

**City of Kodiak Regular Council Meeting Agenda for May 12, 2016**  
**7:30 p.m., at 710 Mill Bay Road, Assembly Chambers (Room 232)**

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<b>I.</b>	<b>Call to Order/Roll Call</b>	
	Invocation/Pledge of Allegiance	
<b>II.</b>	<b>Previous Minutes</b>	
	Approval of Minutes of the April 28, 2016, Regular Council Meeting.....	1
<b>III.</b>	<b>Persons to Be Heard</b>	
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b.	Proclamation: Declaring EMS Week.....	10
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d.	Proclamation: Declaring Mental Health Month.....	14
e.	Public Comments (limited to 3 minutes) (486-3231)	
<b>IV.</b>	<b>Unfinished Business</b>	
a.	None	
<b>V.</b>	<b>New Business</b>	
a.	First Reading, Ordinance No. 1348, Authorizing a Contract With the Kodiak Historical Society to Operate the Baranov Museum .....	18
b.	First Reading, Ordinance No. 1349, Authorizing a Lease Between the City of Kodiak and GCI Communication Corporation for Pillar Mountain Communication Lease Site No. 9, Described as a Portion of Tract B, U.S. Survey 2538-A .....	28
c.	First Reading, Ordinance No. 1350, Enacting Kodiak City Code Chapter 5.52 Prohibiting Marijuana Establishments in the City .....	46
d.	Resolution No. 2016-16, Establishing a Marijuana Advisory Special Committee.....	50
e.	Authorization of Bid Award for Pier III Anodes Installation, Project No. 16/06-8024 ....	54
f.	Authorization of License Agreement for Use of Gull Island Site .....	58
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h.	Authorization of Cooperative Agreement Between the City, Sun’aq Tribe, and BIA for Improvements to Shelikof Street .....	66
<b>VI.</b>	<b>Staff Reports</b>	
a.	City Manager	
b.	City Clerk	
<b>VII.</b>	<b>Mayor’s Comments</b>	
<b>VIII.</b>	<b>Council Comments</b>	
<b>IX.</b>	<b>Audience Comments</b> (limited to 3 minutes) (486-3231)	
<b>X.</b>	<b>Adjournment</b>	

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**MINUTES OF THE REGULAR COUNCIL MEETING  
OF THE CITY OF KODIAK  
HELD THURSDAY, APRIL 28, 2016  
IN THE BOROUGH ASSEMBLY CHAMBERS**

**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, Gabriel T. Saravia, Richard H. Walker, and John B. Whiddon were present and constituted a quorum. City Manager Aimée Kniazowski, City Clerk Debra L. Marlar, and Deputy Clerk Michelle Shuravloff-Nelson were also present.

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

**II. PREVIOUS MINUTES**

Councilmember Whiddon MOVED to approve the minutes of the April 14, 2016, regular meeting as presented.

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

**III. PERSONS TO BE HEARD**

**a. Public Comments**

**Patrick O'Donnell**, a member of the Alaska Whitefish Trawlers Association, spoke in support of Resolution No. 2016–15, which would authorize a permit for a Groundfish festival, fundraiser and parade.

**IV. UNFINISHED BUSINESS**

**a. Second Reading and Public Hearing, 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**

Mayor Branson read Ordinance No. 1347 by title. Council adopted Ordinance No. 1314 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, which amends the Lease Agreement to reflect ACS has the option to self insure.

Councilmember Arboleda MOVED to adopt Ordinance No. 1347.

Mayor Branson closed the regular meeting, opened and closed the public hearing when no one came forward to testify, and reopened the regular meeting.

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

## V. NEW BUSINESS

### a. **Resolution No. 2016–12, Authorizing the Issuance of a Permit to the Kodiak Chamber of Commerce for Use of Public Property in Conjunction With the Kodiak Crab Festival**

Mayor Branson read Resolution No. 2016–12 by title. The Kodiak Chamber of Commerce is the local organization that manages the annual Kodiak Crab Festival, one of Kodiak’s premiere events. It promotes Kodiak, gives a boost to the local economy, and provides fundraising opportunities for many local organizations and non-profits. This year the festival will run from May 25 through May 31, 2016.

Councilmember Walker MOVED to adopt Resolution No. 2016–12.

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

### b. **Resolution No. 2016–13, Authorizing the Issuance of a Permit to the Kodiak Garden Club for Use of Public Property for its Annual Plant Sale**

Mayor Branson read Resolution No. 2016–13 by title. Resolution No. 2016–13 authorizes the issuance of a permit to the Kodiak Garden Club to use the covered area of the Baranof Park ice rink to hold its annual plant sale on June 4, 2016.

Councilmember Davidson MOVED to adopt Resolution No. 2016–13.

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

### c. **Resolution No. 2016–14, Authorizing the Issuance of a Permit to Hope Community Resources for the Use of Public Property for Its Walk and Roll Community Walk Fund-raiser**

Mayor Branson read Resolution No. 2016–14 by title. Hope Community Resources is a non-profit that is funded by grants and community donations. Hope Community Resources wants to offer its annual walk and roll community walking fundraiser on May 7 at the Baranof Track. Hope Community Resources will set up a tent to offer snacks and drinks to participants and will accept donations.

Councilmember Bishop MOVED to adopt Resolution No. 2016–14.

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

**d. Resolution No. 2016–15, Authorizing the Issuance of a Permit to Alaska Whitefish Trawlers Association for the Use of Public Property in Conjunction With the Groundfish Festival and Fundraiser**

Mayor Branson read Resolution No. 2016–15 by title. The North Pacific Fisheries Management Council will meet in Kodiak June 6-14, 2016. Resolution No. 2016–15 will permit Alaska Whitefish Trawlers Association, in conjunction with the Alaska Groundfish Data Bank, to close and use City streets for its one-time Groundfish parade and to use City property in the vicinity of Oscar’s Dock for festival and fundraiser activities. Street closures for the parade will take place on Saturday June 11, 2016, from 4:30 p.m. to 5:30 p.m., for Shelikof Street at Jack Hinkle Way, Shelikof Street to Marine Way, and Marine Way to Oscar’s Dock.

Councilmember Davidson MOVED to adopt Resolution No. 2016–15.

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

**e. Authorization of Purchase FY2016 Sodium Chloride**

For many years the Public Works Department has ordered deicing salt to mix with ¼ inch rock chips for winter deicing and traction control on City streets and parking lots. The FY2016 budget included the funds to purchase the normal amount of deicing salt.

Councilmember Whiddon MOVED to authorize purchase of sodium chloride from Round Butte Products in the amount of \$24,966 with funds coming from the FY2016 Public Works Department, Street Supplies Account and authorize the City Manager to execute the documents of behalf of the City.

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

**f. Authorization of Purchase of Computer V-M Host Servers**

The City currently has three existing VM Host Servers that were purchased in 2010. These servers are currently utilized for all Citywide virtual network functions. These servers host approximately 60 virtual machines used by multiple City departments. The VM Host Servers are becoming obsolete and were scheduled for replacement during the FY2016 budget year.

Councilmember Arboleda MOVED to authorize purchase of VM Host Servers from SHI International Corp in the amount of \$\$28,646.76 with funds from the Finance-IT 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, Saravia, Walker, and Whiddon in favor. The motion passed.

**g. Authorization of Change Order No. 2 With Brechan Construction LLC for the Composting Facility, Project No. 08-06/7517**

The City Council authorized the construction of the Composting Facility to Brechan Construction LLC during the April 9, 2015, regular meeting. The additional elements of work are needed to complete construction and provide an efficient facility for production of Class "A" Exceptional Quality Compost suitable for use by the general public. Change Order No. 2 is for construction of additional site improvements and installation of a 72 foot by 120 foot covered tension fabric storage structure.

Councilmember Walker MOVED to authorize Change Order No. 2 to Brechan Construction LLC in the amount of \$1,079,247.44 for the Compost Facility with funds coming from the Biosolids Management Project, Project No. 08-06/ 7517 and authorize the City Manager to execute the documents on behalf of the City.

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

**h. Authorization of Assignment of Trident Basin Ground Lease From Andrew Properties, LLC to First National Bank Alaska**

The City currently has a lease with Andrew Properties, LLC for office space at Trident Basin to support Andrew Airways, Inc., charter aircraft operation. Section 10 of the lease requires City Council authorization for any assignment of the lease. Dean Andrew has requested the lease be assigned to First National Bank of Alaska as security for a loan, and the bank is awaiting Council approval.

Councilmember Whiddon MOVED to authorize the assignment of Trident Basin ground lease from Andrew Properties, LLC to First National Bank Alaska and authorize the City Manager to sign the Consent Certification.

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

**i. Authorization of Purchase of Compost Wood Amendments**

The City entered into a public/private partnership for the composting of biosolids in December 2012. Since that time we have completed the design of a Class A, EQ Composting Facility, bid the project, completed construction, and began operation on December 9, 2015. We concluded our public/private partnership on January 31, 2016. That partnership provided wood amendments by contract. With the City operating the composting facility full time, the City is now responsible for wood amendments and advertised a Request for Proposal (RFP) for the purchase of up to 3,000 cubic yards of wood amendments. The RFP was advertised beginning March 14, and three proposals were opened on April 15, 2016.

Councilmember Davidson MOVED to authorize the purchase of wood amendment for the Composting Facility from Quayanna Development Corporation in the amount of \$82,500 with funds coming from the Sewer Fund, Compost Department Operation budget line for Supplies - Wood Chips and authorize the City Manager to execute the documents on behalf of the City.

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

## **VI. STAFF REPORTS**

### **a. City Manager**

Manager Kniazowski stated the FY2017 drafted budget books have been given to the Mayor and Council for the budget work session on May 7. She shared that Finance Director Mayes and Deputy Manager Tvenge have worked on the budget extensively and brought forth some great new ideas, and she expressed her appreciation for the work completed by the Department Heads. She indicated she will work with Public Works Director Kozak and Engineer Melvin to schedule tours of the Monashka pumphouse and compost facilities after the budget presentation. She stated DOWL will hold a variety of public meetings in Kodiak on the Pedestrian Pathway and the Near Island plans in the near future. She shared that she attended the government social media training with Clerk Marlar and commented the training was very beneficial. She stated Clerk Marlar is researching best practice policies before creating City Facebook and Twitter accounts. She said the Personnel Rules and Regulations will be adjusted to reflect a COLA increase of 2.38 percent if approved, and she clarified the individual merit based increases are separate.

### **b. City Clerk**

Clerk Marlar announced the first week of May is Municipal Clerk's week and she recognized the work of her staff. She shared that the office of the Clerk administers processes of elections and manages the City's records program. She stated Clerks are the go between of the elected officials and the public and help by communicating the legislative actions of the elected officials. City Clerk Marlar informed the public of the next scheduled Council work session and regular meeting.

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

Mayor Branson shared she just arrived in town after spending time with her mother, and she encouraged others to spend quality time with their parents. She thanked the Clerk's staff for helping the elected officials and the public. She thanked Deputy Mayor Walker for presiding over the work session.

## **VIII. COUNCIL COMMENTS**

Councilmember Walker stated he is very appreciative of the City staff and the hard work that has been completed to prepare the draft FY2017 budget.

Councilmember Bishop stated he had no comments.

Councilmember Davidson thanked the Clerks for their work.

Councilmember Saravia thanked the department heads for their work on the budget and acknowledged Municipal Clerk's week.

Councilmember Arboleda thanked all the staff for their hard work.

Councilmember Whiddon said he was in Washington D.C. last week, and it reminded him how thankful he was to reside in Kodiak. He shared the Fisheries Work Group meetings will be held on May 4, 6, and 11; the meetings are in preparation for the NPFMC visit in June. He thanked the FWG members for their continued work.

**IX. AUDIENCE COMMENTS**

None

**X. EXECUTIVE SESSION**

**a. Unionization of the Workforce**

Councilmember Davidson MOVED to enter into executive session pursuant to AS 44.62.310(c)(1) to discuss matters, the immediate knowledge of which would clearly have an adverse effect upon the finances of the City.

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

Council entered into Executive Session at 8:07 p.m.

Mayor Branson reconvened the regular meeting at 8:49 p.m.

**XI. ADJOURNMENT**

Councilmember Davidson MOVED to adjourn the meeting.

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

The meeting adjourned at 8:50 p.m.

CITY OF KODIAK

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MAYOR

ATTEST:

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CITY CLERK

Minutes Approved:



## **PERSONS TO BE HEARD**

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## MEMORANDUM TO COUNCIL

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**Date:** May 12, 2016

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

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**SUMMARY:** This proclamation urges all citizens and patriotic, civic, and educational organizations to recognize police officers, past and present, who by their faithful and loyal devotion to their responsibilities, have rendered a dedicated service to their community and, in so doing, have established for themselves an enviable and enduring reputation for preserving the rights and security of all citizens. And through their courageous deeds have made the ultimate sacrifice in service to their community or have become disabled in the performance of duty, this proclamation recognizes and pay respects to the survivors of fallen heroes.

