

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

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

**II. Previous Minutes**  
Approval of Minutes of the March 17, 2016, Special Council Meeting.....1

**III. Persons to Be Heard**  
a. Proclamation: Declaring Month of the Military Child .....10  
b. Proclamation: Declaring Week of the Young Child .....12  
c. Public Comments (limited to 3 minutes) (486-3231)

**IV. Unfinished Business**  
a. Second Reading and Public Hearing, Ordinance No.1344, Repealing Kodiak City Code 12.08.030, Obstructions; Amending Kodiak City Code 12.12.030, Outdoor Dining Permit/Encroachment Permit Required; and Enacting Kodiak City Code Chapter 12.18, Encroachment Permits, Regarding the Permission of Encroachments on City Sidewalks and Other City Property .....16  
b. Second Reading and Public Hearing, Ordinance No. 1345, Enacting Kodiak City Code 3.16.015, Definitions, Kodiak City Code 3.16.025, Investment Committee, and Kodiak City Code 3.16.027, Investment Manager; And Amending Kodiak City Code 3.16.020, Treasury Management, and Kodiak City Code 3.16.030, Permissible Investments; to Provide for an Investment Committee to Oversee Investments of City Funds, Professional Management of the Investments and Related Matters .....24  
c. Second Reading and Public Hearing, Ordinance No. 1346, Authorizing a Lease Between the City of Kodiak and United States Department of Transportation, Federal Aviation Administration Alaska Region for Pillar Mountain Communication Lease Site No. 12, Described as a Parcel of Land Within U.S. Survey 3945 .....30

**V. New Business**  
a. First Reading, Ordinance No. 1347, Rescinding Ordinance No. 1314 and Authorizing Amendment of Lease No. 211696 Between the City of Kodiak and ACS of the Northland, LLC, for Pillar Mountain Communications Site No. 10 .....46  
b. Authorization of Emergency Repairs to Pier II Cleats .....58  
c. Recommendation of Appointment of City Applicant to the Planning and Zoning Commission .....66  
d. Appointment of City Councilmembers to the Kodiak Island Borough Marijuana Task Force .....70

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

**VII. Mayor’s Comments**

**VIII. Council Comments**

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

**X. Executive Session**

    a. Discussion of City Manager’s Employment Agreement.....76

**XI. Potential Action Following Executive Session**

    a. Authorization of City Manager’s Employment Agreement.....78

**XII. Adjournment**



**MINUTES OF THE SPECIAL COUNCIL MEETING  
OF THE CITY OF KODIAK  
HELD THURSDAY, MARCH 17, 2016  
IN THE KODIAK PUBLIC LIBRARY MULTI-PURPOSE ROOM**

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

Mayor Pat Branson called the meeting to order at 7:30 p.m. Councilmembers Laura B. Arboleda, Randall C. Bishop, Charles E. Davidson, and Richard H. Walker were present and constituted a quorum. Councilmembers Gabriel T. Saravia and John B. Whiddon were absent. 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 Bishop MOVED to approve the minutes of the February 25, 2016, regular meeting as presented.

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

**III. PERSONS TO BE HEARD**

**a. Public Comments**

**Stephan Taufen** spoke about fisheries. He said he was concerned about processors' comments at a recent Fisheries Work Group meeting.

**Bob Bohay** said the bathrooms in the harbor area should be locked up to deter derelict and criminal behavior. He said there are drug issues in the downtown area that need to be addressed. He suggested closing the downtown liquor store across from the bathrooms.

**Sgt. Thor Johnson** of the Alaska National Guard spoke about veteran's needs and outreach efforts in Kodiak. He distributed a letter to the Mayor and Council requesting use of the old library building to address homelessness and other needs, similar to services at the veterans outreach building in Anchorage.

**David Blacketer** thanked Councilmembers John Whiddon and Gabriel Saravia for the green sweatshirts that were provided to fisheries workers and community members several years ago, which he wore in celebration of St. Patrick's Day. He said he sits on the Commission of Aging, and he gave an overview of the services provided by Senior Citizens of Kodiak Inc. He thanked the Mayor and Council for their support.

**Fire Chief Mullican** provided an update on the Alaska Shield "active shooter drill" at the high school. He said 30 volunteers participated in the drill. He shared there is a national change to

move medics to a scene to assist the injured as soon as possible, which is a modification in protocol they were able to practice during the drill.

#### IV. UNFINISHED BUSINESS

None

#### V. NEW BUSINESS

- a. First Reading, Ordinance No. 1344, Repealing Kodiak City Code 12.08.030, Obstructions; Amending Kodiak City Code 12.12.030, Outdoor Dining Permit/Encroachment Permit Required; and Enacting Kodiak City Code Chapter 12.18, Encroachment Permits, Regarding the Permission of Encroachments on City Sidewalks and Other City Property**

Mayor Branson read Ordinance No. 1344 by title. The Kodiak City Code has a brief reference to encroachment permits; however, a process to issue them is not described. There has been an increase in public requests for such permits, and the City Attorney recommended that sections of Title 12 be amended to better provide for issuance.

Councilmember Walker MOVED to pass Ordinance No. 1344 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, and Walker in favor. Councilmembers Saravia and Whiddon were absent. The motion passed.

- b. First Reading, Ordinance No. 1345, Enacting Kodiak City Code 3.16.015, Definitions, Kodiak City Code 3.16.025, Investment Committee, and Kodiak City Code 3.16.027, Investment Manager; and Amending Kodiak City Code 3.16.020, Treasury Management, and Kodiak City Code 3.16.030, Permissible Investments; to Provide for an Investment Committee to Oversee Investments of City Funds, Professional Management of the Investments and Related Matters**

Mayor Branson read Ordinance No. 1345 by title. The City recently adopted Resolution No. 2016-09 to form an investment committee to enhance and improve the management of City financial assets. The Investment Committee's responsibilities include, but are not limited to, the selection and oversight of an investment management and advisory firm to manage the City's investments. Ordinance No. 1345 will amend Kodiak City Code Chapter 3.16 investments and change the authority of investing City funds from the Finance Director to the Investment Committee.

Councilmember Arboleda MOVED to pass Ordinance No. 1345 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, and Walker in favor. Councilmembers Saravia and Whiddon were absent. The motion passed.

**c. First Reading, Ordinance No. 1346, Authorizing a Lease Between the City of Kodiak and United States Department of Transportation, Federal Aviation Administration, Alaska Region for Pillar Mountain Communication Lease Site No. 12, Described as a Parcel of Land Within U.S. Survey 3945**

Mayor Branson read Ordinance No. 1346 by title. The City of Kodiak has leased Communication Site No. 12 on Pillar Mountain to the Federal Aviation Administration (FAA) since 2004. The most recent lease will expire in June and the FAA wishes to continue to lease the site. Due to the terms, the lease must be approved by ordinance.

Councilmember Davidson MOVED to pass Ordinance No. 1346 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, and Walker in favor. Councilmembers Saravia and Whiddon were absent. The motion passed.

**d. Resolution No. 2016–11, Urging the Governor of the State of Alaska to Appoint a Kodiak Representative to the North Pacific Fishery Management Council**

The Governor had already recommended an appointment from Kodiak; therefore, no action was taken.

**e. Authorization of the First Amendment to Fisheries Analyst Contract**

The City Council and Borough Assembly have worked with a fisheries analyst since 2011 to help track and respond to fisheries resource management issues important to the Kodiak area. Following the resignation of the first analyst in late 2013, the City and Borough selected and hired McCarty and Associates for a two-year contract with an option to renew. At the February 24, 2016, joint work session, the majority of the two governing bodies agreed to a one-year extension of the contract with some modifications.

Councilmember Bishop MOVED to authorize Amendment No. 1 to the professional services agreement with McCarty and Associates for fisheries analyst consulting and related services, effective March 1, 2016, through February 28, 2017, in the amount of \$30,000 per year plus authorized expenses for the City's share of the contract costs, with funds coming from the General Fund Legislative professional services account, and authorize the City Manager to execute the documents on behalf of the City.

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

**f. Authorization of Banking Services Contract**

The City currently uses First National Bank of Alaska (FNBA) for banking purposes. FNBA was awarded the banking services contract in 2010 for three years with the option to extend for an additional two years. The contract was extended, and the contract expired at the end of calendar year 2015. These services are continued on a month-to-month basis until a renewed contract is in place.

Councilmember Walker MOVED to authorize a three-year banking services contract with First National Bank of Alaska with an option to extend for two additional one-year terms and authorize the City Manager to execute the documents on behalf of the City.

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

**g. Authorization of Repairs to Fire Station Overhead Doors**

The overhead doors on the City fire station are in need of significant maintenance and repair. Over the last six months the Fire Department has encountered issues with the doors not opening, failing to close, and parts breaking/falling off while responding to emergencies.

Councilmember Bishop MOVED to authorize overhead door repairs services be made to Pacific Builders in the amount of \$19,920 with funds coming from the FY2016 Fire Department Deferred Maintenance Account and authorize the City Manager to sign necessary documents on behalf of the City.

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

**h. Authorization of Reimbursement of Dockage and Wharfage Fees at Pier I**

From September 2014 to September 2015, Petro Marine Services (PMS) used their own float and fuel transfer system to receive bulk fuel from barges but continued to pay the city fees as prescribed in the last Pier I easement agreement. In September 2015, PMS contacted the Harbor-master to report they had overpaid the City because no fuel crossed the ferry dock. Staff recommends Council authorize the City of Kodiak to refund PMS for overpayment of fees for dockage and other services at Pier I Ferry Terminal in the amount of \$27,851.92.

Councilmember Davidson MOVED to authorize a refund to Petro Marine Services in the amount of \$27,851.92, with funds coming from the Harbor Enterprise Fund and authorize the City Manager to execute the refund for the City.

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

**i. Authorization of the First Amendment to Professional Services Contract with Solstice Alaska Consulting Inc. to Assist in Permitting for the Channel Transient Float Replacement Project No. 8525**

The initial professional services agreement with Solstice Alaska to prepare the necessary documents to obtain permitting for the Channel Transient Float Replacement Project for \$14,630 was approved within the City Manager's spending authority. Due to the expanded regulatory requirements and permitting effort required, Solstice Alaska Consulting Inc. provided an updated budget requesting an additional \$41,260. This amendment amount exceeds the Manager's spending authority and requires Council authorization.

Councilmember Walker MOVED to authorize Amendment No. 1 to the professional service contract with Solstice Alaska Consulting Inc., in the amount of \$41,260, with funding from the Harbor Enterprise Fund, Capital Project No. 8525 and authorize the City Manager to sign necessary documents on behalf of the City.

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

**j. Authorization of Data Storage System Purchase**

The City currently has data storage systems located at City Hall and KPD. These storage systems are used to backup all City-wide electronic records and programs. The storage systems are over five years old and are becoming obsolete, and the capacity is limited. Due to increased software functionality within the City (i.e. ERMS, email archival systems, KPD video recordings, additional network space, etc.), the capacity will exceed its limitations by the end of the current fiscal year. The new systems, software, and support would be supplied by Exablox in the amount of \$22,596.

Councilmember Arboleda MOVED to authorize the purchase of data storage systems from Exablox in the amount of \$22,596 with funds coming from the Finance Department, IT Division, Machinery and Equipment account and authorize the City Manager to execute the documents on behalf of the City.

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

**VI. STAFF REPORTS**

**a. City Manager**

Manager Kniazowski said the Juneau Legislative trip will occur at the end of the month, and the City will advocate for its capital improvement projects and for full revenue sharing. She encouraged the Council to sign up for a tour of the compost facility. She said DOWL held a Pedestrian Pathway public meeting and it was well attended. She mentioned the decorative trash cans have been installed. She thanked Public Works and Parks and Recreation staff for installing them and expressed appreciation to Bruce Schactler for his work to get the trash cans to Kodiak. She mentioned that the Alaska Shield drill exercise went well; she thanked the Fire and Police Departments and volunteers. She said she will present an employee cost of living increase to the Council. She said she will be out of the office March 29 through 31, and Deputy City Manager Mike Tvenge will be Acting City Manager and Fire Chief Jim Mullican will be Acting Emergency Services Director.

**b. City Clerk**

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

**VII. MAYOR’S COMMENTS**

Mayor Branson said she attended SWAMC; she commented she was disappointed that the fisheries schedule was on the last day of the conference. She said Lobbyist Ray Gillespie and the City will host a dinner with Senator Stevens and Representative Stutes when the Mayor and Council are in Juneau to lobby for City projects. She commented the Joint City-Borough Work Session meeting went well.

**VIII. COUNCIL COMMENTS**

Councilmember Davidson reported on his attendance at the SWAMC conference. He said he attended the NLC conference and participated in several sessions. He commented on potential roadway funding.

Councilmember Arboleda reported on her attendance at SWAMC.

Councilmember Bishop said he attended the Joint Building Code Review Committee meeting, and a recommendation to adopt updated building codes will be forwarded to the Council.

Councilmember Walker reported on his attendance at SWAMC stating he was disappointed in the conference as compared to previous years. He said he attended the Borough’s Lands Committee meeting, and he will keep the Council informed of those discussions.

**IX. AUDIENCE COMMENTS**

None

**X. EXECUTIVE SESSION**

**a. City Manager’s Annual Evaluation and Contract Review**

Councilmember Walker MOVED to enter into executive session as authorized by Kodiak City Code Section 2.04.100(b)(2) to evaluate the City Manager’s performance and discuss the terms of the employment contract.

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

The Council entered into executive session at 8:40 p.m.

The Mayor reconvened the Council meeting at 9:35 p.m.

**XI. ADJOURNMENT**

Councilmember Davidson MOVED to adjourn the meeting.

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



The meeting adjourned at 9:36 p.m.

