

**City of Kodiak Regular Council Meeting Agenda for August 11, 2016**  
**7:30 p.m., at 710 Mill Bay Road, Assembly Chambers (Room 232)**

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- I. Call to Order/Roll Call**  
Invocation/Pledge of Allegiance
  
- II. Previous Minutes**  
Approval of Minutes of the July 14, 2016, Regular Council Meeting and July 21, 2016, Special Meeting .....1
  
- III. Persons to Be Heard**
  - a. Presentation of GFOA Award to the Finance Department .....12
  - b. Public Comments (limited to 3 minutes) (486-3231)
  
- IV. Unfinished Business**
  - a. Continued 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 .....16
  - b. Second Reading and Public Hearing, Ordinance No. 1354, Amending Kodiak City Code 14.04.010; Regarding the Adoption of Building Codes .....34
  - c. Second Reading and Public Hearing, Ordinance No. 1355, Authorizing a Memorandum of Agreement With the Alaska Marine Highway System Regarding Joint Use of Pier I, and a Supplemental Agreement No. 1 With the Alaska Marine Highway System for the Lease of Office Space and a License for Use of Pier II.....44
  - d. Second Reading and Public Hearing, Ordinance No. 1356, Authorizing a Lease to Kodiak Maritime Museum and Art Center of a 2,000+ Square Foot Portion of Alaska Tidelands Survey No. 49 Located in St. Paul Harbor for the Thelma C Display and Rescinding Ordinance No. 1340 .....112
  
- V. New Business**
  - a. First Reading, Ordinance 1358, Authorizing the Expenditure of the \$25,000 Appropriated to Ballot Initiative Expense in the FY2017 Operating Budget to Inform the Public Regarding the Effects of the Collective Bargaining Ordinance Initiative Proposition and the Kodiak Island Borough Proposition to Consolidate the Kodiak Island Borough and the City of Kodiak Into a Single Unit of Government, Including Without Limitation Information That May Influence the Outcome of the Election on Either Proposition ....134
  - b. Resolution No. 2016–27, Authorizing the Issuance of a Permit to Kodiak Football League for the Use of Public Property to Sell Concessions and Collect Admission Fees for Kodiak High School and Youth Football Games at Baranof Park .....140
  - c. Resolution No. 2016–28, Appropriating \$650,000 From the Cargo Terminal Fund to the Cargo Development Capital Project Fund to Pay Settlement Costs Related to the Construction of Pier III Replacement Project No. 11-07/8024.....144
  - d. Authorization of Lease Assignment and Sublease of a Portion of Pillar Mountain Antenna Site Lease 3 From Alaska Wireless Network, LLC (AWN) to AWN Tower Company, LLC and the Purchase of AWN Tower Company, LLC by Vertical Bridge Tower II, LLC, and the Sublease From AWN Tower Company, LLC to Alaska Wireless Network, LLC .....148

e.	Authorization of Bid Award of the FY2017 Mill Bay Road Pavement Rehabilitation Project, Project No. 17-02/5036.....	164
f.	Authorization of Purchase of Used Mini-Excavator for Parks and Recreation and Public Works Departments .....	172
g.	Authorization of a Technical Services Agreement With Willard A. Fedra to Operate the Marine Travelift .....	184
h.	Authorization of Bid Award for Harbor and Parks and Recreation Department Vehicles.....	194
i.	Authorization of Bid Award of Final Parking Lot Pavement for Pier III Replacement, Project No. 11-07/8024.....	208
j.	Authorization of Ambulance Purchase .....	212
k.	Authorization of Purchase of Skate Ramps .....	218
l.	Authorization of Bid Award for Bobcat Utility Work Machine for the Parks and Recreation Department .....	226
m.	Authorization to Terminate the Building Inspection Program MOA .....	236
n.	Authorization of Payment of Final Closeout Costs Related to the Primary Construction Contract for Pier III Replacement Project No. 11-07/8024 .....	246

**VI. Staff Reports**

- a. City Manager
- b. City Clerk

**VII. Mayor's Comments**

**VIII. Council Comments**

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

**X. Adjournment**



**MINUTES OF THE REGULAR COUNCIL MEETING  
OF THE CITY OF KODIAK  
HELD THURSDAY, JULY 14, 2016  
IN THE BOROUGH ASSEMBLY CHAMBERS**

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

Mayor Pat Branson called the meeting to order at 7:35 p.m. Councilmembers Laura B. Arboleda, Gabriel T. Saravia, Richard H. Walker, and John B. Whiddon were present and constituted a quorum. Councilmembers Charles E. Davidson and Randall C. Bishop were absent. City Manager Aimée Kniaziowski, City Clerk Debra L. Marlar, and Deputy Clerk Michelle Shuravloff-Nelson were also present. *Councilmember Davidson arrived at 7:36 p.m.*

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

**II. PREVIOUS MINUTES**

Councilmember Whiddon MOVED to approve the minutes of the June 21, 2016, special meeting and June 23, 2016, regular meeting as presented.

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

**III. PERSONS TO BE HEARD**

**a. Public Comments**

**Chris Lynch** stated she would like to provide an explanation for the Kodiak Maritime Museum's nonprofit application as requested by the City Council during the work session on July 12, 2016. She said the \$5,000 costs were classified as administrative because they were not going to be used for capital projects. She informed the Council that the breakdown for the requested \$5,000 from KMM would be for the harbor lights festival in the amount of \$1,000; oral history program in the amount of \$2,500; and harbor walking tour in the amount of \$1,500. She said the other \$10,000 was to finish the Thelma C project. She noted additional funding was sought for the Thelma C. project from the Murdock Trust, Rasmuson Foundation, and two Alaska Legislative grants.

*Councilmember Davidson arrived.*

**IV. UNFINISHED BUSINESS**

None

**V. NEW BUSINESS**

**a. First Reading, Ordinance No. 1354, Amending Kodiak City Code 14.04.010; Regarding the Adoption of Building Codes**

Mayor Branson read Ordinance No. 1354 by title. The State of Alaska adopted new construction codes. As a deferred jurisdiction the City is required to adopt codes that meet or exceed the state's adopted codes. The Joint Building Code Review Committee met numerous times to discuss, review, and amend the proposed codes. The Joint Building Code Review Committee and staff recommend Council adopt the new codes.

Councilmember Arboleda MOVED to pass Ordinance No. 1354 in the first reading and advance to second reading and public hearing at the next regular or special Council meeting.

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

**b. First Reading, Ordinance No. 1355, Authorizing a Memorandum of Agreement With the Alaska Marine Highway System Regarding Joint Use of Pier I, and a Supplemental Agreement No. 1 With the Alaska Marine Highway System for the Lease of Office Space and a License for Use of Pier II**

Mayor Branson read Ordinance No. 1355 by title. The City of Kodiak entered into an agreement with the State of Alaska, Alaska Marine Highway System (AMHS), authorizing the state to replace Kodiak's existing Pier I. The replacement project is scheduled for completion in July 2016, at which time Pier I will be ready for use again by AMHS vessels. Memorandum of Agreement (MOA) No. 2517S004 and Supplemental Agreement No.1, No. 2517S005, spell out the terms for AMHS's use of Pier I and II for the next five years. The adoption of this ordinance will allow for continued ferry service at Kodiak terminals.

Councilmember Walker MOVED to pass Ordinance No. 1355 in the first reading and advance to second reading and public hearing at the next regular or special Council meeting.

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

**c. First Reading, Ordinance No. 1356, Authorizing a Lease to Kodiak Maritime Museum and Art Center of a 2,000+ Square Foot Portion of Alaska Tidelands Survey No. 49 Located in St. Paul Harbor for the Thelma C Display and Rescinding Ordinance No. 1340**

Mayor Branson read Ordinance No. 1356 by title. The Kodiak Maritime Museum (KMM) developed the idea of restoring and displaying an historic 36' fishing vessel, the Thelma C, in the harbor area downtown. KMM representatives came to several City Council meetings since 2013 with their idea, which Council and harbor users supported. The KMM was given formal approval of the original lease site on the harbor spit and recently requested the location be adjusted to make the installation more affordable.

Councilmember Davidson MOVED to pass Ordinance No. 1356 in the first reading and advance to the second reading and public hearing at the next regular or special Council meeting.

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

**d. Resolution No. 2016–23, Authorizing Payment of Fiscal Year 2017 Nonprofit Organization Grants**

Mayor Branson read Resolution No. 2016–23 by title. Each year the City Council authorizes grant payments to local nonprofit organizations. The types and levels of funding are based on the City Council's nonprofit funding policy guidelines adopted by Resolution No. 2015–16. The policy resolution stipulates the total amount available for nonprofit grants in a given fiscal year, which equals the maximum of one percent of budgeted general fund revenues, exclusive of any fund balance appropriations. The amount available in the FY2017 budget for nonprofit grants is \$184,500. The City received twenty applications for FY2017 from nonprofit organizations that serve Kodiak, down from twenty-two applications last fiscal year, for a total amount requested of \$177,201. Council reviewed the applications at the July 12 work session. Council's support for the applicants is reflected in Resolution No. 2016–23.

Councilmember Davidson MOVED to adopt Resolution No. 2016–23.

Councilmember Whiddon MOVED to modify Resolution No. 2016–23 by striking \$5,000 from adult recreation programs for KMXT.

Councilmember Davidson stated he does not support the amendment to eliminate \$5,000 for KMXT adult recreation programs.

Councilmember Whiddon stated he does not support free training as described by KMXT in their request for funding, and said he does not feel it meets the level of urgency as the other requests.

The roll call vote on the amendment was Councilmembers Saravia and Whiddon in favor. Councilmembers Arboleda, Davidson, and Walker opposed. Councilmember Bishop was absent. The motion failed.

Councilmember Whiddon MOVED to withhold \$10,000 from KMM for construction of Thelma C project in Resolution No. 2016–23 until a budget is shown to support the project.

Councilmember Davidson spoke in opposition to the amendment and said obtaining a budget may be difficult if all the funds are not currently available for the Thelma C project and withholding funds may restrict moving forward to complete the Thelma C project.

Councilmember Walker stated he supports the request for information regarding KMM's budget, because he is interested in knowing their other funding sources.

The roll call vote on the second amendment was Councilmembers Saravia, Walker, and Whiddon in favor. Councilmembers Arboleda and Davidson opposed. Councilmember Bishop was absent. The motion failed.

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

**e. Resolution No. 2016–24, Expressing a Deep Sense of Urgency for the Alaska State Legislature to Take Immediate Action During the Fifth Special Session of the 29<sup>th</sup> Legislature to Pass All Necessary Fiscal Legislation Required to Provide for a Fair, Balanced and Sustainable State Budget**

Mayor Branson read Resolution No. 2016–24 by title. Governor Bill Walker and staff have created a fiscal plan towards a sustainable future for the State of Alaska. The Administration has visited communities and held numerous conferences to explain the plan they produced. During the 29<sup>th</sup> Legislative Session, the Legislature failed to enact a fiscal plan, and has now been called back to Juneau by the Governor for a fifth Special Session.

Councilmember Walker MOVED to adopt Resolution No. 2016–24.

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

**f. Resolution No. 2016–25, Authorizing the Issuance of a Permit to the Filipino American Association of Kodiak for the Use of Public Property to Host Its Philippine Consulate Outreach Program**

Mayor Branson read Resolution No. 2016–25 by title. The Filipino American Association of Kodiak (Fil-Am) is hosting the Philippine Consulate General from San Francisco to provide Consular outreach services to Filipino Americans. Fil-Am will ask for a \$20 donation from participants. This service provides local Filipinos help obtaining and updating immigration documents without having to pay the travel expenses that otherwise would be required. This event is scheduled at the Teen Center auditorium from 8 a.m. to 6 p.m. on August 21 and 22.

Councilmember Arboleda MOVED to adopt Resolution No. 2016–25.

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

**g. Resolution No. 2016–26, Appropriating \$165,000 From the Cargo Terminal Fund to the Cargo Development Capital Project Fund to Pay for Additional Construction and Project Management Services Needed in the Pier III Replacement, Project No. 11-07/8024**

Mayor Branson read Resolution No. 2016–26 by title. The Pier III construction project is currently in the final stages of completion. Additional funding is requested through this resolution for construction administration support through the claims and mediation process, City engineering personnel costs related to project delays, and additional construction to complete paving.

Councilmember Walker MOVED to adopt Resolution No. 2016–26.

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

**h. Authorization of Amendment to Lease No. 219595 for City Hall Office Space in the Kodiak Island Borough Building**

The previous Kodiak Island Borough (KIB) Manager and the City Manager revised the terms of a lease for office space the City occupies in the Borough Building in July 2015. The new five-year lease increased the leased office space from 3,444 sf to 4,727 sf. At the May 7, 2016, budget work session City Clerk Debra Marlar presented the need for additional records storage space. Council expressed support during the budget work session to pursue two additional rooms in the Borough building for the City-wide records management program. Staff worked with the KIB Resource Management Officer for a lease amendment to the current office space agreement.

Councilmember Davidson MOVED to authorize the first amendment to Lease No. 219595 for City Hall Office Space in the Kodiak Island Borough Building in the amount of \$11,565.40 per month from the General Fund Nondepartmental Building Rental line item and authorize the City Manager to execute the lease amendment document on behalf of the City.

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

**i. Authorization of Amendment 3 to the Five-Year Regional and Community Jail Contract**

The City of Kodiak is in year four of a five-year contract with the Department of Corrections (DOC) for the Regional and Community Jail Program. DOC has brought forward an amendment to the contract for FY2017. The amended contract amount for the term beginning July 1, 2017, is \$991,552, which is the same funding amount as FY2016.

Councilmember Walker MOVED to authorize the professional services contract Amendment 3 for Regional and Community Jail services with the Alaska Department of Corrections commencing on July 1, 2016, and ending on June 30, 2017, for \$991,552 and authorize the City Manager to sign the contract on behalf of the City.

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

**j. Authorization of Amendment No. 9 to the Professional Services Contract for Pier III Project Management with ARCADIS US Inc.**

Amendment No. 9 to ARCADIS is for additional construction phase project management services for the Pier III replacement project. Project Manager Roe Sturgulewski submitted a proposal, which provides extended project management services to complete closeout of the project and assist with resolution of Pacific Pile & Marine LP, including Dominion Pipe and Piling claims.

Councilmember Arboleda MOVED to authorize Amendment No. 9 to the professional services contract with ARCADIS in an amount not-to-exceed \$50,000 for project management services, Project No. 11-07/8024, with funds from the Cargo Development Capital Project Fund and authorize the City Manager to execute the documents on behalf of the City.

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

**k. Authorization of Purchase of Dump Truck**

The Public Works department has ten medium/heavy duty International trucks in the fleet. Staff has had very good service and performance from International’s medium/heavy duty line of trucks and recommended the sole source purchase of an International dump truck from RWC INTERNATIONAL LTD. Kodiak City Code 3.12.070 2(d) allows for the City Manager to recommend the sole source purchase.

Councilmember Walker MOVED to authorize the purchase of a 2017 International 7400 Dump Truck from RWC INTERNATIONAL LTD in the amount of \$ 121,479 with funding from the Streets, 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, Davidson, Saravia, Walker, and Whiddon in favor. Councilmember Bishop was absent. The motion passed.

**VI. STAFF REPORTS**

**a. City Manager**

Manager Kniazowski said the fifth special session of the 29<sup>th</sup> Legislature is still in session and the session may close by the end of the week. She said the City is following the Legislature’s discussion regarding sales tax and is prepared to lobby in opposition. She said Lori Aldrich from Alaska DEC complemented the staff for their work at the compost site. She said the compost site building should be constructed by the middle of August. She said Pier I is expected to be complete, and the Tustemena is scheduled to dock on July 22, 2016. She said she is scheduled to meet with the Kodiak Island Borough Manager on Friday. She said mediation for the Pier III project is scheduled on July 26, 2016. She said she will meet with the staff and processors regarding the water rates on Friday, July 15, 2016. She said last week Homeland Security was in Kodiak to renew the Tsunami Ready service, and they had a public meeting to share various types of situations that could occur if a tsunami occurs. She said public education and outreach will be done in the future for tsunami preparedness. She informed the public she will be out of the office July 28 through August 27, 2016, and Mike Tvenge will be Acting City Manager.

**b. City Clerk**

Clerk Marljar informed the public she certified a petition to initiate an ordinance by a vote of the people providing for collective bargaining for employees of the City. She read the title of the ordinance that will be on the ballot and stated a copy of the ordinance is available in the Clerk’s Office. She informed the public of the next scheduled Council meetings.

**VII. MAYOR’S COMMENTS**



Mayor Branson referred to Resolution No. 2016–24 and the additional whereas clauses that were included to urge the Legislature to pass necessary legislation required for a fair, balanced, and sustainable state budget. She said she heard on the news if the Legislature does not pass a budget there will not be anything left in two years. She said this will impact the City, other municipalities, agencies, and residents of Alaska, which she feels is very unfortunate and citizens should be aware. She said she met with Anjuli Grantham about the ArtPlace funding that supports bringing art and culture to Shelikof Street. She wished Anjuli good luck in her request. Mayor Branson said during her meeting with the Shelikof Industrial project reviewers, Sun’aq expressed an interest in an icehouse and crane on Shelikof, and she referred them to the City Manager. She said the ordinance that KIB Assembly is introducing for consolidation at their next meeting has not been discussed with the City Council. She said consolidation and building codes are on the agenda item for the next joint work session on August 23, 2016. She said there was good discussion and enhancement of definitions for the nonprofit grant process at the work session earlier in the week.

### VIII. COUNCIL COMMENTS

Councilmember Saravia thanked the nonprofit organizations for the work and services they provide to the community.

Councilmember Whiddon thanked the nonprofit organizations for their services; he said there are four designations within the nonprofit application that he hopes will be reviewed in the future. He said he fought hard to help low income families in need, and he commented he will continue to scrutinize the application process to make sure funding is available to support social services that are essential to the community. He said the Fisheries Work Group meeting will be Tuesday, July 19, 2016. He said the goals will be to refine the talking points to create a letter for Gulf trawl by-catch issues for the fall NPFMC meetings.

Councilmember Arboleda said she appreciated Councilmember Whiddon’s comments. She said she is thankful for the services within the community. She said the next Marijuana Advisory Committee meeting will focus on the cultivation and retail process.

Councilmember Davidson said he is regretful about the situation in Dallas; the vulnerability of first responders is unfortunate and fear is prevalent. He encouraged citizens to thank and appreciate their first responders. He said the citizens should contact legislators about the budget and commented that he believes Governor Walker has done a great job.

Councilmember Walker said he appreciates the work of staff, department heads, and Council on the UV project, Pier III, and other infrastructure projects that have been progressive. He gave a heartfelt thank you for the flowers and well wishes he received during his recent surgery. He thanked the nonprofit agencies.

### IX. AUDIENCE COMMENTS

**Chris Lynch** said the Thelma C project budget was available in the KMM’s nonprofit application grant.

**X. ADJOURNMENT**

Councilmember Davidson MOVED to adjourn the meeting.

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

The meeting adjourned at 8:39 p.m.

CITY OF KODIAK

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MAYOR

ATTEST:

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CITY CLERK

Minutes Approved:

<b>DRAFT</b>
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**MINUTES OF THE SPECIAL COUNCIL MEETING  
OF THE CITY OF KODIAK  
HELD THURSDAY, JULY 21, 2016  
IN THE KODIAK CITY CONFERENCE ROOM**

**I. MEETING CALLED TO ORDER**

Deputy Mayor Richard H. Walker called the meeting to order at 11a.m. Councilmembers Laura B. Arboleda, Charles E. Davidson, Gabriel T. Saravia, and John B. Whiddon were present and constituted a quorum. Mayor Pat Branson and Councilmember Randall C. Bishop were absent. City Manager Aimée Kniazowski, City Clerk Debra Marlar, and Deputy City Manager Mike Tvenge were also present.

City Attorneys Tom Klinkner and Bill Mede were also present via teleconference.

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

Ben Shryock and Michael Sortor spoke in favor of City Proposition No. 1, which will be on the October 4, 2016, municipal election ballot.

**III. EXECUTIVE SESSION**

**a. Discussion of the City's Strategy in Response to the Collective Bargaining Ordinance Initiative**

Councilmember Whiddon 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, specifically the City's strategy response to collective bargaining.

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

The Council entered into executive session at 11:10 a.m.

The Deputy Mayor reconvened the special meeting at 12:55 p.m.

**IV. ADJOURNMENT**

Councilmember Davidson MOVED to adjourn the meeting.

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

The meeting adjourned at 12:55 p.m.

**JULY 21, 2016**

CITY OF KODIAK

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MAYOR

ATTEST:

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CLERK


Minutes Approved:

## **PERSONS TO BE HEARD**

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## MEMORANDUM TO COUNCIL

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**To:** Mayor Branson and City Councilmembers  
**From:** Aimée Kniaziowski, City Manager  
**Thru:** Mike Tvenge, Deputy City Manager   
**Date:** August 11, 2016

**Agenda Item:** III. a. Presentation of GFOA Award to the Finance Department

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**SUMMARY:** The Government Finance Officers Association (GFOA) notified the City that the Finance Department received a Certificate of Achievement for Excellence in financial reporting for the City's FY2015 comprehensive annual financial report (CAFR). The award of this certificate represents one of the highest levels of achievement in governmental financial reporting for the Department and City. Our Finance Director Kelly Mayes and Finance Department staff did a very thorough job of preparing the CAFR and assisting the auditors.

**ATTACHMENTS:**

Attachment A: GFOA Certificate of Achievement for Excellence in Financial Reporting



Government Finance Officers Association

**Certificate of  
Achievement  
for Excellence  
in Financial  
Reporting**

Presented to

**City of Kodiak  
Alaska**

For its Comprehensive Annual  
Financial Report  
for the Fiscal Year Ended

**June 30, 2015**

Executive Director/CEO

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# **UNFINISHED BUSINESS**

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## MEMORANDUM TO COUNCIL

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**To:** Mayor Branson and City Councilmembers  
**From:** Aimée Kniazowski, City Manager  
**Thru:** Mike Tvenge, Deputy City Manager   
**Date:** August 11, 2016

**Agenda Item:** **IV. a. Continued 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 expired June 30, 2016. This new Lease Agreement has a term of five years and requires approval by ordinance. Staff recommends City Council adopt Ordinance No. 1349.

**PREVIOUS COUNCIL ACTION:**

- In February 2011, City Council approved Ordinance No. 1238 authorizing a five-year lease to GCI Communication Corporation (GCI).
- On May 12, 2016, Council postponed Ordinance No. 1349 to allow staff to perform a market analysis on cell tower lease rates.

**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 expired 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) Adopt Ordinance No. 1349, which is recommended by staff.
- 2) Delay or not adopt Ordinance No. 1349, which could allow the current Lease agreement to remain expired as of June 30, 2016.

**FINANCIAL IMPLICATIONS:** The annual rent for this site is \$13, 200 with a 2.5 percent increase each year. Lessee shall remit to City 50% of any assignment or sublease revenues paid monthly.

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

**DEPUTY CITY MANAGER'S COMMENTS:** The City Clerk's office has compiled a list of the City of Kodiak Communication Site Leases and determined the commercial leases of this type within the City are at comparable annual rates. This lease contains a provision for sublease to Alaska Wireless Network which requires City Council approval. This ordinance conveys the required approval.

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 with an effective date of July 1, 2016.

**ATTACHMENTS:**

Attachment A: Ordinance No. 1349

Attachment B: Lease Agreement

Attachment C: Sublease Agreement

*[Clerk's Note: The motion to pass Ordinance No. 1349 in the first reading and advance to second reading and public hearing is already on the floor. The vote on the motion was postponed at the May 12, 2016, regular 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 Postponed: May 12, 2016

Continued 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 slightly condition. Tenant shall not cause or permit any junk, litter, debris, scrap or garbage to be accumulated or stored upon the Premises without the express written permission of the City.

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

**10. Liability.** 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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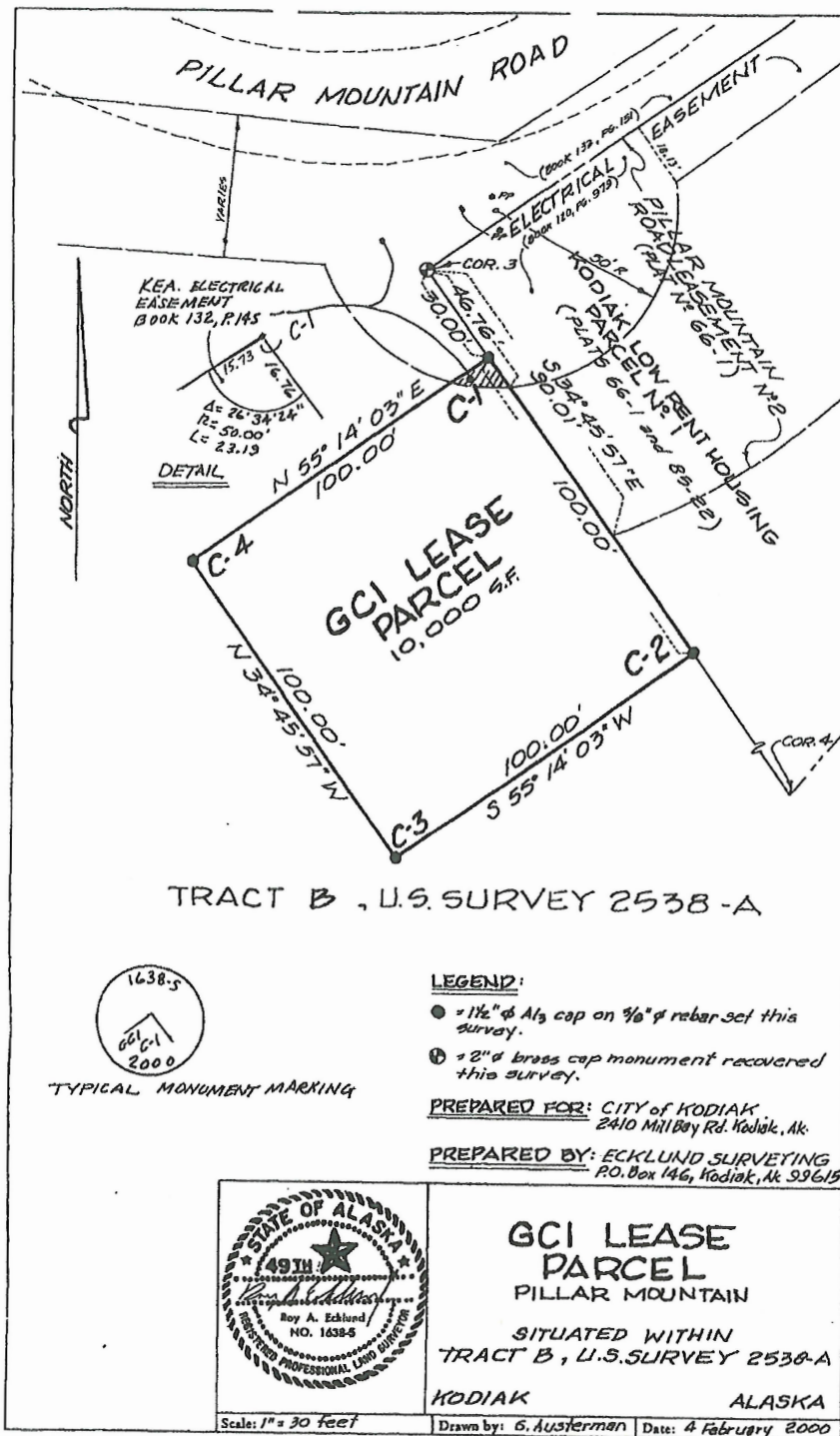
David Morris, VP, Corporate Services

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

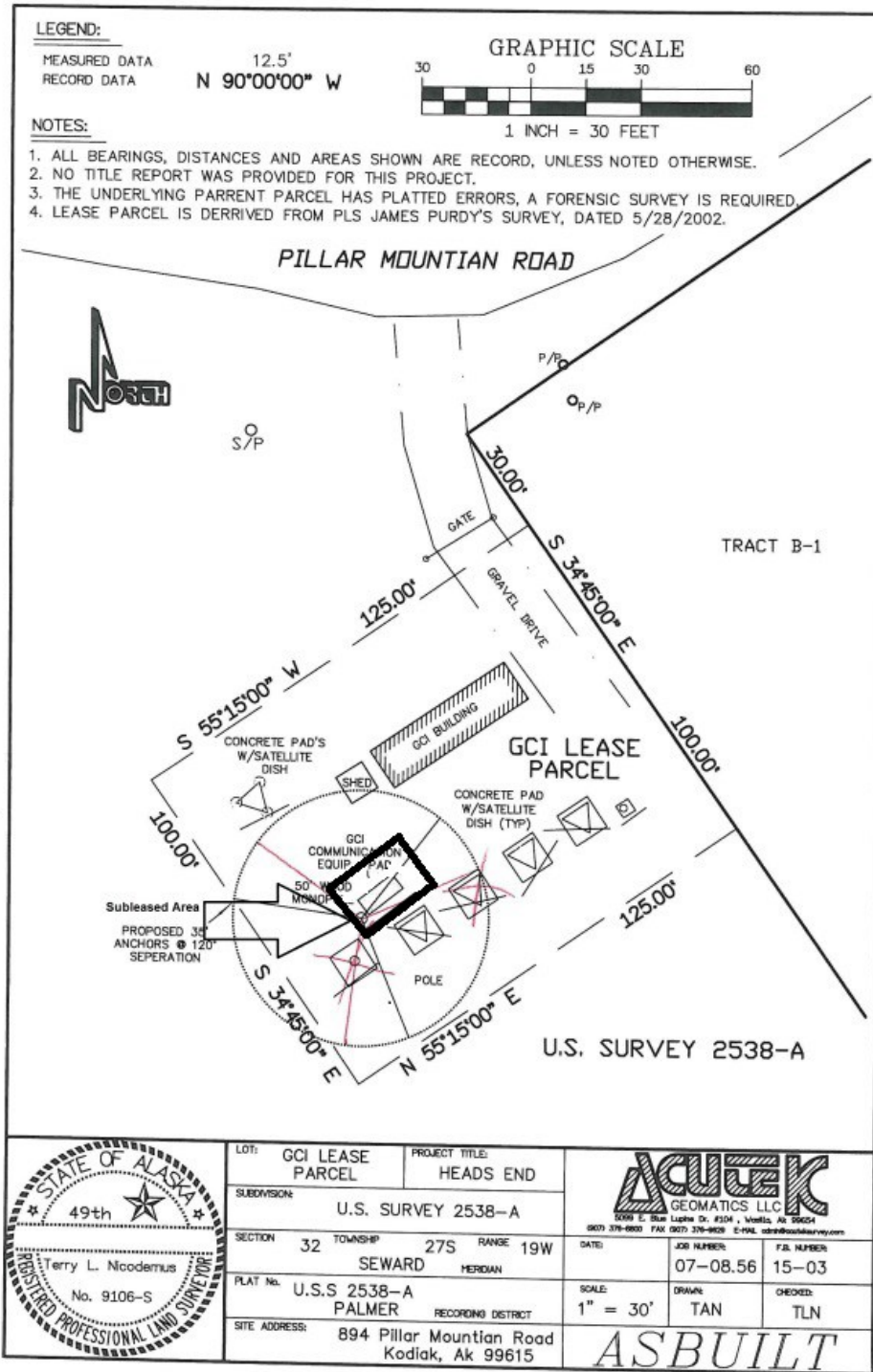
Title: VP, Corporate Communications & Services

Title: VP, Wireless Operations

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

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

# Exhibit A



	LOT: GCI LEASE PARCEL	PROJECT TITLE: HEADS END	 5099 E. Star Line Dr. #104, Anchorage, AK 99504 (907) 379-0850 FAX (907) 379-9128 E-MAIL: acutek@acuteksurvey.com		
	SUBDIVISION: U.S. SURVEY 2538-A				
	SECTION 32 TOWNSHIP 27S RANGE 19W	DATE:	JOB NUMBER: 07-08.56	FILE NUMBER: 15-03	
	PLAT No. U.S.S 2538-A PALMER RECORDING DISTRICT	SCALE: 1" = 30'	DRAWN: TAN	CHECKED: TLN	
SITE ADDRESS: 894 Pillar Mountain Road Kodiak, Ak 99615		<b>ASBUILT</b>			

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## MEMORANDUM TO COUNCIL

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**To:** Mayor Branson and City Councilmembers

**From:** Aimée Kniaziowski, City Manager

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

**Date:** August 11, 2016

**Agenda Item:** IV. b. Second Reading and Public Hearing, Ordinance No. 1354, Amending Kodiak City Code 14.04.010; Regarding the Adoption of Building Codes

---

**SUMMARY:** The State of Alaska adopted new construction codes. As a deferred jurisdiction we are required to adopt codes that meet or exceed the State's adopted codes. The Joint Building Code Review Committee met numerous times to discuss, review, and amend the proposed codes. The Joint Building Code Review Committee and staff recommend Council adopt the new codes as discussed below.

**PREVIOUS COUNCIL ACTION:**

- On February 28, 2013, Council adopted Ordinance No. 1305, amending City Code Title 14 and adopting the most recent building codes.
- On July 14, 2016, Council passed Ordinance No. 1354 in the first reading and advanced to the second reading and public hearing at the next regular or special meeting.

**DISCUSSION:** The State of Alaska adopted the 2014 NEC on March 6, 2015, and the 2012 UPC in September 2014. AHFC adopted the 2012 IRC as their construction standard on April 1, 2016. As a deferred jurisdiction, the City is required to adopt codes that meet or exceed the state's adopted codes. The Joint Building Code Review Committee began meeting in January 2016 and met a total of five times finalizing their recommendations in April 2016. They voted unanimously to recommend adopting the 2012 Uniform Plumbing Code, and the 2014 National Electrical Code. There are also a few minor housekeeping changes to the 2012 International Residential Code.

The Joint Building Code Review Committee is made up of six members. The members are John Butler, Ed Mahoney, Scott Arndt, Kyle Crow (Borough Assembly Representative), Bill Barton and Randy Bishop (City Council Representative).

**ALTERNATIVES:**

- 1) The Joint Building Code Review Committee recommends adoption of the new codes with the recommended amendments made by the Committee. Staff recommends this alternative, because it is consistent with the City's requirement as a deferred jurisdiction.

- 2) Council could adopt a portion of or some amendments to the codes as recommended by the Joint Building Code Review Committee. This is not recommended in order to maintain consistent application of codes.
- 3) Council could choose not to adopt the new codes as recommended by the Joint Building Code Review Committee and staff. This is not recommended, since it could affect the City's deferred status with the State Fire Marshal office and ISO rating, which could affect insurance costs.

**FINANCIAL IMPLICATIONS:** Adoption of the new codes will increase residential construction cost due to new structural requirements. The implementation cost will be minimal to the department and that cost is included in the FY2017 budget.

**LEGAL:** N/A

**STAFF RECOMMENDATION:** Staff recommends the Council adopt Ordinance No. 1354.

**CITY MANAGER'S COMMENTS:** I support the work the Joint Building Code Review Committee and the Building Officials put into the review and recommendations to adopt the updated plumbing, electrical codes, and minor changes to the 2012 international residential code. I recommend Council support their recommendations by adopting Ordinance No. 1354.

**DEPUTY CITY MANAGER'S COMMENTS:** Building code updates are determined necessary as new discoveries in construction safety become known. I support the work of the JBCRC and City Building Officials to bring these code changes to light and support their recommendation to adopt.

**ATTACHMENTS:**

Attachment A: Ordinance No. 1354

Attachment B: Memo from Building Official and PW Director to the City Manager

Attachment C: City 2016 Building Code Adoption

**PROPOSED MOTION:**

Move to adopt Ordinance No. 1354.

**CITY OF KODIAK  
ORDINANCE NUMBER 1354**

**AN ORDINANCE OF THE COUNCIL OF THE CITY OF KODIAK AMENDING  
KODIAK CITY CODE 14.04.010; REGARDING THE ADOPTION OF BUILDING  
CODES**

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

**Section 1:** Subsection (b) of Kodiak City Code 14.04.010 is hereby amended to read as follows:

(b) 2012 International Residential Code for one- and two-family dwellings with the following revisions:

(1) R105.2, Work exempt from permit #10, is modified by striking out “are not attached to a dwelling and do not serve the exit door required by Section R311.4.”

(2) R301.2.1.1 is modified by adding to the end of the section:

The following may be built to Seismic design category D2 with 110 MPH wind speed in B and C wind exposure areas provided that the house was permitted before the adoption of the 2012 Residential Building Code.

One permit only. An addition that is not more than 15% of the total gross square foot area of the existing building that the addition will be attached to. Roof pitch is a maximum of 5/12 or less. One story additions may be built on a piling foundation provided existing building has a piling foundation.

Other exempt structures in section R105.2 titled Work exempt from permit.

(3) R311.7.5.1, Riser height, is modified as follows:

The maximum riser height shall be 8 inches (203mm). The riser shall be measured vertically between leading edges of the adjacent treads. The greatest riser height within any flight of stairs shall not exceed the smallest by more than 3/8 inch (9.5 mm). Risers shall be vertical or sloped from the underside of the nosing of the tread above at an angle not more than 30 degrees (0.51 rad) from the vertical. Open risers are permitted provided that the opening between treads does not permit the passage of a 4-inch-diameter (102 mm) sphere.

(4) R311.7.5.2, Tread depth, is modified as follows:

The minimum tread depth shall be 9 inches (228mm). The tread depth shall be measured horizontally between the vertical planes of the foremost projection of adjacent treads and at a right angle to the tread’s leading edge. The greatest tread depth within any flight of stairs shall not exceed the smallest by more than 3/8 inch (9.5 mm).

**[Bold and underlined added.] Deleted language stricken through.**

- (5) R313.1, Townhouse automatic fire sprinkler systems, and R313.2, One and two family dwellings automatic fire sprinkler systems, are modified by changing the word “shall” to “may.”
- (6) Chapter 11, Energy Efficiency. **Delete and replace with: The AHFC amended 2012 IECC and Bees is the energy standard for the IRC** ~~Exclude this chapter.~~
- (7) Chapters 24, 25, 26, 27, 28, 29, 30, 31, 32, and 33. Delete these chapters related to plumbing and replace with the 2009 Uniform Plumbing Code.
- (8) Chapters 34, 35, 36, 37, 38, 39, 40, 41, 42, and 43. Delete these electrical chapters and replace with the 2011 National Electrical Code.
- (9) M2002.5, Boiler low-water cutoff, is modified by striking out the words “and hot water.”
- (10) Sections R905.2.7.1, R905.4.3.1, R905.5.3.1, R905.6.3.1, R905.7.3.1, R905.8.3.1 Add to exceptions, Exception #2 Ice barriers are not required on roofs that can achieve R-42 insulation factor at the top plate of an exterior wall.**

**Section 2:** Subsection (d) of Kodiak City Code 14.04.010 is hereby amended to read as follows:

- (d) **2012** ~~2009~~–Uniform Plumbing Code, as adopted with revisions in 8 AAC 63.010 ~~in effect as of February 23, 2011~~, Appendix Chapter B, Explanatory Notes on Combination Waste and Vent Systems.