**ATTACHMENTS:**

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

**PROCLAMATION**  
**Declaring May 15, 2016, Peace Officers Memorial Day and**  
**May 15 through 21, 2016, Police Week**

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

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

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

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

NOW, THEREFORE, I, Pat Branson, Mayor of the City of Kodiak, do hereby proclaim May 15, 2016, as

**PEACE OFFICERS' MEMORIAL DAY**

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

I further proclaim the week of May 15 through 21, 2016, as

**POLICE WEEK**

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

Dated this 12th day of May 2016.

City of Kodiak

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 Pat Branson, Mayor

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## MEMORANDUM TO COUNCIL

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**Date:** May 12, 2016

**Agenda Item: III. b. Proclamation: Declaring Emergency Medical Services Week**

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**SUMMARY:** This proclamation encourages the community to observe this week with appropriate programs, ceremonies, and activities, and recognizes this year's theme is "Called to Care".

**ATTACHMENTS:**

Attachment A: Proclamation: Declaring Emergency Medical Services Week

# PROCLAMATION

## Declaring Emergency Medical Services (EMS) Week May 15 – May 21, 2016

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

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

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

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

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

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

WHEREAS, the American College of Emergency Physicians, in partnership with the National Association of Emergency Medical Technicians, has announced this year's theme "Called to Care," for the ongoing campaign to recognize and inspire EMS personnel, strengthen the profession on a national level, and expand and amplify EMS week.

NOW, THEREFORE, I, Pat Branson, do hereby proclaim the week of May 15 through May 21, 2016, as

### EMERGENCY MEDICAL SERVICES WEEK

in Kodiak and with this year's theme, "Called to Care," I encourage the community to observe this week with appropriate programs, ceremonies, and activities.

Dated this 12th day of May 2016.

City of Kodiak

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Pat Branson, Mayor

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## MEMORANDUM TO COUNCIL

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**Date:** May 12, 2016

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

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**SUMMARY:** This proclamation recognizes this year's theme "Blaze a Trail," and takes time this month to recognize and celebrate older adults and the people who serve and support them as powerful and vital citizens who greatly contribute to the community.

**ATTACHMENTS:**

Attachment A: Proclamation: Declaring Older Americans Month

## PROCLAMATION

### Declaring Older Americans Month

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

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

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

WHEREAS, Kodiak's older adults are trailblazers—advocating for themselves, their peers, and their community—paving the way for future generations; and

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

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

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

#### OLDER AMERICANS MONTH

in Kodiak and urge every citizen to recognize this year's theme "Blaze a Trail," and take time this month to recognize and celebrate older adults and the people who serve and support them as powerful and vital citizens who greatly contribute to the community.

Dated this 12th day of May 2016.

City of Kodiak

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Pat Branson, Mayor

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## MEMORANDUM TO COUNCIL

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**Date:** May 12, 2016

**Agenda Item:** III. d. Proclamation: Declaring Mental Health Month

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**SUMMARY:** This proclamation calls upon the citizens, government agencies, public and private institutions, businesses, and schools in Kodiak, Alaska to recommit our community to increasing awareness and understanding of mental health, the steps our citizens can take to protect their mental health, and the need for appropriate and accessible services for all people with mental illnesses at all stages.

**ATTACHMENTS:**

Attachment A: Proclamation: Declaring Mental Health Month



# PROCLAMATION

## Declaring Mental Health Month

WHEREAS, mental health is essential to everyone's overall health and well-being; and

WHEREAS, all Americans experience times of difficulty and stress in their lives; and

WHEREAS, prevention is an effective way to reduce the burden of mental illnesses; and

WHEREAS, there is a strong body of research that supports specific tools that all Americans can use to better handle challenges, and protect their health and well-being; and

WHEREAS, mental illnesses are real and prevalent in our nation; and

WHEREAS, with early and effective treatment, those individuals with mental illnesses can recover and lead full, productive lives; and

WHEREAS, each business, school, government agency, healthcare provider, organization, and citizen shares the burden of mental illnesses and has a responsibility to promote mental wellness and support prevention efforts.

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

### MENTAL HEALTH MONTH

in Kodiak and call upon the citizens, government agencies, public and private institutions, businesses, and schools in Kodiak, Alaska to recommit our community to increasing awareness and understanding of mental health, the steps our citizens can take to protect their mental health, and the need for appropriate and accessible services for all people with mental illnesses at all stages.

Dated this 12 day of May 2016.

City of Kodiak

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Pat Branson, Mayor


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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 Kniaziowski, City Manager   
**Date:** May 12, 2016

**Agenda Item:** V. a. **First Reading, Ordinance No. 1348, Authorizing a Contract With the Kodiak Historical Society to Operate the Baranov Museum**

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**SUMMARY:** The City of Kodiak has partially funded the Kodiak Historical Society (KHS) to operate the Baranov Museum for many years. In 2014, KHS requested that the City enter into a multi-year operating agreement or contract with them for the services provided at the Baranov Museum. The most recent contract expires in June 2016, and the Historical Society requested a new two-year agreement. Based on City Charter requirements and legal advice, the approval for a two-year operating agreement is made by Council through the ordinance process. Staff recommends Council pass Ordinance No. 1348 in the first reading and advance to second reading at the next regular or special Council meeting.

**PREVIOUS COUNCIL ACTION:**

- Council has funded the Kodiak Historical Society to help cover operating costs of the Baranov Museum for many years through a line item in the Parks and Recreation portion of the City's operating budget.
- March 25, 2014, work session, KHS made a formal presentation to Council requesting a two-year agreement.
- May 10, 2014, Council supported a two-year agreement for FY2015-2016.
- May 10, 2016, Council reviewed a renewed contract proposal.

**DISCUSSION:** The City has provided funding to the Kodiak Historical Society to help cover operating costs of the Baranov Museum for many years. In the past KHS made an annual request for funding, and once approved, was added to the Parks and Recreation's operating budget.

Two years ago KHS asked that the City enter into a contract with them to operate the museum similar to the agreement the City has with the Kodiak Humane Society to operate the animal shelter. The agreement identified what each party was responsible for and included a 3% funding increase in the second year. The City paid the cost of the fire suppression system inspection and maintenance. That agreement expires at the end of June, and KHS requested another contract be issued.

Most of the terms in the agreement are the same as the FY2015-2016 contract, but the annual funding level would remain at the current rate of \$92,700 each year plus an amount not to exceed \$2,000 for the

fire suppression system. The fire suppression system costs increased from \$950 to \$2,000, per their contract with Simplex Grinnell.

**ALTERNATIVES:** Council may pass Ordinance No. 1348 in the first reading and advance to the second reading, which is staff's recommendation to ensure continued community access to the museum and its programs. Council may also amend the agreement to reflect a different funding allocation for FY2017-2018, which is not recommended.

**FINANCIAL IMPLICATIONS:** The current version of the draft FY2017 budget reflects an expenditure of \$93,650 including the \$950 for fire suppression costs. Staff did not realize KHS is requesting \$2,000 for fire suppression management, not \$950. If Council approves the agreement, staff will bring back the correct cost of \$94,700 at the second reading of the ordinance.

**LEGAL:** The City Attorney was consulted about the agreement and process and he prepared the ordinance. He explained that the agreement requires approval through the adoption of an ordinance, per City Charter §V-17 Contracts and Sales, because it is similar to a lease and deals with the disposal of interest in real property belonging to the City.

**STAFF RECOMMENDATION:** Staff recommends Council advance Ordinance No. 1348 to second reading and public hearing at the next regular or special meeting. The two-year agreement ending on June 30, 2018, would formally recognize and permit the Kodiak Historical Society to provide museum services and collections to the community through the Baranov Museum with terms to be determined by Council for each of the two years, with funds coming from the General Fund, Parks and Recreation, Museum account.

**CITY MANAGER'S COMMENTS:** The City has provided annual funding amounts to the KHS for many years in order to help them operate the Baranov Museum. KHS requests another two-year agreement with the City. If Council agrees to the terms of the agreement, or wishes to accept the additional costs, they would move Ordinance No. 1348 to second reading and public hearing at the next regular or special meeting.

**ATTACHMENTS:**

Attachment A: Ordinance No. 1348

Attachment B: Proposed FY2017-2018 contract between the Historical Society of Kodiak and the City of Kodiak

**PROPOSED MOTION:**

Move to pass Ordinance No. 1348 in the first reading and advance it to second reading and public hearing at the next regular or special meeting.

**CITY OF KODIAK  
ORDINANCE NUMBER 1348**

**AN ORDINANCE OF THE COUNCIL OF THE CITY OF KODIAK  
AUTHORIZING A CONTRACT WITH THE KODIAK HISTORICAL SOCIETY TO  
OPERATE THE BARANOV MUSEUM**

WHEREAS, the City owns real property located at 101 E. Marine Way, Kodiak, Alaska, and the building located thereon known as the Baranov Museum (“Museum”); and

WHEREAS, the Kodiak Historical Society currently operates a historical museum at the Museum, consisting of a collection of artifacts, exhibits, photographs, documents and other items owned by the Kodiak Historical Society (“Collection”); and

WHEREAS, because of the Kodiak Historical Society’s experience operating the Museum and its ownership of the Collection, the Kodiak Historical Society is the only source for such services, and it is in the best interest of City and its residents that City contract with the Kodiak Historical Society for such services on a sole source basis under Kodiak City Code 3.12.070(d).

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 Contract for Museum Services with the Kodiak Historical Society for a term commencing July 1, 2016, and ending June 30, 2018, for the operation of the Museum.

**Section 2:** The form and content of the Contract for Museum Services hereby are in all respects authorized, approved and confirmed, and the City Manager hereby is authorized, empowered and directed to execute and deliver the Contract for Museum Services to the Kodiak Historical Society 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 Contract for Museum Services as executed.

**Section 3:** The Contract for Museum Services 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:

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

First Reading:  
Second Reading:  
Effective Date:

**CITY OF KODIAK  
CONTRACT NO. 222379  
MUSEUM SERVICES**

**CONTRACT FOR MUSEUM SERVICES** dated as of July 1, 2016, by and between the City of Kodiak, an Alaska municipal corporation (“City”), whose address is 710 Mill Bay Road, Kodiak Alaska, and the Kodiak Historical Society, an Alaska nonprofit corporation (“Contractor”), whose address is 101 E. Marine Way, Kodiak Alaska.

WHEREAS, City owns real property located at 101 E. Marine Way, Kodiak, Alaska, and the building located thereon known as the Baranov Museum (“Museum”); and

WHEREAS, Contractor currently operates a historical museum at the Museum, consisting of a collection of artifacts, exhibits, photographs, documents and other items owned by Contractor (“Collection”); and

WHEREAS, because of Contractor’s experience operating the Museum and its ownership of the Collection, Contractor is the only source for the services that it is to provide under this Contract, and it is in the best interest of City and its residents that City contract with Contractor for such services on a sole source basis under Kodiak City Code 3.12.070(d).

NOW, THEREFORE, for and in consideration of the premises, and the terms, covenants, conditions, and provisions contained herein, it is the parties agree as follows:

**ARTICLE I**

**Provision of Services, Term, Compensation**

**Section 1.1. Agreement to Provide Services.** Contractor shall operate the Museum and provide museum services for the City as described in Article II.

**Section 1.2. Term of Contract.** The term of this contract commences July 1, 2016, and expires June 30, 2018, provided that either party may terminate this contract upon thirty (30) days written notice to the other party.

**Section 1.3. Compensation.** City shall pay Contractor the following annual fees for the services that Contractor provides under this contract. The annual fee shall be payable to Contractor in advance in equal quarterly installments on the first days of July, October, January and April; provided that the first quarterly installment shall be due on the day following the effective date of City Council approval of this contract.

(a) For the period from July 1, 2016, through June 30, 2017: \$92,700, plus an amount not to exceed ~~\$950,000~~ 2,000.00 for fire suppression system costs.

(b) For the period from July 1, 2017 through June 30, 2018: \$92,700, plus an amount not to exceed ~~\$950,000~~ 2,000 for fire suppression system costs.



## ARTICLE II Scope of Services

**Section 2.1. Scope of Work in General.** Contractor shall provide museum operation services at the Museum, including without limitation collections care, management of Contractor's archives, exhibitions, educational programs, and building stewardship.

**Section 2.2. Specific Museum Management Duties.** Subject only to the limitations set forth in this Contract, Contractor shall have, and hereby agrees to undertake and assume, full and complete control and discretion in the management and operation of the Museum during the term of this contract, including without limitation the following:

(a) Employ, pay, supervise, and discharge all employees as deemed necessary by Contractor for the operation of the Museum;

(b) Adopt and implement all policies relating to the acquisition, accession, loan, care, storage, deaccession, and disposal of the Collection in accordance with the standards defined by the American Alliance of Museums;

(c) Adopt and implement the exhibition, interpretation, display and public access of the Collection in accordance with the standards defined by the American Alliance of Museums;

(d) Adopt and implement the historical, educational and research policies, programs and activities of the Museum;

(e) Properly maintain all Collection inventory records, accession records, condition assessment and conservation records, and exhibition records;

(f) Adopt and implement the budgetary and fiscal policies of the Museum, including the establishment of admission fees and other fees and charges for other program services;

(g) Keep and maintain the financial books and records of the Museum in accordance with generally accepted accounting principles;

(h) Adopt and implement the building and maintenance policies for the Museum;

(i) Adopt and implement the best practices for building stewardship of the Museum;

(j) Adopt and implement policies relating to the ancillary activities and services offered at the Museum; and

(k) Adopt and implement policies relating to the promotion and publicity of the Museum.

