

**City of Kodiak Regular Council Meeting Agenda for January 14, 2016**  
**7:30 p.m., at 710 Mill Bay Road, Assembly Chambers (Room 232)**

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<b>I. Call to Order/Roll Call</b>	
Invocation/Pledge of Allegiance	
<b>II. Previous Minutes</b>	
Approval of Minutes of the December 10, 2015, Special and Regular Council Meetings and December 30, 2015, Special Meeting .....	1
<b>III. Persons to Be Heard</b>	
a. Public Comments (limited to 3 minutes) (486-3231)	
<b>IV. Unfinished Business</b>	
a. Second Reading and Public Hearing, Ordinance No. 1340, Authorizing a Lease to Kodiak Maritime Museum for Thelma C Exhibit .....	14
<b>V. New Business</b>	
a. First Reading, Ordinance No.1341, Repealing Kodiak City Chapter 8.20, Assault and Battery, Adopting Kodiak City Code Chapter 8.20, Offenses Against Public Order, and Repealing Kodiak City Code 8.56.060, Disorderly Conduct; 8.64.010, Begging; and 8.64.020, Jostling People .....	30
b. Resolution No. 2016–01, Adopting an FY2017 State Capital Improvements Program List and Urging Continuation of State Matching Grant Programs and Revenue Sharing .....	44
c. Resolution No. 2016–02, Accepting a Code Blue Grant From the Southern Region EMS Council.....	54
d. Resolution No. 2016–03, Expressing a Deep Sense of Urgency for the Alaska State Legislature to Take Immediate and Decisive Action During the 2016 Legislative Session to Enact a Complete Package of Initiatives to Provide for a Balanced, Sustainable, and Predicable State Budget for the Foreseeable Future .....	64
e. Authorization of the Third Amendment to the Composting Agreement With Quayanna Development Corporation.....	70
f. Authorization of Lease With MorphoTrust LLC for Office Space at 411 Marine Way .	100
g. Authorization of a System Support Agreement for Library Mechanical System.....	108
<b>VI. Staff Reports</b>	
a. City Manager	
b. City Clerk	
<b>VII. Mayor’s Comments</b>	
<b>VIII. Council Comments</b>	
<b>IX. Audience Comments</b> (limited to 3 minutes) (486-3231)	
<b>X. Adjournment</b>	

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**MINUTES OF THE SPECIAL COUNCIL MEETING  
OF THE CITY OF KODIAK  
HELD THURSDAY DECEMBER 10, 2015  
IN THE BOROUGH ASSEMBLY CHAMBERS**

**I. MEETING CALLED TO ORDER**

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

**II. PUBLIC COMMENTS ON AGENDA ITEM ONLY**

None

**III. RESOLUTION 2015–37, RESCINDING RESOLUTION NO. 2010–13 AND AUTHORIZING OFFICERS AND OTHER EMPLOYEES TO TRANSACT BUSINESS RELATED TO THE CITY’S FIRST NATIONAL BANK OF ALASKA ACCOUNT**

The City currently uses First National Bank of Alaska for banking purposes. The First National Bank of Alaska is requesting updated signature forms to include manual and facsimile and/or electronic signatures. The Finance Department and City Manager are also requesting to add the Deputy City Manager for authorization of endorsing checks and business transactions related to City credit cards. In addition, this resolution authorizes the Finance Director to obtain deposit account information and place stop payments.

Councilmember Walker MOVED to adopt Resolution No. 2015–37.

Councilmember Whiddon asked for clarification on the City check signers and inquired which signatures are currently printed on the checks. Finance Director Mayes said the City Manager and Mayoral signatures are presently on the checks, and she shared the procedures for internal controls and the need for additional check signers for emergency purposes.

Mayor Branson indicated her signature should not be placed on checks unless she has the opportunity to review each check. She stated her preference that the Finance Director sign checks.

Councilmember Whiddon indicated that the two check signers should be from different departments for internal controls.

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

**IV. ADJOURNMENT**

Councilmember Davidson MOVED to adjourn the meeting.

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

The meeting adjourned at 7:20 p.m.

CITY OF KODIAK

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MAYOR

ATTEST:

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CITY CLERK

Minutes Approved:

<p style="font-size: 2em; margin: 0;">DRAFT</p>
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**MINUTES OF THE REGULAR COUNCIL MEETING  
 OF THE CITY OF KODIAK  
 HELD THURSDAY, DECEMBER 10, 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 Laura B. Arboleda, Randall C. Bishop, Charles E. Davidson, Gabriel T. Saravia, Richard H. Walker, and John B. Whiddon were present and constituted a quorum. City Manager Aimée Kniazowski, City Clerk Debra L. Marlar, and Deputy Clerk Michelle Shuravloff-Nelson were also present.

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

**II. PREVIOUS MINUTES**

Councilmember Whiddon MOVED to approve the minutes of the November 12, 2015, regular meeting as presented.

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

**III. PERSONS TO BE HEARD**

**a. Public Comments**

**Toby Sullivan**, Executive Director of Kodiak Maritime Museum, voiced support for Ordinance No. 1340.

**Fire Chief Mullican** introduced the “Challenge Coin.” He extended his appreciation to the Kodiak Fire department staff, and he gave the Mayor and Council a challenge coin. He provided a quick overview of the International Organization for Standardization (ISO) inspection and maintaining the current stellar rating.

**IV. UNFINISHED BUSINESS**

None

**V. NEW BUSINESS**

**a. First Reading, Ordinance No. 1340, Authorizing a Lease to Kodiak Maritime Museum for Thelma C Exhibit**

Mayor Branson read Ordinance No. 1340 by title. The Kodiak Maritime Museum (KMM) developed the idea of restoring and displaying an historic 36’ fishing vessel, the Thelma C, in the harbor area downtown. KMM representatives came to several City Council meetings since 2013

with their idea, which Council and harbor users supported. The KMM is now ready to install the exhibit on the harbor spit and is requesting the lease be initiated.

Councilmember Walker MOVED to pass Ordinance No. 1340 in the first reading and advance to second reading and public hearing at the next regular or special Council meeting.

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

**b. Resolution No. 2015–35, Supporting Full Funding for the State of Alaska Harbor Facilities Grant Program in the FY2017 State Capital Budget**

Mayor Branson read Resolution No. 2015–35 by title, which supports continued funding for the State of Alaska Harbor Facilities Grant Program in the upcoming fiscal year. The Harbor Facilities Grant program is a matching grant program through which the state and municipality share equally in the cost of replacing aging harbor infrastructure formerly owned by the State of Alaska. The Alaska Association of Harbormasters and Port Administrators (AAHPA) adopted a similar resolution and encouraged other communities to do the same.

Councilmember Bishop MOVED to adopt Resolution No. 2015–35.

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

**c. Resolution No. 2015–36, Appropriating Funds From the Sewer Fund to Purchase a Compost Screener From Screen USA Inc. for the Biosolid Management Project, Project No. 08-06/7517**

Mayor Branson read Resolution No. 2015–36 by title. The City Council authorized the construction of the composting facility in April of this year. The project was operational last week and is receiving biosolids from the wastewater treatment plant for processing into Class A EQ compost. The City recognized that the facility would require a screener to complete the composting process. Staff decided not to include this equipment purchase as part of the project bid, but to purchase it separately.

Councilmember Davidson MOVED to adopt Resolution No. 2015–36.

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

**d. Authorization of Contract Extension With Gillespie and Associates for State Lobbying Services**

The City Council selected Ray Gillespie of Gillespie and Associates to be the City's state lobbyist in 2011. The contract will expire on December 31, 2015. Ray Gillespie has requested to be retained by the City. In recognition of Mr. Gillespie's efforts of the past four years, the Manager recommends Council exercise the two-year extension option.

Councilmember Whiddon MOVED to authorize a two-year contract extension to the professional services contract with Gillespie and Associates for state lobbying services in the annual amount of \$48,735, plus expenses, effective January 1, 2016, through December 31, 2017, based on the same terms as identified in the 2015 contract with funds coming from the General Fund Legislative Professional Services account and authorize the City Manager to sign the extension.

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

**e. Authorization of Change Order No. 1 for the Biosolid Management Project, Project No. 08-06/7517**

The City Council authorized the construction of the compost facility to Brechan Construction LLC at the April 9, 2015, regular meeting. The purchase and installation of 500 cubic yards of bio-filter materials (wood amendments) is an essential part of the project. With the delay in getting an amended agreement with Quayanna Development Corporation (QDC) in place, staff was unable to have the purchase and installation approval of the bio-filter material to Council before the startup date of the compost facility on December 9, 2015. KCC 2.08.060 (f) allows the Manager to issue the change order and receive after-the-fact approval from Council, providing it meets the standards set out in the Code.

Councilmember Walker MOVED to authorize Change Order No. 1 to Brechan Construction LLC in the amount of \$40,302.45 for the bio-filter wood amendment purchase and installation for the compost facility with funds coming from the Sewer Capital Improvement Fund, Biosolids Management Project, Project No. 08-06/ 7517.

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

**f. Authorization of Amended and Restated Composting Agreement with Quayanna Development Corporation**

No motion was made and no action taken.

**g. Authorization to Purchase Wood Chips for the Biosolid Management Project, Project No. 08-06/7517**

The new biosolid composting facility opened this week. A critical operational component to making Class A EQ compost includes the need for wood chips, which are mixed with the biosolids to aid in the composting process. The demand for wood chips at the new facility is expected to average approximately 200 cubic yards (cyd) per week. A sudden disruption in wood chip availability would jeopardize the operation.

Councilmember Bishop MOVED to authorize the City Manager to purchase wood chips for the composting facility in an amount not to exceed \$25,000 with funds coming from the Sewer Fund, biosolid disposal line item.

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

#### **h. Advisory Board Appointments**

Several advisory board seats will expire at the end of December. Volunteers were solicited via newspaper advertisements, public service announcements, and City Clerk and department head recruitment efforts. Applications have been received for appointment to the Building Code Board of Appeals, Joint Building Code Review Board, Parks and Recreation Advisory Board, and Port and Harbors Advisory Board. Appointments to these boards are made by the Mayor and confirmed by the Council. The student application for the Parks and Recreation Advisory Board includes the required letter of endorsement from the Student Council Advisor. The term for the Parks and Recreation Advisory Board ex-officio student position is set at the time of appointment. One application was received for a City seat on the Planning and Zoning Commission. Appointments to the P&Z Commission are made by the Borough Mayor from a list of recommendations from the City.

Mayor Branson made the following advisory board appointments: John Butler and Ed Mahoney to the Building Code Board of Appeals with terms ending December 31, 2018; John Butler, Ed Mahoney, and Councilmember Randy Bishop to the Joint Building Code Review Committee to terms ending December 31, 2018; to the Parks and Recreation Advisory Board: Helm Johnson and William McGuire to City seats and John Butler to a non-City seat with terms ending December 31, 2018, Jessica Horn to a non-City seat with term ending December 31, 2016, John Glover as Alternate No. 1 and Davis Lowery as Alternate No. 2 with terms ending December 31, 2016, Erica Kostelecky to the ex-officio student seat with term ending December 31, 2016; to the Port and Harbors Advisory Board: Tim Abena and Oliver Holm to regular seats ending December 31, 2018, Stormy Stutes as Alternate No. 1 with term ending December 31, 2016.

Councilmember Davidson MOVED to recommend Barry Altenhof for appointment to the City seat on the Planning and Zoning Commission and confirm the Mayoral advisory board appointments to Building Code Board of Appeals, Joint Building Code Review Board, Parks and Recreation Advisory Board, and Port and Harbors Advisory Board as stated.

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

#### **i. Election of Deputy Mayor**

Under the provisions of City Charter Article II, Section 2, the City Council shall elect one of its members as Deputy Mayor no sooner than thirty days, nor more than sixty days, from the beginning of the newly-elected Councilmembers' terms. The Deputy Mayor serves a one-year term and acts as Mayor in the Mayor's absence. If a vacancy occurs in the office of Mayor, the Deputy Mayor serves until another Mayor is elected by the Council.

Councilmember Davidson MOVED to elect Richard Walker as Deputy Mayor for a one-year term.



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

## **VI. STAFF REPORTS**

### **a. City Manager**

Manager Kniazowski said a comprehensive capital project update was given at the work session; she said the composting facility opened on December 9, 2015, and she is very pleased with the City's option to go green. She indicated there were two waterline failures recently on High Street and Wolkoff Lane. She said Public Works Director and staff worked to repair the leaks, which were due to failure of asbestos cement pipes. She mentioned a long-term solution to fix the waterlines is needed. She referred to Fire Chief Mullican's ISO update and commended his work to maintain the rating. She said Congress passed the reauthorization of the Highway Bill, and Alaska will receive additional funding of \$2.4 million over five years. She said the planning for commissioning of the new crane is ongoing; she shared that invitations will be sent to legislators, Matson CEO, KEA staff, and City officials in January. She said the duck viewing site on Potato Patch Lake was vandalized. She thanked Spenard Builders Supply for donating the wood and Jim Cole for repairing the site. She said the City Wastewater Treatment Plant was awarded the System of the Year award from Alaska Rural Water Association. She noted Kodiak operates a five MGC plus Class 3 wastewater treatment facility using pretreatment with fine screens and microscreens and primary treatment and secondary treatment. She congratulated the WWTP Supervisor Hap Heiberg, Public Works Director Kozak, and staff for receipt of this award. She shared information from the recent Alaska Municipal League conference, which included an update on the Governor's budget, succession planning, cross generational training, and the Affordable Care Act. She said there is a Christmas tree in front of the Harbor building. She thanked the Deputy Harbormaster for decorating the harbors. She wished everyone a Merry Christmas.

### **b. City Clerk**

City Clerk Marlar informed the public of the next scheduled Council work session and regular meeting.

## **VII. MAYOR'S COMMENTS**

Mayor Branson thanked the residents who volunteered for Boards and Commissions. She congratulated newly elected Deputy Mayor Walker. She congratulated Clerk Marlar for receiving the Alaska Association Municipal Clerk of the Year award and thanked her for her service. She shared her appreciation for Fire Chief Mullican and staff and Wastewater Treatment Supervisor Hap Heiberg and staff for their award. She shared information regarding the recent Kodiak Strong planning day; the upcoming annual initiatives include a farmers market, more cultural events, and strengthening the downtown committees' goals. She said an affordable housing group has been formed. She congratulated Councilmember Davidson for being elected as the AML representative to National League of Cities. She said she is serving as the 2<sup>nd</sup> Vice President for AML. She said she is proud of Governor Walker's fiscal plan. She said there is a community committee working on the Governor's visit for Monday, December 21. She referenced public comments made at a recent meeting and reiterated the City of Kodiak will pay for contracts approved by the Council, which were recently reviewed at the Fisheries Work Group meeting. She

gave an overview of the process of an investigation, stating there is no cover up. She said the City is transparent and does not have a public information officer to relay information routinely, and information will be released when the investigation is complete. She invited everyone to the harbor festival of lights, which is hosted by the City and Kodiak Maritime Museum. She said she is proud of the City staff and the services that are provided. She wished everyone a blessed holiday season.

**VIII. COUNCIL COMMENTS**

Councilmember Walker thanked the Council for electing him Deputy Mayor. He said the staff and Council are very progressive in their capital projects. He shared his appreciation and wished everyone a Merry Christmas.

Councilmember Davidson thanked Mayor Branson for her report; he said an informed community is a healthy community. He thanked the staff, volunteers, and the community for their involvement. He wished everyone a Merry Christmas and a Happy New Year.

Councilmember Arboleda said she learned a lot during her attendance at the Alaska Municipal League conference. She said she is excited to see the Thelma C displayed. She said during the holiday season it is nice to live in a community where people help and support each other. She wished everyone a Merry Christmas and a blessed New Year.

Councilmember Whiddon said he attended AML and it was good to work with other communities. He commended staff and said there are exceptional teams and staff throughout the City. He commended the Mayor for sharing her views during the meeting. He stated the economic visions are clear and community driven. He wished everyone a Merry Christmas.

Councilmember Saravia thanked Mayor Branson for her report. He congratulated Deputy Mayor Walker for his election. He thanked Fire Chief Mullican for a good job at the Fire department and Clerk Marlar for her "Clerk of the Year" award and the service she provides. He said he appreciates the residents for serving on the advisory boards, because they volunteer their time and they are not compensated for their service. He encouraged citizens to get involved and make a difference.

Councilmember Bishop thanked the volunteers serving on the advisory boards. He thanked the Council and staff for their accomplishments to make Kodiak a thriving community. He shared that CHARR is sponsoring rides to eliminate drinking and driving on New Year Eve. He wished everyone a Merry Christmas.

**IX. AUDIENCE COMMENTS**

None

**X. EXECUTIVE SESSION**

**a. Discussion With the City Attorney About Public Records Litigation**

Councilmember Davidson MOVED to enter into executive session pursuant to Kodiak City Code 2.04.100(c) to discuss litigation with the City’s attorney pertaining to public records litigation.

Council entered into Executive Session at 8:45 p.m.

The Mayor reconvened the regular meeting at 10:47 p.m.

**XI. ADJOURNMENT**

Councilmember Davidson MOVED to adjourn the meeting.

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

The meeting adjourned at 10:48 p.m.

CITY OF KODIAK

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MAYOR

ATTEST:

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CITY CLERK

Minutes Approved:



**MINUTES OF THE SPECIAL COUNCIL MEETING  
OF THE CITY OF KODIAK  
HELD THURSDAY DECEMBER 30, 2015  
IN THE BOROUGH ASSEMBLY CHAMBERS**

**I. MEETING CALLED TO ORDER**

Deputy Mayor Walker called the meeting to order at 5:31 p.m. Councilmembers Laura B. Arboleda, Randall C. Bishop, Gabriel T. Saravia, and John B. Whiddon were present and constituted a quorum. Mayor Pat Branson and Councilmember Charles E. Davidson, were absent. City Manager Aimée Kniazowski, City Clerk Debra L. Marlar, and Deputy Clerk Michelle Shuravloff-Nelson were also present.

**II. PUBLIC COMMENTS ON AGENDA ITEM ONLY**

None

**III. EXECUTIVE SESSION**

**a. Discussion With the City Attorney About Public Records Litigation**

Councilmember Whiddon MOVED to enter into executive session pursuant to Kodiak City Code 2.04.100(c) to discuss litigation with the City's attorney pertaining to public records litigation.

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

Council entered into Executive Session at 5:33 p.m.

Councilmember Bishop left the meeting at 7:15 p.m.

Deputy Mayor Walker reconvened the meeting at 7:40 p.m.

**IV. ADJOURNMENT**

Councilmember Whiddon MOVED to adjourn the meeting.

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

The meeting adjourned at 7:40 p.m.

CITY OF KODIAK

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MAYOR

ATTEST:

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CITY CLERK

Minutes Approved:

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# **UNFINISHED BUSINESS**

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## MEMORANDUM TO COUNCIL

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**To:** Mayor Branson and City Councilmembers

**From:** Aimée Kniazowski, City Manager 

**Date:** January 14, 2016

**Agenda Item:** **IV. a. Second Reading and Public Hearing, Ordinance No. 1340, Authorizing a Lease to Kodiak Maritime Museum for Thelma C Exhibit**

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**SUMMARY:** The Kodiak Maritime Museum (KMM) developed the idea of restoring and displaying a historic 36' fishing vessel, the Thelma C, in the harbor area downtown. KMM representatives came to several City Council meetings since 2013 with their idea, which Council and harbor users supported. The KMM is now ready to install the exhibit on the harbor spit and is requesting the lease be initiated. Based on past Council and staff support, the lease was introduced on December 10, 2015, by Ordinance No. 1340, as required in the City Charter.

**PREVIOUS COUNCIL ACTION:**

- January 22, 2013, KMM presented Thelma C exhibit concept and request to Council
- 2013 and 2014, KMM made additional update to Council on project and funding
- December 8, 2015, KMM made presentation to Council in preparation for introduction of long-term lease via Ordinance No. 1340, which Council supported
- December 10, 2015, Council advanced Ordinance No. 1340 to second reading and public hearing at the next regular or special meeting

**DISCUSSION:** KMM first presented their idea to the Council in 2013 to exhibit a restored 36' wooden boat in the harbor area. The vessel was built in 1965 and fished for salmon in the Kodiak area after the 1964 earthquake and tsunami. KMM believes the historic vessel represents an important era in Kodiak's fishing and maritime history that should be shared with the community and its visitors. They worked with various partners to restore the vessel, obtained informal approval from the City to lease a 7,224 sf area on the spit for the display, obtained needed permits, and acquired grant funds. They are now ready to install the platform and mount the boat on the shore near Oscar's Dock and the green Coast Guard Buoy.

Staff worked with the City Attorney to develop the lease and the ordinance as required by the City Charter, Section V-17. At the request of KMM and their granting agency, they needed to acquire long-term site control, so the City prepared the lease (Attachment B). The lease is for 20 years with the option to renew for two successive five-year terms. KMM will pay an annual fee of \$10 per year for the term of the lease. All costs of operating the premises are the responsibility of KMM, including the cost for any utilities to the site. KMM is also required to have and maintain public liability and property insurance.



While important and of interest to Kodiak, the exhibit also fits well into the City's efforts at downtown revitalization. It will be an attractive and informative display for visitors and others who use and visit the downtown and harbor area.

**ALTERNATIVES:**

- 1) Adopt Ordinance No. 1340, which is staff's recommendation, because it is consistent with expressed support over several years for this project.
- 2) Postpone or do not adopt Ordinance No. 1340, which is not recommended. This project is a good one and well supported in the community.

**FINANCIAL IMPLICATIONS:** The City will receive a nominal lease fee from KMM of \$10 per year for each year of the 20-year lease. There are no other direct or indirect financial implications to approving the ordinance and lease for this small 7,224 sf piece of Harbor property.

**LEGAL:** The City Attorney assisted staff in the development of the lease, and he drafted the ordinance. The City must issue the 20-year, low cost lease through the ordinance process, because the lease extends beyond five years, per the City Charter, Section V-17. KMM is responsible for obtaining all permits and licenses that may be required for construction and operation of this exhibit.

**STAFF RECOMMENDATION:** Staff recommends Council adopt Ordinance No. 1340.

**CITY MANAGER'S COMMENTS:** The KMM has worked over several years to develop this exhibit idea and now it's about to become reality. They are able, with available grant funding, to build the base and install the vessel for display. Completion of the shelter will occur later, as KMM is able to raise the funds. I recommend Council adopt Ordinance No. 1340 tonight following the public hearing.

**ATTACHMENTS:**

- Attachment A: Ordinance No. 1340
- Attachment B: Kodiak Maritime Museum Lease

**PROPOSED MOTION:**

Move to adopt Ordinance No. 1340.

**CITY OF KODIAK  
ORDINANCE NUMBER 1340**

**AN ORDINANCE OF THE COUNCIL OF THE CITY OF KODIAK AUTHORIZING A LEASE TO KODIAK MARITIME MUSEUM AND ART CENTER OF A 7,224 SQUARE FOOT PORTION OF ALASKA TIDELANDS SURVEY NO.49 LOCATED IN ST. PAUL HARBOR FOR THE THELMA C DISPLAY**

WHEREAS, the City of Kodiak (“City”) owns a 7,224 square foot portion of Alaska Tidelands Survey No.49 located in St. Paul Harbor (“Premises”); and

WHEREAS, Kodiak Maritime Museum and Art Center (“Museum”) has requested to lease the Premises from the City as a site for the Thelma C fishing boat historic exhibit; and

WHEREAS, the City has determined that the Premises is not required for any public purpose, and that it is in the best interest of the City to authorize a lease of the Premises to the Museum.

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

**Section 1:** Notwithstanding anything to the contrary in Kodiak City Code Chapter 18.20, the Council of the City of Kodiak hereby authorizes the lease of the Premises to the Museum in the form now before this meeting (“Lease”), for a term of twenty years, plus two five-year renewal options, and the City Manager hereby is authorized, empowered and directed to execute and deliver the Lease on behalf of the City, in substantially the form and content now before this meeting but with such changes, modifications, additions and deletions therein as shall to her seem necessary, desirable or appropriate, the execution thereof to constitute conclusive evidence of approval of any and all changes, modifications, additions or deletions therein from the form and content of said document now before this meeting, and from and after the execution and delivery of said document, the City Manager and City Clerk, and their respective designees, each hereby is authorized, empowered and directed to do all acts and things and to execute all documents as may be necessary to carry out and comply with the provisions of said document as executed.

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

CITY OF KODIAK

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MAYOR

ATTEST:

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CITY CLERK

First Reading: December 10, 2015  
Second Reading:  
Effective Date:

**LEASE NO. 221314 BY AND BETWEEN  
THE CITY OF KODIAK AND  
KODIAK MARITIME MUSEUM AND ART CENTER**

This LEASE (the “Lease”) is entered into as of the 1st day of February 2016, (the “Effective Date”) by and between the CITY OF KODIAK, an Alaska municipal corporation (“Lessor”), and KODIAK MARITIME MUSEUM AND ART CENTER, an Alaska nonprofit corporation (“Lessee”).

1. Premises. Lessor, for and in consideration of the rents, covenants, and conditions hereinafter specified to be paid, performed, and observed by Lessee, hereby leases to Lessee, and Lessee hereby leases from Lessor, the real property located in Kodiak, Alaska, more particularly described on Exhibit A and diagramed on Exhibit B, attached hereto (the “Premises”), pursuant to this Lease.

2. Use and Acceptance of Premises.

2.1 Use. Lessee may use and occupy the Premises solely to install and maintain a historic wooden fishing boat, the Thelma C, and an open air, steel and glass pavilion to shelter the boat. The Premises shall not be used for any other purpose without the prior written consent of Lessor, which Lessor may withhold in its sole discretion. Lessee shall keep the entire Premises in a clean, safe, sanitary, and orderly condition and in good maintenance, repair, and condition at all times. Lessee shall comply with all applicable federal, state, and local statutes, laws, rules, regulations, orders, and ordinances (regardless of their enactment date) affecting, in any manner or portion, the Premises, Lessee’s property, and/or Lessee’s operations. Lessee shall not use or permit any part of the Premises to be used for any unlawful or unauthorized purpose or perform, permit, or suffer any act or omission upon or about the Premises or improvements which would result in a nuisance or a violation of any applicable laws, ordinances, or regulations. Lessee shall not cause or permit any waste, damage, or injury to the Premises and shall not vacate or abandon the Premises at any time during the Term.

2.2 Acceptance. Lessee has inspected the Premises and Lessee accepts the Premises “AS IS, WITH ALL FAULTS.” Lessor makes no warranties, expressed or implied, concerning the title or condition of the Premises, including survey, access, utility availability, or suitability for use, including those uses authorized by this Lease. Lessor shall have no liability or obligation with respect to the condition, maintenance, or use of the Premises or any improvements hereafter placed on the Premises.

3. Term.

3.1 Initial Term. The initial term of this Lease shall be for a period of twenty (20) years, beginning on the Effective Date and expiring at 11:59 pm, January 31, 2036, (the “Initial Term”). On that date the lease will terminate, unless renewed as provided in Section 3.2.