**Section 3:** Subsection (f) of Kodiak City Code 14.04.010 is hereby amended to read as follows:

- (f) **2014** ~~2011~~–National Electric Code.
  - (1) New Section 300.4(I) is added to read as follows:  
Thermoplastic type insulated conductors may not be installed when the working environment is below 20 degrees Fahrenheit.
  - (2) Section 410.16 is amended to read as follows:  
Luminaries and Transformers in closets.

**Section 4:** This ordinance shall be effective on the date that is one month after its final passage and publication in accordance with Kodiak Charter Section 2–13.

CITY OF KODIAK

\_\_\_\_\_  
MAYOR

ATTEST:

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

**[Bold and underlined added.]** ~~Deleted language stricken through.~~

First Reading: July 14, 2016  
Second Reading:  
Effective Date:

[**Bold and underlined added.** Deleted language stricken through.]





# BUILDING DEPARTMENT

710 MILL BAY ROAD, ROOM 208  
KODIAK, ALASKA 99615

[dmathers@city.kodiak.ak.us](mailto:dmathers@city.kodiak.ak.us)  
[thansen@city.kodiak.ak.us](mailto:thansen@city.kodiak.ak.us)

TELEPHONE 907-486-8070  
907-486-8072  
FAX 907-486-8600

**To:** Aimee Kniazowski, City Manager  
**From:** Douglas Mathers, Building Official  
**Thru:** Mark Kozak, Public Works Director and Doug Mathers, Building Official  
**Date:** June 10, 2016  
**Agenda Item:** Adoption of New Construction Codes

The joint building code review committee began meeting in January 2016 and met a total of 5 times finalizing their recommendations in April 2016. The Joint Building Code Review Committee is made up of six members. They are John Butler, Ed Mahoney, Scott Arndt, Kyle Crow (Borough Assembly representative), Bill Barton and Randy Bishop (City Council Representative).

The Joint Building Code Review Committee voted unanimously to recommend adopting the 2012 Uniform Plumbing code, the 2014 National Electrical Code. There are also a few minor housekeeping changes to the 2012 International Residential Code.

Please see attachment of Kodiak City Code Title 14 for rewrite.

A. The 2009 International Building Code, as adopted with revisions in [13 AAC 50.020](#), and including Appendix H, Signs, for all buildings except one- and two-family dwellings and residential accessory buildings; provided, that the following revisions to the 2009 International Building Code in [13 AAC 50.020](#) are not adopted: (1) the deletion in [13 AAC 50.020](#)(1) of Sections 103, 104.4, 104.6, 104.8, 105.4, 107.5, 108.4, 109.2, 109.5 and 110 to 115; and (2) the revisions in [13 AAC 50.020](#)(7), (8), (9), (10), (11), (16), (17), (66), (73), (74) and (77);

B. 2012 International Residential Code for One- and Two-Family Dwellings with the following revisions:

1. R105.2, Work exempt from permit, is amended to read as follows:

Building: #10. Decks not exceeding 200 square feet (18.58 m<sup>2</sup>) in area, that are not more than 30 inches (762 mm) above grade at any point.

2. R301.2.1.1, Wind limitations and wind design required, is amended to read as follows at the end of the section:

The following may be built to Seismic design category D2 with 110 MPH wind speed in B and C wind exposure areas provided that the house was permitted before the adoption of the 2012 Residential Building Code.

1) One permit only. An addition that is not more than 15% of the total gross square foot area of the existing building that the addition will be attached to. Roof pitch is a maximum of 5/12 or less. One story additions may be built on a piling foundation provided existing building has a piling foundation.

2) Other exempt structures in section R105.2 Work exempt from permit.

3. R311.7.5.1, Risers, is amended to read as follows:

The maximum riser height shall be 8 inches (203mm). The riser shall be measured vertically between leading edges of the adjacent treads. The greatest riser height within any flight of stairs shall not exceed the smallest by more than 3/8 inch (9.5 mm). Risers shall be vertical or sloped from the underside of the nosing of the tread above at an angle not more than 30

degrees (0.51 rad) from the vertical. Open risers are permitted provided that the opening between treads does not permit the passage of a 4-inch-diameter (102 mm) sphere.

4. R311.7.5.2, Treads, is amended to read as follows:

The minimum tread depth shall be 9 inches (228mm). The tread depth shall be measured horizontally between the vertical planes of the foremost projection of adjacent treads and at a right angle to the tread's leading edge. The greatest tread depth within any flight of stairs shall not exceed the smallest by more than 3/8 inch (9.5 mm).

5. R313.1, Townhouse automatic fire sprinkler systems, is amended to read as follows:

An automatic residential fire sprinkler system may be installed in townhouses.

6. R313.2, One- and two-family dwellings automatic fire sprinkler systems, is amended to read as follows:

An automatic residential fire sprinkler system may be installed in one- and two-family dwellings.

~~7. Chapter 11, Energy Efficiency. Remove.~~

7. Chapter 11- Delete and replace with. **The AHFC amended 2012 IECC and Bees is the energy standard for the IRC**

8. Chapters 24, 25, 26, 27, 28, 29, 30, 31, 32, and 33. Remove plumbing chapters related to the International Residential Code and insert the 2009 Uniform Plumbing Code.

9. Chapters 34, 35, 36, 37, 38, 39, 40, 41, 42, and 43. Remove electrical chapters of the International Residential Code and insert the 2011 National Electrical Code.

10. M2002.5, Boiler low-water cutoff, is amended to read as follows:

All steam boilers shall be protected with a low-water cutoff control. The low-water cutoff shall automatically stop the combustion operation of the appliance when the water level drops below the lowest safe water level as established by the manufacturer.

Add #11. Sections R905.2.7.1, R905.4.3.1, R905.5.3.1, R905.6.3.1, R905.7.3.1, R905.8.3.1 Add to exceptions, Exception #2 Ice barriers are not required on roofs that can achieve R-42 insulation factor at the top plate of an exterior wall.

C. 2009 International Building Code Appendix J, Grading;

D. The 2009 2012 Uniform Plumbing Code, as adopted with revisions in [8 AAC 63.010](#) in effect as of February 23, 2011, Appendix Chapter B, Explanatory Notes on Combination Waste and Vent Systems; and Appendix Chapter H, Recommended Procedures for Sizing Commercial Kitchen Grease Interceptors;

E. The 2009 International Mechanical Code, as adopted with revisions in [13 AAC 50.023](#), except for the deletions in [13 AAC 50.023](#)(1) of Sections 103, 104, and 106 to 110 of the 2009 International Mechanical Code;

F. The 2011 2014 National Electrical Code.

1. 300.4, Protection Against Physical Damage, is amended to read as follows:

Where subject to physical damage, conductors, raceways, and cables shall be protected. Thermoplastic type insulated conductors may not be installed when the working environment is below 20° Fahrenheit.

2. 410.16 is amended to read as follows:

410.16 Luminaries and Transformers in Closets.

G. The 1997 Uniform Code for the Abatement of Dangerous Buildings;

H. The 1997 Uniform Housing Code; and

I. 2009 International Fuel Gas Code, Chapters 6 and 7.

They are adopted to regulate erection, construction, enlargement, alteration, repair, moving, removal, conversion, demolition, occupancy, equipment, use, height, area, and maintenance of buildings or structures in the borough; to provide for the issuance of permits and collection of fees therefor; and to provide penalties for violations of these regulations. The building codes so adopted shall be interpreted, administered, and enforced with the local amendments hereinafter specifically set forth, by the borough building official, who is authorized to take such action as may be reasonably necessary to enforce the purposes of this section. The borough manager may appoint or authorize an assistant or agent to the building official if necessary to carry out the provisions of this section. [Ord. FY2013-09 §2, 2013; Ord. FY2009-12 §2, 2008; Ord. FY2006-02 §2, 2005; Ord. 02-08 §2, 2002; Ord. 99-04 §2, 1999; Ord. 97-05 §3, 1997; Ord. 92-11 §2, 1992; Ord. 91-13 §2, 1991; Ord. 91-01 §2, 1991; Ord. 88-18-O §3, 1988; Ord. 85-13-O §1, 1985; Ord. 84-61-O §10, 1984; Ord. 84-42-O §2, 1984. Formerly §15.04.010].

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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 and Lon White, Harbormaster

**Date:** August 11, 2016

**Agenda Item:** IV. c. **Second Reading and Public Hearing, Ordinance No. 1355, Authorizing A Memorandum of Agreement With the Alaska Marine Highway System Regarding Joint Use of Pier I, and a Supplemental Agreement No. 1 With the Alaska Marine Highway System for the Lease of Office Space and a License for Use of Pier II**

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**SUMMARY:** The City of Kodiak entered into an agreement with the State of Alaska, Alaska Marine Highway System (AMHS), authorizing the State to replace Kodiak's existing Pier I. The replacement project is scheduled for completion in July 2016, at which time Pier I will be ready for use again by AMHS vessels. Memorandum of Agreement (MOA) No. 2517S004 and Supplemental Agreement No.1, No. 2517S005, spell out the terms for AMHS's use of Pier I and II for the next five years. Staff recommends adopting Ordinance No. 1355, which will allow for continued ferry service at Kodiak terminals.

**PREVIOUS COUNCIL ACTION:**

- On July 1, 2008, Council approved City Contract No. 131341, via Ordinance No. 1235, authorizing a five-year lease and dock agreement with AMHS. After the five-year term expired, the agreement was extended for two additional years as allowed per the agreement terms.
- January 2014, Council approved City Record No. 211200, a Memorandum of Agreement between the City of Kodiak and the State of Alaska authorizing Kodiak Ferry Terminal Improvements, State Project No. 68938 (*Dock Improvement MOA*).
- On May 20, 2015, Council authorized a 3rd one-year extension to the Pier 1 Dock License Agreement, because the replacement project was delayed due to the presence of Sea Lions at the project site.
- On July 14, 2016, Council passed Ordinance No. 1355 in the first reading and advanced to the second reading and public hearing at the next regular or special meeting.

**DISCUSSION:** The document referred to as the *Dock Improvement MOA*, defines the terms agreed to by the City of Kodiak and the State of Alaska for the replacement of Pier I ferry terminal. To summarize the agreement, the state was responsible for the design, construction and management for the replacement project. In exchange for the State funding and managing the project, the City of Kodiak is responsible for all future maintenance and operation costs for the facility once complete. Additionally,

AMHS vessels conducting ferry service to and from Kodiak will not be charged for dockage or other related services at Pier I for the life of the facility. Per the agreement, the State will contribute funds for maintenance of Pier I as follows: For the first three years after completion of the new facility, the State will contribute \$55,000 per year for maintenance. On year four and beyond the State will negotiate their maintenance contribution based on actual maintenance costs offset by revenues the City receives from other entities using the facility. The State will continue to rent office space in the Chamber Building at Pier I. The rental terms are spelled out in *Supplemental Agreement No. 2517S005*.

*MOA No. 2517S004* is a Joint Use Agreement between the State and City of Kodiak that restates all the specific terms spelled out in the *Dock Improvement MOA* and includes terms spelled out in all previous *Dock License Agreements* between the State and City for the use of Pier I.

*Supplemental Agreement No. 2517S005* defines the use and charges for services at Pier II by AMHS. Unlike Pier I, the use of Pier II by AMHS vessels is billable. AMHS will pay for dockage, security and other services at Pier II at preferential rates based on Kodiak Port Tariff No. 12.

**ALTERNATIVES:**

- 1) Adopting Ordinance No. 1355 will allow for continued ferry service at Kodiak terminals Pier I and II. This is staff's recommendation.
- 2) Do not adopt Ordinance No. 1355, which could interrupt ferry service to Kodiak and is not staff's recommendation.

**LEGAL:** The City Attorney worked with the Harbormaster and reviewed *MOA 2517S004* and *Supplemental Agreement No. 2517S005* and prepared Ordinance No. 1355.

**STAFF RECOMMENDATION:** Staff recommends adopting Ordinance No. 1355, allowing for continued ferry service at Kodiak terminals Pier I and II.

**CITY MANAGER'S COMMENTS:** It has taken the Harbormaster substantial time and effort to work with AMHS to bring these finalized agreements forward. The agreements allow continued use of both City Piers by AMHS. I recommend Council adopt this ordinance.

**DEPUTY CITY MANAGER'S COMMENTS:** The reconstruction of Pier I is a great asset to our harbor and community. With this Pier replacement, the State required a new Memorandum of Agreement, including supplemental agreements, which our Harbor Master negotiated on behalf of the community. I support adoption of Ordinance No. 1355.

**ATTACHMENTS:**

- Attachment A: Ordinance No. 1355
- Attachment B: MOA No. 2517S004, Joint Use Agreement (Pier I terms)

Attachment C: Supplemental Agreement No. 2517S005 (Pier II terms and charges)

Attachment D: Dock Improvement MOA (Complete with Appendix)

**PROPOSED MOTION:**

Move to adopt Ordinance No. 1355.

AUGUST 11, 2016  
Agenda Item IV. c. Memo Page 3 of 3



**CITY OF KODIAK  
ORDINANCE NUMBER 1355**

**AN ORDINANCE OF THE COUNCIL OF THE CITY OF KODIAK  
AUTHORIZING A MEMORANDUM OF AGREEMENT WITH THE ALASKA  
MARINE HIGHWAY SYSTEM REGARDING JOINT USE OF PIER I, AND A  
SUPPLEMENTAL AGREEMENT NO. 1 WITH THE ALASKA MARINE HIGHWAY  
SYSTEM FOR THE LEASE OF OFFICE SPACE AND A LICENSE FOR USE OF PIER  
II**

WHEREAS, in January 2014 the State of Alaska Marine Highway System (“AMHS”) and the City of Kodiak (“City”) entered into a Memorandum of Agreement providing for the replacement of Pier I with new Kodiak Ferry Terminal Dock Improvements (“Facility”); and

AMHS and the City have negotiated a Memorandum of Agreement (“Joint Use Agreement”) to memorialize their respective rights and responsibilities with respect to the Facility; and

WHEREAS, the City owns the property located on Lot 4-A, Block 18, New Kodiak Subdivision, as shown on Plat 76-31, Kodiak Recording District, which address is 100 Marine Way, Kodiak, Alaska; and

WHEREAS, AMHS desires to continue leasing office space at this property for the purpose of operating a terminal office and to license use of Pier II on a first-call, first-served basis for the docking of AMHS vessels, and the parties have negotiated a Supplemental Agreement No. 1 to the Joint Use Agreement (“Supplemental Agreement”) regarding these matters; and

WHEREAS, City Charter Article V-17 requires that any contract which by its terms will not be fully executed within five years and the sale or lease of any City property, real or personal, or the sale or other disposal of any interest therein, the value of which property, lease, or interest is more than \$30,000, shall be made only by ordinance; and

WHEREAS, the value of the City’s interests under the Joint Use Agreement and the Supplemental Agreement exceed \$30,000.

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

**Section 1:** The Council of the City of Kodiak hereby authorizes the Joint Use Agreement with AMHS for a term of 30 years, commencing on the effective date of this ordinance, retroactive to the date of the transfer of the Facility from the State of Alaska to the City, and the Supplemental Agreement for a term of one year commencing on the effective date of this ordinance, retroactive to July 1, 2016, plus four one-year optional renewals.

**Section 2:** The form and content of the Joint Use Agreement and the Supplemental Agreement between the City and AMHS hereby are in all respects authorized,

approved and confirmed, and the City Manager hereby is authorized, empowered and directed to execute and deliver the Joint Use Agreement and the Supplemental Agreement to AMHS 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 documents now before this meeting, and from and after the execution and delivery of said documents, 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 documents as executed.

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

CITY OF KODIAK

\_\_\_\_\_  
MAYOR

ATTEST:

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

First Reading: July 14, 2016  
Second Reading:  
Effective Date:

**MEMORANDUM OF AGREEMENT**  
**No. 2517S004**  
**Between**  
**STATE OF ALASKA**  
**Department of Transportation and Public Facilities**  
**Alaska Marine Highway System**  
**And**  
**CITY OF KODIAK**  
**Regarding**  
**JOINT USE AGREEMENT RE FEDERAL-AID FACILITY**

The State of Alaska, Department of Transportation and Public Facilities (DOT&PF), Alaska Marine Highway System (AMHS or State) and the City of Kodiak, Alaska (City) enter this Memorandum of Agreement (MOA or Agreement).

**RECITALS**

WHEREAS, DOT&PF is responsible for the planning, design, and construction of state transportation facilities, AS 44.42.020;

WHEREAS, the City is a home rule city and empowered to enter agreements with the State, AS 29.35.010(13);

WHEREAS, in January 2014, DOT&PF and the City entered a Memorandum of Agreement regarding Kodiak Ferry Terminal & Dock Improvements (Project #68938), which is attached as Appendix 1 (Dock Improvements MOA);

WHEREAS, the Federal Highway Administration (FHWA) participated in Project #68938 by furnishing federal-aid to the Project;

WHEREAS, the ferry terminal, the newly constructed dock, and ancillary improvements resulting from Project #68938 (the Facility) will serve as components of both the State and the National Highway Systems;

WHEREAS, the City and AMHS (the Parties) acknowledge that the Facility will serve as AMHS' principal terminal in Kodiak but recognize that, from time to time, they may enter supplemental agreements under which the City may provide office space, prescribed services, and the like to AMHS in exchange for negotiated compensation (Supplemental Agreements); and

WHEREAS, the Parties wish to memorialize the key elements of their agreement and their respective rights and responsibilities in relation thereto;

NOW, THEREFORE, in consideration of the foregoing recitals and for other good and valuable consideration, the receipt and sufficiency of which the Parties hereby acknowledge, and intending to be legally bound, the Parties agree as follows:

## **TERMS OF AGREEMENT**

### **I. Incorporation**

The Parties agree the foregoing Recitals are true and correct and incorporate them into this Agreement by reference.

### **II. Term**

This Agreement is effective once signed by both Parties and remains in continuous effect for the same duration as the Dock Improvements MOA, which is 30 years from *[insert date of transfer of ownership from DOT&PF to the City]*, plus any negotiated extensions. See Appendix 1, Part II, (A) and (B).

### **III. Facility Premises**

The Facility, known as Pier 1, includes the entire dock constructed in DOT&PF Project #68938, the adjacent berth of suitable dimensions to accommodate current and future AMHS ferry vessels, and any additional area AMHS may reasonably require to comply with applicable security requirements. As a visual aid, Appendix 2 provides a general depiction of the Facility, which is shaded in dark gray and is generally indicated by arrows emanating from boxes labeled “Dock” and “Berth”. NOTE: The City only has jurisdiction over the tidelands it owns as depicted in Appendix 2.

### **IV. Purpose**

The general purpose of this MOA is three-fold:

(A) First, it identifies the principal terms of the Parties’ rights and responsibilities regarding the Facility;

(B) Second, the MOA confirms the Parties’ intent that: (1) during the Term of this MOA, they may enter Supplemental Agreements and (2) they will append such Supplemental Agreements to this MOA so that all City-AMHS agreements regarding ferry-related services are appropriately organized and may be tracked throughout the life of the Facility; and

(C) Finally, the Agreement acknowledges the Parties’ intent that public ferry vessels belonging to entities other than AMHS are also entitled to the exclusive, priority use as addressed in Part V below.

## **V. Exclusive, Priority Use**

(A) AMHS vessels and operations, and those of any other entity providing public ferry service, are entitled to exclusive, priority use of the Facility throughout the term of this Agreement. At the following times, the City will remove or cause to be removed any vessel or obstruction and terminate any use at the Facility if its presence interferes with the operations, safety, or schedule of AMHS or other public ferry operator or the well-being of their passengers or customers:

- a reasonable time prior to arrival of the ferry at the Facility;
- during the ferry's presence at the Facility; and
- a reasonable time following departure the ferry vessel from the Facility.

If opinions differ as to whether a competing vessel or use interferes with the operations, safety, or schedule of AMHS or another public ferry service or the well-being of their passengers or customers, the opinion of ferry vessel's master shall be conclusive.

(B) In the case of conflict between AMHS' exclusive, priority use and such use by another public ferry service, AMHS' entitlement to exclusive, priority use shall prevail.

(C) As used in this Agreement, the term "public ferry vessel" means a ship that is owned or demise (bareboat) chartered by the government of the United States, by a State or local government and transports passengers and, perhaps, their vehicles between points that make up a continuing highway.

## **VI. No Facility Rental, Costs, or Fees**

(A) The City shall not assess any rental, cost, or fee on AMHS, another public ferry, or their passengers or customers in connection with use of the Facility. This prohibition is effective throughout the life of the Facility.

(B) Notwithstanding subpart (A), AMHS will provide the City with an annual financial contribution to help offset the cost of performing Right-of-Way, Operations, and Maintenance Obligations, as more fully addressed in Part VI of the Dock Improvements MOA that is attached as Appendix 1.

## **VII. Facility Maintenance, Parking, & Security**

(A) The City is responsible for fulfilling all obligations identified in Part VI(A)-(B) of the Dock Improvements MOA. *See* Appendix 1.

(B) At no cost to the State, the City will furnish parking along Marine Way or an area immediately adjacent to the Facility to permit transaction of business at the terminal and to accommodate passenger vehicles for ferry staging purposes and for arrival and departure of passengers.

(C) Prior to the AMHS vessel arrival and while an AMHS vessel is present at the Facility, AMHS will fulfill all requirements regarding vessel and facility security as required by the Maritime Transportation Security Act of 2002, as codified in 46 U.S.C. Chapter 701, its implementing regulations, and any related or successor legislation and regulations.

### **VIII. AMHS Use of Reasonable Care**

(A) AMHS will use and occupy the Facility in a safe and reasonable manner for lawful purposes only.

(B) If an AMHS vessel damages a component of the Facility as a result of negligent vessel operation, the State will be responsible for the cost of restoring the component to the same condition that existed prior to the damage. The State is not liable for any other harm, loss, or injury to the City stemming from the dock damage. The State is not responsible for damage caused by others.

### **IX. Indemnification**

The City shall indemnify, hold harmless, and defend the State from and against any claim of, or liability for, negligent acts, errors or omissions of the City arising in connection with this Agreement. The City is not required to indemnify the State for a claim of, or liability for, the independent negligence of the State. If there is a claim of, or liability for, the joint negligent error or omission of the City and the independent negligence of the State, the indemnification and hold harmless obligation shall be apportioned on a comparative fault basis. "City" and "State," as used within this article include the employees, agents, and other contractors who are directly responsible, respectively, to each. The term "independent negligence" is negligence other than in the State's monitoring, approving, or accepting the City's services.

### **X. Insurance**

(A) Without limiting the City's indemnification obligation, the City shall purchase and maintain in force at all times during the performance of services in connection with this Agreement the following policies of insurance. Where specific limits are shown, it is understood that they shall be the minimum acceptable limits. If the City's policy contains higher limits, the State will be entitled to coverage to the extent of such higher limits. The City shall provide the State with current Certificates of Insurance showing evidence of the coverage required under this section of the Agreement. The Certificate Holder shall show as: State of Alaska, DOT&PF, POB 112500, Juneau, AK 99811-2500.

(B) The City shall provide and maintain, for all employees engaged in work in connection with this Agreement, coverage as required by AS 23.30.045 and any other statutory obligations including but not limited to U.S.L. & H. Act requirements. The policy must waive subrogation against the State.

(C) The City shall provide commercial general liability insurance or its equivalent with limits not less than One Million Dollars (\$1,000,000.00) combined single limit per occurrence

and annual aggregates where generally applicable. The State of Alaska shall be named as additional insured.

(D) All insurance shall be considered to be primary and non-contributory to any other insurance carried by the State through self-insurance.

(E) At periodic intervals, the State will review the adequacy of insurance coverages and policy limits under this Agreement. If the State reasonably concludes that the type or amount of insurance is not adequate, it will notify the City, which will promptly revise the type or amount of insurance as requested by the State.

## **XI. Notification**

When any written notice, request, direction, or other communication is necessary, the Parties will deliver it in person, by certified mail, or by email addressed to the party for whom it is intended, as follows:

AMHS:           General Manager  
                  7559 N Tongass Hwy  
                  Ketchikan, AK 99901  
                  Ph: 907/228-7250  
                  Current addressee: [john.falvey@alaska.gov](mailto:john.falvey@alaska.gov)

City:             City Manager  
                  City of Kodiak  
                  710 Mill Bay Road, Room 216  
                  Kodiak, AK 99615  
                  Ph: 907/785-3804  
                  Current addressee: [manager@city.kodiak.ak.us](mailto:manager@city.kodiak.ak.us)

## **XII. Miscellaneous Provisions**

(A) Each Party represents and warrants to the other that (i) it is duly organized, validly existing and in good standing under the laws under which it is organized; (ii) it has the power and authority to enter into this Agreement and to perform fully its obligations hereunder; (iii) the individual executing this Agreement on its behalf has the authority to do so; (iv) the obligations created by this Agreement, insofar as they purport to be binding on it, constitute legal, valid and binding obligations enforceable in accordance with their terms; and (v) it is under no contractual or other legal obligation that shall in any way interfere with its full, prompt and complete performance hereunder.

(B) This Agreement inures to the benefit of and is binding upon the Parties and their respective successors and permitted assigns, if any.

(C) This Agreement shall not be construed as creating the relationship of principal-agent, master-servant, partnership, or joint venture between the Parties. Neither Party shall have

authority to make any statements, representations, or commitments of any kind or to take any action that is binding on the other, except as explicitly provided herein or authorized by the other Party in writing.

(D) Neither Party may assign any portion of this Agreement or any benefits or rights arising under the Agreement without the written consent of the other.

(E) No supplement, modification, or amendment of this Agreement is binding unless executed in a writing signed by the authorized representative of the Party to be bound thereby. No provisions of this Agreement may be waived unless done in writing and signed by the authorized representative of the Party to be charged therewith. Waiver of any one provision shall not be deemed to be a waiver of any other provision

(F) Waiver by a Party of any default by the other will not be deemed a waiver of rights concerning any subsequent default.

(G) The headings used in this Agreement are for convenience only and shall not be deemed to limit or affect any of the provisions of the Agreement.

(H) This Agreement shall not be construed as conferring any legal rights, privileges, or immunities or as imposing any legal duties or obligations on any person or persons other than the parties named in this Agreement.

(I) The City is not an intended beneficiary of any contracts between AMHS and any contractors, subcontractors or consultants or any other third parties, and has no contractual rights with respect to such contracts or any provisions thereof, unless expressly stated otherwise.

(J) This Agreement has been jointly negotiated and drafted by the parties, and both parties have had the ability and opportunity to consult with legal counsel prior to signature. The Agreement shall not be construed for or against either party.

(K) This agreement is governed by the laws of the State of Alaska. All claims arising in connection with this agreement shall be brought in Superior Court in Juneau, Alaska, and no other.

(L) If a court of competent jurisdiction holds any portion of this Agreement invalid, the invalid portion will be severed and will not affect the validity of the remainder.

(M) The provisions of this MOA constitute the whole of the agreement between the Parties with respect its subject matter; no separate understandings or side agreements exist.



Dated: \_\_\_\_\_

ALASKA MARINE HIGHWAY SYSTEM

By: \_\_\_\_\_  
Capt. John F. Falvey, Jr. General Manager

STATE OF ALASKA                    )  
  ) ss.  
FIRST JUDICIAL DISTRICT         )

The foregoing instrument was acknowledged before me on \_\_\_\_\_ \_\_, 2016, by Capt. John F. Falvey, Jr., General Manager of the Alaska Marine Highway System, on behalf of the Alaska Marine Highway System.

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

Dated: \_\_\_\_\_

CITY OF KODIAK

By: \_\_\_\_\_  
City Manager

STATE OF ALASKA                    )  
  ) ss.  
THIRD JUDICIAL DISTRICT         )

The foregoing instrument was acknowledged before me on \_\_\_\_\_ \_\_, 2016, by Aimée Kniaziowski, City Manager of the City of Kodiak, an Alaska municipal corporation, on behalf of the City.

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

Acknowledgment of the Kodiak City Council

BE IT REMEMBERED that on the \_\_\_\_ day of \_\_\_\_\_, 2016 at a regular meeting, of the City of Kodiak Assembly of the City of Kodiak, a home rule city established under Alaska law, granted its approval of the foregoing instrument.

Dated: \_\_\_\_\_  
\_\_\_\_\_  
Clerk, City of Kodiak

**SUPPLEMENTAL AGREEMENT NO. 1**  
**No. 2517S005**  
**Between**  
**STATE OF ALASKA**  
**Department of Transportation and Public Facilities**  
**Alaska Marine Highway System**  
**And**  
**CITY OF KODIAK**  
**Regarding**  
**Joint Use Agreement re Federal-Aid Facility**  
**(Office Lease and Pier II Dock License)**

The State of Alaska, Department of Transportation and Public Facilities (DOT&PF), Alaska Marine Highway System (AMHS or State) and the City of Kodiak, Alaska (City) enter this Supplemental Agreement to Memorandum of Agreement No. 2517S004.

**RECITALS**

WHEREAS, the City is a home rule city and empowered to enter agreements with the State, AS 29.35.010(13);

WHEREAS, state law authorizes DOT&PF to cooperate, coordinate, and enter agreements with local government entities in exercising its powers and duties, AS 44.42.020(a)(6);

WHEREAS, DOT&PF's marine division, AMHS, is responsible for managing and operating State ferries and related facilities, AS 44.42.020(a)(7);

WHEREAS, in State DOT&PF Project #68938, DOT&PF demolished the existing timber ferry dock in Kodiak and constructed a new steel and concrete dock facility in its place through use of federal-aid (Facility);

WHEREAS, the Facility will serve as AMHS' principal terminal in Kodiak;

WHEREAS, to fulfill its public transportation function based at the Facility, AMHS will periodically require additional, offsite dock space to augment space available at the Facility and it will require office space to enable its staff to carry out administrative functions related to its ferry service in Kodiak; and

WHEREAS, the City possesses additional dock space at its Pier II and available office space in Kodiak;

NOW, THEREFORE, in consideration of the foregoing recitals and for other good and valuable consideration, the receipt and sufficiency of which the Parties hereby acknowledge, and intending to be legally bound, the Parties agree as follows:

## TERMS OF AGREEMENT

**1. Incorporation:** The Parties agree the foregoing Recitals are true and correct and incorporate them into this Agreement by reference.

**2. Term:** The term of this Agreement is five (5) years, consisting of an initial term commencing on the effective date of Ordinance No. 1355, retroactive to July 1, 2016, and expiring on June 30, 2017, with four (4) individual one-year renewal options. Renewal options will automatically renew unless the State provides written notice of termination no less than seven days prior to the renewal date. The City or AMHS may terminate this agreement before expiration of the prescribed term, provided it first serves 90-days advance written notice upon the other party.

**3. Leased Office Premises:** The City leases to AMHS that portion of the building (approximately 800 square feet) located on Lot 4-A, Block 18, New Kodiak Subdivision, as show on Plat 76-31, Kodiak Recording District, 100 Marine Way (Office Premises), which includes the manager's office, ticket office and passenger waiting room, subject to all prior easements, conveyances and restrictions of record. As tenant, AMHS and its patrons are also entitled to use the adjacent, City-owned and handicapped-equipped public restrooms.

**4. Licensed Use of Pier II:** Kodiak Pier II, commonly known as the City Dock, is a multi-use dock available on a first-call, first-serve basis. The City shall permit AMHS vessels to berth at Pier II any date that the Pier is available. City officials will work with AMHS prior to publication of AMHS' annual schedule and at other times to reserve dock space and enable scheduled ferry service.

### **5. Pier II Responsibilities:**

**(A) Parking:** The City shall designate an area on or immediately adjacent to Pier II to accommodate parking for a minimum of fifty vehicles awaiting loading upon the State ferries at no cost to the State. Owners of vehicles or equipment left in the staging area longer than four hours before or after a port call will be charged storage at the City's published rates.

**(B) Maintenance:** The City shall provide all necessary maintenance and snow removal services to keep safe and free from hazard all exterior areas utilized by the State and its employees and passengers at Pier II.

**(C) Security:** Per 33 CFR, Part 105 Maritime Facilities Security and USCG approved AMHS and Port of Kodiak security plans, the City and State will execute their respective security duties per approved vessel and facility security plans. When docking is complete, the AMHS vessel security officer (VSO) shall be responsible for AMHS vessel and adjacent shore side facility security unless otherwise agreed upon in a written Declaration of Security (DoS). The VSO will ensure security measures are implemented per the USCG approved AMHS vessel and facility Security Plan. Screening of passengers, baggage, vehicles, carry-ons, etc. will be the responsibility of the State.

**6. Compensation:**

**(A) Office Premises:** Annual rent for building space shall be \$16,242.94 payable in monthly installments of \$1,353.57. Rent shall increase one percent (1%) per year thereafter. Rent does not include garbage generated by the AMHS vessels or building utilities.

**(B) Utilities and Janitorial:** The State shall pay under separate meter electricity costs for the Office Premises. The State shall pay twenty-five percent (25%) of the building’s heating oil costs and janitorial services for the space it occupies, which the City will document through furnished invoices. However, the State shall have the option to do its own janitorial work in lieu of paying the building janitorial service. Sewer and water for the premises will be provided by the City and is included in the annual rent. AMHS will arrange for disposal of the garbage generated by their vessels and office. On an as-needed basis, AMHS will pay \$50.00 per useage for each AMHS vessel that requires potable water at Pier I and Pier II.

**(C) Pier II Dockage:** The State shall pay 50% of the City’s published 2016 through 2020 terminal tariff rates. AMHS rates are defined in Table 1 below. In the event severe weather or unexpected emergencies make it unsafe to depart, AMHS may remain at the dock up to a total of 48 hours without additional charge. Dockage longer than 48 hours will be charged at 100% of the 2016 terminal tariff rate. In the event that Pier II was previously reserved for another vessel, the ferry shall leave the Pier. The terminal tariff rates charged to AMHS can only be changed by invoking the amendment provision in this agreement [17 – Miscellaneous Provisions (E)].

<b>Year</b>	<b><u>TUSTUMENA</u> 296ft x</b>	<b><u>KENNICOTT</u> 382ft x</b>	<b><u>TUSTUMENA</u> Per 12 Hours</b>	<b><u>KENNICOTT</u> Per 12 Hours</b>
2016	\$1.15	\$1.30	\$340.40	\$496.60
2017	\$1.20	\$1.40	\$355.20	\$534.80
2018	\$1.25	\$1.50	\$370.00	\$573.00
2019	\$1.30	\$1.60	\$384.80	\$611.20
2020	\$1.30	\$1.60	\$384.80	\$611.80

Fees will be paid by the State upon billing in triplicate, payable monthly in arrears.

**(D) Pier II Security:** When Pier I and II facility security is necessary to comply with applicable law or regulations, AMHS will compensate the City in accordance with the following fee schedule:

- MARSEC Level 1: \$65/per port call (Pier II Only)
- MARSEC Level 2: \$65/man hour, \$90/man hour overtime

MARSEC Level 3: \$65/man hour, \$90/man hour overtime

**7. Pier II Physical Damage:** The State will repair any physical damage to Pier II that is directly attributable to AMHS operations. Alternatively, if the City repairs the damage, the State will reimburse the City for documented reasonable costs that it has incurred as a proximate result of the damage. However, the State is not responsible for damages caused by others nor is it responsible for reimbursing the City for any costs incurred regarding damage caused by others. If the City believes the State has damaged the facility, it must promptly notify the State of any such damages as soon as practicable. Repairs made by the state must be approved in advance by the City. For repairs made by the city, an itemized invoice shall accompany any request for reimbursement.

**8. Freight Charges:** The City will not assess any fee for vehicles, cargo, or passengers moving across Pier II to and from the State ferries, irrespective of any contrary language contained in the Kodiak terminal tariff.

**9. Equipment:** All equipment of whatsoever nature that the State installs shall continue to be the property of the State and may be removed by the State at the expiration of this Supplemental Agreement.

**10. Line Handling:** AMHS is responsible for arranging line handling for its vessels that call at Pier I and Pier II.

**11. Other Duties of the State:** The State shall:

(A) Use and occupy the Office Premises and Pier II in a careful and proper manner and for lawful purposes only.

(B) Not assign this Supplemental Agreement, not sublease the Office Premises, nor any part thereof without the written consent of the City. However, if the State requests consent, the City shall not unreasonably withhold it.

(C) Leave the Office Premises at termination of this Supplemental Agreement in reasonable condition, less normal wear and tear.

(D) Following receipt of reasonable notice, permit the City to enter upon the Office Premises at all reasonable times to examine their condition.

(E) Not alter the exterior appearance of the Office Premises without written consent of the City but may post signs identifying the building as the ferry ticket office or terminal.

(F) Not alter components of the Pier II (bull rails, fender, etc.) unless plans are approved by the City. Plans shall be submitted to the City harbormaster and City engineer for approval prior to the start of any modification.

(G) Coordinate with the Kodiak Chamber of Commerce to ensure that the public restrooms adjacent to the leased area are available for use by the general public whenever the building is open to the public. Since the State is not leasing the area comprising the public restroom, it is not responsible for maintenance, repair, or liability in connection with the same. Also, the City will defend, indemnify, and hold the State harmless regarding any injury, damage, claim, or the like arising from use of the public restroom facilities by a person who is not in the building in furtherance of a passenger-carrier relationship or other business relations with AMHS.

(H) The State shall have control of only that portion of Pier II that its vessel occupies plus a staging area adjacent to the same location as designated by the City harbormaster. The City will provide sufficient space at Pier II to enable the State to properly implement its vessel security plan.

**12. Other Duties of the City:** The City shall:

(A) Not unreasonably withhold any approval the State may require in connection with this Supplemental Agreement.

(B) Maintain Pier II in good repair and usable condition during the term of this agreement and any renewal or extension thereof;

(C) Maintain the leased Office Premises in compliance with all applicable laws, regulations and codes.

(1) If any part of the Office Premises becomes untenable, a proportionate part of the rent shall be abated and suspended to the extent of untenability until the City restores the Office Premises to a tenantable condition. The State's decision shall be controlling as to whether the premises are tenantable. In addition, if the City fails to correct any violation or remedy any untenable condition within a reasonable time, the State shall have the option of hiring competent workmen, with the City bearing the cost of all materials and labor.

