the attorney by the City;
- e. To call attention of the Council and/or City Manager, as may be appropriate, to or of changes or developments in legal matters that affect the City; and
- f. To perform other such duties as may be prescribed for the City Attorney by ordinance or by direction of the Council and/or City Manager or the Mayor.

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

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

4. Term. *SEE SUBSEQUENT AMENDMENTS* For purposes of case assignments, this contract becomes effective when signed on behalf of the City and shall continue for three (3) years from date executed. The contract may be renewed for three (3) additional years, with one-year extensions at the Council's option. For purposes of assigned case completion, this contract may be extended upon mutual consent.

5. Compensation.

a. Fees. The Contractor shall be compensated at the following hourly rates:

*Amended
7/1/04
See current
contract
5/17/2008*

Shareholder Partners/Members	\$150.00	\$165.00
Senior Associates	\$135.00	
Associates:	\$115.00	\$145.00
Paralegals and Law Clerks:	\$75.00	\$85.00

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

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

6. Payment and Reporting.

a. The Contractor shall submit itemized monthly billings to the City Clerk for payment of all fees and costs for which the Contractor seeks reimbursement under paragraph 5. Said monthly billings shall identify the subject of the work performed and the time, to the nearest one-tenth (1/10) of an hour, spent on each subject. Costs shall be itemized and described separately on each monthly invoice.

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

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

- a.** for convenience by the City Council;
- b.** By mutual consent of the parties; or
- c.** For cause, by either party where the other party fails in any material way to perform its obligations under this contract. Termination under this subsection is subject to the condition that the terminating party notify the other party of its intent to terminate, stating with reasonable specificity the

grounds therefor, and the other party fails to cure the default within fifteen (15) days after receiving notice.

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

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

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

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

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

City: City of Kodiak
ATTN: City Manager
P. O. Box 1397
Kodiak, AK 99615
fax: (907) 486-8600

Contractor: Birch, Horton, Bittner and Cherot
ATTN: Thomas F. Klinkner
1127 West 7th Avenue
Anchorage, AK 99501
fax: (907) 276-3680

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

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

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

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

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

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

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

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

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

22. Insurance. The Contractor shall provide lawyers' professional liability insurance for all periods under the contract for claims up to a minimum amount of \$1,000,000 per claim.

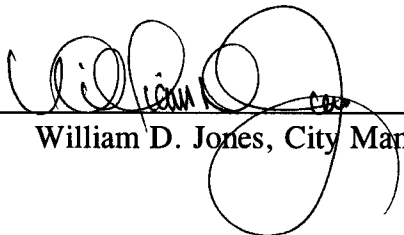
23. **Inspection and Retention of Records.** The Contractor shall at any time during normal business hours and as often as the City Manager or Council may deem necessary, make available to the City for examination all records with respect to all matters covered by this contract for a period ending three (3) years after the date the Contractor is to complete performance of this Contract. Upon request, and within a reasonable time, the Contractor shall submit such other information and reports relating to its activities under this contract to the City in such a form and at such times as the Council may reasonably require. The Contractor shall permit the Council or their designee to audit, examine, and make copies of such records, and to make audits of all research, materials, pleadings, records of personnel, and other data relating to all matters covered by this contract. The City may, at its option, permit the Contractor to submit its records to the City in lieu of the retention requirements of this section.

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

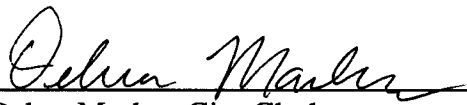
IN WITNESS WHEREOF, the parties have executed this contract.

CITY OF KODIAK

Dated: 8/22/00

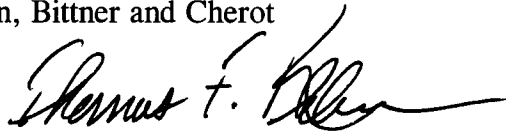
By: 
William D. Jones, City Manager

ATTEST:


Debra Marlar, City Clerk



BIRCH, HORTON, BITTNER, INC., d/b/a Birch,
Horton, Bittner and Cherot

By: 
Thomas F. Klinkner, Member