In performing its duties under this Section, Contractor shall exercise the same degree of care and skill exercised by nonprofit corporate owners and managers of similar local/regional history museums in the United States and shall comply in all material respects with all laws applicable to the conduct of its business and the use and operation of the Museum.

**Section 2.3 Public Museum.** Contractor shall operate the Museum as a facility open to the general public, subject to such reasonable rules and regulations as Contractor may promulgate in its discretion from time to time regarding matters that include without limitation admission fees; days and hours of operation; the safety of employees and the general public; the safety, protection and security of the Collection; the anonymity of donors who desire anonymity; and, to the extent required by law, the confidentiality of employee records and business records.

**Section 2.4. Collection.** Contractor shall have full responsibility for the maintenance, care, documentation and use of the Collection. The accession and deaccession of Collection items as

well as their management, care, documentation and use shall be governed by Contractor's Collection Management Policy and in accordance with standards defined by the American Alliance of Museums. The Collection will be used for exhibitions, research and public programs at the discretion of Contractor in accordance with its mission and in order to provide museum services to the City.

**Section 2.5. Contractor Employment Responsibilities.** All services required under this Contract shall be performed by Contractor or under its supervision. Contractor shall employ at its own expense all personnel required to perform Contractor's services under this Contract in a timely and proper manner. Such personnel shall not be considered contractors or employees of the City, and the City shall have no responsibility or liability whatsoever to any Contractor personnel, or for their acts or omissions.

**Section 2.6. Alterations and Improvements to Museum.** Contractor may make whatever nonstructural alterations or improvements to the Museum that it deems necessary or desirable in the best interests of the Museum. Contractor shall make no structural alterations or additions to the Museum or any associated City property without the written consent of the City. Unless otherwise provided in such written consent, any structural improvements or additions constructed by the Contractor shall become the City property upon substantial completion. All such nonstructural or structural alterations, improvements and additions, regardless of how funded, shall be part of the Museum real property and shall be subject to the terms of this Agreement.

**Section 2.7. Personal Property.** Contractor may furnish, install and maintain at the Museum any and all personal property which Contractor deems necessary or desirable in connection with the operation of the Museum. All tangible personal property acquired by City or Contractor and installed in or located at the Museum, regardless of how funded, shall be deemed to be subject to the terms of this Contract. All personal property installed in or located at the Museum shall be the property of Contractor. Contractor may alter, rehabilitate and improve such personal property in such manner, as it deems necessary or desirable in the best interests of the Museum.

**Section 2.8. No Liens.** In performing any work required or permitted under this contract, Contractor shall keep the Museum free of all liens, and hold the City harmless from liability for any such liens, including costs and attorney fees.

### **ARTICLE III Payment of Expenses**

**Section 3.1. In General.** Except as this Article provides otherwise, Contractor shall bear all costs and pay all expenses incurred in providing the services required under this contract.

**Section 3.2. Utilities.** City shall pay the costs of the following utility services provided to the Museum: fuel oil, heat, electricity, water and sewer. Contractor shall pay the costs of telecommunications utility services and, except as provided in the preceding sentence, any and all other utilities provided to Contractor at the Museum.

**Section 3.3. Repairs and Maintenance.**

- (a) Contractor shall provide at its expense the following at the Museum:
  - (1) Interior janitorial services
  - (2) Replacement of light bulbs and receptacles as needed
  - (3) Exhibit construction and maintenance
  - (4) Flower beds and plant box plantings and maintenance
  - (5) Fire alarm and suppression system annual inspections
  - (6) Boiler system annual inspections
- (b) City shall provide at its expense the following at the Museum:
  - (1) Maintenance of electrical, water and sewer utility facilities
  - (2) Snow removal from the parking lot and pedestrian walkways
  - (3) Lawn mowing and general landscaping
  - (5) Maintenance or replacement of sidewalk and parking lot pavement
  - (6) Structural building maintenance or replacements when funds are available

**ARTICLE IV  
Indemnification and Insurance**

**Section 4.1. Indemnification.** To the fullest extent permitted by law, Contractor agrees to defend, indemnify, and hold harmless City, its elected and appointed officials, employees, and volunteers against any and all liabilities, claims, demands, lawsuits, or losses, including costs and attorney fees incurred in defense thereof, arising out of or in any way connected or associated with this contract.

**Section 4.2. Insurance.**

(a) Contractor, at its expense, shall provide the following insurance coverages for its performance under this contract, and shall provide to City certificates of insurance and/or policies acceptable to City therefore at the time this contract is executed:

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

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

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

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

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

(3) Require sixty (60) days written notice of cancellation non-renewal, reduction and/or material change addressed to: City Clerk, 710 Mill Bay Road, Room 220, Kodiak, AK 99615.

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

## **ARTICLE V Miscellaneous**

**Section 5.1. Independent Contractor.** Notwithstanding anything to the contrary contained herein, this contract shall not be deemed or construed to make the parties hereto partners or joint venturers, to render either party liable for any of the debts or obligations of the other, or to make either party the agent of the other or to bind or obligate the other in any manner to any third party. Without limiting the generality of the foregoing, the employees of Contractor are not City employees and are not entitled to any of the benefits City provides for its employees, including without limitation, health, life or disability insurance, sick or annual leave, or worker's compensation.

**Section 5.2. Authority of Signers.** Each individual executing this contract hereby represents and warrants that he or she has the capacity set forth on the signature pages hereof with full power and authority to bind the party on whose behalf he or she is executing this contract to the terms hereof.

**Section 5.3. Entire Agreement; Amendment.** This contract constitutes the entire agreement and understanding of the parties with respect to the subject matter hereof, and there are no other prior or contemporaneous written or oral agreements, undertakings, promises, warranties, or covenants with respect thereto not contained herein. This Agreement may be amended only by a written instrument executed by each of the parties hereto.

**Section 5.4. No Waiver.** No waiver of any condition or provision of this contract by any party shall be valid unless in writing signed by such party. No such waiver shall be deemed or construed as a waiver of any other or similar provision or of any future event, act, or default.

**Section 5.5. Severability.** If any provision of this contract is deemed unenforceable in whole or part, such provision shall be limited to the extent necessary to render the same valid or shall be deemed excised from this contract and replaced by a valid provision as close in meaning and intent as the excised provision as circumstances require, and this contract shall be construed as if said provision had been incorporated herein as so limited or as so replaced, as the case may be.

**Section 5.6. Assignment or Delegation.** Contractor may not assign its rights or delegate its duties under this contract, or any part of it, except with the prior written consent of City.

**Section 5.7. Governing Law.** This contract shall be governed by the laws of the State of Alaska and any suit or legal action hereunder shall be brought only in the courts of said State, in the Third Judicial District at Kodiak.

**Section 5.8. Notice.** Any notice required by this contract must be hand delivered or sent by first class mail to the appropriate party at the address set forth above the signatures below, or any other address which the party subsequently designates in writing.

IN WITNESS WHEREOF, the parties hereto have hereunder set their hands this \_\_\_\_ day of \_\_\_\_\_ 2016.

CITY OF KODIAK  
710 Mill Bay Road  
Kodiak, AK 99615

KODIAK HISTORICAL SOCIETY  
101 E Marine Way  
Kodiak, AK 99615

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

\_\_\_\_\_  
Mary Munk, President

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 Kniazowski, City Manager *AK*  
**Thru:** Mike Tvenge, Deputy City Manager *MT*  
**Date:** May 12, 2016

**Agenda Item:** V.b. **First Reading, Ordinance No. 1349, Authorizing a Lease Between the City of Kodiak and GCI Communication Corporation for Pillar Mountain Communication Lease Site No. 9, Described as a Portion of Tract B, U.S. Survey 2538-A**

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**SUMMARY:** City Council and the City Manager approve communication site leases/subleases as required by Kodiak City Code 18.20.230. The existing lease with GCI Communication Corporation expires June 30, 2016. This new Lease Agreement has a term of five years and requires approval by ordinance. Staff recommends City Council pass Ordinance No. 1349 in the first reading and advance to second reading and public hearing.

**PREVIOUS COUNCIL ACTION:**

- February 2011 - City Council approved Ordinance No. 1238 authorizing a five-year lease to GCI Communication Corporation (GCI).

**DISCUSSION:** GCI continues to operate from Site No. 9 located on Pillar Mt. This Lease Agreement is a renewal of Site No. 9 to GCI. Records reveal they have held the lease since 2000. The Alaska Wireless Network LLC will also sublease from GCI. The Lease of Pillar Mt. Site No. 9 to GCI Communication Corporation held a statement allowing its Subtenant - Alaska Wireless Network to lease beyond the term of the Prime Lease Tenant -GCI. This is not allowable under the KCC; therefore, changes were required and have been incorporated in Section 10 of the Sublease Agreement.

The most recent lease expires in June 2016, and this renewal will expire June 30, 2021. It is recommended by staff to authorize lease of Site No. 9 to GCI.

**ALTERNATIVES:**

- 1) Pass Ordinance No. 1349 in the first reading, which is recommended by staff.
- 2) Delay or not pass Ordinance No. 1349, which could allow the current Lease agreement to expire as the effective date of expiration is June 30, 2016.

**FINANCIAL IMPLICATIONS:** The annual rent for this site is \$13,200 with a 2.5 % increase each year.

**LEGAL:** Legal counsel has reviewed this lease proposal and provided comments which have been incorporated.

**DEPUTY CITY MANAGER'S COMMENTS:** The City Clerk has worked with our attorney and the lessee parties to establish an Agreement acceptable by both parties. Therefore, it is my recommendation we approve this Lease Agreement to GCI beginning July 1, 2016.

**ATTACHMENTS:**

Attachment A: Ordinance No. 1349

Attachment B: Lease Agreement

Attachment C: Sublease Agreement

**PROPOSED MOTION:**

Move to pass Ordinance No. 1349 in the first reading and advance to second reading and public hearing at the next special or regular Council meeting.

**CITY OF KODIAK  
ORDINANCE NUMBER 1349**

**AN ORDINANCE OF THE COUNCIL OF THE CITY OF KODIAK AUTHORIZING A LEASE BETWEEN THE CITY OF KODIAK AND GCI COMMUNICATION CORPORATION FOR PILLAR MOUNTAIN COMMUNICATION LEASE SITE NO. 9, DESCRIBED AS A PORTION OF TRACT B, U.S. SURVEY 2538-A**

WHEREAS, the City owns property on Pillar Mountain known as Pillar Mountain Communication Lease Site No. 9 and

WHEREAS, GCI Communication Corporation (“GCI”) desires to lease Communication Lease Site No. 9, and GCI has requested that the City Council authorize the Lease Agreement – Pillar Mountain Communications Site No. 9 ("Lease") that now is before this meeting; and

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

WHEREAS, the sublease to The Alaska Wireless Network, LLC identified in Section 19 of the Lease should be approved at no cost, provided that the approval of the sublease does not release GCI from any of its obligations under its Lease with the City; the sublessee agrees to comply with all the terms of the City's Lease with GCI regarding the use of the premises, insurance and environmental requirements; and the insurance provided by GCI must cover the activities of the sublessee.

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. 173430, with GCI 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 2538-A on Pillar Mountain in the City of Kodiak.

**Section 2:** The form and content of the Lease between the City and GCI 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 GCI 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:  
Second Reading:  
Effective Date:

## LEASE AGREEMENT

### PILLAR MT. COMMUNICATIONS SITE NO. 9 GCI Communication Corp.

LEASE AGREEMENT dated as of the \_\_\_\_ day of \_\_\_\_\_, 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 **GCI Communication Corp.**, an Alaskan corporation ("Tenant"), whose address is 2550 Denali Street, Suite 1000, Anchorage, Alaska 99503. 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") illustrated on Exhibit A hereto and described as a portion of Tract B, U.S. Survey 2538-A adjacent to Kodiak Low Rent Housing Parcel Number 1, U.S. Survey 2538-A & B, Plat numbers 66-1 and 85-22, Kodiak Recording District, Third Judicial District, Kodiak Island Borough, State of Alaska, more particularly described as follows:

Beginning at Corner 3 of said Parcel Number 1;

Thence S 34°45' 57" E a distance of 25.00 feet to a point on the Corner 3-Corner 4 boundary of said Parcel Number 1, The True Point of Beginning: Corner 1, G.C.I. Lease Parcel;

Thence S 34°45' 57" E, 100.00 feet;

Thence S 55°14' 03" E, 125.00 feet;

Thence N 34°45' 57" W, 100.00 feet;

Thence N 55°14' 03" E, 125.00 feet to the point of beginning.

Containing 12,500 sq. feet, more or less.