3.2 Renewal Term. Lessee shall have the option to renew this Lease (“Renewal Option”) for two (2) successive five (5) year terms (each a “Renewal Term”) by giving Lessor written notice of its intent to commence a Renewal Term at least thirty (30)

calendar days, but not more than sixty (60) calendar days, before the date the then current term would otherwise expire, provided that at the time of each renewal notice and the date of commencement of each Renewal Term, Lessee is in compliance with all Lease terms. Failure of Lessee to exercise the option as to any Renewal Term shall terminate the option as to all succeeding Renewal Terms. Unless otherwise required by the context, references herein to "Term" include both the Initial Term and any Renewal Term.

3.3 Termination upon Cessation of Use. Any unexpired Term of this Lease shall terminate upon thirty (30) days notice from Lessor to Lessee if Lessee ceases to use the Premises as the site for the Thelma C fishing boat historic exhibit

4 Rent. Lessee shall pay in advance to Lessor annual rent ("Rent"), of Ten and No/100 Dollars (\$10.00) commencing on the Effective Date and due thereafter on each anniversary of the Effective Date during the Term. Rent shall be paid at the address shown in Section 17 below, or such other place as Lessor may designate in writing from time to time. All Rent shall be paid without prior demand or notice and without any deduction or offset whatsoever. All Rent shall be paid in lawful currency of the United States of America.

5. Additional Rent.

5.1. Triple Net Lease. This is a triple net Lease, and Lessee shall be responsible for all costs of operating the Premises. Any payment called for in this Lease other than Rent shall be deemed Additional Rent and shall be due as set forth in this Lease, or in the absence of a contrary provision, within ten (10) days of invoice. The failure to pay Additional Rent shall entitle Lessor to the same remedies as the failure to pay Rent.

5.2. Property Taxes and Assessments. Beginning on the Effective Date Lessee agrees to promptly pay, as Additional Rent, to the public authorities charged with the collection thereof, as the same become due and payable, all taxes, assessments (general and special), permits, inspection, and license fees and other public charges, whether of a like or different nature, levied upon or assessed against the Premises and any buildings, structures, fixtures, or improvements now or hereafter located thereon, or arising in respect to the occupancy, use, or possession of the Premises, and which are assessed and are, or may become, a lien during the Term; Lessee agrees to exhibit to Lessor, on demand, receipts evidencing payment of all taxes, assessments, and public charges so payable by Lessee.

5.3. Other Taxes. As Additional Rent, Lessee further agrees to pay any sales, use, gross receipts, or business revenues tax that may in the future be imposed by any public authority upon the rents payable to Lessor hereunder. Lessor agrees and understands that the payment of Rent to Lessor shall be net of any such tax that may be imposed upon gross rents or revenues, and those taxes shall be paid by Lessee to Lessor as Additional Rent.

5.4. Utilities. All costs for utilities and other services necessary for the operation of the Premises, improvements thereon, and Lessee's activities thereon, including without limitation water, sewer, garbage, and snow removal, shall be provided by Lessee at Lessee's sole cost and expense. Lessee shall be solely responsible, at Lessee's sole cost and expense, for necessary utility hook-ups and connections, including without limitation those necessary for water and sewer service

to the Premises.

5.5. Payment by Lessor. Lessor shall have the right to pay any taxes, assessments, levies, or other charges upon the Premises, or other charges payable by Lessee under the terms of this Lease, and to pay, cancel, and clear off all tax sales, liens, charges, and claims upon or against the Premises or any building or improvement that may be placed thereon, and redeem the Premises from the same, from time to time without being obligated to inquire as to the validity of the same. Any sum so paid by Lessor shall become Additional Rent due and payable by Lessee on the next day after any such payment by Lessor.

6. Quiet Enjoyment. Lessor hereby represents and warrants to Lessee that Lessee, upon paying the Rent, Additional Rent, and other charges provided for in this Lease as well as observing and keeping all of the Lease covenants and conditions required of Lessee, shall lawfully and quietly hold, occupy, and enjoy the Premises during the Term without hindrance or interference by Lessor or by any person or entity claiming a right, title, or interest in or to the Premises through Lessor.

7. Insurance. As of the Effective Date, Lessee shall have obtained and shall maintain throughout the Term public liability insurance coverage as required under this Lease. All coverage shall be with insurance carriers licensed and admitted to do business in the State of Alaska that are acceptable to Lessor. The required lines and limits of insurance shall not be less than (1) \$1,000,000 per person, \$3,000,000 in the aggregate per accident, and \$2,000,000 property damage; or (2) amounts which the Lessor reasonably requires to adequately cover the risks involved. Upon the commencement of the first Renewal Term and each Renewal Term thereafter, upon request of either party, Lessor and Lessee shall agree upon new limits for such insurance coverage, which new limits shall, at a minimum, reflect increases (but not decreases) to the cost of living during the Renewal Term. Lessee shall procure and maintain property insurance on any buildings and improvements on the Premises in a minimum amount equal to the replacement value of such buildings and improvements, and Lessee shall name Lessor and Lessee as insureds on all insurance policies that Lessee is required to maintain under the provisions of this Section 7. Lessee shall furnish copies of certificates evidencing insurance coverage to Lessor automatically, without demand of Lessor, within thirty (30) days of the Effective Date.

8. Indemnification.

8.1 General. Lessee shall save, protect, hold harmless, indemnify, and defend Lessor, and Lessor's officers, directors, employees, agents, and shareholders, of, from, and against any and all liability, damages, demands, penalties, fines, causes of action, losses, costs, or expenses, including attorneys fees, arising from any act, omission, or negligence of Lessee or the officers, contractors, subcontractors, licensees, agents, servants, employees, sublessees, guests, invitees, visitors, customers, or trespassers of Lessee in or about the Premises or improvements located thereon, or arising from any accident, injury, or damages however and by whomever caused, to any person or property, including but not limited to damage to the Premises itself, improvements thereon, or injury to or death of persons, occurring in or about the Premises or improvements located thereon, or in any manner arising out of Lessee's use and occupation of the Premises or improvements thereon, or as a result of the condition of the Premises or improvements thereon.

8.2 Environmental. Lessee shall abide by, and shall cause its employees, agents, customers, any contractors or subcontractors it employs, and any sublessees, and its and all of their invitees and guests, to abide by all applicable rules and regulations related to fire, safety, health, and environmental protection. Lessee shall transport and dispose of any Hazardous Substances in accordance with all applicable laws. Hazardous Substances may not be used or stored on the Premises without Lessor's express written consent. Without limiting the duty to indemnify as provided in Section 8.1 above, Lessee shall save, protect, defend, indemnify, and hold harmless Lessor from and against any and all demands, claims, causes of action (whether in the nature of an action for damages, indemnity, contribution, government cost recovery, or otherwise), lawsuits, settlements, actions, damages, fines, penalties, judgments, costs, and expenses (including without limitation costs of defense, settlement, and reasonable attorneys' fees), charges, forfeitures, liens, liabilities, or losses of any nature and kind whatsoever that arise during or after the Term from or in connection with the presence or suspected presence of Hazardous Substances in the soil, groundwater, or otherwise on, above, or in the Premises, or otherwise generated from the Premises, or operations or activities thereon, or from any alleged or actual violation of an Environmental Law. This indemnification includes, without limitation, costs incurred in connection with any investigation of site conditions or any clean-up, remedial, removal, or restoration work. For purposes of this Lease, the term "Hazardous Substance" means any flammables, explosives, radioactive materials, crude or refined petroleum, pollutants, contaminants, or any hazardous, toxic, or dangerous waste, substance, or material, including asbestos, defined as such in (or for purposes of) the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. Sec. 9601 *et. seq.*), any so-called "Superfund" or "Superlien" law, or any other Environmental Law, including, but not limited to, Alaska Statutes Title 46, Chapters .03, .08, and .09, as now or at any time hereafter in effect. For purposes of this Lease, the term "Environmental Law" means any federal, state, or local laws, ordinances, codes, regulations, rules, orders, or decrees, relating to or imposing liability or standards of conduct concerning the treatment, storage, use, or disposal of any Hazardous Substances.

8.3 Survival. All of the indemnification, defense, and hold harmless obligations in Sections 8.1 and 8.2 above survive the expiration or early termination of this Lease.

9. Inspection. Lessor and its authorized representatives and agents shall have the right, but not the obligation, to enter the Premises at any reasonable time to inspect the use and condition of the Premises; to serve, post, or keep posted any notices required or allowed under the provisions of this Lease, including notices of non-responsibility for liens; and to do any act or action necessary for the safety or preservation of the Premises.

10. Condemnation. If all of the Premises or such portion as may be required for the reasonable use of the Premises, are taken by eminent domain, this Lease shall automatically terminate as of the date Lessee is required to vacate the Premises, and all Rent shall be paid, which is due and owing through that date. In the case of a taking of less than that portion of the Premises required for the reasonable use of the Premises, then this Lease shall continue in full force and effect, and the Rent shall be equitably reduced based upon the proportion of the square footage by which the Premises is reduced, such rent reduction to be effective as of the date possession of such portion is delivered to the condemning authority. Lessor reserves all rights to just compensation and/or damage for any taking of the Premises, and Lessee hereby assigns to Lessor, and Lessee shall make no claim against Lessor, for damages arising out of the condemnation, provided Lessee shall

have the right to claim and recover from the condemning authority, to the extent permitted by law, compensation for any loss to which Lessee may be put for the improvements or for Lessee's moving expenses to the extent such damages may be claimed and awarded separately from the damages and/or compensation awarded to Lessor.

11. Assignment or Subletting. Except as provided below, Lessee shall not sublet, mortgage, pledge, or assign its rights under this Lease without the prior written consent of Lessor, which may be withheld in Lessor's sole and absolute discretion. Any purported sublease, mortgage, pledge, or assignment without Lessor's written consent shall be null and void and of no force or effect. Any permitted assignment or sublease will be subject to the terms and conditions of this Lease.

12. Liens. Lessee shall keep the Premises and any part thereof free from liens for labor or materials ordered or supplied upon the express or implied request of Lessee. Should any lien be recorded, Lessee shall forthwith and within ten (10) days of learning of the recording cause the same to be cancelled and discharged of record at Lessee's sole cost and expense.

13. Surrender of Premises. Upon the expiration or sooner termination of the Term, Lessee shall: quit and surrender the Premises to Lessor clean and in the condition existing on the Effective Date, ordinary wear and tear excepted; remove all of Lessee's property; and, at Lessor's option, remove any alteration, addition, and improvement made by Lessee, repairing all damages to the Premises caused by such removal. Any improvements or installations that are required to be removed but are not shall be deemed to have been abandoned by Lessee and may be retained or disposed of by Lessor, as Lessor shall desire and in accordance with the Kodiak City Code, but Lessee shall be responsible for the cost of restoring the Premises as well as all removal and disposal costs.

14. Holding Over. If Lessee fails to surrender the Premises at the expiration or earlier termination of this Lease, occupancy of the Premises shall be deemed to be that of a month-to-month tenancy. Lessee's occupancy of the Premises during the holdover shall be subject to all terms and provisions of this Lease, except Rent shall be 150% of the then-current Rent. No holdover by Lessee or payment by Lessee after the expiration or early termination of this Lease shall be construed to extend the Term or prevent Lessor from immediately recovering possession of the Premises by summary proceedings or otherwise.

15. Subsidence. Lessor shall not be responsible for any washout, subsidence, avulsion, settling or reliction to the Premises, or for any injury caused thereby to Lessee's or any other person's property. Lessor is not obligated to replace, refill, or improve any part of the Premises during Lessee's occupancy in the event of such washout, subsidence, avulsion, settling, or reliction.

16. Default and Remedies.

16.1 Events of Default. The occurrence of any of the following shall constitute a default by Lessee:



(a) If Lessee at any time during the Term shall fail to make payment of any installment of Rent, Additional Rent, or of any other sum herein specified to be paid by Lessee within ten (10) days after such payment is due; or

(b) If Lessee at any time during the Term shall fail to observe or perform any of Lessee's other material covenants, agreements, or obligations hereunder, and if within thirty (30) days after Lessor has provided Lessee written notice specifying the failure or failures, Lessee has not commenced to correct the same and proceeded diligently to correct the same.

16.2 Remedies. In the event Lessee is in default as defined in Section 16.1 above, Lessor shall have the right at its sole election, then or at any time thereafter, and while such default, defaults, or events shall continue, to avail itself of the following remedies:

(a) Lessor may give Lessee notice of Lessor's intention to terminate this Lease and all Lessee's rights hereunder on a date specified in such notice, which date shall be at least thirty (30) days after the date Lessor provides notice. On the date specified in the notice, the Lease Term and all rights granted Lessee hereunder shall come to an end as fully as if the Lease then expired by its own terms. Upon such termination, Lessor shall also be entitled to sue for and recover all Rent, Additional Rent, and other sums accrued up to the time of such termination, and damages arising out of any breach on the part of Lessee, including damages for Rent not then accrued; and

(b) Lessor may, upon written notice to Lessee, without terminating the Lease, immediately terminate Lessee's right to possession of the Premises and retake possession of the same and eject all persons therefrom, and Lessor may then relet or attempt to relet the Premises for the benefit of Lessee for the remainder of the Term or for a longer or shorter period as Lessor may decide is appropriate; notwithstanding the termination of Lessee's right to possession, Lessee shall nevertheless pay to Lessor on the due dates specified in this Lease all Rent, Additional Rent, and other sums required to be paid under this Lease together with the costs of reletting, less the proceeds of any reletting, and Lessee shall continue to perform all other obligations imposed on it under the Lease; and

(c) Lessor may, whether or not it has terminated this Lease or retaken possession of the Premises, sue Lessee for and recover all Rent, Additional Rent, and other sums, including damages, at any time and from time to time accruing hereunder.

17. Notices. Any and all notices and other communications under this Lease, must be in writing and will be deemed to have been duly provided when (a) delivered by hand, (b) sent by facsimile (with written confirmation of receipt), or (c) when deposited in a United States general or branch post office, enclosed in a registered or certified mail prepaid wrapper or envelope addressed as follows:

Lessor: CITY OF KODIAK  
710 Mill Bay Road  
Kodiak, Alaska 99615  
Attention: City Manager  
Facsimile: (907) 486-8600

Lessee: KODIAK MARITIME MUSEUM AND ART CENTER  
500 Dog Salmon Bay Road  
P.O. Box 1876  
Kodiak, Alaska 99615  
Attention: \_\_\_\_\_  
Facsimile: (907) 486-2514

Any party may change its address or facsimile number by giving notice in accordance with this Section.

18. Miscellaneous.

18.1 Entire Agreement. This Lease contains the entire agreement between the parties with respect to the subject matter hereof, and there are no other agreements, promises, representations, or covenants of any party with respect to the matters covered by this Lease. This Lease may not be amended, modified, or terminated except by a written agreement signed by each party.

18.2 Attorneys' Fees, Costs, and Expenses. In the event either party commences legal proceedings to enforce any of the terms of this Lease, the prevailing party in such action shall receive from the other a reasonable sum for attorneys' fees and costs to be fixed by the court in the same action.

18.3 Rights and Remedies. No right or remedy conferred upon or reserved to a party hereunder is intended to be exclusive of any other right or remedy. Every right and remedy shall be cumulative and in addition to any other right or remedy provided hereunder, or now or hereafter existing at law or in equity or by statute.

18.4 No Waiver. The failure by Lessor or Lessee to insist upon the strict performance of any term hereof or to exercise any right, power, or remedy consequent upon a breach hereof, and the acceptance of Rent during the continuance of any such breach, shall not constitute a waiver by Lessor of any breach or of any term. No waiver of any breach shall affect or alter this Lease, which shall continue in full force and effect, or the rights of Lessor or Lessee with respect to any other then-existing or subsequent breach.

18.5 Successors in Interest. This Lease shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors, and permitted sublessees and assigns.

18.6 Late Payment. In the event that any Rent, Additional Rent, or other amount due under this Lease is not received by Lessor when due, a late fee of one and one-half percent (1.5%) per month of the principal amount due shall be due and payable until the full amount of

Rent, Additional Rent, or other payment is received by Lessor.

18.7 Applicable Law. This Lease Agreement shall be construed and enforced in accordance with the laws of the State of Alaska.

18.8 Authority. Lessee covenants and acknowledges that it has the full, complete, and absolute authority to enter into this Lease; this Lease has been duly authorized by its governing body; this Lease is a binding and enforceable agreement of and against Lessee; and the person executing the Lease on Lessee’s behalf is duly and properly authorized to do so.

18.9 No Partnership, Joint Venture, Etc. Nothing in this Lease shall be intended or deemed to create a partnership, joint venture, association, or other similar relationship between the parties hereto.

18.10 No Third Party Beneficiaries. This Lease does not create, and shall not be construed as creating, any rights or interests enforceable by any person not a party to this Lease.

18.11 Severability. If any provision of this Lease is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions of this Lease shall remain in full force and effect and shall in no way be affected, impaired, or invalidated.

18.12 No Brokers. Each party represents that it has not dealt with a broker in connection with this Lease. Each party agrees to indemnify, defend, and hold harmless the other party from claims of any person for brokerage or finder’s fees or commissions or similar payments based upon any agreement or understanding alleged to have been made by any such person in connection with this Lease.

18.13 No Recording. The parties agree that this Lease shall not be recorded as a title document with any governmental authority.

18.14 Counterparts. This Lease may be executed in one or more counterparts, and delivered by facsimile or other electronic transmission, each of which when so executed shall be deemed to be an original and all of which taken together shall be deemed to be one and the same instrument.

IN WITNESS WHEREOF, the undersigned have executed this Lease as of the Effective Date.

LESSEE:

KODIAK MARITIME MUSEUM AND ART CENTER

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

LESSOR:

CITY OF KODIAK

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By: Aimée Kniazowski, City Manager

EXHIBIT A

DESCRIPTION OF PREMISES

A Lease Lot of land for Kodiak Maritime Museum's "Thelma C" Display, Kodiak Spit, Kodiak Channel, City of Kodiak, Kodiak Island, consisting of a 7,224 square foot portion of Alaska Tidelands Survey No.49, according to Plat No. 62-23, in the Kodiak Recording District, Third Judicial District, State of Alaska, more particularly described as follows:

Beginning at a brass monument for the centerline intersection of Shelikof Street and Marine Way,  
Thence S 37°24'00" E, 691.00 feet along centerline of Marine Way to a brass monument at the PI of centerline curve,

Thence S 42°30'22" W, 244.98 feet to the true point of beginning,

Thence from said point of beginning, S58° 44' 15" W, 150.00 feet, along the edge of asphalt, edge of curb,

Thence N 31°15'45" W, 32.00 feet,

Thence N 32°38'31" E, 54.56 feet,

Thence N 58°44'15" E, 52.00 feet,

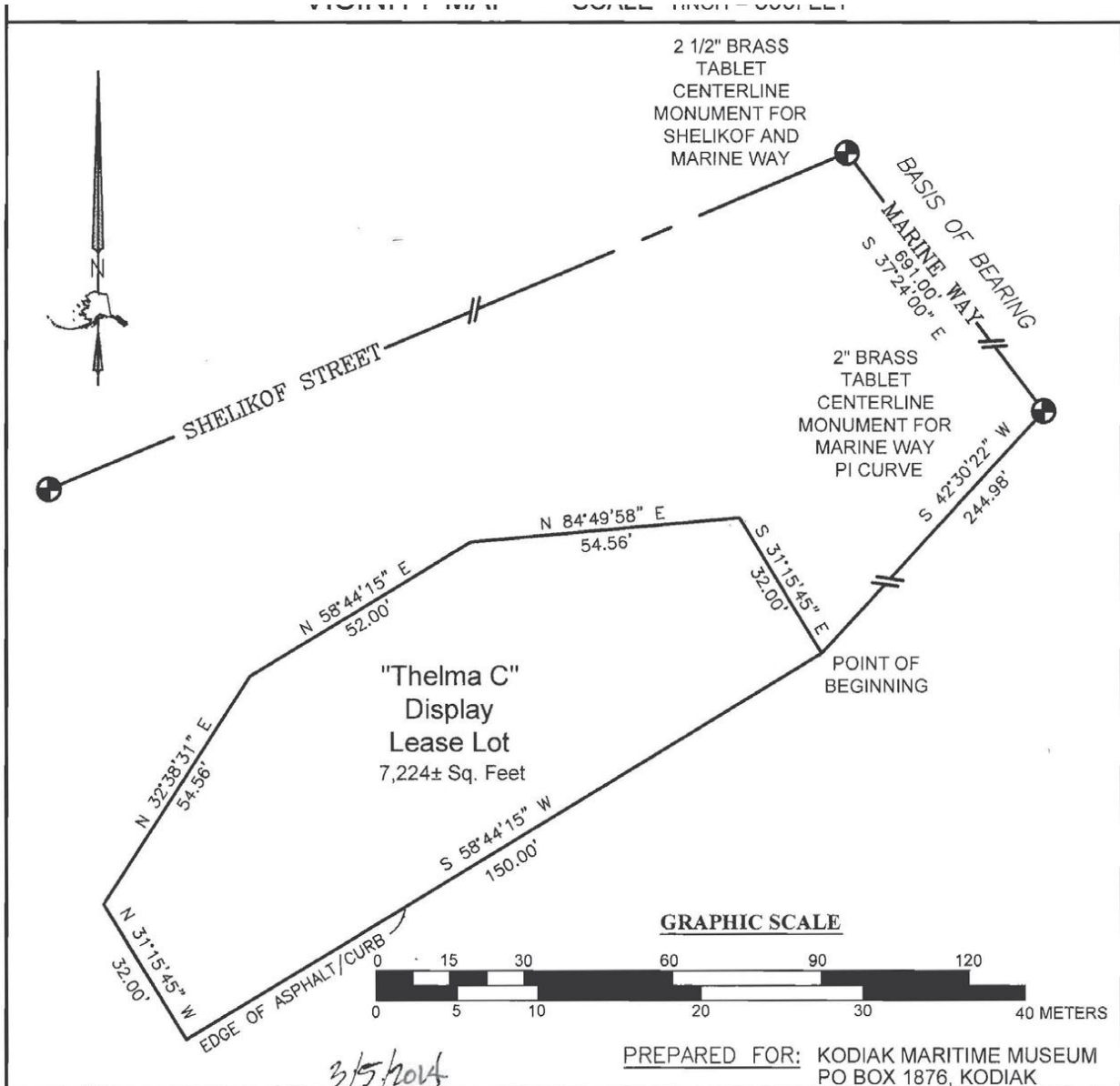
Thence N 84°49'58" E, 54.56 feet,

Thence S 31°15'45" E, 32.00 feet, to the point of beginning,

As depicted as the "Thelma C" Display Lease Lot in Exhibit B.

**EXHIBIT B**

**SURVEY OF LEASE AREA**



PREPARED FOR: KODIAK MARITIME MUSEUM  
PO BOX 1876, KODIAK

**KODIAK LAND SURVEYING**

P.O. BOX 2322  
KODIAK ALASKA 99615  
(907) 486-1945  
kodiaklandsurveying@ak.net

3/5/2014

STATE OF ALASKA  
49 TH  
JAMES PURDY  
LS 10201  
Registered Professional Land Surveyor

**Kodiak Maritime Museum  
Thelma C  
Lease Parcel**

CHANNEL SPIT, - WITHIN  
ALASKA TIDELANDS SURVEY 49  
CITY OF KODIAK, ALASKA


Scale: 1INCH = 30FEET	Date: 2/28/14
REF: THELMAC.DWG	Drawn: JLP

# **NEW BUSINESS**

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## MEMORANDUM TO COUNCIL

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**To:** Mayor Branson and City Council members  
**From:** Aimée Kniazowski, City Manager   
**Thru:** Ronda Wallace, Chief of Police  
**Date:** January 14, 2016

**Agenda Item:** V. a. **First Reading, Ordinance No.1341, Repealing Kodiak City Chapter 8.20, Assault and Battery, Adopting Kodiak City Code Chapter 8.20, Offenses Against Public Order, and Repealing Kodiak City Code 8.56.060, Disorderly Conduct; 8.64.010, Begging; and 8.64.020, Jostling People**

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**SUMMARY:** The last several years the City has fielded concerns from citizens and staff regarding the growing homeless, indigent and inebriate population in the downtown area. Lacking depth in our Kodiak City Code, and concerns about violating citizens constitutional rights, has limited The Kodiak Police Departments (KPD) ability to address ongoing problems. The City reached out to its legal firm for direction. The City's attorney was able to conduct research and develop regulations to meet the City's needs. Ordinance No. 1341 was drafted and staff recommends Council pass it in the first reading and move it to second reading and public hearing at the next regular or special Council meeting.

**PREVIOUS COUNCIL ACTION:**

- On April 14, 1977, Council adopted Ordinance No. 488, an ordinance relating to vagrancy, 8.64.030; loitering becoming effective on May 14, 1977.
- On September 8, 1983, Council adopted Ordinance 695, amending and/or repealing certain specified section of the Kodiak City Code, repealing Section 22 Loitering 8.64.030.
- On January 12, 2016, Council reviewed the suggested Code amendments identified in Ordinance No. 1341 at the work session

**DISCUSSION:** Over the last several years, Kodiak City has seen a growing problem with a number of the homeless, indigent and inebriate population. This population spends their days, and sometimes nights, in Kodiak's downtown area in public spaces like sidewalks and parks, and in business doorways, where they shout obscenities and engage in other intimidating and offensive behavior. The KPD responds daily to complaints by business owners and citizens regarding these behaviors. Unless a crime has been committed there has been little law enforcement has been able to enforce because of activities that are constitutionally protected under the First Amendment.

The last several years KPD has responded to an increase in complaints from citizen and business owners of intoxication, open containers, individuals passed out in doorways of business and general intimidating and offensive behavior by homeless, indigent and inebriated population. Many presentations have been



made to the public concerning ways KPD can respond and limitations placed upon them because of First Amendment rights.

As a general rule, a “city is free to prevent people from blocking sidewalks, obstructing traffic, littering streets, committing assaults, or engaging in countless other forms of antisocial conduct,” but is must do so “through the enactment and enforcement of ordinances directed with reasonable specificity toward the conduct to be prohibited.” However, laws that seek to address social problems that can arise from street dwellers, homeless persons, and vagrants, by prohibiting breach of the peace, disorderly conduct, loitering, vagrancy, soliciting, begging, panhandling and similar conduct, often are subject to successful constitutional challenges. As advocacy for homeless and other marginal groups has intensified, more laws of this type have become subject to successful constitutional challenge. The City has to avoid enacting laws that are unconstitutionally vague or overbroad.