(2) If a substantial portion of the Office Premises are untenable for more than 30 days, the State may elect to terminate the lease. This 30 day period shall not be so restrictively construed that the State is bound to remain in the leased facility if the State's business cannot be safely executed. If warranted due to unsafe condition, the State is free to move elsewhere. If the premises are made tenantable again within this 30 day period, the State will return to the facility for occupancy. The State may also choose to recover any excess costs, over the abated lease payments, occasioned by relocation due to unsafe condition

**13. Indemnity:** The City shall indemnify, hold harmless, and defend the State from and against any claim of, or liability, for negligent acts, errors or omissions of the City arising in connection with this Supplemental Agreement. The City is not required to indemnify the State for a claim of, or liability for, the independent negligence of the State. If there is a claim of, or

liability for, the joint negligent error or omission of the City and the independent negligence of the State, the indemnification and hold harmless obligation shall be apportioned on a comparative fault basis. "City" and "State," as used within this paragraph include the employees, agents, and other contractors who are directly responsible, respectively, to each. The term "independent negligence" is negligence other than in the State's monitoring, approving, or accepting the City's services.

**14. Insurance:**

(A) Without limiting the City's indemnification obligation, the City shall purchase and maintain in force at all times during the performance of services in connection with this Supplemental Agreement the following policies of insurance. Where specific limits are show, it is understood that they shall be the minimum acceptable limits. If the City's policy contains higher limits, the State will be entitled to coverage to the extent of such higher limits. The City shall provide the State with current Certificates of Insurance showing evidence of the coverage required under this section of the Supplemental Agreement. The Certificate Holder shall show as: State of Alaska, DOT&PF, POB 112500, Juneau, AK 99811-2500.

(B) The City shall provide and maintain, for all employees engaged in work in connection with this Supplemental Agreement, coverage as required by AS 23.30.045 and any other statutory obligations including but not limited to U.S.L. & H. Act requirements. The policy must waive subrogation against the State.

(C) The City shall provide commercial general liability insurance or its equivalent with limits not less than One Million Dollars (\$1,000,000.00) combined single limit per occurrence and annual aggregates where generally applicable. The State of Alaska shall be named as additional insured.

(D) All insurance shall be considered to be primary and non-contributory to any other insurance carried by the State through self-insurance.

(E) The State shall provide and maintain insurance on its own improvements and contents in the Office Premises, as well as broad form casualty and marine liability coverage provided through the State's comprehensive self-insurance program administered by the Division of Risk Management.

**15. Non-appropriation of Funds:** The fiscal year for the State of Alaska is a twelve-month period beginning July 1 and ending June 30 of the following calendar year. Lease payments from the State are subject to annual appropriation of funds by the Alaska State Legislature. After the initial fiscal year of the lease, the State has the right to terminate this lease in whole, or in part, if:

(A) The Alaska State Legislature fails to appropriate funds budgeted for continuation of this lease; or



(B) The Legislature fails to appropriate funds to the occupying agency(s) that results in a material alternation or discontinuance, in whole or in part, of the occupying agency(s)' programs. The termination of the lease for fiscal necessity and non-appropriation of funds under this section shall not cause any penalty or liability to be charged to the State, and shall not constitute a breach or an event of default by the State.

**16. Notice:** When any written notice, request, direction, or other communication is necessary, the Parties will deliver it in person, by certified mail, or by email addressed to the party for whom it is intended, as follows:

AMHS: General Manager  
7559 N Tongass Hwy  
Ketchikan, AK 99901  
Ph: 907/228-7250  
Current addressee: [john.falvey@alaska.gov](mailto:john.falvey@alaska.gov)

City: City Manager  
City of Kodiak  
710 Mill Bay Road, Room 216  
Kodiak, AK 99615  
Ph: 907/785-3804  
Current addressee: [manager@city.kodiak.ak.us](mailto:manager@city.kodiak.ak.us)

**17. Miscellaneous Provisions:**

(A) Each Party represents and warrants to the other that (i) it is duly organized, validly existing and in good standing under the laws under which it is organized; (ii) it has the power and authority to enter into this Supplemental Agreement and to perform fully its obligations hereunder; (iii) the individual executing this Agreement on its behalf has the authority to do so; (iv) the obligations created by this Supplemental Agreement, insofar as they purport to be binding on it, constitute legal, valid and binding obligations enforceable in accordance with their terms; and (v) it is under no contractual or other legal obligation that shall in any way interfere with its full, prompt and complete performance hereunder.

(B) This Supplemental Agreement inures to the benefit of and is binding upon the Parties and their respective successors and permitted assigns, if any.

(C) This Supplemental Agreement shall not be construed as creating the relationship of principal-agent, master-servant, partnership, or joint venture between the Parties. Neither Party shall have authority to make any statements, representations, or commitments of any kind or to take any action that is binding on the other, except as explicitly provided herein or authorized by the other Party in writing.

(D) Neither Party may assign any portion of this Supplemental Agreement or any benefits or rights arising under the Agreement without the written consent of the other.

(E) No supplement, modification, or amendment of this Supplemental Agreement is binding unless executed in a writing signed by the authorized representative of the Party to be bound thereby. No provisions of this Agreement may be waived unless done in writing and signed by the authorized representative of the Party to be charged therewith. Waiver of any one provision shall not be deemed to be a waiver of any other provision

(F) Waiver by a Party of any default by the other will not be deemed a waiver of rights concerning any subsequent default.

(G) The headings used in this Supplemental Agreement are for convenience only and shall not be deemed to limit or affect any of the provisions of the Agreement.

(H) This Supplemental Agreement shall not be construed as conferring any legal rights, privileges, or immunities or as imposing any legal duties or obligations on any person or persons other than the parties named in this Agreement.

(I) The City is not an intended beneficiary of any contracts between AMHS and any contractors, subcontractors or consultants or any other third parties, and has no contractual rights with respect to such contracts or any provisions thereof, unless expressly stated otherwise.

(J) This Supplemental Agreement has been jointly negotiated and drafted by the parties, and both parties have had the ability and opportunity to consult with legal counsel prior to signature. The Agreement shall not be construed for or against either party.





JAN 23 2014  
KCO

**MEMORANDUM OF AGREEMENT**

Between

**STATE OF ALASKA**

**Department of Transportation and Public Facilities**

And

**CITY OF KODIAK**

Regarding

**KODIAK FERRY TERMINAL & DOCK IMPROVEMENTS**

**State Project #68938**

**(Revised December 12, 2013)**

The State of Alaska, Department of Transportation and Public Facilities (DOT&PF) and the City of Kodiak, Alaska (City) enter this Memorandum of Agreement (MOA or Agreement).

**RECITALS**

WHEREAS, DOT&PF is responsible for the planning, design, and construction of state transportation facilities, AS 44.42.020;

WHEREAS, this Agreement concerns improvements to the Pier 1 ferry terminal in Kodiak, which forms part of the state highway system;

WHEREAS, state law authorizes DOT&PF to cooperate, coordinate, and enter agreements relating to highways with local government entities, AS 19.05.040(10), AS 44.42.020(a)(6);

WHEREAS, the City is a home rule city and empowered to enter agreements with the State, AS 29.35.010(13);

WHEREAS, Congress has authorized a high priority earmark as a source of federal funding for the planning, design, and new construction of an AMHS terminal and approach in Kodiak;

WHEREAS, the terminal will serve as a component of the National Highway System;

WHEREAS, DOT&PF has conducted a reconnaissance of possible sites for a new ferry facility and has consulted the City regarding this subject;

WHEREAS, DOT&PF and the City (the Parties) agree that demolition of the existing Kodiak ferry dock, or Pier 1 Dock, and replacement with a newly constructed dock is the preferred option for utilization of the federal funding;

WHEREAS, DOT&PF and the Federal Highway Administration (FHWA) share responsibilities concerning proper management and administration of the federal funding appropriated to the state for highway construction;

WHEREAS, DOT&PF acknowledges that the City need not provide a “local match,” or financial contribution, for construction of this project;

WHEREAS, the Parties are committed to collaborate in working toward the timely, successful completion of this project;

WHEREAS, the Kodiak City Council has adopted, Ordinance No. 1312, which authorizes the City to enter this Agreement;

WHEREAS, the Parties wish to memorialize the key elements of this project and their respective rights and responsibilities in relation thereto;

NOW, THEREFORE, in consideration of the foregoing recitals and for other good and valuable consideration, the receipt and sufficiency of which the Parties hereby acknowledge, and intending to be legally bound, the Parties agree as follows:

## **TERMS OF AGREEMENT**

### **I. Incorporation**

The Parties agree the foregoing Recitals are true and correct and incorporate them into this Agreement by reference.

### **II. Term**

(A) This Agreement is effective once signed by both Parties and expires either: (1) in a manner consistent with a finding of the DOT&PF Commissioner that public need and the best interests of State no longer support use of the facility that is the subject of this Agreement as a public ferry facility or (2) the day following the 30-year anniversary of the date on which DOT&PF transfers ownership of the Project to the City per Part V of this Agreement, whichever occurs first.

(B) If this Agreement does not otherwise expire per Part II(A)(1), then, before the 30-year expiration under Part II(A)(2), the Parties agree to negotiate in good faith for an extension of this Agreement if the facility remains in serviceable condition and if it is cost effective for the State to continue use of this existing facility rather than construct a new ferry facility in Kodiak.

### **III. Project Purpose and Scope**

(A) The purpose of this project is to provide a new terminal facility in Kodiak, which consists of a new dock and associated improvements that are dedicated to serving Alaska Marine Highway System (AMHS) vessels and operations, as well as those of any other entity providing public ferry service. The Parties acknowledge that, following project completion, DOT&PF will

transfer ownership of the constructed facility to the City and the City will own, operate, and maintain the facility in accordance with this Agreement.

(B) This project consists of planning, designing and constructing improvements to Kodiak's Pier 1 dock to provide a facility compatible with AMHS vessels and operations, while maintaining dock functionality for non-AMHS vessels. These improvements are expected to include demolition of the existing Pier 1 timber dock, construction of a new dock in the same location as the demolished dock using a steel substructure and concrete decking, sheet pile retaining wall abutment, vessel fendering and mooring system, purser's shelter, covered walkway, security fencing, and upgrades to the fuel and water systems. As shorthand, the Parties will refer to this collective planning, design, and construction effort as "the Project."

(C) The current scope, schedule, cost estimates and site plan for the Project are attached as Appendix A.

#### **IV. Design, Construction, & Ownership of Project**

(A) DOT&PF's principal Project obligations are to:

- (1) Submit necessary Project requests in the State capital budgeting process and obtain legislative authority to spend the appropriated funding;
- (2) Provide the federal match share consistent with departmental policy, *see* P&P #09.01.040 – Local Match for CIP;
- (3) Perform each of the following Project phases, which it will initiate only after receiving appropriate federal authorization:
  - Phase 2: Design;
  - Phase 3: Right-of-way acquisition/certification; and
  - Phase 4: Construction;
- (4) Prepare Plans, Specifications, and Estimate (PS&E) package;
- (5) Administer all aspects of Project procurement and resulting contracts;
- (6) Develop the Project with DOT&PF staff and/or contracted professional services;
- (7) Seek City review, comment, and, if applicable, approval on appropriate subjects, which may include:
  - Project design at 35% and 95% stages of completion;
  - PS&E package final review prior to advertisement;
  - Construction change orders prior to approval;
- (8) Acquire all necessary rights of way in the name of the City of Kodiak;
- (9) Pay all appropriate costs, fees, and expenses from appropriated Project monies;
- (10) Comply with applicable statute, regulations, codes, and standards regarding administration, design, and construction of the Project.

(B) The City's principal Project obligations are to:

- (1) Provide a sufficient number of qualified personnel at no cost to the Project as needed to work with DOT&PF regarding Project development and administration, including any legal claims that might arise;
- (2) Promptly review, comment on, and, if applicable, approve or reject any matter that DOT&PF submits for the City's consideration;

- (3) Authorize DOT&PF and its contractors to conduct Project-related work on City property and provide DOT&PF with construction easements and such other interests as required to satisfy the needs of Project construction, operations, maintenance, and right-of-way certification.
- (4) Inspect the Project prior to Project closeout.

## **V. Final Inspection & Transfer of Ownership**

(A) The City may participate in DOT&PF's final inspection of the Project. However, DOT&PF shall solely determine when the Project reaches substantial completion, as well as the suitability of contractor's work. As used in this Agreement, "Substantial completion" means the point at which:

- (1) The newly constructed dock and appurtenant structures, approaches, utilities, fencing, signage, markings, cameras, and safety/security features (Facility) are installed and completed, with the exception of minor punch list items;
- (2) AMHS and the public can safely and effectively use the Facility without further delays, impediments, or disruptions; and
- (3) DOT&PF's Project team issues a letter to the contractor acknowledging that the Project has reached substantial completion.

(B) Following substantial completion and DOT&PF's determination upon final inspection that contractor's work is complete and satisfactory, DOT&PF will transfer title and right-of-way, operations, and maintenance responsibilities for the Facility to the City, which the City will promptly accept. On or before the transfer, DOT&PF will provide the City with "as built" drawings of the Facility.

## **VI. City's Right-of-Way, Operations, and Maintenance Obligations**

(A) Upon DOT&PF's transfer of the Facility to the City, the City will acquire and perform responsibilities imposed by federal and state statute, regulation, procedures, policies, guidelines, and agreements, to the extent that they apply to the operation and maintenance of the Facility, including the following:

- (1) The obligations identified in:
  - (a) 23 U.S.C. Chapters 1-5 (*Highways*) and its implementing regulations;
  - (b) 23 C.F.R. §1.23 (*Right-of-Way*);
  - (c) 23 C.F.R. §1.27 (*Maintenance*),
  - (d) 23 CFR Part 710 (*Right-of-Way and Real Estate*), and
  - (e) 23 C.F.R. Part 645 (*Utilities*);
  - (f) The governing version of Stewardship and Oversight Agreement between FHWA and DOT&PF (current copy attached as Appendix B);
  - (g) This Memorandum of Agreement; and
  - (h) This "Flow-Down" Clause: That is, to the extent federal statute, regulation, procedure, policy, guideline, or agreement imposes a continuing obligation on DOT&PF regarding the Facility irrespective of DOT&PF's transfer to the City, the City assumes toward DOT&PF all obligations and responsibilities that DOT&PF owes to FHWA in connection with the Facility.



- (2) State highway requirements *see, e.g.*, AS 19.25.010 *et seq.* (*Utilities, Advertising, Encroachments, & Memorials*), 17 AAC 15.011 *et seq.* (*Utility Permits*), DOT&PF Utility Manual, and DOT&PF Right-of-Way Manual. (The City may access these manuals on DOT&PF's website: <http://www.dot.alaska.gov/>);
- (3) Maritime Transportation Security Act of 2002, as codified in 46 U.S.C. Chapter 701, and its implementing regulations; and
- (4) The obligation to operate and maintain the Facility throughout the term of this Agreement .

(B) In particular, the City's Facility responsibilities include the activities identified immediately below. Except as provided in Part VI(C), the City will fulfill these responsibilities at its own expense and without reimbursement from DOT&PF:

- (1) Planning, scheduling, administration, and logistics of Facility maintenance activities;
- (2) Parties agree to a coordinated security plan;
- (3) Riprap slope protection, including erosion control, to as-built conditions;
- (4) Snow and ice control and associated tasks as may be required for the safe and timely passage of public users of the ferry terminal and dock;
- (5) Maintaining signs and their replacement, including posts and foundations, when damaged, unreadable, or worn out;
- (6) Maintaining dock and fender structures in a proper, serviceable condition, including panels, piles, cathodic protection components, bull rails, hand rails, cleats, bollards, ladders, gates, fencing, and overhead and navigational lights; and
- (7) Removal of debris, rubbish, and dead animals.

(C) To help offset the City's cost of performing certain Maintenance Items, the Parties further agree that AMHS will provide the City with an annual contribution. The amount of AMHS' annual contribution will be derived in the following manner:

- (1) On or before January 2 of the calendar year in which the Facility is expected to commence operation, and on or before every January 2 thereafter while AMHS' contribution commitment remains in effect, the City will provide AMHS with a projected budget that identifies anticipated Maintenance Items for the ensuing fiscal year, *i.e.*, July 1-June 30, associated costs for each anticipated Item, and anticipated revenue the City expects to generate during that fiscal year through public use of the Facility as permitted by Part VIII of this Agreement.
- (2) During the first three fiscal years in which the facility is in operation, AMHS will provide the city with the "AMHS Contribution" which for the first three years will be \$55,000 annually. Beginning in the fourth fiscal year AMHS and the City will negotiate the "AMHS Contribution" for that year prior to the beginning of said year. At the conclusion of each fiscal year, but no later than the ensuing August 31, the City will provide AMHS with an itemized list of actual Maintenance Items performed during that fiscal year, the associated costs for each Item actually performed, and supporting documentation that demonstrates such performance and costs. Additionally, the City will provide AMHS with an accounting of the revenue it generated during that fiscal year from public use of the Facility.
- (3) If the City's actual cost of performing Maintenance Items during a fiscal year exceeds the actual revenues generated from public use of the Facility for that year plus the State's

contribution, then the City is responsible for those excess costs without further contribution from AMHS.

Conversely, if the City's actual cost of facility maintenance during a fiscal year is less than the actual revenues generated from public use of the facility for that year plus the appropriate "AMHS Contribution" then the City will promptly reimburse AMHS the calculated excess amount.

As used in this paragraph "Maintenance Items" means the tasks identified in Part VI (B) (3)-(6).

(D) Notwithstanding paragraphs (A) - (C) of this Part VI, if an AMHS vessel damages a dock component at the Facility as a result of vessel operation, DOT&PF will be responsible for the cost of restoring the damaged component to the same condition that existed prior to the damage; DOT&PF will not be liable for any other harm, loss, or injury stemming from the dock damage.

## VII. Use by AMHS Vessels, Passenger, & Vehicles

(A) AMHS vessels and operations, and those of any other entity providing public ferry service, are entitled to priority use of the Facility throughout the term of this Agreement. At the following times, the City will remove or cause to be removed any vessel and terminate any use at the Facility if its presence interferes with the safety or schedule of an AMHS vessel or the well-being of its passengers or customers:

- prior to arrival of an AMHS vessel at the Facility;
- during an AMHS vessel's presence at the Facility; or
- prior to departure of an AMHS vessel's from the Facility.

If opinions differ as to whether a competing vessel or use interferes with an AMHS vessel, passengers, or customers, the AMHS vessel master's opinion shall be conclusive.

(B) The City shall not assess any fee on AMHS or any other entity providing public ferry service, their passengers, or customers for use of the Facility. This prohibition is effective throughout the life of the Facility.

(C) Notwithstanding paragraph (B) of this Part VII, the Parties acknowledge they are free to negotiate for provision of services by the City to AMHS, *e.g.*, office lease, provision of potable water, removal of shipboard trash, disposal of vessel sewage, etc., for which the City may receive an agreed fee. The Parties will document such service agreement, if any, by written contract.

## VIII. Revenue

(A) Excluding AMHS, as well as any other entity providing public ferry service, their respective passengers and customers, the City may assess a reasonable fee on those who use the Facility. If the City assesses any such fee, it shall segregate this revenue and use it for no other purpose than the maintenance or future replacement of the Facility.

(B) The City shall maintain this segregated revenue fund throughout the term of the MOA. The fund is subject to periodic audit by DOT&PF.

### **IX. Indemnification**

(A) The City shall hold DOT&PF, the State, its officers, employees, and agents (collectively, "the State") harmless from and defend and indemnify the State for liability, claims, demands, fines, penalties, and causes of action arising in connection with this MOA, the Project, and/or the Facility. The City's duty to defend and indemnify shall apply regardless of whether it is also alleged that the State's acts or omissions contributed to the injury (including injury to personal property, real property or persons, including fatal injury).

(1) Notwithstanding the foregoing, the City shall have no obligation to hold harmless and indemnify the State to the extent the State is determined to be liable for its own acts or omissions, except that to the maximum extent allowed by law, the City shall hold the State harmless from and indemnify the State for liability, claims, or causes of action arising from an alleged defect in the design or construction of any facility transferred to the City pursuant to this MOA, regardless of negligence or other fault, if such liability, claim, or cause of action arises out of an incident that occurs more than two years after the DOT&PF transfers ownership and maintenance responsibilities for the facility.

(2) Neither liability, claims, or causes of action arising from injuries that occurred prior to the date of substantial completion, nor liabilities imposed by or claims or causes of action arising from or asserted under AS 46.03.822, shall be governed by this paragraph.

(3) The City's obligation to indemnify does not apply to damage to the Facility for which DOT&PF is responsible under Part VI(D).

(B) DOT&PF shall add a special provision to its bid documents for the design and construction of the Facility requiring the City to be listed as an additional insured in all instances where the successful bidder would be required to add the DOT&PF as an additional insured. The City shall have the right to enforce these provisions against the successful bidder.

### **X. Cancellation Remedies**

(A) If the City requests cancellation of any professional services, consultant or construction contracts entered into by DOT&PF, the City shall be responsible for those costs not accepted for reimbursement by FHWA, amounts for which FHWA expects reimbursement, and any other costs or expenses incurred by the City or DOT&PF in the Project to the date of cancellation or related to finalizing cancellation and Project termination.

(B) If DOT&PF is the primary cause of the cancellation, DOT&PF shall bear those costs not accepted for reimbursement by FHWA, amounts for which FHWA expects reimbursement, and any other costs or expenses incurred by DOT&PF in the Project to the date of cancellation or related to finalizing cancellation and Project termination.

(C) If it is determined that the cancellation was caused by third parties or circumstances beyond the control of DOT&PF or the City, the Parties shall meet in good faith to negotiate a fair and equitable allocation of responsibility for those costs not accepted for reimbursement by FHWA, amounts for which FHWA expects reimbursement, and any other costs or expenses

incurred in the Project to the date of cancellation or related to finalizing cancellation and Project termination.

(D) The foregoing remedies are in addition to any other remedies referenced in this MOA, and do not bar or limit the Parties from resorting to any other remedy available at law or equity.

### **XI. Breach of Contract Provisions**

(A) If DOT&PF provides written notice to the City stating that it is in violation of any of the terms, conditions, or provisions of this Agreement, the City shall have thirty days from the date of such notice to remedy the violation; or, if the remedy requires more than thirty days to complete, the City shall promptly take responsive action necessary to achieve a satisfactory remedy as close as possible to the 30<sup>th</sup> day from DOT&PF's initial notice.

(B) The City's failure to cure a violation that is remediable within thirty days or its failure to take responsive action necessary to promptly resolve a violation that is not remediable within thirty days constitutes a breach of this MOA. If the City is in breach, DOT&PF may elect to terminate the MOA. In addition, the City's breach may adversely affect the viability of current and future municipal capital projects. *See* 17 AAC 05.175(l).

(C) If the City breaches its right-of-way, operations, or maintenance obligations concerning the Facility, appropriate remedies include:

- (1) City reimbursement of all federal and state funds expended on the Project in connection with this MOA;
- (2) City reimbursement of DOT&PF for any direct and indirect costs it has incurred in fulfilling any of City obligations addressed in this MOA; and,
- (3) DOT&PF withholding of its approval of City federal-aid projects until the City cures its breach and fulfills any related obligations.

### **XII. Notification**

When any written notice, request, direction, or other communication is necessary, the Parties will deliver it in person, by certified mail, or by email addressed to the party for whom it is intended, as follows:

DOT&PF:     Regional Director  
                  DOT&PF, SE Region,  
                  6860 Glacier Hwy, MS-2506  
                  Juneau, Alaska 99811-2506  
                  Ph: 907/465-1762  
                  Current addressee: [al.clough@alaska.gov](mailto:al.clough@alaska.gov)

DOT&PF:     General Manager  
                  DOT&PF, Alaska Marine Highway System,  
                  7559 N Tongass Highway  
                  Ketchikan, Alaska 99901

Ph: 907/228-7255  
Current addressee: john.falvey@alaska.gov

City: City Manager  
City of Kodiak  
710 Mill Bay Road, Room 216  
Kodiak, AK 99615  
Ph: 907/785-3804  
Current addressee: manager@city.kodiak.ak.us

### **XIII. Miscellaneous Provisions**

(A) Each Party represents and warrants to the other that (i) it is duly organized, validly existing and in good standing under the laws under which it is organized; (ii) it has the power and authority to enter into this Agreement and to perform fully its obligations hereunder; (iii) the individual executing this Agreement on its behalf has the authority to do so; (iv) the obligations created by this Agreement, insofar as they purport to be binding on it, constitute legal, valid and binding obligations enforceable in accordance with their terms; and (v) it is under no contractual or other legal obligation that shall in any way interfere with its full, prompt and complete performance hereunder.

(B) The City agrees to provide reasonable access to the Project and to relevant Project documents to any authorized representatives of DOT&PF or the U.S. Government. The City further agrees to cooperate in good faith with inquiries and requests for information relating to the Project and its obligations under this MOA.

(C) This Agreement inures to the benefit of and is binding upon the Parties and their respective successors and permitted assigns, if any.

(D) This Agreement shall not be construed as creating the relationship of principal-agent, master-servant, partnership, or joint venture between the Parties. Neither Party shall have authority to make any statements, representations, or commitments of any kind or to take any action that is binding on the other, except as explicitly provided herein or authorized by the other Party in writing.

(E) Neither Party may assign any portion of this Agreement or any benefits or rights arising under the Agreement without the written consent of the other.

(F) No supplement, modification, or amendment of this Agreement is binding unless executed in a writing signed by the authorized representative of the Party to be bound thereby. No provisions of this Agreement may be waived unless done in writing and signed by the authorized representative of the Party to be charged therewith. Waiver of any one provision shall not be deemed to be a waiver of any other provision.

(G) Waiver by a Party of any default by the other will not be deemed a waiver of rights concerning any subsequent default.

(H) If either Party is, due to an event of Force Majeure, rendered unable, in whole or in part, to perform its obligations under this Agreement, such party shall be freed from such obligations, so long as and to the extent that Party is necessarily and directly affected by the Force Majeure. The date of delivery or performance of the affected obligation shall be extended by a period of time reasonably necessary to overcome the effects of such delay and, if necessary, the scheduled services shall be revised in respect of such delay. The Parties shall cooperate in good faith to overcome and to mitigate the effects of an event of Force Majeure. As used in this Agreement, an event of "Force Majeure" means any unforeseeable event which is beyond the control, and without the fault or negligence, of the Party affected, including war, revolution, invasion, insurrection, riot, civil commotion, sabotage, military or usurped power, lightning, explosion, fire, storm, drought, flood, earthquake, epidemic, quarantine, strikes, acts or restraints of governmental authorities affecting the project or directly or indirectly prohibiting or restricting the furnishing or use of materials or labor required, inability to secure materials, machinery, equipment or labor because of priority, allocation or other regulations of any governmental authorities. A lack of funds does not constitute an event of Force Majeure.

(I) The headings used in this Agreement are for convenience only and shall not be deemed to limit or affect any of the provisions of the Agreement.

(J) This Agreement shall not be construed as conferring any legal rights, privileges, or immunities or as imposing any legal duties or obligations on any person or persons other than the parties named in this Agreement.

(K) The City is not an intended beneficiary of any contracts between the DOT&PF and any contractors, subcontractors or consultants or any other third parties, and has no contractual rights with respect to such contracts or any provisions thereof, unless expressly stated otherwise.

(L) This Agreement has been jointly negotiated and drafted by the parties, and both parties have had the ability and opportunity to consult with legal counsel prior to signature. The Agreement shall not be construed for or against either party.

(M) If a court of competent jurisdiction holds any portion of this Agreement invalid, the invalid portion will be severed and will not affect the validity of the remainder.

(N) The provisions of this MOA constitute the whole of the agreement between the Parties with respect its subject matter; no separate understandings or side agreements exist.

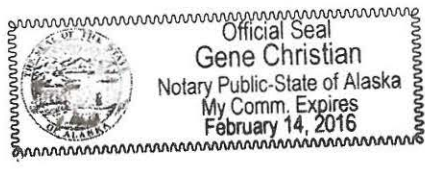
Dated: 1-6-14

DEPARTMENT OF TRANSPORTATION & PUBLIC FACILITIES – Alaska Marine Highway System

By: [Signature]  
Captain John F. Falvey, General

Manager

SUBSCRIBED AND SWORN TO before me this 6<sup>th</sup> day of January, 2014



[Signature]  
Notary Public in and for Alaska  
My commission expires: 2/14/16

Dated: 1/9/14

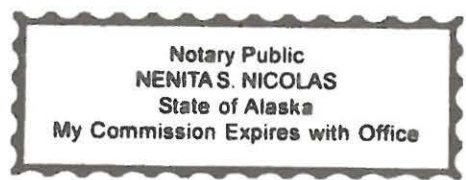
CITY OF KODIAK

By: [Signature]  
Aimee Kniazowski, City Manager

SUBSCRIBED AND SWORN TO before me this 9<sup>th</sup> day of January 2014

State of Alaska  
Third Judicial District

[Signature]  
Notary Public in and for Alaska  
My commission expires: with office



Acknowledgment of the Kodiak City Council

BE IT REMEMBERED that on the 12 day of December, 2013 at a regular meeting, of the City of Kodiak ~~Assembly~~ <sup>Council</sup> of the City of Kodiak, a home rule city established under Alaska law, granted its approval of the foregoing instrument.

Dated: 1/23/14

[Signature]  
Clerk, City of Kodiak

## Kodiak Ferry Terminal and Dock Improvements Project

State Project No.: 68938

Appendix A

Scope, Schedule, Estimate

### Scope

This project will consist of planning, designing and constructing improvements to Kodiak's Pier 1 dock to provide a facility compatible with AMHS vessels and operations. These improvements are expected to include demolition of the existing Pier 1 timber dock, construction of a new dock in the same location as the demolished dock using a steel substructure and concrete decking, sheet pile retaining wall abutment, vessel fendering and mooring system, purser's shelter, covered walkway, security fencing, and upgrades to the fuel and water systems.



STIP page attached thru Amendment #6 (2013)





**Federal Highway Administration, Alaska Division  
and  
Alaska Department of Transportation & Public Facilities  
Stewardship and Oversight Agreement**



## TABLE OF CONTENTS

TABLE OF CONTENTS .....	II
INTRODUCTION .....	3
Purpose.....	3
Background .....	3
AGENCY ROLES AND RESPONSIBILITIES.....	4
Overview.....	4
Roles and Responsibilities .....	4
<i>Federal Highway Administration</i> .....	4
<i>Alaska Department of Transportation and Public Facilities</i> .....	5
<i>Joint Roles and Responsibilities</i> .....	6
COMPREHENSIVE RISK-BASED APPROACH .....	7
Overview .....	7
Strategic Stewardship and Oversight Methods .....	7
<i>Program Assessments</i> .....	8
<i>Program Reviews</i> .....	8
<i>Strategic Project Oversight</i> .....	9
Performance Indicators/Measures.....	10
Quality Improvement Process.....	12
IMPROVEMENTS TO THE AGREEMENT.....	12
EXECUTION OF DOCUMENT .....	13

<b>Appendix A</b>	<b>Program Responsibilities List</b>
<b>Appendix B</b>	<b>Project Responsibilities List</b>
<b>Appendix C</b>	<b>List of Measures</b>
<b>Appendix D</b>	<b>Acronyms</b>

## **INTRODUCTION**

### **Purpose**

The purpose of this Joint Stewardship and Oversight Agreement (Agreement) is to provide a roadmap to effectively and efficiently manage the Federal-Aid Highway Program (FAHP) both in terms of program and project delivery. It formalizes the roles and responsibilities of the Federal Highway Administration (FHWA), Alaska Division and the Alaska Department of Transportation (DOT&PF) in administering the FAHP, and outlines authorities, and assures accountability.

The Agreement outlines a risk-based approach for FHWA and DOT&PF to manage the public funds and to ensure the FAHP is delivered in accordance with federal laws and regulations. The approach includes a Strategic Planning Process, Strategic Stewardship and Oversight, and performance indicators/measures.

Through this Agreement, DOT&PF accepts responsibility as the project approval authority for delegated activities in accordance with Section 106 of Title 23, United States Code (USC). FHWA retains overall responsibility for the FAHP and this Agreement does not preclude FHWA from accessing or reviewing any federal-aid program and/or project at any time.

### **Background**

The United States Congress (Congress) has charged FHWA with administering the FAHP under Title 23 of the United States Code (USC), Title 23 of the Code of Federal Regulations (CFR), and other associated laws and regulations. Section 106 of Title 23 USC, requires the agencies to enter into an agreement that documents the delegation of responsibilities. With the passage of the Safe, Accountable, Flexible, Efficient, Transportation Equity Act: A Legacy for Users (SAFETEA-LU), stewardship evolved to cover all aspects of the FAHP including financial integrity, local agency project delivery, and other mainstream FAHP program elements. With the changes in the law, Congress tasked both agencies with managing the FAHP through stewardship and oversight to accomplish national, state and local goals of maintaining a national highway network, improving its operation and safety, and providing for national security while protecting and improving the environment. In addition to the changes brought through SAFETEA-LU, current efforts require both agencies to ensure accountability and transparency in managing the FAHP.

FHWA is charged with stewardship and oversight responsibilities for all federal highway funded programs, regardless of project approval authorities assumed by DOT&PF. FHWA must conduct activities to ensure that DOT&PF implementation of the FAHP conforms to established laws, regulations, and policies; and that DOT&PF is carrying out its roles and responsibilities according to established agreement with FHWA.

Stewardship and oversight, as outlined in this document, are exercised through program management and project level activities. FHWA and DOT&PF have defined stewardship and oversight as follows:

*Stewardship is the efficient and effective management of the public funds that have been entrusted to the FHWA.*

*Oversight is the act of ensuring that the federal highway program is delivered in accordance with applicable laws, regulations and policies.*

DOT&PF and FHWA will work in partnership to deliver the FAHP to ensure integrity, value, quality, accountability, and transparency for system stakeholders and its customers. In order to meet this outcome, the agencies will implement strategies and employ a variety of tools to assess and effectively monitor the overall health of the FAHP to enhance the transportation system within the State of Alaska.

## **AGENCY ROLES AND RESPONSIBILITIES**

### **Overview**

In an effort to enhance the continuing partnership between FHWA and DOT&PF, this Agreement focuses on the individual and joint agency roles and responsibilities. More specific details about DOT&PF and FHWA's roles, responsibilities, and performance measures for each program area are described in the respective program overviews and are summarized in Appendix A: Program Responsibility List; Appendix B: Project Responsibilities List; and, Appendix C: List of Measures.

### **Roles and Responsibilities**

#### *Federal Highway Administration (FHWA)*

FHWA will maintain overall responsibility for the FAHP within the parameters of 23 USC 106, except for the assignment of environmental responsibilities under SAFETEA-LU Sections 6004 (23 USC 326).<sup>1</sup> In addition, FHWA is ultimately responsible for ensuring financial integrity and compliance with applicable federal laws and regulations. FHWA remains accountable to the public and Congress for the FAHP and ensuring that it is delivered in an efficient and effective manner regardless of approval authority or responsibility delegated to DOT&PF. FHWA maintains authority for the actions and approvals in the following categories:

- Civil Rights Act of 1964;
- Environmental approvals not specifically assigned under Sections 6004 SAFETEA-LU;
- Federal air quality conformity determinations required by the Clean Air Act;

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<sup>1</sup> Section 6004 of SAFETEA-LU is codified in 23 USC 326. For convenience, it is referred to here as Section 6004.

- Progress payments and final vouchers;
- Hardship acquisition and protective buying;
- Project agreements and modifications to project agreements;
- Obligation of funds;
- Planning and programming pursuant to 23 USC 134 and 135;
- Special Experimental Projects (SEP-14 and SEP-15);
- Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (UA), as amended; and,
- Waivers to Buy America requirements.

Projects for which defined approval authority is delegated to DOT&PF are not subject to further approvals by FHWA, unless it is jointly agreed. However, nothing in the Agreement shall prohibit FHWA from reviewing any programs and projects at any time.

FHWA will maintain the Program of Oversight Initiatives (POI), a comprehensive oversight document. The POI will capture all the initiatives associated with our oversight responsibilities for a given Performance Year (PY). The POI will identify:

- Risks and Improvement Opportunities
- Headquarters Directed Program Management Initiatives
- Division Risk-Based Program Management Initiatives
- Fraud Prevention Initiatives
- Project Oversight Activities

*Alaska Department of Transportation and Public Facilities (DOT&PF)*

DOT&PF, through the specific delegation allowed under federal law, has authority for monitoring, reviewing, and/or approving activities that are eligible for FAHP funds. DOT&PF, in conformance with 23 USC 106, accepts responsibilities for the delegated duties in this Agreement. Additionally, per SAFETEA-LU Section 6004, DOT&PF has been assigned FHWA's authority and responsibility for compliance with the National Environmental Policy Act (NEPA) and other federal environmental laws. Specific authorities, responsibilities and exceptions are defined in the Memorandum of Understanding (MOU) for this delegation and assignment.

DOT&PF is responsible for administering the FAHP in a manner that ensures efficient and effective use of the FAHP funds. DOT&PF will administer the FAHP by being responsible for:

- Duties delegated to it pursuant to 23 USC 106;
- Ensuring and verifying, as needed, compliance with all federal laws, regulations and requirements;
- Identifying areas that are either non-compliant with federal requirements or have a high risk for becoming non-compliant (through a structured assessment process);
- Taking appropriate action when non-compliant findings are made;

- Implementing safeguards and/or improvements to reduce the risk of non-compliance;
- Assessing the FAHP through routine involvement;
- Conducting reviews and offering conflict resolution processes where necessary;
- Reviewing and approving activities under this Agreement related to federal-aid funds usage; and,
- Ensuring compliance with the executed MOU assigning federal responsibilities and supporting all required reviews and audits of activities under SAFETEA-LU Section 6004.

Title 23 USC does not recognize local entities as direct recipients of federal-aid funds. Accordingly, local agencies cannot take the place of DOT&PF in the context of the FAHP. DOT&PF is responsible for all requirements of the FAHP, whether these requirements stem from Title 23 or non-Title 23 statutes. The program and project authority that FHWA has delegated to DOT&PF does not authorize DOT&PF to pass these responsibilities to the local agencies. DOT&PF will provide the necessary review and approval to assure that locally administered federal-aid projects comply with federal requirements. DOT&PF will achieve this by assuring that local agencies have adequate project delivery systems in place and sufficient accounting controls to properly manage FAHP funds.