CITY OF KODIAK

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MAYOR

ATTEST:

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CITY CLERK

Minutes Approved:

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## **PERSONS TO BE HEARD**

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## MEMORANDUM TO COUNCIL

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**Date:** April 14, 2016

**Agenda Item:** III. a. Proclamation: Declaring Month of the Military Child

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**SUMMARY:** This proclamation encourages all citizens to show appreciation and understanding to the military children in our communities, and recognize their commitment, courage, sacrifice, and continued resilience.

**ATTACHMENTS:**

Attachment A: Proclamation: Declaring Month of the Military Child

## PROCLAMATION Declaring Month of the Military Child

WHEREAS, Alaskans are deeply grateful for the many sacrifices made by our servicemen and women to protect the security and freedom of our great nation; and

WHEREAS, we also appreciate the special courage, strength, and sacrifice of the children and families of members of the military who provide support, endure long periods of separation, and move residences frequently; and

WHEREAS, today, thousands of Alaskan children currently have at least one parent serving in full time or active duty status in the armed forces; and

WHEREAS, the children of military men and women face unique challenges and need our support to help them succeed in the absence of their enlisted parent(s); and

WHEREAS, the Month of the Military Child was established in 1986 to pay tribute to military children for their incredible resilience, commitment, sacrifices, ability to deal with life changing events, and unconditional support for our troops; and

WHEREAS, this year marks Alaska's fifth annual "Purple Up! For Military Kids" observance. All Alaskans are encouraged to wear purple, the color symbolizing all branches of the military, as a visible way to show support for Alaska's military children on April 15; and

NOW THEREFORE, I, Pat Branson, Mayor of the City of Kodiak, do hereby proclaim April 2016 as

### MONTH OF THE MILITARY CHILD

in Kodiak, and encourage all citizens to show appreciation and understanding to the military children in our communities, and recognize their commitment, courage, sacrifice, and continued resilience.

Dated this 14th day of April 2016.

City of Kodiak

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Pat Branson, Mayor

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## MEMORANDUM TO COUNCIL

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**Date:** April 14, 2016

**Agenda Item:** III. b. Proclamation: Declaring Week of the Young Child

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**SUMMARY:** This proclamation encourages all citizens to work to make a good investment in early childhood education.

**ATTACHMENTS:**

Attachment A: Proclamation: Declaring Week of the Young Child

PROCLAMATION  
Declaring April 10 through 16, 2016,  
Week of the Young Child

WHEREAS, the Kodiak Early Childhood Coalition and other local organizations, in conjunction with the National Association for the Education of Young Children, are celebrating the Week of the Young Child, April 10 through April 16; and

WHEREAS, these organizations are working to improve early learning opportunities, including early literacy programs, that can provide a foundation of learning for children in Kodiak, Alaska; and

WHEREAS, teachers and others who make a difference in the lives of young children in Kodiak, Alaska deserve thanks and recognition; and

WHEREAS, public policies that support early learning for all young children are crucial to young children's futures; and

NOW THEREFORE, I, Pat Branson, Mayor of the City of Kodiak, do hereby proclaim April 10 through April 16 as

WEEK OF THE YOUNG CHILD

in Kodiak, Alaska and encourage all citizens to work to make a good investment in early childhood education.

Dated this 14th day of April 2016.

City of Kodiak

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Pat Branson, Mayor

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# **UNFINISHED BUSINESS**

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## MEMORANDUM TO COUNCIL

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**To:** Mayor Branson and City Councilmembers  
**From:** Aimée Kniaziowski, City Manager  
**Thru:** Mike Tvenge, Deputy City Manager *MT*  
**Date:** April 14, 2016

**Agenda Item:** **IV. a. Second Reading and Public Hearing, Ordinance No. 1344, Repealing Kodiak City Code 12.08.030, Obstructions; Amending Kodiak City Code 12.12.030, Outdoor Dining Permit/Encroachment Permit Required; and Enacting Kodiak City Code Chapter 12.18, Encroachment Permits, Regarding the Permission of Encroachments on City Sidewalks and Other City Property**

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**SUMMARY:** The Kodiak City Code has a brief reference to encroachment permits; however, there is no mention of a means to issue them. The City has issued encroachment permits for many years, and the City's Schedule of Fees, Charges, and Tariffs includes an encroachment permit fee. There has been an increase in public requests for such permits, and the City Attorney recommended that sections of Title 12 need to be amended to allow such permits to be issued.

**PREVIOUS COUNCIL ACTION:** On September 9, 2015, Council supported a staff recommendation that the Kodiak City Code be amended to clarify the issuance of encroachment permits as an administrative function. On March 15, 2016, Council reviewed Ordinance No. 1344 at the work session to begin the code amendment process. On March 17, 2016, the Council passed Ordinance No. 1344 in the first reading and advanced to second reading and public hearing at this meeting.

**DISCUSSION:** In 2015, a downtown business in the Mall wanted to install two seating benches to accommodate waiting patrons on the City owned sidewalk in front of their business. Staff worked with the business to come up with a way to accommodate the request, believing an annual encroachment permit would be the best way to make that happen. Also, a local church asked for parking space on City owned property to accommodate 12 or more vehicles. These requests lead to the research and finding of the need to establish authority to issue encroachment permits by amending sections of Title 12 of the KCC to allow for such action.

Kodiak City Code 12.12.030 **Outdoor dining permit/encroachment permit required** *Outdoor dining is not allowed without an outdoor dining permit and an encroachment permit as set forth in KCC 12.12.100.* This reference to an encroachment permit does not provide the authority elsewhere to issue such a permit. The Building Department has issued encroachment permits for several years for building and access related issues. These variances are issued by "Permit" hence likely the beginning of the

encroachment permit. This proposed ordinance will clear up any ambiguity and provide a section in Code for the issuance and provisions for revocation of such a permit. Approval of any and all encroachment permits will be through the City Manager or designee.

**ALTERNATIVES:**

- 1) Adopt Ordinance No. 1344 in the second reading after the public hearing, which is staff's recommendation, because it allows for well-defined and safe alternative uses of City owned property and rights of way.
- 2) Amend or do not adopt Ordinance No. 1344, which is not recommended, because it would continue the lack of authority to issue the permits and create confusion as to how to enact this aspect of the City Code.

**FINANCIAL IMPLICATIONS:** Once adopted by ordinance, the issuance of encroachment permits will be relatively infrequent, and therefore of little financial impact. The permit template exists, the Building Department will provide the permit on request, the applicant will complete the permit form, return, if approved by the City Manager or designee, a \$30.00 fee will be charged to the applicant and the issued permit will expire in twelve months. Earlier permits issued currently have no expiration date or provision for revocation.

**LEGAL:** The Deputy Manager has worked with the City Attorney to make the proposed Code revisions.

**STAFF RECOMMENDATION:** Staff recommends Council adopt Ordinance No. 1344 after the public hearing. This would provide a means to accommodate specific use of City-owned property and rights-of-way.

**DEPUTY CITY MANAGER'S COMMENTS:** I support the adoption of Ordinance No. 1344. This permit has a review process and is revocable in situations where there is misuse. The two requests we currently have for such permits are completely reasonable and will provide a means to grant the public access for their request.

**CITY MANAGER'S COMMENTS:** The encroachment permit has been in use for many years and has worked as a means to provide a simple and fair way to accommodate requests by the community for access to some City property and rights of way. The Deputy Manager worked with the City Attorney to make sure the City Code is consistent with current practices and a way to allow for the issuance of time-specific encroachment permits, like the one for the benches in the Mall area. I support Mike's efforts and think this will help clean up our Code and make it reflect current practices.

**ATTACHMENTS:**

Attachment A: Ordinance No. 1344

Attachment B: Encroachment Permit Form

**PROPOSED MOTION:**

Move to adopt Ordinance No. 1344.

**CITY OF KODIAK  
ORDINANCE NUMBER 1344**

**AN ORDINANCE OF THE COUNCIL OF THE CITY OF KODIAK REPEALING KODIAK CITY CODE 12.08.030, OBSTRUCTIONS; AMENDING KODIAK CITY CODE 12.12.030, OUTDOOR DINING PERMIT/ENCROACHMENT PERMIT REQUIRED; AND ENACTING KODIAK CITY CODE CHAPTER 12.18, ENCROACHMENT PERMITS, REGARDING THE PERMISSION OF ENCROACHMENTS ON CITY SIDEWALKS AND OTHER CITY PROPERTY**

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

**Section 1:** Kodiak City Code 12.08.030, Obstructions prohibited, is repealed.

**Section 2:** Kodiak City Code 12.12.030 Outdoor dining permit/encroachment permit required, is amended to read as follows:

**12.12.030 Outdoor dining permit/~~encroachment permit~~ required**

Outdoor dining is not allowed without an outdoor dining permit ~~and an encroachment permit~~ as set forth in KCC 12.12.100

**Section 3:** Kodiak City Code Chapter 12.18, Encroachment Permits, is enacted to read as follows:

**CHAPTER 12.18—ENCROACHMENT PERMITS**

Section	
12.18.010	Definitions
12.18.020	Sidewalk encroachments prohibited; exceptions
12.18.030	Encroachment permit—Sidewalk
12.18.040	Encroachment permit—Other city property
12.18.050	Indemnification of city
12.18.060	Assignment and transfer of permit
12.18.070	Repair of damage
12.18.080	Right of city to enter.

**12.18.010 Definitions.**

As used in this chapter:

“Adjacent property” means property immediately adjacent to a sidewalk.

“Emergency” means an event or condition that presents an imminent hazard to public safety.

“Permit” means an encroachment permit issued under this chapter.

“Permittee” means any person granted a permit under this chapter.

“Sidewalk” means a paved surface in a City right-of-way that has been improved for pedestrian travel.

"Storefront" means the first story street frontage of a building that is used or occupied by a single owner or lessee for commercial purposes, and through which the public is given access to the interior of the building.

**12.18.020 Sidewalk encroachments prohibited; exceptions.**

No person may place an object of any kind on or over a sidewalk that in any manner prevents or restricts pedestrian access to or movement upon the sidewalk, including without limitation any merchandise, furniture, container, vending machine, sign, equipment, structure, or barricade, except for the following:

(a) An object placed on or over a sidewalk by the owner or occupant of the adjacent storefront in accordance with the terms of an encroachment permit issued under section 12.18.030;

(b) An object placed on or over a sidewalk in accordance with an outdoor dining permit issued under Section 12.12.100;

(c) Work performed in accordance with a building permit issued by the City under Title 14 of this code;

(d) The construction or repair of a street or sidewalk by the City; or

(e) The construction or repair by a public utility of a utility facility located on, under or over a street or sidewalk with the permission of the City.

**12.18.030 Encroachment permit--Sidewalk.**

(a) The owner or occupant of a storefront may apply to the city manager for an encroachment permit on a form provided by the city manager, which shall include:

(1) The name and mailing address of the applicant;

(2) If an applicant is not a natural person, the business entity form and jurisdiction of incorporation or organization of the applicant;

(3) The name of the business owning or occupying the storefront adjacent to the sidewalk where the encroachment is to be located;

(4) A description of the objects that are to be placed on or over the sidewalk, and a drawing to scale showing their location and dimensions; and

(5) The encroachment fee specified in the City fee schedule.

(b) The city manager may grant an encroachment permit upon finding:

(1) the application meets the requirements of subsection (a) of this section;

(2) the permitted encroachment reasonably provides for the safe and unobstructed movement of pedestrians, and safe and unobstructed sidewalk access and building ingress and egress for fire and emergency purposes.

(c) The city manager may issue a permit for a sidewalk encroachment subject to such conditions as in the judgment of the city manager are necessary to protect the public health, safety and welfare.

(d) A permit for a sidewalk encroachment shall be issued for a term that expires on December 31 of the calendar year of its issuance. It shall identify the objects that are permitted to be placed on or over the sidewalk, and a drawing to scale showing their location and dimensions. It shall state that the permission granted is temporary in nature; that it grants no interest in real property; that it is revocable upon the city manager finding that a term of the permit has been violated or if the permitted use shall become contrary to public safety or convenience.

**12.18.040 Encroachment permit—Other city property.**

(a) A person desiring to use or occupy city property other than a sidewalk may apply for an encroachment permit on a form provided by the city manager, which shall include:

- (1) The name and mailing address of the applicant;
- (2) If an applicant is not a natural person, the business entity form and jurisdiction of incorporation or organization of the applicant;
- (3) A description of the city property where the encroachment is to be located;
- (4) A description of the nature of the proposed use or occupancy of the city property, and its proposed duration, and a drawing to scale showing the area to be used or occupied and the location and dimensions of any objects to be placed therein; and
- (5) The encroachment fee specified in the City fee schedule.

(b) The city manager may grant an encroachment permit upon finding:

- (1) the application meets the requirements of subsection (a) of this section;
- (2) the permitted encroachment does not interfere with the city's use and occupancy of the property, and is consistent with public safety and convenience.

(c) The city manager may issue an encroachment permit subject to such conditions as in the judgment of the city manager are necessary to protect the public health, safety and welfare.

(d) An encroachment permit shall be issued for an indefinite term. It shall identify the nature of the permitted use or occupancy of the city property, and its duration, and a drawing to scale showing the area to be used or occupied and the location and dimensions of any objects to be placed therein. It shall state that it grants no interest in real property, and that it is revocable at any time by the city manager for the convenience of the city.

**12.18.050 Indemnification of city.**

The permittee shall be responsible for all claims and liabilities arising out of the use or activity that is the subject of the permit or failure to perform the permittee's obligations under the permit. The permittee shall indemnify, defend, save and hold harmless the city, and its officers and employees, from and against any and all lawsuits, claims or actions brought by any person for or on account of damage to property, or injury, disease, illness or death of persons, including all costs and expenses incident thereto, arising wholly or in part from or in connection with such use, activity or failure to perform.

**12.18.060 Assignment and transfer of permit.**

A permittee may not assign or transfer the permit or any rights thereunder. A permittee may not allow another person to conduct any activity or use under the authority of the permittee's permit.