Understanding police response strategies have not been effective, staff needed to identify laws KPD could rely on to address public disorder in the downtown area. Staff contacted City Attorney Tom Klinkner to help draft recommended changes to the City Code to allow for more active enforcement. Mr. Klinkner conducted a considerable amount of research regarding case law, and what would address the concerns of the City. Ordinances addressing camping, panhandling, obstruction of pedestrians or vehicles, aggressive panhandling and sitting or lying on sidewalks were identified. Mr. Klinkner was able to develop regulations that are carefully tailored to meet the City’s needs within constitutional constraints.

**ALTERNATIVES:**

- 1) Pass Ordinance No. 1341 in the first reading and advance to second reading at the next regular or special Council meeting. This is the recommendation staff makes to Council.
- 2) Do not pass the ordinance in the first reading. This would have a negative impact on our community and KPD still would not have laws to assist in the problems addressed in this memo.

**FINANCIAL IMPLICATIONS:** None

**LEGAL:** City staff worked with City Attorney Tom Klinkner to review problems and possible solutions to the problems being experienced downtown. Mr. Klinkner conducted a considerable amount of research and was able to draft the ordinance for the City of Kodiak.

**STAFF RECOMMENDATION:** Staff recommends Council adopt Ordinance No. 1341 in the first reading and advance it to second reading and public hearing at the next regular or special Council meeting. This ordinance will repeal Kodiak City Code Chapter 8.20, Assault and Battery and adopt Kodiak City Code Chapter 8.20, Offenses Against Public Order.

**CITY MANAGER’S COMMENTS:** I worked with the City Attorney to bring forward revisions to the City Code that will address some of the problems we experience in the downtown area. The issues have been brought forward repeatedly by residents and the Downtown Revitalization Committee. The attorney drafted this ordinance that strengthens the City Code to allow for more clarity of action while protecting the constitutional rights of all. I recommend Council pass this in the first reading and move it forward toward adoption.

**ATTACHMENTS:**

Attachment A: Ordinance No.1341

Attachment B: Ordinance No. 488

Attachment C: Ordinance No. 695

**PROPOSED MOTION:**

Move to pass Ordinance No. 1341 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 1341**

**AN ORDINANCE OF THE COUNCIL OF THE CITY OF KODIAK REPEALING KODIAK CITY CHAPTER 8.20, ASSAULT AND BATTERY, ADOPTING KODIAK CITY CODE CHAPTER 8.20, OFFENSES AGAINST PUBLIC ORDER, AND REPEALING KODIAK CITY CODE 8.56.060, DISORDERLY CONDUCT; 8.64.010, BEGGING; AND 8.64.020, JOSTLING PEOPLE**

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

**Section 1:** Kodiak City Code Chapter 8.20, Assault and Battery is hereby repealed.

**Section 2:** Kodiak City Code Chapter 8.20, Offenses Against Public Order, is adopted to read as follows:

8.20.010 Definitions

As used in this chapter,

“Camping” means sleeping or otherwise being in a temporary shelter, tent or sleeping bag out-of-doors, sleeping atop or covered by materials such as a bedroll, cardboard or newspapers out-of-doors, or cooking over an open flame or fire out-of-doors.

“Panhandling” means any solicitation made in person in which a person requests an immediate donation of money or other gratuity from another person, including without limitation seeking donations in exchange for an item of little or no monetary value under circumstances where a reasonable person would understand that the transaction is in substance a donation.

"Public place" means a place to which the public has access, including without limitation streets, highways, sidewalks, alleys, parking areas, plazas, parks, and playgrounds.

8.20.020 Assault

No person may by words or other conduct recklessly place another person in a public place in fear of imminent physical injury.

8.20.030 Obstruction of pedestrians or vehicles.

No person may walk, stand, sit, lie, or place an object in a public place in such a manner as to block rightful passage by another person or a vehicle, or to require another person or a driver of a vehicle to take evasive action to avoid physical contact. This section does not apply to lawful picketing, parades or use of a public place in accordance with a permit issued by the City.

8.20.040 Aggressive panhandling.

No person may engage in an act of panhandling in an aggressive manner as set forth in (a) through (e) of this section:

(a) Touching the solicited person without the solicited person's consent;

- (b) Panhandling a person while such person is standing in line and waiting to be admitted to a commercial or public establishment;
- (c) Blocking the path of a person being solicited, or the entrance to any building or vehicle;
- (d) Persisting in closely following or approaching a person, after the person solicited has informed the solicitor by words or conduct that such person does not want to be solicited or does not want to give money or any other thing of value to the solicitor;
- (e) Making any statement, gesture, or other communication which would cause a reasonable person to be fearful or coerced to make a donation; or
- (f) Panhandling in a group of two or more persons.

8.20.050 Sitting or lying on public sidewalks.

- (a) No person may sit or lie upon a public sidewalk, or upon a blanket, chair, stool, or any other object placed upon a public sidewalk, during the hours between:
  - (1) 6:00 a.m. and 11:59 p.m. on Monday, Tuesday, Wednesday or Thursday; or
  - (2) 6:00 a.m. Friday through 2:30 a.m. Saturday; or
  - (3) 6:00 a.m. Saturday through 2:30 a.m. Sunday.
- (b) The prohibition in subsection (a) of this section does not apply to:
  - (1) Sitting or lying on a public sidewalk due to a medical emergency;
  - (2) Using, as the result of a disability, a wheelchair, walker, or similar device to move about;
  - (3) Operating or patronizing a commercial establishment conducted on a public sidewalk in accordance with a permit issued by the city, or participating in or attending a parade, festival, performance, race, rally, demonstration, meeting, or similar event conducted on the public sidewalk in accordance with a permit issued by the city;
  - (4) Sitting on a chair or bench located on the public sidewalk which is supplied by a public agency or by the abutting private property owner;
  - (5) Sitting on a public sidewalk within a passenger loading zone while waiting for public or private transportation; or
  - (6) Waiting in line to purchase, receive or deliver an item or gain access to an adjacent property, such as waiting to purchase an item from a street vendor, or tickets at a ticket window, or waiting for an establishment to open to receive or deliver goods or services, while remaining as far from the traveled roadway as practicable.

8.20.060 Camping.

Camping is prohibited in all public places, except those that are specifically designated for camping by the appropriate governmental authority

**Section 3:** Subsection (c) of Kodiak City Code Section 1.12.040, Disposition of scheduled offenses—fine schedule, is hereby amended by adding new lines to read as follows:

City Code Provision	Offense	Fine		
		1st offense w/i 2 years	2nd offense w/i 2 years	3rd offense w/i 2 years
8.20.020	Assault	\$250	\$500	\$1,000
8.20.030	Obstruction of pedestrians or vehicles	\$50	\$100	\$200
8.20.040	Aggressive panhandling	\$50	\$100	\$200
8.20.050	Sitting or lying on public sidewalks	\$50	\$100	\$200
8.20.060	Camping	\$50	\$100	\$200

**Section 4:** Kodiak City Code 8.56.060, Disorderly conduct; 8.64.010, Begging; and 8.64.020, Jostling people, are hereby repealed.

**Section 5:** This ordinance shall be effective one month following final passage and publication in accordance with Kodiak Charter article II section 13.

CITY OF KODIAK

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MAYOR

ATTEST:

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CITY CLERK

First Reading:  
Second Reading:  
Effective Date:

CITY OF KODIAK

ORDINANCE NO. 488

AN ORDINANCE RELATING TO VAGRANCY

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

SECTION 1. Section 8.64.030 of the Kodiak City Code is repealed and re-enacted to read as follows:

8.64.030 Loitering. It is unlawful for a person to loiter, remain, prowl or wander in or about any public or private place without apparent reason and at a time, in a manner or under circumstances which justify suspicion that he may be engaged in or about to engage in a crime, or which warrants alarm for the safety of persons or property in the vicinity, or which prevents the use of a street, sidewalk or entrance to a public place by other people, and

A. Upon inquiry by a police officer refuse to identify himself by name and address; or

B. After having given his name and address, refuse or fail to give a reasonably credible account of his conduct and purpose.

CITY OF KODIAK

Tom Frost  
MAYOR

ATTEST:

Shirley Personal  
City Clerk

FIRST READING: 3/24/77  
SECOND READING AND PASSAGE: 4/14/77  
EFFECTIVE DATE: 5/14/77

CITY OF KODIAK  
ORDINANCE NUMBER 695

AN ORDINANCE AMENDING AND/OR REPEALING CERTAIN SPECIFIED SECTIONS OF THE KODIAK CITY CODE

BE IT ORDAINED by the Council of the City of Kodiak, Alaska, that the following changes be and are hereby made to the Kodiak City Code:

Section 1. Section 2.08.025 shall be amended to read as follows:

"2.08.025 Compensation of [councilmen] councilmembers. Each councilmember shall be compensated at the rate of thirty dollars per month, to be paid on a [quarterly] monthly basis."

Section 2. Section 2.08.034 shall be amended to read as follows:

"2.08.034 Compensation of mayor. The mayor shall compensated at the rate of fifty dollars per month, to be paid on a [quarterly] monthly basis."

Section 3. The heading for chapter 2.12 shall be changed as follows:

CHAPTER 2.12

[VOLUNTEER] FIRE DEPARTMENT

Section 4. Section 2.12.010 shall be amended to read as follows:

"2.12.010 Officers. The department shall consist of a chief, [two lieutenants] an assistant chief, three shift supervisors, and other officers as the chief and city manager may deem necessary for the effective operation of the department."

Section 5. Section 2.12.040 shall be amended to read as follows:

"2.12.040 [Lieutenants] Shift Supervisors. The [lieutenants] shift supervisors and all other department and company officers shall be appointed by the chief. Such officers shall be accountable only to the chief, and subject to removal by him."

Section 6. Section 2.12.070 shall be amended to read as follows:

"2.12.070 Chief and/or Shift Supervisors--drills and instruction. The chief and/or shift supervisors shall [at least once a month] conduct suitable drills or instruction in the operation and handling of equipment, first aid and rescue work, salvage, [a] study of buildings in the city, fire prevention, water supplies, and all other matters generally considered essential to good firemanship and safety of life and property from fire."

Section 7. Section 2.12.280 shall be amended to read as follows:

"2.12.280 Vehicle--following apparatus. No unauthorized person with any vehicle shall follow within [six] five hundred feet of any apparatus belonging to the department, nor park any vehicle within three hundred feet of a fire."

Section 8. Sections 2.12.300, 2.12.330 and 2.12.340 are hereby repealed.

Section 9. Section 2.28.040 shall be amended to read as follows:

"2.28.040 Cost of recount. The contestant shall pay all costs and expenses incurred in any recount of an election demanded by the contestant if the recount fails to reverse any result of the election or the difference between the winning and a losing vote on the result contested is more than two percent."

Section 10. Section 3.04.020 is hereby repealed.

Section 11. Section 3.08.060(B) shall be amended to read as follows:

[(B)] "(b) A construction contractor or subcontractor requesting exemption under subsection [D] (d) of section 3.08.050 must apply [for and obtain separate certificates of exemption for each building project, and the application and certificate shall reflect] to the city for a certificate of tax exemption which will be issued, without charge, to qualified licensed contractors or subcontractors. The exemption shall be valid for a period of one year, at the end of which, an accounting of the use of the exemption shall be made to the Finance Director, reflecting each building project and the correct location of the project by legal description and any other commonly recognized address [. The application for a certificate shall be signed by the person seeking the exemption and the certificate shall be valid only for businesses specified by name and address on the application] and by the names and addresses of the businesses from which services, materials, supplies, or other property are purchased or obtained."

Section 12. Section 3.08.110(a) shall be amended to read as follows:

"Section 3.08.110 Tax schedule. (a) The amount of the tax to be added to the rental charge for transient room rentals shall be determined in accordance with the following schedule:

<u>Charge</u>	<u>Tax</u>
Under [6] <u>5</u> cents. . . . .	.None
\$ [.07] <u>.05</u> through \$ .14. . . . .	\$.01



.15 through	.24.	. . . . .	.02
.25 through	.34.	. . . . .	.03
.35 through	.44.	. . . . .	.04
.45 through	.54.	. . . . .	.05
.55 through	.64.	. . . . .	.06
.65 through	.74.	. . . . .	.07
.75 through	.84.	. . . . .	.08
.85 through	.94.	. . . . .	.09
.95 through	1.04.	. . . . .	.10
Over \$1.05	. . . . .	. . . . .	.Continue on same scale."

Section 13. Section 3.12.060 shall be amended to read as follows:

"3.12.060 Local/minority preference. (a) The council may, at its discretion, direct an award of a contract for the purchase of personal property or services after competitive bidding to a responsible bidder who maintains a business office or store within the city from which the property or service would be provided, if that bid does not exceed the lowest responsible bid by more than ten percent.

(b) The council may, at its discretion, direct an award of a contract for the purchase of personal property or services after competitive bidding to a responsible bidder who is a minority business enterprise, if that bid does not exceed the lowest responsible bid by more than ten percent. For the purposes of this section a "minority business enterprise" is a business entity at least 50% of which is owned by minority group members, or in the case of publicly-owned businesses, at least 51% of the stock of which is owned by minority group members, and who control policy decisions and actually manage the business on a day-to-day basis. For the purpose of this definition, minority groups include Blacks, Hispanics, Asians, Pacific Islanders, American Indians, and Alaska Natives. Although females are not a numerical minority, female-owned businesses are considered in the same category.

(c) If the bid is submitted by a minority business enterprise who maintains a business office or store within the city from which the property or service would be provided the maximum preference shall be no more than ten percent."

Section 14. Section 5.40.210(G) shall be amended to read as follows:

[G] "(g) Operate or remain in physical control for purposes of operating a taxicab or other for-hire vehicle for a period of time in excess of twelve consecutive hours, or for a period in excess of sixteen nonconsecutive hours in any twenty-four-hour period. As used in this subsection, "physical control" means [possession of the vehicle key,] having the vehicle accessible [and] or being available for dispatch;"

Section 15. Chapter 7.12 is hereby repealed in its entirety.

Section 16. Section 7.16.030(B) shall be amended to read as follows:

[B] "(b) Items such as beds, water heaters, furnaces, major applicances, and similarly bulky household items discarded by individuals utilizing the established collection service shall be placed for collection on the first Monday of each month except December, January, February, and March. Bulk item collection will be provided at no additional cost to individuals utilizing the established garbage collection service."

Section 17. Section 8.04.010(C) shall be amended to read as follows:

[C] "(c) Electioneering on election day within the polling place or within [one] two hundred feet of the same;"

Section 18. Section 8.36.150 shall be amended to read as follows:

"8.36.150 Motion picture machines--inspection. No moving picture machine shall be operated until the chief of the fire department has inspected and approved the picture machine room and given [his] consent in writing for the operation thereof[.]; provided, however, that this shall not apply to home motion picture machines as heretofore referred to in section 8.36.140."

Section 19. Chapter 8.52 shall be amended by changing the title to "Gambling Prohibited" and substituting the following wording for section 8.52.010:

"8.52.010 Gambling Prohibited. Gambling is prohibited within the city limits of Kodiak with the exception of activites for which a permit is issued under the provisions of AS 05.15."

Section 20. Section 8.56.050 shall be relocated and renumbered as follows:  
"5.44.010 Hotel registration" under Business Licenses and Regulations.

Section 21. Section 8.56.070 is hereby repealed.

Section 22. Section 8.64.030 is hereby repealed.

Section 23. Section 8.76.010 shall be amended to read as follows:  
"8.76.010 Disposal--Exception. If there is any property in the possession of the police department that has been stolen and is not claimed by the owner within six months of the conviction of the person for stealing the property, or any property that has been abandoned and not claimed within six months of the date on which the police department took possession thereof, the chief of police may, if the owner be not known, publish in a newspaper of general circulation in the city once a week for two consecutive weeks that the property is in the possession of the police department. If, after notice is given as required herein, the property still remains unclaimed by the owner, if it be money the chief of police shall pay such money to the [city clerk] finance director. If it be other property, then the chief of police shall have the property sold at public auction; after paying the expenses of the sale, the chief of police shall pay any money in excess to the [city clerk] finance director. This section shall not apply to abandoned or stolen motor vehicles."

Section 24. Section 8.96.020 is hereby repealed.

Section 25. Section 18.04.040 shall be amended to read as follows:  
"18.04.040 Assessor. "Assessor" means the assessor of the [city] borough of Kodiak Island, Alaska."

Section 26. Section 18.12.480 is hereby repealed.

Section 27. The reference to AS 29.10.132(E) in Section 18.20.100(B) is hereby corrected to read "AS 29.48.260(e)".

CITY OF KODIAK

  
MAYOR

ATTEST:

  
CITY CLERK

First Reading: August 25, 1983

Second Reading: September 8, 1983

Effective Date: October 8, 1983


Ordinance Number 695  
Page 6 of 6

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## MEMORANDUM TO COUNCIL

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**To:** Mayor Branson and City Councilmembers  
**From:** Aimée Kniazowski, City Manager 

**Date:** January 14, 2016

**Agenda Item:** V. b. **Resolution No. 2016-01, Adopting an FY2017 State Capital Improvements Program List and Urging Continuation of State Matching Grant Programs and Revenue Sharing**

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**SUMMARY:** Council and staff reviewed a draft of the City's FY2017 state CIP request resolution with the City's state lobbyist, Ray Gillespie at the November 10, 2015, work session. Ray Gillespie supported the inclusion of statements of support for continued funding for state revenue and grant sharing programs as well as the list of requested projects. Based on Council discussion and the lobbyist's recommendation, as well as a review by Kodiak's state legislators, staff prepared the resolution (Attachment A) requesting projects and supporting continued funding of state programs. Staff recommends Council adopt Resolution No. 2016-01, which contains a short list of ongoing cost-reduced infrastructure improvements and long-term priority projects, and also includes two smaller life-safety requests.

**PREVIOUS COUNCIL ACTION:**

- November 10, 2015, Council reviewed and discussed a draft resolution for the City's FY2017 state CIP request with the lobbyist
- January 12, 2016, Council discussed the resolution with state legislators at the work session and during packet review

**DISCUSSION:** Each year the City prepares and submits a resolution requesting financial support from the State of Alaska for priority projects that require additional funding beyond what the City is capable of covering on its own. This FY2017 resolution contains three priorities carried over from the FY2016 request list. The resolution also includes two requests for capital funds for the purchase of life safety equipment for the City's Fire Department and statements of support for continued funding of state matching grant programs and the revenue sharing program.

The draft project and issues list was reviewed by the City's lobbyist Ray Gillespie and Council at the November 10, 2015, work session. He encouraged the City to request a small list of priority projects this coming year and include a few smaller requests that focus on life and safety in the event that there are smaller amounts of funding made available during the session. He said there could be support for a bond to fund capital projects and encouraged the City to retain those capital projects that remain a priority. He

liked the idea of including statements of support for continued funding of the grant and revenue sharing programs. He said they would benefit our legislators during the upcoming session.

The state is facing major financial limitations again this year as the price of oil continues to drop and is currently below \$40 bbl. This has huge implications for the state and its ability to fund operating and capital budgets. The Governor released a fiscal plan, but full support for it may be lacking in the legislature. It will be a difficult session with many hard choices facing the state and its citizens.

The FY2017 state CIP request list remains short and cost-reduced. As mentioned, it retains the three main capital priorities brought forward in FY2016, but not funded. One of the three projects would be funded through the cruise ship excise tax fund and not the general fund. If a bond is successful, the City might see funding through that process, but that remains to be seen.

Based on the discussion at the November and January meetings, staff is submitting a resolution of three prioritized projects rolled over from the FY2016 resolution. They include a request to fund rehabilitation of the paving on Mill Bay Road, state funding for the Shelikof bulkhead parking project, and funding via the cruise ship excise tax fund for one element of the Shelikof Street pedestrian improvement project, the construction of a visitor shelter – information kiosk – public restroom facility on Pier II.

The top priority recommended remains a request to rehabilitate the paving on Mill Bay Road from McDonalds to Bartel Avenue. The rehabilitation of other portions of the road was successful, and staff hoped funding assistance to do the remaining section would prevent roadbed failure. There is concern that waiting much longer to resurface the road will require a full rebuild, which is a more expensive option. The cost of the request for FY2017 is \$1.5 million; a reduction from the FY2016 request due to City funded emergency repairs in FY2016.

The resolution also contains two smaller capital requests recommended by Ray Gillespie. They are both life-safety related projects for the Kodiak Fire Department. The #4 priority is a request of \$200,000 to fund replacement of the City's oldest ambulance, which is experiencing frequent mechanical and electrical failure. The second request for \$62,550 is a request for the state to cover the replacement costs for equipment such as turnouts, SCBA tanks, and automatic external defibrillators to maintain firefighter/EMS equipment that is consistent with updated NFPA and OSHA standards.

The remaining two items are statements of support for the retention and continued funding of state matching grant programs and the revenue sharing program, all of which are under pressure as the state navigates this financial crisis. By supporting the continued funding of these programs, the City joins other local governments who are concerned that they will carry the costs of the financial burden of the state's shortfall. Local governments, including Kodiak, do not have the resources to fund the replacement or updates of infrastructure needed to keep adequate services available at the local level.

Staff will send an approved copy of Resolution No. 2016–01 to the Kodiak delegation and state lobbyist, Ray Gillespie, as soon as it is adopted for their use in promoting these three important community projects.

**ALTERNATIVES:** There are two alternatives for Council to consider:

- 1) Adopt Resolution No. 2016–01, as discussed in November and again on January 12. The list reflects Council’s direction and will provide the delegation and lobbyist with information to use when promoting Kodiak’s funding needs during this coming legislative session. This is staff’s recommendation.
- 2) Amend or do not adopt the resolution, which is not recommended as it would not reflect support for the City’s key projects as discussed.

**FINANCIAL IMPLICATIONS:** There are no direct financial implications in adopting the CIP resolution. However, the entire community will benefit if the City receives state funding assistance for any of these important projects. If funded, the much needed paving rehabilitation will reduce maintenance costs in the future, and the Shelikof projects will improve safety, parking, and public convenience, but require future funding for operations and maintenance. Funding of the two Fire Department requests will reduce the amount of local funds needed to support the Department’s cost intensive and ongoing equipment needs.

**CITY MANAGER’S COMMENTS:** The resolution for the City’s FY2017 state funding request reflects staff’s recommendations, Council and our lobbyist’s discussions from the November 10 and January 12 work sessions. The City’s lobbyist, Ray Gillespie, supports the projects and approach taken this year. The resolution continues to reflect projects desired by Council, can be advocated for by City representatives and our lobbyist, and can hopefully be supported by our delegation. I am uncertain if we will receive funding in FY2017 due to the state’s funding situation. However, we should keep these elements on the list in the event funding does become available. I recommend Council adopt the resolution, keeping in mind that the state will be facing very difficult financial realities this coming year.

**ATTACHMENTS:**

Attachment A: Resolution No. 2016–01, FY2017 state CIP

Attachment B: Resolution No. 2014–35, FY2016 state CIP

**PROPOSED MOTION:**

Move to adopt Resolution No. 2016–01.



**CITY OF KODIAK  
RESOLUTION NUMBER 2016-01**

**A RESOLUTION OF THE COUNCIL OF THE CITY OF KODIAK ADOPTING  
A FY2017 STATE CAPITAL IMPROVEMENT PROGRAM LIST AND URGING  
CONTINUATION OF STATE MATCHING GRANT PROGRAMS AND REVENUE  
SHARING**

WHEREAS, the City of Kodiak uses a Capital Improvements Program planning process to identify the capital improvement project needs of the community; and

WHEREAS, this identification and planning process plays a vital role in directing the City's administration and is utilized as a long-range planning and policy setting tool for City infrastructure maintenance and enhancement; and

WHEREAS, the City of Kodiak is committed to paying its way to the greatest extent possible, but the cost of some of the City's capital project needs are greater than the resources available locally; and

WHEREAS, the Kodiak City Council has identified and prioritized capital improvement projects for submission to the Alaska State Legislature and Governor for funding consideration due to their significance and/or magnitude; and

WHEREAS, because Kodiak is the second largest commercial fishing port in the United States in terms of volume and third largest in terms of value of product landed, the City requires a large infrastructure to support this commercial activity; and

WHEREAS, the City of Kodiak relies upon the State of Alaska's legislative and matching grant programs and revenue sharing to continue to keep its economy strong.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Kodiak, Alaska, that the following infrastructure replacement/improvement projects and issues are considered of primary importance and are hereby adopted as the City of Kodiak's FY2017 State capital improvement project and issues list:

**1. Mill Bay Road Pavement Rehabilitation Project: \$1,500,000**

Mill Bay Road is a 2.5 mile major arterial that provides access to the City of Kodiak's main business district. It is the most traveled road in Kodiak with approximately 12,000 vehicle trips per day. The City took ownership of Mill Bay Road from the State after it was reconstructed by DOT in 1991. The road surface has developed extreme pavement wear in the driving lanes over the past 23 years and the City milled and repaved in 2001 and 2008. The road continues to deteriorate due to weather and traffic so the City completed a pavement assessment study which recommended repair for the full length of the road. Due to rapid deterioration of the road, the City developed a successful rehabilitation approach and

milled and overlaid approximately 6100 ft. of road to repair the worst sections at a cost of over \$2 million. The remaining 5,480 ft. of repair needed is estimated to cost \$1.5 million. The total road rehabilitation cost, including engineering and construction, is \$4 million. The City has contributed over \$2.5 million to the road rehabilitation project in the past three years. The City is requesting funding assistance for permitting, redesign, and construction for the remaining 5,480 ft. of the road in the amount of \$1,500,000 to fully rehabilitate Mill Bay Road.

## **2. Shelikof Street Bulkhead Parking**

**Funding Request: \$1,565,000**

In 2009, the City identified the need for pedestrian improvements from Pier II to downtown Kodiak to more safely accommodate pedestrian traffic and to improve facilities for local residents, workers, and businesses that use the pier, street, and access to the City's adjacent 250 slip boat harbor. The first phase of the project, construction of an ADA accessible sidewalk, new retaining walls, improved lighting and parking, and utility work was completed in 2013. The City is planning for and preparing the permitting and design of the next parking improvement phase of this project, which is to construct a 30 space bulkhead parking area on the south side of Shelikof Street adjacent to St. Paul Harbor. The roadway area adjacent to the proposed bulkhead parking is dangerously congested. Due to lack of adequate parking, vehicles block walkways, equipment operates in the ROW, and access to businesses is often blocked, forcing pedestrians into the roadway. Construction of additional off-road parking will direct pedestrian traffic out of the congested roadway. The net increase in parking will benefit harbor users and retail businesses along Shelikof Street. It will provide improved and safer pedestrian access from Marine Way to the fish processors in the immediate area. Associated tasks for this phase of the project include geotechnical investigation, design, permitting, mapping, construction, improved lighting, and utility relocates. The City of Kodiak is requesting state funding assistance for permitting, design, and construction in the amount of \$1,565,000 to complete design, permit, and construct this bulkhead parking project to enhance pedestrian and vehicle safety.