DOT&PF retains project management and technical development responsibilities for most projects funded with Title 23 funds. On a case by case basis, the DOT&PF may elect to assign limited project responsibilities to local agencies. DOT&PF and the local agency will develop individual project agreements that explain each agency's roles and responsibilities and explain DOT&PF oversight.

The individual project agreement between a local agency and the DOT&PF includes the standards and processes to which the local government will adhere. It will include allocation of funding and required billing records. It will include the source of matching funds and any stipulations for the use of the funds and the specific terms of any transfers of title.

The agreements will be executed (signed) prior to the performance of work to be reimbursed with federal funds. Changes in scope of work, responsibilities and local agency funding requirements beyond the amount set forth in an Agreement will require execution of an Agreement Amendment.

#### *Joint Roles and Responsibilities*

DOT&PF and FHWA will work collaboratively to manage the FAHP, and review, monitor, and approve activities as necessary in the designated areas of responsibility to comply with applicable laws, regulations, directives, and standards as defined in the Program Responsibilities (Appendix A) and the Project Responsibilities (Appendix B) lists. The success of the FAHP in Alaska is a joint responsibility that requires both agencies to be proactive in monitoring and improving the program, as well as taking necessary corrective actions when needed.

## **RISK-BASED APPROACH**

### **Overview**

FHWA and DOT&PF will work cooperatively to identify appropriate stewardship and oversight initiatives using a risk-based approach. The process will consider items such as strategic goals, mutual FHWA and DOT&PF initiatives to improve quality, cost, and FHWA's level of confidence in oversight mechanisms and activities.

This Agreement, therefore, implements a risk-based approach to effectively manage the FAHP and assess its overall health. This risk-based approach to program stewardship and oversight facilitates the effective leveraging of federal resources by focusing on areas of risk at the program and project level. It will be accomplished using distinctive, yet inter-dependent methodologies:

1. Strategic Planning Process,
2. Strategic Stewardship and Oversight (SSO),
3. Performance Measures/Indicators, and
4. Quality Improvement Process

### **Strategic Planning Process**

DOT&PF and FHWA will coordinate strategic planning activities, to the extent possible, in an effort to align agency strategic plans. The FHWA will represent Alaska perspectives in setting national FHWA goals and strategies, and will coordinate the adopted national goals and strategies with the DOT&PF Strategic Planning Process in order to assure reasonable alignment of desired outcomes, objectives, and measures of both agencies.

Annually DOT&PF and FHWA staff will jointly meet to: assess various elements within the FAHP; ensure that program elements are being managed effectively and efficiently; recommend projects for High Profile status; and to assess how well the elements are achieving program goals. They will accomplish this through the utilization of SSO methods (see below), performance measures/indicators and other strategies. In addition, they will consider changes to goals or requirements that affect program elements.

### **Strategic Stewardship and Oversight Methods**

SSO includes methods and activities by which DOT&PF and FHWA will work together in managing the FAHP to: 1) ensure effective strategies are implemented to maintain and improve the overall health of the transportation system within the State of Alaska; and, 2) monitor and maintain compliance with all required federal laws and regulations. These methods develop into the Strategic Planning Process that will guide DOT&PF and FHWA in implementing strategies that manage risk.

SSO is achieved through program management of the responsibilities, including those listed in Appendix A. Program management is used by DOT&PF and FHWA to plan and organize activities to formulate methods that achieve common goals through cooperative efforts in

administering the FAHP. Effective management means ensuring that all requirements are met while proactively seeking opportunities to improve the program through:

- Analyzing and evaluating methods and processes;
- Evaluating and recommending improvement for the effectiveness and efficiency of programs;
- Performing program level involvement;
- Promoting new initiatives and concepts;
- Participating on relevant joint task forces, joint committees, and joint quality improvement teams;
- Assisting other stakeholders with program-related issues;
- Verifying compliance through project level samples;
- Conducting program assessments (see below);
- Conducting program reviews (see below); and,
- Conducting strategic project oversight (see below).

### *Program Assessments*

Program assessments provide an avenue for determining the current health and effectiveness of the FAHP and assess future risk. Assessments include program analysis such as risk management techniques and self-assessments. These tools are based on the common concepts of identifying strengths, areas of concern, opportunities, and sharing best practices to continually improve the programs. DOT&PF and FHWA will conduct Program Analyses and implement principles of risk management. Risk management is a systematic process that involves the identification, assessment, planning, and management of threats and opportunities faced by programs, processes, and projects. This will be accomplished by performing an Annual Program Analysis and Risk Assessment in core program areas. The program analysis will identify particular program initiatives that could be accomplished to optimize the effectiveness of the current state of the program and the vision of where that program should be in three years. In order to accomplish this, a Risk Assessment will be conducted to evaluate the potential exposure to loss for a particular program or process and the identification of potential countermeasures to control or reduce perceived risk. In addition, information obtained from oversight activities and performance measures/indicators will be considered when performing the program analysis and risk assessment. The program analysis will outline response strategies and initiatives to effectively manage risk. Response strategies include strategies of avoidance, acceptance, transference, mitigation or enhancement, planned or implemented to cope with identified risks. Mitigation efforts may include:

- 1) staff training,
- 2) program reviews,
- 3) updating manuals, and procedural guidance,
- 4) and providing technology transfer/technical assistance.

### *Program Reviews*



Program reviews analyze key program components and the processes used by the DOT&PF and FHWA in managing the program. Program reviews can be conducted by individuals or teams from the agencies and other stakeholder groups or organizations. Program reviews are often an outcome of program assessments or performance indicators/measures that suggest a need for improvement. Performance indicators/measures may also be developed as a part of program reviews to help highlight and quantify successes and problem areas. In general, the reviews will:

- Gauge compliance with federal requirements;
- Identify opportunities for greater efficiencies and improvements to the program;
- Identify good program delivery systems and exemplary practices;
- Identify areas that need attention and make recommendations for improvement;
- And follow up to ensure that recommendations have been implemented.

Program reviews may include process reviews, project level reviews, quality improvement reviews and peer reviews.

### *Strategic Project Oversight*

On September 30, 1997, 23 USC 106(c) permitted the States to approve, on a project-by-project basis, plans, specifications, and estimates for projects on the National Highway System (NHS), and permitted the States to request that the U.S. Secretary of Transportation no longer review and approve highway projects on the Interstate with an estimated construction cost of less than \$1,000,000. Additionally, FHWA issued guidance on February 22, 2007, that allows FHWA and the States to establish programmatic agreements for new or reconstruction projects on the Interstate which are greater than \$1,000,000 but are evaluated as low risk. The States will have advance approval for design, plans, specifications, estimates, contract award, contract administration, and project inspections in advance of actual delivery of these projects. However, these advance approvals are not effective until after approval of the project's environmental document accomplished in accordance with the National Environmental Policy Act (NEPA) process and the satisfaction of other related environmental laws and procedures.

It is mutually desirable to both FHWA and DOT&PF to streamline the approval process for routine and inherently low risk projects. Through this Agreement, FHWA is granting its approval to delegate to DOT&PF in advance of actual delivery of projects the responsibility for oversight and approval of project level activities for low-risk projects. This includes projects on the Interstate System that are routine and inherently low risk in which DOT&PF has a high level of experience and has well-documented procedures and processes in place for ensuring compliance with federal requirements. For projects on the Interstate that are delegated to the DOT&PF, FHWA's oversight will be satisfied by conducting SSO methods and activities. Therefore, both agencies will implement a risk-based approach to project-level management that no longer uses the \$1,000,000 threshold.

While DOT&PF will be responsible for approval of project level activities for low risk projects, FHWA will maintain project level approval for High Profile projects. This risk-

based approach to project oversight will be conducted by selecting the projects that traditionally pose a risk to the health of the FAHP.

Each year, after the Program Analyses and Risk Assessments are complete (around February), DOT&PF's Chief Engineer and FHWA's Field Operations Engineer will jointly determine which projects are considered to be High Profile projects based on the criteria listed below. The *High Profile Project* determination will be made by FHWA in conjunction with DOT&PF at the regional level. The criteria include:

- Projects identified through Program Assessments (the likelihood and severity of potential problems)
- Controversial and Congressional Interest projects
- Projects of National Focus
- Innovative contracting method projects with federal funds
- Invitational projects (invited by the DOT&PF)
- Major Intelligent Transportation Systems (ITS) projects
- Major Projects (>\$500M)
- Mini-major Projects (\$100M - \$500M)
- Non-Traditional Revenue Sources projects
- Special Experimental Projects – Alternative Contracting (SEP-14)
- Special Experimental Projects – Public Private Partnerships (SEP-15)
- Unusual Bridge and Structure projects

All Major Projects (>\$500M) will automatically be selected as *High Profile Projects*. Beyond that, the number of *High Profile Projects* is expected to be no greater than thirty projects statewide at any point in time to provide a manageable workload for FHWA area engineers.

All projects will be administered in accordance with the Project Responsibilities List (Appendix B). The three types of projects include High Profile Projects, NHS Projects and non-NHS Projects. FHWA and DOT&PF will have project level approval authorities as indicated in Project Responsibilities List. DOT&PF and FHWA will maintain an open and collaborative relationship in order to ensure timely and efficient delivery of all projects within the FAHP.

### **Performance Indicators/Measures**

Performance indicators/measures will be one of several tools used to assess the health of the FAHP during the Strategic Planning Process. They will enable FHWA and DOT&PF to monitor program performance and proactively implement corrective actions when needed. Performance indicators/measures consist of a mixture of different types of measures designed to monitor and track trends of the effectiveness (outcomes) and efficiency (outputs) of the functional program areas and the overall FAHP. Data derived from these indicators/measures will be used on an ongoing basis to monitor how well the various program elements are functioning, including how efficiently the program is being delivered and how well the program is complying with various requirements. The indicators/measures

are to be used as a tool for FHWA and DOT&PF in jointly managing the FAHP. Changes in the measurements over time will be tracked to determine the progress being made toward any objectives, and whether adjustments are necessary to improve efficiency or reduce risk. While these performance measures/indicators provide a point-in-time evaluation, they do not generally reveal why the program is performing at the measured level.

The indicators/measures will also serve as input in conducting annual program analyses and risk assessments and may give cause for program reviews or other program management techniques such as project inspections and project document reviews.

Appendix C provides a comprehensive list of the performance indicators/measures, along with the goal, report cycle, lead authority, and supporting justification for the indicator/measure. It is important to note that the indicators/measures may evolve and change over time; however, every effort will be made to achieve the original intent of the indicator/measure. Additionally, other indicators/measures may be developed and used. All changes to the indicators/measures will be agreed upon by both the FHWA and DOT&PF and will not by themselves warrant a change to this Agreement. However, if other major changes need to be made to the agreement, the latest list of measures will be placed in Appendix C.

### **Quality Improvement Process**

Each agency agrees to appoint a Quality Improvement Manager to meet on a quarterly basis to discuss elements mainly related to the outcomes of the Strategic Planning Process, Strategic Stewardship and Oversight Methods, and Performance Indicators and Measures. Their main objectives are to 1) ensure that the SSO methods and performance measures/indicators are effective and utilized by program and senior level managers, 2) ensure that strategies are implemented that address systemic issues rather than activities that attempt to fix symptoms, and 3) ensure that major changes to the Agreement are completed in a timely manner. They will discuss the current and upcoming activities, review major issues at the program or project level, and develop strategic approaches to improve the overall processes and programs. The following is a general list of activities that will occur during the quarterly meetings:

- Report status on previous FY program review findings and recommendations
- Ensure that previous reviews are closed out in a timely manner
- Review status of Program reviews (required reviews and risk-based reviews) for the current year
- Share Program Review Work Plans
- Review outcomes of Strategic Stewardship and Oversight Methods and Performance Indicators and Measures
- Identify global FAHP issues
- Develop strategies to address global issues and memorialize them through the Risk Management Framework activities and DOT&PF's Division Overviews
- Ensure list of measures is kept current
- Recommend for approval any major changes to the Agreement

This will assist in monitoring the FAHP in a holistic manner rather than a stove-piped approach. It will facilitate a systemic approach to identifying global issues, developing response strategies, and ensuring that resources are effectively and efficiently utilized.

## **IMPROVEMENTS TO THE AGREEMENT**

It is anticipated that during its implementation there will be instances when both agencies agree that improvements can be made to the terms of this Agreement. As previously stated, *it is important to note that the indicators/measures may evolve and change over time; however, every effort will be made to achieve the original intent of the indicator/measure. All changes to the indicators/measures will be agreed upon by both the FHWA and DOT&PF and will not by themselves warrant a change to this Agreement. However, if other major changes need to be made to the agreement, the latest list of measures will be placed in Appendix C.*

In order to facilitate major changes, each agency's Quality Improvement Manager will be the principal contact for assuring that the Agreement is kept current, and will coordinate the negotiation of any changes. They will make the final recommendations to the DOT&PF Commissioner and the FHWA Division Administrator, who will have approval authority for any such changes.

**EXECUTION OF DOCUMENT**

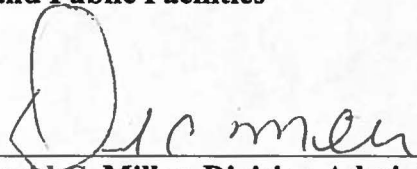
The FHWA and DOT&PF enter into this Agreement to carry out their respective responsibilities with mutual cooperation and collaboration. This Agreement does not relieve either party from accountability for compliance with federal laws and regulations of the FAHP. Signatures on this Agreement by the FHWA and DOT&PF acknowledge delegation of responsibilities for stewardship and oversight under the provisions of Section 106 of Title 23 USC.



\_\_\_\_\_  
**Pat Kemp, Acting Commissioner  
Alaska Department of Transportation  
and Public Facilities**

12/21/12

\_\_\_\_\_  
**Date**



\_\_\_\_\_  
**David C. Miller, Division Administrator  
Federal Highway Administration**

12/21/12

\_\_\_\_\_  
**Date**

**Appendix A: Program Responsibilities List (currently under separate file)**

APPENDIX A

Program Responsibilities List

The Program Responsibilities List is to be used as a tool to jointly manage program activities that are integral parts of the FAHP. This comprehensive list defines program level activities, roles, and responsibilities. The list also outlines the approval authorities (highlighted in yellow, where applicable) and is broken down by program area identifying frequency of approvals and actions, regulatory references, and provides the FHWA and AKDOT&PF contact information. Effective management of these activities contributes to the overall health of the FAHP.

ACTIVITY	Authority	Frequency / Due	AKDOT&PF Contact	FHWA Contact	Remarks
Planning					
Statewide Planning					
SFPR (Part 1) Work Program	23 CFR 420.111	Annually by September 30	Program Development	Planner	
State Participation Process for Non-metropolitan Local Officials	23 CFR 450.210(b)	As needed or as revised by State	Program Development	Planner	
State Public Involvement Process	23 CFR 450.210(e)	As needed or as revised by State	Program Development	Planner	
State Self-certification	23 CFR 450.218	submitted with proposed STIP or STIP amendments	Program Development	Planner	FHWA and FTA issue a joint finding
Statewide Transportation Plan	23 CFR 450.214	Revise and update, as appropriate	Program Development	Planner	
STIP	23 CFR 450.216	At least every 4 years	Program Development	Planner	Joint FHWA and FTA approval
STIP Amendments	23 CFR 450.218	As submitted by State	Program Development	Planner	Joint FHWA and FTA approval
Tribal Government Consultation Process(es)	23 CFR 450.210(c)	As needed or as revised by State	Civil Rights	Civil Rights	
Metropolitan Planning					
Annual Listing of Obligated Projects	23 CFR 450.332	Annually, no later than 90 days after September 30	Program Development	Planner	
Certification in TMAs	23 CFR 450.334(b)	Every 4 yrs	Program Development	Planner	Joint FHWA and FTA certification
Congestion Management Process in TMAs	23 CFR 450.320	Established and revised as needed	Program Development	Planner	
Metropolitan Planning Area Boundaries	23 CFR 450.312	established and revised as needed	Program Development	Planner	Require agreement between Governor and the MPO
Metropolitan Transportation Plan (MTP) in Attainment Areas	23 CFR 450.322	Every 5 yrs	Program Development	Planner	Developed by MPOs
MPO Designation and Redesignation	23 CFR 450.310	As needed/revised by MPO/State	Program Development	Planner	Require agreement between Governor and local governments
MPO Self-certification (Non-TMAs)	23 CFR 450.334(b)	At least every 4 years, with substantial of TIP as part of the STIP	Program Development	Planner	
MTP in Non-attainment and Maintenance Areas	23 CFR 450.322	Every 4 yrs	Program Development	Planner	Developed by MPOs
Participation Plans	23 CFR 450.316	As needed or revised by MPOs	Program Development	Planner	Developed by MPOs

ACTIVITY	Authority	Frequency / Due	AKDOT&PF Contact	FHWA Contact	Remarks
TIP	23 CFR 450.324; 23 CFR 450.328	At least every 4 years	Program Development	Planner	
TIP Amendments	23 CFR 450.328; 23 CFR 450.328	As submitted by MPOs	Program Development	Planner	
Unified Planning Work Programs	23 CFR 450.306	Annually by January 1	Program Development	Planner	Developed by MPOs; Joint FHWA and FTA approval.
Air Quality					
CMAQ Funds Report	04/28/89 HQ CMAQ guidance memo	Annually by Feb 1	Program Development	Planner	
Conformity Determination for MTP in Non-attainment and Maintenance Areas	23 CFR 450.322; 40 CFR 93	With MTP updates at least every 4 years and as needed on amendments	Program Development	Planner	Joint FHWA and FTA determination; in consultation with the Environmental Protection Agency (EPA)
Conformity Determination for TIP in Non-attainment and Maintenance Areas	23 CFR 450.328; 40 CFR 93	With TIP submitted at least every four years and as needed on TIP amendments	Program Development	Planner	Joint FHWA and FTA determination; in consultation with EPA
PM2.5 and Mobile Source Air Toxics	Memos February 3, 2006 and March 29, 2008, 71 FR 12468, 23 CFR 771.129	As needed	Planning/ Environment	Planner/Environment	In consultation with EPA
ROW					
Acquisitions, Appraisals, and Relocations	48 CFR 24; The UA	As needed	ROW	ROW	
Early Acquisitions	23 CFR 710.501	As needed	ROW	ROW	
Outdoor Advertising Policies and Procedures	23 CFR 750.304	As needed or submitted by State	ROW	ROW	
Railroad Agreement Alternate Procedure	23 CFR 646.220	One time	ROW	ROW	
Requests for Waivers	49 CFR 24.204(b); 49 CFR 24.7	As submitted by State	ROW	ROW	
State ROW Manual	23 CFR 710.201	Jan. 1, 2001 & every 3 years thereafter	ROW	ROW	Submitted to FHWA Headquarters (HQ)
Uniform Relocation Assistance and Real Property Acquisition Report - (Office of Management and Budget (OMB) Form 2125-0030)	49 CFR 24.9(c) and Appendix B	Annually by no later than November 15	ROW	ROW	
Utility Accommodation Policy	23 CFR 845.215	When changes occur	ROW	ROW	
Highway Information					
Functional classification of highways/streets	23 CFR 105(b)	As needed or as revised by State	Program Development	Planner	
HPMS Data Submission and Review	FHWA HPMS Field Manual & CFR 420.105(b)	Submission by June 15; Review by November 1	Program Development	Planner	Submission by AKDOT&PF; Review by FHWA Division
NHS revisions	23 CFR 470.113, 115(a)	As requested by State	Program Development	Planner	Approved by HQ - Office Director
Public road mileage certification	23 CFR 460.3 & FAPG NS 23 CFR 460	Annually by June 1	Program Development	Planner	Approved by Governor or designee
Urban area boundaries	23 CFR 470.105(a)	As needed or as revised by State	Program Development	Planner	
Environment					
Bicycle Transportation and Pedestrian Walkways	23 USC 217	As needed or requested by State	Design	Small Programs Manager	
Environmental Justice	FHWA Order 8640.23	As needed or required	Environment	Environment	
Environmental Review Process	SAFETEA-LU Section 6002	As required for EISs and as needed for EAs	Environment	Environment	
NEPA Procedures, including Section 4(f)	23 CFR 771; 23 CFR 774; SAFETEA-LU 6007 & 6009	As needed or required	Environment	Environment	



ACTIVITY	Authority	Frequency / Due	AKDOT&PF Contact	FHWA Contact	Remarks
Noise Policy	23 CFR 772; 06/12/05 HQ memo	As needed or required	Environment/ Design	Environment	FHWA approves AKDOT&PF noise abatement policy
Planning and Environmental Linkages	23 CFR 450.212; 23 CFR 450.316; Appendix A to 23 CFR 450	As needed	Planning/ Environment	Planning/ Environment	
Compliance Reviews on Section 6004 MOU	SAFETEA-LU Section 6004; MOU	At least every 15 months	Environment	Environment	
Public Involvement/Public Hearing Program	23 CFR 771.111(b)(1)	As revised by State	Environment	Environment	
Section 106 of the National Historic Preservation Act	23 CFR 800	As needed or required	Environment	Environment	
Section 404 of the Clean Water Act	23 CFR 777; NEPA/404 MOU	As needed or required	Environment	Environment	
Section 6(f) of the Land and Water Conservation Fund Act	36 CFR 59	As needed or required	Environment	Environment	
Section 7 of the Endangered Species Act	50 CFR 402; Dispute Resolution Process	As needed or required	Environment	Environment	
Section 9 of the Rivers and Harbors Act (Bridge Permits)	23 CFR 650 Subpart H; 33 CFR 114 and 115	As needed or required	Environment	Bridge	
Annual Wetlands Mitigation Report		Annually	Environment	Environment	
Annual ESA Expense Report		Annually	Environment	Environment	
Tribal Government Consultation	36 CFR 800.16(m)	As needed or required	Environment	Civil Rights	
<b>Civil Rights</b>					
ADA/Sec. 504 Program Plan accomplishments and next year's goals	48 CFR 27.11(c), EO 12860	Annually by Oct. 1	Civil Rights	Civil Rights	Division reviews and comments
ADA complaint reports of investigation	28 CFR 35.190	As requested by FHWA	Civil Rights	Civil Rights	Division reviews, FHWA HQ approves and issues finding
Annual Contractor Employment Report (Construction Summary of Employment Data (Form PR-1392))	23 CFR 230.121(e)(3)	Annually by Sept. 30	Civil Rights	Civil Rights	Division reviews and submits to FHWA HQ for approval - Is this still required???
DBE Program Plan accomplishments and next year's goals	48 CFR 26.11	Annually by Oct. 1	Civil Rights	Civil Rights	Division reviews and comments
DBE Program revisions	48 CFR 26.21(b)(2)	As needed	Civil Rights	Civil Rights	
EEO Contract Compliance review reports	23 CFR 230.409, 230.413(b)(1)(D)	Upon completion by State	Civil Rights	Civil Rights	Division reviews and comments
EEO Contractor Compliance Plan accomplishments and next year's goals	23 CFR 230, Subpart C, Appendix A, Part I, III	Annually by Oct. 1	Civil Rights	Civil Rights	Division reviews and comments
Historically Black College & University / Minority Institutions of Higher Learning / Tribal Colleges and Universities Report	EO 12876	Annually by Nov 1	Research	Research	Division reviews and submits to FHWA HQ
OJT goals & accomplishments	23 CFR 230.111(b)	Annually by Jan 30	Civil Rights	Civil Rights	Division reviews and comments
Report on supportive services (OJT & DBE)	23 CFR 230.113(g), 230.121(e), 230.204(g)(6)	Quarterly by April 15, July 15, Oct. 15, and Jan. 15	Civil Rights	Civil Rights	Division reviews and comments
State Employment Practices Report (EEO-4)	23 CFR 230.311(a)(2), FAPG-1-C-230-C	Annually by Aug. 15	Civil Rights	Civil Rights	Division reviews and submits to FHWA HQ
State internal EEO affirmative action plan (Title VII) accomplishments, next year's goals, and employment statistical data	23 CFR 230.311, FAPG-1-C-230-C	Annually by Oct. 1	Civil Rights	Civil Rights	Division reviews and comments
State's Overall Disadvantaged Business Enterprise (DBE) Goal	48 CFR 26.45(f)(1)	Annually by Aug 1	Civil Rights	Civil Rights	Also requires FHWA legal review and concurrence
Supportive services funds requests (OJT and DBE)	23 CFR 230.113 & 230.204	As requested by FHWA	Civil Rights	Civil Rights	Division reviews and submits to FHWA HQ for approval
Title VI Plan accomplishments and next year's goals	23 CFR 200.9(a)(10), FAPG-1-C-200	Annually by Oct. 1	Civil Rights	Civil Rights	Division reviews and comments
Title VI Plan revisions	23 CFR 200.9	As needed	Civil Rights	Civil Rights	
Uniform Report of DBE Commitments/Awards and Payments	48 CFR 26, Appendix B	Semi-annually by June 1 and Dec. 1	Civil Rights	Civil Rights	Division reviews and submits to FHWA HQ
<b>ITS and Traffic Operations</b>					

ACTIVITY	Authority	Frequency / Due	AKDOT&PF Contact	FHWA Contact	Remarks
Incident Management	23 CFR 500	As needed	Engineering	Engineering	
National Manual on Uniform Traffic Control Devices Compliance	23 CFR 655	within 2 years of most recent national MUTCD edition	Engineering	Engineering	
National Network Modifications	23 CFR 658.11	As requested by State	Engineering	Planning Team	
Regional ITS Architecture Maintenance	23 CFR 940.9	As needed	Planning	Engineering	Typically, MPOs own and maintain system
Statewide ITS Architecture and System Plan	23 CFR 940.9	As needed or as revised by State	Planning	Engineering	
Systems Engineering Analysis Implementation	23 CFR 940.11	Until fully integrated	Planning	Engineering	
Vehicle Size & Weight enforcement certification	23 CFR 657.13	Annually by Jan 1	Weights and Measures	Planning	
Vehicle Size & Weight enforcement plan	23 CFR 657.11	Annually by Oct 1	Weights and Measures	Planning	
<b>Research, Development and Technology</b>					
Local Technical Assistance Program (LTAP) Centers Work Plan and Budget	FHWA LTAP work program	Annually by January 1	Research	Research	
Research Work Program	23 CFR 420.111	Annually by January 1	Research	Research	
<b>Safety</b>					
402 Highway Safety Plan	1222/99 guidelines, TEA-21, 2001	Annual	Program Development	Engineering	The Governor's Highway Safety Rep coordinates with the National Highway Traffic Safety Administration for review and approval; no AKDOT&PF involvement
5% Report	23 USC 148(c)(1)(D)	Annually by August 31	Engineering	Engineering	
Drug offender driver's license suspension law & enforcement certification	23 USC 159, 23 CFR 192.5	Annually by Jan 1	Program Development	Engineering	The Department of Motor Vehicles coordinates with Governor's Safety Rep for certification
High Risk Rural Road Safety	SAFETEA-LU 1401, 23 USC 148	Annually by August 31	Engineering	Engineering	
Highway Safety Improvement Program	SAFETEA-LU, 23 USC 148	Annually by August 31	Engineering	Engineering	
Work Zone Traffic Control Report	23 CFR 630.1008(e)	Biennial	Engineering	Engineering	
Work Zone Accident Report	23 CFR 630.1008(b)	Annually	Engineering	Engineering	
Pedestrian and Bicycle Safety Program	23 CFR 652	As needed	Program Development	Engineering	
Project crash data	23 CFR 630.1010	Continuous	Program Development	Engineering	
Repeat Offender	23 CFR 1275, 23 USC 164	Annually by October 1	Governor's Safety Rep	Engineering	
Roadside Hardware	FHWA July 25, 1997 Policy Memo re: NCHRP Report 350	As needed	Engineering	Engineering	
SHSP	SAFETEA-LU, 23 USC 148	As needed	Governor's Safety Rep	Engineering	
Work Zone Safety and Mobility Final Rule compliance	23 CFR 630	12-Oct-07	Engineering	Engineering	AKDOT&PF already implements transportation management plans (TMPs) and will continually review and refine TMPs to comply with the provisions of the Final Rule.
<b>Bridges, Structures, Hydraulics and Geotechnical</b>					
Bridge Construction, Geotechnical, Hydraulics Review	23 CFR 650	As needed	Bridge/materials	Bridge	
BMS	23 CFR 500.107	As needed	Bridge	Bridge	
Bridge/Structural Design Review	23 CFR 650	As needed	Bridge	Bridge	
HBR Unit Cost submittal	23 CFR 650 Subpart D	Annually by April 1	Bridge	Bridge	
NBS Review Statewide report	23 CFR 650 Subpart C	Annually by Feb 1	Bridge	Bridge	Division performs review and prepares annual report
<b>Quality, Construction, &amp; Maintenance</b>					
3R Program	23 CFR 625	As needed	Engineering	Engineering	Chapter 11 of Preconstruction Manual
Construction Inspections	23 USC 114	Quarterly	Engineering	Engineering	
Contracting Procedures Consultant Selection	23 CFR 172.5 & 172.9	As updated	Engineering	Engineering	

ACTIVITY	Authority	Frequency / Due	AKDOT&PF Contact	FHWA Contact	Remarks
Conduct Produced Materials	23 CFR 635.417	As needed	Engineering	Engineering	
Design Exception Policy	23 625.3	As needed	Engineering	Engineering	
Highway Facility Relinquishment	23 CFR 620.203	As needed	ROW	ROW	
Labor Compliance Policy	23 CFR 635.118, Davis-Bacon Act	As needed	Engineering	Engineering	
Liquidated Damages	23 CFR 635.127	Every 2 years	Engineering	Engineering	
Local Public Agency Oversight Policies & procedures	23 CFR 635.105	As updated	Engineering	Engineering	
Public Agency Furnished Material	23 CFR 635.407	As needed	Engineering	Engineering	
Standard Specifications and Plans	23 CFR 625.4	As Needed	Engineering	Engineering	
Year-end Value Engineering Report	23 CFR 627	Annually by Nov. 22	Engineering	Engineering	FHWA HQ publishes national report
<b>Transportation System Preservation</b>					
Materials Acceptance - Quality Control/Quality Acceptance Program	23 CFR 637B	As updated	Materials	Engineering	
Materials Certifications	23 CFR 637 Appendix A	As needed on federal-aid projects	Construction/ Materials	Engineering	Certifications provide data for program updates.
Pavement Design Policy	23 CFR 626.3	As needed	Materials	Engineering	
Pavement Management System	23 CFR 500.106	As needed	Maintenance	Engineering	
<b>Financial Management</b>					
Appropriations, Allocations, Obligations	31 USC 1341(e)(1)(A) & (B); 31 USC 1517(e), 23 USC 188(b)	As needed	Program Development	Finance	
Audit Coordination	CFO Act of 1990; DOT Order 8000.1C	As needed	Internal Review	Finance	
AKDOT&PF External Audit Reviews	OMB A-87, 123, GAAP	As needed	External Auditors	Finance	
AKDOT&PF Internal Audit Reviews	OMB A-87, 123, GAAP	Annually	Internal Review	Finance	
FHWA Financial Statement Audit	FMFIA, OMB A-123, 127, GAAP	Annually	STWD Admin Services	Finance	
Fed-aid Billing Reimbursement of Eligible Expenditures	23 CFR 140 and 635.122	Weekly	STWD Admin Services	Finance	
FIRE Program	FHWA Order 4560.1A	Ongoing	STWD Admin Services	Finance	
Indirect Cost Allocation Plans	49 CFR Part 18; 2 CFR Part 225 (OMB A-87); ASIMBC-10	As needed	STWD Admin Services	Finance	
Innovative Financing, Toll Roads and Privatization	GARVEE 23 CFR 122; TIFIA 23 USC 181-189; SIB Guidance 9/97; AC NHS Act, Section 308; Flexible Match 23 USC 323; Toll 23 USC 129(A); Tapered Match TEA-21 Section 1302	As needed	STWD Admin Services	Finance	
Transfer of Funds as Requested by State	23 USC 104(c) and 119(f) and 126	As needed	Program Development	Finance	
<b>Discretionary and Other Funding Programs</b>					
Border Technology Exchange Program	23 USC 506	Annually	Research	Research	Grant program administered by FHWA, Office of International Programs
CMAQ	SAFETEA-LU Sections 1101(e)(5), 1103(d), & 1808	As needed	Program Development	Planner	
Coordinated Border Infrastructure Program	SAFETEA-LU Sections 1101(e)(1) & 1303	As needed	Program Development	Engineering	FHWA recommends action to FHWA HQ
Ferry Boats and Ferry Terminal Facilities	SAFETEA-LU Sections 1101(e)(13) & 1801	As needed	AMHS	Engineering	

ACTIVITY	Authority	Frequency / Due	AKDOT&PF Contact	FIWA Contact	Remarks
High Priority Projects Program	SAFETEA-LU 1701-1702	As needed	Budgets/DLA	Finance	
Bridge replacement and rehabilitation	23 CFR 650 Subpart D	As needed	Bridge	Bridge	Division makes eligibility determinations
Highways For Life	SAFETEA-LU Section 1602	As needed	Engineering	Engineering	FIWA HQ approval
Innovative Bridge Research and Deployment Program	23 USC 603(b)	Annually (date varies)	Bridge	Bridge	Division makes eligibility determinations
ITS Integration Program	TEA-21 Section 5208	Quarterly and Annual Reports	Engineering	Engineering	Program also requires FIWA qualitative assessments of adequacy of project descriptions and evaluation reports and timely submittal of reports by AKDOT&PF.
ITS Deployment Program	TEA-21 Section 5208 and 5209	As needed	Engineering	Engineering	
Public Lands Highway Discretionary	SAFETEA-LU Section 1101(e)(9)(D)	As needed	Engineering	Engineering	Division recommends action to FIWA HQ
Railroad-Highway Crossings	SAFETEA-LU Section 1401	Annually by August 31	Engineering	Engineering	
Recreational Trails Program	SAFETEA-LU Sections 1101(a)(8) & 1108	As submitted by State	DNR	Small Programs Manager	
Safe Routes to School	SAFETEA-LU Sections 1101 & 1404	Varies	Program Development	Engineering	
Scenic Byways Discretionary Program	SAFETEA-LU Sections 1101 & 1605	Annually	Program Development	Small Programs Manager	FIWA division recommends action to FIWA HQ
Transportation Enhancements Program	SAFETEA-LU Sections 1113, 1122, & 6003; TE Guidance dated January 19, 2006	As needed	Program Development	Small Programs Manager	FIWA provides program guidance and technical assistance
Transportation, Community, and System Preservation Program	SAFETEA-LU Section 1117	As needed	Engineering	Engineering	
FIWA Emergency Preparedness Program	Executive Order 12856 and FIWA Order 1910.2C	Continuously	Maintenance	Small Programs Manager	
<b>State Manuals Approved by FIWA for Use on Federal-Aid Projects</b>					
Annual Overall DBE Goal	N/A	As Needed	Civil Rights	Civil Rights	
Standard Specifications	N/A	As Needed	Design	Field Operations	
Title VI Program Plan	N/A	As Needed	Civil Rights	Civil Rights	
Preconstruction Manual (Highways)	N/A	As Needed	Engineering	Engineering	
Construction Manual (Highways)	N/A	As Needed	Engineering	Engineering	
Design Build Manual	N/A	As Needed	Engineering	Engineering	
Environmental Procedures Manual	N/A	As Needed	Environment	Environment	
Flexible Pavement Design Manual	N/A	As Needed	Materials	Engineering	
Geotechnical Procedures Manual	N/A	As Needed	Materials	Engineering	
Highway Drainage Manual	N/A	As Needed	Bridge	Engineering	
Right-of-Way Manual	N/A	As Needed	Right of Way	Right of Way	
Sign Design Specifications	N/A	As Needed	Engineering	Engineering	
Standard Drawing Manual	N/A	As Needed	Engineering	Engineering	
Alaska Test Methods Manual	N/A	As Needed	Materials	Engineering	
Traffic Manual Supplement	N/A	As Needed	Engineering	Engineering	
Professional Services Agreement Manual	N/A	As Needed	Engineering	Engineering	
Utility Manual	N/A	As Needed	Engineering	Engineering	
ICAP Manual	N/A	As Needed	Finance	Finance	
Financial Procedures	N/A	As Needed	Finance	Finance	
Recovery Act Reports	ARRA	As Needed	Engineering	Engineering	

**Appendix B: Project Responsibilities List (currently under separate file)**

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**Appendix B - Project Responsibilities List**

**Overview:** The Project Responsibilities List identifies the responsible agency for the major project level actions and is not intended to be an all-inclusive list. It is organized by columns listed as High Profile Projects, NHS Projects, and non-NHS Projects. Within each column, activities are listed and the appropriate action is identified. Except those FHWA responsibilities identified below, and those Title 23 actions that FHWA cannot delegate, the ADOT will assume the responsibilities of the FHWA under Title 23 for design, plans, specifications, estimates, right-of-way certification statements (part of PS&E), contract awards, and inspection/final acceptance of projects. This responsibility does not extend to other Federal actions outside of Title 23 unless specifically identified below (i.e., SAFETEA-LU 6004 Categorical Exclusions). FHWA reserves its responsibilities to maintain approval authority on activities that may pose a risk to individual FHWP projects.

**TERMS:**  
 Approve - an approval action shall take place before the project action can proceed.  
 Concur - the project can proceed once concurrence is received or agreed to timeframe (3 days for FHWA review) has expired.  
 Information - documentation is submitted to FHWA for review and provides input to Program Analysis and Risk Assessments.  
 ADOT&PF Assigned - Responsibilities have been assigned to ADOT&PF through SAFETEA-LU 6004  
 Available - documentation is available to FHWA on-line.