**12.18.070 Repair of damage.**

Upon notice from the city manager, a permittee shall promptly repair any damage to city property that results from the permittee's activity or use under the permit, and until such repair is completed, take all measures that are required to

protect users of the property from injury resulting from such damage. If the permittee fails to make such repairs or take such measures within a reasonable time, the city may do so at the expense of the permittee.

**12.18.080 Right of city to enter.**

The city may enter upon any area that is the subject of a permit at any time to inspect the use or activity that is conducted under the permit for compliance with permit terms and conditions, to perform any required repair or maintenance to city property, or to respond to an emergency.

**Section 4:** 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: March, 17, 2016

Second Reading:

Effective Date:





CITY OF KODIAK  
ENCROACHMENT PERMIT  
INTO CITY OWNED PROPERTY OR RIGHT OF WAY

<b>DATE</b>		<b>LEGAL ADDRESS</b>	
<b>NAME (print)</b>		<b>MAILING ADDRESS</b>	
<b>CITY</b>		<b>STATE</b>	
<b>HOME PHONE #</b>		<b>WORK PHONE #</b>	

DESCRIPTION OF PROPOSED ENCROACHMENT:

ATTACH A SKETCH OF PROPOSED ENCHROACHMENT. Show the property lines and the dimension of the proposed encroachment. It is suggested the encroachment be sketched on your property as-built drawing.

Subject to acceptance of this permit, the applicant must understand and agree to the following terms and conditions:

1. This is not an exclusive right to use the publicly owned area.
2. The encroachment shall be removed, at your expense, upon notice from the City of Kodiak if access is needed for utility and street maintenance.
3. Should the City of Kodiak decide to use the property or right of way, the encroachment shall be removed, at your own expense, and the applicant shall make different arrangements which do not result in a conflict with City of Kodiak’s use of its property, or right of way.
4. The City of Kodiak maintains all of its rights and interest in the property, or right of way, and conveys no interest to the applicant other than permission to allow the encroachment until the City of Kodiak determines otherwise.

Applicant Signature:

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

**Reviewed & Accepted by:**

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

Mark Kozak, Public Works Director

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

Aimée Kniazowski, City Manager

**FOR OFFICE USE ONLY:**

<p>Annual Permit- 12 months  <input type="checkbox"/> \$30.00 per permit                  Total: \$ _____                  Date _____</p>	<p>Instructions: Complete all requested information including signature and date. Return to City of Kodiak Building Department Room 208, 710 Mill Bay Road, Kodiak AK. 99615. For Additional information please call Building Department at 907-486-8070.                  Comments:</p>
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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 Kelly Mayes, Finance Director

**Date:** April 14, 2016

**Agenda Item:** **IV. b. Second Reading and Public Hearing, Ordinance No. 1345, Enacting Kodiak City Code 3.16.015, Definitions, Kodiak City Code 3.16.025, Investment Committee, and Kodiak City Code 3.16.027, Investment Manager; And Amending Kodiak City Code 3.16.020, Treasury Management, and Kodiak City Code 3.16.030, Permissible Investments; to Provide for an Investment Committee to Oversee Investments of City Funds, Professional Management of the Investments and Related Matters**

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**SUMMARY:** The City recently adopted Resolution No. 2016–09 to form an investment committee to enhance and improve the management of City financial assets. The Investment Committee’s responsibilities include, but are not limited to, the selection and oversight of an investment management and advisory firm to manage the City’s investments. Ordinance No. 1345 will amend the Kodiak City Code Chapter 3.16 Investment and Collateralization of Public Funds and change the authority of investing City funds from the Finance Director to the Investment Committee.

**PREVIOUS COUNCIL ACTION:** Per the City Council work session on February 9, 2016, the Mayor and Council voiced support for a Councilmember to serve on the new Investment Committee. On February 25, 2016, the City Council adopted Resolution No. 2016–09 to form the Investment Committee. Responsibilities of the Investment Committee include selection and oversight of an investment firm to manage the City’s investments. The Council passed Ordinance No. 1345 in the first reading at the March 17, 2016, special meeting and advanced to second reading and public hearing at this meeting.

**DISCUSSION:** The Finance Director of the City of Kodiak has managed the City’s investment portfolios for many years. Due to a slowly recovering economy, many investments are not providing substantial returns on investments. The Finance Director researched information regarding investment advisory and management services. Due to the complexities of selecting an appropriate company to oversee the City’s investments, the Finance Director suggested a committee be formed for the selection, and periodic oversight, of the investment firm selected. The City Council agreed that additional solicitation, and formal RFP’s would provide a greater potential for earning higher returns on City investments. The City Council also suggested that an elected City Councilmember serve on the committee. Resolution No. 2016–09 outlined the composition, responsibilities, and positions to be appointed to the Investment Committee.

The Finance Director discussed Resolution No. 2016-09 and KCC Chapter 3.16 and Chapter 3.28 with Tom Klinkner, City Attorney, and Michelle Shuravloff-Nelson, Deputy City Clerk on March 3, 2016. Mr. Klinkner provided insights on the amendments that would be required to the City of Kodiak Municipal Code. If adopted, Ordinance No. 1345 would amend KCC Chapter 3.16 references to alter the investing authority of City funds from the Finance Director to the Investment Committee and to hire, monitor, and direct an investment firm to manage City investments.

**ALTERNATIVES:**

- 1) Adopt Ordinance No. 1345 in the second reading following the public hearing, which is recommended by staff and is supported by previous Council discussions and actions.
- 2) Amend or do not adopt Ordinance No. 1345, which would not be consistent with the direction and support from the Council to strengthen the City's investment portfolios.

**FINANCIAL IMPLICATIONS:** Once the Investment Committee is in place and a professional financial management firm is selected, the City's returns on its various investments are expected to increase.

**LEGAL:** Staff worked with the City Attorney on this issue. The attorney also prepared the Ordinance No. 1345, which reflects necessary Code amendments.

**STAFF RECOMMENDATION:** Staff recommends Council adopt Ordinance No. 1345 in the second reading following the public hearing.

**CITY MANAGER'S COMMENTS:** It has been my hope for quite some time that the City take a closer look at ways to better manage investments than to expect the Finance Director to make investment decisions without the benefit of access to professional investment advisors. I am very happy that Kelly Mayes took this idea up, investigated it, and developed a path forward with the help of staff and the City Attorney. I strongly urge Council to adopt this ordinance following the public hearing.

**ATTACHMENTS:**

Attachment A: Ordinance No. 1345

**PROPOSED MOTION:**

Move to adopt Ordinance No. 1345.

**CITY OF KODIAK  
ORDINANCE NUMBER 1345**

**AN ORDINANCE OF THE COUNCIL OF THE CITY OF KODIAK ENACTING KODIAK CITY CODE 3.16.015, DEFINITIONS, KODIAK CITY CODE 3.16.025, INVESTMENT COMMITTEE, AND KODIAK CITY CODE 3.16.027, INVESTMENT MANAGER; AND AMENDING KODIAK CITY CODE 3.16.020, TREASURY MANAGEMENT, AND KODIAK CITY CODE 3.16.030, PERMISSIBLE INVESTMENTS; TO PROVIDE FOR AN INVESTMENT COMMITTEE TO OVERSEE INVESTMENTS OF CITY FUNDS, PROFESSIONAL MANAGEMENT OF THE INVESTMENTS AND RELATED MATTERS**

WHEREAS, historically, the Finance Director of the City of Kodiak managed all City investments; and

WHEREAS, given the increasing complexity of the investment environment, the Finance Director has recommended that the City establish an investment committee to oversee the investment of City funds, and that those investments be managed by a professional investment manager.

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

**Section 1:** Kodiak City Code 3.16.015, Definitions, is hereby enacted amended to read as follows:

3.16.015 Definitions

As used in this chapter:

“Committee” means the investment committee established under Section 3.16.025.

“Investment manager” means the person or persons with whom the city contracts to perform the services of investment manager under Section 3.16.027.

**Section 2:** Kodiak City Code 3.16.020, Treasury management, is hereby amended to read as follows (new text is **bold and underlined**, deleted text ~~stricken~~):

3.16.020 Treasury management

The finance director shall be responsible for treasury management, **and the committee shall be responsible for** ~~including~~ investment and reinvestment of all city funds.

**Section 3:** Kodiak City Code 3.16.025, Investment committee, is hereby enacted to read as follows:

3.16.025 Investment committee

(a) There shall be an investment committee, that shall have overall responsibility for and administration of the investment of all city funds.

(b) The committee shall consist of the following five voting members:

- (1) The city manager
- (2) The deputy city manager
- (3) The finance director
- (4) The city clerk
- (5) A member of the city council, appointed by motion of the city council.

(c) The finance director shall be the chair of the committee and preside at all committee meetings. The committee shall hold quarterly regular meetings, and special meetings as circumstances require. Three committee members shall constitute a quorum of the committee. The committee shall act by majority vote of the members present and constituting a quorum.

(d) The committee shall have the following powers and duties:

- (1) Review the city's investment policy periodically, and recommend changes to the investment policy to the city council.
- (2) Select one or more investment managers to perform the duties prescribed in Section 3.16.027.
- (3) Monitor the performance of each investment manager.

**Section 4:** Kodiak City Code 3.16.027, Investment manager, is hereby enacted to read as follows:

3.16.027 Investment manager

(a) An investment manager retained by the committee shall be licensed by the federal and state governments to perform its duties under this section.

(b) An investment manager retained by the committee shall have the powers and duties assigned by the committee, which may include without limitation the following:

- (1) Assisting the committee in strategic planning for the city's investments, including assistance in developing an investment policy, recommendations on asset allocation strategy, and investment vehicle structure.
- (2) Provide the committee with written reports on the performance of the city's investments at the frequency required by the committee.
- (3) Meet with the committee quarterly to review performance, suggest recommendations, and implement approved actionable ideas;
- (4) Manage the city's investments in a manner consistent with the investment objectives, guidelines, and constraints outlined in the city's investment policy and in accordance with applicable laws.
- (5) Act as a fiduciary with respect to the investments it manages.

**Section 5:** Kodiak City Code 3.16.030, Permissible investments, is hereby amended to read as follows (new text is **bold and underlined**, deleted text ~~stricken~~):

3.16.030 Permissible investments

**City funds shall be invested** ~~The finance director shall invest public funds~~ only in the following types of security investments:

(a) Bonds, notes, or other obligations, direct or otherwise, of the United States;

(b) Bonds and other evidence of indebtedness of the state of Alaska or its political subdivisions or other states of the United States;

(c) Savings accounts, certificates of deposit, bankers' acceptances, repurchase agreements, and such other security instruments as may be authorized by law; and

(d) The Alaska Municipal League Investment Pool, Inc., made in accordance with the terms of that pool's Common Investment Agreement.

**Section 6:** 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: March 17, 2016

Second Reading:

Effective Date:

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## MEMORANDUM TO COUNCIL

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**To:** Mayor Branson and City Councilmembers

**From:** Aimée Kniaziowski, City Manager

**Through:** Mike Tvenge, Deputy City Manager 

**Date:** April 14, 2016

**Agenda Item:** **IV. c. Second Reading and Public Hearing, Ordinance No. 1346, Authorizing a Lease Between the City of Kodiak and United States Department of Transportation, Federal Aviation Administration, Alaska Region for Pillar Mountain Communication Lease Site No. 12, Described as a Parcel of Land Within U.S. Survey 3945**

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**SUMMARY:** The City of Kodiak has leased Communication Site No. 12 on Pillar Mountain to the Federal Aviation Administration (FAA) since 2004. The most recent lease will expire in June, and the FAA wishes to continue to lease the site. Due to the terms, the lease must be approved by ordinance. Staff recommends Council adopt Ordinance No. 1346 in the second reading following the public hearing.

**PREVIOUS COUNCIL ACTION:** The Council originally authorized a one-year lease of Pillar Mountain Communication Site No. 12 with the FAA in 2004. The lease was renewed for a five-year term in 2005. Council approved a five-year lease in 2011, which will expire on June 30, 2016. Council reviewed the proposed new lease and Ordinance No. 1346 at the March 15, 2016, work session and passed the ordinance in the first reading at the March 17, 2016, special meeting and advanced it to second reading and public hearing at this meeting.

**DISCUSSION:** The FAA has leased Pillar Mountain Site No. 12 from the City since 2004. The most recent lease will expire at the end of June and needs to be renewed. The FAA and City staff reviewed the new lease and have agreed to the terms which are the same as those of the current lease.

**ALTERNATIVES:** Council may adopt Ordinance No. 1346 in the second reading following the public hearing, which is staff's recommendation. Council may decline to adopt the ordinance, which would require the Tenant's lease to continue on a month-to-month basis. The Council may also cancel the existing lease, which is not recommended.

**FINANCIAL IMPLICATIONS:** At least seven years ago, the City revalued its communication site leases to reflect use, rather than appraised land value. The revaluation resulted in increased revenues for the City. The annual lease rent is Six Thousand Six Hundred Dollars (\$6600).



**LEGAL:** The City Attorney drafted the lease and the ordinance to authorize the lease.

**STAFF RECOMMENDATION:** Staff recommends Council adopt Ordinance No. 1346 in the second reading following public hearing.

**CITY MANAGER'S COMMENTS:** I recommend Council adopt this ordinance following the public hearing, so we can finalize a new lease for this site with the FAA.

**ATTACHMENTS:**

Attachment A: Ordinance No. 1346

Attachment B: Pillar Mountain Lease No. 12 FAA SLA#1

Attachment C: Pillar Mountain Lease No. 12 to FAA

Attachment D: Email Requesting renewal of lease from Mr. Katchatag

**PROPOSED MOTION:**

Move to adopt Ordinance No. 1346.