## **3. Shelikof Street Pedestrian Improvements Pier II to Downtown**

**Funding Request: \$1,100,000**

In 2009 the City of Kodiak started work to improve pedestrian and roadway improvements along Shelikof Street (Cannery Row) from Pier II to downtown Kodiak to more safely accommodate cruise ship passengers who walk along the street and to improve the roadway and parking facilities for local residents and businesses that use the highly congested street and pier year round. The first phase, construction of an ADA accessible sidewalk, improved lighting and parking, retaining walls, and utility relocates was completed in 2013. The City wants to begin work on a portion of the next phase of improvements with design and construction of a visitor shelter-information kiosk-public restroom facility at Pier II. The shelter will benefit ferry and cruise ship passengers and visitors with a place to come in out of the weather, a location for the distribution of visitor information, and provide the only public restroom facility at Pier II. The City has 65% engineering design drawings and two drawings showing floor plans and elevations. The City of Kodiak is requesting state funding assistance in the amount of \$1,100,000 through the cruise ship excise tax fund for planning,

permitting, design, and construction of this shelter for the community of Kodiak, its visitors, and residents.

**4. Replacement Ambulance**

**\$200,000**

The City of Kodiak’s Fire Department provides advance emergency medical services to the residents, fishermen, and visitors to the City, as well as area Fire Protection Districts 1, 2, and 3, U.S. Coast Guard Base Kodiak, and all non-covered road system areas, with a total population estimate of over 10,000. The Department currently operates three Type 1 Advanced Life Support (ALS) ambulances which respond to an average of 850 medical calls a year. Service life of each ambulance is 10 years. The City has replaced two ambulances, but currently one ambulance has exceeded its expected service life by three years and reliability has become a serious issue with ongoing mechanical and electrical issues. The City will continue to look for funds to help offset the full cost of replacement of this important piece of emergency response equipment and will contribute local general fund money to replace the equipment associated with the ALS type ambulance. Therefore, the City is requesting funding assistance from the Legislature help fund the replacement of 1 Type 1 ambulance for an estimated total of \$200,000.

**5. Firefighting and Safety Equipment**

**\$62,550**

The City of Kodiak’s Fire Department is a paid department of 13.75 FTEs that serves both the City residents, including 2 commercial boat harbors containing 600 slips and vessels, and those who live and have businesses in mutual aid response districts. The services provided are heavily dependent upon safety and other response equipment for the firefighters, EMTs, and public. The Department purchases necessary equipment through the General Fund and grants. Much of the equipment purchased must meet National Fire Protection Association (NFPA) and OSHA standards and be replaced periodically to maintain certification and ensure safety. The City is finding it more financially demanding to replace the life safety equipment while continuing normal operations as funding sources become more limited. Therefore, the City is requesting funding assistance from the Legislature to fund the replacement of 10 firefighting turnouts which firefighters wear when responding to an incident, 25 SCBA bottles needed to enter a fire or other hazardous environment, and 4 automatic external defibrillators (AEDs) to be placed in response vehicles for an estimated total of \$63,000.

**6. State Municipal Matching Grant and Harbor Facilities Grant Programs**

The economy of the City of Kodiak is based upon commercial fishing and all the work, such as local, state and federal governmental activities associated with support of the fisheries as well as research and enforcement activities are based on Kodiak’s fishing industry. Each year Kodiak ranks as a top commercial fishing port. In 2014, NOAA statistics put Kodiak as the second largest commercial fishing port in the United States in terms of volume and third in terms of value. This activity requires an infrastructure from potable water, replacement of aging water, sewer, and storm drain systems, and harbor and dock infrastructure that is much larger than its population might suggest. The City of Kodiak relies heavily on the Department of Environmental Conservation Municipal Matching Grant Program to help fund repairs and replacement of the City’s water, sewer, and storm drainage systems. The Kodiak

Harbor Department relies on the State's Harbor Facilities Grant Program to help match costs for dock replacements. The City of Kodiak urges the State to continue to support these matching grant programs to avoid shifting the burden of costs back on local governments.

**7. State Revenue Sharing**

As the cost of providing governmental services rise, the City of Kodiak must rely on and use all sources of revenue carefully to meet its obligations. The City received \$377,926 in revenue sharing this year, a substantial drop from the \$572,936 received three years ago. The City urges the State to continue to provide revenue sharing to local governments through this program.

CITY OF KODIAK

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MAYOR

ATTEST:

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CITY CLERK

Adopted:

**CITY OF KODIAK  
RESOLUTION NUMBER 2014-35**

**A RESOLUTION OF THE COUNCIL OF THE CITY OF KODIAK ADOPTING  
A FY2016 STATE CAPITAL IMPROVEMENTS PROGRAM LIST**

WHEREAS, the City of Kodiak uses a Capital Improvements Program planning process to identify the capital improvement project needs of the community; and

WHEREAS, this identification and planning process plays a vital role in directing the City's administration and is utilized as a long-range planning and policy setting tool for City infrastructure maintenance and enhancement; and

WHEREAS, the City of Kodiak is committed to paying its way to the greatest extent possible, but the cost of some of the City's capital project needs are greater than the resources available locally; and

WHEREAS, the Kodiak City Council has identified and prioritized capital improvement projects for submission to the Alaska State Legislature and Governor for funding consideration due to their significance and/or magnitude.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Kodiak, Alaska, that the following infrastructure replacement/improvement projects are considered of primary importance and are hereby adopted as the City of Kodiak's FY2016 State capital improvement project list:

- 1. Mill Bay Road Pavement Rehabilitation Project: \$3,500,000**  
Mill Bay Road is a 2.5 mile major arterial that provides access to the City of Kodiak's main business district. It is the most traveled road in Kodiak with approximately 12,000 vehicle trips per day. The City took ownership of Mill Bay Road from the State after it was reconstructed by DOT in 1991. The road surface has developed extreme pavement wear in the driving lanes over the past 23 years. The City has maintained and repaired sections and the driving lanes were milled and overlaid twice, but the overall road condition has not been assessed. The most critical issue is the development of ruts in the driving lanes up to 3" deep in some lanes in major intersections. Ruts create drainage problems which further accelerate wear on the pavement. The need for further pavement rehabilitation is necessary to prevent areas of roadbed failure. The City must plan on full road width pavement rehabilitation for the most traveled 2 mile portion from the main intersection downtown (the "Y") to Island Lake Road (Walmart) and is completing an engineering study to assess the condition of the pavement, address drainage, and review the possibility of updating and reusing the original design segments to help reduce project costs. The total road rehabilitation cost, including engineering and construction, is estimated to be \$4,000,000 with funds coming from a combination of local funds for design & engineering and state funds for the remainder of the

project. The City of Kodiak is requesting state funding assistance for permitting, redesign, and construction in the amount of \$3,500,000 to fully rehabilitate Mill Bay Road.

## **2. Shelikof Street Bulkhead Parking**

**Funding Request: \$1,650,000**

In 2009, the City identified the need for pedestrian improvements from Pier II to downtown Kodiak to more safely accommodate pedestrian traffic and to improve facilities for local residents, workers, and businesses that use the pier, street, and access to the City's adjacent 250 slip boat harbor. The first phase of the project, construction of an ADA accessible sidewalk, new retaining walls, improved lighting and parking, and utility work was completed in 2013. The City must plan and design the next parking improvement phase of this project, which is to construct a 30 space bulkhead parking area on the south side of Shelikof Street adjacent to St. Paul Harbor. The roadway area adjacent to the proposed bulkhead parking is dangerously congested. Due to lack of adequate parking, vehicles block walkways, equipment operates in the ROW, and access to businesses is often blocked, forcing pedestrians into the roadway. Construction of additional off-road parking will direct pedestrian traffic out of the congested roadway. The net increase in parking will benefit harbor users and retail businesses along Shelikof Street. It will provide improved and safer pedestrian access from Marine Way to the fish processors in the immediate area. Associated tasks for this phase of the project include geotechnical investigation, design, permitting, mapping, construction, improved lighting, and utility relocates. The City of Kodiak is requesting state funding assistance for planning, permitting, design, and construction in the amount of \$1,650,000 to construct this bulkhead parking project to enhance pedestrian and vehicle safety.

## **3. Shelikof Street Pedestrian Improvements Pier II to Downtown**

**Funding Request: \$1,100,000**

In 2009 the City of Kodiak started work to improve pedestrian and roadway improvements along Shelikof Street (Cannery Row) from Pier II to downtown Kodiak to more safely accommodate cruise ship passengers who walk along the street and to improve the roadway and parking facilities for local residents and businesses that use the highly congested street and pier year round. The first phase, construction of an ADA accessible sidewalk, improved lighting and parking, retaining walls, and utility relocates was completed in 2013. The City wants to begin work on a portion of the next phase of improvements with design and construction of a visitor shelter-information kiosk-public restroom facility at Pier II. The shelter will benefit ferry and cruise ship passengers and visitors with a place to come in out of the weather, a location for the distribution of visitor information, and provide the only public restroom facility at Pier II. The City has 65% engineering design drawings and two drawings showing floor plans and elevations. The City of Kodiak is requesting state funding assistance in the amount of \$1,100,000 through the cruise ship excise tax fund for planning, permitting, design, and construction of this shelter for the community of Kodiak, its visitors, and residents.



CITY OF KODIAK

*Cat Branson*

MAYOR

ATTEST:

*Marianne Ushakovskaya*  
for CITY CLERK


Adopted: October 23, 2014

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## MEMORANDUM TO COUNCIL

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**To:** Mayor Branson and City Councilmembers

**From:** Aimée Kniazowski, City Manager 

**Thru:** James R. Mullican Jr., Fire Chief

**Date:** January 14, 2016

**Agenda Item:** V. c. Resolution No. 2016–02, Accepting a Code Blue Grant From the Southern Region EMS Council

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**SUMMARY:** This grant, Code Blue Phase 14; will purchase a new Zoll X Series Defibrillator and 2 E Series CAPNO graphs for the use of the Kodiak Fire Department’s EMS response for a total cost of \$31,700 of which the City is responsible for a co-pay of ten percent or \$3,170. Staff recommends Council accept this grant by adopting Resolution No. 2016–02.

**PREVIOUS COUNCIL ACTION:** Council routinely accepts grants from federal or state agencies by resolution.

**DISCUSSION:** The City Fire Department provides advance cardiac life support treatment and transport for citizens of the city as well as those living on the road system and transported in from the villages. This equipment grant allows the Fire Department to replace an out of service defibrillator and upgrade current machines to meet the demands of advanced cardiac patient care. Fire Chief James Mullican Jr. has been working with Southern Region EMS as well as Zoll Medical Corporation to facilitate the purchase of said equipment with a substantial price break. Zoll Medical Corporation will accept the department’s out of service defibrillator as a trade in lowering the new total by \$7,600. This brings the new overall total to \$58 over the original grant request.

The City was approved for a Code Blue Phase 14 grant in April of 2014 to provide funding for approved medical equipment. The original grant approved a total of \$31,642.00 in equipment purchases, including a city co-pay of ten percent. Funding issues by the State of Alaska and Federal sources delayed purchasing of said equipment. During this delay Zoll Medical (Equipment source) discontinued production of the model machine originally requested requiring a new model machine as a suitable replacement. The resulting equipment change has raised the original price quote from Zoll Medical from \$31,642 to \$39,300. Zoll Medical has agreed to accept the department’s out of service defibrillator as a trade in lowering the overall cost by \$7,600 bring the total purchase price to \$31,700. Funding has been restored, and the Code Blue Steering committee is now ready to fulfill their obligations



**ALTERNATIVES:**

- 1) Adopt Resolution No. 2016-02, which is the recommendation of staff, because it will allow the replacement of an out of service defibrillator and upgrade current machines at a significant monetary saving.
- 2) Do not adopt Resolution No. 2016-02, which is not recommended, because it would require the City to find alternative funding sources including full funding from the General Fund.

**FINANCIAL IMPLICATIONS:** The ten percent co-pay of \$3,170 will come from the current FY2016 Fire Department budget.

**STAFF RECOMMENDATION:** Staff recommends Council adopt Resolution No. 2016-02 to accept the Code Blue grant.

**CITY MANAGER'S COMMENTS:** The award of this grant is quite beneficial to the City and Fire Department. It allows Southern Region EMS to cover the majority of the cost to replace important and expensive medical equipment used during ambulance calls to cardiac incidents. The City's ten percent contribution is easily covered under the Fire Department's existing equipment budget. I want to thank Chief Mullican for following this request through and for negotiating the final outcome with the medical supplier. I recommend Council approve acceptance of this grant.

**ATTACHMENTS:**

- Attachment A: Resolution No. 2016-02
- Attachment B: Original Code Blue Approval Letter dtd April 7, 2014
- Attachment C: Updated Code Blue approval for upgraded Defibrillator dtd Dec 30, 2015
- Attachment D: Zoll Medical Corporation Equipment quote.

**PROPOSED MOTION:**

Move to adopt Resolution No. 2016-02

**CITY OF KODIAK  
RESOLUTION NUMBER 2016-02**

**A RESOLUTION OF THE COUNCIL OF THE CITY OF KODIAK ACCEPTING  
A CODE BLUE GRANT FROM THE SOUTHERN REGION EMS COUNCIL**

WHEREAS, the City of Kodiak has been awarded a Code Blue grant from the Southern Region EMS Council in the amount of Thirty-One Thousand Seven Hundred dollars (\$31,700) to purchase a Zoll X Series Defibrillator and 2 E Series CAPNO graphs for the use of the Kodiak Fire Department's EMS response team; and

WHEREAS, the Southern Region EMS Council will pay the cost of purchase; and

WHEREAS, the City will pay 10% or \$1,370 toward the purchase of the equipment; and

WHEREAS, this grant will provide important cardiac medical equipment to support the Kodiak Fire Department's EMS services, which are available to all residents on the road system and those flown in from the villages; and

WHEREAS, the assistance provided by the grant greatly reduces the cost burden on the City to fully pay for this expensive and important equipment.

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

CITY OF KODIAK

\_\_\_\_\_  
MAYOR

ATTEST:

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

Adopted:

6130 Tuttle Place • Anchorage, Alaska 99507-2041 • 562-6449 • FAX 562-9893

Southern Region  
**EMERGENCY**  
 Medical Services Council, Inc.

April 7, 2014

Rome Kamai  
 City of Kodiak Fire Department  
 219 Lower Mill Bay Road  
 Kodiak, AK 99615

RE: Code Blue Phase 14

Dear Chief Kamai:

The Code Blue Phase 14 equipment requests submitted by your agency for consideration in late 2013 have gone through a rigorous review process over the last several months. There have been multiple review steps along the way, which include Southern Region staff, Board of Directors Equipment Review Committee, the Southern Region Board of Directors, and then the Statewide Code Blue Steering Committee.

During these steps, items have been considered based on many established criteria, including whether they are essential EMS equipment, whether they meet minimum criteria, reasonableness of the request, application to the community setting, documentation of need, costs, how they fit into regional and statewide priorities, and a host of others. In addition, there are always more requests than can ultimately be funded, so some simply do not make the list or their funding is capped.

The portion of funding we receive from the State via the Governor's Capital Equipment bill is currently pending in the legislative process. We don't anticipate any problems with that funding, and by the time all grant paperwork is completed, State funding should be available by September 2014.

We are in process of submitting a grant request to the USDA – Rural Development office and will inform you of the status as soon as we have information, if USDA-RD funding pertains to your project.

If your item is listed below as **Approved**, your project(s) are on the State Code Blue Equipment list and pending grant processes.

If it is **Changed**, it was altered within the review process and an explanation will be detailed below.


If it is listed as **Dropped**, it will not be considered in this Code Blue phase and an explanation will be detailed below.

Item	Status	USDA	Local Match	STATE	UNMET	Total
Zoll E Series Defibrillator	Approved	\$0.00	\$2,448	\$8,568	\$13,464	\$24,480
E Series CAPNO 5 Side Str.LoFlo	Approved	\$0.00	\$716	\$2,507	\$3,939	\$7,162

**NOTES:** None

Thank you for all you do for EMS in Alaska. At Southern Region, we are working hard to support you in every way that we can.

Sincerely,

  
 Vlada Sotskaya,  
 Finance Manager

CC: Jud Brenteson, Subarea Coordinator  
 WORKING TOGETHER TO SAVE LIVES



## Southern Region EMS Council Anchorage, Alaska

6130 Tuttle Place, Suite B, Anchorage, AK 99507  
(907) 562-6449 FAX: (907) 562-9893 [www.sremsc.org](http://www.sremsc.org)

December 30, 2015

Jim Mullican, Fire Chief  
City of Kodiak Fire Department  
219 Lower Mill Bay Road  
Kodiak, AK 99615

RE: Code Blue Phase 14

Dear Chief Mullican:

The Code Blue Phase 14 equipment requests submitted by your agency for consideration in late 2013 have been approved and funding allocated for these projects. Your projects have funding allocated from the State of Alaska, the U.S. Department of Agriculture and local match funding from the City of Kodiak.


With the significant delays in the release of the State grant funds, technology has moved forward. Your approved request for a ZOLL "E" Series Defibrillator has been changed to an "X" series Defibrillator, following discussion and support from your department for this upgrade.

The reason behind this change is that it was recently learned from the vendor that the ZOLL "E" series will no longer be manufactured. They have upgraded their technology to the "X" series. One of your "E" Series units will be used as a "trade-in" for the new defibrillator. Please note that the "E" series will continue to be supported by ZOLL for your remaining units.

You have been provided a copy of the quote for the ZOLL "X" Series and the two E Series CAPNO 5 Side Stream LoFlo modules for your other defibrillators. We will be purchasing from this quote.

Thank you for all you do for EMS in Alaska. At Southern Region, we are working hard to support you in every way that we can.

Sincerely,

  
Sue Hecks  
Executive Director

*CC: Wayne Sargent, Kodiak Island Subarea Coordinator*

**Mission:**

*Improve the quality, availability and sustainability of emergency patient care*



**TO: City of Kodiak Fire Department**

219 Lower Mill Bay Road  
Kodiak, AK 99615

Attn: **Frank Dorner, Deputy Chief**

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

Tel: 907-486-4080

**ZOLL Medical Corporation**

Worldwide HeadQuarters  
269 Mill Rd  
Chelmsford, Massachusetts 01824-4105  
(978) 421-9655 Main  
(800) 348-9011  
(978) 421-0015 Customer Support  
FEDERAL ID#: 04-2711626

**QUOTATION 204897 V:3**

DATE: December 11, 2015

TERMS: Net 30 Days

FOB: Shipping Point

FREIGHT: Free Freight

ITEM	MODEL NUMBER	DESCRIPTION	QTY.	UNIT PRICE	DISC PRICE	TOTAL PRICE
1	601-2221011-01	<p><b>X Series ® Manual Monitor/Defibrillator \$14,995</b> with 4 trace tri-mode display monitor/ defibrillator/ printer, comes with Real CPR Help®, advisory algorithm, advanced communications package (Wi-Fi, Bluetooth, USB cellular modem capable) USB data transfer capable and large 6.5"( 16.5cm) diagonal screen, full 12 ECG lead view with both dynamic and static 12-lead mode display.</p> <p><b>Accessories Included:</b></p> <ul style="list-style-type: none"> <li>• Six (6) foot 3- Lead ECG cable</li> <li>• MFC cable</li> <li>• MFC CPR connector</li> <li>• A/C power adapter/ battery charger</li> <li>• A/C power cord</li> <li>• One (1) roll printer paper</li> <li>• 6.6 Ah Li-ion battery</li> <li>• Carry case</li> <li>• Declaration of Conformity</li> <li>• Operator's Manual</li> <li>• Quick Reference Guide</li> </ul> <p>• <b>One (1)-year EMS warranty</b></p> <p><b>Advanced Options:</b> <b>Real CPR Help Expansion Pack \$ 995</b> CPR Dashboard quantitative depth and rate in real time, release indicator, interruption timer, perfusion performance indicator (PPI) • See - Thru CPR artifact filtering</p> <p><b>ZOLL Noninvasive Pacing Technology: \$2,550</b></p>	1	\$37,275.00	\$30,565.50	\$30,565.50 *

This quote is made subject to ZOLL's standard commercial terms and conditions (ZOLL T's + C's) which accompany this quote. Any purchase order (P.O.) issued in response to this quotation will be deemed to incorporate ZOLL T's + C's. Any modification of the ZOLL T's + C's must be set forth or referenced in the customer's P.O. No commercial terms or conditions shall apply to the sale of goods or services governed by this quote and the customer's P.O unless set forth in or referenced by either document.

**Page 1 Subtotal**

**\$30,565.50**

1. DELIVERY WILL BE MADE 60-90 DAYS AFTER RECEIPT OF ACCEPTED PURCHASE ORDER.
2. PRICES QUOTED ARE VALID FOR 60 DAYS.
3. APPLICABLE TAX, SHIPPING & HANDLING WILL BE ADDED AT THE TIME OF INVOICING.
4. ALL PURCHASE ORDERS ARE SUBJECT TO CREDIT APPROVAL BEFORE ACCEPTABLE BY ZOLL.
5. FAX PURCHASE ORDER AND QUOTATION TO ZOLL CUSTOMER SUPPORT AT 978-421-0015 OR EMAIL TO [ESALES@ZOLL.COM](mailto:ESALES@ZOLL.COM).
6. ALL DISCOUNTS OFF LIST PRICE ARE CONTINGENT UPON PAYMENT WITHIN AGREED UPON TERMS.
7. PLACE YOUR ACCESSORY ORDERS ONLINE BY VISITING [www.zollwebstore.com](http://www.zollwebstore.com).

Jonathan Erickson  
EMS Territory Manager  
800-242-9150, x9242



**ZOLL Medical Corporation**

Worldwide Headquarters  
 269 Mill Rd  
 Chelmsford, Massachusetts 01824-4105  
 (978) 421-9655 Main  
 (800) 348-9011  
 (978) 421-0015 Customer Support  
 FEDERAL ID#: 04-2711626

**TO: City of Kodiak Fire Department**

219 Lower Mill Bay Road  
 Kodiak, AK 99615

Attn: **Frank Dorner, Deputy Chief**

email: [fdorner@city.kodiak.ak.us](mailto:fdorner@city.kodiak.ak.us)  
 Tel: 907-486-4080

**QUOTATION 204897 V:3**

DATE: December 11, 2015

TERMS: Net 30 Days

FOB: Shipping Point

FREIGHT: Free Freight

ITEM	MODEL NUMBER	DESCRIPTION	QTY.	UNIT PRICE	DISC PRICE	TOTAL PRICE
		<b>Masimo Pulse Oximetry</b>				
		<b>SP02</b> <b>\$1,795</b> <ul style="list-style-type: none"> <li>• Signal Extraction Technology (SET)</li> <li>• Rainbow SET</li> </ul> <b>NIBP Welch Allyn includes:</b> <b>\$3,495</b> <ul style="list-style-type: none"> <li>• Smartcuff 10 foot Dual Lumen hose</li> <li>• SureBP Reusable Adult Medium Cuff</li> </ul> <b>End Tidal Carbon Dioxide monitoring (ETCO2)</b> <b>Oridion Microstream Technology:</b> <b>\$4,995</b> Order required Microstream tubing sets separately  <b>Interpretative 12- Lead ECG:</b> <b>\$8,450</b> <ul style="list-style-type: none"> <li>• 12-Lead one step ECG cable- includes 4- Lead limb lead cable and removable precordial 6- Lead set</li> </ul>				
2	8000-0294	SpO2 LNCS Adult Reusable Sensor (1 each)	1	\$295.00	\$221.25	\$221.25 *
3	8000-0330	SpO2 Rainbow Reusable Patient Cable: Connects to LNCS Single Use and Reusable Sensors (4 ft)	1	\$295.00	\$221.25	\$221.25 *
4	8000-0580-01	Six hour rechargeable Smart battery	1	\$495.00	\$420.75	\$420.75 *
5	8200-000100-01	Single Bay Charger for the SurePower and SurePower II batteries	1	\$945.00	\$708.75	\$708.75 *

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**Page 2 Subtotal \$32,137.50**

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Jonathan Erickson  
 EMS Territory Manager  
 800-242-9150, x9242



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**TO: City of Kodiak Fire Department**

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email: [fdorner@city.kodiak.ak.us](mailto:fdorner@city.kodiak.ak.us)  
 Tel: 907-486-4080

**QUOTATION 204897 V:3**

DATE: December 11, 2015

TERMS: Net 30 Days

FOB: Shipping Point

FREIGHT: Free Freight

ITEM	MODEL NUMBER	DESCRIPTION	QTY.	UNIT PRICE	DISC PRICE	TOTAL PRICE
6	8000 - 0367	E Series Only CAPNO 5 Sidestream LoFlo Module	2	\$4,775.00	\$3,581.25	\$7,162.50 *
7	4001 - 9930	ZOLL M-Series Biphasic w/Pacing + 3 parameters (includes CCT) Trade-In	1		(\$7,600.00)	(\$7,600.00) **

\*Reflects National Purchasing Partners (NPP) Contract Pricing.  
 \*\* Trade value guaranteed only through December 31, 2015  
 \*\*Trade-In Value valid if all units purchased are in good operational and cosmetic condition, and include all standard accessories such as paddles, cables, etc. Customer assumes responsibility for shipping trade-in equipment to ZOLL Chelmsford within 60 days of receipt of new equipment. Customer agrees to pay cash value for trade-in equipment not shipped to ZOLL on a timely basis.

This quote is made subject to ZOLL's standard commercial terms and conditions (ZOLL T's + C's) which accompany this quote. Any purchase order (P.O.) issued in response to this quotation will be deemed to incorporate ZOLL T's + C's. Any modification of the ZOLL T's + C's must be set forth or referenced in the customer's P.O. No commercial terms or conditions shall apply to the sale of goods or services governed by this quote and the customer's P.O unless set forth in or referenced by either document.

**TOTAL \$31,700.00**

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Jonathan Erickson  
 EMS Territory Manager  
 800-242-9150, x9242

## ZOLL QUOTATION GENERAL TERMS & CONDITIONS

**1. ACCEPTANCE.** This Quotation constitutes an offer by ZOLL Medical Corporation to sell to the Customer the equipment (including a license to use certain software) listed in this Quotation and described in the specifications either attached to or referred to in this Quotation (hereinafter referred to as Equipment). Any acceptance of such offer is expressly limited to the terms of this Quotation, including these General Terms and Conditions. Acceptance shall be so limited to this Quotation notwithstanding (i) any conflicting written or oral representations made by ZOLL Medical Corporation or any agent or employee of ZOLL Medical Corporation or (ii) receipt or acknowledgement by ZOLL Medical Corporation of any purchase order, specification, or other document issued by the Customer. Any such document shall be wholly inapplicable to any sale made pursuant to this Quotation, and shall not be binding in any way on ZOLL Medical Corporation.

Acceptance of this Quotation by the Customer shall create an agreement between ZOLL Medical Corporation and the Customer (hereinafter referred to as the "Contract") the terms and conditions of which are expressly limited to the provisions of this Quotation including these Terms and Conditions. No waiver change or modification of any of the provisions of this Quotation or the Contract shall be binding on ZOLL Medical Corporation unless such waiver, change or modification (i) is made in writing (ii) expressly states that it is a waiver, change or modification of this Quotation or the Contract and (iii) is signed by an authorized representative of ZOLL Medical Corporation.