Activities/Item	High Profile Projects			NHS Projects			Non-NHS Projects		
	ADOT&PF Action	FHWA Action	ADOT&PF Action	FHWA Action	ADOT&PF Action	FHWA Action			
<b>Finance</b>									
Financial Submittal (PR 37)	Prepare	Approve	Prepare	Approve	Prepare	Approve	Prepare	Approve	Approve
State Infrastructure Bank Reports	Prepare	Information	Prepare	Information	Prepare	n/a	Prepare	n/a	n/a
All Vouchers (batched State progress payments to FHWA)	Prepare	Approve	Prepare	Approve	Prepare	Approve	Prepare	Approve	Approve
Federal-aid Project Agreement and Modifications - Preliminary Engineering through Construction [ 23 CFR 630.110]	Prepare	Approve	Prepare	Approve	Prepare	Approve	Prepare	Approve	Approve
Project Authorizations - Obligate Funds	Prepare	Approve	Prepare	Approve	Prepare	Approve	Prepare	Approve	Approve
Section 1.9 Waiver [23 CFR Section 1.9]	Prepare	Approve	Prepare	Approve	Prepare	Approve	Prepare	Approve	Approve
<b>Environment</b>									
Programmatic Categorical Exclusions [23 CFR 771.1179c) and (d)]	Prepare, Approve	ADOT&PF Assigned	Prepare, Approve	ADOT&PF Assigned	Prepare, Approve	ADOT&PF Assigned	Prepare, Approve	ADOT&PF Assigned	ADOT&PF Assigned
Programmatic Section 4(f) Evaluation (SAFETEA-LU 6004 assigned)	Prepare, Approve	ADOT&PF Assigned	Prepare, Approve	ADOT&PF Assigned	Prepare, Approve	ADOT&PF Assigned	Prepare, Approve	ADOT&PF Assigned	ADOT&PF Assigned
Section 4(f) de minimis Finding (SAFETEA-LU 6004 assigned)	Prepare, Approve	ADOT&PF Assigned	Prepare, Approve	ADOT&PF Assigned	Prepare, Approve	ADOT&PF Assigned	Prepare, Approve	ADOT&PF Assigned	ADOT&PF Assigned
SAFETEA-LU 6004 Categorical Exclusions	Prepare, Approve	ADOT&PF Assigned	Prepare, Approve	ADOT&PF Assigned	Prepare, Approve	ADOT&PF Assigned	Prepare, Approve	ADOT&PF Assigned	ADOT&PF Assigned
Project-Level Transportation Conformity Determination (SAFETEA-LU 6004 assigned)	Prepare, Approve	ADOT&PF Assigned	Prepare, Approve	ADOT&PF Assigned	Prepare, Approve	ADOT&PF Assigned	Prepare, Approve	ADOT&PF Assigned	ADOT&PF Assigned
Non-Programmatic Categorical Exclusions [23 CFR771.117]	Prepare	Approve	Prepare	Approve	Prepare	Approve	Prepare	Approve	Approve
Environmental Assessment [23 CFR 771.11999c)]	Prepare	Approve	Prepare	Approve	Prepare	Approve	Prepare	Approve	Approve
Finding Of No Significant Impact [23 CFR 771.121]	Prepare	Approve	Prepare	Approve	Prepare	Approve	Prepare	Approve	Approve
Environmental Impact Statement [23 CFR 771.125; 23 CFR 771.125 ( c ) ]	Prepare	Approve	Prepare	Approve	Prepare	Approve	Prepare	Approve	Approve
Record of Decision [23 CFR 771.127]	Prepare	Approve	Prepare	Approve	Prepare	Approve	Prepare	Approve	Approve
Individual Section 4(f) Evaluation	Prepare	Approve	Prepare	Approve	Prepare	Approve	Prepare	Approve	Approve
Programmatic Section 4(f) Evaluation (non-assigned)	Prepare	Approve	Prepare	Approve	Prepare	Approve	Prepare	Approve	Approve
Section 4(f) de minimis Finding (non-assigned)	Prepare	Approve	Prepare	Approve	Prepare	Approve	Prepare	Approve	Approve
Project-Level Transportation Conformity Determination (non-assigned)	Prepare	Approve	Prepare	Approve	Prepare	Approve	Prepare	Approve	Approve

Appendix B - Project Responsibilities List

Activities/Item	High Profile Projects		NHS Projects		Non-NHS Projects	
	ADOT&PF	FHWA	ADOT&PF	FHWA	ADOT&PF	FHWA
	Action	Action	Action	Action	Action	Action
ROW						
Disposal of ROW [23 CFR 710.409]	Prepare, Approve	Information	Prepare, Approve	Information	Prepare, Approve	n/a
Disposal of Access Control	Prepare	Approve	Prepare	Approve	Prepare	Approve
Hardship and Protective Buying [23 CFR 710.307, 503]	Prepare	Approve	Prepare	Approve	Prepare	Approve
Use of Right of Entry to Obtain Possession	Prepare, Approve	Information	Prepare, Approve	Information	Prepare, Approve	Information
Annual ROW Acquisition and Relocation Statistics Report	Prepare	Information	Prepare	Information	Prepare	Information
ROW Plans	Prepare, Approve	Information	Prepare, Approve	Information	Prepare, Approve	n/a
ROW Certification 1, 2	Prepare, Approve	Information	Prepare, Approve	n/a	Prepare, Approve	n/a
ROW Certification 3	Prepare	Approve	Prepare, Approve	Approve	Prepare, Approve	Information
Use of Fee negotiators/Fee Appraisers	Prepare, Approve	Information	Prepare, Approve	n/a	Prepare, Approve	n/a
Public Interest Finding (PIF) - Disposal of federally funded ROW for less than market value - 23 CFR 710.403, 409	Prepare	Approve	Prepare	Approve	Prepare	Approve
Junkyard Control [23 CFR 751.25]	Prepare	Approve	Prepare	Approve	Prepare	Approve
Relinquishment of a Highway Facility [23 CFR 620.201, 202, 203]	Prepare	Approve	Prepare	Approve	Prepare	Approve
Functional Replacement [23 CFR 710.509]	Prepare, Approve	Concur	Prepare, Approve	Concur	Prepare, Approve	Concur
Request for Credits for Early Acquisition of ROW [23 CFR 710.501]	Prepare	Approve	Prepare	Approve	Prepare	Approve
Request for Direct Federal Acquisition [23 CFR 710.803]	Prepare	Approve	Prepare	Approve	Prepare	Approve
Request for Federal Land Transfer [23 CFR 710.601]	Prepare	Approve	Prepare	Concur	Prepare	Concur
Request for Waivers [ 49CFR 24.204b]	Prepare	Approve	Prepare	Approve	Prepare	Approve
ROW encroachments- Use and occupancy of Acquired ROW [23 CFR 710.401, HDM 504.8]	Prepare	Approve	Prepare	Approve	Prepare	Approve
Design						
Design Project Status Reports	Prepare	Information	Prepare	Information	Prepare	Information
Professional Services Agreement [23 CFR 172.7 - 172.9]	Prepare, Approve	n/a	Prepare, Approve	n/a	Prepare, Approve	n/a
Public Interest Finding (PIF) - Use of Negotiated Consultant (Non-Competitive) Contracts 23 CFR 172.5(3)	Prepare, Approve	Information	Prepare, Approve	n/a	Prepare, Approve	n/a
Experimental Features SEP 14	Prepare	Approve	Prepare	Approve	Prepare	Approve
Project Management Plans for projects > \$500M	Prepare	Approve	Prepare	Approve	Prepare	Approve
Design Study Report	Prepare, Approve	Information	Prepare, Approve	Information	Prepare, Approve	Information
Design Exceptions [23 CFR 625.3 (f)]	Prepare, Approve	Concur	Prepare, Approve	Information	Prepare, Approve	Information
Financial Management Plans for projects >\$500M	Prepare	Approve	Prepare	Approve	Prepare, Approve	Approve
Finance Plans for Projects from \$100M to \$499M	Prepare	Approve	Prepare, Approve	Information	Prepare, Approve	Information
ITS Projects Systems Engineering Analysis [23 CFR 940.11]	Prepare, Approve	Information	Prepare, Approve	Information	Prepare, Approve	Information
Utility Agreements	Prepare, Approve	Information	Prepare, Approve	n/a	Prepare, Approve	n/a
Toll Facilities Agreements	Prepare	Approve	Prepare	Approve	Prepare	Approve
Approve Preliminary Plans for Major Structures and Tunnels [23 USC 109(a)]	Prepare, Approve	Information	Prepare, Approve	Information	Prepare, Approve	n/a
Life Cycle Cost Analysis and Value Engineering	Prepare	Information	Prepare	Information	Prepare	n/a
Value Engineering Study for Highway Project > \$25M [23 CFR 627] or Bridge Project > \$20M	Prepare, Approve	Information	Prepare, Approve	n/a	Prepare, Approve	n/a
Exempt Bridge from Coast Guard Permit Requirement [23 CFR 650.805]	Prepare	Approve	Prepare	Approve	Prepare	Approve
Public Interest Finding (PIF) - Airspace Clearance 23 CFR 620.104	Prepare	Approve	Prepare, Approve	Approve	Prepare, Approve	Approve
Local Review Plans	Prepare	Information	Prepare	n/a	Prepare	n/a
"Plans-in-Hands" Review Plans	Prepare	Information	Prepare	n/a	Prepare	n/a

Appendix B - Project Responsibilities List

Activities/Item	High Profile Projects		NHS Projects		Non-NHS Projects	
	ADOT&PF	FHWA	ADOT&PF	FHWA	ADOT&PF	FHWA
	Action	Action	Action	Action	Action	Action
Geotechnical Reports	Prepare, Approve	Information	Prepare, Approve	n/a	Prepare, Approve	n/a
Waiver of Buy America [23 CFR 635.410]	Prepare	Approve	Prepare, Approve	Approve	Prepare, Approve	Approve
Public Interest Finding (PIF) - Statewide and project Specific use of proprietary products and processes 23 CFR 635.411	Prepare	Approve	Prepare, Approve	n/a	Prepare, Approve	n/a
Public Interest Finding (PIF) - Cost Justification Letter - Statewide and project specific - concur in use of publically furnished materials 23 CFR 635-407	Prepare	Approve	Prepare, Approve	n/a	Prepare, Approve	n/a
Public Interest Finding (PIF) - Advertising Period less than 3 weeks 23 CFR 635.112	Prepare, Approve	Information	Prepare, Approve	n/a	Prepare, Approve	n/a
Public Interest Finding (PIF) - Use of Contracting Method other than competitive bidding 23 CFR 635.104 & 204	Prepare	Approve	Prepare, Approve	n/a	Prepare, Approve	n/a
Public Interest Finding (PIF) - Use of force account 23 CFR635.204 & 205	Prepare	Approve	Prepare, Approve	n/a	Prepare, Approve	n/a
Public Interest Finding (PIF) - Use of Mandatory Borrow/Disposal sites 23 CFR 635.407	Prepare, Approve	Information	Prepare, Approve	n/a	Prepare, Approve	n/a
Public Interest Finding (PIF) - Use of Publically owned equipment 23 CFR 635.106	Prepare	Approve	Prepare, Approve	n/a	Prepare, Approve	n/a
Warranties - Materials and Products [23 CFR 635.413]	Prepare	Approve	Prepare	Approve	Prepare, Approve	n/a
Utility Certifications	Prepare, Approve	Information	Prepare, Approve	n/a	Prepare, Approve	n/a
Reimbursement for State Furnished Materials	Prepare	Approve	Prepare	Information	Prepare, Approve	Information
PS&E Assembly [23 CFR 630.205]	Prepare, Approve	Information	Prepare, Approve	n/a	Prepare, Approve	n/a
Authority to Advertise Memorandum	Prepare, Approve	Available <sup>1</sup>	Prepare, Approve	Available <sup>1</sup>	Prepare, Approve	Available <sup>1</sup>
Addendum to Contract Documents	Prepare, Approve	Available <sup>2</sup>	Prepare, Approve	Available <sup>2</sup>	Prepare, Approve	Available <sup>2</sup>
Bid Tabs	Prepare, Approve	Information	Prepare, Approve	n/a	Prepare, Approve	n/a
Subcontract Approvals	Prepare, Approve	Information	Prepare, Approve	Information	Prepare, Approve	Information
Confirmed Contract and FHWA Certification Checklist	Prepare, Approve	Information	Prepare, Approve	Information	Prepare, Approve	Information
Request for Concurrence in Contract Award	Prepare, Approve	Information	Prepare, Approve	n/a	Prepare, Approve	n/a
Letter of Award	Prepare, Approve	Information	Prepare, Approve	Information	Prepare, Approve	Information



Appendix B - Project Responsibilities List

Activities/Item	High Profile Projects		NHS Projects		Non-NHS Projects	
	ADOT&PF	FHWA	ADOT&PF	FHWA	ADOT&PF	FHWA
	Action	Action	Action	Action	Action	Action
Construction						
Construction Project Status Reports	Prepare	Available	Prepare	n/a	Prepare	n/a
Supplemental Agreements	Prepare	Approve	Prepare	Approve	Prepare	Approve
Change Orders						
Minor Change Orders (< 5% of Contract Amount or < \$500K whichever is greater)	Prepare, Approve	Information	Prepare, Approve	n/a	Prepare, Approve	n/a
Major Change Orders (> 5% of Contract Amount or > \$500K whichever is greater)	Prepare	Approve	Prepare, Approve	n/a	Prepare, Approve	n/a
Materials Certification	Prepare, Approve	Information	Prepare, Approve	Information	n/a	n/a
Progress Estimate	Prepare	Information	Prepare	n/a	Prepare	n/a
Recovery Act Project Reports	Prepare	Concur	Prepare	Concur	Prepare	Concur
Experimental Features (pilot and Demo)	Prepare	Approve	Prepare	Approve	Prepare, Approve	n/a
Form FHWA 1446C	Prepare, Approve	Information	Prepare, Approve	Information	Prepare, Approve	Information
Final Construction Payment, Project History (full package)	Prepare, Approve	Information	Prepare, Approve	Information	Prepare, Approve	n/a
Letter of Project Completion	Prepare, Approve	Information	Prepare, Approve	Information	Prepare, Approve	Information
ER Damage Assessment Reports [23 CFR 668, 23 USC 120 and 125]	Prepare	Approve	Prepare	Approve	Prepare	Approve

\*Available\* Document Addresses

- 1 [http://www.dot.state.ak.us/apps/contracts?ACTION=BIDCAL&REGION\\_CODE=ALL](http://www.dot.state.ak.us/apps/contracts?ACTION=BIDCAL&REGION_CODE=ALL)
- 2 <http://www.dot.state.ak.us/procurement/bidding/results/index.shtml>
- 3 [http://dot.alaska.gov/ewd/pjg/projectinfo/ser/PROJECT\\_STATUS/Assets/SER\\_CON.pdf](http://dot.alaska.gov/ewd/pjg/projectinfo/ser/PROJECT_STATUS/Assets/SER_CON.pdf)

 is an Action unique to HP Projects

**Appendix C: List of Measures (currently under separate file)**

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## Appendix C - Performance Indicators/Measures

ID	PERFORMANCE INDICATOR/ MEASURE	GOAL	AGREED/ PROPOSED (REPORT CYCLE)	LEAD REPORTING AUTHORITY	SUPPORTING JUSTIFICATION FOR PERFORMANCE INDICATOR/MEASURE AND OTHER COMMENTS
<b>PROJECT DELIVERY</b>					
1	<b>EA Scheduling</b> -Percent of EA projects with a Schedule of NEPA activities completed within 3 months of ATP through Environmental Document.	100%	Quarterly	Environmental (FHWA)	The purpose of this measure is to determine whether and encourage project to develop a reasonable project schedule, track delays, and to negotiate timeframes.
2	<b>EIS Scheduling</b> -Percent of EIS projects with a Schedule of NEPA activities completed within 2 months of Completion of Environmental Scoping.	100%	Quarterly	Environmental (FHWA)	The purpose of this measure is to determine whether and encourage project to develop a reasonable project schedule, track delays, and to negotiate timeframes.
3	<b>NEPA Document Schedule</b> - Ratio of actual document completion time to scheduled document completion time	<1.20	Quarterly	Environmental (FHWA)	The purpose of this measure is to improve FHWA/ADOT&PF Nepa Document completion scheduling. In accordance with Environmental Procedures, the schedule will identify concurrence points on document sections and dates for concurrence.
4	<b>NEPA Document Cost</b> - Percent cost increase for preparing EA/EIS documents. (Initial ATP Estimate Thru EDA vs Actual Obligated Amount through EDA - identified in ATP thru Final Design)	<20%	Quarterly	Environmental (FHWA)	The purpose of this measure is to track how well we are estimated cost to prepare environmental documents, scoping, and managing contractors. The initial ATP the is baseline.
5	<b>Preliminary Engineering Cost</b> - Ratio of Final PE cost to initial PE cost estimate. (Final PE = PDA from EDA to Bid Award; PE Cost Estimate from PMP)	< 1.20	Quarterly	FHWA	Assesses the ability to estimate actual PE cost.
6	<b>Engineer's Estimate</b> : Percent of projects with low bid within +/- 10% of Engineer's Estimate. (Contract Award vs ATA Estimate)	65%	Quarterly	FHWA	The purpose of this measure is to assess the accuracy of the low bid vs. Engineer's Estimate. FHWA's guidance states that low bid should be within +/- 10% of the Engineer's Estimate for at least 50% of the projects.
7	<b>Construction Schedule Management</b> : Contract Completion Date vs Actual Construction Completion Date (Notice of Project Completion).	On time or early	Quarterly	FHWA	Assesses the ability to predict project completion dates, taking into account work windows, working days, weather and work type. This serves the public by completing projects on predicted date.

## Appendix C - Performance Indicators/Measures

ID	PERFORMANCE INDICATOR/ MEASURE	GOAL	AGREED/ PROPOSED (REPORT CYCLE)	LEAD REPORTING AUTHORITY	SUPPORTING JUSTIFICATION FOR PERFORMANCE INDICATOR/MEASURE AND OTHER COMMENTS
8	<b>Construction Cost Management</b> -The ratio of total Final Contractor Payment to the total Contract Award amount.	≤1.10	Quarterly	FHWA	Assesses the quality of the design, PS&E, and effective project management. Data source:
9	<b>Federal Highway Obligation Schedule</b> : Obligation Authority used by April 30th.	>75%	Quarterly	ADOT - Program Development	Use all available Federal Obligation Authority, which would otherwise lapse, prior to the end of the Federal fiscal year.
<b>ENVIRONMENT</b>					
10	<b>6004 - ADOT Responsibility for Categorical Exclusions</b> : Percent of complete and accurate quarterly reports submitted by fiscal quarterly due dates.	100%	Quarterly	FHWA	The purpose of this measure is to determine if quarterly reports are submitted on time per the 6004 MOU. Complete is defined as no missing information. Accuracy is determined by comparing submitted report to project documentation.
11	<b>6004</b> : Percent of notifications of changes in regulation and any new guidance and/or policy submitted to DOT&PF within 10 days .	100%	Quarterly	FHWA	The purpose of this measure is to determine if FHWA is informing the DOT of changes in a timely manner per the 6004 MOU.
<b>BRIDGE ASSET MANAGEMENT</b>					
11	<b>Bridge Management</b> - Percentage of bridge deck classified as structurally deficient or functionally obsolete. Goal is to reduce deficient deck area by 5% annually. A five year trend is the best representation.	>5% <u>Reduction</u>	Annually	ADOT - Bridge	The intent of the HBP is to reduce the number of deficient bridges on the NBI. This information is already being collected by ADOT&PF and is a State Performance Goal.
<b>CIVIL RIGHTS</b>					
12	<b>DBE</b> : ADOT&PF is operating a race neutral program pending resolution of legal actions. This measure will be added pending resolution of legal actions.				
<b>FINANCE</b>					
13	<b>Project Authorization Responsiveness</b> - Percent of Project authorization/modifications completed within 7 calendar days of receipt of supporting documentation	< 7 days	(Annual)	FHWA	This is an FHWA measure, for which AKDOT&PF will provide supporting documentation. FHWA provides timely customer service on all project authorization/modification reviews and approvals (excluding final vouchers).

## Appendix C - Performance Indicators/Measures

ID	PERFORMANCE INDICATOR/ MEASURE	GOAL	AGREED/ PROPOSED (REPORT CYCLE)	LEAD REPORTING AUTHORITY	SUPPORTING JUSTIFICATION FOR PERFORMANCE INDICATOR/MEASURE AND OTHER COMMENTS
14	Annual Financial Statement Audit. Percent of corrective actions addressed by requested deadline.	100%	(Annual)	Accounting	Chief Financial Officer Act of 1990 requires Federal agencies to establish a plan for improving financial management and DOT Order 8000.1C, Office of Inspector General Audit and Investigation Report Findings, Recommendations, and Follow-up Action, establishes reporting requirements.
15	Responses to requests for current bill documentation are received by FHWA within 10 business days.	< 10 days	(Annual)	Accounting	Improper Payments Information Act of 2002, FHWA Order 4560.1A, ensures timely completion of billing reviews.
<b>PLANNING &amp; PROGRAMMING</b>					
16	Programming Consistency. Percentage of all Federally funded projects obligated annually compared to those programmed.	50%	Annually	ADOT&PF - Program Development	Measures the effectiveness of the programming process. Are the programmed projects being obligated? This measure would require MPOs to report on non-Federally funded regionally significant projects in non-attainment areas.
17	STIP Schedule - FHWA Responsive Time for Approval of STIP and Amendments	< 21 days	Annually	ADOT&PF - Program Development	Measures the effectiveness of the programming process.
<b>SAFETY &amp; OPERATIONS</b>					
18	Highway Fatality Count - Fatality trend on State and Local Roads - # of fatalities (5-year trend:% decrease/increase)	Decrease 3% Annually	Monthly	Traffic Operations/Local Assistance	Fundamental indicator of effectiveness of AKDOT&PF Traffic Safety Program.
19	Fatality Rate Trend - on State and Local Roads - # of fatalities per 100 MVMT (5-year Annual trend:% decrease/increase)	Decrease 2% Annually	Monthly	Traffic Operations/Local Assistance	Fundamental indicator of effectiveness of AKDOT&PF Traffic Safety Program.
20	Delivery of Safety Projects: Percent of Highway Safety Improvement (HSIP) funding obligated.	95%	Monthly	Traffic Operations	Indicator of effectiveness of AKDOT&PF expediting safety projects. Requires coordination with Project Delivery.
21	Highway Safety - Percent of state road land miles that meet ADOT&PF Standards	Decrease 1% Annually	Annually	ADOT&PF	State Performance Goal to increase to 90% the percentage of National Highway System routes that meet ADOT&PF standards.

Appendix C - Performance Indicators/Measures

ID	PERFORMANCE INDICATOR/ MEASURE	GOAL	AGREED/ PROPOSED (REPORT CYCLE)	LEAD REPORTING AUTHORITY	SUPPORTING JUSTIFICATION FOR PERFORMANCE INDICATOR/MEASURE AND OTHER COMMENTS
22	Benefit/Cost Ratio of HSIP Post Construction projects	> 1.2	Annually	Traffic Operations	Evaluate 5 year trend in HSIP Post Construction Benefit Cost ratio. Evaluates performance of on-going program.
23	Run-Off-Road: # of fatalities (5-year Annual trend: % decrease/increase) SHS Only	Decrease 3% Annually	Monthly	Traffic Operations	Indicator of effectiveness of AKDOT&PF Traffic Safety Program by one of the most frequent crash types.
24	Intersection: # of fatalities (5-year Annual trend: % decrease/increase) SHS Only	Decrease 3% Annually	Monthly	Traffic Operations	Indicator of effectiveness of AKDOT&PF Traffic Safety Program by one of the most frequent crash types.
25	Pedestrian: # of fatalities (5-year Annual trend (% decrease/increase) SHS Only	Decrease 3% Annually	Monthly	Traffic Operations	Indicator of effectiveness of AKDOT&PF Traffic Safety Program by one of the most frequent crash types.

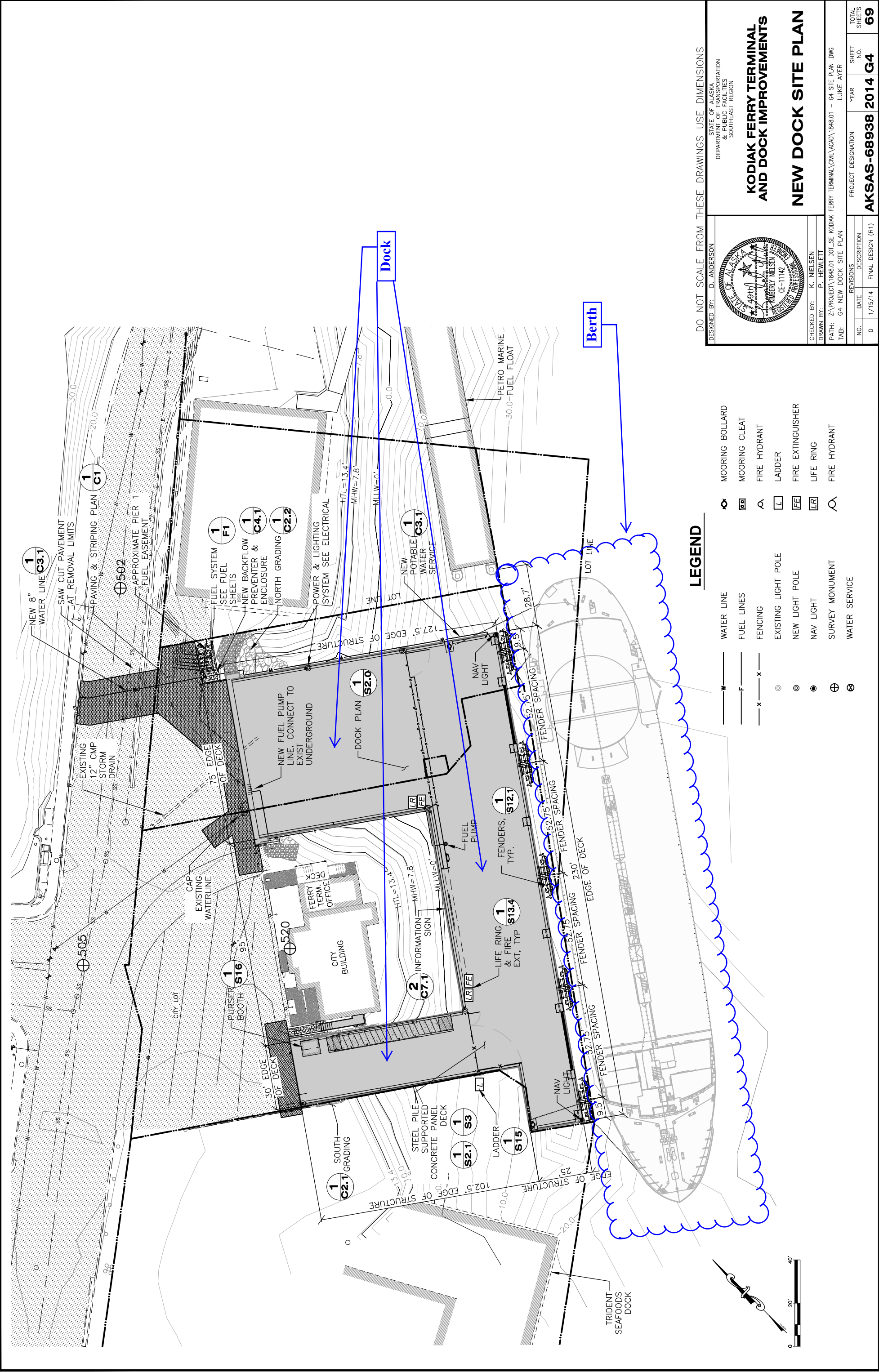
## **Appendix D: List of Acronyms**

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ADA	Americans with Disabilities Act of 1990
BMS	Bridge Management System
CE	Categorical Exclusion
CFR	Code of Federal Regulations
CMAQ	Congestion Mitigation and Air Quality Improvement Program
DBE	Disadvantaged Business Enterprise
DEIS	Draft Environmental Impact Statement
DOT	Department of Transportation
EA	Environmental Assessment
EEO	Equal Employment Opportunity
EIS	Environmental Impact Statement
EPA	Environmental Protection Agency
ER	Emergency Relief
FAHP	Federal-aid Highway Program
FAPG	Federal-aid Policy Guide
FEIS	Final Environmental Impact Statement
FHWA	Federal Highway Administration
FIRE	Financial Integrity Review and Evaluation Program
FTA	Federal Transit Administration
GARVEE	Grant Anticipation Revenue Vehicle
HBP	Highway Bridge Program
HPMS	Highway Performance Monitoring System
ITS	Intelligent Transportation Systems
LTAP	Local Technical Assistance Program
METS	Materials Engineering and Testing Services
MOU	Memorandum of Understanding
MPO	Metropolitan Planning Organization
MTP	Metropolitan Transportation Plan
NBIS	National Bridge Inspection Standards
NEPA	National Environmental Policy Act
NHS	National Highway System
OJT	On-the-Job Training
OMB	Office of Management and Budget
OTS	Office of Traffic Safety
OWP	Overall Work Program
PD&E	Project Development and Environment
PIF	Public Interest Finding
PMS	Pavement Management System
PS&E	Plans, Specifications and Estimate
ROW	Right-of-Way
SAFETEA-LU	The Safe, Accountable, Flexible, Efficient, Transportation Equity Act: A

	Legacy for Users
SEP	Special Experimental Project
SHSP	Strategic Highway Safety Plan
SPR	State Planning and Research
SSO	Strategic Stewardship and Oversight
STIP	Statewide Transportation Improvement Plan
TEA-21	Transportation Equity Act for the 21 <sup>st</sup> Century
TIFIA	Transportation Infrastructure Finance & Innovation Act
TIP	Transportation Improvement Plan
TMA	Transportation Management Area
TMP	Transportation Management Plan
TSI	Transportation System Information
UA	Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended
USC	United States Code

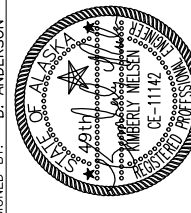




**LEGEND**

- W — WATER LINE
- F — FUEL LINES
- X — FENCING
- ⊙ — EXISTING LIGHT POLE
- ⊙ — NEW LIGHT POLE
- — NAV LIGHT
- ⊕ — SURVEY MONUMENT
- ⊗ — WATER SERVICE
- ⊗ — MOORING BOLLARD
- ⊗ — MOORING CLEAT
- ⊗ — FIRE HYDRANT
- ⊗ — LADDER
- ⊗ — FIRE EXTINGUISHER
- ⊗ — LIFE RING
- ⊗ — FIRE HYDRANT

DO NOT SCALE FROM THESE DRAWINGS USE DIMENSIONS  
 DESIGNED BY: D. ANDERSON



**KODIAK FERRY TERMINAL  
 AND DOCK IMPROVEMENTS**

**NEW DOCK SITE PLAN**

CHECKED BY: K. NIELSEN  
 DRAWN BY: P. HEWLETT  
 PATH: Z:\PROJECT\1848.01 DOT SE KODIAK FERRY TERMINAL\Civil\ACAD\1848.01 - G4 SITE PLAN.DWG  
 TAB: G4 NEW DOCK SITE PLAN

NO.	DATE	REVISIONS	DESCRIPTION	YEAR	SHEET NO.	TOTAL SHEETS
0	1/15/14		FINAL DESIGN (R1)		G4	69

PROJECT DESIGNATION: **AKSAS-68938**

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## MEMORANDUM TO COUNCIL

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**To:** Mayor Branson and City Councilmembers

**From:** Aimée Kniaziowski, City Manager

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

**Date:** August 11, 2016

**Agenda Item:** **IV. d. Second Reading and Public Hearing, Ordinance No. 1356, Authorizing a Lease to Kodiak Maritime Museum and Art Center of a 2,000+ Square Foot Portion of Alaska Tidelands Survey No. 49 Located in St. Paul Harbor for the Thelma C Display and Rescinding Ordinance No. 1340**

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**SUMMARY:** The Kodiak Maritime Museum (KMM) developed the idea of restoring and displaying an historic 36' fishing vessel, the Thelma C in the harbor area downtown. KMM representatives came to several City Council meetings since 2013 with their idea, which Council and harbor users supported. The KMM was given formal approval of the original lease site on the harbor spit and recently requested the location be adjusted to make the installation more affordable. Staff recommends Ordinance No. 1340 be rescinded and Ordinance No. 1356 be adopted, which reflects the new location of the exhibit.

**PREVIOUS COUNCIL ACTION:**

- January 22, 2013, KMM presented Thelma C exhibit concept and request to Council
- 2013 and 2014, KMM made additional update to Council on project and funding
- December 8, 2015, KMM made presentation to Council in preparation for introduction of long-term lease via Ordinance No. 1340, which Council supported
- December 10, 2015, Council advanced Ordinance No. 1340 to second reading and public hearing
- January 14, 2016, Council adopted Ordinance No. 1340
- KMM presented an alternative location for the exhibit to Council at several work sessions in the spring of 2016 to save on installation costs and worked with staff to find the optimum location on the spit
- July 12, 2016, Council reviewed the revised the location and Ordinance No. 1356 at the work session
- July 14, 2016, Council passed Ordinance No. 1356 in the first reading and advanced to the second reading and public hearing at the next regular or special meeting.

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

AUGUST 11, 2016  
Agenda Item IV. d. Memo Page 1 of 3

KMM notified the City and Council this spring that they needed to modify the placement of the Thelma C exhibit on the spit to reduce construction costs and ensure grant funds needed for construction could be used and not lost. The location noted in the original lease approved by Ordinance No. 1340 was too expensive to install. The board suggested moving it onto the spit without the need to sink piles or build up the area near Oscar's Dock and the green Coast Guard Buoy as identified in the original installation plans. The City Engineer and Harbormaster agreed and the optimal location was identified (Attachment B).

Staff worked with KMM to locate the new installation spot between Trident Seafoods and the channel-side boat launch area. According to Toby Sullivan, the roofed exhibit with the vessel resting in a steel cradle will remain as originally planned, but the new site will have a smaller footprint, 2,000+ sf vs. 7,224 sf for the original layout and will be much less expensive to construct.

The only differences in the documentation for the new lease are the lease number, the effective date, new exhibits, and the smaller square footage required. The lease term remains at 20 years with the option to renew for two successive five-year terms. KMM will pay an annual fee of \$10 per year for the term of the lease. All costs of operating the premises are the responsibility of KMM, including the cost for any utilities to the site. KMM is also required to have and maintain public liability and property insurance.

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

**ALTERNATIVES:**

- 1) Adopt Ordinance No. 1356, which is staff's recommendation, because it is consistent with expressed support over several years for this project, including support for the new location.
- 2) Postpone, or do not advance, or adopt Ordinance No. 1356, which is not recommended. This project is a good one and well supported in the community.

**FINANCIAL IMPLICATIONS:** The City will receive a nominal lease fee from KMM of \$10 per year for each year of the 20-year lease. There are no other direct or indirect financial implications to approving the ordinance and lease for this small 2,000+ sf piece of Harbor property.

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

**STAFF RECOMMENDATION:** Staff recommends Council adopt Ordinance No. 1356.

**CITY MANAGER’S COMMENTS:** The KMM has worked over several years to develop this exhibit idea and now it’s about to become reality. They are able, with available grant funding, to build the base and install the vessel for display more affordably in the alternate location on the spit. Completion of the exhibit will occur once KMM has secured all their funding. I recommend Council adopt Ordinance No. 1356.

**ATTACHMENTS:**

Attachment A: Ordinance No. 1356

Attachment B: Lease with Kodiak Maritime Museum

Attachment C: Letter of request from KMM, dated 6/28/16

Attachment D: Ordinance No. 1340 (to be rescinded)

**PROPOSED MOTION:**

Move to adopt Ordinance No. 1356.

**CITY OF KODIAK  
ORDINANCE NUMBER 1356**

**AN ORDINANCE OF THE COUNCIL OF THE CITY OF KODIAK AUTHORIZING A LEASE TO KODIAK MARITIME MUSEUM AND ART CENTER OF A 2,000+ SQUARE FOOT PORTION OF ALASKA TIDELANDS SURVEY NO. 49 LOCATED IN ST. PAUL HARBOR FOR THE THELMA C DISPLAY AND RESCINDING ORDINANCE NO. 1340**

WHEREAS, the Kodiak City Council adopted Ordinance No. 1340 on January 14, 2016, which authorized a lease to the Maritime Museum and Art Center (“Museum”) for a 7,224 square foot portion of Alaska Tidelands Survey No. 49 located in St. Paul Harbor (“Premises”) for the Thelma C fishing boat historic exhibit; and

WHEREAS, recently revised construction estimates determined the original Premises authorized by Ordinance No. 1340 is no longer feasible for the Museum; and

WHEREAS, the Museum has identified a City-owned 2,000+ square foot site across the spit from the currently designated Premises, which would eliminate earthwork and concrete work, reducing the cost significantly; and

WHEREAS, the Museum has worked with City staff, and staff believe the proposed new Premises fits within the built environment of the harbor and would not impact any City facilities; and

WHEREAS, the Kodiak Port and Harbors Advisory Board passed a resolution approving use of the proposed new Premises for the Thelma C Project; and

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

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

**Section 1:** Ordinance No. 1340 is hereby rescinded.

**Section 2:** Notwithstanding anything to the contrary in Kodiak City Code Chapter 18.20, the Council of the City of Kodiak hereby authorizes the lease of the Premises to the Museum in the form now before this meeting (“Lease”), for a term of twenty years, plus two five-year renewal options, and the City Manager hereby is authorized, empowered and directed to execute and deliver the Lease on behalf of the City, in substantially the form and content now before this meeting but with such changes, modifications, additions and deletions therein as shall to her seem necessary, desirable or appropriate, the execution thereof to constitute conclusive evidence of approval of any and all changes, modifications, additions or deletions therein from the form

and content of said document now before this meeting, and from and after the execution and delivery of said document, the City Manager and City Clerk, and their respective designees, each hereby is authorized, empowered and directed to do all acts and things and to execute all documents as may be necessary to carry out and comply with the provisions of said document as executed.

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

CITY OF KODIAK

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MAYOR

ATTEST:

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CITY CLERK

First Reading: July 14, 2016

Second Reading:

Effective Date:

**LEASE NO. 222854 BY AND BETWEEN  
THE CITY OF KODIAK AND  
KODIAK MARITIME MUSEUM AND ART CENTER**

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

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

2. Use and Acceptance of Premises.

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

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

3. Term.

3.1 Initial Term. The initial term of this Lease shall be for a period of twenty (20) years, beginning on the Effective Date and expiring at 11:59 pm, September 30, 2036, (the “Initial Term”). On that date the lease will terminate, unless renewed as provided in Section 3.2.

3.2 Renewal Term. Lessee shall have the option to renew this Lease (“Renewal Option”) for two (2) successive five (5) year terms (each a “Renewal Term”) by giving Lessor written notice of its intent to commence a Renewal Term at least thirty (30) calendar days, but not more than sixty (60) calendar days, before the date the then current term

would otherwise expire, provided that at the time of each renewal notice and the date of commencement of each Renewal Term, Lessee is in compliance with all Lease terms. Failure of Lessee to exercise the option as to any Renewal Term shall terminate the option as to all succeeding Renewal Terms. Unless otherwise required by the context, references herein to "Term" include both the Initial Term and any Renewal Term.