**2. Authorized Uses of Premises.** Tenant shall use the Premises only for the purpose of maintaining, operating and replacing existing equipment consisting of five (5) five-meter earth stations and a sixteen by forty-four foot equipment building, and constructing one (1) new satellite antenna for the village Internet/school program 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 day of July 2016, and shall expire at midnight on the 30 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 Thirteen Thousand Two Hundred Dollars (\$13,200.00) payable in advance in equal monthly installments of One Thousand Dollars (\$1,100) on the first day of each month. On each anniversary of the commencement of the Term, the annual Rent and monthly installments of Rent shall be adjusted according to the following schedule:

Year	Rent Amount
2	102.5% of Year 1
3	105.0% of Year 1
4	107.5% of Year 1
5	110.0% of Year 1

Payment shall be made by wire, check, bank draft or money order made payable to City of Kodiak. If a monthly installment of rent is not paid by the fifth day of the month in which it is due, a penalty of \$30 shall be added to the rent amount; and interest shall accrue on the rent amount at the rate of 12% per annum (but not to exceed the maximum lawful rate) from the due date until paid.

**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 twelve and one half percent (112.5%) 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 sightly 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.** Tenant shall indemnify, defend and hold City and its agents, officers and employees harmless from any liability, action, claim, suit, loss, property damage or personal injury of whatever kind resulting from any act or omission by Tenant, its agents, employees or invitees to the extent arising from Tenant's use and occupation of the Premises or its exercise of the rights and privileges granted by this Lease, except that Tenant shall have no duty to indemnify City or its agents, officers or employees for their own negligence, misconduct or breach of the terms of this Lease.

**11. Insurance.** Before entering upon the Premises, Tenant shall file with City certificates or evidence of insurance acceptable to City, including evidence of the additional insured and waiver of subrogation endorsements required in this section. Coverages shall be maintained without interruption throughout the Term and any extensions thereof. The coverages afforded under the policies will not be cancelled, modified or allowed to expire without at least thirty (30) days' prior written notice to City. Tenant shall provide each of the forms of insurance coverage described below.

*Workers' Compensation* insurance in accordance with the applicable laws relating to workers' compensation and employers' liability insurance with respect to all personnel performing work on the Premises with limits of not less than:

- \$500,000 Bodily Injury by Accident-Each Accident Limit
- \$500,000 Bodily Injury by Disease-Policy Limit
- \$500,000 Bodily Injury by Disease-Each Employee

*Liability Insurance* to protect Tenant and City (additionally insured) from and against claims and liabilities arising out of bodily injury (including death) or property damage that may result from Tenant's operations, construction, reconstruction and maintenance on the Premises, including the following:

*Commercial General Liability* insurance (including, but not limited to, premises-operations, products, contractual, broad-form property damage) with limits as follows:

- \$1,000,000 Each Occurrence Limit
- \$2,000,000 General Aggregate excluding Products/Completed Operations Aggregate Limit
- \$2,000,000 Products/Completed Operations Aggregate Limit
- \$1,000,000 Personal and Advertising Injury Limits

*Business Automobile Liability* insurance (including owned, hired and non-owned) with a combined single limit of not less than \$1,000,000 for bodily injury (including death) and property damage.

*Additional Insured; Waiver of Subrogation.* The Commercial General Liability and Business Automobile Liability policies shall name City as additional insured. Tenant's insurance shall also be primary to any policies held by City and the coverage afforded City under such policies shall be the same coverage extended to Tenant without exception or limitation. Tenant waives all rights of subrogation against City and its agents, officers, directors and employees for recovery of damages to the extent these damages are covered by the Commercial General Liability, Business Automobile and Workers' Compensation policies.

The requirements of this section as to insurance to be maintained by Tenant do not limit or qualify the liabilities and obligations of Tenant under this Lease.

**12. 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. 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.

**13. 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.

**14. Non-Interference with Communications Use.** City shall not cause or permit the placement of any structure on the Premises or on other property owned or controlled by City that would interfere with the view of the satellite arc from Tenant's communications equipment on the Premises without Tenant's prior written consent, which shall not be unreasonably withheld.

**15. 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.

**16. 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.

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

**18. Compliance with Laws and Regulations.** Tenant, at its sole cost and expense, shall comply with and shall cause the Premises to comply with all 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.

**19. Assignment and Subleasing.** Tenant is authorized to sublease to Alaska Wireless Network, LLC under the terms of the Sublease Agreement attached hereto as Exhibit B. Tenant shall not otherwise assign its rights, enter into a sublease, or delegate its duties under this Lease without the prior written consent of City and under the terms outlined in Kodiak City Code Title 18, Section 18.20.230. Lessee shall remit to City fifty percent (50%) of any assignment or sublease revenues paid monthly in equal installments, which shall fall due on the first day of each calendar month.

**20. 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.

**21. Force Majeure.** Either party may terminate this Lease upon thirty (30) days' written notice to the other, in accordance with Section 22, if any cause that occurs without the fault or negligence of the terminating 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.

**22. 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.

**23. 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.

**24. 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.

**25. 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

GCI:  
GCI Communication Corp.  
Attn.: Corporate Counsel  
2550 Denali St., Suite 1000  
Anchorage, AK 99503

With a Copy to:  
Kodiak City Clerk  
710 Mill Bay Road  
Kodiak, Alaska 99615  
Telephone: (907) 486-8633  
Fax: (907) 486-8633  
Email: clerk@city.kodiak.ak.us

With a Copy to:  
GCI Contact: Corporate Services, Properties  
Attn.: Carolyn Lima  
Telephone: 907.868.5580  
Cell: 907 230-6689  
Email: clima@gci.com

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.

**26. 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.

**27. 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.

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

**29. Applicable Law.** 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.

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

CITY OF KODIAK

GCI COMMUNICATION CORP.

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Aimee Kniazowski, City Manager

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David Morris, VP, Corporate Services

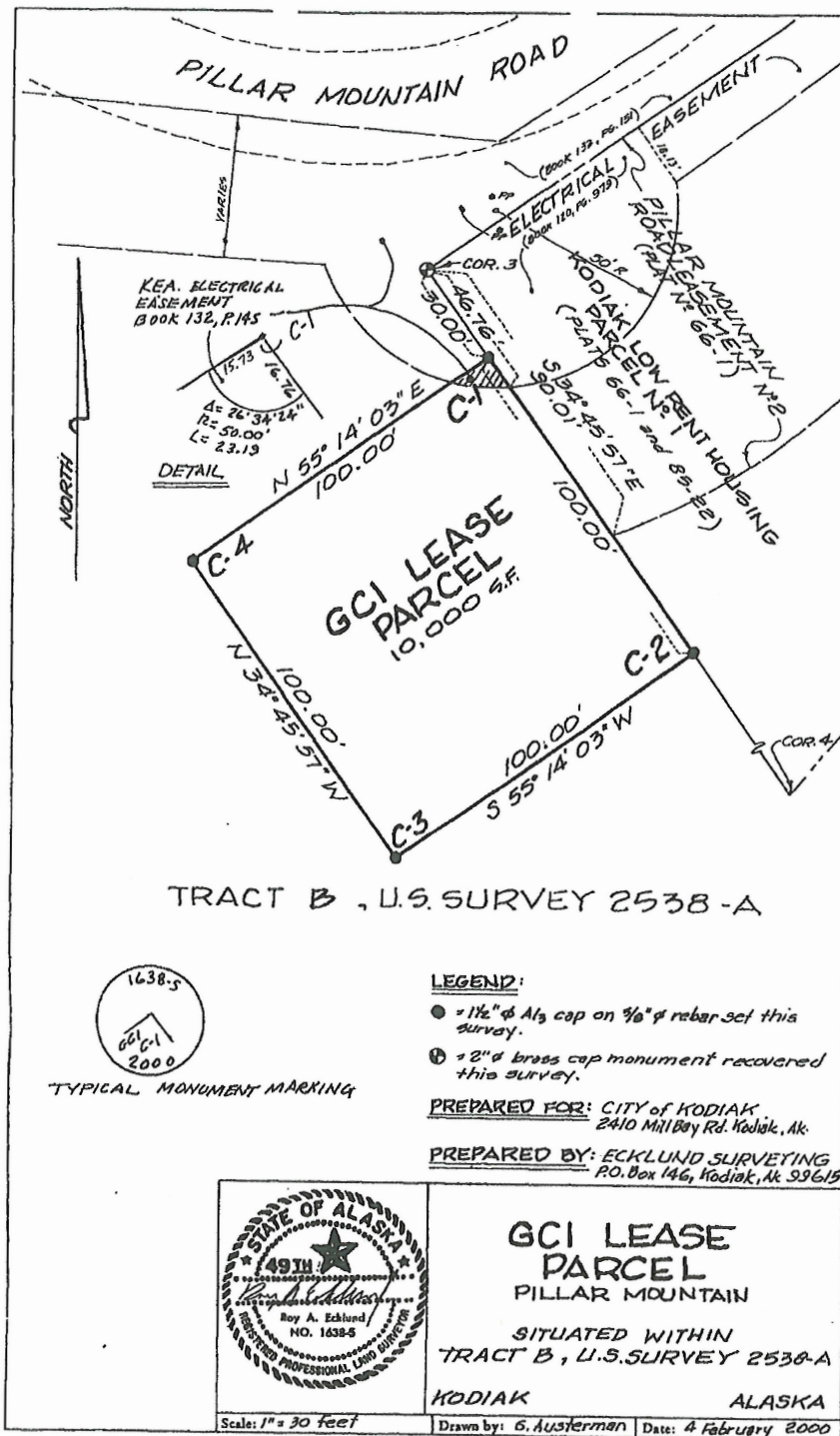
Attest:

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Debra L. Marlar, City Clerk



Exhibit A



## SUBLEASE AGREEMENT

THIS SUBLEASE AGREEMENT (“Agreement”) is made effective as of May 1, 2016 (“Effective Date”), between GCI Communication Corp., a corporation (“Sublandlord”) organized and existing under the laws of Alaska with its head office located at 2550 Denali Street, Suite 1000, Anchorage, AK 99503-2751 and The Alaska Wireless Network, LLC, 2550 Denali Street, Suite 1000, Anchorage, AK 99503-2751, an Delaware limited liability company, on its own behalf and on behalf of its telecommunications affiliates (collectively, “Subtenant”) (each a “Party” and collectively, the “Parties”). Sublandlord is the sole tenant of the property located at Site No. 9, Pillar Mountain Road, Kodiak, AK 99615, pursuant to that Lease Agreement dated May 24, 2011 (the “Prime Lease”).

### 1. PREMISES AND AUTHORIZED USES

Sublandlord subleases to Subtenant the following premises (“Premises”): An approximately 12’ x 20’ portion of Tract B, US Survey 2538-A, adjacent to Kodiak Low Rent Housing Parcel Number 1, US Survey 2538-A & B, Plat numbers 66-1 and 85-22, Kodiak Recording District, Third Judicial District, Kodiak Island Borough, State of Alaska as outlined in Exhibit A of this Agreement. Subtenant may construct, maintain, and operate a technical facility and related communications equipment at the Premises in conjunction with Subtenant’s operation as a communications provider. The Premises must be appropriate and adequate as determined by Subtenant. If no such space is provided by Sublandlord, this Agreement will be deemed void *ab initio*. Sublandlord may change the location of the Premises upon 60 days’ written notice and provided that the new location is appropriate and adequate as determined by Subtenant. Sublandlord will be responsible for all costs of Subtenant in moving to the new Premises.

Subtenant will have the right to reasonable access to operate and maintain this equipment, and all replacement equipment thereto 24 hours a day/ 7 days a week. All such equipment must be compatible with and not adversely impact the operation and maintenance of Sublandlord’s equipment, or the equipment of any other Party authorized to use Sublandlord’s facility.

### 2. TERM AND LICENSE

The term of this Agreement is 5 years (“Term”), to the extent that Sublandlord holds over under the terms of the Prime Lease, Subtenant shall be treated as a holdover tenant under this Agreement subject to the same terms.

### 3. SPACE AND POWER CHARGES

Sublandlord grants the rights conferred by this Agreement to Subtenant in return for mutual promises and good and valuable consideration conveyed as part of previous transactions between the Parties, the receipt and sufficiency of which is hereby acknowledged. Additional monthly charges for use of the Premises will be Zero Dollars (\$0.00) per month. Subtenant shall be solely responsible for and promptly pay all charges for gas, electricity, telephone service, or any other utility used or consumed by Subtenant on the Premises. If Subtenant uses utilities which are not separately metered and which are billed to Sublandlord, Subtenant shall pay to Sublandlord, within thirty (30) days of receipt of an invoice therefore, all charges attributable to Subtenant’s use of the utility.

### 4. PRIME LEASE

Except as otherwise expressly provided in this Agreement, to the extent that the terms and conditions of the “Prime Lease”, a copy of which is attached hereto as Exhibit B, are applicable to the Premises (which terms and conditions shall include, without limitation, the default and remedy provisions of the Prime Lease), such terms and conditions of the Prime Lease are incorporated into and made a part of this Agreement as if Sublandlord were the lessor thereunder, Subtenant were the lessee thereunder. To the

extent the terms of the Prime Lease and this Agreement conflict with each other (as distinguished from being different because this is a collocation sublease), this Agreement is subject to such terms of the Prime Lease. As between the Prime Lease and this Agreement, the more restrictive term or provision dealing with rights or privileges under either agreement shall apply to Subtenant.