**2. DELIVERY AND RISK OF LOSS.** Unless otherwise stated, all deliveries shall be F.O.B. ZOLL Medical Corporation's facility. Risk of loss or damage to the Equipment shall pass to the Customer upon delivery of the Equipment to the carrier.

**3. TERMS OF PAYMENT.** Unless otherwise stated in its Quotation payment by Customer is due thirty (30) days after the ship date appearing on ZOLL Medical Corporation invoice. Any amounts payable hereunder which remain unpaid after the date shall be subject to a late charge equal to 1.5% per month from the due date until such amount is paid.

**4. CREDIT APPROVAL.** All shipments and deliveries shall at all times be subject to the approval of credit by ZOLL Medical Corporation. ZOLL Medical Corporation may at any time decline to make any shipment or delivery except upon receipt of payment or security or upon terms regarding credit or security satisfactory to ZOLL Medical Corporation.

**5. TAXES & FEES.** The pricing quoted in its Quotation do not include sales use, excise, or other similar taxes or any duties or customs charges, or any order processing fees. The Customer shall pay in addition for the prices quoted the amount of any present or future sales, excise or other similar tax or customs duty or charge applicable to the sale or use of the Equipment sold hereunder (except any tax based on the net income of ZOLL Medical Corporation), and any order processing fees that ZOLL may apply from time to time. In lieu thereof the Customer may provide ZOLL Medical Corporation with a tax exemption certificate acceptable to the taxing authorities.

**6. WARRANTY.** (a) ZOLL Medical Corporation warrants to the Customer that from the earlier of the date of installation or thirty (30) days after the date of shipment from ZOLL Medical Corporation's facility, the Equipment (other than accessories and electrodes) will be free from defects in material and workmanship under normal use and service for the period noted on the reverse side. Accessories and electrodes shall be warranted for ninety (90) days from the date of shipment. During such period ZOLL Medical Corporation will at no charge to the Customer either repair or replace (at ZOLL Medical Corporation's sole option) any part of the Equipment found by ZOLL Medical Corporation to be defective in material or workmanship. If ZOLL Medical Corporation's inspection detects no defects in material or workmanship, ZOLL Medical Corporation's regular service charges shall apply. (b) ZOLL Medical Corporation shall not be responsible for any Equipment defect failure of the Equipment to perform any specified function, or any other nonconformance of the Equipment caused by or attributable to (i) any modification of the Equipment by the Customer, unless such modification is made with the prior written approval of ZOLL Medical Corporation; (ii) the use of the Equipment with any associated or complementary equipment accessory or software not specified by ZOLL Medical Corporation, or (iii) any misuse or abuse of the Equipment; (iv) exposure of the Equipment to conditions beyond the environmental, power or operating constraints specified by ZOLL Medical Corporation, or (v) installation or wiring of the Equipment other than in accordance with ZOLL Medical Corporation's instructions. (c) Warranty does not cover items subject to normal wear and burnout during use, including but not limited to lamps, fuses, batteries, cables and accessories. (d) The foregoing warranty does not apply to software included as part of the Equipment (including software embodied in read-only memory known as "firmware"). (e) The foregoing warranty constitutes the exclusive remedy of the Customer and the exclusive liability of ZOLL Medical Corporation for any breach of any warranty related to the Equipment supplied hereunder. THE WARRANTY SET FORTH HEREIN IS EXCLUSIVE AND ZOLL MEDICAL CORPORATION EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES WHETHER WRITTEN, ORAL, IMPLIED, OR STATUTORY, INCLUDING BUT NOT LIMITED TO ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

**7. SOFTWARE LICENSE.** (a) All software (the "Software" which term shall include firmware) included as part of the Equipment is licensed to Customer pursuant to a nonexclusive limited license on the terms hereinafter set forth. (b) Customer may not copy, distribute, modify, translate or adapt the Software, and may not disassemble or reverse compile the Software, or seek in any manner to discover, disclose or use any proprietary algorithms, techniques or other confidential information contained therein. (c) All rights in the Software remain the product of ZOLL Medical Corporation, and Customer shall have no right or interest therein except as expressly provided herein. (d) Customer's right to use the Software may be terminated by ZOLL Medical Corporation in the event of any failure to comply with terms of this quotation. (e) Customer may transfer the license conferred hereby only in connection with a transfer of the Equipment and may not retain any copies of the Software following such transfer. (f) ZOLL Medical Corporation warrants that the read-only memory or other media on which the Software is recorded will be free from defects in materials and workmanship for the period and on terms set forth in section 6. (g) Customer understands that the Software is a complex and sophisticated software product and no assurance can be given that operation of the Software will be uninterrupted or error-free, or that the Software will meet Customer's requirements. Except as set forth in section 7(f), ZOLL MEDICAL CORPORATION MAKES NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO THE SOFTWARE AND IN PARTICULAR DISCLAIMS ANY IMPLIED WARRANTIES OR MERCHANTABILITY OR FITNESS OF A PARTICULAR PURPOSE WITH RESPECT THERETO. Customer's exclusive remedy for any breach of warranty or defect relating to the Software shall be the repair or replacement of any defective read-only memory or other media so that it correctly reproduces the Software. This License applies only to ZOLL Medical Corporation Software.

**8. DELAYS IN DELIVERY.** ZOLL Medical Corporation shall not be liable for any delay in the delivery of any part of the Equipment if such delay is due to any cause beyond the control of the ZOLL Medical Corporation including, but not limited to acts of God, fires, epidemics, floods, riots, wars, sabotage, labor disputes, governmental actions, inability to obtain materials, components, manufacturing facilities or transportation or any other cause beyond the control of ZOLL Medical Corporation. In addition ZOLL Medical Corporation shall not be liable for any delay in delivery caused by failure of the Customer to provide any necessary information in a timely manner. In the event of any such delay, the date of shipment or performance hereunder shall be extended to the period equal to the time lost by reason of such delay. In the event of such delay ZOLL Medical Corporation may allocate available Equipment among its Customers on any reasonable and equitable basis. The delivery dates set forth in this Quotation are approximate only and ZOLL Medical Corporation shall not be liable for or shall the Contract be breached by, any delivery by ZOLL Medical Corporation within a reasonable time after such dates.

**9. LIMITATIONS OF LIABILITY.** IN NO EVENT SHALL ZOLL MEDICAL CORPORATION BE LIABLE FOR INDIRECT SPECIAL OR CONSEQUENTIAL DAMAGES RESULTING FROM ZOLL MEDICAL CORPORATIONS PERFORMANCE OR FAILURE TO PERFORM PURSUANT TO THIS QUOTATION OR THE CONTRACT OR THE FURNISHING, PERFORMANCE, OR USE OF ANY EQUIPMENT OR SOFTWARE SOLD HERETO, WHETHER DUE TO A BREACH OF CONTRACT, BREACH OF WARRANTY, THE NEGLIGENCE OF ZOLL MEDICAL CORPORATION OR OTHERWISE.

**10. PATENT INDEMNITY.** ZOLL Medical Corporation shall at its own expense defend any suit that may be instituted against the Customer for alleged infringement of any United States patents or copyrights related to the parts of the Equipment or the Software manufactured by ZOLL Medical Corporation, provided that (i) such alleged infringement consists only in the use of such Equipment or the Software by itself and not as a part of or in combination with any other devices or parts, (ii) the Customer gives ZOLL Medical Corporation immediate notice in writing of any such suit and permits ZOLL Medical Corporation through counsel of its choice, to answer the charge of infringement and defend such suit, and (iii) the Customer gives ZOLL Medical Corporation all requested information, assistance and authority at ZOLL Medical Corporation's expense, to enable ZOLL Medical Corporation to defend such suit.

In the case of a final award of damages for infringement in any such suit, ZOLL Medical Corporation will pay such award, but it shall not be responsible for any settlement made without its written consent.

Section 10 states ZOLL Medical Corporation's total responsibility and liability's, and the Customer's sole remedy for any actual or alleged infringement of any patent by the Equipment or the Software or any part thereof provided hereunder. In no event shall ZOLL Medical Corporation be liable for any indirect, special, or consequential damages resulting from any such infringement.

**11. CLAIMS FOR SHORTAGE.** Each shipment of Equipment shall be promptly examined by the Customer upon receipt thereof. The Customer shall inform ZOLL Medical Corporation of any shortage in any shipment within ten (10) days of receipt of Equipment. If no such shortage is reported within ten (10) day period, the shipment shall be conclusively deemed to have been complete.

**12. RETURNS AND CANCELLATION.** (a) The Customer shall obtain authorization from ZOLL Medical Corporation prior to returning any of the Equipment. (b) The Customer receives authorization from ZOLL Medical Corporation to return a product for credit, the Customer shall be subject to a restocking charge of twenty percent (20%) of the original list purchase price, but not less than \$50.00 per product. (c) Any such change in delivery caused by the Customer that causes a delivery date greater than six (6) months from the Customer's original order date shall constitute a new order for the affected Equipment in determining the appropriate list price.

**13. APPLICABLE LAW.** This Quotation and the Contract shall be governed by the substantive laws of the Commonwealth of Massachusetts without regard to any choice of law provisions thereof.

**14. COMPLIANCE WITH LAWS.** (a) ZOLL Medical Corporation represents that all goods and services delivered pursuant to the Contract will be produced and supplied in compliance with all applicable state and federal laws and regulations, including the requirements of the Fair Labor Standards Act of 1938, as amended. (b) The Customer shall be responsible for compliance with any federal, state and local laws and regulations applicable to the installation or use of the Equipment furnished hereunder, and will obtain any permits required for such installation and use.

**15. NON-WAIVER OF DEFAULT.** In the event of any default by the Customer, ZOLL Medical Corporation may decline to make further shipments or render any further warranty or other services without in any way affecting its right under such order. If despite any default by Customer, ZOLL Medical Corporation elects to continue to make shipments its action shall not constitute a waiver of any default by the Customer or in any way affect ZOLL Medical Corporation's legal remedies regarding any such default. No claim or right arising out of a breach of the Agreement by the Customer can be discharged in whole or in part by waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by ZOLL Medical Corporation.

**16. ASSIGNMENT.** This Quotation, and the Contract, may not be assigned by the Customer without the prior written consent of ZOLL Medical Corporation, and any assignment without such consent shall be null and void.

**17. TITLE TO PRODUCTS.** Title to right of possession of the products sold hereunder shall remain with ZOLL Medical Corporation until ZOLL Medical Corporation delivers the Equipment to the carrier and agrees to do all acts necessary to perfect and maintain such right and title in ZOLL Medical Corporation. Failure of the Customer to pay the purchase price for any product when due shall give ZOLL Medical Corporation the right, without liability to repossess the Equipment, with or without notice, and to avail itself of any remedy provided by law.

### 18. EQUAL EMPLOYMENT OPPORTUNITY / AFFIRMATIVE ACTION.

**VETERAN'S EMPLOYMENT** - If this order is subject to Executive Order 11710 and the rules, regulations, or orders of the Secretary of Labor issued thereunder the contract clause as set forth at 41 CFR 60-250.4 is hereby included as part of this order.

**EMPLOYMENT OF HANDICAPPED** - if this order is subject to Section 503 of the Rehabilitation Act of 1973, as amended and the rules, regulations or orders of the Secretary of Labor as issued thereunder, the contract clause at 41 CFR 60-741.7 is hereby included as part of this order.

**EQUAL OPPORTUNITY EMPLOYMENT** - if this order is subject to the provisions of Executive Order 11246, as amended, and the rules, regulations or orders of the Secretary of Labor issued thereunder, the contract clause set forth at 41 CFR 60-1.4 (a) and 60-1.4 (b) are hereby included as a part of this order and Seller agrees to comply with the reporting requirements set forth at 41 CFR 60-1.7 and the affirmative action compliance program requirements set forth as 41 CFR 60-1.40.

**19. VALIDITY OF QUOTATION.** This Quotation shall be valid and subject to acceptance by the Customer, in accordance with the terms of Section 1 hereof for the period set forth on the face hereof. After such period, the acceptance of this Quotation shall not be binding upon ZOLL Medical Corporation and shall not create a contract, unless such acceptance is acknowledged and accepted by ZOLL Medical Corporation by a writing signed by an authorized representative of ZOLL Medical Corporation.

**20. GENERAL.** Any Contract resulting from this Quotation shall be governed by and interpreted in accordance with the laws of the Commonwealth of Massachusetts. This constitutes the entire agreement between Buyer and Supplier with respect to the purchase and sale of the Products described in the face hereof, and only representations or statements contained herein shall be binding upon Supplier as a warranty or otherwise. Acceptance or acquiescence in the course of performance rendered pursuant hereto shall not be relevant to determine the meaning of this writing even though the accepting or acquiescing party has knowledge of the nature of the performance and opportunity for objection. No addition to or modification of any of the terms and conditions specified herein shall be binding upon Supplier unless made in writing and signed by a duly authorized representative of Supplier. The terms and conditions specified shall prevail notwithstanding any variance from the terms and conditions of any order or other form submitted by Buyer for the Products set forth on the face of this Agreement. To the extent that this writing may be treated as an acceptance of Buyer's prior offer, such acceptance is expressly made conditional on assent by Buyer to the terms hereof, and, without limitation, acceptance of the goods by Buyer to the terms hereof, and, without limitation, acceptance of the goods by Buyer shall constitute such assent. All cancellations and reschedules require a minimum of thirty (30) days notice.





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## MEMORANDUM TO COUNCIL

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**To:** Mayor Branson and City Councilmembers  
**From:** Aimée Kniazowski, City Manager   
**Thru:** Mike Tvenge, Deputy City Manager   
**Date:** January 14, 2016

**Agenda Item:** V. d. **Resolution No. 2016–03, Expressing a Deep Sense of Urgency for the Alaska State Legislature to Take Immediate and Decisive Action During the 2016 Legislative Session to Enact a Complete Package of Initiatives to Provide for a Balanced, Sustainable, and Predicable State Budget for the Foreseeable Future**

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**SUMMARY:** Governor Bill Walker and First Lady Donna Walker visited Kodiak on December 21, 2015. During a joint work session with the City Council and Borough Assembly, Governor Walker and staff addressed the state's current fiscal position due to the precipitous drop in oil prices and announced a plan towards a sustainable fiscal future. Deputy Chief of Staff John Hozey invited the City to adopt a resolution supporting the Governor and his administration's work towards a fiscal solution. The Mayor and Council expressed support for the adoption of such a resolution in support of the Governor's efforts. City staff will distribute Resolution No. 2016–03 (Attachment A) in Juneau as soon as possible, if Council adopts it.

**PREVIOUS COUNCIL ACTION:** The City Council has provided resolutions of support to the state in the past.

**DISCUSSION:** The Governor presented his fiscal plan to a joint session of the City Council and Borough Assembly on December 21, 2015. This resolution supports the Governor's plan of action and will hopefully gain support of the Alaska Legislature during a time where lack of action is considered irresponsible as oil prices continue to decline, rupturing the state's financial base. The State of Alaska is by some estimates within two years of depleted reserves, leaving it in a position of reduced school funding, infrastructure deferment, capital project reductions, loss of the permanent fund dividend and loss of jobs. Alaskans need a course correction from the Legislature and Governor Walker, and this administration is proposing that action.

The evening of December 21, the Governor attended a community reception at the Afognak Native Corporation Building where Governor Walker expanded on the state economy, but the message remained the same – it's time to take action.

**ALTERNATIVES:**

- 1) Adopt Resolution No. 2016-03, which was suggested by the Governor's staff and supported by Council. This is recommended.
- 2) Do not adopt the resolution, which is not recommended, because it would send a message that the City does not support the Governor's plan and may not support this approach to fiscal sustainability.

**FINANCIAL IMPLICATIONS:** Adoption of this resolution will not result in direct financial impacts to the City. However, continued low oil prices and lack of operational funds at the state level will impact the City and the shared revenues it receives from the state.

**LEGAL:** N/A

**STAFF RECOMMENDATION:** Staff recommends Council support Resolution No. 2016-03.

**CITY MANAGER'S COMMENTS:** The state is facing an ongoing budget crisis. There are tough fiscal decisions that need to be made, and while not all decisions may be popular, we must encourage our legislators to act in the State's long-term and best interest. Therefore, I recommend Council adopt the resolution, which we will distribute in Juneau upon passage.

**ATTACHMENTS:**

Attachment A: Resolution No. 2016-03

**PROPOSED MOTION:**

Move to adopt Resolution No. 2016-03.

**CITY OF KODIAK  
RESOLUTION NUMBER 2016-03**

**A RESOLUTION OF THE COUNCIL OF THE CITY OF KODIAK EXPRESSING A DEEP SENSE OF URGENCY FOR THE ALASKA STATE LEGISLATURE TO TAKE IMMEDIATE AND DECISIVE ACTION DURING THE 2016 LEGISLATIVE SESSION TO ENACT A COMPLETE PACKAGE OF INITIATIVES TO PROVIDE FOR A BALANCED, SUSTAINABLE, AND PREDICABLE STATE BUDGET FOR THE FORESEEABLE FUTURE**

WHEREAS, Alaska is an ‘owner state’ who has developed its natural resources as the primary means to fund essential/desired public services offered by the state; and

WHEREAS, Alaska has relied predominately on the development of its vast oil reserves to fund the majority of state government expenditures over the past 35 years; and

WHEREAS, production of Alaskan North Slope crude oil has steadily decreased over the past 25 years; and

WHEREAS, global oil prices have remained highly volatile over recent decades, but until recently, have trended higher over time, masking the effect of decreasing oil production; and

WHEREAS, global oil prices have dropped significantly over the past two years and are projected to remain relatively low for the foreseeable future; and

WHEREAS, the combination of reduced oil production, reduced oil prices, and an overreliance on oil as the primary source of funding for state government has resulted in a massive state fiscal deficit; and

WHEREAS, cash reserves currently being used to cover the existing deficit will be depleted in just a few years, threatening the state’s annual dividend program and potentially the state’s Permanent Fund itself; and

WHEREAS, the State of Alaska has been duly warned by Standard & Poors that due to the current fiscal imbalance, its credit rating will be downgraded if the Legislature fails to take appropriate action in 2016; and

WHEREAS, major business leaders in the state have warned that they would be unlikely to continue making significant commercial investments in Alaska if the Legislature fails to address the fiscal deficit during the 2016 legislative session; and

WHEREAS, Governor Walker has introduced a complete fiscal plan to provide a sustainable and predicable balanced budget, using the strength of our existing financial assets, and a balanced blend of spending reductions and additional new revenues; and

WHEREAS, while spending reductions must be a part of any balanced fiscal solution, extreme care must be exercised to not inadvertently cut our way into an economic recession as was done in the 1980s; and

WHEREAS, every dollar of cash reserves spent now to fund one-time budget shortfalls, is then unavailable to continue working for the state as an ongoing income producing asset into the future; and

WHEREAS, continuing to spend down cash reserves in the short-term, will reduce the amount of sustainable revenue we can plan to generate from our current financial assets in the future, resulting in the necessity to increase other sources of revenue (taxes) in the future to compensate; and

WHEREAS, now more than ever is the time for statesmanship, not provincial politics or electioneering rhetoric; politically difficult decisions are required this year.

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

Section 1. The Council of the City of Kodiak calls upon the Alaska State Legislature to take affirmative and immediate action this year to enact a comprehensive package of initiatives that will provide for a sustainable and predicable balanced state budget for the foreseeable future.

Section 2. The Council of the City of Kodiak appreciates the difficult work of the Administration to put forth one possible comprehensive fiscal solution; and while the (Community Name) may not support every aspect of this plan, does recognize it as an appropriate starting point for legislative deliberation.

Section 3. The Council of the City of Kodiak insists that the Alaska State Legislature engage in meaningful discussions of all fiscal options without regard to perceived negative political fallout.

Section 4. The City Clerk is instructed to transmit a copy of this resolution to every member of the Alaska State Legislature, the Governor, and all local and statewide media outlets.

CITY OF KODIAK

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MAYOR

ATTEST:

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CITY CLERK

Adopted:

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## MEMORANDUM TO COUNCIL

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**To:** Mayor Branson and City Councilmembers

**From:** Aimée Kniazowski, City Manager

**Thru:** Mike Tvenge, Deputy Manager and Mark Kozak, Public Works Director

**Date:** January 14, 2016

**Agenda Item:** V. e. **Authorization of the Third Amendment to the Composting Agreement with Quayanna Development Corporation**

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**SUMMARY:** The existing bio-solids composting agreement between the City of Kodiak and Quayanna Development Corporation (QDC) began in October 2012. There have been two approved amendments to the original agreement. This amendment would be the third. The reason for this third amendment centers around the opening of the City's new bio-solids composting facility located at 885 Monashka Bay Road and the terms associated with the City-owned facility. Staff recommends approving Amendment No. Three to the contract with QDC and accepting the cost to purchase 3,000 cubic yards of supplied and delivered wood chips for composting for \$150,000.

**PREVIOUS COUNCIL ACTION:** The City approved the following actions with this project:

- February 2012 an MOU was signed between the City and Quayanna Development Corporation (QDC) to establish the goal of working toward a mutual agreement for the purpose of bio-solid disposal and composting.
- City Council approved a five-year contract with Quayanna Development Corporation at its October 25, 2012, meeting.
- First amendment was signed December 14, 2012, moving composting to the Borough Landfill.
- Second amendment was signed December 15, 2014, increasing the contract price.
- Negotiations with QDC and the City failed to come to agreement for the third amendment by the November or December council meetings and, therefore, no action was taken.

**DISCUSSION:** Beginning in 2007 the City staff had multiple discussions with the Borough about bio-solid disposal at the landfill. The City undertook evaluating disposal options and this included the concept of composting. As part of the disposal options, the City did a pilot test project to verify that composting would work on Kodiak Island. The pilot project showed good results, and this information was presented to the City Council.

Discussions began with Quayanna Development Corporation about a public/private partnership and by October 2012 a signed 5 year agreement was in place.



With assistance from the City, QDC submitted a permit application to ADEC in October 2012 to operate a Class A composting facility in Middle Bay. The Alaska Department of Environmental Conservation (ADEC) started the advertising notice for QDC's permit by November 2012. Public opposition to the Middle Bay site and permit required ADEC to extend the comment period well beyond the shut off notice the Borough had given the City. Options were explored, and the Borough Assembly approved an agreement to allow the City to compost Class "B" bio-solids within the landfill site, and Quayanna Development Corporation started composting the weekly bio-solid deliveries at the City's allowed location within the landfill. Since January 2013 QDC has been composting weekly amounts of bio-solids at the Borough landfill.

The City began construction of the new City of Kodiak composting facility on Monashka Bay Road in April 2015. Brechan Construction LLC constructed the facility. The City received the ADEC permit in March 2015 to operate at the new facility and on December 9, ADEC was present on site for the first delivery of bio-solids. Included during this visit were representatives from CH2M, Brechan Construction LLC, facility equipment suppliers, QDC, and City staff for the first batch mixing. City staff continues to operate the facility jointly with QDC.

As the City prepared to move into the new facility, staff discussed negotiating changes to the existing five-year agreement with QDC. QDC also wanted changes which included higher fees and/or a reduced scope of involvement in the City facility. The parties met multiple times over the course of three months, but were unable to reach agreement for Council ratification at the November and December meetings. Discussions continued until both parties felt comfortable in bringing QDC's request forward at this meeting.

Amendment No. Three states that QDC will complete composting at the landfill by January 31, 2016 as well as at the City facility on the same date. The renegotiated agreement also includes the provision that QDC will provide daily wood amendments needed for operations through the end of January, provide labor and equipment to chip City provided trees and branches, make delivery of 3,000 cy of wood amendments to the site as a stockpile for purchase by the City at \$50/cy, and receive an amount of completed Class A EQ compost in an amount not to exceed the first 2,000 cy at no cost. This was a difficult negotiation, but staff is confident that this is the best outcome for the City and for QDC. The City will continue to move toward full operations of the compost facility as QDC completes their contract.

**ALTERNATIVES:**

- 1) Approve Amendment No. 3 with QDC to complete composting Class B bio-solids at the Borough landfill and to provide composting services at the new facility on Monashka Bay Road through January 31, 2016, including provisions of an additional stockpile of wood amendments, which is recommended.

- 2) Do not approve the amendment, which is not recommended as it would require both parties to revert to the existing 2012 agreement, because the terms are no longer good for either party.

**FINANCIAL IMPLICATIONS:** The contract price for QDC's services and supplies at the new facility and detailed in the proposed contract amendment is \$150,000. A payment for January services was processed and made payable December 24, 2015, as required by contract Amendment No. Two. The funds to make the negotiated payments come from the Sewer Fund-Waste Water Treatment Biosolid Disposal Account -FY2016 budgeted expenses.

**LEGAL:** City Attorneys have reviewed this proposed contract Amendment No. Three and provided direction, which is what is presented before you.

**STAFF RECOMMENDATION:** Staff recommends approving Amendment No. 3 to the composting agreement with Quayanna Development Corporation as presented with funds coming from the Sewer Fund-Waste Water Treatment Biosolid Disposal Account- FY2016 budgeted expenses.

**DEPUTY CITY MANAGER'S COMMENTS:** The City Wastewater Treatment facility produces bio-solids, which are now composted into value added product. Disposal of the bio-solids into the landfill is more costly and does not have further use as demonstrated by demand of processed compost. The engineered facility now provides for a safe and dependable disposal cycle of high quality bio-solids produced locally on Kodiak Island for years ahead. This facility is the vision of many and should be recognized as such. While we have a contractor experienced in composting bio-solids and currently under contract with us, we should continue the agreement until other such alternatives such as a fully City operated facility becomes economical or necessary.

**CITY MANAGER'S COMMENTS:** I appreciate the time it has taken for City staff and Peter Olsen to plan for and work through this process. I appreciate the public-private partnership we've developed with QDC and look forward to refining operating in the new facility. I continue to believe this is the best and most affordable solution to treatment of the City's biosolids and believe this agreement is in the City's best interest. Therefore, I recommend Council approve the amendment and authorize me to sign the documents for the City.

**ATTACHMENTS:**

- Attachment A: Third amendment to QDC Contract
- Attachment B: First and second amendments to the agreement
- Attachment C: Change Order No.1 dated December 12, 2014
- Attachment D: Original agreement between City and QDC

**PROPOSED MOTION:**

Move to authorize Amendment No. Three to the composting agreement with Quayanna Development Corporation with funds coming from the Sewer Fund Waste Water Treatment biosolid disposal account, and authorize the City Manager to sign the documents on the City's behalf.