**CITY OF KODIAK  
ORDINANCE NUMBER 1346**

**AN ORDINANCE OF THE COUNCIL OF THE CITY OF KODIAK AUTHORIZING A LEASE BETWEEN THE CITY OF KODIAK AND UNITED STATES DEPARTMENT OF TRANSPORTATION, FEDERAL AVIATION ADMINISTRATION ALASKA REGION FOR PILLAR MOUNTAIN COMMUNICATION LEASE SITE NO. 12, DESCRIBED AS A PARCEL OF LAND WITHIN U.S. SURVEY 3945**

WHEREAS, the City owns property on Pillar Mountain known as Pillar Mountain Communication Lease Site No. 12 and

WHEREAS, United States Department of Transportation, Federal Aviation Administration (FAA) desires to lease Communication Lease Site No. 12, and FAA has requested that the City Council authorize the Lease Agreement – Pillar Mountain Communications Site No. 12 ("Lease") that now is before this meeting; and

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

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

**Section 1:** Notwithstanding anything to the contrary in Kodiak City Code Chapter 18.20, the Council of the City of Kodiak hereby authorizes the Lease, Contract No. 222120, with FAA for a term commencing July 1, 2016, and ending June 30, 2021, for the communications site described in the Lease, located on a portion of U.S. Survey 3945 on Pillar Mountain in the City of Kodiak.

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

**Section 3:** This ordinance shall be published in full within ten days after its passage.

**Section 4:** 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 take 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: March 17, 2016

Second Reading:

Effective Date:



U.S. Department  
of Transportation  
**Federal Aviation  
Administration**

## SUPPLEMENTAL LEASE AGREEMENT

1a. Building Name Pillar Mt. Communications Site 12	1b. Building Address	
1c. City Kodiak	1d. State AK	1e. Zip Code 99615

THIS AGREEMENT, made and entered into and between the City of Kodiak whose address is 710 Mill Bay Road, Kodiak, AK 99615, hereinafter called the Lessor, and the UNITED STATES OF AMERICA, herein after called the Government:

WHEREAS, the parties hereto desire to amend the above Lease effective as of 15<sup>th</sup> day of August, 2011.

NOW THEREFORE, these parties for the considerations hereinafter mentioned covenant and agree that the said Lease is amended, as follows:

**3. Term.** The Term of this lease ("Term") shall commence the 1<sup>st</sup> day of July, 2016 and shall expire at midnight on the 30<sup>th</sup> day of June 2021, unless sooner terminated as herein provided.  
<Insert additional information or attachment(s) as necessary>

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

Important: Lessor x is,  is not required to sign this document and return 2 copies to the issuing office.

### 2.6.13 Supplemental Lease Agreement (SLA)

Added: 07/2014

OMB Control No. 2120-0595

Page 1 of 2

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

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**LESSOR:**

BY \_\_\_\_\_  
Signature Title Date

IN THE PRESENCE OF (witnessed by)

\_\_\_\_\_  
Signature Address

**UNITED STATES OF AMERICA:**

BY \_\_\_\_\_ Contracting Officer  
Signature Title Date

## LEASE AGREEMENT

### PILLAR MT. COMMUNICATIONS SITE NO. 12 FEDERAL AVIATION ADMINISTRATION

LEASE AGREEMENT dated as of the 1 day of July 2016 by and between the **City of Kodiak**, a municipal corporation of the State of Alaska ("City"), whose address is 710 Mill Bay Road, Kodiak, Alaska 99615, and the **United States Department of Transportation, Federal Aviation Administration Alaska Region** ("Tenant"), whose address is 1601 Lind Ave. SW, Renton, WA 98057-3356. For and in consideration of the covenants and conditions contained herein, the parties agree as follows:

**1. Premises.** Subject to the terms and conditions herein, City leases to Tenant the premises ("Premises") described as a parcel of land within U.S. Survey 3945 in the Kodiak Recording District, Third Judicial District, State of Alaska, more particularly described as follows:

Commencing at a brass cap monument set in a gun turret "U.S. Army Corp of Engineers ALKOD RM 2";

Thence S 51° 43' 30" E, 212.27 feet to the True Point of Beginning;

Thence N 41° 19' 44" E, 76.13 feet;

Thence S 52° 56' 02" E, 80.87 feet;

Thence S 37° 03' 58" W, 75.92' feet;

Thence N 52° 56' 02" W, 86.53 feet to the True Point of Beginning.

Containing 6,354.6 square feet, more or less.

**2. Authorized Uses of Premises.** Tenant shall use the Premises only for the purpose of maintaining, operating and replacing existing communications equipment and for no other purpose without first obtaining the written consent of the City.

**3. Term.** The term of this Lease ("Term") shall commence the 1<sup>st</sup> day of July 2016 and shall expire at midnight on the 30th day of June 2021, unless sooner terminated as herein provided.

**4. Rent.** The annual rent for the Premises ~~for the first year of the Term~~ shall be Six Thousand Six Hundred Dollars (\$6,600.00) payable in advance in equal monthly installments of Five Hundred Dollars (\$550.00) on the first day of each month.

Payment shall be made by wire, check, bank draft or money order made payable to City of Kodiak. Tenant will abide by the Prompt Payment Act, 39 USC § 3901, et seq. If a monthly payment is not paid by the 7th of each month, interest on the amount due, but not paid, shall be computed as the rate of interest established by the Secretary of the Treasury for interest payments under Section 12 of the Contract Disputes Act of 1978 (41 USC § 611), which is in effect at the time Tenant accrues the obligation to pay a late payment interest penalty.

5. **Utilities.** Tenant shall pay for any utility service that it requires for its use of the Premises.

6. **Holding Over.** If Tenant continues to occupy the Premises following the expiration of the Term of this Lease or any renewal with the consent of the City, Tenant's occupancy shall be treated as a month-to-month tenancy at a rent equal to one hundred fifty percent (150%) of the rent in effect under this Lease immediately prior to the commencement of the holdover period.

7. **Improvements.** Tenant may not construct or install any permanent or temporary improvements on the Premises other than the facilities identified in Section 2 without first obtaining the written consent of the City. Tenant shall properly locate all improvements on the Premises, and shall not encroach upon other lands of the City or any other person.

8. **Maintenance of Premises.** Tenant shall at all times, and at Tenant's sole cost and expense, keep and maintain the entire Premises in a neat, orderly, and slightly condition. Tenant shall not cause or permit any junk, litter, debris, scrap or garbage to be accumulated or stored upon the Premises without the express written permission of the City.

9. **Surrender of Premises; Disposition of Improvements.** Upon the expiration, termination or cancellation of this Lease for any cause whatsoever, Tenant shall peacefully and quietly surrender the Premises in a condition as good as the Premises were at the beginning of the Term. Within one hundred eighty (180) days after such expiration, termination or cancellation of this Lease, Tenant shall either remove all of its improvements and personal property from the Premises and immediately repair any damage to the Premises caused by such removal, or with the consent of City sell such improvements and personal property to the succeeding tenant. City may extend the time for removal if Tenant demonstrates to City's satisfaction that the extension is required to avoid hardship to Tenant. During any period of time after termination or expiration of this Lease that Tenant's improvements or personal property remain on the Premises, Tenant shall pay rent at the rate provided in Section 6 for a holdover period. Title to any improvements or other property owned by Tenant that Tenant fails to dispose of as required by this section shall vest in City. Notwithstanding anything to the contrary in this section, Tenant may not remove any improvements without City consent during any period that Tenant is in default under this Lease.

10. **Liability.** In accordance with and subject to the conditions, limitations, and exceptions set forth in the Federal Tort Claims Act of 1948, as amended (28 USC 2671, et seq.), hereafter termed "the Act," Tenant will be liable to persons damaged by any personal injury, death, or injury to or loss of property, which is caused by a negligent or wrongful act or omission of any employee of Tenant while acting within the scope of his/her office or employment under circumstances where a private person would be liable in accordance with the laws of the place where the act or omission occurred. The foregoing shall not be deemed to extend Tenant's liability beyond that existing under the Act at the time of such act or omission or to preclude Tenant from using any defense

available in law or equity. Nothing in this agreement shall obligate the United States in violation of the Anti-deficiency Act.

**11. Hazardous Material.** Tenant shall not permit or cause any Hazardous Material to be brought upon, kept or used in or about the Premises by its employees, agents, contractors or invitees unless permission is granted by the City. If Tenant breaches this obligation, or if the presence of Hazardous Material on or about the Premises caused or permitted by Tenant results in contamination of the Premises, or if contamination of the Premises otherwise occurs for which Tenant is legally liable for damage resulting therefrom, then Tenant shall indemnify, defend and hold City harmless from any and all claims, judgments, damages, penalties, fines, costs, liabilities or losses (including without limitation diminution in value of the Premises, damages for the loss or restriction of useable space or of any amenity of the Premises, and sums paid in settlement of claims, attorney fees, consultant fees and expert fees) that arise during or after the period in which this Lease is in effect as a direct result of such contamination. This indemnification includes without limitation reasonable and necessary costs incurred in connection with any investigation of Premises conditions or any clean-up, remedial, removal or restoration work required by any federal, state or local government agency or political subdivision because of Hazardous Material present in the soil or groundwater on or under the Premises. Without limiting the foregoing, if the presence of any Hazardous Material on the Premises caused or permitted by Tenant results in any contamination of the Premises, Tenant shall take all actions at its expense as are necessary to return the Premises to the condition existing prior to Tenant's introduction of any such Hazardous Material to the Premises; provided that City's approval of such actions shall first be obtained, which approval shall not be unreasonably withheld so long as such actions would not potentially have any material adverse long-term or short-term effect on the Premises. As used herein, the term "**Hazardous Material**" means any hazardous or toxic substance, material or waste, that is or becomes regulated by any local governmental authority, the State of Alaska, or the United States Government. City agrees to indemnify, defend and hold harmless, at its expense, Tenant from any and all costs, losses, damages, claims, suits or other liabilities, including reasonable attorney fees, arising from or related to contamination occurring at the Premises released by City, its agents or its other tenants. Neither party shall have the duty to indemnify to the extent the damages are caused by the misconduct, fault or negligence of the indemnitee, its employees, agents or invitees.

**12. Quiet Enjoyment.** Provided Tenant is not in default of this Lease, Tenant shall have peaceful and quiet use and possession of the Premises without hindrance on the part of City, and City shall warrant and defend Tenant in such peaceful and quiet use and possession against the claims of all persons claiming by, through or under City.

**13. Inspection.** Tenant shall permit the authorized agents and employees of the City to enter upon the Premises at any reasonable time for the purpose of inspecting the condition of the Premises or the use thereof.

**14. Liens.** Tenant shall not cause or permit any lien or encumbrance to be imposed on the Premises or any part thereof. Tenant shall, at its sole expense, obtain



the release and discharge of any such lien or encumbrance by payment, bonding or otherwise, within thirty (30) days after receipt of written notice from the City.

**15. Charges.** Tenant shall pay when due all charges which are levied at any time during the Term upon its leasehold interest or any of its improvement on the Premises.

**16. Compliance with Laws and Regulations.** Tenant, at its sole cost and expense, shall comply with and shall cause the Premises to comply with all applicable federal, state, municipal and other governmental statutes, laws, rules, orders, regulations and ordinances affecting the Premises or any part thereof, or the use thereof, whether or not any such statutes, laws, rules, orders, regulations or ordinances which may be hereafter enacted involve a change of policy on the part of the governmental body enacting the same.

**17. Assignment and Subleasing.** Tenant may not assign all or any portion of this Lease without first obtaining the written approval of City. Any assignment approved by City shall be subject to all terms and provisions of this Lease. Any assignment executed without the written approval of City shall be void. Tenant may not sublease the Premises, either in whole or in part, without first obtaining the written approval of City.

**18. Condemnation.** If the Premises are taken by the power of eminent domain, the term of this Lease will end on the date Tenant is required to surrender possession of the Premises. City is entitled to all the condemnation proceeds, except Tenant will be paid the portion of the proceeds attributable to the fair market value of any improvements placed on the Premises by Tenant. Rent will also be adjusted to apply to the period ending on the date Tenant is required to surrender possession of the Premises.

**19. Force Majeure.** Either party may terminate this Lease upon thirty (30) days' written notice to the other, in accordance with Section 23, if any cause that occurs without the fault or negligence of either party renders the Premises unusable for more than 30 days. Such causes include without limitation acts of God or the public enemy, acts of the United States, fires, floods, epidemics, quarantine restrictions or strikes. No party shall be liable for any delay or failure in performance due to such events outside of the party's reasonable control. The obligations and rights of the excused party shall be extended on a day-to-day basis for the duration of the cause of the delay.

**20. Termination.** City may terminate this Lease and recover possession of the Premises by giving Tenant thirty (30) days' prior written notice, upon the happening of any of the events listed below, which are not cured within such thirty (30) day notice period:

- (a) Tenant's failure to pay when due the rents or fees specified in this Lease, including any increases made pursuant to this Lease.
- (b) The return for insufficient funds of checks for payment of rents or fees.
- (c) The use of the Premises by Tenant for any purpose not authorized by this Lease.

(d) The failure of Tenant to perform any obligation in this Lease. If it is not possible for Tenant to cure a default, other than a default in payment of the rents or fees specified in this Lease, within such thirty (30) day cure period, Tenant shall not be in default under this Lease if it has promptly commenced and is diligently pursuing the cure thereof.

Tenant may terminate this Lease with thirty (30) days' written notice if for any reason the Premises become unsuitable for its communications purposes, or if City fails to perform any obligation in this Lease. If it is not possible for City to cure a default within such thirty (30) day cure period, City shall not be in default under this Lease if it has promptly commenced and is diligently pursuing the cure thereof.

**21. Remedies Cumulative; No Waiver.** No reference to any specific right or remedy shall preclude City from exercising any other right or from having any other remedy or from maintaining any action to which it may otherwise be entitled at law or in equity. No failure by City to insist upon the strict performance of any agreement, term, covenant or condition hereof, or to exercise any right or remedy consequent upon a breach thereof, and no acceptance of full or partial rent during the continuance of any such breach, shall constitute a waiver of any such breach, agreement, term, covenant or condition. No waiver by City of any breach by Tenant under this Lease shall affect or alter this Lease in any way whatsoever.