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

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

5. Additional Rent.

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

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

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

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



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

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

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

8. Indemnification.

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

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

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

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

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

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

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

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

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

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

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

16. Default and Remedies.

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

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

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

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

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

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

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

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

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

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

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

18. Miscellaneous.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

LESSEE:

KODIAK MARITIME MUSEUM AND ART CENTER

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

LESSOR:

CITY OF KODIAK

---

By: Aimée Kniazowski, City Manager

EXHIBIT A

**A Lease Lot of land for Kodiak Maritime Museum's "Thelma C" Display,  
Kodiak Spit, Kodiak Channel, City of Kodiak, Kodiak Island**

A portion of Tract N18 as described in deed book 79, page 72, of Alaska Tidelands Survey No.49, according to Plat No. 62-23, in the Kodiak Recording District, Third Judicial District, State of Alaska, more particularly described as follows:

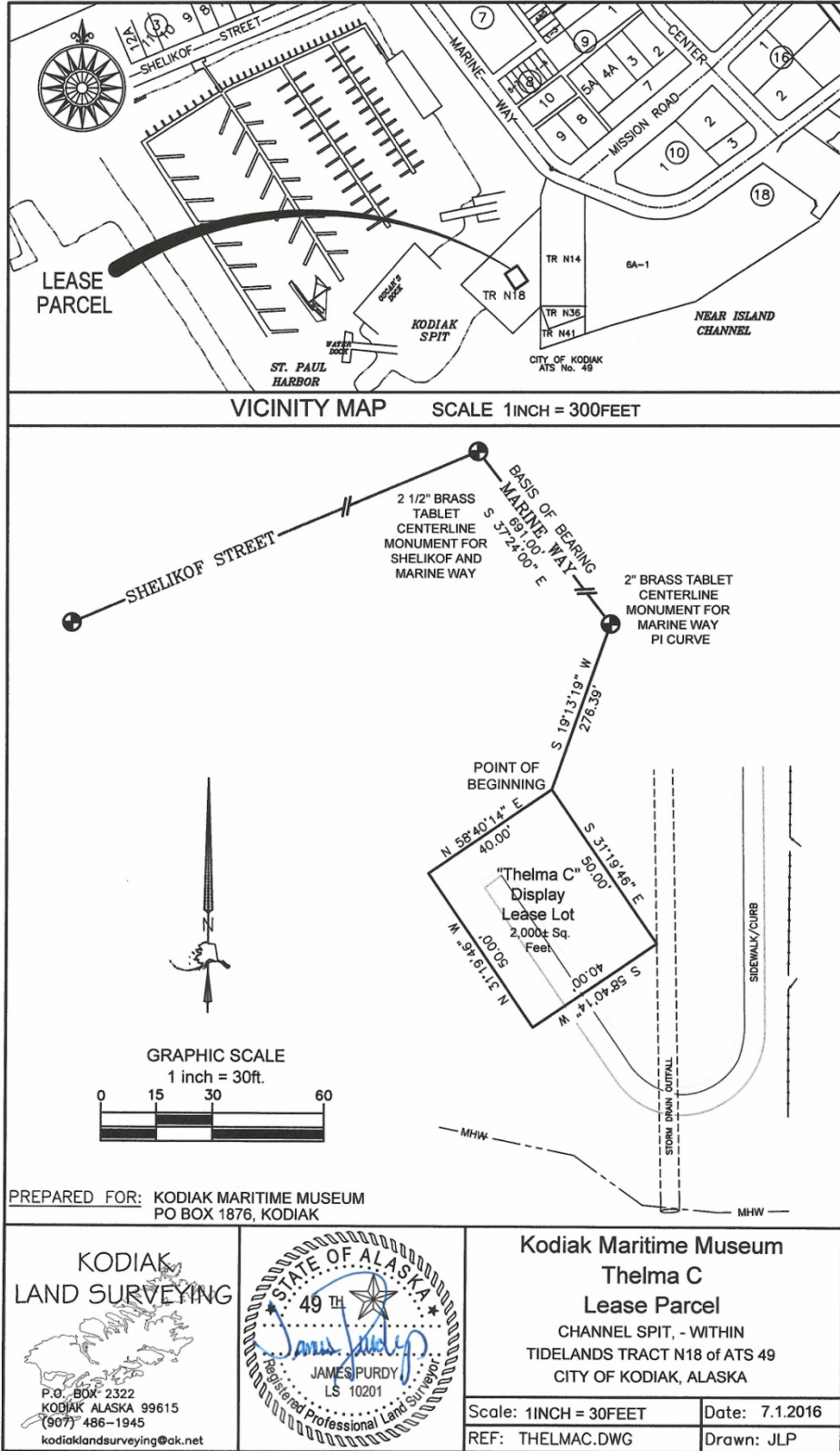
Beginning at a brass monument for the centerline intersection of Shelikof Street and Marine Way,  
Thence S 37°24'00" E 691.00 feet along centerline of Marine Way to a brass monument at the PI of centerline curve,  
Thence S 19°13'19" W 276.39 feet to the true point of beginning,  
Thence from said point of beginning, S 31° 19' 46" E, 50.00 feet,  
Thence S 58°40'14" W, 40.00 feet,  
Thence N 31°19'46" W, 50.00 feet,  
Thence N 58°40'14" E, 40.00 feet, to the point of beginning containing 2,000 square feet more or less.  
As shown on a sketch attached hereto and made a part of this description.

This description was written with the intent to satisfy the requirements of City of Kodiak for Lease Lots.  
It is not a representation of a Land Survey with the intent to subdivide, and should not be used as such.



**EXHIBIT B**

**SURVEY OF LEASE**

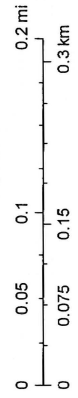


# Kodiak Island Borough GIS Website



July 29, 2016

1:4,514



Kodiak Island Borough and Others  
Kodiak Island Borough  
Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics,  
CNES/Airbus DS, USDA, USGS, Aero, AEX, Geomatics, Aerogrid, IGN,  
IGP, swisstopo, and the GIS User Community



# KODIAK MARITIME MUSEUM

PO Box 1876 Kodiak, AK 99615  
907-486-0384  
info@kodiakmaritimemuseum.org www.kodiakmaritimemuseum.org

Aimee Kniaziowski  
City Manager, City of Kodiak  
710 Mill Bay Rd.  
Kodiak, AK 99615

June 28, 2016

Dear Aimee-

Due to recently revised construction cost estimates of the Thelma C Project, it has become apparent to the KMM board and myself that it will be very difficult to build the exhibit on the original site on the harbor spit with the funding available. A December 2015 geotech survey by PND Engineering revealed that large armor rock underlying the designated exhibit site would make it very expensive to construct the project as planned.

However, after discussing the issue with Jim Graham at Breehan Inc., the City Engineer, and the Kodiak Harbormaster, we believe it is possible to construct the project across the spit from the currently designated site, on City owned land adjacent to the channel, between Trident Seafoods and the channel-side boat launching area. The exhibit, including the boat mounted on a steel cradle, and a roof over the boat, would remain as originally planned. This new site would eliminate a significant amount of earthwork and concrete, reducing the cost significantly.

Harbormaster Lon White believes the proposed new site for the project fits within the built environment of the harbor. The Kodiak Ports and Harbors Advisory Board passed a resolution on April 26 approving use of the new site for the Thelma C Project. The City Engineer, Glen Melvin, believes placing the project on this site would have no adverse impact on any city facilities, including the storm sewer recently installed adjacent to the new Trident Seafoods plant. Mr. Melvin also vetted the project through other city staff, including public works and the City Fire Chief. No objections were noted.

No new permitting would be required from the Corps of Engineers and no special community development permit is needed. KMM would obtain a building permit when construction begins in the fall of 2016. KMM has obtained a site survey for the new site.

Kodiak Maritime Museum is therefore asking the City of Kodiak and the Kodiak City Council to approve the new site and issue an appropriate lease in order for construction to begin in the fall.

Thank you,

Toby Sullivan  
Executive Director

**CITY OF KODIAK  
ORDINANCE NUMBER 1340**

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

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

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

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

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

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

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

CITY OF KODIAK

*Pat Bran*

MAYOR

ATTEST:

*Dulm Maulen*  
CITY CLERK

First Reading: December 10, 2015  
Second Reading: January 14, 2016  
Effective Date: February 20, 2016




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# **NEW BUSINESS**

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## MEMORANDUM TO COUNCIL

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**To:** Mayor Branson and City Councilmembers  
**From:** Aimée Kniazowski, City Manager  
**Thru:** Mike Tvenge, Deputy City Manager   
**Date:** August 11, 2016

**Agenda Item:** V. a **First Reading, Ordinance 1358, Authorizing the Expenditure of the \$25,000 Appropriated to Ballot Initiative Expense in the FY2017 Operating Budget to Inform the Public Regarding the Effects of the Collective Bargaining Ordinance Initiative Proposition and the Kodiak Island Borough Proposition to Consolidate the Kodiak Island Borough and the City of Kodiak Into a Single Unit of Government, Including Without Limitation Information That May Influence the Outcome of the Election on Either Proposition**

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**SUMMARY:** For the past several years the Council has appropriated funds in the General Fund Legislative Budget Account No. 450.138 titled Ballot Initiative Expense that may be used to educate the public on ballot measures. \$25,000 was budgeted in the FY2017 budget for this purpose. This year there are two ballot questions for which the City may desire to provide public education. One is an initiative for collective bargaining for City employees under the Public Employment Relations Act, and the other is a Kodiak Island Borough Assembly advisory proposition to pursue the idea of consolidating the Borough and City of Kodiak into a single unit of government. While AS 15.13.145(c)(2) permits the City to provide the public with nonpartisan information about a ballot proposition, AS 15.13.145(b) prohibits the City from using public funds to influence the outcome of an election concerning a ballot proposition unless the City specifically appropriates funds for this purpose by ordinance. The Alaska Public Offices Commission (APOC), which enforces these State statutes, interprets the statutes very narrowly so that the City cannot inform the public fully about the effects of the ballot propositions without including information that APOC likely would categorize as influencing the outcome of the election on the ballot propositions. Ordinance No. 1358 conforms with APOC requirements and would permit the City to provide public information about these two initiatives if the Council desires to do so. Staff recommends Council pass Ordinance No. 1358 in the first reading and advance to second reading and public hearing at the next special or regular meeting.

**PREVIOUS COUNCIL ACTION:** From FY2010-FY2015 the Council budgeted \$50,000 annually for ballot initiative education, and increased that amount through the supplemental budget process, if needed. Unspent funds from this account were returned to the General Fund, fund balance at the end of the fiscal year. In FY2016 the annual budgeted amount was reduced to \$25,000, which is the amount included in the FY2017 budget for ballot initiative education.

AUGUST 11, 2016  
Agenda Item V. a. Memo Page 1 of 3



**DISCUSSION:** This ordinance is being brought forward to fully comply with APOC requirements by specifically naming the ballot initiatives for which the City of Kodiak may desire to provide public education. The collective bargaining initiative for City employees will have effects on the City and its residents, including higher legal expenses, City labor costs, limitations on City contracting and managerial discretion, and significant expenditure of City management time on labor relations issues. The Kodiak Island Borough's advisory initiative will also affect City residents if pursued. Past studies have shown that consolidating the Borough and City governments could result in a substantial increase in the tax burden on City residents. Our attorney has advised this ordinance is necessary to also allow use of administrative time or use of City equipment to produce informational flyers, opinion editorial articles for the newspaper, public service announcements, etc. The ordinance does not obligate the City to spend the \$25,000 already budgeted for this purpose; however, it provides the legal path necessary if the Council desires to educate voters about these two specific ballot initiatives in a manner that requires the use of City resources.

**ALTERNATIVES:**

- 1) Pass Ordinance No. 1358 in the first reading and advance to second reading and public hearing at the next special or regular meeting. This is staff's recommendation, because it will allow the City to provide information to voters about potential effects of either of these ballot propositions.
- 2) Do not pass or postpone Ordinance No. 1358. This is not recommended.

**FINANCIAL IMPLICATIONS:** \$25,000 was budgeted in the FY2017 budget to provide public education about ballot initiatives.

**LEGAL:** The City's attorney drafted Ordinance No. 1358 and advised staff it is required to adhere to APOC requirements.

**CITY MANAGER'S COMMENTS:** I recommend Council pass this ordinance in the first reading and advance to second reading. The adoption of Ordinance No. 1358 will allow the City to correct false information and, upon direction of the Council, would allow City staff to educate the public about the potential effects of collective bargaining and consolidation of government.

**DEPUTY CITY MANAGER'S COMMENTS:** I also recommend Council pass this ordinance to allow the City Council and Administrative staff the opportunity to educate the public on the facts of each ballot measure. For instance, a newspaper advertisement regarding collective bargaining states:

Prop 1 was sponsored by the Kodiak City Employee Association and once passed will apply to all city employees.

Factually, there are certain municipal employees that are exempt from becoming a union member. So I believe it would benefit the public to here the facts surrounding these ballot measures.

**NOTES/ATTACHMENTS:**

Attachment A: Ordinance No. 1358

**PROPOSED MOTION:**

Move to pass Ordinance No. 1358 in the first reading and advance to second reading and public hearing at the next special or regular meeting.

AUGUST 11, 2016  
Agenda Item V. a. Memo Page 3 of 3

**CITY OF KODIAK  
ORDINANCE NUMBER 1358**

**AN ORDINANCE OF THE COUNCIL OF THE CITY OF KODIAK AUTHORIZING THE EXPENDITURE OF THE \$25,000 APPROPRIATED TO BALLOT INITIATIVE EXPENSE IN THE FY2017 OPERATING BUDGET TO INFORM THE PUBLIC REGARDING THE EFFECTS OF THE COLLECTIVE BARGAINING ORDINANCE INITIATIVE PROPOSITION AND THE KODIAK ISLAND BOROUGH PROPOSITION TO CONSOLIDATE THE KODIAK ISLAND BOROUGH AND THE CITY OF KODIAK INTO A SINGLE UNIT OF GOVERNMENT, INCLUDING WITHOUT LIMITATION INFORMATION THAT MAY INFLUENCE THE OUTCOME OF THE ELECTION ON EITHER PROPOSITION**

WHEREAS, in the Fiscal Year 2017 budget for the City of Kodiak, the Council appropriated \$25,000 from the General Fund to Account No. 450.138, Ballot Initiative Expense, for education of the public on ballot measures; and

WHEREAS, the City Clerk has certified a petition for an initiative to enact an ordinance providing for collective bargaining for City employees under the Public Employment Relations Act, which will appear on the ballot for the regular City election to be held on October 4, 2016; and

WHEREAS, instituting collective bargaining for City employees will have substantial effects on the City and its residents, including higher City labor costs, limitations on City contracting and managerial discretion, and significant expenditure of City management time on labor relations issues; and

WHEREAS, the Kodiak Island Borough (“Borough”) Assembly is considering an ordinance that would place an advisory proposition to pursue the idea of consolidating the Borough and the City of Kodiak into a single unit of government on the ballot for the regular Borough election to be held on October 4, 2016; and

WHEREAS, past studies have shown that consolidating the Borough and City governments could result in a substantial increase in the tax burden on City residents; and

WHEREAS, it is the Council’s duty and desire to ensure that all City voters are aware of the impact the institution of collective bargaining for City employees and consolidating the Borough and the City of Kodiak into a single unit of government would have on the City and its residents; and

WHEREAS, AS 15.13.145(c)(2) permits the City to provide the public with nonpartisan information about a ballot proposition, but AS 15.13.145(b) prohibits the City from using public funds to influence the outcome of an election concerning a ballot proposition unless the City specifically appropriates the funds for that purpose by ordinance; and

WHEREAS, the Alaska Public Offices Commission (“APOC”), which enforces AS 15.13.145, has interpreted nonpartisan information permitted under AS 15.13.145(c)(2) very narrowly, so that the City cannot inform the public fully about the effects of the ballot propositions described above without including information that APOC likely would categorize as influencing the outcome of the election on the ballot propositions.

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

**Section 1:** The expenditure of the \$25,000 appropriation in the Fiscal Year 2017 Budget from the General Fund to Account No. 450.138, Ballot Initiative Expense, is authorized to inform the voters regarding the effects on the City and its residents of the initiative proposition to enact an ordinance providing for collective bargaining for City employees under the Public Employment Relations Act, which will appear on the ballot for the regular City election to be held on October 4, 2016, and the Borough ballot proposition to pursue the idea of consolidating the Borough and the City of Kodiak into a single unit of government, which is proposed to appear on the ballot for the regular Borough election to be held on October 4, 2016, including without limitation the provision of information that may influence the outcome of the election on either proposition.

**Section 2:** This ordinance shall become effective immediately upon final passage in accordance with Kodiak Charter Section 2-13.

CITY OF KODIAK

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MAYOR

ATTEST:

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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  
**Thru:** Mike Tvenge, Deputy City Manager and Corey Gronn, Parks and Recreation Director  
**Date:** August 11, 2016

**Agenda Item:** V. b. **Resolution No. 2016–27, Authorizing the Issuance of a Permit to Kodiak Football League for the Use of Public Property to Sell Concessions and Collect Admission Fees during Kodiak High School and Youth Football Games at Baranof Park**

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**SUMMARY:** Resolution No. 2016–27 authorizes the issuance of a permit to the Kodiak Football League to use the Baranof Football Field to sell concessions from August 11 to October 31 and to collect gate fees at home high school football games. Staff recommends Council adopt Resolution No. 2016–27.

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

**DISCUSSION:** The Kodiak Football League has applied for and received a permit for concession and gate fee sales from the City for many years. KFL provides all needed gear, coaching, and refereeing for the youth league and is the primary booster source for the high school team. Community club sports such as KFL fill a vitally important role because without them activities for families would be very limited. KFL promotes good sportsmanship and character building for boys and girls ages 8 to 18.

**ALTERNATIVES:**

- 1) Adopt Resolution No. 2016–27, which is staff’s recommendation.
- 2) Do not adopt Resolution No. 2016–27, which is not recommended.

**STAFF RECOMMENDATION:** Staff recommends Council adopt Resolution No. 2016–27.

**DEPUTY CITY MANAGER’S COMMENTS:** I support staff’s recommendation to adopt this resolution. As stated earlier, youth sports provide numerous benefits to the community, young and old.

**ATTACHMENTS:**

Attachment A: Resolution No. 2016–27

Attachment B: Letter of request from the Kodiak Football League, dated July 18, 2016

**PROPOSED MOTION:**

Move to adopt Resolution No. 2016-27.

AUGUST 11, 2016  
Agenda Item V. b. Memo Page 2 of 2

**CITY OF KODIAK  
RESOLUTION NUMBER 2016-27**

**A RESOLUTION OF THE COUNCIL OF THE CITY OF KODIAK AUTHORIZING THE ISSUANCE OF A PERMIT TO THE KODIAK FOOTBALL LEAGUE FOR THE USE OF PUBLIC PROPERTY TO SELL CONCESSIONS AND COLLECT ADMISSION FEES FOR KODIAK HIGH SCHOOL AND YOUTH FOOTBALL GAMES AT BARANOF PARK**

WHEREAS, the Kodiak Football League is a local nonprofit organization dedicated to the promotion of building positive character in young people through the sport of football; and

WHEREAS, the Kodiak Football League is entirely self funded and sponsors the expense of the football programs grades 3<sup>rd</sup> through 12th; and

WHEREAS, events at the Baranof fields are in need of a snack vendor; and

WHEREAS, the Kodiak High School hosts home games and events at Baranof Park; and

WHEREAS, the Kodiak Football League has requested permission to charge admission at football games from August 11 through October 31; and

WHEREAS, the Kodiak Football League has requested permission to sell concessions at the park at certain events August 11 through October 31;

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Kodiak, Alaska, that a permit be issued, with the permit fee waived, as provided in Kodiak City Code Section 5.04.050(d), to the Kodiak Football League for charging admissions at the Kodiak High School football team home games.

BE IT FURTHER RESOLVED that permission is granted for the League to charge to sell concessions at certain events, on the condition that the League complies with the applicable stipulations set forth in Kodiak City Code Section 5.04.050.

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

CITY OF KODIAK

\_\_\_\_\_  
MAYOR

ATTEST:

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

Adopted:





## Kodiak Football League

P.O. Box 973  
Kodiak, Alaska 99615  
907-539-7472



July 18, 2016

Aimee Kniaziowski  
Kodiak City Manager  
710 Mill Bay Road, Rm114  
Kodiak, AK 99615

Dear Mrs. Kniaziowski

The Kodiak Football League would like to request a City Permit to move our Snack Shack Building to a location approved by the City within Baranof Park to sell concessions and collect gate admission for all of this years

High School and Youth Football Games from August 11, 2016 to October 31, 2016.

As most of you know we are a Non-profit Organization that survives by raising money through Fund Raiser's, Raffles, Donations, Concessions and Gate Sales.

We promote Good Sportsmanship, Team Work and Teach the Sport of Football to

An average of 200 Boys and Girls ages 8 to18 and their families each year.

Thank You for your Consideration.

Sincerely,

Richard Walker  
President  
Kodiak Football League

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## MEMORANDUM TO COUNCIL

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**To:** Mayor Branson and City Councilmembers

**From:** Aimee Kniazowski, City Manager

**Thru:** Mike Tvenge, Deputy City Manager and Kelly Mayes, Finance Director

**Date:** August 11, 2016

**Agenda Item:** V. c. **Resolution No. 2016–28, Appropriating \$650,000 From the Cargo Terminal Fund to the Cargo Development Capital Project Fund to Pay Settlement Costs Related to the Construction of Pier III Replacement Project No. 11-07/8024**

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**SUMMARY:** Pacific Pile and Marine LLC construction is complete. Additional funding is requested through this resolution for settlement of disputed costs mutually agreed upon during the mediation process.

**PREVIOUS COUNCIL ACTION:**

- October 22, 2015, Council authorized Resolution No. 2015–31 for a transfer from the Cargo Terminal Fund to the Pier III project in the amount of \$305,000.
- February 25, 2016, Council authorized Resolution No. 2016–10 for a transfer from the Cargo Terminal Fund for the Pier III project in the amount of \$350,000.
- July 14, 2016, Council authorized Resolution No. 2016–26 for a transfer from the Cargo Terminal Fund for the Pier III project in the amount of \$165,000.

**DISCUSSION:** Throughout the mediation process, the City and construction contractor came to terms regarding the disputed costs items related to the construction of the Pier III Replacement Project. Resolution No. 2016–28 transfers the necessary funds to pay the disputed costs.

**ALTERNATIVES:**

- 1) Council shall authorize Resolution No. 2016–28 for transfer of funds from the Cargo Terminal fund to the Pier III Replacement Project, which is a guarantee of payment spelled out in the settlement agreement.

**FINANCIAL IMPLICATIONS:** Staff continues to closely monitor the Pier III replacement project and fund balance of the Cargo Terminal fund. The fund balance of the Cargo Terminal fund will continue to have an excess to meet any immediate, unforeseen, future needs at this time. The transfer of funds from the Cargo Terminal fund to the Pier III Replacement Project will assist management in project closeout and resolution of outstanding financial issues.

**LEGAL:** The City's legal counsel advised staff throughout the mediation process.

**STAFF RECOMMENDATION:** Staff recommends Council adopt Resolution No. 2016-28 to transfer the needed funds for the Pier III project.

**DEPUTY CITY MANAGER'S COMMENTS:** The settlement agreement mutually releases all claims by the City and Contractor yet preserves the contract warranties. This Resolution No. 2016-28 quite literally brings this dispute to resolution.

**ATTACHMENT:**

Attachment A: Resolution No. 2016-28

**PROPOSED MOTION:**

Move to adopt Resolution No. 2016-28

**CITY OF KODIAK  
RESOLUTION NUMBER 2016–28**

**A RESOLUTION OF THE COUNCIL OF THE CITY OF KODIAK  
APPROPRIATING \$650,000 FROM THE CARGO TERMINAL FUND TO THE  
CARGO DEVELOPMENT CAPITAL PROJECT FUND TO PAY SETTLEMENT  
COSTS RELATED TO THE CONSTRUCTION OF PIER III REPLACEMENT  
PROJECT NO. 11-07/8024**

WHEREAS, the Pier III replacement project identified as Project No. 11-07/8024 is several months behind schedule; and

WHEREAS, the City has been negotiations for settlement costs related to construction elements associated with Project No. 11-07/8024 as a result of that delay; and

WHEREAS, Article V of the City of Kodiak Charter provides that an appropriation of funds separate from the budget document may be made by resolution.

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

Section 1. The Fiscal Year 2017 Operating Budget is amended by appropriating and transferring \$650,000 from the Cargo Terminal Fund Fund Balance to the following account to pay for settlement construction costs needed in Pier III Replacement, Project No. 11-07/8024:

Appropriation / Transfer From:

<u>Account Description</u>	<u>Amount</u>
Cargo Fund–Appropriation of Fund Balance	\$650,000

Transfer to:

<u>Account Description</u>	<u>Amount</u>
Cargo Capital Project Fund–Pier III Construction	\$650,000

Section 2. This resolution shall become effective upon adoption.

CITY OF KODIAK

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MAYOR

ATTEST:

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CITY CLERK

Adopted:

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## MEMORANDUM TO COUNCIL

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**To:** Mayor Branson and City Councilmembers

**From:** Aimée Kniazowski, City Manager

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

**Date:** August 11, 2016

**Agenda Item:** V. d. **Authorization of Lease Assignment and Sublease of a Portion of Pillar Mountain Antenna Site Lease 3 From Alaska Wireless Network, LLC (AWN) to AWN Tower Company, LLC and the Purchase of AWN Tower Company, LLC by Vertical Bridge Tower II, LLC, and the Sublease From AWN Tower Company, LLC to Alaska Wireless Network, LLC**

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**SUMMARY:** The Council adopted Ordinance No. 1265 on September 24, 2009, which authorized a five-year agreement with GCI for a lease at the City's Pillar Mountain antenna site. The lease includes four automatic five-year extensions at the option of the tenant. The City received a letter from Alaska Wireless Network (AWN) requesting the City to agree to assign the lease to Vertical Bridge Tower II, LLC. Staff recommends Council authorize the assignment of the lease by motion, per the City Attorney's direction.

**PREVIOUS COUNCIL ACTION:**

- September 24, 2009, Council adopted Ordinance No. 1265, which authorized a five-year lease of a communications site with GCI
- January 24, 2013, Council authorized the assignment of Pillar Mt. Communication Site 3 lease to AWN

**DISCUSSION:** The City has had a lease with CGI for a communications site located on the City's Pillar Mountain Antenna Lease Site No. 3 since 2009. The City Council authorized the assignment of that lease in 2013 to AWN. AWN and Vertical Bridge Tower II, LLC entered into a Purchase and Sale Agreement involving a portion of AWN's tower portfolio under which Vertical Bridge Tower II, LLC will purchase, manage, and operate the portfolio, and AWN will continue to operate its Alaska statewide wireless network as a tenant on the towers included in the portfolio.

Staff consulted with the City's attorney who determined the requested assignment required Council authorization in accordance with Kodiak City Code 18.20.240 Assignments: "The rights of a lessee or purchaser under a lease or under contract of sale may not be assigned unless the assignment is first approved by the Council. The assignee shall be subject to all of the provisions of the lease or sales contract." The attorney recommended the assignment be approved by a motion of the Council.

August 11, 2016  
Agenda Item V. d. Memo Page 1 of 2

**ALTERNATIVES:** Council may approve the lease assignment by motion, which is staff's recommendation, or may deny approval of the assignment which is not recommended.

**FINANCIAL IMPLICATIONS:** N/A

**LEGAL:** The City's Attorney reviewed the request and lease and advised staff that the lease assignment requires Council approval and the approval can be done by motion, which was drafted by the attorney.

**DEPUTY CITY MANAGER'S COMMENTS:** Staff is comfortable with this lease assignment, since our attorney reviewed the documents and had no concerns. The new entity, Vertical Bridge Tower II, LLC., will be required to comply with all provisions of the existing lease, including the requirement in Section 2 that says the tenant's use and equipment will not cause interference with the transmitting or receiving capabilities of the City. In the event the tenant wishes to make changes, they will have to provide results of an inter-modulation analysis to verify that no unacceptable signal interference will result. I recommend Council approve GCI's request.

**ATTACHMENTS:**

Attachment A: Request for Consent to Assignment/Consent to Assignment

Attachment B: Land Lease Agreement

Attachment C: Ordinance No. 1265

**PROPOSED MOTION:**

Move to approve the assignment of the Lease dated November 1, 2009, of a portion of Pillar Mountain Antenna Site Lease 3 from Alaska Wireless Network, LLC to AWN Tower Company, LLC and the purchase of AWN Tower Company, LLC by Vertical Bridge Tower II, LLC, and the sublease from AWN Tower Company, LLC to Alaska Wireless Network, LLC of a portion of the leased premises, all as described in the Consent Agreement dated May 2, 2016 that now is before the Council, pursuant to Kodiak City Code 18.20.230 and 18.20.240 and authorize the City Manager to execute the lease assignment on behalf of the City.

Consent Agreement

May 2, 2016

City of Kodiak  
710 Mill Bay Road  
Kodiak, AK 99615  
Attention: Mary Munk

Re: Request for Consent to Assignment

Dear Ms. Munk:

As you may be aware, on April 29, 2016, The Alaska Wireless Network, LLC ("AWN") and Vertical Bridge Tower II, LLC ("Buyer") entered into a Purchase and Sale Agreement (the "Agreement") involving a portion of AWN's tower portfolio (the "Portfolio"), under which Buyer will purchase, manage and operate the Portfolio. AWN will continue to operate its Alaska statewide wireless network as a tenant on the towers included in the Portfolio. The Lease(s) and the Site(s), as described in the attached Exhibit A, are part of the Portfolio and the Agreement.

AWN and Buyer expect the transaction described in the Agreement to close on or before June 15, 2016. As set out in the Agreement, (i) AWN will transfer all of its rights, title and interest in and to the Lease(s) and the Site(s) to AWN Tower Company, LLC, a new company which will be formed by AWN, (ii) AWN Tower Company, LLC will be purchased by and become a subsidiary of Buyer, and (iii) AWN Tower Company, LLC will sublease back a portion of the Site(s) to AWN and grant certain rights to AWN in the Agreement(s) and Site(s) regarding AWN's antenna facilities.

To the extent your consent is required to the transfers and sublease described above, AWN and Buyer request your consent by signing this letter and returning it in the enclosed self-addressed envelope.

AWN Tower Company, LLC will notify you of the date of the closing and of any change in its contact address.

AWN Tower Company, LLC, AWN, Buyer, and each of their respective affiliates are intended third party beneficiaries of this letter. This letter may be executed in separate counterparts, each of which when so executed will be deemed to be an original, and all of which taken together will constitute one and the same instrument. Delivery of an executed signature page to this letter by facsimile or other electronic transmission (including documents in Adobe PDF format) will be effective as delivery of a manually executed counterpart to this letter.

Thank you for your prompt attention to this matter. If you have any questions about the Transaction or this request, please contact Rachelle Alger via email at [raalger@gci.com](mailto:raalger@gci.com) or via phone at 907-868-5771. Otherwise, please sign this letter below where indicated and return to us in the enclosed self-addressed envelope.

[Remainder of Page Blank – Signature Page Follows]





Sincerely,

THE ALASKA WIRELESS NETWORK,  
LLC

A handwritten signature in cursive script that reads "Rachelle A. Alger".

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

Name: Rachelle A Alger

Title: Contracts Administrator

Accepted and agreed:

**City of Kodiak**

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Dated as of: \_\_\_\_\_

## LAND LEASE AGREEMENT

This 1st day of November 2009, the **City of Kodiak**, a Municipal Corporation ("Landlord"), whose address is 710 Mill Bay Road, Kodiak, Alaska 99615, and **GCI Communication Corp.**, an Alaska corporation ("Tenant"), whose address is 2550 Denali Street, Suite 1000, Anchorage, Alaska 99503, agree as follows:

### 1. Premises:

Subject to the terms and conditions herein, Landlord leases to Tenant the following Premises ("Premises"): That portion of Pillar Mountain Antenna Site Lease 3, U.S. Survey No. 3945, further described in **Exhibit A** attached hereto which is required for the location of a 100' guyed tower and 10'x12' equipment shelter as illustrated in **Exhibit B-1 and B-2** attached hereto.

### 2. Authorized Uses:

This lease ("Lease") is issued for the following authorized uses:

Tenant may construct, maintain, and operate a communication tower, equipment shelter, related communications equipment and guy wires in conjunction with Tenant's operation as a communications provider on such space as is illustrated in **Exhibit B-1 and B-2** or as otherwise mutually agreed upon.

Tenant shall have the right to collocate and install the communications equipment listed in Exhibit B on Landlord's Premises in the space and in the manner set forth in Exhibit B. Tenant may obtain access to operate and maintain this equipment, and all replacement equipment thereto by obtaining a key to enter the enclosed Premises from the Kodiak Police Department twenty-four (24) hours a day/seven (7) days a week. In installing, operating, or maintaining any equipment on the Premises and in its general management of the Premises, Tenant will act in accordance with applicable laws and regulations and so as not to cause interference with any other radio or television transmitting or receiving equipment whether located on the Premises or not. Tenant will at all times protect from interference all frequencies assigned to Landlord whether or not such frequencies are in use. Before altering, replacing or adding any transmission equipment at the Premises, Tenant shall, at Tenant's sole expense, arrange for an inter-modulation analysis so as to verify that no unacceptable signal interference will result from the alteration, replacement or addition. Tenant shall provide Landlord with a copy of the inter-modulation analysis.

### 3. Term:

The initial term of this Lease is for five (5) years ("Term"), commencing as of a date thirty (30) days subsequent to the commencement of construction, with four (4), five (5) year extensions (individually, an "extension" and collectively, the "Extensions") at the option of Tenant, so long as Tenant is not in violation of any terms or conditions as set forth in this Lease. The Extensions shall be automatic unless (a) Tenant notifies Landlord at least thirty (30) days prior to the expiration of the then-current term of its intent not to renew the Lease or (b) Landlord notifies Tenant in writing of a default, and Tenant fails to timely cure that default, in accordance with Section 16.

### 4. Rent:

The initial rent for the Premises will begin at One Thousand Dollars (\$1,000.00) per month, payable in annual installments of Twelve Thousand Dollars (\$12,000.00). The rental payment shall be increased each year by the amount of three percent (3%). Adjustments shall occur on each of the anniversary dates of this Lease. Payment shall be made by wire, check, bank draft, or money order made payable to City of Kodiak. Overdue payments shall be subject to a late payment charge of 1 ½% per month of the overdue amount (but not to exceed the maximum lawful rate), beginning thirty (30) days after payment is due.

### 5. Improvements:

Any construction on the Premises must be neat, presentable, and compatible with its use and surroundings. Before installing a new communication tower on the Premises, Tenant shall dismantle, remove and dispose of in a lawful manner the existing communication tower on the Premises, along with all related equipment and fixtures that will not be used in Tenant's ongoing operations on the Premises.

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, Tenant shall have the right to remove its equipment causing the interference upon thirty (30) days' prior written notice and/or cancel this Agreement.

7. Maintenance and Construction:

Tenant shall keep the Premises and all improvements neat and presentable. Tenant shall not strip, waste, or remove any material from the Premises without the prior written permission of Landlord.

Tenant shall provide for power utilities.

8. Disposition of Improvements:

- (a) Within one hundred eighty (180) days after the end of this Lease, improvements and personal property must either:
  - 1. be removed by Tenant if required by the Landlord; or
  - 2. with Landlord's consent, be sold to the succeeding Tenant.
- (b) Landlord may grant additional time for the removal of improvements if hardship is established by Tenant.
- (c) Title to any improvements or other property owned by Tenant which is not disposed of as set out above shall vest in Landlord.

9. Hazardous Substances:

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 there from, then Tenant shall indemnify, defend, and hold Landlord 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 Agreement is in effect as a direct result of such contamination, solely to the extent caused by Tenant or its agents. This indemnification of Landlord by Tenant 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 Landlord'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. Landlord 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 Landlord, its agents or its other tenants. No party shall have the duty to indemnify to the extent the damages are caused by the misconduct, fault or negligence of the indemnitee, its agents or invitees.

10. Warranties and Hold Harmless:

Landlord agrees to indemnify, defend, and hold Tenant harmless for any breach of the following warranties: The execution of this Lease has been duly authorized by Landlord and all necessary consents

have been received. Landlord has all right, title, and interest in the Premises, and to execute and to perform its obligations under this Lease except as set forth in Exhibit C attached hereto.

11. Liability:

Tenant shall indemnify, defend, and hold Landlord and its authorized agents, officers, and employees harmless from any liability, action, claim, suit, loss, property damage, or personal injury of whatever kind resulting from or arising out of any act of commission or wrongful omission by Tenant, its agents, employees, or customers to the extent arising from or connected with Tenant's use and occupation of the Premises or its exercise of the rights and privileges granted by this Lease, except that it shall have no duty to indemnify Landlord or its authorized agents, officers, or employees to the extent of its/their own negligence or misconduct, fraud, or breach of the terms of this Lease.

12. Insurance:

**Workers' Compensation** Tenant shall ensure that, with respect to all personnel performing work on the Premises, Tenant shall maintain in effect at all times during the term of this Agreement, coverage or insurance in accordance with the applicable laws relating to workers' compensation and employers' liability insurance. Tenant shall carry Employers' Liability insurance 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** Prior to the commencement of the work, Tenant shall secure such liability insurance as will protect Tenant and Landlord (additionally insured) from and against claims and liabilities arising out of bodily injury (including death) or property damage that may result from such operations, construction, reconstruction and/or maintenance. Such insurance shall include 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** Tenant shall insure that the Commercial General Liability and Business Automobile Liability policies name Landlord as additional insured. Tenant's insurance shall also be primary to any policies held by Landlord and the coverage afforded Landlord under such policies shall be the same coverage extended to Tenant without exception or limitation.

Tenant waives all rights of subrogation against Landlord 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/or Workers' Compensation policies.

**Evidence of Insurance** Certificates or evidence of Insurance acceptable to Landlord shall be filed with Landlord prior to commencement of the work, including copies of the additional insured and waiver of subrogation endorsements. The coverages afforded under the policies will not be cancelled or allowed to expire until at least thirty (30) days' prior written notice has been given to Landlord. Tenant shall furnish information concerning reduction of coverage with reasonable promptness in accordance with Tenant's information and belief.

**No Limitation** The insurance required within this Agreement shall be written for not less than the limits of liability specified in this Agreement or required by law, whichever is greater. Coverages shall be maintained without interruption from date of commencement of the work until date of final payment and termination of any coverage required to be maintained after final payment.

The requirements of this Agreement as to insurance and acceptability to Landlord of insurers and insurance to be maintained by Tenant is not intended to and shall not in any manner limit or qualify the liabilities and obligations of Tenant under this Agreement.