Subtenant acknowledges that Sublandlord specifically reserves the right to amend the terms of the Prime Lease without the consent of Subtenant, provided that Subtenant shall not hereby be deemed to have assumed the obligations of Sublandlord under the Prime Lease to the extent such provisions are hereafter modified by Sublandlord without Subtenant's consent and have a material adverse impact on Subtenant or the Premises. If the Prime Lease terminates, this Agreement shall terminate on the effective date of the termination of the Prime Lease and the parties shall be relieved of any further liability or obligation under this Agreement, provided however, that if the Prime Lease terminates as a result of a default or breach by Subtenant under this Agreement and/or the Prime Lease, then the Subtenant shall be liable to the Sublandlord for the damage suffered as a result of such termination. Notwithstanding the foregoing, if the Prime Lease gives Sublandlord any right to terminate the Prime Lease in the event of the partial or total damage, destruction, or condemnation of the property or the building of which the Premises are a part, the exercise of such right by Sublandlord shall not constitute a default or breach hereunder.

Sublandlord and Landlord shall have no liability whatsoever to Subtenant with respect to (i) termination of the Prime Lease for any reason (including without limitation Sublandlord's default thereunder) or (ii) termination of this Agreement as a result of termination of the Prime Lease.

#### **5. FIXTURES AND IMPROVEMENTS**

At no additional charge, Subtenant may operate, maintain and replace equipment at the Premises so long as the size of Subtenant's Premises is not increased thereby. Any construction on the Premises must be neat, presentable, and compatible with its use and surroundings. Subtenant will have the right to remove all fixtures, structures and improvements it makes to the Premises upon termination of this Agreement.

Within 180 days after the end of this Agreement, improvements and personal property must be:

- removed by Subtenant if required by Sublandlord; or
- with Sublandlord's consent, be sold to the succeeding Subtenant; or
- abandoned on the Premises.

Sublandlord may grant additional time for the removal of improvements if hardship is established by Subtenant. At the end of this Agreement, Subtenant must peaceably and quietly vacate the Premises and return possession to Sublandlord. The Premises must be left in a clean, neat and presentable condition, at least as good as existed at the commencement of the Agreement, normal wear and tear excepted. If Subtenant causes any abnormal wear and tear or abuse of or to the Premises, Subtenant shall, at its expense and upon demand by Sublandlord, immediately eliminate such abnormal wear and tear or abuse or waste and pay for the restoration of the affected area(s) to a commercially reasonable equivalent condition to the Premises' condition at the commencement of this Agreement.

#### **6. RADIO OR ELECTRONIC INTERFERENCE**

In the event of radio frequency or other electronic interference, the Parties agree to work cooperatively to find a mutually satisfactory solution to any interference problem. In the event the problem cannot be resolved, regardless of whether or not the source of the problem can be determined, Subtenant will have the right to remove its equipment causing the interference upon 60 days' prior written notice and/or cancel this Agreement.

7. **DESTRUCTION OF PREMISES**

If the Premises become unusable due to flood, fire, or other unavoidable cause, Sublandlord is not obligated to repair or restore the Premises. Subtenant's sole remedy is to terminate the Agreement.

8. **MUTUAL INDEMNITY**

Each Party will indemnify the other from and against any loss, cost, claim, liability, damage, or expense (including reasonable attorney's fees) to third parties caused by negligence or misconduct by the indemnifying Party, its agents, employees, or contractors in the performance of this Agreement. In addition, the indemnifying Party will, to the extent of its negligence or misconduct, defend any action or suit brought by a third party against the indemnified Party for any loss, cost, claim, liability, damage, or expense caused by the indemnifying Party's negligence or misconduct, its employees, agents, or contractors, in the performance of this Agreement. No Party will have the duty to indemnify another to the extent of the other Party's own negligence or misconduct.

9. **TAXES AND ASSESSMENTS**

Subtenant will not be liable for payment of any real and personal property taxes or assessments that may be levied on the Premises or on Sublandlord's fixtures, improvements, equipment, or other property on the Premises not belonging to Subtenant. Subtenant must pay any sales tax due on any payment made under this Agreement.

10. **ASSIGNMENT, SALE AND SUBLEASE**

Subtenant may not sell, assign or sublease this Agreement without the written consent of the Sublandlord, which consent shall not be unreasonably withheld, conditioned or delayed. Such assignment, sale or sublease also is subject to the written consent of Landlord under the terms of the Prime Lease.

11. **CANCELLATION**

Sublandlord may cancel this Agreement and recover possession of the Premises by giving Subtenant 30 days' prior written notice, upon the happening of any of the events listed below, that are not cured within the 30 day notice period:

- a. Subtenant's failure to pay when due the rents or fees specified in this Agreement, including any increases made pursuant to this Agreement.
- b. The return for insufficient funds of checks for payment of rents or fees.
- c. The use of the Premises by Subtenant for any purpose not authorized by this Agreement.
- d. The appointment of a trustee or receiver for the Subtenant's assets in a proceeding brought by or against the Subtenant.
- e. The failure of Subtenant to perform any provision or covenant in this Agreement. If such provision or covenant is not possible to perform within such 30 day cure period, Subtenant shall not be in default under this Agreement if it has promptly commenced and is diligently pursuing the cure thereof.

Subtenant may cancel this Agreement with 30 days' written notice if (a) for any reason the Premises become unsuitable for its communications purposes, (b) the appointment of a trustee or receiver for the Sublandlord's assets in a proceeding brought by or against Sublandlord, or (c) the failure of Sublandlord to perform any provision or covenant in this Agreement. If such provision or covenant is not possible to perform within such 30 day cure period, Sublandlord shall not be in default under this Agreement if it has promptly commenced and is diligently pursuing the cure thereof.

12. **NOTICES** Any notices to be given under this Agreement by either Party to the other may be

effected either by personal delivery in writing or by mail, registered or certified, postage prepaid with return receipt requested, to the recipient at the address indicated below:

**Sublandlord:**

GCI Communication Corp.  
Attn.: Carolyn Lima  
2550 Denali Street, Suite 1000  
Anchorage, AK 99503  
Telephone: 907-868-5580  
Email: clima@gci.com

**Subtenant:**

The Alaska Wireless Network, LLC  
Attn.: Rachelle A. Alger  
2550 Denali Street, Suite 1000  
Anchorage, AK 99503  
Telephone: 907-868-5771  
Email: raalger@gci.com

**With a copy of legal notices to:**

GCI Communication Corp.  
Attn: Corporate Counsel  
2550 Denali Street, Suite 1000  
Anchorage, AK 99503

**With a copy of legal notices to:**

The Alaska Wireless Network, LLC.  
Attn: Corporate Counsel  
2550 Denali Street, Suite 1000  
Anchorage, AK 99503

or such other address or to the attention of such other person as the recipient Party may specify by prior written notice to the sending Party. Such notice will be effective as of the date of its receipt.

**13. CONDEMNATION**

If the whole of the Premises or such portion thereof as may be required for its reasonable use, is taken by virtue of any condemnation or eminent domain proceeding, this Agreement will automatically terminate as of the date of the condemnation, or as of the date possession is taken by the condemning authority, whichever is later. The charges will be apportioned as of the date of the end of possession. In case of the taking of a non-material (in Subtenant's reasonable opinion) part of the Premises not required by reasonable use of the Premises, then this Agreement will continue in full force and effect and the charges will be equitably reduced based upon the proportion by which the rentable area of the Premises is reduced. This reduction will be effective on the date of the partial taking.

**14. DISPUTES**

In any disputes between the Parties, the laws of the State of Alaska will govern. Any lawsuit must be brought in the courts of the State of Alaska. Either Party may request a mediation of any unresolved dispute. Subtenant agrees to notify Sublandlord of any claim, demand, or lawsuit arising out of Subtenant's occupation or use of the Premises. Upon Sublandlord's request, Subtenant will reasonably cooperate and assist in the investigation and litigation of any claim, demand, or lawsuit affecting the Premises.

**15. NO WAIVER; CONSENTS**

The failure of a Party to insist upon the strict performance of any provision in this Agreement may not be considered as a waiver or relinquishment of that provision for the future. The waiver of any provision or covenant in this Agreement cannot be enforced or relied upon unless the waiver is in writing and executed by the Party waiving such provision. Whenever consent by one Party is required in this Agreement, the granting of such consent in any one instance will not constitute continuing consent to subsequent instances where such consent is required.

**16. VALIDITY OF PARTS**

If any provision of this Agreement is declared to be invalid by a court of competent jurisdiction, the remaining covenants and provisions will continue in full force.

**17. QUIET ENJOYMENT; ACCESS**

So long as Subtenant is not in breach of this Agreement, it shall have the right of quiet enjoyment of the Premises for the Term and all Extensions thereof, regardless of any sale, transfer, assignment or foreclosure of the Premises. This Agreement shall be binding on each Party’s successors and assigns. Under no circumstances shall Subtenant be prevented or delayed from accessing its equipment during the Term and all Extensions, twenty-four hours a day, seven days a week.

**18. BINDING AGREEMENT; AMENDMENTS; COUNTERPARTS**

This Agreement shall be binding upon each Party’s heirs, representatives, executors, successors and assigns. This Agreement may only be amended in writing, and such amendment shall be signed by authorized representatives of both Parties. The Parties may execute this Agreement in counterparts, each of which shall be deemed an original, and both of which, collectively, taken together shall constitute one and the same Agreement. Delivery of an executed counterpart by electronic transmission email or fax shall be as effective as physical delivery of an executed counterpart.

**19. NON-DISCLOSURE AGREEMENT**

Neither Party shall disclose the terms and conditions of this Agreement, including the rent due hereunder, outside its organization.

**IN WITNESS WHEREOF**, the Parties hereto have executed this Agreement.

**GCI Communication Corp.**

**The Alaska Wireless Network, LLC**

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

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

Name: David Morris

Name: Ben Benton

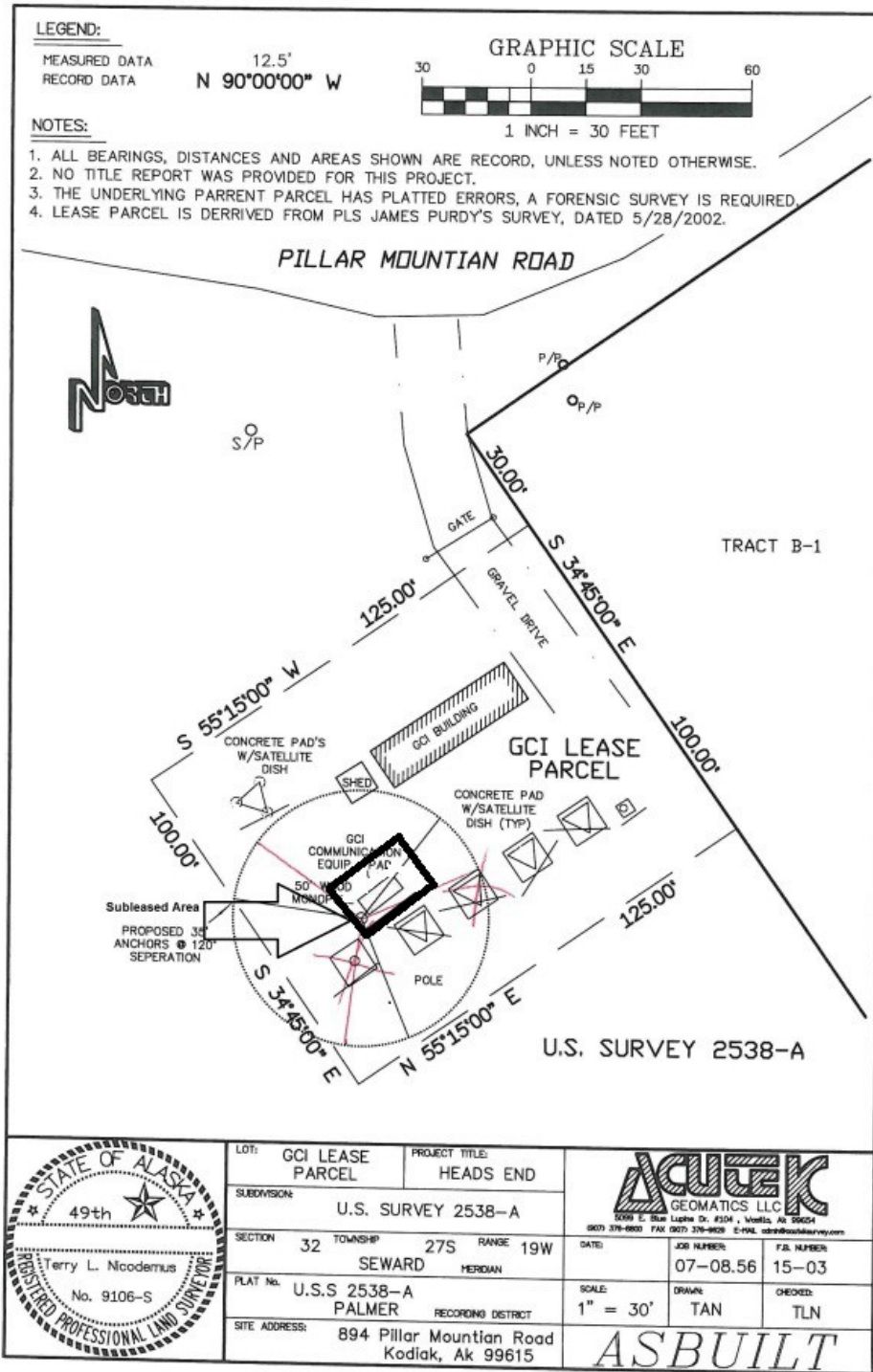
Title: VP, Corporate Communications & Services

Title: VP, Wireless Operations

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

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

**Exhibit A**





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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:** May 12, 2016

**Agenda Item:** V. c. **First Reading, Ordinance No. 1350, Enacting Kodiak City Code Chapter 5.52 Prohibiting Marijuana Establishments in the City**

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**SUMMARY:** State Ballot Measure 2, An Act to Tax and Regulate the Production, Sale, and Use of Marijuana (AS 17.38), was approved by voters statewide on November 4, 2014. AS 17.38.210 provides that a local government may prohibit the operation of marijuana cultivation facilities, marijuana product manufacturing facilities, marijuana testing facilities, or retail marijuana stores through the enactment of an ordinance or by voter initiative. The City Council voiced a consensus at the April 26, 2016, work session to bring forth an ordinance that allows the City to opt out of allowing marijuana operations within City limits for a period not to exceed six months. The City's attorney wrote Ordinance No 1350 in response to Council direction, which would enact KCC 5.52 Prohibiting Marijuana Establishments in the City and which would expire six months after the ordinance effective date. Staff recommends that Council pass the ordinance in the first reading and advance to second reading and public hearing at the next special or regular meeting.