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

**23. Notices.** Any notice, request, demand, approval or consent given or required to be given under this Lease shall be in writing and shall be hand delivered or sent by registered or certified mail addressed as follows:

City of Kodiak:  
Attn.: City Manager  
710 Mill Bay Road  
Kodiak, Alaska 99615  
Telephone: (907) 486-8640

Federal Aviation Administration:  
Real Estate and Utilities Group  
1601 Lind Ave. SW  
Renton, WA 98057-3356

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

**24. Entire Agreement; Modification.** This Lease is the final expression of the parties' agreement and a complete and exclusive statement of the terms thereof, all negotiations, considerations and representations between the parties having been incorporated herein. This Lease can be modified only by a writing signed by the party against whom the modification is to be enforced.

**25. Severability.** If any term or provision of this Lease, or the application thereof to any person or circumstance, shall be invalid or unenforceable, the remainder

of this Lease, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Lease shall be valid and be enforced to the fullest extent permitted by law.

**26. No Third Party Beneficiary.** Nothing contained in this Lease shall confer any rights on a person other than the parties hereto.

**27. Applicable Law.** To the extent applicable, this Lease and the rights and obligations of the parties hereunder shall be governed by and construed in accordance with the laws of the State of Alaska.

Special Condition: This lease superseded FAA Lease No. DTFAWN-11-L-00203.

IN WITNESS WHEREOF the parties hereto have executed this Lease as of the date first set forth above.

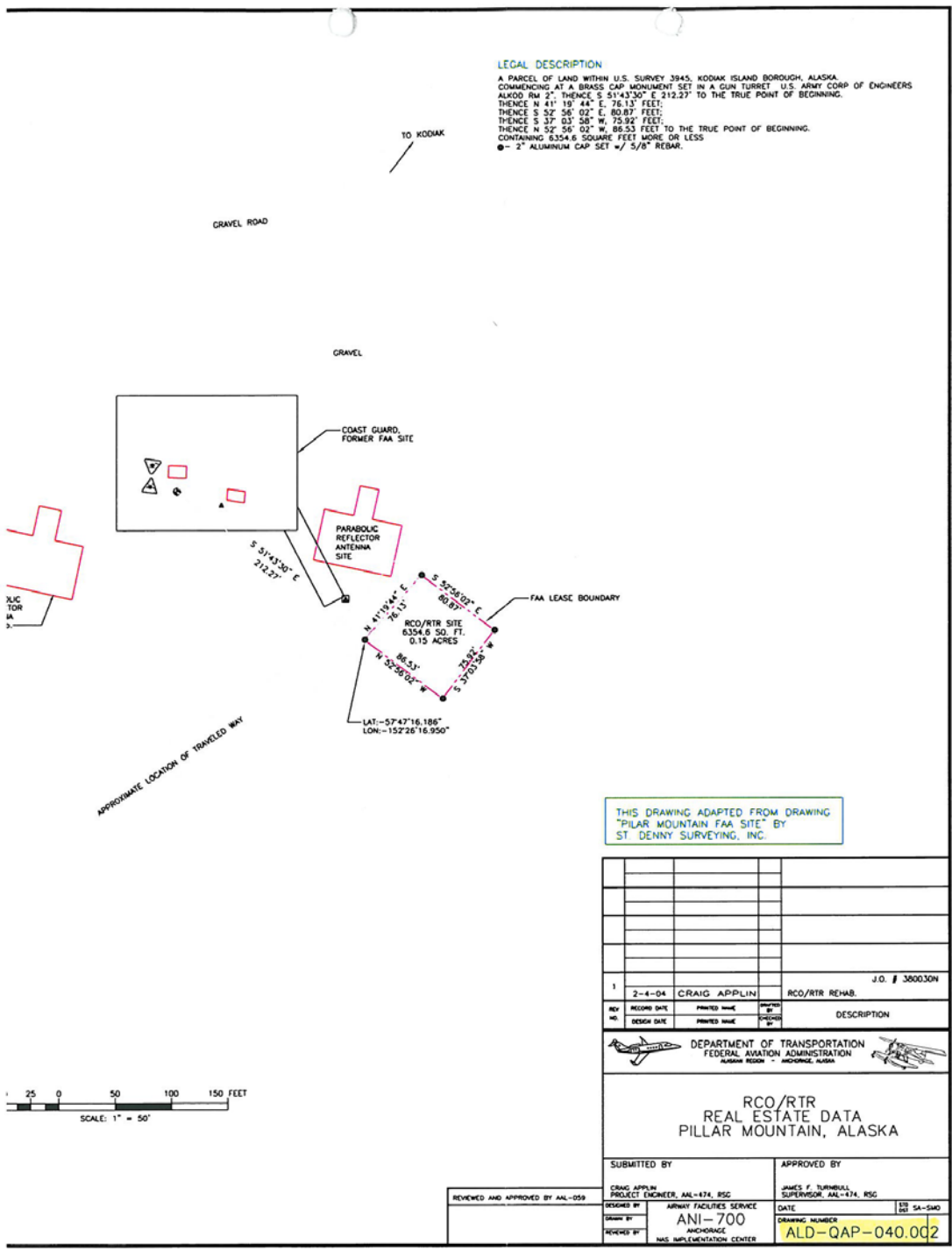
**CITY OF KODIAK**

**U.S. DEPARTMENT OF  
TRANSPORTATION FEDERAL AVIATION  
ADMINISTRATION  
ALASKA REGION**

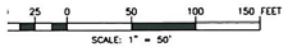
\_\_\_\_\_  
Aimee Kniazowski, City Manager

**Attest:**

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



THIS DRAWING ADAPTED FROM DRAWING "PILLAR MOUNTAIN FAA SITE" BY ST DENNY SURVEYING, INC.



1	2-4-04	CRAIG APPLIN	RCO/RTR REHAB.	J.O. # 300030N
REV NO.	RECORD DATE	PRINTED NAME	DESIGNED BY	DESCRIPTION
NO.	DESIGN DATE	PRINTED NAME	CHECKED BY	

DEPARTMENT OF TRANSPORTATION  
 FEDERAL AVIATION ADMINISTRATION  
 ALASKA REGION - ANCHORAGE, ALASKA

**RCO/RTR  
 REAL ESTATE DATA  
 PILLAR MOUNTAIN, ALASKA**

SUBMITTED BY CRAIG APPLIN PROJECT ENGINEER, AAL-474, RSG	APPROVED BY JAMES F. TURNBULL SUPERVISOR, AAL-474, RSG
DESIGNED BY AIRWAY FACILITIES SERVICE	DATE 1/10/04 SA-SAD
DRAWN BY ANI-700	DRAWING NUMBER ALD-QAP-040.002
CHECKED BY NAS IMPLEMENTATION CENTER	

Pillar Mtn. Communication Site No. 12  
 Federal Aviation Administration 2016-2021  
 City Record No. 222120  
 DTFAWN-16-L-00103  
 Ord. 1346

**Marlar, Debra**

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**From:** Paul.CTR.Katchatag@faa.gov  
**Sent:** Thursday, June 25, 2015 2:32 PM  
**To:** Marlar, Debra  
**Cc:** Brad.Grooms@faa.gov; brian.schum@faa.gov  
**Subject:** FAA Pillar Mt Lease

Hi Debra,

The FAA Lease for the RCO facility at your Pillar Mountain site, DTFAWN-11-L-00203 will be expiring 06/30/2016. We will be sending your office a DRAFT Supplemental Lease Agreement (SLA #1) to extend the term of the lease to September 30, 2021 for your review.

FAA Real Estate management has directed staff to begin the renewal process early so that there will be no lapses in coverage.

Please reply to this email with your intention to renew this lease.

Your assistance is greatly appreciated and thank you,

Paul S. Katchatag  
Real Estate Management Specialist - ANM  
Subsystem Technologies, Inc.  
FAA Logistics Support Services Contract (LSSC)  
ALO-810 & ALO-820 - Northwest Mountain Region (ANM)  
Office: 425-227-2392  
[PKatchatag@subsystem.com](mailto:PKatchatag@subsystem.com)

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# **NEW BUSINESS**

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## MEMORANDUM TO COUNCIL

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**To:** Mayor Branson and City Councilmembers

**From:** Aimée Kniazowski, City Manager

**Thru:** Mike Tvenge, Deputy City Manager *MT*

**Date:** April 14, 2016

**Agenda Item:** V. a. **First Reading, Ordinance No. 1347 Rescinding Ordinance No. 1314 and Authorizing Amendment of Lease No. 211696 Between the City of Kodiak and ACS of the Northland, LLC for Pillar Mountain Communications Site No. 10**

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**SUMMARY:** Council adopted Ordinance No. 1314 (Attachment B) on January 23, 2014, which authorized Lease Agreement No. 211696 a five year communication site lease with ACS of the Northland LLC. The lease was not signed by ACS as they requested changes to Section 8, the insurance requirement. Staff recommends rescinding Ordinance No. 1314 and passing Ordinance No. 1347 (Attachment A) in the first reading and amending the Lease Agreement (Attachment C) to reflect ACS has the option to self insure.

**PREVIOUS COUNCIL ACTION:** City Council adopted Ordinance No. 1314, January 23, 2014, authorizing a communication site lease to ACS of the Northland LLC.

**BACKGROUND:** Lease Agreement No. 211696 for Pillar Mountain Site No. 10 was returned by ACS without signature on May 29, 2014. Gayle Doty Manager of ACS Real Estate Program requested minor changes to the agreement with the most notable change allowing for ACS to meet the insurance requirement through self insurance and not procure an additional policy.

**DISCUSSION:** ACS of the Northland LLC dba Alaska Communications System (ACS) continues to operate from this location, Site No. 10 without a lease agreement in place; however they are current with rental payments. By amending the lease agreement allowing ACS of the Northland LLC to substitute self insurance for a separate specific insurance policy, we can move forward with this lease and close the loop on a two year delay. This site is a microwave relay station for customers in Chiniak, Alaska.

**ALTERNATIVES:**

- 1) Pass Ordinance No. 1347 on the first reading and move to second reading and public hearing, which is recommended by staff.
- 2) Delay or not pass Ordinance No. 1347, which leaves the lease agreement in the current status, unofficial, which is not recommended.



**FINANCIAL IMPLICATIONS:** As stated earlier, rental payments are current for this site and a signed lease would ratify the agreement terms.

**LEGAL:** Legal counsel has been included in this amendment discussion and has concluded that ACS would likely have sufficient assets to cover a claim of \$1,000,000, which is the lease requirement. Additional language in the lease, Section 7 provides indemnity for the City as a condition of the Lessee's use of the site under this lease. KCC 18.20.235 only requires such insurance coverage as the City deems appropriate, and therefore it is certainly possible to decide that self insurance is appropriate for this lease. If Council so chooses, the City could ask ACS for a corporate guarantee. ACS would guarantee on behalf of the smaller company, ACS of the Northland LLC.

**STAFF RECOMMENDATION:** The request by ACS is reasonable and qualifies under KCC 18.20.235. Therefore, Staff recommends rescinding Ordinance No. 1314; amending Lease Agreement No. 211696 to reflect language changes to Section 8 Insurance, allowing ACS the option to substitute self insurance for a specific policy.

**DEPUTY CITY MANAGER'S COMMENTS:** The terms and conditions of this lease have been reviewed by Boyd, Chandler & Falconer LLP. Their comments provided little or no concern with the requested self insurance provision. I agree with that decision and am comfortable knowing the City is included in an indemnification clause, which I mentioned above. We are currently without a signed lease agreement and it would be prudent to move forward with this ordinance to create an official agreement.

**ATTACHMENTS:**

Attachment A: Ordinance No. 1347

Attachment B: Ordinance No. 1314

Attachment C: Pillar Mountain Lease Site No. 10

**PROPOSED MOTION:**

Move to pass Ordinance No. 1347 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 1347**

**AN ORDINANCE OF THE COUNCIL OF THE CITY OF KODIAK RESCINDING  
ORDINANCE NO. 1314 AND AUTHORIZING AMENDMENT OF LEASE NO. 211696  
BETWEEN THE CITY OF KODIAK AND ACS OF THE NORTHLAND, LLC, FOR  
PILLAR MOUNTAIN COMMUNICATIONS SITE NO. 10**

WHEREAS, the City owns property on Pillar Mountain known as Pillar Mountain Communications Site No. 10 that it has leased to ACS of the Northland, LLC dba Alaska Communications Systems (ACS) as a microwave antenna site for several years; and

WHEREAS, the Council adopted Ordinance No. 1314 on January 23, 2014, which authorized Pillar Mountain Communication Site No. 10 Lease Agreement No. 211696 with ACS for five years through December 31, 2018; and

WHEREAS ACS desires to amend lease Section 8 Insurance to reflect ACS is self-insured for commercial and automobile liability; and

WHEREAS the City's attorney advised that this lease amendment is authorized by City Code but would require a new ordinance adopted by the City Council; and

WHEREAS, it is in the best interest of the City to amend the lease with ACS to allow ACS to continue to occupy the Property.

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

**Section 1:** Ordinance No. 1314 is rescinded.

**Section 2:** Notwithstanding anything to the contrary in Kodiak City Code Chapter 18.20, the Council of the City of Kodiak hereby authorizes amendment of the Lease, which is attached and incorporated by reference, with ACS for a term of five years, January 1, 2014, through December 31, 2018, for the communications site described in the Lease, located on an unsubdivided portion of U.S. Survey 2538 A, Tract B on Pillar Mountain in the City of Kodiak.