13. Holding Over

Subject to the Extensions available to Tenant in Section 3 above, if Tenant holds over after the expiration of this Lease, the holding over will not operate as a renewal or extension of this Lease, but only creates a tenancy from month to month, regardless of any rent payments accepted by Landlord. Each party's obligations for performance under this Lease will continue until the month to month tenancy is terminated. Either party may terminate the hold-over, month-to-month tenancy at any time by giving the other at least thirty (30) days' prior written notice.

14. Assignment or Sublease

Except to an affiliate, Tenant shall not assign or sublet this Agreement without the prior written consent of the Landlord which shall not be unreasonably withheld, conditioned or delayed.

15. Condemnation

If the Premises are condemned by any proper authority, the term of this Lease will end on the date Tenant is required to surrender possession of the Premises. Landlord 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.

16. Cancellation

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

17. Vacation

At the end of this Lease, Tenant must peaceably and quietly vacate the Premises and return possession to Landlord. The Premises must be left in a clean, neat and presentable at least as good as existed at the commencement of the Lease Term, normal wear and tear excepted. If Tenant causes any abnormal wear and tear or abuse of or to the Premises, Tenant shall, at its expense and upon demand by Landlord, 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 the Lease.

18. Easements

Subject to Section 2, Landlord covenants and agrees that Tenant shall have access to the Premises for parking vehicles, pedestrian traffic, and ingress and egress to the Premises for all uses authorized or required by this Lease, including, but not limited to, Tenant's right to place underground conduits or aerial feeds as needed for power and telephone or other purposes, from the Premises to all utility easements and rights of way which are owned by Landlord, without any further compensation due to Landlord therefore.

Landlord reserves the right to grant to third parties or reserve to itself easements or right-of-way through, on, or above the Premises. No easement or right of way may unreasonably interfere with Tenant's use of the Premises.

19. Non-Interference with Communications Use

Landlord agrees to not build or allow to be built, any structures on the Premises, or on any property surrounding the Premises owned or controlled by Landlord, within the area emanating outward from Tenant's equipment without the prior written consent of an authorized representative of Tenant. Said consent shall not be unreasonably withheld. The intent of this clause is to prevent development that would adversely impact Tenant's ability to "see" the satellite arc required in order to provide service to the community.

20. Laws and Permits

Each party shall conduct all activities authorized by this Lease in compliance with all applicable federal, state, and local laws, including but not limited to matters of health, safety, sanitation and pollution. Tenant must obtain all necessary licenses and permits and authorizations to construct and operate a communications premises from the Premises.

21. Taxes. Tenant shall pay all property taxes levied on its property located on the Premises and its leasehold interest in the Premises.

22. 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.

Tenant agrees to notify Landlord of any claim, demand, or lawsuit arising out of Tenant's occupation or use of the Premises. Upon Landlord's request, Tenant will reasonably cooperate and assist in the investigation and litigation of any claim, demand, or lawsuit affecting the Premises.

23. No Other Warranties/ "As-Is"

Other than the express warranties in Section 10 above, Landlord makes no express or implied warranties concerning the title or condition of the Premises, including survey, access, or suitability for any use, including those uses authorized by this Lease. Tenant takes the Premises as-is, subject to all other provisions to this Lease.

24. Liens

Tenant shall keep the Premises free of all liens; pay all costs for labor and materials arising out of any construction or improvements by Tenant on the Premises, and hold Landlord harmless from liability for any liens arising from Tenant's activities, including costs and reasonable attorney fees. By this provision, Landlord does not recognize that it is in any way liable for any liens on the Premises.

25. No Waiver

The failure of a party to insist upon the strict performance of any provision in this Lease may not be considered as a waiver or relinquishment of that provision for the future. The waiver by a party of any provision or covenant in this Lease cannot be enforced or relied upon unless the waiver is in writing.

26. Validity of Parts

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

27. Natural Disasters

If any cause which occurs without the fault or negligence of either party renders the Premises unusable for more than 30 days, this Lease may be terminated by either party upon thirty (30) days' written notice to the other, in accordance with Section 28 below. Causes include but are not restricted to 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 defaulting party's reasonable control. The obligations and rights of the excused party shall be extended on a day-to-day basis for the time period equal to the period of the excusable delay.

**28. Notices**

Any notice required by this Lease must be hand delivered or sent by registered or certified mail to the appropriate party at the address set forth on page one of this Lease or to any other address which the parties subsequently designate in writing. A copy of any legal notices to Tenant here under shall also be sent to:

City of Kodiak:  
Attn.: City Manager  
710 Mill Bay Road #220  
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 #216  
Kodiak, Alaska 99615  
Telephone: (907) 486-8633  
Fax: (907) 486-8633  
Email: clerk@city.kodiak.ak.us

With a Copy to:  
**GCI Contact:**  
Attn.: Rachele A. Alger, Contract Administrator  
Telephone: 907.868.5771  
Cell: 907.306.1601  
Email: raalger@gci.com

With a Copy to:  
GCI Contact:  
Attn.: Wayne Haerer, Jr.  
3127 Commercial Drive  
Anchorage, AK 99501  
Telephone: (907) 350-9797  
Email: whaerer@gci.com

**29. Inspection**

Landlord reserves the right to enter any part of the Premises, including buildings, for the purpose of inspection at any reasonable time. Except in the case of an emergency, all inspections will be coordinated with Tenant in advance, in order to minimize interference with Tenant's activities.

**30. Quiet Enjoyment**

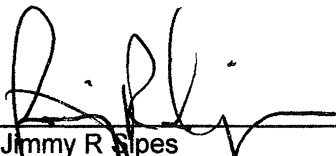
So long as Tenant is not in breach of this Lease, it shall have the right of quiet enjoyment of the Premises for the Term and all Extensions thereof. This Lease shall be binding on each party's successors and assigns.

**31. Binding Agreement**

This Lease shall be binding upon each party's heirs, representatives, executors, successors and assigns. So long as Tenant is not in default hereunder, Tenant shall have the right of quiet enjoyment of the Premises, during the initial term and all renewal terms, regardless of any sale, transfer, assignment or foreclosure of the Premises. This Lease may only be amended in writing, and such amendment shall be signed by authorized representatives of both parties.

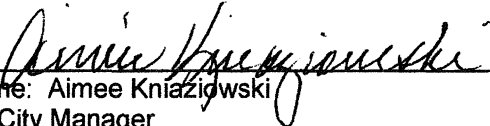
Dated the 14<sup>th</sup> day of December 2009.

Tenant:  
GCI Communication Corp.

By:   
Name: Jimmy R. Sipes  
Its: Vice President - Network Services & Chief Engineer

Dated the 8<sup>th</sup> day of OCTOBER, 2009.

Landlord:  
City of Kodiak

By:   
Name: Aimee Kniaziowski  
Its: City Manager

Attest:

  
City Clerk



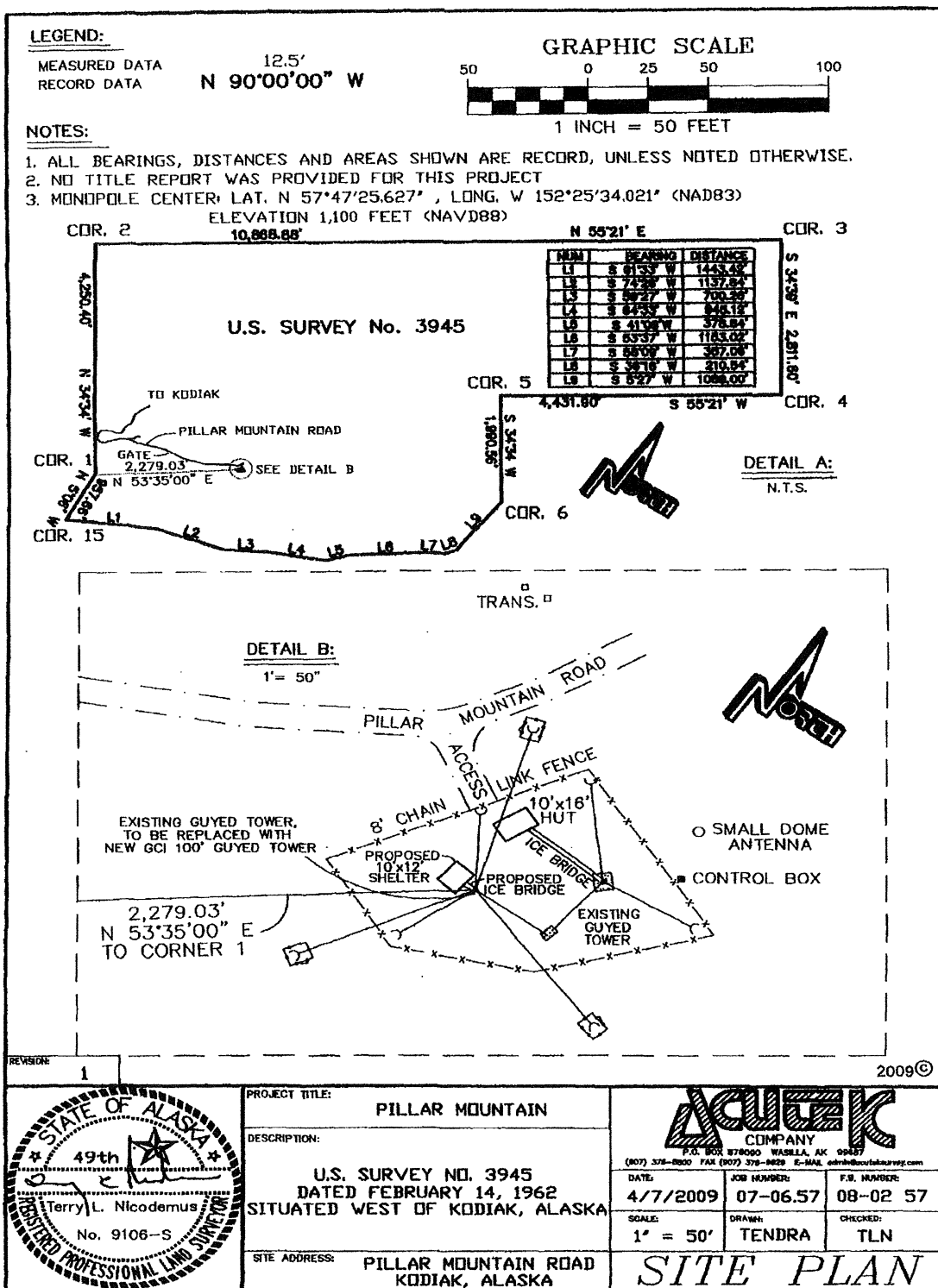
**EXHIBIT A**

**Legal Description of Property:**

A portion of Pillar Mountain Antenna Site Lease 3, U.S. survey No. 3945

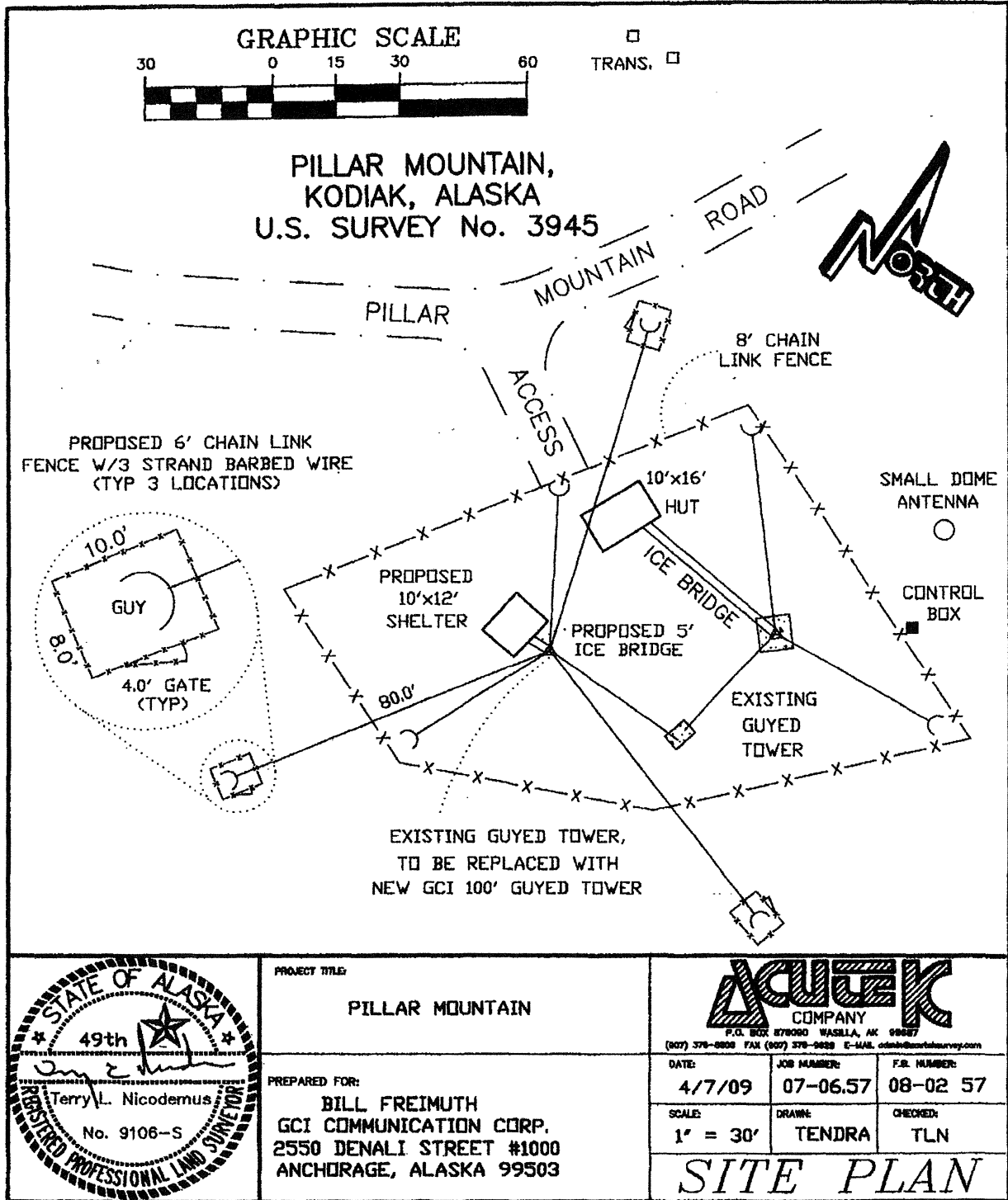
**EXHIBIT B -1**

**Survey/Site Plan**



**EXHIBIT B - 2**

**Survey/Site Plan**



**CITY OF KODIAK  
ORDINANCE NUMBER 1265**

**AN ORDINANCE OF THE COUNCIL OF THE CITY OF KODIAK AUTHORIZING A LEASE BETWEEN THE CITY OF KODIAK AND GCI COMMUNICATION CORPORATION FOR A PORTION OF PILLAR MOUNTAIN ANTENNA LEASE SITE 3, U.S. SURVEY NO. 3945**

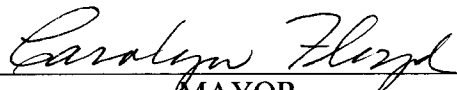
WHEREAS, the City is the owner of land on Pillar Mountain; and

WHEREAS, GCI Communication Corporation desires to lease a portion of the City's Pillar Mountain Antenna Lease Site 3, U.S. Survey No. 3945.

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

- Section 1:** The Council finds that it is in the best interest of the City of Kodiak to authorize the Lease, Contract No. 157303, with GCI Communication Corporation for a portion of the City's Pillar Mountain Antenna Lease Site 3, U.S. Survey No. 3945. Notwithstanding any provision of Kodiak City Code Chapter 18.20 to the contrary, the authorization of the Lease hereby is authorized.
- Section 2:** The form and content of the Lease between the City and GCI Communication Corporation 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 Communication Corporation, 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:** 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

  
MAYOR

ATTEST:

  
CITY CLERK




First Reading: August 27, 2009  
Second Reading: September 24, 2009  
Effective Date: October 30, 2009

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## MEMORANDUM TO COUNCIL

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**To:** Mayor Branson and City Councilmembers  
**From:** Aimée Kniaziowski, City Manager  
**Thru:** Mike Tvenge, Deputy City Manager; Mark Kozak, Public Works Director; and Glenn Melvin, City Engineer  
  
**Date:** August 11, 2016

**Agenda Item:** V. e. **Authorization of Bid Award of the FY2017 Mill Bay Road Pavement Rehabilitation Project, Project No. 17-02/5036**

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**SUMMARY:** Keeping City streets and parking lots in good driving condition requires a continual asphalt maintenance program. This project will repair and overlay sections of Mill Bay Road pavement. The project was advertised for bid on June 29 and two bids were opened on August 1, 2016. During the design of the project we compromised areas of work in order to bring the project within our available funding level based on the Engineer's estimate. The two bids were within project funding. Based on review of the bids, staff recommends Council authorize the bid award to Brechan Construction LLC in the amount of \$956,925 with funds coming from the Mill Bay Road Pavement Rehabilitation Project No. 5036.

**PREVIOUS COUNCIL ACTION:** Since 2006, the City has authorized multiple contracts with Brechan Construction to repair sections of street and parking lots in order to keep the paved areas from deteriorating to the point of requiring a complete rebuild.

- In FY 2015 Council approved a sole source contract with Brechan Construction for the Mill Bay Road pavement repair project and designated and authorized funds to the Street Capital Improvement.
- In FY 2016 Council approved \$1,150,000 for pavement repair work on Mill Bay Road and a sole source contract with Brechan Construction for the project.
- During the June 9, 2016 regular meeting, Council approved the Mill Bay Road design and bid packet preparation with DOWL.

**DISCUSSION:** Council approved sole source pavement repair and overlay projects on Mill Bay Road with Brechan Construction in both FY2015 and FY2016. Brechan Construction was the only asphalt supplier and road construction contractor on island at that time.

In 2014 four smaller sections of patch and then overlay were completed from Upper Mill Bay Road through the Birch and Powell Avenue intersections to just north of Malutin Lane. Three other smaller sections were included totaling approximately 1,500 lineal feet of repair.

In 2015 Brechan Construction completed two larger sections of work. The first piece was from Island Lake Road to Benny Benson Drive and the second was from Benny Benson Drive to Bartel Avenue. The total distance of this project was approximately 4,380 lineal feet.

For 2016 we have chosen to place the project out for bid, because we have another qualified road paving contractor on island which we think will make the bid environment competitive. The total distance of this project is approximately 5,480 lineal feet.

**Project Background and Future Pavement Needs:** Based on the heavy traffic volumes, Mill Bay Road was originally paved in two lifts of two inches each. The existing ruts along the project route vary in depth from 1.5 inches to over 2.5 inches. In some sections of the road, the ruts are almost completely through the asphalt. Once the asphalt is worn completely through, failure of the gravel base occurs rapidly and repair work becomes extensive and at higher cost. This project covers the last of the critical areas needing rehabilitation.

In order to repair the rutted areas and improve the drainage we are milling two inches deep along the gutter in a seven foot width. The milling pass next to the gutter will come out almost in the center of the rut closest to center line. A leveling course of fine mix asphalt will be placed in what is left of the remaining ruts. This leveling course will improve finish compaction on the overlay lift. The overlay lift will be laid with two inches of asphalt next to the gutter and thicken to three inches at the centerline of the road. The three inch thickness at the center line will provide for an increased cross slope grade from 2% to 3%, which is used in several southeast Alaska communities. Southeast community weather is similar to our weather with regard to freeze thaw cycles and rain fall. They use the steeper 3% cross slope, which allows the water to drain off the pavement much quicker.

It is important to point out that this project utilizes a method of pavement rehabilitation that is the least costly alternative but not necessarily the longest lasting alternative, which would require a total removal and replacement of the pavement. Total removal and replacement is not an option this fiscal year due to funding constraints.

During the design process, some areas that were recommended to be repaired were scaled back in order to keep the project within the available funds based on the engineers estimate. For example, sections of road that the engineer recommended to be full depth replacement were reduced to smaller patchwork methods at staff request. The sub-grade repair work was scaled back in order to allow the entire road section to be resurfaced.

Even after scaling back the scope of road repair work, the engineer's estimate was still well above the available budget. In order to safely bid the entire project, staff and the engineer made the decision to divide the project into smaller sections that included a base bid and two additive alternates. The base bid

included paving from Bartel Avenue to Malutin Lane. Additive Alternate One - Upper Mill Bay Road to Hemlock Street and Additive Alternate Two -Hemlock Street to Thorsheim Street.

We opened the two submitted bids and found that the competitive bidding environment produced bids that came in well under the engineer's estimate. As a result, the project can be fully constructed, and the budget will have additional funds to expand the sub-grade repairs as originally intended if needed.

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

- 1) Authorize the bid award for Mill Bay Road Pavement Rehabilitation FY2017 to Brechan Construction LLC, which is staff's recommendation, because it will allow us to complete the project during the 2016 construction season.
- 2) Do not award the bid. This is not recommended, because it would delay repairs, increase the risk of road failure, and would leave Mill Bay Road in a continuing worsening condition.

**FINANCIAL IMPLICATIONS:** In the FY2017 budget, Council authorized funding of \$1,470,000 for the Mill Bay Road Pavement Rehabilitation Project No. 5036. The bid documents included bid "Alternates" to allow for portions of the project to be awarded if the bids exceeded the project funding. The recommendation to award is for the base bid and Alternates 1 and 2 for a total of \$956,925.

**STAFF RECOMMENDATION:** Staff recommends Council authorize the bid award of Mill Bay Road Pavement Rehabilitation FY2017, Project No. 17-02/5037 to Brechan Construction LLC in the amount of \$956,925, with funds coming from the Streets Capital Improvement Fund Project No. 5036, Pavement Repairs.

**DEPUTY MANAGER'S COMMENTS:** We opened two competitive bids for this project, and it is determined the project has sufficient funding to complete the initial scope of work. There may be additional work requested by the City if determined necessary, and that will be issued through the change order process. I support staff's work on this necessary project and recommend Council approve this bid award.

**ATTACHMENTS:**

Attachment A: Bid Tab.

**PROPOSED MOTION:**

Move to authorize the bid award of Mill Bay Road Pavement Rehabilitation FY2017, Project No. 17-02/5037 to Brechan Construction LLC in the amount of \$956,925 with funds coming from the Streets Capital Improvement Fund Project No. 5036, Pavement Repairs.





# Bid Tab Mill Bay Road Pavement Rehabilitation - TOTAL PN 17-02/5036.

Bid Date: Monday, August 01, 2016

Bid Item	Description	Quantity	Units	Engineers Estimate	Brechan Construction LLC	QAP
1	Base Bid	1	each	\$1,112,110.00	\$495,097.00	\$642,600.00
2	Additional Alt #1	1	each	\$368,834.00	\$225,905.00	\$239,042.00
3	Additional Alt #2	1	each	\$378,930.00	\$235,923.00	\$285,870.00
<b>Grand Total</b>				<b>\$1,859,874.00</b>	<b>\$956,925.00</b>	<b>\$1,167,512.00</b>



# Bid Tab Mill Bay Road Pavement Rehabilitation - Base Bid PN 17-02/5036

Bid Date: Monday, August 01, 2016

Bid Item	Description	Quantity	Units	Engineers Estimate	Brechan Construction LLC	QAP	
1	Unclassified Excavation	180	cubic yard	\$30.00	\$180.00	\$50.00	
2	Borrow Leveling Course, D-1	166	ton	\$50.00	\$6,640.00	\$45.00	
3	Recycled Asphalt Product (RAP)	166	ton	\$40.00	\$2,822.00	\$45.00	
4	Remove Pavement	14490	square foot	\$1.00	\$14,490.00	\$4.00	
5	Asphalt Concrete Pavement, Type IIB	1564	ton	\$340.00	\$531,760.00	\$200.00	
6	Asphalt Concrete Leveling Course, Type IVB	44	station	\$890.00	\$39,160.00	\$700.00	
7	Pavement Rotomilling	3125	square yard	\$2.00	\$6,250.00	\$20.00	
8	Mobilization and Demobilization	1	Lump Sum	\$300,000.00	\$5,000.00	\$50,000.00	
9	Traffic Maintenance	1	Lump Sum	\$125,000.00	\$21,000.00	\$55,000.00	
10	Stormwater Pollution Prevention Plan	1	Lump Sum	\$28,910.00	\$3,000.00	\$15,000.00	
11	Construction Survey Measurement	1	Lump Sum	\$15,000.00	\$4,000.00	\$20,000.00	
12	Adjust Existing Monuments	1	Lump Sum	\$2,400.00	\$1,000.00	\$5,000.00	
13	Adjust Manhole to Finish Grade	12	each	\$1,200.00	\$14,400.00	\$500.00	
14	Adjust Valve Box to Finish Grade	18	each	\$800.00	\$14,400.00	\$200.00	
<b>Grand Total</b>					<b>\$1,112,110.00</b>	<b>\$495,097.00</b>	<b>\$642,600.00</b>



# Bid Tab Mill Bay Road Pavement Rehabilitation - Addt'l #1 PN 17-02/5036.

Bid Date: Monday, August 01, 2016

Bid Item	Description	Quantity	Units	Engineers Estimate	Brechan Construction LLC	QAP		
1	Unclassified Excavation	30	cubic yard	\$30.00	\$1.00	\$30.00	\$50.00	\$1,500.00
2	Borrow Leveling Course, D-1	27	ton	\$50.00	\$40.00	\$1,080.00	\$80.00	\$2,160.00
3	Recycled Asphalt Product (RAP)	27	ton	\$40.00	\$17.00	\$459.00	\$80.00	\$2,160.00
4	Remove Pavement	2346	square foot	\$1.00	\$1.00	\$2,346.00	\$7.00	\$16,422.00
5	Asphalt Concrete Pavement, Type IIB	679	ton	\$340.00	\$230.00	\$156,170.00	\$160.00	\$108,640.00
6	Asphalt Concrete Leveling Course, Type IVB	25	station	\$890.00	\$650.00	\$16,250.00	\$850.00	\$21,250.00
7	Pavement Rotomilling	3214	square yard	\$2.00	\$5.00	\$16,070.00	\$15.00	\$48,210.00
8	Traffic Maintenance	1	Lump Sum	\$65,000.00	\$10,000.00	\$10,000.00	\$25,000.00	\$25,000.00
9	Stormwater Pollution Prevention Plan	1	Lump Sum	\$9,820.00	\$1,000.00	\$1,000.00	\$3,500.00	\$3,500.00
10	Construction Survey Measurement	1	Lump Sum	\$10,000.00	\$3,500.00	\$3,500.00	\$2,500.00	\$2,500.00
11	Adjust Existing Monuments	1	Lump Sum	\$2,400.00	\$4,000.00	\$4,000.00	\$1,500.00	\$1,500.00
12	Adjust Manhole to Finish Grade	9	each	\$1,200.00	\$1,200.00	\$10,800.00	\$500.00	\$4,500.00
13	Adjust Valve Box to Finish Grade	6	each	\$800.00	\$600.00	\$3,600.00	\$200.00	\$1,200.00
14	Adjust Cleanout to Finish Grade	1	each	\$800.00	\$600.00	\$600.00	\$500.00	\$500.00
<b>Grand Total</b>				<b>\$368,834.00</b>	<b>\$225,905.00</b>	<b>\$239,042.00</b>		



# Bid Tab Mill Bay Road Pavement Rehabilitation - Addt'l #2 PN 17-02/5036.

Bid Date: Monday, August 01, 2016

Bid Item	Description	Quantity	Units	Engineers Estimate	Brechan Construction LLC	QAP	
1	Unclassified Excavation	43	cubic yard	\$30.00	\$1,290.00	\$40.00	\$1,720.00
2	Borrow Leveling Course, D-1	40	ton	\$50.00	\$2,000.00	\$100.00	\$4,000.00
3	Recycled Asphalt Product (RAP)	40	ton	\$40.00	\$1,600.00	\$100.00	\$4,000.00
4	Remove Pavement	3450	square foot	\$1.00	\$3,450.00	\$7.00	\$24,150.00
5	Asphalt Concrete Pavement, Type IIB	660	ton	\$340.00	\$224,400.00	\$205.00	\$135,300.00
6	Asphalt Concrete Leveling Course, Type IVB	13	station	\$890.00	\$11,570.00	\$1,500.00	\$19,500.00
7	Pavement Rotomilling	1760	square yard	\$2.00	\$3,520.00	\$25.00	\$44,000.00
8	Traffic Maintenance	1	Lump Sum	\$65,000.00	\$65,000.00	\$35,000.00	\$35,000.00
9	Stormwater Pollution Prevention Plan	1	Lump Sum	\$9,700.00	\$9,700.00	\$2,000.00	\$2,000.00
10	Construction Survey Measurement	1	Lump Sum	\$10,000.00	\$10,000.00	\$2,500.00	\$2,500.00
11	Adjust Existing Monuments	1	Lump Sum	\$1,600.00	\$1,600.00	\$2,000.00	\$2,000.00
12	Adjust Manhole to Finish Grade	12	each	\$1,200.00	\$14,400.00	\$500.00	\$6,000.00
13	Adjust Valve Box to Finish Grade	38	each	\$800.00	\$30,400.00	\$150.00	\$5,700.00
<b>Grand Total</b>				<b>\$378,930.00</b>	<b>\$235,923.00</b>	<b>\$285,870.00</b>	

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## MEMORANDUM TO COUNCIL

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**To:** Mayor Branson and City Councilmembers

**From:** Aimée Kniaziowski, City Manager

**Thru:** Mike Tvenge, Deputy City Manager; Mark Kozak, Public Works Director; and Corey Gromm, Parks and Recreation Director

**Date:** August 11, 2016

**Agenda Item:** V. f. **Authorization of Purchase of Used Mini-Excavator for the Parks and Recreation and Public Works Departments**

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**SUMMARY:** Both the Parks and Recreation and Public Works Departments have need for and use mini-excavators on a regular basis. The Parks and Recreation Department has a 2002 Terex HR16 mini-excavator that was purchased used from Kodiak Rental Center in 2010. This machine is used for park maintenance as well as support of the cemetery. Public Works has used this machine also for water and sewer maintenance work and has rented other mini-excavators from Kodiak Rental Center. Between the two departments, we anticipate approximately 400 hours of annual use on the machine. City Code Section 3.12.100 allows the Public Works Department to purchase used equipment. Staff recommends that Council approve the purchase of a used Case CX36B mini-excavator from Yukon Equipment in the amount of \$40,020 FOB Kodiak with funds coming from the Water Machinery and Equipment account.

**PREVIOUS COUNCIL ACTION:** City Code Section 3.12.100 was added in 1979 for the benefit of purchasing used equipment.

**BACKGROUND:** Through the Public Works Department, we have purchased many used pieces of excavation equipment. With the many different equipment dealers having large rental fleets, we have found a significant savings by purchasing a low hour rental unit over the cost of bidding and purchasing a new machine. It is not recommended to purchase all equipment used; however, we have found it to be very useful when purchasing loaders, excavators, and backhoes.

**DISCUSSION:** The Parks and Recreation Department has a regular need for a mini-excavator for cemetery and general parks maintenance. The Public Works Department has found a mini-excavator to be a very effective and efficient tool for utility maintenance of water, sewer, and storm drainage maintenance and repair.

Mini-excavators provide excavation depth and reach almost equal to a Case 580 type rubber tired backhoe. However, they have significant advantage because of the mobility on the job. The ability to work within very confined work zones is a major advantage over any rubber tired back hoe. With this

machine being shared between the departments, it will allow both to have access to an extremely useful tool and provide for efficient use of the mini-excavator.

Staff looked at several brands of mini-excavators to find a machine that would fit our working needs. In order to meet the needs for the cemetery, we need to be able to dig to a depth greater than eight feet. The dig depth and weight of the machine help determine the size of the mini-excavator we need. We also matched up the weight of the machine for compatibility with existing hauling trailers within each department. OSHA trenching regulations have multiple requirements that must be met when trenching for the safety of the crew. Having excavating equipment that is capable to safely dig to the depth needed and manage excavated soil is critical for crew safety. While doing research in order to evaluate the different brands, we found that the Case mini-excavators were rated quite well for service, durability, and performance.

The Public Works Department has three Case loaders and a Case backhoe. All the equipment has performed very well over the years. We have found that Yukon Equipment provides good support and service of their equipment.

City Code Section 3.12.100 requires any piece of used equipment to be evaluated by a Public Works mechanic prior to purchase. On Monday, July 25, Fleet Maintenance Supervisor Chris Dolph went to the Anchorage area and evaluated one Cat 304 E CRCB (in Wasilla) as well as a Case CX36B (in Anchorage). After evaluating both machines, Chris feels that the Case CX36B meets our needs and recommends that we purchase the Case CX36B. This machine is a 2012 model with 990 hours on it. It has been in Yukon's rental fleet since it was new and serviced by their shop routinely. The Cat is a newer model and more costly, but the Case is in very good condition and is very well equipped.

The existing Terex HR16 is in generally very poor condition and has required significant maintenance over the last couple of years. We have attached the Public Works shop's mechanical and condition evaluation for review.

**ALTERNATIVES:**

- 1) Authorize purchase of the Case CX36B. This is staff's recommendation, because the need for a mini-excavator was identified years ago.
- 2) Do not authorize purchase of the mini-excavator. This is not recommended, because continued rental on an excavator is problematic due to high demand, required advance notice, and difficulty scheduling the work load around rental availability.

**FINANCIAL IMPLICATIONS:** Funds to replace the Parks and Recreation mini-excavator were included in the approved FY2017 budget in the Water Machinery and Equipment Account 550-560-360-470-126. The funds are a combination of general funds (Parks and Recreation) and water and

wastewater funds (Public Works). Both departments' budgets will include vehicle replacement fund fees on an annual basis.

**LEGAL:** As described in Kodiak City Code Section 13.12.100 Purchase of Heavy Equipment

**STAFF RECOMMENDATION:** Staff recommends Council approve the purchase of a used 2012 Model Case CX36B mini-excavator from Yukon Equipment in the amount of \$40,020 FOB Kodiak for use by both the Public Works and Parks and Recreation Departments with funds coming from Water Machinery and Equipment account number 550-560-360-470-126.

**DEPUTY CITY MANAGER'S COMMENTS:** The mini-excavator is a very versatile tool for digging in confined spaces and causing minimal impact to the surrounding area. The two departments did their homework on this collaboration and chose to be fiscally responsible in buying used, thus saving taxpayer dollars. The funding is available through the approved FY2017 budget, and I support the staff recommendation to purchase this inspected used mini-excavator.

**ATTACHMENTS:**

Attachment A: PW Shop evaluation and photos of the Terex HR 16 mini-excavator

Attachment B: Fleet Maintenance Supervisor's assessment of the Case CX36B mini-excavator and recommendation.

Attachment C: Yukon Equipment proposal for used Case CX36B mini-excavator.

**PROPOSED MOTION:**

Move to authorize purchase of a used 2012 Model Case CX36B mini-excavator from Yukon Equipment in the amount of \$40,020 FOB Kodiak and authorize the City Manager to execute documents on behalf of the City.



## City of Kodiak Equipment Evaluation

- Evaluation Date 7-22-16
- City vehicle ID number TEREX HR16 MINI EXCAVATOR
- Equipment hour meter reading and mileage 3,316 hrs
- Equipment history None / Regular
- Equipment test drive notes ~~None~~ delay in controls acceptable
- 
- Assess engine and transmission performance consistent idle / competent amount of torque
- 

### Under equipment inspection

- Front end, draw bar, mold board and circle turn (inspect for cracks and multiple repair spots) No signs of Fresh leaks / loose bucket, arm, and ram mounts
- Rear tandem and differential
- Hydraulic hoses, lines and cables Acceptable condition
- 
- Suspension and steering components, including tie rods, drag link, ball joints, springs shackles
- 
- Condition of frame, frame hangers and body mounts
- 
- Transmission fluid level, color, engagement
- 
- Underside of engine and engine compartment No fresh leaks
- Check hydraulic cylinders/ rams (check ends for excessive wear, check to see if rams are bent, leaking) Noticeable Play through front arm/rams/bucket no leaks

### Under hood inspection

- Check all fluid levels and record Adequate oil level, should be changed
- Check battery and charging system Started fine
- Inspect engine for leaks, exhaust, oil, coolant No fresh leaks
- 
- Inspect hoses, belts and accessories No cracks, splits, or leaks
- 
- Inspect electrical components and wiring No frays, splits, or exposed wires
- Check cylinder power balance or compression
- 
- Check for abnormal engine, clutch noises Normal Engine/Hydraulic sounds thru entire
- Inspect hydraulic pumps and drive No fresh leaks / Adequate power 121PM Band

### Equipment exterior

- Check for body damage/ rust Surface Rust prominent
- Check glass—windows, windshield All glass intact / no cracks
- Check lights and strobes for proper operation Light functional

### Equipment interior

- Check interior—seats, steering wheel, pedals and panels Notes in seat / pedals secure
- Check equipment comfort controls and accessories (heater, wipers and fans) wipers functional
- (No fan)
- Use all controls to check function \_\_\_\_\_
- \_\_\_\_\_

### Added notes:

THE TEREX STILL RUNS & OPERATES BUT IS GENERALLY IN POOR CONDITION. THE TRACKS ARE SEVERELY WORN AND HAVE NO TRACTION. THE TRACK ADJUSTORS ARE SEIZED ON BOTH SIDES & WOULD BE A TIME CONSUMING & COSTLY REPAIR. THE CHASSIS IS IN DECENT SHAPE BUT RUST IS STARTING TO DETERIORATE COMPONENTS. BECAUSE OF ENGINE WEAR IT IS OCCASIONALLY HARD TO START, ESPECIALLY IN COLDER WEATHER. THE HYDRAULIC SYSTEM IS WEAK RESULTING IN SLOW MOVEMENT AND LOW DIGGING POWER & INTERMITTENTLY WILL NOT MOVE AT ALL











CITY OF KODIAK  
2410 Mill Bay Road, KODIAK, ALASKA 99615  
Public Works Department  
907-486-8060 Voice  
907-486-8066 Fax

FROM: Christopher Dolph  
Shop Supervisor

DATE: July 26, 2016

RE: Mini excavator inspection

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I traveled to Anchorage on Monday, July 25<sup>th</sup>, to inspect 2 used mini excavators for possible purchase. I inspected a 2015 Caterpillar 304E2 at NC Machinery in Wasilla and a 2012 Case CX36B at Yukon Equipment in Anchorage. Both machines are in very good condition and have been routinely serviced by their respective dealers since they were new. Here is a summary of each machine. I have included a "+" or "-" to indicate which has an advantage.