**AMENDED AND RESTATED COMPOSTING AGREEMENT NO. 205796**

**Third Amendment to the Composting Agreement with Quayanna Development Corporation**

THIS AMENDED AND RESTATED COMPOSTING AGREEMENT (this "Agreement") is entered into as of January 5, 2016 by and between the City of Kodiak, an Alaska municipal corporation (the "City"), whose address is 710 Mill Bay Road, Kodiak AK 99615, and Quayanna Development Corporation, an Alaska corporation ("QDC"), whose address is 11801 Middle Bay Drive, Kodiak AK 99615.

**Recitals**

WHEREAS, the City owns and operates a wastewater treatment facility as part of its sanitary sewer utility; and

WHEREAS, periodically bio-solids must be removed from the City's wastewater treatment facility and disposed of; and

WHEREAS, composting the bio-solids is a waste utilization process that benefits the public health and welfare and the environment by reducing the volume of material that is disposed of in the Borough landfill and allowing the reuse of this material when converted to compost.

WHEREAS, the parties entered into a Composting Agreement as of October 30, 2012, which was amended twice to provide for the relocation of QDC's composting facility to a temporary location at the Borough landfill, and to adjust the compensation payable to QDC as a result of the relocation (the "Prior Agreement"); and

WHEREAS, this Agreement constitutes an amendment and restatement of the Prior Agreement to provide for QDC to operate the new City-owned Bio-solids Composting Facility located at 855 Monashka Bay Road, and supersedes and replaces the Prior Agreement as provided herein.

NOW, THEREFORE, in consideration of the foregoing Recitals (which are incorporated herein by this reference), the mutual covenants and conditions hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and QDC hereby agree as follows:

**Agreement**

**1.0 Definitions.** In this Agreement:

"ADEC" means the Alaska Department of Environmental Conservation.

"Bio-solids" means all material produced at the City's wastewater treatment facility that is "sewage sludge" as defined in 40 C.F.R. §503.9(w) which has less than the Maximum Allowable Amounts of Arsenic, Cadmium, Chromium, Copper, Lead, Mercury Molybdenum, Nickel, Selenium, and Zinc as defined in the EPA Part 503 regulations pertaining to bio-solids pollutant limits, and can be composted using the Aerated Static Pile System to produce a Class A compost with an unrestricted status.

"City" means the City of Kodiak, an Alaska municipal corporation.

"Commencement Date" means December 1, 2015

"Facility" means the City of Kodiak Bio-solids Composting Facility described in Section 2.1.

"Operational Plan" means the plan approved by ADEC under which QDC will receive and compost Bio-solids at the Facility.

"QDC" means Quayanna Development Corporation, an Alaska Corporation.

## **2.0 Facility; QDC Relocation.**

2.1 Commencing December 1, 2015, the City shall permit QDC to occupy and operate the City Bio-Solids Composting Facility located at 855 Monashka Bay Road, as depicted in Exhibit A to this Agreement (the "Facility"), solely for the purpose of composting Bio-solids delivered to the Facility by the City, according to the terms of this Agreement, the City's Solid Waste Treatment Permit No. SWXA 060-20 (Exhibit B), and the Operational Plan (Exhibit C). The City shall have the right to make additions, alterations, or improvements to the Facility which do not impede QDC's access to or use of the Facility.

2.2 The City will make final delivery of Bio-solids to QDC at its current site at the Borough Landfill not later than December 4, 2015. QDC shall provide composting services at the Borough Landfill site and the Facility concurrently until QDC has relocated its composting operation from the Borough Landfill site to the Facility. QDC shall provide composting services at the Borough Landfill site in accordance with the ADEC permit and operational plan for that site. QDC shall relocate its composting operation from the Borough Landfill site to the Facility, cease its composting operation at the Borough Landfill site, and return the Borough Landfill site to the condition that is required under the Borough Permit for the City's occupancy of that site, and obtain Borough approval of the condition of the Borough Landfill site, no later than January 31, 2016. QDC shall notify the City immediately if at any time it becomes aware that it will be unable to comply timely with the preceding sentence, and provide the City with an accurate revised schedule for such compliance. QDC shall indemnify and save the City harmless from any claims by the Borough against the City or QDC arising from QDC delay in vacation or restoration of the Borough Landfill site. QDC shall provide the City with copies of all of its reports to ADEC for verification of QDC's vacation and restoration of the Borough Landfill site, and shall notify the City promptly upon obtaining Borough approval of the completed vacation and restoration

of the Borough Landfill site.

### **3.0 Composting Services.**

3.1. On and after December 8, 2015, the City will make weekly deliveries of Bio-solids to the Facility for composting. QDC shall have its personnel present at the Facility at the time required to receive all scheduled City deliveries of Bio-solids to the Facility. Delivery of the Bio-solids to QDC at the Facility will be complete when City employees or contractors have deposited the Bio-solids at the location at the Facility designated by a QDC employee.

3.2 During the month of January 2016, QDC shall deliver or produce all wood chips required for composting, operate the loaders, construct and deconstruct the compost batches, screen the finished batches, and inventory the final product under the direction of the City at the new Facility.

3.3. QDC shall, at its own expense (except as provided in Section 4.1(b)), supply approved wood chips and other amendments as specified in the ADEC Permit and the Operation & Maintenance Manual for the Facility, and maintain at the Facility a minimum of two (2) weeks' supply (approximately 500 cubic yards) of such approved wood chips and other amendments. QDC also shall, at its own expense, supply all labor, tools and equipment (other than equipment and structures that constitute the City-owned Facility) necessary to its composting operation at the Facility.

3.4 QDC will provide labor and equipment to chip City provided trees including branches, at the Facility and may use these produced wood chips as test batch wood chips. The produced volume will replace the requirement for QDC to supply wood chips as specified in section 3.3, with except for onsite material provided by the City. The City will determine the quantity of wood that it will provide for test batch wood chips in its sole discretion.

3.5 QDC shall receive and remove not to exceed 2000 cubic yards of finished Class A EQ compost produced at the Facility, for sale or disposal in any other lawful manner, and may retain the proceeds of such sale or disposal. QDC may not store completed, finished, compost at the Facility after the later to occur of January 31, 2016 and the date as of which the City notifies QDC that storage space no longer will be available.

### **4.0 Fees and Payments.**

4.1 The City shall pay to QDC for the services to be performed under this Agreement as follows:

(a) \$35,963.38 per month for the month of January 2016; and

(b) \$150,000.00 for 3,000 cubic yards of City approved (free of rocks and foreign debris) wood chips delivered to the Facility (equal to \$ 50.00 per cubic yard), to be used at a future date determined by the City, payable in three installments of \$50,000.00 within ten (10) days

after the date QDC provides and delivers each 1000 cubic yards of City approved wood chips to the Facility, as measured in place and approved by the City Engineer. QDC must deliver a minimum of 250 cubic yards of wood chips per week to satisfy this requirement.

## **5.0 Facility Operation.**

5.1 QDC shall conduct all of its operations at the Facility in a safe and sanitary manner, in accordance with all requirements of the Operational Plan. QDC shall keep the Facility free from trash, litter and debris. QDC shall conduct its operations at the Facility in a manner that does not subject persons or property located outside the boundaries of the Facility to excessive odor, noise, vibration or dust. QDC shall not permit any conditions on the Facility to exist that constitute a nuisance.

5.2 QDC shall keep Facility buildings and gates locked when not in use to provide daily Facility and site security, and report any suspected or known unauthorized entry upon the Facility immediately to the City.

5.3 QDC shall provide for, at QDC's sole expense, health and safety measures, including personnel hygiene amenities and crew cleanup methods, all in addition to Chapter 10 of the Facility Operation & Maintenance manual.

5.4 QDC shall notify the City of any changing conditions or maintenance and repair needs in a timely manner to prevent or reduce the risk of damage to equipment or buildings at the Facility.

5.5 The City shall at its sole expense make all repairs and replacements of the Facility, pay all costs of utility service to the Facility, provide non-potable water at the Facility, and provide liability and casualty insurance for the Facility premises, buildings and equipment.

5.6 The City will independently conduct tests required by the City's ADEC Permit.

## **6.0 Term of Agreement; Termination.**

6.1 The term of this Agreement shall begin on the Commencement Date and expire at midnight on January 31, 2016, except as provided in Sections 3.5 and 4.0 (b). This Agreement shall supersede and replace the Prior Agreement as of the Commencement Date. The replacement of the Prior Agreement with this Agreement is by mutual agreement of the parties and is not a termination of the Prior Agreement by the City.

6.2 The City may immediately terminate this Agreement for cause and take immediate possession of the Facility for the purpose of composting existing and deliverable Bio-solids, if the City reasonably determines that QDC is incapable of continuing to perform composting services under this Agreement. Except as provided in the preceding sentence, this Agreement may be terminated for cause by either party if a breach by the other party is not cured within seven (7) days after the first party gives written notice of the breach to the other party,

describing the breach with particularity and the requirements for its cure.

6.3 This Agreement may be terminated without cause by either party after thirty (30) days written notice to the other party. Upon the giving of such notice by either party, the parties shall work cooperatively to minimize or avoid any interruption in service at the Facility.

6.4 All property owned by either party will remain under that party's respective ownership at the termination or expiration of this Agreement, except as provided in Section 3.4. Except as provided in Section 3.4 or otherwise permitted by the City, QDC shall promptly remove all of its property from the Facility at the termination or expiration of this Agreement.

## **7.0 Liability, Indemnity and Insurance**

7.1 QDC shall pay for all damage to City-owned property at the Facility caused by QDC, its agents, employees, or invitees.

### **7.2 Indemnification.**

(a) QDC shall indemnify and hold harmless the City and its elected and appointed officials, employees, agents, and servants from any and all losses, expenses, damages, demands, and claims by any person in connection with or rising out of any injury (including death) to persons or in connection with damage to property or the natural environment, sustained in whole or in part as a result of QDC's occupancy and operation of the Facility, and/or exercise of its rights under this Agreement or QDC's breach of this Agreement. QDC shall defend all suits and actions brought against the City and any of its elected or appointed officials, employees, agents or servants from any such injury or damage and shall pay all damages, costs, and expenses, including attorney's fees incurred in connection with the suits or actions. The only exception to this indemnity provision shall be for claims resulting from the negligence, gross negligence, or willful misconduct of the City or its employees, agents, or servants, and for claims resulting from an act or omission of a third party, with respect to which QDC's obligations under this section shall be limited to that portion of any such claim not attributable to the City and not attributable to a third party.

(b) This indemnity provision specifically includes all environmental damage that may result from QDC's operations under this Agreement and any penalties or fines which may be assessed in connection therewith.

(c) Notwithstanding any provision of this Agreement, QDC shall not be liable for, and shall not be liable to indemnify, defend or hold the City harmless from, any condition at the Facility, whether known or unknown, which was in existence before the Commencement Date.

### **7.3 Insurance.**

(a) QDC shall procure and maintain at its sole expense, and shall keep in full force and effect throughout the Term, the following policies of insurance:



(1) Commercial General Liability Insurance, One Million Dollars (\$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 Two Million Dollars (\$2,000,000).

(2) Commercial Automobile Liability Insurance, One Million Dollars (\$1,000,000) combined single limit per accident for bodily injury and property damage. Coverage must include all motor vehicles utilized by QDC in connection with its performance of the services hereunder

(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: (i) bodily injury by accident \$1,000,000 each accident; and (ii) bodily injury by disease \$1,000,000 each employee, \$1,000,000 policy limit.

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

(1) Commercial General Liability and Automobile Liability

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

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

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

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

(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, or reduced in coverage or in limits except after 30 days' prior written notice has been given by the insurer to the City by certified mail, return receipt requested.

(c) Acceptability of Insurers. Insurance is to be placed with insurers qualified to do business in Alaska having a Best's rating of no less than A: VII.

(d) Verification of Coverage. QDC shall furnish the City with approved certificates of insurance and with certified copies of all endorsements effecting coverage required by this section. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates are to be on forms which meet industry standard. The City reserves the right to require complete, certified copies of all required insurance policies, at any time.

7.4 QDC shall give prompt written notice to the City of all known losses, damages, or injuries to any person or to property of the City or third persons that may be in any way related to the services being provided hereunder or for which a claim might be made against the City, whether related to matters insured or uninsured.

**8.0 Warranties of QDC.** QDC warrants to the City that:

8.1 QDC has and will at all times during the Term keep and maintain in effect all licenses, permits and certificates necessary to lawfully provide the services described in this Agreement.

8.2 QDC will at all times comply with applicable federal, state and local laws and regulations, including without limitation wage and hour laws, in its performance of this Agreement.

8.3 QDC is duly authorized and has taken all steps necessary to enter into this Agreement, and this Agreement will in all ways be binding and enforceable against QDC.

8.4 QDC warrants that, to the best of its knowledge and belief, no person except bona fide employees, agents, consultants or representatives of QDC or any of its subcontractors has been employed or retained to solicit or secure this Agreement.

**9.0 Warranties of the City.** The City warrants to the QDC that:

9.1 The City is authorized by law to enter into this Agreement.

9.2 The City has taken all steps necessary to enter into this Agreement, and this Agreement will in all ways be binding and enforceable against the City.

**10.0 Dispute Resolution.** Any dispute or conflict regarding this contract shall be resolved under this paragraph.

10.1 Promptly following execution of this Agreement, QDC and the City shall each appoint two persons to a dispute resolution committee. The four persons so appointed shall meet and mediate any disputes between the City and QDC regarding this Agreement, and the duties and performance of each of them. No lawsuit may be filed in any court regarding the subject matter of this Agreement until mediation efforts before the dispute resolution

committee have failed. No pending dispute between the City and the QDC shall permit either party to withhold or suspend its performance under this Agreement.

10.2 Notwithstanding the requirements of this section, either party may terminate this Agreement without cause under Section 6.3, without engaging in dispute resolution.

### **11.0 Other Terms and Conditions.**

11.1 The City and QDC each shall designate in a Notice to the other party a single individual to act as the City and QDC's respective authorized representative for purposes of this Agreement (respectively, the "City Representative" and the "Project Manager"). Such individual (a) must be authorized to act on the designating party's behalf with respect to all matters relating to this Agreement; (b) shall ensure the designating party's compliance with its responsibilities under this Agreement; and (c) shall coordinate appropriate schedules in connection with QDC's services under this Agreement. Either party may change the individual it has designated hereunder by providing the other party with advance Notice designating a successor individual authorized to act in the same capacity.

11.2 QDC agrees that in performing its tasks under this Agreement, it shall not discriminate against any worker, employee, or applicant, or any member of the public, because of age, race, sex, creed, color, religion, or national origin.

11.3. This Agreement and the City's responsibilities under this Agreement, are conditional upon the appropriation of funds by the City Council as part of its budgetary process as a matter of law. A failure by the City to fund the performance of its obligations under this Agreement shall not be a breach of this Agreement.

11.4 This Agreement and the exhibits to it constitute the complete agreement of the parties. All other negotiations, writings, drafts and agreements are null and void.

11.5 Alaska law shall apply to the interpretation of this Agreement.

11.6 Any amendment to this Agreement shall be in writing, signed by the City and QDC and, in case of the City, approved by the City Council. Oral modifications and changes shall not be enforceable.

11.7 The City has entered into this Agreement with QDC because of the special relationship of trust and confidence that exists between the City and QDC. Because of that special relationship, QDC agrees that this Agreement may not be assigned or conveyed to a third party or ownership of more than forty nine percent of QDC changed, without the prior written consent of the City.

11.8 The City and QDC are independent contractors under this Agreement, and nothing herein shall be construed to create a partnership, joint venture, or agency relationship between the parties hereto. Neither party shall have any authority to enter into agreements of any kind

on behalf of the other and shall have no power or authority to bind or obligate the other in any manner to any third party. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever. Each party hereto represents that it is acting on its own behalf and is not acting as an agent for or on behalf of any third party.

11.9 Nothing in this Agreement, express or implied, is intended or shall be construed to give to any person other the City and QDC any right, remedy or claim, legal or equitable, 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 QDC, and their permitted successors and assigns.

11.10 Each party hereto has been afforded the opportunity to consult with counsel of its choice before entering into this Agreement. The language in this Agreement shall in all cases be simply construed according to its fair meaning and not for or against either party as the drafter thereof.

11.11 If any provision of this Agreement shall for any reason be held to be invalid, illegal, unenforceable, or in conflict with any law of a federal, state, or local government having jurisdiction over this Agreement, such provision shall be construed so as to make it enforceable to the greatest extent permitted, such provision shall remain in effect to the greatest extent permitted and the remaining provisions of this Agreement shall remain in full force and effect.

11.12. All notices, requests, demands, or other communications required or permitted to be given hereunder must be in writing and must be addressed to the parties at their respective addresses set forth below and shall be deemed to have been duly given when (a) delivered in person; (b) sent by email transmission indicating receipt at the email address where sent, (c) one (1) business day after being deposited with a reputable overnight air courier service; or (d) three (3) business days after being deposited with the United States Postal Service, for delivery by certified or registered mail, postage pre paid and return receipt requested. All notices and other communications regarding default or termination of this Agreement shall be delivered by hand or sent by certified mail, postage pre-paid and return receipt requested. Either party may from time to time change the notice address set forth below by delivering notice to the other party in accordance with this section setting forth the new address and the date on which it will become effective.

If to QDC: Quayanna Development Corporation

Attention: Executive Director  
11801 Middle Bay Drive  
Kodiak, Alaska 99615  
peter@quayanna.com

If to the City: City of Kodiak

Attention: City Manager  
710 Mill Bay Road  
Kodiak, Alaska 99615  
akniaziowski@city.kodiak.ak.us

11.13. The paragraph and section headings used in this Agreement or in any exhibit hereto are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content or intent of this Agreement. Any term referencing time, days or period for performance shall be deemed calendar days and not business days, unless otherwise expressly provided herein.

11.14. This Agreement may be signed in two or more counterparts, each of which shall constitute an original, and all of which together shall constitute one and the same document.

11.15 This agreement offer expires and must be signed by both parties not later than January 6, 2016.

IN WITNESS WHEREOF, the parties have hereunto set their hands as set forth below.

\_\_\_\_\_  
Aimée Kniaziowski, City Manager  
City of Kodiak

\_\_\_\_\_  
Peter J. Olsen, President  
Quayanna Development Corporation

Date \_\_\_\_\_

Date \_\_\_\_\_

**FIRST AMENDMENT TO  
COMPOSTING AGREEMENT**

THIS FIRST AMENDMENT TO COMPOSTING AGREEMENT (this "Amendment") is entered into as of December 14, 2012, by and between the City of Kodiak, an Alaska municipal corporation (the "City") and Quayanna Development Corporation, an Alaska corporation ("QDC")

WHEREAS, the parties entered into a Composting Agreement as of October 30, 2012 (the "Agreement"); and

WHEREAS, the parties intended that QDC would commence composting operations under the Agreement on or about December 15, 2012; and

WHEREAS, delays in permitting require the parties to establish a temporary solution for composting bio-solids from the City's wastewater treatment facility.

NOW, THEREFORE, in consideration of the foregoing Recitals (which are incorporated herein by this reference), the mutual covenants and conditions hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Purchaser and Seller hereby agree as follows:

**1. Definition of "Borough."** Section 1.0 is amended by adding the following definition, "Borough" means the Kodiak Island Borough, an Alaska municipal corporation.

**2. Definition of "Operational Plan."** The definition of "Operational Plan" in Section 1.0 is amended to read, "Operational Plan" means either (i) for composting at the Borough landfill, the amended operating permit for the Borough landfill and the agreement between the City and Borough regarding the composting of Bio-solids at the Borough landfill; or (ii) for composting at any other Site, the plan approved by ADEC under which QDC will receive and compost Bio-solids at the Site. Upon ADEC approval of the plan, it shall be attached to this Agreement and incorporated by reference herein.

**3. Definition of "Site."** The definition of "Site" in Section 1.0 is amended to read, "Site" means real property located either (i) at the Borough landfill that the Borough has designated for use as a site for the composting of Bio-solids under this Agreement; or (ii) within approximately 25 road miles of the City's wastewater treatment facility, and designated by QDC from time to time and approved by ADEC and other regulatory authorities for the composting of Bio-solids under this Agreement.

**4. Time for Performance.** Section 2.1 is amended by changing the date, "December 15, 2012" everywhere that it appears to "September 15, 2013."

5. **Termination.** Section 8.1 is amended to read, "This Agreement may be terminated with at least 60 days written notice by either party."

6. **Affirmation of Agreement.** Except as expressly amended herein, all terms and conditions of the Agreement as originally executed shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have hereunto set their hands as set forth below.

City of Kodiak

By:

Aimée Kniazowski  
City Manager

Quayanna Development Corporation

By:

Peter J. Olsen,  
Executive Director

**SECOND AMENDMENT TO  
COMPOSTING AGREEMENT**

THIS SECOND AMENDMENT TO COMPOSTING AGREEMENT (this "Amendment") is entered into as of December 15, 2014, by and between the City of Kodiak, an Alaska municipal corporation (the "City") and Quayanna Development Corporation, an Alaska corporation ("QDC")

WHEREAS, the parties entered into a Composting Agreement as of October 30, 2012, (the "Agreement"); and

WHEREAS, the parties previously amended the Agreement to provide for the relocation of the composting facility to the Borough landfill; and

WHEREAS, QDC has encountered unforeseen additional costs in operating the composting facility at Borough landfill location, and the parties agree that it would be appropriate and in their mutual interest to adjust the compensation to QDC under the Agreement accordingly.

NOW, THEREFORE, in consideration of the foregoing Recitals (which are incorporated herein by this reference), the mutual covenants and conditions hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and QDC hereby agree as follows:

**1. Contract Price.** Section 4.4 is added to the Agreement as follows:

4.4 In addition to the compensation that is payable to QDC under Sections 4.1 through 4.3, the City shall pay QDC (i) the sum of eighty seven thousand three hundred seventy dollars (\$87,370) on or before December 31, 2014, and (ii) the sum of eight thousand two hundred seventy five and 88/100 dollars (\$8,275.88) on the first day of each month commencing January 1, 2015 and continuing through the end of the month in which QDC commences composting operations at the permitted City composting facility.

**2. Affirmation of Agreement.** Except as expressly amended herein, all terms and conditions of the Agreement as originally executed and previously amended shall remain in full force and effect.

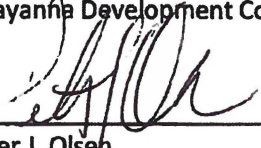


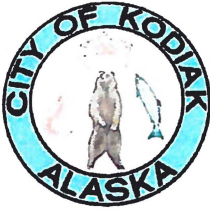
IN WITNESS WHEREOF, the parties have hereunto set their hands as set forth below.

City of Kodiak

By:   
Aimée Kniazowski  
City Manager

Quayanna Development Corporation

By:   
Peter J. Olsen,  
Executive Director



**CITY OF KODIAK  
CHANGE ORDER**

ATTACHMENT: A

CHANGE ORDER NO.: 1

DATE: December 12, 2014

NAME OF PROJECT: Composting Agreement between City of Kodiak and Quayanna Development Corporation

CONTRACT NO.: 205796

CONTRACTOR: Quayanna Development Corporation (QDC)

Changes are hereby made to the CONTRACT DOCUMENTS:


1. Per 6.0 of the Composting Agreement between the City of Kodiak and Quayanna Development Corporation dated October 30, 2012, First Amendment to Composting Agreement and Second Amendment to Composting Agreement (attachment A).


Justification: Attachment B, QDC letter dated November 6, 2014.


Original CONTRACT PRICE: \_\_\_\_\_ \$332,250.00/annual or \$27,687.60/monthly

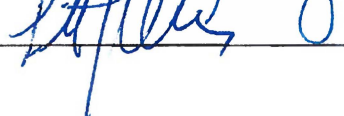
The CONTRACT PRICE due to this CHANGE ORDER will increase: \$87,370.00/lump sum for compensation 2013 and 2014.

Additional monthly payment of \$8,275.88 for Total Monthly Payment of \$35,963.38 continuing through the end of the month in which QDC commences composting operations at the permitted City Composting Facility.

Requested by City Engineer 

Approved by Department Head 

Ordered by City Manager 

Accepted by Contractor 

**CITY OF KODIAK  
COMPOSTING AGREEMENT  
CONTRACT NO. 205796**

This Agreement ("Agreement") is entered into this 30<sup>th</sup> day of October, 2012 (the "Effective Date"), by and between the City of Kodiak, an Alaska municipal corporation (the "City") and Quayanna Development Corporation, an Alaska corporation ("QDC").

**RECITALS**

WHEREAS, the City owns and operates a wastewater treatment facility as part of its sanitary sewer utility; and

WHEREAS, periodically bio-solids must be removed from the City's wastewater treatment facility and disposed of; and

WHEREAS, the City has disposed of the bio-solids by delivering them to the Kodiak Island Borough landfill, but the Borough will no longer accept bio-solids at its landfill after December 15, 2012; and

WHEREAS, QDC has offered to accept the bio-solids from the City for composting under the terms and conditions in this agreement; and

WHEREAS, QDC is qualified to provide the services specified in this Agreement and, subject to the terms and conditions set forth in this Agreement, QDC desires to provide such services;

WHEREAS, composting the bio-solids is a waste utilization process that will benefit the public health and welfare and the environment by reducing the volume of material that is disposed of in the Borough landfill and allowing the reuse of this material when converted to compost.

NOW THEREFORE, in consideration of the premises and the mutual covenants contained herein, the City and QDC hereby agree as follows:

**AGREEMENT**

1.0 Definitions. In this Agreement:

"ADEC" means the Alaska Department of Environmental Conservation.

"Bio-solids" means 'sewage sludge' as defined in 40 C.F.R. §503.9(w) which have less than the Maximum Allowable Amounts of Arsenic, Cadmium, Chromium, Copper, Lead, Mercury Molybdenum, Nickel, Selenium, and Zinc as defined in the EPA Part 503 regulations pertaining to bio-solids pollutant limits, and can be composted using the Aerated Static Pile System to produce a Class A compost with an unrestricted status.

"City" means the City of Kodiak, an Alaska municipal corporation.

"Commencement Date" means the first day of the first month that begins after the date as of which QDC gives Notice to the City that QDC is ready to receive and compost Bio-solids at the Site.

"Notice" means notice given in the manner prescribed in Section 24.

"Operational Plan" means the plan approved by ADEC under which QDC will receive and compost Bio-solids at the Site. Upon ADEC approval of the plan, it shall be attached to this Agreement and incorporated by reference herein.

"QDC" means Quayanna Development Corporation, an Alaska corporation

"Site" means real property located within 25 road miles of the City's Wastewater Treatment facility, and designated by QDC from time to time and approved by ADEC and other regulatory authorities for the composting of Bio-solids under this Agreement.

## 2.0 Scope of Work.

2.1. Upon the execution of this Agreement, QDC shall proceed with due diligence to acquire all governmental permits required to provide its services under this Agreement. Without limiting the generality of the foregoing, QDC shall obtain an ADEC permit to operate a composting facility at the Site no later than December 15<sup>th</sup>, 2012. Commencing no later than December 15, 2012 QDC shall have obtained all governmental permits required for it to receive and compost Bio-solids as provided in this section. QDC shall give written Notice to the City promptly if at any time it expects not to be able to obtain a required permit on or before December 15, 2012. In the event QDC is unable to obtain all required permits and approvals in a timely manner, this agreement shall terminate automatically without penalty or other liability of any kind to either party.