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

CITY OF KODIAK

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MAYOR

ATTEST:

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CITY CLERK

First Reading:  
Second Reading:  
Effective Date:

**CITY OF KODIAK  
ORDINANCE NUMBER 1314**

**AN ORDINANCE OF THE COUNCIL OF THE CITY OF KODIAK AUTHORIZING LEASE NO. 211696 BETWEEN THE CITY OF KODIAK AND ACS OF THE NORTH-LAND, INC., FOR PILLAR MOUNTAIN COMMUNICATIONS SITE NO. 10**

WHEREAS, the City owns property on Pillar Mountain known as Pillar Mountain Commu- nications Site No. 10 that it has leased to Alaska Communications Systems, as a microwave an- tenna site for several years; and

WHEREAS, ACS of the Northland, Inc. dba Alaska Communications Systems (ACS), de- sires to continue leasing the communications site, and has requested that the City Council author- ize the Pillar Mountain Communication Site No. 10 Lease Agreement No. 211696 ("Lease"); and


WHEREAS, it is in the best interest of the City to authorize a lease with ACS that allows for ACS to continue to occupy the Property.

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, which is attached and in- corporated by reference, with ACS for a term of five years, January 1, 2014, through December 31, 2018, for the communications site described in the Lease, located on an unsubdivided portion of U.S. Survey 2538 A, Tract B on Pillar Mountain in the City of Kodiak.

**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, un- til the ordinance is approved at an election by a majority of the qualified voters voting on the question. If no referendum petition with signatures is filed, this ordinance shall go into effect one month after its passage and publication.

CITY OF KODIAK



MAYOR

ATTEST:

  
DEPUTY CITY CLERK



First Reading: January 16, 2014  
Second Reading: January 23, 2014  
Effective Date: February 29, 2013

14 DM

**LEASE AGREEMENT NO. 211696**  
**PILLAR MOUNTAIN LEASE SITE NO. 10**  
**ACS OF THE NORTHLAND, ~~INC.~~ LLC**

THIS LEASE made this 1st day of January 2014, by and between the **City of Kodiak**, an Alaska municipal corporation, herein referred to as "Lessor," and **ACS of the Northland, ~~Inc.~~ LLC dba Alaska Communications System (ACS)**, herein referred to as "Lessee," provides as follows:

**1. Leased Premises.** Upon the terms and conditions herein set forth and subject to the prompt payment and performance by Lessee of each and every sum and other obligation hereinafter referred to, the Lessor does hereby lease, let, and demise to the Lessee, and the Lessee does hereby lease from the Lessor the following described premises:

A portion of land within U.S. Survey 2538A, Tract "B" described as follows:

Commencing at Corner 1, USS Survey 2538, identical with Corner 6, USS 3945 and Corner 11, USS 2537A. THENCE N 36°03'57" W a distance of 353.78 feet along a line common with USS 2538 and USS 3945 to THE TRUE POINT OF BEGINNING.

1. THENCE N 36°03'57" W a distance of 125.00 feet along said line;
2. THENCE S 86°42'47" E a distance of 72.46 feet;
3. THENCE along a tangent curve to the left, central angle 26°30'40", radius 190.00 feet, curve length of 87.91 feet;
4. THENCE S 23°13'28" E a distance of 41.77 feet;
5. THENCE S 53°56'03" W a distance of 125.00 feet to THE TRUE POINT OF BEGINNING

Containing 9,919 square feet.

A copy of said plat of survey is attached hereto and made a part of this Lease. These leased premises are hereinafter referred to as the "Site."

**2. Term.** This Lease shall continue in effect for a period of five (5) years from January 1, 2014 through December 31, 2018, provided, however, that either party shall have the right to cancel this Lease upon ninety (90) days written notice in advance of the date of such cancellation, such notice to be by certified mail sent to the usual mailing address of the party to be notified.

**3. Rental.** Lessee agrees to pay as and for rent the sum of FIVE HUNDRED SEVENTEEN DOLLARS (\$517.00) per month in monthly installments which fall due on the first of each calendar month for the first year of the Lease term and according to the following schedule for the remaining four years.

YEAR	RENTAL
2	102.5% of Year 1
3	105.0% of Year 1
4	107.5% of Year 1
5	110.0% of Year 1

**4. Conditions of Lease.** The Site shall be used solely as a telephone microwave relay station to customers located in Chiniak, Alaska.

**5. Improvements.** Lessor shall have the right to make additions, alterations, or improvements to the Site, which will not impede Lessee's access to or use of the Site. Any improvements constructed by Lessee shall be consistent with the limited use of the Site authorized by this Lease and shall be constructed at Lessee's sole cost and expense. Upon termination of this Lease, such improvements shall become the property of Lessor or, at Lessor's option, will be removed by Lessee at its sole expense.

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

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

**8. Insurance.** Lessee shall further procure and maintain at its sole expense, and keep in full force and effect, policies of public and property damage liability in the amount of ONE MILLION DOLLARS (\$1,000,000) for death or bodily injury, or loss sustained by any one person in any one occurrence, [such insurance can be met through self insurance](#). Lessor and its officers and employees shall be named as insureds in all such policies, ~~which shall include a clause requiring~~ at least thirty (30) days advance written notice to Lessor ~~by the carrier~~ before any cancellation or non-renewal during the term of this lease. The Lessee shall provide the Lessor with proof of such insurance pursuant to this paragraph prior to the effective date of this Lease and this Lease shall not become effective until and unless such proof is made. Unless otherwise expressly agreed to in writing by the Lessor, all insurance coverage required to be obtained under this paragraph shall be placed with a carrier licensed to do business in the State of Alaska. ~~No insurance coverage required by this Lease shall be obtained pursuant to a "claims made" policy unless, at the time such insurance is procured a "tail" policy covering all insured risks is also obtained.~~

## **9. Environment**

For purposes of this section:

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

**Pillar Mt. No. 10 ACS- 12/31/18**

**Lease No. 211696**

**Page 2 of 6**

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

(c) "Hazardous Material" shall mean: (1) Any hazardous waste, any extremely hazardous waste, or any restricted hazardous waste, or words of similar import, as defined in the Resource Conservation and Recovery Act (42 USC §6901 et seq.).

(2) Any hazardous substances as defined in the Comprehensive Environmental Response, Compensation and Liability Act (42 USC §9601 et seq.);

(3) Any toxic substances as defined in the Toxic Substances Control Act (15 USC §2601 et seq.).

(4) Any pollutant as defined in the Clean Water Act (33 USC §1251 et seq.).

(5) Gasoline, petroleum or other hydrocarbon products or by-products.

(6) Asbestos.

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

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

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

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

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

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

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

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

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

(i) The provisions of Section 8 shall survive termination of the Lease.

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

**11. Operation of Equipment.** In installing, operating, or maintaining any equipment on the Site and in its general management of the Site, the Lessee will act in accordance with applicable laws and regulations and so as not to cause interference with any other radio or television transmitting or receiving equipment whether located on the Site or not. Specifically, the Lessee will install all equipment in accordance with industry standards. The Lessee shall at all times protect from interference all frequencies assigned to the Lessor whether or not such frequencies are in use. The Lessee will not do, attempt, or permit any acts in connection with this Lease, which could be construed as a violation of law. The Lessee will review the Federal Communications Commission's Guidelines for Human Exposure to Radiofrequency Emissions ("Guidelines") and Federal Communications Commission OET Bulletin 65, current edition, Evaluating Compliance with FCC Guidelines for Human Exposure to Radiofrequency Electromagnetic Fields on a regular basis. The Lessee will post all proper warnings in plain public view and take all reasonable steps to warn the public of a possible hazard of exposure to radiofrequency emissions.

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

**13. Assignment and Subleasing.** Lessee shall not sublease lands or any part thereof leased from the Lessor without prior written permission signed by the city manager and approved by the council. Subleases shall be in writing and be subject to the terms and conditions of the original lease.

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

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

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



| CITY OF KODIAK

ACS OF THE NORTHLAND, ~~INC.~~LLC

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

\_\_\_\_\_  
Name  
Title

Attest:

Witness:

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

\_\_\_\_\_



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## MEMORANDUM TO COUNCIL

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**To:** Mayor Branson and City Councilmembers

**From:** Aimée Kniaziowski, City Manager

**Thru:** Mike Tvenge, Deputy City Manager and Lon White, Harbormaster

**Date:** April 14, 2016

**Agenda Item:** V. b. Authorization of Emergency Repairs to Pier II Cleats

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**SUMMARY:** The City Manager used emergency authority KCC 2.08.060(f) to authorize repairs to Pier II on March 18, 2016. This memo recommends authorization of that approval. Two cleats at Pier II were damaged by the State Ferry TUSTUMENA. Requests for quotes to perform the repairs were solicited to qualified local vendors. Brechan Construction LLC was the low bidder at \$17,500.

**PREVIOUS COUNCIL ACTION:** None.

**DISCUSSION:** On December 26, 2015, the Alaska Marine Highway vessel TUSTUMENA damaged two cleats that are critically needed at Pier II. The City hired marine engineers PND Inc. to evaluate the structural damage to the Pier and provide design drawings and specifications needed to solicit contractors to perform the repair work. On January 8, 2016, PND Inc. provided a written report of their inspection and findings and submitted completed design drawings and specifications on February 19. Local contractors were solicited for repair quotes. Two qualified contractors responded; Belarde Custom Concrete Co. quoted \$26,520 and Brechan Construction LLC quoted \$17,500. Although the lower priced quote from Brechan Construction was slightly over the City Manager's spending authority, the cleat repair was authorized as an emergency repair due to the critical need to keep Pier II operational. With Pier I out of service during replacement, Pier II is in high demand as a temporary ferry terminal. Additionally the NOAA vessel Oscar Dyson is home ported at Pier II and has been in port much of this winter season. The first cruise ship of the season is scheduled at Pier II on April 25, 2016; repairs need to be completed by then. This action is being brought to Council for official approval.

**ALTERNATIVES:**

- 1) Staff recommends Council authorize Brechan Construction LLC to perform the repair work, and is consistent with past actions.
- 2) Council may delay or not authorize the repair project. This action is not recommended by Staff.

**FINANCIAL IMPLICATIONS:** Initial funding is available in the Harbor Enterprise Fund Repair and Maintenance account. Damages were caused by the AMHS vessel TUSTUMENA. The State of Alaska has approved all repair costs and will fully reimburse the City after work is completed.

**LEGAL:** This action to exceed the City Manager's spending authority is authorized in Kodiak City Code 2.08.060(f).

**STAFF RECOMMENDATION:** Staff recommends approval of the City Manager decision authorizing Brechan Construction LLC to perform emergency repairs to damaged cleats at Pier II.

**DEPUTY CITY MANAGER'S RECOMMENDATION AND COMMENTS:** Due to the critical need for the cleat repairs at Pier II, with the City Manager's prior approval, I authorized Brechan Construction LLC to proceed with the work. I recommend Council support this decision and authorize Brechan Construction LLC to perform the work for the sum of \$17,500.

**ATTACHMENTS:**

Attachment A: PND Inspection Report, 1-8-16

Attachment B: Quote from Brechan Construction LLC

Attachment C: Quote from Belarde Custom Concrete Company

**PROPOSED MOTION:**

Move to authorize emergency repairs to Pier II cleats from Brechan Construction LLC in the amount of \$17,500 with funds from the Harbor Enterprise Fund and authorize the City Manager to execute the documents on behalf of the City.

# FIELD OBSERVATION AND INSPECTION REPORT

## KODIAK HARBOR PIER 2 CLEAT DAMAGE INSPECTION

<b>Project:</b>	<b>Kodiak Harbor Pier 2 Cleat Damage Inspection</b>		<b>Kodiak, Alaska</b>	
<b>PND Job #:</b>	151136	<b>PND Observer:</b>	Bryan Hudson	<b>Title:</b> Senior Engineer
<b>Client:</b>	City of Kodiak	<b>Client Contact</b>	Lon White	<b>Title:</b> Harbormaster
<b>WEATHER</b>		<b>TEMP</b>		<b>WIND</b>
Clear		35 deg. F.		N/A mph
<b>HUMIDITY</b>				
N/A				

### Field Observation and Inspection Report

Bryan Hudson from PND Engineers Inc. along with Lon White, the City of Kodiak Harbormaster, were on site at Pier 2 on January 6, 2015 to evaluate damage to two cleats on the pier that occurred while a vessel was moored during a recent storm. The following report details the damage observed to the two cleats.

#### Cleat #9

Cleat #9 was pulled seaward, failing the front face rebar and spalling the concrete on the face of the pier (Figure 1). Additionally the concrete pedestal was rotated seaward and began pulling away from the top side of the concrete deck indicating that the anchor rods attached to the steel face beam may have yielded and/or broken (Figure 2, 3). No damage was observed at the connection of the anchor rods to the steel face beam or concrete however; only a visual inspection from approximately 10 feet away could be conducted because of the tide (Figure 4). There was no visible damage observed to the cleat.

#### Cleat #5

According to Lon the line pull direction at this location was approximately parallel with the pier towards the south. There was no visible damage to the cleat, face of the concrete dock, anchor rod attachments, steel face beam or concrete deck. The concrete cleat pedestal was cracked on the south side at the top, shore and sea sides (Figure 5, 6)

PND was asked to provide a proposal to the City for efforts to include repair drawings, cost estimates and inspection.