**PREVIOUS COUNCIL ACTION:**

- January 27, 2016, joint work session – Cynthia Franklin, Director of the Marijuana Control Board presented information about marijuana laws to the Council and Assembly.
- April 12, 2016, City work session – City attorney Holly Wells presented marijuana information to the Council.
- April 26, 2016, City work session – the Council voiced a consensus and directed staff to prepare an ordinance to opt out of marijuana establishments within the Kodiak City limits for not more than six months and directed that a resolution be brought forth to establish a marijuana advisory committee appointed by the Council to be comprised of two Councilmembers, two Kodiak retail business owners, and two City resident at-large members to review and recommend the best path forward.

**DISCUSSION:** The Marijuana Control Board began to accept and process applications for marijuana establishments on February 24, 2016. AS 17.38.210 grants local government the authority to prohibit the operation of marijuana establishments through the enactment of an ordinance or by voter initiative. If the City does not have an ordinance in place to opt out of allowing marijuana establishments within the



Kodiak City limits, and the Marijuana Control Board determines the applicant has met the State standards for licensure, the State will notify the municipality of its intent to issue a license and will allow the municipality 60 days to object if there is cause to do so. The City Council has given direction that the City opt out of allowing marijuana establishments within the Kodiak City limits for a period not to exceed six months to enable a marijuana committee appointed by the Council to determine the best path forward. A resolution to establish the committee is scheduled later on the agenda.

**ALTERNATIVES:**

- 1) Pass Ordinance No. 1350 in the first reading, which is staff's recommendation, as it is consistent with the direction given at the April 26, 2016, work session.
- 2) Do not pass Ordinance No. 1350 in the first reading, which is not recommended, as it is contrary to Council direction.

**FINANCIAL IMPLICATIONS:** N/A

**LEGAL:** The City Attorney wrote Ordinance No. 1350

**STAFF RECOMMENDATION:** Staff recommends that Council pass Ordinance No. 1350 in the first reading and advance to second reading and public hearing at the next regular or special Council meeting.

**CITY MANAGER'S COMMENTS:** Council provided consensus to pass an opt out ordinance for a period of six months, which will allow the City Council to form and appoint members to the committee to advise the Council of the best way to move forward. Therefore, I recommend Council pass Ordinance 1350 in the first reading and advance to second reading and public hearing at the next regular or special Council meeting.

**ATTACHMENTS:**

Attachment A: Ordinance No. 1350

**PROPOSED MOTION:**

Move to pass Ordinance No. 1350 in the first reading and advance to second reading and public hearing at the next special or regular Council meeting.

**CITY OF KODIAK  
ORDINANCE NUMBER 1350**

**AN ORDINANCE OF THE COUNCIL OF THE CITY OF KODIAK ENACTING  
KODIAK CITY CODE CHAPTER 5.52 PROHIBITING MARIJUANA ESTABLISH-  
MENTS IN THE CITY**

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

**Section 1:** Kodiak City Code Chapter 5.52, Marijuana Establishments, is enacted to read as follows:

Chapter 5.52  
MARIJUANA ESTABLISHMENTS

Sections:

- 5.52.010 Definitions.
- 5.52.020 Interpretation.
- 5.52.030 Marijuana establishments prohibited.
- 5.52.040 Violation—penalty.

5.52.010 Definitions.

In this chapter:

"marijuana" means all parts of the plant of the genus cannabis whether growing or not, the seeds thereof, the resin extracted from any part of the plant, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or its resin, including marijuana concentrate; "marijuana" does not include fiber produced from the stalks, oil, or cake made from the seeds of the plant, sterilized seed of the plant which is incapable of germination, or the weight of any other ingredient combined with marijuana to prepare topical or oral administrations, food, drink, or other products.

"marijuana cultivation facility" means an entity registered to cultivate, prepare, and package marijuana and to sell marijuana to retail marijuana stores, to marijuana product manufacturing facilities, and to other marijuana cultivation facilities, but not to consumers;

"marijuana establishment" means a marijuana cultivation facility, a marijuana testing facility, a marijuana product manufacturing facility, or a retail marijuana store.

"marijuana product manufacturing facility" means an entity registered to purchase marijuana; manufacture, prepare, and package marijuana products; and sell marijuana and marijuana products to other marijuana product manufacturing facilities and to retail marijuana stores, but not to consumers.

"marijuana products" means concentrated marijuana products and marijuana products that are comprised of marijuana and other ingredients and are intended for use or consumption, such as, but not limited to, edible products, ointments, and tinctures.

"marijuana testing facility" means an entity registered to analyze and certify the safety and potency of marijuana.

"retail marijuana store" means an entity registered to purchase marijuana from marijuana cultivation facilities, to purchase marijuana and marijuana products from marijuana product manufacturing facilities, and to sell marijuana and marijuana products to consumers.

5.52.020 Interpretation.

All terms used in this chapter that are defined in AS 17.38 or the regulations promulgated thereunder shall be interpreted in accordance with such definitions.

5.52.030 Marijuana establishments prohibited.

The operation of marijuana cultivation facilities, marijuana product manufacturing facilities, marijuana testing facilities, and retail marijuana stores in the city is prohibited.

5.52.040 Violation—penalty.

A violation of this chapter is an offense punishable by a fine not exceeding \$1,000, plus any surcharge required to be imposed by AS 12.55.039.

**Section 2:** This ordinance shall be effective one month following final passage and publication in accordance with Kodiak Charter article II section 13, and shall expire six months after its effective date.

CITY OF KODIAK

\_\_\_\_\_  
MAYOR

ATTEST:

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

First Reading:  
Second Reading:  
Effective Date:

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## MEMORANDUM TO COUNCIL

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**To:** Mayor Branson and City Councilmembers  
**From:** Aimée Kniazowski, City Manager and Debra Marlar, City Clerk  
**Thru:** Mike Tvenge, Deputy City Manager  
**Date:** May 12, 2016

**Agenda Item:** V. d. Resolution No. 2016–16, Establishing a Marijuana Advisory Special Committee

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**SUMMARY:** State Ballot Measure 2, An Act to Tax and Regulate the Production, Sale, and Use of Marijuana (AS 17.38), was approved by voters statewide on November 4, 2014. AS 17.38.210 provides that a local government may prohibit the operation of marijuana cultivation facilities, marijuana product manufacturing facilities, marijuana testing facilities, or retail marijuana stores through the enactment of an ordinance or by voter initiative. The City Council voiced a consensus at the April 26, 2016, work session to bring forth an ordinance that allows the City to opt out of allowing marijuana operations within City limits for a period not to exceed six months while a committee is established to act in an advisory capacity to the Council and City Manager on the regulation of marijuana and operation of marijuana facilities within Kodiak City limits. Council must adopt Resolution No. 2016–16 to provide for the creation, structure, and function of an advisory committee.

**PREVIOUS COUNCIL ACTION:**

- January 27, 2016, joint work session – Cynthia Franklin, Director of the Marijuana Control Board presented information about marijuana laws to the Council and Assembly.
- April 12, 2016, City work session – City attorney Holly Wells presented marijuana information to the Council.
- April 26, 2016, City work session – the Council voiced a consensus and directed staff to prepare an ordinance to opt out of marijuana establishments within the Kodiak City limits for not more than six months and directed that a resolution be brought forth to establish a marijuana advisory committee appointed by the Council to be comprised of two Councilmembers, two Kodiak retail business owners, and two City resident at-large members to review and recommend regulations and policies for establishing marijuana establishments within the Kodiak City limit.

**DISCUSSION:** The Marijuana Control Board began to accept and process applications for marijuana establishments on February 24, 2016. AS 17.38.210 grants local government the authority to prohibit the operation of marijuana establishments through the enactment of an ordinance or by voter initiative. If the City does not have an ordinance in place to opt out of allowing marijuana establishments within the Kodiak City limit, and the Marijuana Control Board determines the applicant has met the State standards

for licensure, the State will notify the municipality of its intent to issue a license and will allow the municipality 60 days to object if there is cause to do so. The City Council has given direction that the City opt out of allowing marijuana establishments within the Kodiak City limits for a period not to exceed six months while a marijuana advisory committee appointed by the Council reviews and recommends regulations and policies to establish marijuana establishments in the City.

**ALTERNATIVES:**

- 1) Adopt Resolution No. 2016–16, which is staff’s recommendation, as it is consistent with the direction given at the April 26, 2016, work session.
- 2) Do not adopt Resolution No. 2016–16, which is not recommended.

**FINANCIAL IMPLICATIONS:** N/A

**LEGAL:** The City Attorney worked with staff to draft Resolution No. 2016–16.

**STAFF RECOMMENDATION:** Staff recommends that Council adopt Resolution No. 2016–16 so that staff may work with a committee to determine the best path forward for marijuana establishments in the City limit.

**CITY MANAGER’S COMMENTS:** I support Council’s recommendation that the City establish a committee to advise the Council to determine what types of marijuana businesses will be allowed and how to process and regulate the licenses at the local level. I believe establishing this committee will help us address those aspects of City involvement. I look forward to working through the process and recommend Council adopt Resolution No. 2016–16 to allow that foundation of this special advisory committee.

**ATTACHMENTS:**

Attachment A: Resolution No. 2016–16

**PROPOSED MOTION:**

Move to adopt Resolution No. 2016–16.

**CITY OF KODIAK  
RESOLUTION NUMBER 2016-16**

**A RESOLUTION OF THE COUNCIL OF THE CITY OF KODIAK ESTABLISHING A MARIJUANA ADVISORY SPECIAL COMMITTEE**

WHEREAS, State Ballot Measure 2, An Act to Tax and Regulate the Production, Sale, and Use of Marijuana, was approved by voters statewide on November 4, 2014; and

WHEREAS, the Kodiak City Council desires to form a committee consisting of two Councilmembers, two City retail business owners, and two City resident at-large members to recommend guidelines for implementing taxation, regulation, production, sale, and use of marijuana within the Kodiak City limit.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Kodiak, Alaska, that a Marijuana Advisory Special Committee is hereby established.

BE IT FURTHER RESOLVED THAT:

- Section 1. Membership/Quorum. The Marijuana Advisory Special Committee shall consist of the following six members appointed by the City Council.
- a) Two members of the City Council of which one member shall be designated as Chair and one as Vice-chair
  - b) Two retail business owners within the City
  - c) Two City resident at-large members

The City Manager, Deputy Manager, and City Clerk as well as additional City staff designated by the City Manager shall serve as nonvoting consulting members of the Committee. The City Attorney shall serve as a nonvoting consulting member of the Committee when requested by the City Manager.

Four voting members shall constitute a quorum.

- Section 2. Terms of members.
- a. The Committee shall be in effect until it presents its final report to the City Council.
  - b. Any Committee member who shall have two successive unexcused absences shall be subject to removal by the Committee by a majority vote of the members present.

- Section 3. Powers/Duties. It shall be the duty of the Marijuana Advisory Special Committee to act in an advisory capacity to the City Manager and the City Council on the regulation of marijuana and operation of marijuana facili-

ties within the Kodiak City limit. Further duties shall include, but not be limited to:

- Review taxation/fees, regulation, production, sale, use, and other issues related to implementation of marijuana laws and operating procedures within the Kodiak City limit.
- Recommend the implementation of laws and policies governing marijuana in the City.
- Analyze the economic impact of marijuana regulation in the City.

The Committee shall not have direct power to affect policy determinations but shall make recommendations to the City Council and administration.