2.2. On and after the Commencement Date, the City will make weekly deliveries of Bio-solids to the Site for composting, subject to the testing requirements in this subsection. Before the first delivery of Bio-solids under this Agreement, the first delivery in each of the next four calendar quarters, and the first delivery in each following year, the City shall test the Bio-solids for pollutants and report the results of the test to QDC. The City shall not deliver any Bio-solids which test results show to exceed the limit for any pollutant that appears in Table H under 18 AAC 60.510.

2.3 Under the terms of this Agreement QDC agrees to annually receive up to 3,500 cubic yards of Bio-solids from the City. The quantity of Bio-solids in each weekly delivery shall not generally exceed seventy five (75) cubic yards. Delivery of the Bio-solids to QDC at the Site will be complete when City employees or contractors have deposited the Bio-solids at the location on the Site designated by a QDC employee.

2.4 Upon the delivery of Bio-solids to the Site, title to the Bio-solids shall transfer from the City to QDC without further action on the part of either party. QDC will receive the delivered Bio-solids in "as is condition, and without warranty of the City of any kind, express or implied, except that the Bio-solids do not exceed the limit for any pollutant that appears in Table H under 18 AAC 60.510.

2.5 QDC shall receive and compost in accordance with its Operational Plan all Bio-solids delivered by the City to the Site in accordance with Section 2.3.

2.6 The Operational Plan shall provide for the storage on the Site of Bio-solids awaiting composting, in quantities sufficient to allow the City to make deliveries of Bio-solids in accordance with Section 2.3 in spite of any interruption in the composting process.

2.7 QDC shall conduct all of its operations at the Site in a safe and sanitary manner, in accordance with all requirements of the Operational Plan. QDC shall keep the Site free from trash, litter and debris. QDC shall conduct its operations at the Site in a manner that does not subject persons or property located outside the boundaries of the Site to excessive odor, noise, vibration or dust. QDC shall not permit any conditions on the Site to exist that constitute a nuisance.

### 3.0 Term of Agreement

Unless earlier terminated as provided for in Section 8.0, this Agreement shall take effect on the Effective Date and continue in effect for a period of five (5) years after the Commencement Date.

### 4.0 Contract Price

4.1 The City shall pay QDC an annual fee of three hundred thirty two thousand two hundred fifty dollars (\$332,250) for the services that QDC performs under this Agreement. The annual fee shall be payable as provided in Sections 4.2 and 4.3.

4.2 On the Effective Date, the City shall pay QDC the sum of sixty six thousand four hundred fifty dollars (\$66,450). On the Commencement Date, and on the first day of the next eleven (11) months, the City shall pay QDC the sum of twenty two thousand one hundred fifty dollars (\$22,150).

4.3 Commencing on the first anniversary of the Commencement Date, and on the first day of each month during the remainder of the term of this Agreement, the City shall pay QDC the sum of twenty seven thousand six hundred eighty seven and 50/100 dollars (\$27,687.50).

### 5.0 Project Manager and City Representative

5.1 QDC shall designate in a Notice to the City a single individual to act as the project manager (the "Project Manager"). The Project Manager shall ensure QDC's compliance with, and shall coordinate appropriate schedules in connection with, QDC's obligations hereunder. QDC may change the individual designated hereunder by providing the City with advance Notice designating the new individual authorized to act as the Project Manager.

5.2 The City shall designate in a Notice to QDC a single individual to act as the City's authorized representative for purposes of this Agreement (the "City Representative"). Such individual (a) must be authorized to act on the City's behalf with respect to all matters relating to this Agreement; (b) shall ensure the City's compliance with its responsibilities under this Agreement; and (c) shall coordinate appropriate schedules in connection with QDC's services under this Agreement. The City may change the

individual designated hereunder by providing QDC with advance Notice designating the new individual authorized to act as the City Representative.

## 6.0 Changes

6.1 The scope and schedule of services provided under this Agreement may be changed from time to time by a written change order (a "Change Order") mutually agreed upon and signed by duly authorized representatives of each of the parties. Changes causing a modification to the Contract Price not exceeding \$15,000 are subject to approval on behalf of the City by the City Manager. Changes causing a modification to the Contract Price exceeding \$15,000 are subject to approval on behalf of the City by its City Council.

6.2 Upon receipt of a written request from QDC, in the event federal health care legislation creates a large enough financial impact on QDC so as to impact the ability to continue this contract, the City may agree to reopen discussions on select provisions of this contract.

## 7.0 Informal Dispute Resolution

7.1 The parties to this Agreement shall exercise their best efforts to negotiate and settle promptly any dispute that may arise with respect to this Agreement in accordance with the provisions set forth in this Section 7.0.

7.2 If either party (the "Disputing Party") disputes any provision of this Agreement, or the interpretation thereof, or any conduct by the other party under this Agreement, that party shall bring the matter to the attention of the other party at the earliest possible time in order to resolve such dispute.

7.3 If such dispute is not resolved by the employees responsible for the subject matter of the dispute within ten (10) business days, the Disputing Party shall deliver to the first level of representatives below a written statement (a "Dispute Notice") describing the dispute in detail, including any time commitment and any fees or other costs involved.

7.4 Receipt by the first level of representatives of a Dispute Notice shall commence a time period within which the respective representatives must exercise their best efforts to resolve the dispute. If the respective representatives cannot resolve the dispute within the given time period, the dispute shall be escalated to the next higher level of representatives in the sequence as set forth below. If the parties are unable to resolve the dispute in accordance with the escalation procedures set forth below, the parties may assert their rights under this Agreement.

Escalation Timetable (Business Days)	QDC Representative	City Representative
0 to 5 <sup>th</sup>	Project Manager	City Representative
6th to 10 <sup>th</sup>	Executive Director	City Manager

7.5 Notwithstanding the fact that the parties may be attempting to resolve a dispute in accordance with the informal dispute resolution procedures set forth in Section 7.0, the parties shall continue without delay to perform all their respective responsibilities under this Agreement that are not affected by the dispute.

7.6 Notwithstanding the foregoing, either party may, before or during the exercise of the informal dispute resolution procedures set forth in Section 7.0, apply to a court having jurisdiction for a temporary restraining order or preliminary injunction where such relief is necessary to protect its interests pending completion of such informal dispute resolution procedures.

7.7 The foregoing provisions relating to Informal Dispute Resolution are aspirational in nature. They are not intended to be treated as administrative remedies which must be completed or exhausted as a prerequisite to the filing of a lawsuit nor shall a failure or alleged failure to invoke or comply with them be regarded as a waiver of any rights or remedies otherwise available to a party to this agreement.

**8.0 Termination**

8.1 This Agreement may be terminated with at least 180 days written notice by either party.

8.2 Termination for Default. Subject to completion of the dispute resolution procedures set forth in Section 7.0, in the event that either party hereto materially defaults in the performance of any of its obligations hereunder, the other party may, at its option, terminate this Agreement by providing the defaulting party thirty (30) days' prior written Notice of termination, which notice shall identify and describe with specificity the basis for such termination. If, prior to the expiration of such notice period, the defaulting party cures such default to the satisfaction of the non-defaulting party (as evidenced by written Notice delivered by the non-defaulting party), termination shall not take place.

8.3 Termination Without Cause. The City may terminate this Agreement without cause by providing QDC at least thirty (30) days' prior written Notice of termination.

**9.0 Consequences of Termination.**

9.1 Upon termination of this Agreement for whatever reason, QDC shall be under no further obligation to provide services hereunder.

9.2 In the event of termination by the City for convenience under Section 8.3 hereof, the City shall cause payments to be made to QDC within thirty (30) days after the effective date of termination for all costs and expenses incurred prior to the effective date of the termination. The City shall pay QDC an early termination fee sum according to the following:

If termination occurs in calendar year:      2012, then City will pay QDC \$440,000  
2013, then City will pay QDC \$367,000  
2014, then City will pay QDC \$285,000  
2015, then City will pay QDC \$215,000  
2016, then City will pay QDC \$140,000  
2017, then City will pay QDC \$70,000

9.3 All provisions of this Agreement that by their nature would reasonably be expected to continue after the termination of this Agreement shall survive the termination of this Agreement.

#### 10.0 Indemnification and Insurance

10.1 QDC agrees to protect, defend, indemnify, and save the City, its agents, officials, employees, or any firm, company, organization, or individual to whom the City may be contracted, harmless from and against any and all claims, demands, actions, and causes of action of which QDC is given prompt notification and over which QDC is given control to resolve (the "Indemnified Matters"), which may arise on account of illness, disease, loss of property, services, wages, death or personal injuries resulting from QDC's negligence or intentional misconduct in the performance of the services hereunder. QDC agrees to further indemnify the City for all reasonable expenses and attorney's fees incurred by the City in connection with the Indemnified Matters. Notwithstanding the foregoing, in no event shall "Indemnified Matters" be interpreted as including, nor shall QDC have any obligation to indemnify or hold the City harmless from, any claims, demands, actions, causes of action or other costs or damages to the extent the same arise out of or are attributable to the sole negligence or fault of the City, its agents or employees, or to the strict liability of the same.

10.2 QDC shall procure and maintain in effect during the term of this Agreement the following insurance coverages with an insurance company or companies authorized to do business in the State of Alaska:

10.2.1 Workers' Compensation and Employers Liability insurance in accordance with the laws of the State of Alaska.

10.2.2 Comprehensive General Liability and Broad Form Comprehensive General Liability or Commercial General Liability including bodily injury, personal injury, and property damage in the amount of a combined single limit of One Million Dollars (\$1,000,000), each occurrence, and Two Million Dollars (\$2,000,000) in aggregate limit.

10.2.3 Comprehensive Auto Liability including bodily injury, personal injury and property damage in the amount of a combined single limit of One Million Dollars (\$1,000,000). Coverage must include all motor vehicles utilized by QDC in connection with its performance of the services hereunder.

The City shall be named as an additional insured under the policies of Comprehensive General Liability and Comprehensive Auto Liability insurance. Each of the insurance policies required above shall include a waiver of subrogation against the City. Thirty (30) days prior written notice will be given to the City in the event of any material change in or cancellation of any required insurance policy.



10.3 QDC shall give prompt written notice to the City of all known losses, damages, or injuries to any person or to property of the City or third persons that may be in any way related to the services being provided hereunder or for which a claim might be made against the City. QDC shall promptly report to the City all such claims that QDC has noticed, whether related to matters insured or uninsured. No settlement or payment for any claim for loss, injury or damage or other matter as to which the City may be charged with an obligation to make any payment or reimbursement shall be made by QDC without the prior written approval of the City.

#### 11.0 Non-Discrimination

QDC agrees that in performing its tasks under this Agreement, it shall not discriminate against any worker, employee, or applicant, or any member of the public, because of age, race, sex, creed, color, religion, or national origin, nor otherwise commit an unfair employment practice in violation of any state or federal law.

#### 12.0 Conflict of Interest

QDC warrants that, to the best of its knowledge and belief, no person except bona fide employees, agents, consultants or representatives of QDC or any of its subcontractors has been employed or retained to solicit or secure this Agreement

#### 13.0 Independent Contractor Status

The City and QDC are independent contractors under this Agreement, and nothing herein shall be construed to create a partnership, joint venture, or agency relationship between the parties hereto. Neither party shall have any authority to enter into agreements of any kind on behalf of the other and shall have no power or authority to bind or obligate the other in any manner to any third party. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever. Each party hereto represents that it is acting on its own behalf and is not acting as an agent for or on behalf of any third party.

#### 14.0 Assignment

Neither party hereto may assign its rights or obligations under this Agreement without the prior written consent of the other party, which consent shall not be unreasonably withheld; provided, however, that QDC may assign this Agreement to its successor in connection with a sale of its business without obtaining consent of any party. Subject to the foregoing, each and every covenant, term, provision and agreement contained in this Agreement shall be binding upon and inure to the benefit of the parties' permitted successors, executors, representatives, administrators and assigns.

#### 15.0 Third Party Beneficiaries

This Agreement is entered into for the sole benefit of the City and QDC and, where permitted above, their permitted successors, executors, representatives, administrators and assigns. Nothing in this Agreement shall be construed as giving any benefits, rights, remedies or claims to any other person,

firm, corporation or other entity, including without limitation the general public or any member thereof, or to authorize anyone not a party to this Agreement to maintain a suit for personal injuries, property damage, or any other relief in law or equity in connection with this Agreement.

#### 16.0 Governing Law

All questions concerning the validity, operation, interpretation, construction and enforcement of any terms, covenants or conditions of this Agreement shall in all respects be governed by and determined in accordance with the laws of the State of Alaska without giving effect to the choice of law principles thereof.

#### 17.0 Venue

All legal proceedings brought in connection with this Agreement may be brought in the trial courts for the State of Alaska at Kodiak, Alaska. Each party hereby agrees to submit to the personal jurisdiction of those courts for any lawsuits filed there against such party arising under or in connection with this Agreement.

#### 18.0 Advice of Counsel

Each party hereto has been afforded the opportunity to consult with counsel of its choice before entering into this Agreement.

#### 19.0 Amendment

No amendment or other modification of this Agreement shall be valid unless pursuant to a written instrument referencing this Agreement signed by duly authorized representatives of each of the parties hereto.

#### 20.0 Waiver

In order to be effective, any waiver of any right, benefit or power hereunder must be in writing and signed by an authorized representative of the party against whom enforcement of such waiver would be sought, it being intended that the conduct or failure to act of either party shall imply no waiver. Neither party shall by mere lapse of time without giving notice or taking other action hereunder be deemed to have waived any breach by the other party of any of the provisions of this Agreement. No waiver of any right, benefit or power hereunder on a specific occasion shall be applicable to any facts or circumstances other than the facts and circumstances specifically addressed by such waiver or to any future events, even if such future events involve facts and circumstances substantially similar to those specifically addressed by such waiver. No waiver of any right, benefit or power hereunder shall constitute, or be deemed to constitute, a waiver of any other right, benefit or power hereunder. Unless otherwise specifically set forth herein, neither party shall be required to give notice to the other party, or to any other third party, to enforce strict adherence to all terms of this Agreement.

## 21.0 Force Majeure

Neither party will be liable for any failure or delay in the performance of its obligations under this Agreement (and the failure or delay will not be deemed a default of this Agreement or grounds for termination) if both of the following conditions are satisfied: (1) the failure or delay could not have been prevented by reasonable precautions, and cannot reasonably be circumvented by the non-performing party through the use of alternate sources, work-around plans, or other means; and (2) the failure or delay is caused, directly or indirectly, by reason of fire or other casualty or accident; strikes or labor disputes; inability to procure raw materials, equipment, power or supplies; war, terrorism or other violence; any law, order, proclamation, regulation, ordinance, demand, or requirement of any governmental agency or intergovernmental body other than a party hereto; or any other act or condition beyond the reasonable control of the non-performing party. Upon the occurrence of an event which satisfies both of the above conditions (a "Force Majeure Event"), the non-performing party will be excused from any further performance of those obligations under this Agreement affected by the Force Majeure Event for as long as (a) the Force Majeure Event continues; and (b) the non-performing party continues to use commercially reasonable efforts to recommence performance whenever and to whatever extent possible without delay. Upon the occurrence of a Force Majeure Event, the non-performing party will immediately notify the other party by telephone (to be confirmed by written notice within two (2) business days of the failure or delay) of the occurrence of a Force Majeure Event and will describe in reasonable detail the nature of the Force Majeure Event.

## 22.0 Severability

If any provision of this Agreement shall for any reason be held to be invalid, illegal, unenforceable, or in conflict with any law of a federal, state, or local government having jurisdiction over this Agreement, such provision shall be construed so as to make it enforceable to the greatest extent permitted, such provision shall remain in effect to the greatest extent permitted and the remaining provisions of this Agreement shall remain in full force and effect.

## 23.0 Entire Agreement

This Agreement sets forth the final, complete and exclusive agreement and understanding between QDC and the City relating to the subject matter hereof and supersedes all other communications between the parties (oral or written) relating to the subject matter hereof. No affirmation, representation or warranty relating to the subject matter hereof by any employee, agent or other representative of a party shall bind the party or be enforceable by the other party unless specifically set forth in this Agreement.

## 24.0 Notices

All notices, requests, demands, or other communications required or permitted to be given hereunder must be in writing and must be addressed to the parties at their respective addresses set forth below and shall be deemed to have been duly given when (a) delivered in person; (b) sent by email transmission indicating receipt at the email address where sent, (c) one (1) business day after being deposited with a reputable overnight air courier service; or (d) three (3) business days after being deposited with the United States Postal Service, for delivery by certified or registered mail, postage pre-

paid and return receipt requested. All notices and other communications regarding default or termination of this Agreement shall be delivered by hand or sent by certified mail, postage pre-paid and return receipt requested. Either party may from time to time change the notice address set forth below by delivering notice to the other party in accordance with this section setting forth the new address and the date on which it will become effective.

If to QDC:  
Quayanna Development Corporation  
Attention: Executive Director  
11801 Middle Bay Drive  
Kodiak, Alaska 99615  
plarc@alaska.net

If to the City:  
City of Kodiak  
Attention: City Manager  
710 Mill Bay Road  
Kodiak, Alaska 99615  
akniaziowski@city.kodiak.ak.us

#### 25.0 Construction

The paragraph and section headings used in this Agreement or in any exhibit hereto are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content or intent of this Agreement. Any term referencing time, days or period for performance shall be deemed calendar days and not business days, unless otherwise expressly provided herein.

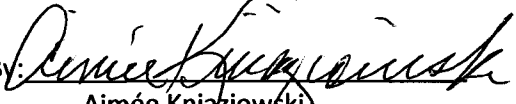
#### 26.0 Counterparts


This Agreement may be signed in two or more counterparts, each of which shall constitute an original, and all of which together shall constitute one and the same document.

IN WITNESS WHEREOF, the parties have hereunto set their hands as set forth below.

City of Kodiak

Quayanna Development Corporation

By:   
Aimée Kniaziowski  
City Manager

By:   
Peter J. Oisen  
Executive Director


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## MEMORANDUM TO COUNCIL

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**To:** Mayor Branson and City Councilmembers

**From:** Aimée Kniazowski, City Manager 

**Thru:** Lon White, Harbormaster

**Date:** January 14, 2016

**Agenda Item:** V. f. **Authorization of Lease With MorphoTrust USA, LLC for Office Space at 411 Marine Way**

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**SUMMARY:** MorphoTrust USA, LLC is the company hired by the Transportation Security Administration (TSA) to administer and issue Transportation Worker Identification Credentials, commonly referred to as “TWIC cards.” For the last two years MorphoTrust has leased the office space in the downtown public restroom building at 411 Marine Way as the local venue to issue and renew TWIC cards. The current lease expired on December 31, 2015. MorphoTrust has requested renewing the lease for an additional two years, beginning January 1, 2016, through December 31, 2017. Having this service available in Kodiak benefits the community greatly. Staff recommends renewing the lease as requested.

**PREVIOUS COUNCIL ACTION:**

- January 23, 2014, Council approved the current two-year lease with MorphoTrust
- January 12, 2016, Council reviewed the two-year lease with MorphoTrust in preparation for approval at the January 14 regular meeting

**BACKGROUND:** TWIC cards are required for employees working around regulated vessels like container ships, cruise ships, fuel barges, and others needing a mariner’s license—including charter boat skippers. TWIC was implemented in 2008. Five years later several hundred cards issued to Kodiak residents expired. Until May 2013, the closest place to renew a TWIC was Anchorage. With a TSA office in Kodiak, employers, including the City of Kodiak, save thousands of dollars previously spent on travel to and from Anchorage.

**DISCUSSION:** The proposed lease is for a term of two years, from January 1, 2016, through December 31, 2017. The tenant will pay \$850 per month. Kodiak office space generally rents for between \$1.50 and \$2 per square foot, plus utilities. Since it is not possible to bill separately for utility service in this building, MorphoTrust agreed to pay \$4 per square foot. It’s a reasonable deal for both the contractor and the City. The rental rate was calculated as follows: 50 percent of the average monthly electric and fuel costs plus \$2 per square foot. MorphoTrust pays their telephone and internet service separately.

**ALTERNATIVES:**

- 1) Authorize the two-year lease as presented, which is staff's recommendation. This keeps the building in use and allows the City to collect rent for its use.
- 2) Do not authorize the lease, which is not recommended. Not having this local service will cost employers a great deal of travel expense.

**LEGAL:** The City Attorney prepared the lease document.

**STAFF RECOMMENDATION:** Staff recommends Council authorize a two-year lease agreement of the office space at 411 Marine Way with MorphoTrust USA, LLC with a 90-day cancellation clause.

**CITY MANAGER'S COMMENTS:** It is a great benefit for employers in Kodiak to send their employees to a local contractor for renewal or newly issued TWIC cards. It is also good for the City to have this facility occupied. I support staff's recommendation that Council approve the attached two-year lease and authorize me to execute it on behalf of the City.

**ATTACHMENTS:**

- Attachment A: Two-year Lease Agreement between City and MorphoTrust USA, LLC
- Attachment B: MorphoTrust USA, LLC, letter requesting renewal

**PROPOSED MOTION:**

Move to authorize Lease No. 221804 between the City of Kodiak and MorphoTrust USA, LLC for the lease of the office space located at 411 Marine Way for the purpose of TWIC card enrollment and authorize the City Manager to execute the agreement on behalf of the City.

**AGREEMENT TO LEASE OFFICE SPACE  
FOR TRANSPORTATION WORKER IDENTIFICATION  
CREDENTIAL (TWIC) ENROLLMENT  
LEASE NO. 221804**

AGREEMENT is made and effective the date of last signature hereto, by and between the **City of Kodiak ("City")**, a municipal corporation organized under the constitution and laws of the State of Alaska, with offices at 710 Mill Bay Road, Room 220, Kodiak Alaska and **Morpho Trust USA, LLC ("Tenant")**, with its principal office at 296 Concord Road, Suite 300, Billerica, MA 01821.

WHEREAS, the City owns real property and improvements at: 411 Marine Way, Kodiak, Alaska – south corner of Marine Way and Shelikof Street intersection (**"Property"**).

WHEREAS the City determined that leasing space in the building located on the Property (**"Building"**) for the purpose of Transportation Worker Identification Credential (TWIC) enrollment is in the best interest of the public.

WHEREAS the Tenant desires to lease certain office space of approximately **210 square feet at 411 Marine Way, Kodiak, Alaska ("Premises")** for the purposes of enrolling individuals for Transportation Worker Identification Credentials.

NOW, THEREFORE, in consideration of the mutual promises herein, and other good and valuable consideration, the parties agree as follows:

**1. Term and Termination.**

A. City hereby leases the Premises to Tenant, and Tenant hereby leases the same from City, for a "Term" beginning **January 1, 2016, and ending on December 31, 2017**. City shall use its best efforts to deliver the Premises to Tenant for Tenant's possession as closely as possible to the beginning of the Term. If City is unable to deliver the Premises by such date, rent shall abate for the period of delay. Tenant shall make no other claim against City for any such delay.

B. Notwithstanding the terms of Section 1.A. of this Lease, either party may terminate this Lease at any time and without penalty upon at least ninety (90) days prior written notice to the other party.

C. The City may, in its discretion, offer to extend the Term. The City shall give the Tenant written notice of an offer to extend the Term at least sixty (60) days before the expiration of the Term then in effect. Tenant 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 Tenant accepts the City's offer to extend the Term, all of the terms and conditions of this Agreement shall remain in full force and effect during the extended Term.

**2. Rent.** Tenant shall pay rent to the City during the Term at the rate of \$850.00 per month. Each monthly payment shall be due in advance, on the first day of each calendar month.

**MorphoTrust USA, LLC Lease  
City of Kodiak, 411 Marine Way  
City Record No. 221804  
January 1, 2016 - December 31, 2017  
Page 1 of 5**



3. **Use.** Tenant may use the Premises to provide fingerprinting services and TWIC enrollment to Tenant's invitees and for general office use, and for no other purposes.

4. **Insurance.**

A. At all times during the Term and any extended Term, the City shall insure the Building (but not its contents) from all risk property perils at a value that the City deems sufficient.

B. At all times during the Term and any extended Term, the Tenant will carry and maintain at its expense commercial general liability insurance, including without limitation insurance against assumed or contractual liability under this Agreement, with respect to the Premises, to afford protection with limits of liability not less than \$1,000,000 combined single limit bodily injury and property damage, \$1,000,000 personal injury, and \$1,000,000 aggregate. The Tenant shall provide the City with a certificate of insurance and/or a copy of each policy for the coverage listed herein promptly upon commencement of the Tenant's obligation to procure the same. The company or companies writing any insurance which the Tenant is required to carry and maintain shall be licensed to do business in the State of Alaska and shall be rated no less than A-7 by AM Best rating service. Commercial general liability policies shall name the City as additional insured, contain a waiver of subrogation in favor of the City and shall also contain a provision by which the Tenant agrees to give ten (10) days' written notice to the City cancellation or material modification of such policy.

5. **Utilities; Taxes; Common Area Maintenance.**

A. The rent payable under Section 2 of this Lease includes the supplying of water, electricity, and heat to the Premises. Tenant shall be responsible for the cost of phone and internet service.

B. Except as provided in Section 9C of this lease, City shall pay all taxes, assessments, levies and other charges which may be assessed, levied, or imposed upon, or become a lien on, the Building, the Premises or the Property.

C. "Common Areas" shall mean those areas within the Property, including the Building's entrances, public lobbies, doors, windows, hallways, corridors, main elevators, freight elevators, loading docks, walkways, plazas, access ways, lavatories, roads, drives, public and fire stairways, sidewalks, exterior ramps, the parking facilities, and other areas not leased or held for lease within or contiguous to or serving the Property, but that are necessary or desirable for Tenant's full use and enjoyment of the Premises. City shall provide the following services with respect to Common Areas: maintain and repair the Common Areas in the condition and status as City deems consistent with those of other properties nearby with the same or similar character of the Property; provide security and fire protection; cleaning and removing of rubbish, dirt, debris, snow, and ice; planting, replanting, and replacing flowers and landscaping; the care and maintenance of artwork, maintaining lighting fixtures (including the costs of light bulbs and electric current) and such other services as City may reasonably determine are required for the proper maintenance of the Common Areas.

6. **Signs.** With City's prior written consent, Tenant shall have the right to place at the Premises, at locations selected by Tenant and approved by City, signs permitted under applicable zoning ordinances. City may refuse consent to any proposed signage that is in City's reasonable opinion too large, deceptive, unattractive or otherwise inconsistent with or inappropriate for the Premises or use of the Building by any other tenant. City shall assist and cooperate with Tenant in obtaining any necessary permission from governmental authorities or adjoining building owners for Tenant to place or construct the foregoing signs. Tenant shall repair all damage to the Premises resulting from the removal of signs installed by Tenant.