# FIELD OBSERVATION AND INSPECTION REPORT

January 8, 2016

KODIAK HARBOR PIER 2 CLEAT DAMAGE INSPECTION

Page 2 of 4



**Figure 1**

**Description:**  
Extents of damage to cleat #9 at face of pier.



**Figure 2**

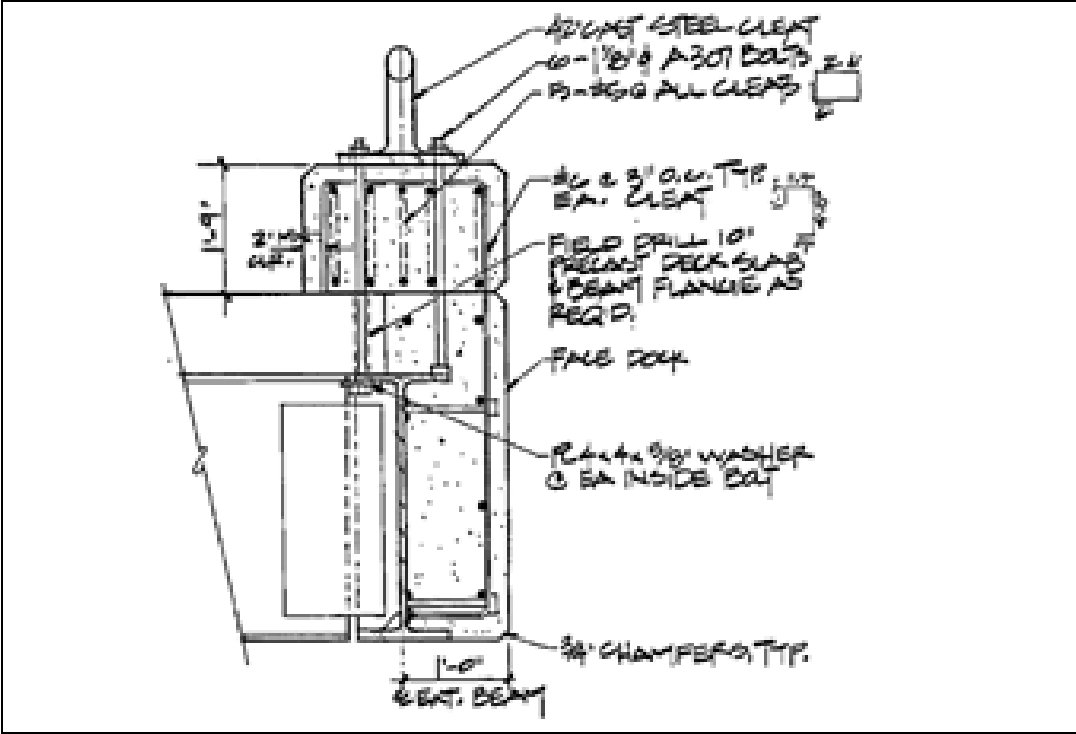
**Description:**  
Pedestal separation from CIP deck and cracking of CIP face at cleat #9.

# FIELD OBSERVATION AND INSPECTION REPORT

January 8, 2016

KODIAK HARBOR PIER 2 CLEAT DAMAGE INSPECTION

Page 3 of 4



**Figure 3**

**Description:**  
Original Pier 2 cleat design detail.



**Figure 4**

**Description:**  
Typical anchor bolt attachment to steel face beam flange.



# FIELD OBSERVATION AND INSPECTION REPORT

January 8, 2016

KODIAK HARBOR PIER 2 CLEAT DAMAGE INSPECTION

Page 4 of 4



**Figure 5**

**Description:**

Cleat 5 shore side cracking



**Figure 6**

**Description:**

Cleat 5 sea side cracking

# Proposal

Attachment B

## BRECHAN CONSTRUCTION LLC

2705 Mill Bay Road · Kodiak, AK 99615  
(907) 486-3215 · Fax: (907) 486-4889



**Alaska Business License #1016083 · Alaska Contractors License #39993**

PROPOSAL SUBMITTED TO Port of Kodiak / City of Kodiak		PHONE 486-8065	DATE March 15, 2016
CONTACT Lonnie White / Glenn Melvin		JOB NAME Pier 2 Cleat Repair	
CONTACT PHONE # 654-8100 / 486-8065		JOB LOCATION Cleats #5 & #9	
ARCHITECT PND Engineers	DATE OF PLANS 2/19/2016	Fax 486-8066	JOB PHONE

**We hereby submit specifications and estimates for:**

**Scope of Work:**

Project is to repair damaged cleats on Pier 2 as per PND Engineers plans dated 2/19/2016. All notes on said plans will be adhered to. We can do this scope of work for the **Lump Sum Price of \$17,500.00.**

**Exclusions:**

As this is under \$25,000 Total, we assume that Davis Bacon Wage Rates do not apply. Therefore, filing with the DOL and Certified Payrolls will not be performed. If DB Rates apply, please add \$5,000 to our proposed price.

**TERMS: NET 30 UPON APPROVED CREDIT (APPLICATION ATTACHED) or VISA / MASTER CARD**

All material is guaranteed to be as specified. All work to be completed in a workmanlike manner according to standard practices. Any alteration or deviation from above specifications involving extra cost will be executed only upon written orders, and will become an extra charge over, and above the estimate. All agreements contingent upon strikes, accidents or delays beyond our control. Owner to carry fire, tornado and other necessary insurance. Our workers are fully covered by Workman's Compensation Insurance.

Authorized Signature \_\_\_\_\_ 

Note: This proposal may be withdrawn by us if not accepted within 30 days.

**Acceptance of Proposal** - The above prices,

specifications and conditions are satisfactory and are hereby accepted. You are authorized to do work as specified. Payment will be made as outlined above.

Signature \_\_\_\_\_

Signature \_\_\_\_\_

Date of Acceptance: \_\_\_\_\_



# Belarde

## Custom Concrete Co.

P.O. BOX 1929  
Kodiak, AK 99615

DBE Certified

Attachment C

# Proposal

Date	Estimate No.
3/3/2016	1401 B

Name/Address
City of Kodiak Harbor Operations 403 Marine Way Kodiak, AK 99615 Attn: Lonnie White

Description	Qty	Rate	Total
<b>Port of Kodiak Pier II Cleat Repairs</b>			
Belarde Custom Concrete to Provide Labor, Materials, and Equipment for the Following:			
Remove & Repair Existing Asphalt			
Demo & Sawcut Existing Damaged Concrete Cleat Base, Replace with new CIP Concrete			
Reinstall Concrete Cleat Base			
Install reinforcement , and Epoxy Dowels			
Form, Pour and Finish / Reinstall Cleat			
Cleat # 9 Repair	1	20,440.00	20,440.00
Cleat # 5 Repair	1	6,080.00	6,080.00
Exclusions: All Locates Permits / Bonds Cleats			
<b>Phone #</b>	<b>Fax #</b>		<b>Total</b>
907-486-2924	907-481-1035		
<b>E-mail</b>			
belarde-custom-concrete@gci.net			\$26,520.00

Signature: \_\_\_\_\_

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

I certify that I have read and agree to the terms and conditions of the proposal.

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**MEMORANDUM TO COUNCIL**

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**To:** Mayor Branson and City Councilmembers

**From:** Aimée Kniazowski, City Manager  
Debra Marlar, City Clerk

**Thru:** Mike Tvenge, Deputy City Manager and Michelle Shuravloff-Nelson, Deputy Clerk

**Date:** April 14, 2016

**Agenda Item:** **V. c. Recommendation of Appointment of City Applicant to the Planning and Zoning Commission**

---

**SUMMARY:** Three of the seven seats on the Planning and Zoning Commission are designated as City seats. Kyle Crow was recommended for appointment to a City seat for a term ending December 2016, by the City Council at their regular meeting on June 11, 2015. The Kodiak Borough Mayor made the appointment on July 2, 2015. Mr. Crow resigned from the Planning and Zoning Commission, and the Council needs to recommend an applicant for appointment. At Tuesday's work session, Deputy Mayor Walker and Councilmembers interviewed applicants for the vacant City seat on the Planning and Zoning Commission.

**BACKGROUND:** Alaska Statute 29.40.020 provides that an appointment to the Planning and Zoning Commission is made by the Borough Mayor for a three-year term from a list of recommendations submitted by the City Council. The Borough Clerk's Office advertised for the vacant position, and received two applications from City residents' Russell Anderson and Don Gates. Historically, the Council has submitted the names of one or more applicants for recommendation of appointment. If the Council has had a preference of who is appointed, this list contained only those name(s).

**ATTACHMENTS:**

- Attachment A: Planning and Zoning Applications
- Attachment B: P&Z Commission List

**PROPOSED MOTION:**

Move to recommend \_\_\_\_\_ for appointment to the vacant City seat on the Planning and Zoning Commission for a term ending December 2016.





# Kodiak Island Borough

Office of the Borough Clerk

710 Mill Bay Road

Kodiak, Alaska 99615

Phone (907) 486-9310 Fax (907) 486-9391

EMAIL: njavier@kib.co.kodiak.ak.us

## BOARD APPLICATION

NAME: Don Gates

HOME PHONE: 486-2871 WORK: 539-2881 E-MAIL: Kodiakdwg@gmail.com

STREET ADDRESS: 1217 Larch St

MAILING ADDRESS: Box 229 Kodiak, AK

LENGTH OF RESIDENCE IN KODIAK: 27 years IN ALASKA: same

ARE YOU A REGISTERED VOTER IN KODIAK? YES () NO ()

ARE YOU A PROPERTY OWNER IN KODIAK? YES () NO ()

COMMUNITY ACTIVITIES: Compulsory board member 20+ years  
Winnis member for 10 years

PROFESSIONAL ACTIVITIES: taught school one year  
owner of Kodish Builders for 20 years  
In construction over 40 years

AREA OF EXPERTISE AND/OR EDUCATION: Self-Employed - College Degree

I AM INTERESTED IN SERVING ON THE FOLLOWING BOARD(S) (List in order of preference)

- Planning & Zoning
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_

Signature Donald Gates

Date Mar 16, 2016

A resume or letter of interest may be attached, but is not required. This application will be kept on file for one year. Please return the application by the advertised deadline.

- STAFF USE ONLY -		
Voter ID No Verified By <u>SP</u> Applicant's Residence Borough ( ) City <u>AK</u> Date Appointed _____ Term Expires on: <u>2016</u> Comments _____	Documentation _____	Appointment Letter _____ Roster _____ Oath of Office: _____ Financial Disclosure: _____



# Kodiak Island Borough

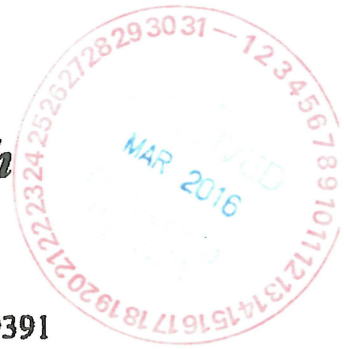
Office of the Borough Clerk

710 Mill Bay Road

Kodiak, Alaska 99615

Phone (907) 486-9310 Fax (907) 486-9391

EMAIL: njavier@kib.co.kodiak.ak.us



## BOARD APPLICATION

NAME: Russell Anderson

HOME PHONE: 907-654-5182 WORK: \_\_\_\_\_ E-MAIL: russandsea@gmail.com

STREET ADDRESS: 508 W. Marine Way, Suite 100, Apt. #3

MAILING ADDRESS: \_\_\_\_\_

LENGTH OF RESIDENCE IN KODIAK: 1 year IN ALASKA: 1 year

ARE YOU A REGISTERED VOTER IN KODIAK? YES () NO ()

ARE YOU A PROPERTY OWNER IN KODIAK? YES () NO ()

COMMUNITY ACTIVITIES: Fish, trail running, hiking, attending library events, fundraisers, city & KIB meetings, general comm. events.

PROFESSIONAL ACTIVITIES: CPR/1st AID, OSHA 10, oil spill cert, private professional research, data collection, documentation, classification, science, topography, etc.

AREA OF EXPERTISE AND/OR EDUCATION: No degree yet, in & out of college, 4.0 standing GPA

I AM INTERESTED IN SERVING ON THE FOLLOWING BOARD(S) (List in order of preference)

1. Planning & Zoning 2. \_\_\_\_\_

3. \_\_\_\_\_ 4. \_\_\_\_\_

Signature: Russell Anderson Date: 02/29/16

A resume or letter of interest may be attached, but is not required. This application will be kept on file for one year. Please return the application by the advertised deadline.

-STAFF USE ONLY-	
Voter ID No Verified By: <u>LP</u> Applicant's Residence: Borough ( ) City <u>X</u> Date Appointed: _____ Term Expires on: _____ Comments: _____	Documentation: _____ Appointment Letter: _____ Roster: _____ Oath of Office: _____ Financial Disclosure: _____



## KODIAK ISLAND BOROUGH

## PLANNING AND ZONING COMMISSION

NAME	TERM	HOME PHONE	WORK PHONE	CELL PHONE	EMAIL
Scott Arndt (B) Chair PO Box 76 Kodiak, AK 99615	2018	481-3745	FAX 481-3333	414-791- 3745	<u>Call instead of email</u>
Jay Baldwin (B) Vice Chair 3343 Eider St Kodiak, AK 99615	2016			942-0386	<u>Jay.baldwin@kibplanning.org</u> <u>kodiakjay@yahoo.com</u>
Barry Altenhof (C) PO Box 1373 Kodiak, AK 99615	2018	486-6238		539-5828	<u>barry.altenhof@kibplanning.org</u> <u>baltenhof@gci.net</u>
Maria Painter (B) 3901 Woodland Dr. Kodiak, AK 99615	2018			942-2560	<u>maria.painter@kibplanning.org</u>
Alan Schmitt (C) 3295 Woody Way Loop Kodiak, AK 99615	2017	486-5314			<u>alan.schmitt@kibplanning.org</u>
Greg Spalinger (B) PO Box 2635 Kodiak, AK 99615	2017	486-8366	486-3725		<u>greg.spalinger@kibplanning.org</u>
VACANT (C)	2016				

B=Borough Seat  
C=City Seat

**This commission is governed by Kodiak Island Borough Code 2.105**

**STAFF:**

CDD DIRECTOR, BOB PEDERSON	486-9360	<u><a href="mailto:bpederson@kodiakak.us">bpederson@kodiakak.us</a></u>
ASSOCIATE PLANNER, JACK MAKER	486-9362	<u><a href="mailto:jmaker@kodiakak.us">jmaker@kodiakak.us</a></u>
ASSISTANT PLANNER, VACANT		
CODE ENFORCEMENT OFFICER, VACANT		
CDD SECRETARY, SHEILA SMITH	486-9363	<u><a href="mailto:ssmith@kodiakak.us">ssmith@kodiakak.us</a></u>

COMMUNITY DEVELOPMENT DEPARTMENT  
710 MILL BAY ROAD  
ROOM 205  
KODIAK, AK 99615

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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:** April 14, 2016

**Agenda Item:** **V. d. Appointment of City Councilmembers to the Kodiak Island Borough Marijuana Task Force**

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**SUMMARY:** The Assembly of the Kodiak Island Borough passed Resolution FY2016-31 establishing a Marijuana Task Force to consider the issues surrounding the legalization of marijuana and advise the Assembly and Administration of their findings. The eleven members Task Force includes two members of the Kodiak City Council which shall be appointed by the Council.