Section 4. Meetings/Duration. Marijuana Advisory Special Committee meetings shall be open to the public, and public notice shall be provided at least three days prior to each meeting. The Committee shall meet at the call of the Chair and shall meet as often as necessary to complete its task prior to the expiration of Ordinance 1350. Permanent records or minutes shall be kept of the vote of each member upon every question. Every decision of finding shall immediately be filed in the office of the City Clerk, and shall be a public record open to inspection by any person. Every decision of finding shall be directed to the City Council at the earliest possible date.

Section 5. Administrative Support. The City Clerk’s Office shall provide administrative support.

CITY OF KODIAK

\_\_\_\_\_  
MAYOR

ATTEST:

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CITY CLERK

Adopted:

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## MEMORANDUM TO COUNCIL

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**To:** Mayor Branson and City Councilmembers

**From:** Aimee Kniazowski, City Manager 

**Thru:** Lon White, Harbormaster

**Date:** May 12, 2016

**Agenda Item:** V. e. **Authorization of Bid Award for Pier III Anodes Installation, Project No. 16/06-8024**

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**SUMMARY:** This memo recommends authorization to award the bid for Pier III additional dolphin anodes and coating, Project No. 16/06-8024, to Richard Phillips Marine, Inc. for the lump sum price of \$27,770.

**PREVIOUS COUNCIL ACTION:** Council has approved various change orders and contract amendments associated with the Pier III construction project for Pacific Pile and Marine, but no action for work outside the scope of the main project has been brought before Council.

**DISCUSSION:** This project is outside the scope of work previously authorized by Council and performed by Pacific Pile & Marine (PPM). Under the recommendation of Roe Sturgulewski, Pier III project manager, the additional anode and pile coating project was put out for bid. The additional work is needed to protect uncoated pilings that were installed for one dolphin at the new Pier III site. Bedrock at the dolphin was significantly shallower than design engineers estimated. Consequently, the pilings were not able to be driven to design depth, leaving un-galvanized piling within the water column. Engineers determined it was more cost effective to install protective wrap and additional anodes on the piling than to pay PPM to pull them and replace with modified piles. PPM wanted in excess of \$50,000 to install additional anodes and coating. Removal and replacement of the piling would be much more costly.

It is important the piles are wrapped with a protective coating and additional anodes are installed to protect the pilings from corrosion and match the equivalent design life of adjacent pilings that are fully galvanize coated. On May 2 at 2 pm the city received bids from three contractors as follows:

<b>Contractor</b>	<b>Bid Amount</b>
Ballard Marine Construction, Washington	\$114,000
Global Diving and Salvage Inc, Washington	\$44,704
<b>Richard Phillips Marine Inc, Oregon</b>	<b>\$27,770</b>
City Engineer Estimate:	\$40,000



**ALTERNATIVES:**

- 1) Authorize bid award for additional anodes and pile coating at Pier III. This will ensure the pilings are properly protected from corrosion for the projected design life of the pier structure. This is the project manager's, engineers' and staff recommendation.
- 2) Council may delay or not award the bid. This is not recommended. The piling will not have sufficient protection from corrosion, leading to a substantially shorter life of the piling and the structure.

**FINANCIAL IMPLICATIONS:** Council authorized additional funds for the Pier III project that included funds for this work.

**LEGAL:** N/A

**STAFF RECOMMENDATION:** Staff recommends Council authorize the bid award to Richard Phillips Marine Inc., to install additional anodes and pile coating for the sum of \$27,770 with funds coming from the Pier III project PN 16/06-8024.

**CITY MANAGER'S COMMENTS:** I support the recommendations given to me to install anodes and pile coating on the new Pier III dolphin pilings. This will ensure adequate service life for the dolphin piles that are currently not protected. Staff bid the project out in April and opened bids in May. Of the three bidders, Richard Phillips Marine was the lowest responsible bidder.

**ATTACHMENT:**

Attachment A: Bid Tabulation Form, 2016 Project: PN 16/06-8024

**PROPOSED MOTION:**

Move to authorize bid award for Pier III additional anodes and coating to Richard Phillips Marine in an amount not-to-exceed \$27,770 with funds coming from Pier III Replacement Project, Project No. 16/06-8024 and authorize the City Manager to execute the documents on behalf of the City.



# Bid Tab Pier III Additional Dolphin Anodes and Coating PN 16-06/8024

Bid Date: Monday, May 02, 2016

<i><b>Bid Item</b></i>	<i><b>Description</b></i>	<i><b>Quantity</b></i>	<i><b>Units</b></i>	<i><b>Engineers Estimate</b></i>	<i><b>Richard Phillips Marine Inc</b></i>	<i><b>Global Diving &amp; Salvage Inc</b></i>	<i><b>Ballard Marine Construction</b></i>
1	Install additional anodes on existing pipe piles	1	Lump Sum	\$40,000.00	\$27,770.00	\$44,704.00	\$114,500.00
<b>Grand Total</b>				<b>\$40,000.00</b>	<b>\$27,770.00</b>	<b>\$44,704.00</b>	<b>\$114,500.00</b>

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## MEMORANDUM TO COUNCIL

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**To:** Mayor Branson and City Councilmembers  
**From:** Aimée Kniazowski, City Manager   
**Thru:** Lon White, Harbormaster <sup>1</sup>  
**Date:** May 12, 2016

**Agenda Item:** V. f. Authorization of License Agreement for Use of Gull Island Site

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**SUMMARY:** Marine Exchange of Alaska (MXAK), a non-profit corporation, has requested permission to install weather data collection equipment and vessel tracking equipment on an existing tower located on the south end of Gull Island. The information provided by the equipment is extremely valuable and is available for use by Harbor staff and the maritime public. Staff recommends Council approve the license agreement for use of Gull Island site.

**PREVIOUS COUNCIL ACTION:** None

**DISCUSSION:** The City previously entered into an agreement with Alaska Sea Life Center to provide similar equipment on Gull Island. The Sea Life Center installed the tower and equipment. The City agreed to maintain the equipment once operational. Unfortunately in 2015, Alaska Sea Life Center lost their funding and could no longer support the project. Since that time MXAK has requested to use the tower to install new and upgraded equipment.

MXAK is a non-profit maritime organization established to serve the Alaska maritime community by providing information, communications, and services to ensure safe, secure, efficient and environmentally responsible maritime operations. MXAK provides a number of valuable services to the Harbor Department. They helped draft the City's USCG approved Facility Security Plan, train staff in facility security duties, provide annual security audits and assure USCG compliance. Additionally, they provide free of charge vessel tracking capability to the harbor department, which is extremely valuable for harbor operations.

The weather and camera equipment on the tower will benefit Matson and other users by providing real time weather data. This is especially critical information to large deep draft vessels such as Matson for safely entering the Port of Kodiak.

**ALTERNATIVES:**

- 1) Authorize the License Agreement for Use of Gull Island Site. This will benefit the Harbor Department and all maritime users and enhance safety in our port. This is staff's recommendation.

- 2) Do not authorize the License Agreement. This would preclude the installation of much needed safety equipment at a critical location, and is not staff's recommendation.

**LEGAL:** The City Attorney drafted the license agreement and advised staff that Council can approve the agreement by motion.

**FINANCIAL:** None. MXAK takes full responsibility for the installation, operation and maintenance of the equipment.

**STAFF RECOMMENDATION:** Staff recommends Council approve the license agreement with the Marine Exchange of Alaska.

**CITY MANAGER'S COMMENTS:** The City and the maritime community will benefit from the data provided. MXAK is a non-profit corporation that has worked with the City Harbor staff for many years and has provided outstanding service. If in the future the City has other needs for the area, the agreement allows for termination and removal of all equipment with 14 days notice. I support MXAK's proposal and recommend Council approve the license agreement for the use of Gull Island.

**ATTACHMENTS:**

Attachment A: License Agreement with Marine Exchange of Alaska for use of Gull Island

**PROPOSED MOTION:**

Move to authorize License Agreement No. 222381 for use of Gull Island with Marine Exchange of Alaska and authorize the City Manager to sign the agreement on behalf of the City.

**LICENSE AGREEMENT NO. 222381  
FOR USE OF GULL ISLAND SITE**

THIS AGREEMENT, effective the \_\_\_ day of \_\_\_\_\_, 2016, is made and entered into by and between the CITY OF KODIAK, ALASKA, a municipal corporation, organized and existing under the laws of the State of Alaska, whose address is 710 Mill Bay Road, Kodiak, Alaska 99615, hereinafter referred to as "CITY" and the MARINE EXCHANGE OF ALASKA, INC., an Alaska non-profit organization, whose address is 1000 Harbor Way, Suite 204, Juneau, AK 99801, hereinafter referred to as "LICENSEE";

1. Premises. CITY hereby grants to LICENSEE a revocable license to occupy and use, subject to all of the terms and conditions hereinafter stated, a portion of the following-described premises as further identified on a location map attached hereto as Exhibit A:

City-owned island (Gull Island) located adjacent to the real property currently known as the St Herman Harbor.

The Latitude/Longitude for this site is: 57<sup>0</sup> 46' 38.08" / 152<sup>0</sup> 25' 30.67"

2. Use. The premises may be occupied and used by LICENSEE solely for the purpose of operating weather and vessel tracking equipment on the tower located on the premises. LICENSEE shall be entitled to own and operate the "Rohn" communications tower on the breakwater area described above for use in connection with LICENSEE's data collection goals including: collecting and transmitting coastal marine weather conditions, and collecting real-time vessel traffic data. The use of the premises granted to LICENSEE is temporary and may be revoked by the CITY upon fourteen (14) days' written notice.
3. Term. The initial term of this License shall begin on June 1, 2016, and terminate on May 31, 2017 ("Initial Term"). Subsequently, this License may be extended for one (1) year terms, beginning June 1 of each year and terminating May 31 of the following year, unless terminated by either party.
4. Consideration. In consideration for use of the premises, LICENSEE shall keep its operations in good order. In addition, this agreement shall entitle the Kodiak Harbor Department to membership benefits in the Marine Exchange of Alaska, and thus will be entitled to two user accounts to the Marine Exchange's vessel tracking system providing data from of all the LICENSEE's receiver sites located in Alaska.
5. Installations. The existing tower placed upon the above-described premises shall be and remain the property of LICENSEE and may be removed therefrom by LICENSEE at any time provided that LICENSEE shall not damage or impair the CITY's property while installing or removing LICENSEE's equipment or improvements. All work related to the installations shall be accomplished by LICENSEE at its sole cost and expense and in such a manner as will, at all times, enable CITY, members of the general public and those otherwise entitled to do so to use the premises. At no time shall such installations or use

of the premises impede the clear and safe use of the harbor, as determined by the Harbormaster.

6. Removal of Improvements. LICENSEE hereby covenants and agrees that, on or before the termination of this License, it will remove said installation from the premises of CITY and restore the premises to a clean and safe condition.
7. Liability and Indemnity. Except and to the extent solely caused by CITY's own negligence or intentional misconduct, CITY shall not be liable for damages to property or injuries to persons, including death, arising from the construction, operation, maintenance, removal or activity of LICENSEE, its principals, officers, employers, associates, agents, representatives, successors, heirs or assigns, licensees or invitees, and LICENSEE does hereby agree to release, protect, defend, save harmless and indemnify CITY, its officials, employees and authorized representatives against any loss, cost, damage, expense, judgment or liability of any kind whatsoever, from or by reason or on account or as a result of the activity of LICENSEE.
8. Insurance. LICENSEE, during the Initial Term and every term thereafter, shall carry, at its sole expense, worker's compensation and general commercial liability insurance covering the premises and the LICENSEE's operations thereon, with terms and coverage that are reasonably satisfactory to the CITY.
9. Maintenance and Operation. LICENSEE shall fund all maintenance and operating costs associated with the tower and associated equipment described in this agreement. LICENSEE shall at all times, and at LICENSEE's sole cost and expense, keep and maintain the entire premises in a neat, orderly, and sightly condition. LICENSEE 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.
10. Hazardous Material. LICENSEE 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. If LICENSEE breaches this obligation, or if the presence of Hazardous Material on or about the premises is caused or permitted by LICENSEE results in contamination of the premises, then LICENSEE 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 License is in effect as a direct result of such contamination. 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.

IN WITNESS WHEREOF, the parties hereto have executed this document by and through their duly authorized officials.

CITY OF KODIAK, ALASKA

MARINE EXCHANGE OF ALASKA

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Aimée Kniaziowski, City Manager

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Brett Farrell, Assistant Director

ATTEST:

SUBMITTED BY:

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Debra Marlar, City Clerk  
(City Seal)

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Lon White, Harbormaster





**Exhibit A:** Map of Kodiak Harbor showing location of Gull Island Weather Station Site.

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## MEMORANDUM TO COUNCIL

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**To:** Mayor Branson and City Councilmembers  
**From:** Aimée Kniazowski, City Manager and Debra Marlar, City Clerk  
**Thru:** Mike Tvenge, Deputy City Manager  
**Date:** May 12, 2016

**Agenda Item:** V. g. Appointments to Marijuana Advisory Special Committee

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**SUMMARY:** Earlier in the meeting the Council adopted Resolution No. 2016–16, Establishing a Marijuana Advisory Special Committee, whose task is to review various elements of State marijuana laws and act in an advisory capacity to the Council and City Manager on the regulation of marijuana and operation of marijuana facilities within the Kodiak City. Council will review applications and appoint by motion members that will represent businesses and at-large community members.