7. **Parking.** During the Term of this Lease, Tenant and Tenant's invitees shall have the non-exclusive use in common with City, other tenants of the Building and their invitees of the Common Areas provided for non-reserved automobile parking, driveways, and footways, subject to rules and regulations for the use thereof as prescribed from time to time by City. City reserves the right to restrict parking by Tenant and Tenant's invitees to certain parking areas.

8. **Building Rules.** Tenant will comply with the rules of the Building specified by City from time to time and will cause all of its agents, employees and invitees to do so; all changes to such rules will be sent by City to Tenant in writing at least thirty (30) days prior to such changes taking effect.

9. **Alterations and Modifications.**

A. The Tenant shall be solely responsible for the cost of partitioning and otherwise improving space within the Building in order to make such space suitable for enrolling TWIC applicants. The plans for such improvements shall be subject to the advance written approval of the City throughout the Term of this Agreement.

B. The Tenant 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 Tenant, unless the City agrees otherwise in writing.

C. The Tenant 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. Tenant may not permit any mechanic's or materialman's lien for such alteration work to be recorded against the Property. If any such lien is recorded against the Property, Tenant shall cause the same to be removed; provided that Tenant may in good faith and at Tenant's own expense contest the validity of any such lien without subjecting the Property to foreclosure, and if Tenant has furnished the bond required in A.S. 34.35.072 (or any comparable statute hereafter enacted providing for a bond freeing the Property from the effect of such a lien claim). Tenant shall indemnify and save the City harmless from all liability for damages occasioned by any such lien, together with all costs and expenses (including attorneys' fees) incurred by the City in negotiating, settling, defending, or otherwise protecting against such lien and shall, in the event of a judgment of foreclosure of the lien, cause the same to be discharged and removed prior to any attempt at execution of such judgment.

**10. Damage and Destruction.** Subject to the terms of Section 4A of this Lease, if the Premises or any part thereof or any appurtenance thereto is so damaged by fire, casualty or structural defects such that the same cannot be used by Tenant's for the purposes described in Section 3 of this Lease, then Tenant shall have the right within ninety (90) days following such damage to elect, by notice to City, to terminate this Lease as of the date of such damage. In the event of minor damage to any part of the Premises that does not render the Premises unusable for Tenant's purposes, City shall promptly repair such damage at City's expense and there shall be no abatement of rent. In making the repairs described in this Section, City shall not be liable for any delays resulting from strikes, governmental restrictions, inability to obtain necessary materials or labor or other matters which are beyond the reasonable control of City. Tenant shall be relieved from paying rental payments during any portion of the Term that the Premises are inoperable or unfit for occupancy or the uses specified in Section 3 of this Lease. For any such time periods that the Premises are inoperable or unfit for occupancy or Tenant's permitted uses, Tenant shall receive credit for future rent payments Tenant may have paid in advance. If no further rent payments are to be made, any such advance payments shall be refunded to Tenant. The provisions of this Section extend not only to the matters aforesaid, but also to any occurrence which is beyond Tenant's reasonable control and which renders the Premises inoperable or unfit for occupancy or use, in whole or in part, for Tenant's permitted uses.

**11. Access to Tenant Equipment.** City shall provide Tenant with a means to secure its property located at the Premises during any times a Tenant employee is not present (e.g., locked cabinet, secure room).

**12. Compliance with Laws.** City shall ensure that the Premises, the Building and Property are in compliance with all applicable environmental, health, or safety statutes, ordinances, orders, rules, standards, regulations or requirements. City shall also ensure that the Premises, Building and Common Areas are in compliance with all legal requirements of the Americans with Disabilities Act.

**13. Default.** If Tenant defaults at any time during the Term on the payment of rent when due under the terms of this Lease, and if said default shall continue for fifteen (15) days after written notice thereof shall have been given to Tenant by City, or if Tenant defaults on any of the other covenants, terms or conditions under this Lease, and such default shall continue for thirty (30) days after written notice thereof to Tenant by City without correction thereof, City may terminate this Lease immediately by written notice to Tenant thereof. In the event of such termination, if Tenant has not surrendered possession of the Premises, City may reenter the Premises. City shall have, in addition to the aforementioned remedy, any other right or remedy available to City on account of Tenant default, either in law or equity. In all such instances of Tenant default, City shall use commercially reasonable efforts to mitigate its damages.

**14. Quiet Enjoyment.** Subject to the terms and conditions of this Lease, so long as Tenant is not in default under this Lease, City covenants and agrees that Tenant is entitled to quiet enjoyment of the Premises during the Term.

**15. Indemnification.** Tenant 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 Tenant's occupancy of the Premises, occasioned wholly or in part by any act or omission of Tenant, 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. Notice.** Any notice required or permitted under this Lease shall be deemed sufficiently given or served if sent by United States certified mail, return receipt requested, or by nationally-recognized overnight courier, addressed as follows:

If to City: Kodiak City Manager, Attn: Aimee Kniazowski, 710 Mill Bay Road, Room 220, Kodiak, Alaska 99615, cc: Kodiak Harbormaster, Attn: Lon White, 403 Marine Way, Kodiak, Alaska 99615.

If to Tenant: MorphoTrust USA, LLC., Attn: Charles Carroll, 6840 Carothers Parkway, Suite 601, Franklin, TN 37067. cc: MorphoTrust USA, LLC, Attn: General Counsel, 296 Concord Road, Suite 300, Billerica, MA 01821

City and Tenant shall each have the right from time to time to change the addresses to which such notices are to be given under this Section by providing written notice thereof to the other party.

**17. Waiver.** No waiver of any default of City or Tenant hereunder shall be implied from any omission to take any action on account of such default if such default persists or is repeated, and no express waiver shall affect any default other than the default specified in the express waiver and that only for the time and to the extent therein stated. One or more waivers by City or Tenant shall not be construed as a waiver of a subsequent breach of the same or any other covenant, term or condition.

**18. Governing Law.** This Agreement shall be governed, construed and interpreted by, through and under the laws of the State of Alaska, without regard to conflicts of law rules.

IN WITNESS WHEREOF, the parties have executed this Lease as of the date of last signature hereto.

**City of Kodiak, Alaska**

**MorphoTrust USA, LLC**

By: \_\_\_\_\_  
Typed Name: Aimée Kniazowski  
Title: City Manager

By: \_\_\_\_\_  
Typed Name: Robert Eckel  
Title: Chief Executive Officer

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

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



Date: 11/25/2015

cc: mshuravloff-nelson@city.kodiak.ak.us

To whom it may concern,

This letter is to notify you of our interest to renew our lease at 411 Marine Way, Kodiak, AK 99615. Please except this letter as our formal request. Please let me know if you require any additional information.


Thank you,

Shawn Marks  
Program Real Estate Manager – Facilities  
6840 Carothers Pkwy, Suite 601  
Franklin, TN 37067  
[smarks@morphotrust.com](mailto:smarks@morphotrust.com)

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## MEMORANDUM TO COUNCIL

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**To:** Mayor Branson and City Councilmembers  
**From:** Aimée Kniazowski, City Manager   
**Thru:** Katie Baxter, Library Director  
**Date:** January 14, 2016

**Agenda Item:** V. g. Authorization of a System Support Agreement for Library Mechanical System

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**SUMMARY:** Staff is recommending that the Council authorize an agreement between LONG Building Technologies and the City for services at the Kodiak Public Library. This service agreement would begin in February 2016 and continue for a period of three years, and from year to year thereafter until terminated. The annual sum for services furnished by LONG Building Technologies Inc. will be \$9,927.97 with a three percent increase per year over the three contract years for a total of \$30,686.37.

**PREVIOUS COUNCIL ACTION:** At June 9, 2015, work session, the Library Director explained that the mechanical system agreement was needed and that CCI/LONG Building Technologies was in the process of drafting a system support agreement.

**DISCUSSION:** During the Cornerstone Construction building phases of the library at 612 Egan Way, CCI Automated Technologies worked with MRV Architects, AMC, Inc. and Tundra Heating and Plumbing to build and install the mechanical system. The system was completed by October 2013. In July 2014 the Senior Mechanical Engineer of AMC Engineers who designed the system conducted a site visit to review system operations and found the system to be in satisfactory order. In 2015 there was a change at CCI in that LONG Building Technologies purchased CCI assets. System experts who were on site during both the library construction and the systems warranty period are currently with LONG Building Technologies and maintain contact with the City.

It has been the City's intent since the opening of the new library building to enter into a system support agreement. The service technician who was on site during construction and during the systems warranty period would be assigned to deliver the system support services noted in the agreement. This is seen as a desirable point of service given the individual's knowledge and expertise with the library's mechanical system. There are no significant issues or malfunctions of the system at the present time. The City would like to keep this track record. The one instance in November of 2014 when the fuel company had neglected to deliver fuel according to the monthly schedule, the system responded appropriately. However, specific analysis of system sensors and vents needed to be completed, and the master electrical switch needed resetting. No one on Kodiak Island other than the CCI Service Technician had the knowledge, experience and expertise to assist the Library Director and City Engineer in assessing

and correcting the situation. Moving forward, it is seen as a prudent measure to secure this service agreement for the budgeted amount rather than risk incurring tens of thousands of dollars of repair and replacement costs due to an unforeseen circumstance.

**ALTERNATIVES:** City Staff who has been monitoring the system over the past two years believes the Council alternatives are as follows:

- 1) Approve the service agreement with LONG Building Technologies for a three-year contract, which is staff's recommendation because the City has no trained maintenance staff and the services in Kodiak do not offer the range of expertise and knowledge needed to care for the library's whole mechanical system. Entering into a service agreement that includes monthly, annual, and immediate response provides the City with sustained maintenance of a high-quality system that is designed to serve the building for decades.
- 2) Do not approve the agreement and rely on limited local resources, which cause delays in response time and wasted funds. This is not recommended.

**FINANCIAL IMPLICATIONS:** The Library Department's budget includes a professional services line item and is funded to cover the annual cost of just under \$10,000 for this service agreement. It is the Staff's findings given the sophisticated integration of the system's setpoints, airflow indicators and alarm functions, back-up database, and controllers firmware, that this service agreement will save the City in staff workload since there are no system experts of this nature on staff. The service agreement indicates that there will be a three percent increase per year over the three contract years. The City's library budget will accommodate that increase.

**LEGAL:** N/A

**STAFF RECOMMENDATION:** Staff is recommending that the Council approve the agreement and authorize the City Manager to sign the agreement by and between LONG Building Technologies and the City for services to the Kodiak Public Library to ensure the building and its systems are kept in good order.

**CITY MANAGER'S COMMENTS:** I support Katie's recommendation to enter into an agreement with this mechanical systems maintenance company. The State, City, and community invested a great deal of time and money to build a beautiful library and it's important to care for it to protect our investment. Katie, her staff, and other City employees have all worked to ensure the library remains in the best possible shape. This agreement will provide her with the people that have the appropriate technical skills. I recommend Council approve the agreement and authorize me to sign for the City.

**ATTACHMENTS:**

Attachment A: System Support Agreement by LONG Building Technologies November 25, 2015

**PROPOSED MOTION:**

Move to authorize the three-year service agreement with LONG Building Technologies beginning January 2016, with a first year cost of \$9,927.97 and a three percent increase each of the next two years for a total of \$30,686.37 with funds coming from the Library's professional services line item and authorize the City Manager to sign the documents on the City's behalf.



Attachment A



*Long live your building!*

## **System Support Agreement**

For

### **Kodiak Library**

**Kodiak Library  
612 Egan Way  
Kodiak, AK 99615**

**Submitted By:**

**LONG Building Technologies  
5660 'B' Street  
Anchorage, AK 99518**

**Curtis Holeman  
Sr Account Executive**

**November 25 2015**

November 25 2015

Kodiak Library  
612 Egan Way  
Kodiak, AK 99615

Attention: Katie Baxter

Regarding: Kodiak Library

LONG Building Technologies is pleased to offer a System Support Agreement to provide you with the following services.

**DDC Control System Performance and Operation Review**

The System Support Agreement allows our technician to meet with your building operator to discuss the overall system operation, that the operating schedule meets programmed time schedule, and any known deficiencies, desired changes or enhancements. Minor changes or enhancements are taken care of within the time frame allowed for each scheduled facility visit.

Each system sequence of operation will be reviewed. This verifies that equipment functions as originally designed. A check that setpoints are being maintained, flow indication is working, and alarm functions are properly set up is also performed.

A review is made of all connected points. This will check for bad sensor readings, flow indication problems, setpoints not being maintained and loop tuning. Any loops that are excessively hunting will be tuned.

A visual inspection of major systems is made. Any discrepancies will be noted and forwarded in the service report. Calibration and field devices adjustments will be made as required for proper indication readings.

**Back-up database**

This will ensure that you and we have the most current database. The database is the custom-programmed information in each controller required for the system to operate. Having the most recent database on hand ensures that there will be minimal disruption and expense involved in re-loading a controller should the database be lost or a controller be damaged.

**Firmware Upgrade**

The latest firmware will be provided to keep all controllers at current revision levels. This allows you to receive system enhancements and improved performance as developed. This also allows additions to be made to the system with the latest versions and models of controllers as desired.

**Alarm and Exception Log**

A printout of the Exception Log and Current Alarms reports is generated with each visit. This provides a quick reference to any problems that have been or are occurring in the system.

**VAV Systems**

For facilities with Variable Air Volume (VAV) systems, the following procedures will be performed.

Check each zone from the host computer or laptop.  
Record the temperature reading vs. the setpoint on a check list.  
Record the actual flow reading vs. flow setpoint on a checklist.

Any major discrepancies found in these readings will be reported for action.

**Graphics Systems**

Facilities with Host computers running graphical user interface (GUI) software will receive the most current software revision with each scheduled visit. Operator interface features will be discussed with your operator. The Host database will be backed up to the local computer as well as to a disk that we store at our office.

**Online System Checks**

Online system checks are made based on the number stated in the agreement. An online system check consists of connecting to the site and establishing communication. Once established, the system operation will be reviewed by modem and a printout made of the Exception Log and Alarm reports. Verification will be made that all connected controllers are communicating properly. Any problems found with internet communication or system operation will be reported.

There are many advantages to keeping your facility management controls system in good operating condition and at current revision levels. The controlled mechanical equipment will be ensured to operate at the most efficient and economic mode of operation. Upgraded revision levels provide new features and enhancements to the control system, such as faster communication speeds, more user-friendly operator interfaces, and internal system improvements. New products continually become available that require existing controllers and software to be at current revision levels in order for them to communicate. In addition to the above services, as a System Support Agreement customer, you receive preferential pricing on parts and labor for work done beyond the scope of the agreement.

A System Support Agreement outlining this is attached. Please review and feel free to contact me with any questions.

Sincerely,

Curtis Holeman

Curtis Holeman  
Sr Account Executive



Date: November 25 2015

Proposal Number: 0

Agreement Number: 1

Maintenance Agreement

LONG Building Technologies

SERVICES AGREEMENT

By and Between

LONG Building Technologies

Kodiak Library

5660 'B' Street
Anchorage, AK 99518
Phone # 907-561-3044
Fax # 907-561-4225

612 Egan Way
Kodiak, AK 99615
907-486-8688

Services will be provided at the following location(s):
Kodiak Library
612 Egan Way

LONG Building Technologies will provide the services in accordance with the schedules, terms and conditions on the pages, which are attached and listed below.

Services Agreement and Schedules

Table with 2 columns: Type, System Support, Mechanical Maintenance. Rows include Performance Review, Database Back-up, Software Upgrades, and Filter Service.

Agreement coverage will begin on 1/1/2016 and shall continue for a period of Three year(s) and from year to year thereafter until terminated.

The contract price shall be subject to adjustment yearly to recognize any changes in costs. Notice of proposed adjustments to the annual price will be provided at least sixty days prior to agreement renewal date.

LONG Building Technologies Inc. agrees to furnish the services described in this agreement for an annual sum of \$9,927.97. This annual price includes an escalation rate of 3 Percent per year.

In addition to the annual contract amount, the customer shall pay applicable sales tax.

Invoices shall be issued quarterly in installments of \$2,481.99. These payments are due and payable when the customer receives CCI's invoices and in advance of the services CCI is to provide.

The coverage included in this agreement, including terms, conditions and schedules attached, will constitute the entire agreement between us. This agreement is the property of LONG Building Technologies, Inc. and is provided for the Customer's use only.

LONG Building Technologies :

By: Curtis Holeman
Title: Sr Account Executive
Date: November 25 2015

Approved for LONG Building Technologies, Inc., Inc

Signature: Dwight Longuevan
Title: General Manager

(CUSTOMER):
By:
Title:
Signature:
Date:

This proposal is the property of LONG Building Technologies and may not be copied or disclosed to any other individual or company



# MAINTENANCE AGREEMENT

November 25 2015

0  
Kodiak Library

LONG Building Technologies will maintain the systems or equipment listed as follows:

See list of Control Prints covered under this Controls Agreement: ATTACHMENT A  
See list of Maintained Equipment under Mechanical Agreement: ATTACHMENT B

## 1. SCHEDULED MAINTENANCE – Included

1. Specially trained technicians, engineers and mechanics are available to conduct the necessary tasks to ensure that your equipment is properly maintained.
2. Each piece of covered equipment receives an annual inspection and thorough preventive maintenance routine as appropriate. In addition, periodic tests and adjustments are made to ensure efficient and reliable operation of other major components.
3. Each scheduled call has a specific set of tasks detailing exactly what needs to be performed and what special skills; tools or instruments are required to keep equipment operating at peak level.
4. Maintenance intervals will be determined by our experience, manufacturers' recommendations, usage, location and run-time intervals unless otherwise noted.
5. A service report will be completed after each call and provided to you our partner. A duplicate record will be maintained at CCI to update the history of the work performed.

## 2. REPAIR SERVICES

If in the course of a service call, it is determined that a repair to the covered system or a replacement of a component within the system would be beneficial, the following repair coverage has been elected:

**A. Preferred Labor & Materials:** Included in agreement Accepted by: \_\_\_\_\_

The Customer will be advised of the defect. Subject to approval by an authorized agent of the customer, work will be performed on a preferred time and material basis.

**B. Standard Labor:** Not included in agreement Accepted by: \_\_\_\_\_

All of the necessary unscheduled emergency labor to restore, repair or replace the equipment on the list of maintained equipment during CCI normal working hours is included. Any material replacement will be invoiced on a preferred pricing basis.

**C. Comprehensive Coverage:** Not included in agreement Accepted by: \_\_\_\_\_

The labor and material components and parts necessary to restore covered equipment to normal operation are included. These replacements will be of like or current design to prevent system depreciation or obsolescence. All work will be performed during CCI normal working hours.

**D. 24-Hour Coverage:** Not included in agreement Accepted by: \_\_\_\_\_

This coverage includes back-up emergency services for critical responses on a 7-day/week, 24-hour/day basis.

November 25 2015

Kodiak Library

### 3. BUILDING AUTOMATION SYSTEM SUPPORT SERVICES

#### PREVENTIVE MAINTENANCE INSPECTIONS

LONG Building Technologies will perform scheduled preventive maintenance inspections in accordance with the Services Agreement page of this contract. LONG will conduct its work during normal working hours at intervals determined by manufacturers' recommendations, usage, location, run-time intervals and/or our experience.

Scheduled preventive maintenance inspections for the covered equipment will provide those services required to maintain the system at maximum performance and reliability levels and may include the following:

Analyze, adjust, calibrate the applicable temperature sensors, humidity sensors, diagnostic LEDs, printers, power supplies, work stations, controllers, modems, input/output points, communication cabling, transmitters, transducers, UPS for the EMS system.

Conduct an annual inspection and thorough preventive maintenance routine on each piece of covered equipment. In addition, make periodic tests and adjustments to ensure efficient and reliable operation of other major components.

**Database Backup:** Included in agreement

Annually, as a minimum, LONG will review all application software databases and verify that such databases are maintained in accordance with recommended operating procedures. A complete back-up of the most recently verified databases will be maintained on-file by LONG for emergency back-up through telephone modem link-up, on-site visit or controller replacement. The customer shall provide an auto-dial/auto-answer modem connection, or Internet connection as applicable, to the Facility Management System.

**Software Upgrades:** Included in agreement

LONG shall provide the owner software upgrades as released by the factory within the twelve-month period covered by the specified agreement. This will enable the owner to take advantage of new system technologies and enhancements to keep the system current with new capabilities. Past software upgrades have required host computer hardware upgrades. If a hardware or firmware upgrade is required, the owner will be responsible for these associated costs. Note that software programs not produced by Schneider Electric are not included. Likewise, "Major Revisions" to the GUI software which add new features, capabilities, run on new operating platforms or significantly enhance existing features, are not included.

**Web Service/Modem Support:** Not included in agreement

Modem access enhances LONG's ability to respond to partner requests for troubleshooting and remote diagnostics. This service affords LONG engineers and technicians the ability to be on-line with your system within minutes of problem notification. By providing quick response, disruptions will be kept to an absolute minimum.

Scheduled Modem calls will be made on a **N/A** basis.

Note: Telephone line or network connection, as applies, to be the responsibility of the customer.



Long live your building!

## MAINTENANCE AGREEMENT

### ATTACHMENT A

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### CONTROLS EQUIPMENT

Kodiak Library

Per CCI Drawings: 0

LONG Building Technologies, Inc., Inc. will provide maintenance services for the following equipment on

an annual basis.

Database back-up will be provided on

an annual basis.

Qty.	System Component	Manufacturer	Model	I/Per/Yr.	Location of Equipment
1	Network Controller	Schneider Electric	ENC-520-2	1	See Control Drawings
2	Local Controller	Schneider Electric	MNB-1000	1	See Control Drawings
1	Unitary Controller	Schneider Electric	MNB-300	1	See Control Drawings
9	Unitary Controller	Schneider Electric	MNB-70	1	See Control Drawings



Long live your building!

## MAINTENANCE AGREEMENT

### ATTACHMENT B

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### MECHANICAL EQUIPMENT

Kodiak Library

LONG Building Technologies, Inc., Inc. will provide maintenance services for the following equipment on

a **semi-annual** basis.

Qty.	System Component	Manufacturer	Model	I/Per/Yr.	Location of Equipment
2	Boiler B-1 & B-2			2	Boiler Room
4	Pmp VFD			2	Boiler Room
1	Hot Water Heater			2	Boiler Room
1	Fuel Oil Tank			2	Exterior
7	Pumps			2	Boiler Room
2	Unit Heater			2	Various
1	Air Handling Unit -1 SF/RF			2	Mech Rm 25
1	TF-1			2	Receiving Rm 17
1	SCF-1			2	Boiler Room
4	EF-1,2,3,4			2	various





Long live your building!

MAINTENANCE AGREEMENT

ATTACHMENT C
FILTER SERVICE

0
Kodiak Library

Table with 6 columns: Unit #, Location, # Filters, Size, Changes/Year, Type Filter. Includes rows for AHU-1 (Primary/Secondary Filters) and EF Fans.



## Long live your building! MAINTENANCE AGREEMENT

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Kodiak Library

### GENERAL CONDITIONS

- 1 This agreement applies only to equipment installed prior to effective date of this agreement and as described in this agreement. Normal working hours (7:30 a.m. to 4:30 p.m.; Monday through Friday, excluding holidays) will apply to all services, unless otherwise stated, including major repairs performed under this agreement
- 2 This agreement assumes the systems covered to be in maintainable condition. If repairs are found necessary upon initial inspection or initial seasonal start-up, repair charges will be submitted for approval. Should these restoration charges be declined, those non-maintainable items will be eliminated from the program and the agreement price adjusted accordingly
- 3 It is agreed that the customer shall provide reasonable means of access to all devices, which are to be maintained. Normal operation such as starting, stopping and resetting of the listed equipment is not included in this program. However, LONG Building Technologies (LONG ) shall be permitted to start and stop all primary equipment incidental to the operation of mechanical system.
- 4 If the system is modified, changed or altered, or if any equipment is added, or if the system is removed within the premises or to other premises, LONG , at its sole option, reserves the right to terminate or re-negotiate this agreement based on the condition of the system after the changes have been made.
- 5 It is agreed that the contract price shall be adjusted yearly; such adjustments shall be consistent with current labor and material costs. Either party may terminate this agreement after its initial term on the anniversary of its effective date by giving the written notice a minimum of 30 days prior to the anniversary date.
- 6 LONG shall not, under any circumstances, be liable for injury to persons or damage to property unless such injury or damage is caused by a negligent act of omission or commission by LONG agents, employees or subcontractors.
- 7 LONG and Customer assume the non-occurrence of the following contingencies which, without limitation, might render performance by LONG impractical: strikes, fires, war, late or non-delivery by suppliers of LONG , and all other contingencies beyond the reasonable control of LONG . Under no circumstances shall LONG be liable for any special or consequential damages whether based upon lost goodwill, lost resale profits, work stoppage, impairment of other goods or otherwise and whether arising out of breach of warranty, breach of contract, negligence or otherwise, except only in the case of personal injury where applicable law requires such liability. But in no event shall LONG 's liability exceed the purchase price paid under contract.
- 8 The Customer shall pay LONG , in addition to the contract price, the amount of all present and future taxes or any other government charge now or hereafter imposed by existent or future laws with respect to the transfer, use, ownership or possession of equipment to which this agreement relates, exclusive of ordinary personal property taxes assessed against LONG .
- 9 It is agreed that the customer shall assume responsibility and pay extra for all service and material required due to electrical power failure, low voltage, burned out main or branch fuses, low water pressure, corrosion or lightning strikes.
- 10 The customer is responsible for the addition of any items of equipment or performance of any safety test or corrections in design as recommended or required by insurance companies, government, state, municipalities or other authorities.
- 11 The customer is responsible for the indoor air quality of their facility.
- 12 In the event LONG is required to make any repairs and/or replacement and/or emergency calls occasioned by improper operation or misuse of equipment covered by this agreement or any cause beyond LONG 's control, the customer shall reimburse LONG for expenses incurred in making repairs and/or replacements and/or emergency calls in accordance with the established rate for performing such service such as calls for thermostat setting, air balancing or equipment resetting.
- 13 If equipment becomes non-repairable due to unavailability of replacement parts, LONG , at its option, may remove the equipment from the contract and will not be required to maintain or service such equipment as a part of this agreement. However, LONG will assist the owner in replacing the equipment at prevailing service rates.
- 14 The customer is responsible for the replacement or repair of non moving/maintainable parts of the heating, cooling and ventilating systems, such as duct work, boiler shell and tubes, boiler refractory and complementary equipment, for example but not limited to: cabinets, fixtures, boxes, water supply lines, drain lines, steam lines, plumbing, oil storage tanks, oil and/o gas lines, domestic water lines, refrigerant piping, pneumatic tubing, converter shell and tubes, heating or cooling coils and electrical wiring, starters, and conduit.
- 15 LONG reserves the right to discontinue this maintenance service agreement at any time, without notice, unless all payments under this contract shall have been made as agreed.