**PREVIOUS COUNCIL ACTION:** The Marijuana Task Force was discussed during the City Council-Borough Assembly Joint Work Session Wednesday, March 16, 2016. No action was taken to appoint during that meeting.

**BACKGROUND:** The Assembly of the Kodiak Island Borough by Ordinance FY2016-17 exercised its local control to prohibit the operation of marijuana cultivation facilities, marijuana product manufacturing facilities, marijuana testing facilities and retail marijuana stores anywhere within the Kodiak Island Borough, through February 28, 2017.

**DISCUSSION:** Legalization of marijuana was approved statewide by the voters November 4, 2014. The State is currently receiving applications for marijuana related businesses. Kodiak has one known application filed with the Alaska Marijuana Control Board. The task force includes members of the Assembly, Council, Medical, Enforcement, Business, Advocacy and At Large members of the community to address the factors to be considered surrounding these applications.

**ALTERNATIVES:**

- 1) Appoint two City Councilmembers to the KIB Marijuana Task Force and therefore have a voice/vote in the direction our community takes with regards to marijuana legalization.
- 2) Choose to not appoint two voting members to the KIB Task Force.

**ATTACHMENT:**

Attachment A: KIB Resolution No. FY2016-31



**PROPOSED MOTION:**

Move to appoint Councilmember \_\_\_\_\_ and Councilmember \_\_\_\_\_ to the vacant City seats on the Kodiak Island Borough Marijuana Task Force.

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Introduced by: Assembly member Rohrer  
Requested by: Assembly member Rohrer  
Drafted by: KIB Clerk  
Introduced on: 03/17/2016  
Adopted on: 03/17/2016

**KODIAK ISLAND BOROUGH  
RESOLUTION NO. FY 2016-31**

**A RESOLUTION OF THE ASSEMBLY OF THE KODIAK ISLAND BOROUGH  
ESTABLISHING A MARIJUANA TASK FORCE**

**WHEREAS,** on November 4, 2014, Ballot Measure 2 was approved statewide by the voters;  
and

**WHEREAS,** Ballot Measure 2 also allows for the Borough to prohibit and/or implement regulations governing the number, time, place and manner of marijuana cultivation facilities, manufacturing facilities, retail stores and testing facilities; and

**WHEREAS,** there are many issues and factors to be considered by the Borough in deciding all the local issues associated with the legalization of marijuana; and

**WHEREAS,** the Assembly is creating a Marijuana Task Force to advise the Assembly and Administration on any and all aspects, impacts, and concerns related to the legalization of marijuana; and

**NOW, THEREFORE BE IT RESOLVED BY THE ASSEMBLY OF THE KODIAK ISLAND BOROUGH** that there is established a Kodiak Island Borough Marijuana Task Force.

**Section 1: Created-membership.** The formation of the Task Force will consist of the following eleven members. The quorum for this committee is attendance of six members and it takes a majority vote of those present for a motion to carry.

- 2 Borough Assembly Members
- 2 City Council Members
- 1 Medical Professional
- 1 Law Enforcement
- 1 Retail Business Owner
- 1 Marijuana Advocate
- 3 members at large

**Section 2: Organization.** The chairperson and the vice chairperson are assigned by the Borough Mayor. The Chair person shall report to the entire Assembly on behalf of the Task Force.

**Section 3: Appointments.** The Mayor shall appoint the members of the task force subject to confirmation of the Assembly. The City Council members are appointed by the City Council.

51 **Section 4: Powers and duties.** The scope of review of the task force includes, but not  
52 limited to:

- 53 • Land use
- 54 • Law enforcement
- 55 • Revenue
- 56 • Regulatory compliance
- 57 • Cultivation
- 58 • Manufacturing
- 59 • Retail Stores
- 60 • Testing

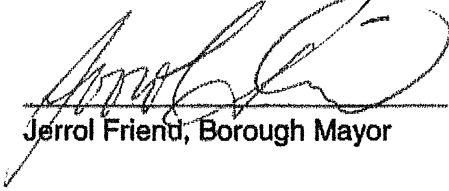
61 The responsibility of the task force is to offer advice and recommendations to the Assembly and  
62 administration on both the upsides and downsides of any issue related to or impacted by the  
63 legalization of marijuana.

64  
65 **Section 5: Administrative assistance.** The clerk's office staff shall provide the committee  
66 with supplies, meeting space, and secretarial assistance.

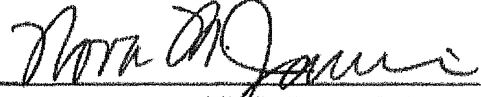
67  
68 **Section 6: Reporting.** The Task Force chairperson shall report to the Assembly during a  
69 public meeting.

70  
71 **ADOPTED BY THE ASSEMBLY OF THE KODIAK ISLAND BOROUGH**  
72 **THIS SEVENTEENTH DAY OF MARCH 2016**  
73  
74  
75

KODIAK ISLAND BOROUGH

  
\_\_\_\_\_  
Jerrol Friend, Borough Mayor

ATTEST:

  
\_\_\_\_\_  
76 Nova M. Javier, MMC, Borough Clerk

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# **EXECUTIVE SESSION**

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## MEMORANDUM TO COUNCIL

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**To:** Mayor Branson and City Councilmembers

**From:** Aimée Kniazowski, City Manager

**Date:** April 14, 2016

**Agenda Item:** X. a. Discussion of City Manager's Employment Agreement

---

**SUMMARY:** The Mayor and City Council will go into executive session to discuss the City Manager's employment agreement. The Manager, Mayor, and Council will also discuss the terms of the agreement.

**PROPOSED MOTION:**

Move to enter into executive session as authorized by Kodiak City Code Section 2.04.100(b)(2) to discuss the City Manager's employment agreement.

**POTENTIAL ACTION FOLLOWING  
EXECUTIVE SESSION**

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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 *MT*  
**Date:** April 14, 2016

**Agenda Item:** **XI. a. Authorization of City Manager's Employment Agreement**

---

**SUMMARY:** This action will authorize the City Manager's employment agreement by extending it for one year, from May 1, 2016, through April 30, 2017.

**PREVIOUS COUNCIL ACTION:**

- February 13, 2014, Council authorized the City Manager's employment agreement effective through April 28, 2015
- February 12, 2015, Council and City Manager met in executive session to discuss Manager's performance and to discuss the employment agreement extension
- March 19, 2015, Council authorized the City Manager's employment agreement effective through April 30, 2016
- March 17, 2016, Council and Manager met in executive session to discuss the Manager's annual performance and agreement review
- April 14, 2016 Council and City Manager met in executive session to continue discussion of Manager's employment agreement

**DISCUSSION:** The City Manager, Mayor, and Council met in executive session on March 17 to evaluate the Manager's performance and to discuss renewal of the agreement, per Sections 2 and 13 of the agreement. It is the intent of both parties to extend the agreement for another year from May 2016 through April 2017, under the same general terms as the previous agreement.

**ALTERNATIVES:** Council may approve, amend, or choose not to approve the Agreement.

**CITY MANAGER'S COMMENTS:** Once again, I appreciate Council's continuing support and am pleased to renew my employment agreement for another year. As I often state, I am proud of being a public employee and like what I do. I help navigate us through many complex issues from the management responsibilities of eight City departments, to oversight for multiple capital projects, to state and federal lobbying efforts, to my responsibilities as the Emergency Services Manager for the Kodiak Island Borough. I look forward to another productive year.



**DEPUTY CITY MANAGER'S COMMENTS:** Aimée Kniaziowski is a dedicated City Manager and has been thorough in her approach to include me in this new Administrative position. We work very well together and bring years of municipal management experience to our positions. With challenges ahead both at the state and local level, I feel it imperative to retain Ms. Kniaziowski and renew her employment agreement for an additional year.

**ATTACHMENTS:**

Attachment A: City Manager's Employment Agreement

**PROPOSED MOTION:**

Move to authorize the City Manager's employment agreement, Record No. 222297, through April 2017.

## EMPLOYMENT AGREEMENT

THIS AGREEMENT is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_ 2016, between the CITY OF KODIAK (hereinafter called "City") and AIMÉE L. KNIAZIOWSKI (hereinafter called "Manager").

### SECTION 1: DUTIES

Employer hereby agrees to employ Employee as City Manager of the City of Kodiak to perform the functions and duties as specified in Title 29 of the Alaska State Statutes, Articles I, II, and III of the City Charter, and Title 2 of the Kodiak City Code City's Personnel Rules and Regulations to perform such other legally permissible and proper duties and functions as the City Council may prescribe.

### SECTION 2: TERM

A. This agreement shall become effective May 1, 2016 and shall remain in effect until April 30, 2017. In the event either party wishes to terminate the contract prior to that time, at least ninety (90) days notice shall be given prior to the termination date identified.

B. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the City Council to terminate the services of Employee at any time, subject only to the provisions set forth in Section 3, paragraph A, of this Agreement.

C. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of Employee to resign at any time from his position with Employer, subject only to the provisions set forth in Section 2A and Section 3, paragraph B, of this Agreement.

### SECTION 3: TERMINATION AND SEVERANCE PAY

A. In the event Employee is terminated by Employer before expiration of the aforesaid term of employment and during such time that Employee is willing and able to perform the duties of City Manager, Employer agrees to pay Employee a lump sum cash payment equal to three (3) months' aggregate salary plus accrued and unused personal leave in lieu of any and all other damages or monies that Employee might claim. Provided, however, that in the event Employee is terminated because of any illegal act involving personal gain to him, then Employer shall have no obligation to pay the aggregate severance sum designated in this paragraph.

B. In the event Employee voluntarily resigns her position with Employer before expiration of the aforesaid term of employment, then Employee shall give Employer three (3) months' notice in advance and Employer agrees to pay Employee any accrued and unused personal leave. Provided that such notice is given, there will be no breach of this Agreement by reason of said resignation, and Employee shall not be responsible for any damages hereunder.

#### SECTION 4: SALARY

Employer agrees to pay Employee for services rendered hereunder an annual base salary of \$ \_\_\_\_\_ payable in installments at the same time as other employees of the City are paid. Effective on the anniversary date during the term of this Agreement, Employer agrees this base salary is calculated on the basis of a favorable annual review of Employee and the increase from the previous year is in an amount equal to the total percentage increase (if any) in the Anchorage Consumer Price Index Urban (CPI-U) for the previous year as is regularly published by the U.S. Bureau of Labor Statistics, San Francisco, California.

#### SECTION 5: HOURS OF WORK

It is recognized Employee must devote time outside normal office hours to the business of Employer.

#### SECTION 6: PROFESSIONAL DEVELOPMENT

Employer recognizes that the duties of Employee require a certain amount of travel by Employee including travel to ICMA, AML and SWAMC. Payment for such travel and entertainment shall be made by Employer upon presentation of actual and reasonable expenses, excluding alcohol.

#### SECTION 7: DUES AND SUBSCRIPTIONS

Employer agrees to pay the following dues and expenses on behalf of Employee: membership dues for the Alaska Municipal Manager's Association and International City Manager's Association; actual and reasonable expenses for Employee to attend the Alaska Municipal Manager's Association Conference, Alaska Municipal League Local Government Conference, and other conferences mutually agreed to in writing by both parties.

#### SECTION 8: VEHICLE

Employer agrees to provide Employee with exclusive use of a vehicle at all times during employment with the City. Employer shall provide for insurance, repair and operation and maintenance of said vehicle. Employee shall be responsible for any and any tax consequences associated with use of vehicle.

SECTION 9: PERSONAL LEAVE

Employee shall accrue personal leave (vacation leave) at the rate of 320 hours or eight (8) weeks per year, payable in equal installments during each pay period. Employee shall accrue sick leave at the same rate as other City employees as identified in Section 1102 of the City's Personnel Rules and Regulations. Any accrued and unused personal leave remaining upon the Employee's termination with the City will be paid to the Employee.

SECTION 10: RETIREMENT SYSTEM

Employee shall remain covered by the Public Employees Retirement System.

SECTION 11: PERSONNEL RULES

Except to the extent specifically referenced in this Agreement, provisions of the City's Personnel Rules and Regulations are not applicable to Manager's personnel status as a City employee.

SECTION 12: MEDICAL BENEFITS

Employee shall be entitled to medical benefits as specified in Section 415 of the City of Kodiak's Personnel Rules and Regulations.

SECTION 13: EVALUATIONS

If the decision to extend the contract is reached, the Employee shall be given a performance evaluation ninety (90) days before the Employee's anniversary date of April 27<sup>th</sup>.

SECTION 14: INTEGRATION AND MODIFICATION

This Agreement is the fully integrated Agreement of Employer and Employee and supersedes all prior Agreements between the parties relating to the subject matter herein. This Agreement shall remain in force and shall be binding upon the successors, assigns, and heirs of each of the parties and shall not be changed orally but only by mutual agreement in writing by both parties.

IN WITNESS WHEREOF, the City of Kodiak (Employer) and Aimée Kniaziowski (Employee) hereby accepting the above conditions, set their hand and seal to execute this Agreement, this \_\_\_ day of \_\_\_\_\_, 2016.

EMPLOYEE:

EMPLOYER:

\_\_\_\_\_  
Aimée L. Kniaziowski

\_\_\_\_\_  
Patricia Branson, Mayor

Attest:

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