**PREVIOUS COUNCIL ACTION:**

- January 27, 2016, joint work session – Cynthia Franklin, Director of the Marijuana Control Board presented information about marijuana laws to the Council and Assembly.
- April 12, 2016, City work session – City attorney Holly Wells presented marijuana information to the Council.
- April 26, 2016, City work session – the Council voiced a consensus and directed staff to prepare an ordinance to opt out of marijuana establishments within the Kodiak City limit for not more than six months and directed that a resolution be brought forth to establish a marijuana advisory committee appointed by the Council to be comprised of two Councilmembers, two Kodiak retail business owners, and two City resident at-large members to review and recommend regulations and policies for establishing marijuana establishments within the Kodiak City limit.
- May 10, 2016 City work session – the Council reviewed applications from retail business owners in the City and City resident at large members.

**DISCUSSION:** The City Council gave direction at the April 26, 2016, work session that the City opt out of allowing marijuana establishments within the Kodiak City limit for a period not to exceed six months while a marijuana advisory committee appointed by the Council reviews and recommends regulations and policies to establish marijuana establishments in the City. The City Clerk placed ads in the newspaper seeking applicants to serve on this committee and submitted public service announcements to the local radio stations. The Council reviewed applications at Tuesday's work session.

**ALTERNATIVES:**

- 1) If sufficient applications were received, the Council may wish to proceed with appointments to the committee.
- 2) If sufficient applications were not received, the Council may wish to postpone appointments to allow additional time to receive applications.

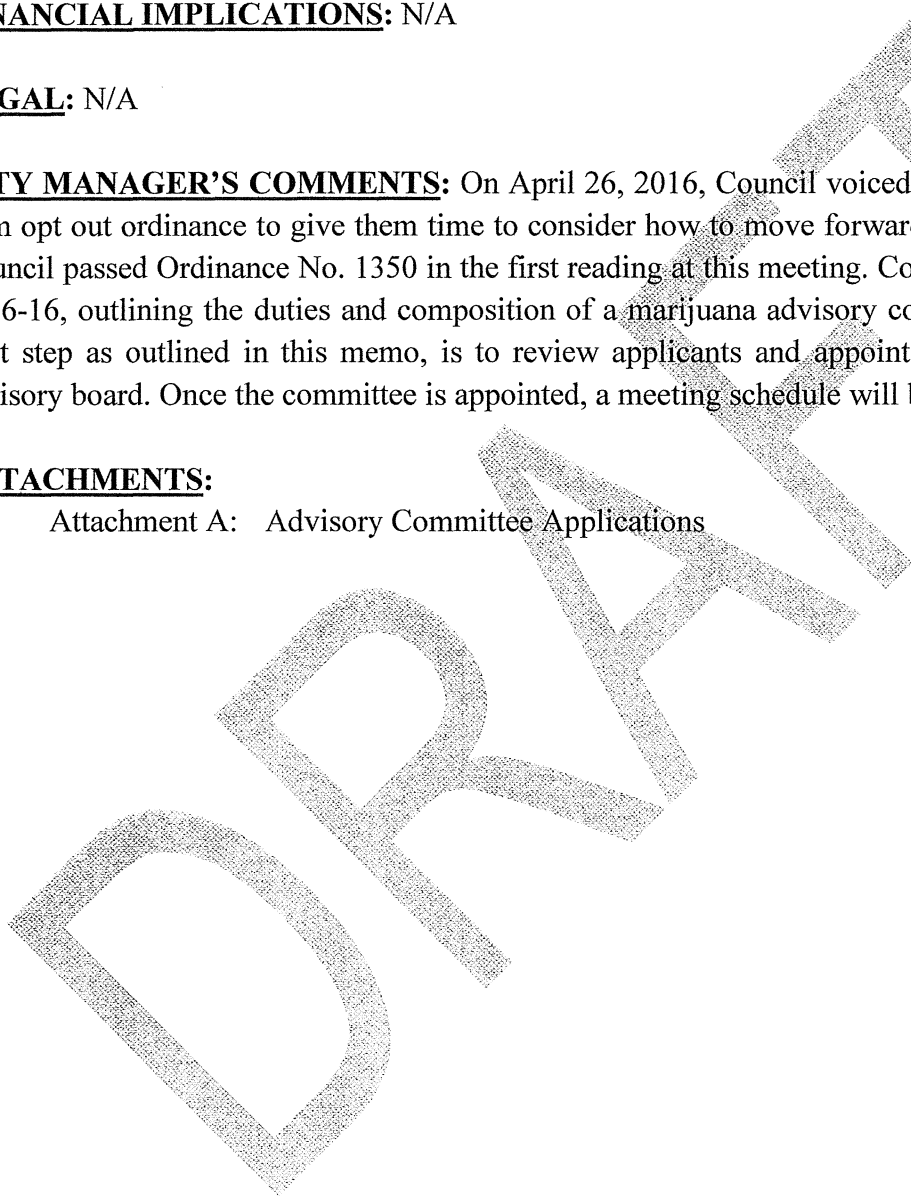
**FINANCIAL IMPLICATIONS:** N/A

**LEGAL:** N/A

**CITY MANAGER’S COMMENTS:** On April 26, 2016, Council voiced a consensus to adopt a short-term opt out ordinance to give them time to consider how to move forward with marijuana legalization. Council passed Ordinance No. 1350 in the first reading at this meeting. Council also adopted Resolution 2016-16, outlining the duties and composition of a marijuana advisory committee at this meeting. The next step as outlined in this memo, is to review applicants and appoint members to the six-member advisory board. Once the committee is appointed, a meeting schedule will be developed for the board.

**ATTACHMENTS:**

Attachment A: Advisory Committee Applications



**PROPOSED MOTION:**

Move to appoint Councilmembers \_\_\_\_\_ and \_\_\_\_\_ with \_\_\_\_\_ to serve as Chair and \_\_\_\_\_ as Vice-chair and \_\_\_\_\_ and \_\_\_\_\_ as retail business owners within the City and \_\_\_\_\_ and \_\_\_\_\_ as City resident at-large members.

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## MEMORANDUM TO COUNCIL

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**To:** Mayor Branson and City Councilmembers  
**From:** Aimée Kniazowski, City Manager *AK*  
**Thru:** Mike Tvenge, Deputy City Manager *MT*  
**Date:** May 12, 2016

**Agenda Item: V.h. Authorization of Cooperative Agreement Between the City, Sun'aq Tribe and BIA for Improvements To Shelikof Street**

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**SUMMARY:** The Sun'aq Tribe of Kodiak has approached the City to include Shelikof Street in the Tribe's existing road inventory to the Bureau of Indian Affairs (BIA) Tribal Transportation Program. A Memorandum of Agreement between the Sun'aq Tribe and the City would potentially bring Federal funding to Kodiak to make improvements to this street. Staff recommends the City Council authorize the City Manager to enter into this Memorandum of Agreement.

**PREVIOUS COUNCIL ACTION:**

Council heard discussion of this proposal during the May 10, 2016, City Council work session.

**DISCUSSION:** City Council has authorized DOWL to develop a plan for the Shelikof Street area including bulkhead parking. Kathy Drabek, Sun'aq Tribal Transportation Program Manager is aware of this project and sees the benefit in a collaborative plan as the Tribe recently purchased the old Ursin cannery property for future development.

Kathy Drabek met with the City Manager and Deputy City Manager to discuss the idea of including Shelikof Street in the BIA Transportation Program. As the program is explained, the City does not transfer any rights or ownership but rather benefits from any improvements BIA funding might provide to the City through the Tribe. With the recent purchase of Ursin Cannery property on Shelikof Street by the Sun'aq Tribe, they too have a vested interest in the area. City Council approval is required for any Tribal-Council approved projects.

**ALTERNATIVES:**

- 1) City Council could authorize the City Manager to bind an agreement with the Sun'aq Tribe of Kodiak to allow Shelikof Street to become part of their Transportation Program Inventory.
- 2) City Council could delay approval and request more information about the funding mechanism through BIA and benefits of collaboration to the City. This may be the first agreement of its kind with the City.

**FINANCIAL IMPLICATIONS:** There are no known matching funds or other financial obligations required of the City by this MOA. The City has been working on a phased project for the Shelikof Pedestrian Pathway project since 2010 and works phases as state cruise ship excise taxes become available.

**DEPUTY CITY MANAGER'S COMMENTS:** We have had three meetings now with Ms. Drabek regarding this collaboration. It appears to be a clear benefit to the Community with an opportunity to fund improvements to Shelikof Street. As the City moves ahead with the bulkhead parking project design and other phases of the Shelikof Pedestrian Pathway project, the Sun'aq Tribe suggestions could fold into our master plan for this area of town. During our previously described meetings there was no clear understanding how details such as federal funding would be applied to any street improvements, but thoughts were it would likely pass through the Sun'aq Tribe directly to the City, as the City is the owner of this property.

**ATTACHMENTS:**

- A) Letter of Request From the Sun'aq Tribe of Kodiak
- B) Memorandum of Agreement Between the Sun'aq Tribe of Kodiak and the City of Kodiak

**PROPOSED MOTION:**

Move to authorize the Memorandum of Agreement between the City and Sun'aq Tribe and authorize the City Manager to sign the MOA for the City.

*[ Federally Recognized December, 2000*



Sun'aq Tribe of Kodiak

May 3, 2016

Aimee Kniazowski, City Manager  
710 Mill Bay Road, Room 114  
Kodiak, AK 99615

Dear Ms. Kniazowski:

Thank you for your consideration of the Sun'aq Tribe of Kodiak's proposal to add Shelikof Street to the Sun'aq Tribal Transportation Program's Inventory.

We currently have an inventory of roads that are mostly state-owned; such as, Rezanof Drive and Anton Larsen Bay Road. With our newly purchased Ursin cannery property on Shelikof Street, we have a vested interest in the neighborhood. By adding Shelikof Street in our inventory, we will be able to access Bureau of Indian Affairs (BIA) funds for such things as lighting, signage and other road improvement expenses to benefit the City's road improvement efforts. Including a road in a Tribal inventory does not limit the owner of the road nor relinquish any ownership rights.

All federally-recognized tribes in Alaska have cooperative agreements with the owners of the roads in their inventories, which clearly outlines a collaboration to seek to improve roads of mutual benefit.

Given that we all live in this community together and as the BIA Tribal Transportation Program brings funds to Sun'aq, we would like to contribute support to City of Kodiak roads that benefit us all. These funds are made available to Sun'aq through BIA in support of design, construction or maintenance of Tribal Council approved projects. As we discussed in our meeting yesterday, we would adhere to existing plans like the DOWL Pedestrian Pathways project and keep open communications with your office.

I look forward to potentially developing this agreement.

Regards,

  
Kathy Drabek

Tribal Transportation  
Program Manager

312 W. Marine Way, Kodiak, Alaska 99615 (907) 486-4449

Fax: (907) 486-3361 \* E-mail: [kddrabek@sunaq.org](mailto:kddrabek@sunaq.org)

Proudly representing the members of the Sun'aq Tribe of Kodiak Island, Alaska



## MEMORANDUM OF AGREEMENT

Between

Sun'aq Tribe of Kodiak

City of Kodiak

312 West Marine Way  
Kodiak AK 99615  
Phone: (907) 486-4449  
Fax: (907) 486-3361

710 Mill Bay Road  
Kodiak, AK 99615  
Phone: (907) 486-8640  
Fax: (907) 486-8600

This Memorandum of Agreement is by and between City of Kodiak, current OWNER and RESPONSIBLE AUTHORITY for Maintaining Routes in the City of Kodiak and Sun'aq Tribe of Kodiak. In Kodiak, Alaska, where Sun'aq Tribe of Kodiak Resides, the Tribe does not own the Route or maintain it.

A Separate Maintenance Agreement between the Public Authorities allows the Tribe to work with City to maintain route.

Route #	Section #	Route Name	Length	Route Location
1012	010	Shelikof Street	0.03	E01-850
1012	020	Shelikof Street	0.42	E01-850
1012	030	Shelikof Street	0.37	E01-850
Total Length			0.82 Miles	

If needed improvements to the OWNER routes are completed under cooperative agreements between the TRIBE and OWNER, and if Tribal Transportation Program (TTP) funds are available the TRIBE can contribute based on its Long Range Transportation Plan (LRTP) and Council Approval. Moreover, these routes will be open to the public unless the roads meet the definition of 25 C.F.R. 170.120, 170.122 Requirement – 23 U.S.C. 116 (a) (b), Appendix C, Question 10 (3), 170.443 (d).

This agreement is binding upon signatories not as individuals, but solely in their capacity as officials of their respective organizations, and acknowledges proper action of OWNER and TRIBE to infer the same.

SUN' AQ TRIBE OF KODIAK

CITY OF KODIAK

\_\_\_\_\_  
Chief Executive Officer

\_\_\_\_\_  
City Manager

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

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

312 W. Marine Way, Kodiak, Alaska 99615 (907) 486-4449

Fax: (907) 486-3361 \* E-mail: ceo@sunaq.org

Proudly representing the members of the Sun'aq Tribe of Kodiak Island, Alaska