Cat 304E2

- Approx 370 hrs +
- Attached thumb
- Includes 1 24" digging bucket -
- Straight plow blade -
- Electronic engine control, auto idle, maintenance minder +
- Full pilot controls
- Door swings out -

Case CX36B

- Approx 990 hrs -
- Attached thumb
- Includes 3 buckets, 12" trench, 24" digging, 36" cleanup +
- Powered angle blade +
- Basic engine controls, manual throttle, no maintenance minder -
- Pilot controls with foot swing controls
- Door slides open to match contour of cab +
- Optional counter weight installed +

Both machines have similar operating specifications and either would work well for the City's use. Considering the price difference between the two and added options on the Case, my first choice would be the purchase of the Case for the City's fleet.

A handwritten signature in blue ink, appearing to read "C. Dolph", is written over the typed name.

Christopher Dolph



Anchorage • Fairbanks • Wasilla

*Subsidiary of Calista Corporation*

July 26, 2016

City of Kodiak  
2410 mill Bay Rd  
Kodiak, Ak 99615

We are pleased to quote a Yr 2012 Case CX36B Mini-Excavator with 980 hrs on it. This is a previously rented machine that has been well maintained by our shop. It has a cab with heater, Dozer blade with lift and angle, Pin grabber coupler, Hyd thumb, 12" trench bucket, 24" dig bucket, 36" clean-up bucket, 5ft-3" long arm, 11.8" wide rubber tracks, Travel Alarm and additional counter weight.

Price delivered to Kodiak, Ak      \$40,020.00

Sincerely

Richard Kimball  
Yukon Equipment  
2020 e 3<sup>rd</sup> st  
Anchorage, Ak 99501

Richard "Doc" Kimball  
Yukon Equipment  
2020 E 3rd  
Anchorage, Ak 99501  
Cell 907-227-3107  
Dir 907-677-5714  
Off 907-277-1541  
Free 800-478-1541  
[richk@yukoneq.com](mailto:richk@yukoneq.com)



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EQUIPMENT FOR CONTRACTING – UTILITY – GOVERNMENT



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## MEMORANDUM TO COUNCIL

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**To:** Mayor Branson and City Councilmembers

**From:** Aimée Kniazowski, City Manager

**Thru:** Lon White, Harbormaster

**Date:** August 11, 2016

**Agenda Item:** V. g. **Authorization of a Technical Services Contract With Willard A. Fedá to Operate the Marine Travelift in Kodiak Shipyard**

---

**SUMMARY:** Willard (Bill) Fedá has been under contract with the City to operate the Marine Travelift since operations started in 2009. His contract expires August 31, 2016. A new two-year contract with a continuation of the same terms was discussed with the contractor and is ready for Council approval. Staff recommends Council authorize a two-year technical services contract with Willard A. Fedá for operation of the Travelift in Kodiak Shipyard.

**PREVIOUS COUNCIL ACTION:** The Council previously approved contracts with Mr. Fedá on July 23, 2009, August 26, 2010, September 13, 2012, and August 28, 2014.

**DISCUSSION:** Mr. Fedá is the only person on Kodiak Island with the training and experience to operate the City's 660-ton Marine Travelift. Under the current contract, Mr. Fedá has successfully lifted over 350 vessels since the yard opened October 2, 2009. He has a clean safety record. Staff and customers work well with him, and he is a key member of the boatyard team. Without his expertise, the City would have a difficult time operating the boatyard.

The terms in the contract are unchanged from the previous contract, which expires at the end of August. The hourly rate of \$100/hour is comparable to the Group 1A Davis-Bacon heavy crane operator (\$55.04 plus workmen's compensation, plus liability insurance). As a contractor, Mr. Fedá is required to provide his own commercial insurance package with the City of Kodiak named as an "additional insured." As an independent contractor, Mr. Fedá is not eligible for City benefits. He continues to agree to work on short notice call outs. Staff believes the rate of compensation is reasonable and a good value to the City. The Harbormaster proposes a two-year contract renewal.

**ALTERNATIVES:**

- 1) Council may approve the contract as negotiated, which is staff's recommendation, since Mr. Fedá provides an essential operational service to the boatyard.
- 2) Council may amend the contract or not approve the contract, neither of which is recommended. The Harbor Department does not have a position or an employee to exclusively operate the lift. However, one of the harbor maintenance mechanics has sufficient training to lift a boat in an emergency should Mr. Fedá not be available.

**FINANCIAL IMPLICATIONS:** Funds for this contract are included in the FY2017 Boatyard/Lift Enterprise Fund budget approved by Council in June 2016.

**LEGAL:** Previous contracts with Mr. Fedra received legal and insurance review. The terms and wording of this renewal agreement have not changed.

**STAFF RECOMMENDATION:** The Harbormaster recommends Council authorize the technical services contract with Willard A. Fedra for Harbor Department boat lift operations for a two-year term at the rate of \$100/hr with funds coming from the Boat Yard/Vessel Lift Enterprise Fund, Professional Services Account.

**CITY MANAGER'S COMMENTS:** Bill Fedra has provided his expertise to the City and Harbor for the past five years. He is safe, responsible, and willing to meet the Harbormaster's need for an experienced lift operator. We are fortunate to have a local resident with this set of unique skills. I recommend Council authorize this two-year contract.

**ATTACHMENTS:**

Attachment A: Technical Services Contract for Boatlift Operations

**PROPOSED MOTION:**

Move to authorize a two-year technical services agreement, Agreement No. 224103, with Willard A. Fedra to operate the Harbor Marine Travelift, with funds coming from the Boat Yard/Vessel Lift Enterprise Fund, Professional Services Account.

**CITY OF KODIAK**  
**Technical Service Agreement**  
**Marine Travelift Operator for Kodiak Shipyard**  
**Agreement No. 224103**

THIS AGREEMENT is entered into this 1<sup>st</sup> day of September, 2016, by and between **Willard A. Feda** (hereinafter called "Contractor"), and the **CITY OF KODIAK** (hereinafter called "City").

WITNESSETH THAT:

WHEREAS City desires to engage Contractor to be the lead operator of the 660-ton Marine Travelift for the shipyard operated by the City of Kodiak; and

WHEREAS Contractor is properly licensed and insured and has the experience and ability to perform such services; and

WHEREAS the parties hereto desire to enter into a basic agreement setting forth the terms under which Contractor will, as requested, perform such work.

NOW THEREFORE the parties hereto do mutually agree as follows:

1. *Employment of Contractor.* Contractor agrees to provide technical services in accordance with the provisions of this Agreement. A written description of the work to be performed is set out in the attached exhibit, a copy of which is attached hereto and incorporated by reference.
2. *Scope of Services.* The scope of services in **Exhibit A** describes and defines the services and responsibilities. The Contractor shall exercise independent professional judgment in performing its obligations and responsibilities under this Agreement. The Contractor services shall be available upon execution of the Agreement by the City. The Contractor shall perform the tasks as set forth in **Exhibit A**. The Contractor shall also attend or otherwise learn all necessary training required for effective shipyard and Travelift operations, including safety training, operating training, and environmental awareness.
3. *Term and Duration.* This agreement is for two (2) years, beginning September 1, 2016, and ending August 31, 2018. It may be extended by the mutual written agreement of City and Contractor.
4. *Performance.* Contractor agrees to perform the work on a non-exclusive basis, when requested, as described in the Scope of Services at Exhibit A. The Contractor is not authorized to perform any work or incur any expense other than his own labor without the prior written approval of the City.
5. *Operator Compensation.* The City agrees to pay the Contractor for the services under this Agreement at \$100 per hour for the duration of the agreement. The Contractor will not be compensated by vessel owners for operation of the Travelift. Upon receipt of monthly invoices, City agrees to make payments to Contractor within 30 days during the term of this agreement.
6. *Labor*
  - a. The City shall provide labor to assist the Contractor. Use of City personnel will be coordinated by the Harbormaster or the Deputy Harbormaster. Operations after normal business hours will be avoided unless deemed necessary and appropriate by the Harbormaster or Deputy Harbormaster.

- b. Contractor will communicate with City personnel prior to movement of each vessel and clearly explain details of the operation, ensuring all involved personnel understand their role, their specific tasks and communication protocols.
  - c. As a safety precaution, Contractor agrees to not perform the lift or launch vessels without sufficient personnel (minimum two) to assist in such activities.
7. *Independent Contractor Status.* In performing under this Agreement, Contractor acts as an independent contractor and shall have responsibility for and control over the details and means for performing the services required hereunder. Contractor shall have the authority to direct activities of the additional personnel as described in Section 6 above, so long as such direction is intended for the safety of the vessels and personnel on-site and during training of a back-up Travelift operator.
8. *Assignment.* Contractor is selected for his individual expertise in operating a Marine Travelift and, therefore, shall not assign any of the duties of this Agreement without the prior written consent of City, which the City may withdraw at its sole discretion.
9. *Subcontracting.* Contractor may not subcontract its performance under this Agreement without prior written consent of City, which the City may withhold at its sole discretion.
10. *Designation of Representative.* The Parties agree, for the purposes of this Agreement, the City shall be represented by and may act only through the City Manager or Harbormaster or such other person as he/she may designate in writing.
11. *Termination.*
- a. Either party shall have the right to terminate this Agreement in whole or in part at any time, by delivery of twenty (20) days written notice, specifying the extent and effective date hereof. After receipt of such notice, Contractor shall stop work hereunder to the extent and on the date specified in such notice, terminate all other commitments to the extent they relate to the work terminated, and deliver to City all computations and other material and information prepared or developed hereunder in connection with the work terminated.
  - b. In the event of any termination pursuant to this clause, Contractor shall be entitled to be paid as provided herein for direct labor hours expended and reimbursable costs incurred prior to the termination pursuant to Section 4 hereof, and for such direct labor hours and reimbursable costs as may be expended or incurred thereafter with City's approval in concluding the work terminated, it being understood that Contractor shall not be entitled to any compensation on anticipated services not performed. Except as provided in this clause, any such termination shall not alter or affect the rights or obligations of the parties under this Agreement.
12. *Ownership and Use of Documents.* Contractor agrees that all pertinent calculations, reports, data and other documents prepared for the City hereunder are the property of the City and the City shall have the right, without payment of additional compensation, to disclose, reproduce and use, and to authorize others to disclose, reproduce and use such documents for projects worked on.
13. *Performance Standard.* Services performed under this Agreement shall be in accordance with public sector administration requirements and Best Management Practices and shall comply with all applicable codes and standards.

14. *Compliance with Applicable Laws.* Contractor shall, in the performance of this Agreement, comply with all applicable federal, state and local laws, ordinances, order, rules and regulations applicable to its performance hereunder.
15. *Records and Audit.* Contractor agrees to maintain sufficient and accurate records and books of hauls and launches, including detailed hauling profiles of each vessel, complete date and time records, showing all direct labor hours expended and all costs incurred and the same shall be provided in a timely fashion to the City for its record keeping.
16. *Notices.* Official notice that either party hereto desires to give the other shall be delivered through the United States mail by certified mail, return receipt requested, addressed as below. The addresses specified may be changed by either party by giving written notice thereof to the other party.

To City:  
 Kodiak City Manager  
 Aimée Kniazowski  
 710 Mill Bay Rd, Room 219  
 Kodiak, Alaska 99615

To Contractor:  
 Willard A. Feda  
 P.O. Box 2933  
 Kodiak, Alaska 99615

17. *Venue/Applicable Law.* The venue of any legal action between the parties arising as a result of this Agreement shall be laid in the Third Judicial District of the Superior Court of the State of Alaska and this contract shall be interpreted in accordance with the laws of the State of Alaska.
18. *Attorney's Fees.* In the event either party institutes any suit or action to enforce its right hereunder, the prevailing party shall be entitled to recover from the other party its reasonable attorney's fees and costs in such suit or action and on any appeal there from.
19. *Waiver.* No failure on the part of City to enforce any covenant or provisions herein contained, nor any waiver of any right hereunder by City, unless in writing and signed by the parties sought to be bound, shall discharge or invalidate such covenants or provisions or affect the right of City to enforce the same or any other provision in the event of any subsequent breach or default.
20. *Binding Effect.* The terms, conditions and covenants contained in this Agreement shall apply to, inure to the benefit of, and bind the parties and their respective successors.
21. *Entire Agreement/Modification.* This agreement constitutes the entire Agreement between the parties with respect to the subject matter hereof, and all prior negotiations and understandings are superseded and replaced by this Agreement and shall be of no further force and effect. No modification of this Agreement shall be of any force or effect unless reduced to writing, signed by both parties and expressly made a part of this Agreement.
22. *Indemnity.* Contractor agrees to indemnify, defend ,with legal counsel approved by City of Kodiak, and hold the City of Kodiak and its administrators, officers, agents, employees, volunteers and servants harmless from and against any and all claims, demands, actions, losses, expenses, and liabilities for, or related to, loss of or damage to property or injury to or death of any person relating to or arising or resulting in any way from the performance by the Contractor or any of its Subcontractors under the Agreement, or the WORK or SERVICES provided or the condition or use thereof, regardless of any negligence of the City of Kodiak or their respective agents or employees, excepting only such loss, damage, injury or death which results solely from the negligence or willful misconduct of the City of Kodiak.

23. *Insurance.* The Contractor shall carry, at his sole expense, shall procure and maintain the following insurance:
- a. Minimum Scope of Insurance
    - (1) Commercial Marine Liability
    - (2) Commercial Automobile Liability Insurance
  - b. Minimum Limits of Insurance
 

Contractor shall maintain limits no less than:

    - (1) Commercial Marine Liability:
      - (A) \$1,000,000 combined single limit per occurrence for bodily injury and property damage claims arising from operation of the City of Kodiak 660-ton Marine Travelift. The general aggregate limit shall be \$2,000,000.
    - (2) Auto Liability:
      - (A) \$1,000,000 combined single limit per accident for bodily injury and property damage.
  - c. Other Insurance Provisions
 

The policies are to contain, or be endorsed to contain, the following provisions:

    - (1) Commercial Marine Liability and Automobile Liability
      - (A) The City of Kodiak, its Administrator, officers, officials, employees and volunteers are to be covered as additional insureds as respects: liability arising out of activities performed by or on behalf of the Contractor; products and completed operations of the Contractor, premises owned, occupied or used by the Contractor, or automobiles owned, leased, hired or borrowed by the Contractor. The coverage shall contain no special limitation on the scope of protection afforded to the City of Kodiak, its Administrator, officers, officials, employees and volunteers.
      - (B) The Contractor's insurance coverage shall be primary insurance as respects the City of Kodiak, its Administrator, officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the City of Kodiak, its Administrator, officers, officials, employees and volunteers shall be excess of the Contractor's insurance and shall not contribute to it.
      - (C) The Contractor's insurer shall agree to waive all rights of subrogation against the City, its Administrator, officers, officials, employees and volunteers for losses arising from work performed by the Contractor or any subconsultant for the City.
    - (2) Employer's Liability
 

The Contractor's insurer shall agree to waive all rights of subrogation against the City of Kodiak, its Administrator, officers, officials, employees and volunteers for losses arising from work performed by the Contractor or any subcontractor for the city of Kodiak.
    - (3) All Insurance
 

Each insurance policy required by this Agreement shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after 30 days prior written notice for nonpayment of premium or fraud on the part of the Contractor or 60 days prior written notice for any other reason by certified mail, return receipt requested, has been given to the City of Kodiak. Such notice shall be mailed by the Contractor's insurer(s) to the attention of the City of Kodiak City Manager.
  - d. Acceptability of Insurers
 

Insurance is to be placed with insurers with a Best's rating of no less than A-: VII.
  - e. Verification of Coverage
 

Contractor shall furnish the City of Kodiak with approved certificates of insurance and with certified copies of all endorsements effecting coverage required by this clause. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates are to be on forms provided by the City of Kodiak, or

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

In witness whereof, the parties hereto have executed, or caused to be executed by their duly authorized officials, this Agreement in duplicate on the respective date indicated below.

CITY OF KODIAK

OPERATOR

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

\_\_\_\_\_  
Willard A. Feda

ATTEST:

WITNESS:

\_\_\_\_\_  
Debra Marlar, City Clerk

\_\_\_\_\_  
Lon A. White, Harbormaster



**EXHIBIT A**  
**Scope of Services**  
**Kodiak Shipyard**  
**Marine Travelift Operator**

1. Operate the Marine Travelift 600C Mobile Boat Hoist, Z9368, SN 3433-0409, the Travelift, per the operation and maintenance manual as required for lifting, moving, blocking and launching vessels.
2. Be available, as scheduled by Harbormaster, and/or his designee to lift, move, block, launch and vessels. Vessels shall be transported to the wash down pad and to dry moorage as directed by the Harbormaster.
3. The Contractor shall work closely with the Harbormaster to schedule all lifts, moves and launches. No vessel shall be lifted without the owner or designee agreeing (in writing) to yard policies and the Kodiak Shipyard's best management practices. No vessel shall be launched without insuring that the vessel's shipyard fees have been paid.
4. Perform visual inspections of lift, straps and cables prior to, and after, each use per the Marine Travelift operation and maintenance manual.
5. Agree to use the highest level of safety precautions at all times while operating the Travelift.
6. Agree to use ground crew of no less than two additional City employees for every lift, launch or movement. City staff to be hired by Harbormaster or designee. Ground crew may be augmented with vessel crew members.
7. The Contractor shall train at-least one City employee (as designated by the Harbormaster), to be the back-up lift operator. Training shall be hands-on and include actual boat lifts and launches under the direct supervision of the Contractor. A record of such training shall be kept. Once trained, the back-up operator will maintain his skills by lifting and/or launching at least one boat per quarter under the Contractor's supervision and will operate the Travelift when the Contractor is on vacation, sick, or otherwise unavailable.
8. Keep the straps and cables clean and free of debris that may cause premature deterioration.
9. Check all fluid levels before use and maintain proper fuel levels and oil levels at all times.
10. Report to Harbormaster or designee any and all defects or repairs or maintenance needs on the day such needs are identified.
11. Non-routine maintenance expenses shall be approved, in advance by the Harbormaster.
12. All lifts and launches shall not exceed the recommended loads as is specified by Marine Travelift.
13. Loads must be properly distributed per the Travelift operator's manual.
14. All vessels being lifted for the first time must have a verifiable displacement provided to the operator. If displacement is unknown, and in the operators opinion may be projected to be within 15% of the limits of the machine, the operator shall require the vessel owner/operator to provide calculated displacement prior to lifting the vessel.
15. Owner/operators of all vessels to be lifted must identify the known underwater fixtures, transducers, bearing and shaft locations and any other underwater appendages that may affect the strap placement. If such cannot be specifically identified ahead of time, inspection by a diver must be required prior to lifting such vessel.

16. Contractor shall record weight and other data on each vessel lifted. A photograph or notes regarding strap locations and underwater appendages, as well as displacement reading of Travelift gauges shall be recorded. Notes shall record each vessel's load, including water, fuel, freight, etc.
17. Contractor must attend any training deemed necessary by the Harbormaster for effective shipyard and Marine Travelift operations, including safety training, operator training and environmental awareness. The Contractor may bill the City for training time at the rate specified in paragraph 5 of the contract. Travel expenses shall be paid by the operator.

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## MEMORANDUM TO COUNCIL

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**To:** Mayor Branson and City Councilmembers  
**From:** Aimée Kniaziowski, City Manager  
**Thru:** Mike Tvenge, Deputy City Manager and Mark Kozak, Public Works Director  
**Date:** August 11, 2016 *MA*

**Agenda Item: V. h. Authorization of Bid Award for Harbor and Parks and Recreation Department Vehicles**

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**SUMMARY:** Vehicle bid No. 536 consists of replacement vehicles for the Harbor and Parks and Recreation Departments. Both Harbor and Parks and Recreation are replacing existing maintenance pickups with new four-wheel-drive 1/2 ton standard cab pickups. The vehicles have been through a mechanical evaluation by the City maintenance shop and have been recommended to be replaced. Staff recommends Council authorize the vehicle bid award to Kodiak Motors Inc. for two four-wheel-drive 1/2 ton standard cab pickups.

**PREVIOUS COUNCIL ACTION:** The City Council adopted a vehicle and equipment replacement policy in 2011. These replacement vehicles were budgeted in the FY2017 budget.

**DISCUSSION:** The Public Works shop does mechanical evaluations on all City vehicles and equipment due for replacement. Each piece is evaluated using a mechanical and structural evaluation process to determine how safe the vehicle or equipment is to operate and then for significant mechanical problems requiring a major investment in repairs. Staff then weighs the estimated repair or component replacement cost against the potential additional years of service. Structural deterioration of the frames on smaller vehicles usually determines the remaining time in service, due primarily to the coastal environment. When each vehicle or piece of heavy equipment is evaluated, the staff also weighs the risk of extending the time in service. The shop evaluates the equipment and vehicles before the departments prepare their budgets for the coming fiscal year, usually by April. If a piece of equipment or vehicle is extended one year, that piece usually remains in service for eighteen months to two years before being replaced. Staff modified the bid specs to accept current-year models in an effort to save money and improve delivery times.

The vehicle replacement policy estimates replacement of a maintenance pickups at 12 years.

Parks and Recreation # 6 is a 1999 Dodge Dakota that was recommended for replacement after being evaluated by the City's mechanic. He stated it would take an excessive amount of time and money to get this running before he can evaluate the power train. This vehicle has been sitting in the City impound lot since 2013, which requires the Parks and Recreation Department to borrow other department vehicles to

maintain their level of service. The vehicle was evaluated in April 2015, and the following conditions were identified:

- 1) Rear of frame has severe rust.
- 2) Spring hangars and shackles are severely rusted.
- 3) The front clutches in the transmission burned and inoperable.
- 4) Windshield cracked.
- 5) Left hand mirror busted
- 6) Worn interior
- 7) Could not get engine running

Harbor pickup #H6 was purchased in 2006 and currently has over 68,000 miles on it. The vehicle served as a patrol truck for most of its life, and then moved to the maintenance department as mechanical issues rendered it unreliable for emergency response. Public Works mechanics recommend the vehicle be replaced due to several deteriorating conditions. The following summarizes key deficiencies noted in the inspection report:

- 1) Substantial oil leak between engine and transmission
- 2) Substantial oil leak coming from the engine
- 3) Cylinder head over temperature
- 4) Engine misfiring, and numerous error codes exist
- 5) Rear hatch/door substantial corrosion under paint.
- 6) Instrument cluster intermittently failing
- 7) Body and frame has major deterioration

The bid was advertised on June 20 and opened on July 20, 2016. We received two bids - Kodiak Motors Inc. and Alaska Sales and Service. Kodiak Motors was the lowest responsible bidder.

**ALTERNATIVES:**

- 1) Award the bid to Kodiak Motors in the amount of \$ 52,400 (\$26, 200.00 for each ½ ton 4X4 pickup).
- 2) Reject the bids and do not purchase the new vehicles. This is not recommended, since mechanical evaluations of these vehicles have identified numerous mechanical and structural issues.

**FINANCIAL IMPLICATIONS:** The funding for replacing the vehicles was approved in the FY 2017 budget. The Harbor vehicle is funded in the Boat Harbor, machinery and equipment account number 510-520-100-470-126. The Parks and Recreation vehicle is funded in the Parks and Recreation machinery and equipment account number 100.170.100.470.126. Each department will be paying estimated annual fees of \$ 2610.00 into the vehicle replacement fund based on an estimate from Finance

Department. Those costs will be taken out of the department's operating budget vehicle replacement fund.

**LEGAL:** Advertising for bids was conducted per Kodiak City Code 3.12.040 (a) (b).

**STAFF RECOMMENDATION:** Staff recommends that Council approve the award of Vehicle Bid No. 536 to Kodiak Motors Inc in the amount of \$26,200 per pickup. Funds will come from the Boat Harbor, machinery and equipment account number 510-520-100-470-126 and the Parks and Recreation machinery and equipment account number 100.170.100.470.126.

**CITY MANAGER'S COMMENTS:** Staff followed the City's vehicle replacement policy when proposing the replacement of these vehicles in the FY2016 budget. The shop did a full review of the pickups and found them to be in poor condition. I support the replacement recommendation and am pleased to see the order go to a local business. I recommend Council authorize the purchases as outlined in the memo and attachments.

**DEPUTY CITY MANAGER'S COMMENTS:** Staff followed the City's vehicle replacement policy when proposing the replacement of these vehicles in the FY17 budget. The shop did a full review of the pickups and found them to be in poor condition. I support the replacement recommendation and am pleased to see the order go to a local business. I recommend Council authorize the purchases as outlined in the memo and attachments.

**ATTACHMENTS:**

Attachment A: Kodiak Motors Bid Forms

Attachment B: Alaska Sales and Service, Inc Bid Forms

Attachment C: Harbor Pickup #6 Mechanical Evaluation

Attachment D: Parks and Recreation Pickup 374 Mechanical Evaluation

**PROPOSED MOTION:**

Move to award the bid for purchase of two new four-wheel-drive 1/2 ton standard cab pickup trucks to Kodiak Motors in the amount of \$52,400 from the following accounts: \$26,200 with funds from the Boat Harbor, machinery and equipment account and \$26,200 with funds from the Parks and Recreation machinery and equipment account.

KODIAK MOTORS INC.

### BID FORM

TO: Aimee Kniazowski, City Manager  
City of Kodiak  
710 Mill Bay Road, Room #114  
PO Box 1397  
Kodiak AK 99615

Any exceptions to the published bid specifications must be listed by item.

In compliance with your Invitation to bid for Bid No. 536 dated June 20, 2016, the undersigned hereby proposes to provide the following:

**Two (2) 2016/2017, 1/2 ton, four wheel drive, standard cab, long bed pickup trucks.**

upfitter switches not available

Class IV trailer Hitch

**Bid amount**

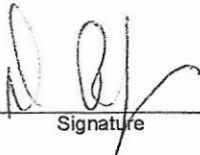
**Total** \$ 52,400.00

**(Turn in Page 5 & 6 in as part of your bid)**

**Bid price valid for** 30 **days.**

Submitted by:

Dated: 7-15-16

  
Signature

Kodiak Motors, Inc  
Business Name

President  
Title

201 Center Ave  
Address

907-486-3204  
Telephone

Kodiak, AK 99615  
City, State, Zip



AK SALES &amp; SERVICE

**BID FORM**

TO: Aimee Kniaziowski, City Manager  
City of Kodiak  
710 Mill Bay Road, Room #114  
PO Box 1397  
Kodiak AK 99615

Any exceptions to the published bid specifications must be listed by item.

In compliance with your Invitation to bid for Bid No. 536 dated June 20, 2016, the undersigned hereby proposes to provide the following:

1. Two (2) 2016/2017, ½ ton, four wheel drive, standard cab, long bed pickup trucks.

Bid amount

27,020 each  
\$  
Total 54,040

(Turn in Page 5 & 6 in as part of your bid)

Bid price valid for 180 days.

Submitted by:

Dated: July 15, 2016

[Signature]  
Signature

Alaska Sales & Service, Inc  
Business Name

Commercial Bid Specialist  
Title

1300 E 5th Avenue  
Address

907 265 7535  
Telephone

Anchorage AK 99501  
City, State, Zip

## City of Kodiak Vehicle Evaluation

- Evaluation date 3-24-16
- City vehicle ID number H#6 2006 DODGE RAM 1500
- Vehicle odometer reading 68031
- Vehicle history \_\_\_\_\_
- Vehicle test drive notes rotors and/or brake pads
- bad
- Assess engine and transmission performance Engine / transmission
- operates OK

### Under vehicle inspection

- Front brakes condition, amount remaining RF 40% LF 40%
- Rear brakes condition, amount remaining RR 30% LR 30%
- Brake hoses, lines and cables OK
- \_\_\_\_\_
- Suspension and steering components, including tie rods, drag link, ball joints, springs shackles and shocks rusting, but OK, right
- CV axle loose/bad
- Condition of frame, frame hangers and body mounts bad rust
- \_\_\_\_\_
- Transmission, transfer case and differentials small leak where tranny  
bolts to engine, drive line rusting
- Underside of engine and engine compartment front right CV joint seal  
possible leak

### Under hood inspection

- Check all fluid levels and record oil low, everything else 100%
- Check battery and charging system 19.2 V
- Inspect engine for leaks, exhaust, oil, coolant front engine seal.
- leaking badly
- Inspect power steering, hoses, belts and accessories OK
- \_\_\_\_\_
- Inspect electrical components and wiring OK
- Check cylinder power balance or compression Cylinder 3 misfire
- \_\_\_\_\_
- Check power train control module for codes stored codes: P0406, P1404, Engine  
APBS/C100A/C1014, 4011 / Central Gateway: B1B2C / P0430, P0420  
Vehicle exterior: B2215  
B1B2B
- Check for body damage—fenders, bumpers dent front bumper, rear is rusted  
dents in driver side door

- Check glass—windows, windshield OK
- Check lights – lenses and proper operation OK

### Vehicle interior

- Check interior—seats, steering wheel, pedals and panels tore seats, steering OK
- Check vehicle controls and accessories good, RPM meter, digital display it out

### Added notes:

THIS VEHICLE IS 10 YEARS OLD, HAS 68,000 mi, AND IS DUE FOR REPLACEMENT. IT HAS A MAJOR OIL LEAK DEVELOPING AND HAS NUMEROUS FAULT CODES FOR ENGINE RUNNING PROBLEMS, ANTILOCK BRAKE PROBLEMS, EMISSION PROBLEMS, AND BODY FUNCTIONS. THE BODY AND FRAME ARE SHOWING THEIR AGE. I RECOMMEND REPLACING THIS VEHICLE IN THE NEXT FISCAL YEAR

**CITY OF KODIAK  
FIVE-YEAR CAPITAL IMPROVEMENT PROGRAM  
VEHICLE / EQUIPMENT REPLACEMENT NOMINATION**

**1 of 2 pages**

Costs are estimated at (check one)

- Less than \$10,000  
 Greater than \$10,000

The Following Signatures are required:

Vehicle Maint. Supervisor Chris Dolph  
 Department Head: Lon White  
 City Manger: \_\_\_\_\_

This purchase is requested to be funded in Fiscal Year	Fiscal Year : FY 2017
Prepared by: Lon White	Date: 3/30/2016
Department: Harbor	
Nomination Name: Replace Dodge 4X4 Pickup #H6	

REQUEST NEW UNIT DESCRIPTION (ATTACH PRICE QUOTES, DESCRIPTIONS, AND PHOTOS FROM THREE VENDORS)	
Unit ID Number	H6
Year – Make - Model	2006 Dodge Ram 1500 Pickup 4X4
Engine Size – Fuel Type	5.4 L V-8 Gas
Current Mileage	69,822
Body Condition	Fair
License Plate No.	XYB834
VIN or Serial Number	1D3HU16N76J119061

**FUNCTION: WRITE A BRIEF SUMMARY OF HOW THIS UNIT HAS BEEN USED AND HOW OFTEN.**

This pickup is a 1/2 ton pickup in the maintenance vehicle fleet. It was originally purchased and used by Harbormaster Owen for years then transferred to the patrol fleet, then to the maintenance fleet as it aged and developed mechanical problems. The vehicle has been used daily for the majority of its life.

**JUSTIFICATION: WRITE A BRIEF SUMMARY OF WHY THIS UNTI IS BEING REPLACED. INCLUDE ITEMS SUCH AS HISTORY, CONDITION ASSESSMENT, COSTS, USES, PUBLIC WORKS EVALUATION REPORT, ETC.**

The frame and body are showing extensive rust areas. The dash is having electrical problems and multiple code errors are constantly being trouble shot. See attached shop evaluation and photos (pending completion by PW Supervisor). I discussed if we could delay this vehicle for another budget year with Chris. He reports it is very difficult to say. A second Harbor truck will need to be replaced next year. Moving this vehicle to next year will put a financial burden on the Harbor Enterprise Fund next year.

PW Shop Supervisor inspected the truck and recommends it be replaced. His report will follow.

**CITY OF KODIAK**  
**FIVE-YEAR CAPITAL IMPROVEMENT PROGRAM**  
**VEHICLE / EQUIPMENT REPLACEMENT NOMINATION**

2 of 2 pages

Proposed Dispositions of Replaced Unit as Determined by Vehicle Maintenance Division (check one):

To General Fleet

To Surplus Sale

REQUEST NEW UNIT DESCRIPTION (ATTACH PRICE QUOTES, DESCRIPTIONS, AND PHOTOS FROM THREE VENDORS)	
Year – Make - Model	2016 or 2017 Ford F-150 (or equivalent)
Engine Size – Fuel Type	V-6 or small V-8 , Gas
Number of Doors	2 doors
Seating Capacity	Standard Cab pickup
Specialty Items	Under coat, towing package, VHF radio and siren
Color , Police Package, Tires, Transmission, Etc.	White, Police light bar, auto transmission

REQUESTED NEW UNIT COSTS	
Basic Equipment Costs	\$27,500
Specialty Equipment Cost	\$2,500
Shipping Costs	\$
<b>Total Costs</b>	<b>\$30,000</b>

**OPERATIONAL COSTS:**

Attach a detailed spreadsheet describing the last five years' annual costs to operate this unit, including fuel consumption, maintenance materials, AND maintenance labor.

NOTE: PW inspection report pending.

## City of Kodiak Vehicle Evaluation

- Evaluation date 2-2-2015
- City vehicle ID number 374
- Vehicle odometer reading BATT DEAD, CANNOT READ
- Vehicle history PARKED AT IMPOUND LOT
- Vehicle test drive notes INOP
- \_\_\_\_\_
- Assess engine and transmission performance NA
- \_\_\_\_\_

### Under vehicle inspection

- Front brakes condition, amount remaining RF - LF -
- Rear brakes condition, amount remaining RR - LR -
- Brake hoses, lines and cables OK
- \_\_\_\_\_
- Suspension and steering components, including tie rods, drag link, ball joints, springs shackles and shocks RUSTED, OK
- \_\_\_\_\_
- Condition of frame, frame hangers and body mounts REAR VERY RUSTED
- \_\_\_\_\_
- Transmission, transfer case and differentials OK
- \_\_\_\_\_
- Underside of engine and engine compartment OK

### Under hood inspection

- Check all fluid levels and record OK
- Check battery and charging system BATT DEAD / BAD
- Inspect engine for leaks, exhaust, oil, coolant OK
- \_\_\_\_\_
- Inspect power steering, hoses, belts and accessories OK
- \_\_\_\_\_
- Inspect electrical components and wiring OK
- Check cylinder power balance or compression N/A
- \_\_\_\_\_
- Check power train control module for codes NA

### Vehicle exterior

- Check for body damage—fenders, bumpers EXTENSIVE

- Check glass—windows, windshield WINDSHIELD CRACKED, LH SIDE MIRROR
- Check lights – lenses and proper operation NA BROKEN

### Vehicle interior

- Check interior—seats, steering wheel, pedals and panels SEATS WORN
- Check vehicle controls and accessories N/A

### Added notes:

VEHICLE IN POOR CONDITION - WOULD TAKE  
EXCESSIVE AMOUNT OF TIME & MONEY TO EVEN  
GET IT RUNNING



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## MEMORANDUM TO COUNCIL

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**To:** Mayor Branson and City Councilmembers

**From:** Aimée Kniaziowski, City Manager

**Thru:** Mike Tvenge, Deputy City Manager and Glenn Melvin, City Engineer

**Date:** August 11, 2016

**Agenda Item:** V. i. **Authorization of Bid Award of Final Parking Lot Pavement for Pier III Replacement, Project No. 11-07/8024**

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**SUMMARY:** This memo recommends authorization of bid award for Pier III parking lot paving to Brechan Construction LLC for the lump sum price of \$39,880.

**PREVIOUS COUNCIL ACTION:** Council has addressed multiple change orders and contract amendments associated with the Pier III construction project for Pacific Pile and Marine, but only one Council action for work outside the scope of the main project has been brought before Council. It was authorization of additional dolphin anodes and coatings awarded at the May 12, 2016, meeting.

**DISCUSSION:** This project is outside the scope of work previously authorized by Council and performed by Pacific Pile & Marine LP (PPM). Under the recommendation of Roe Sturgulewski, Pier III Project Manager, and PN&D Project Engineers, a section of pavement adjacent to the new Pier was not paved last fall in order to allow for stabilization in the soils. The expected soil stabilization was achieved during the recent months, and the area is now ready for pavement. In order to meet this season's construction schedule, the City Engineering Department issued an invitation to bid on June 29, and opened bids on August 1, 2016. The City received one bid; Brechan Construction LLC in the amount of \$39,880. The Engineers estimate for the project is \$42,570. The bid package was reviewed by the Engineering Department and determined to be compliant with the bid documents, and we recommend awarding the project to Brechan Construction LLC.

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

- 1) Authorize the bid award for Pier III Replacement Pavement 2016 Project No. 11-07/8024 to Brechan Construction LLC, which is staff's recommendation, because it will allow Matson to fully utilize the facility as designed.
- 2) Do not award the bid. This is not recommended, because delay would operationally and financially impact Matson and could negatively impact the operational agreement with the City.

**FINANCIAL IMPLICATIONS:** At the July 14, 2016, regular Council meeting, Council adopted Resolution No. 2016-26, which appropriated \$165,000 from the Cargo Terminal Fund to the Cargo

Development Capital Project Fund to pay for additional construction and project management services needed in the Pier III Replacement Project No. 11-07/8024. Construction funds for this project will be drawn from this appropriation of funds.

**STAFF RECOMMENDATION:** Staff recommends Council authorize the bid award for Pier III Replacement Pavement 2016 Project No. 11-07/8024, to Brechan Construction LLC for the lump sum price of \$39,880 with funds coming from the Cargo Development Capital Project Fund.

**DEPUTY CITY MANAGER'S COMMENTS:** The City was wise to wait on the settlement of soils in this area to avoid expected asphalt damage by proceeding in hast. The 7,800 square foot section was temporarily replaced with D-1 type gravel material that will now be removed and saved by the Public Works Department to be reused at a later date. I recommend Council approve the remaining parking lot paving at Pier III and award to Brechan Construction LLC.

**ATTACHMENTS:**

Attachment A: Bid Tabulation

**PROPOSED MOTION:**

Move to authorize the bid award of final parking lot pavement for Pier III Replacement, Project No. 11-07/8024, with funds from the Cargo Development Capital Project Fund.

AUGUST 11, 2016  
Agenda Item V. i. Memo Page 2 of 2



**Bid Tab**

**Pier III Replacement Pavement**

**PN 11-07/8024.4**

*Bid Date: August 01, 2016*

<i>Bid Item</i>	<i>Description</i>	<i>Quantity</i>	<i>Units</i>	<i>Engineers Estimate</i>	<i>Brechan Construction LLC</i>
1	Remove approximately 2" of D-1 base, compact, and install 2.5" AC Pavement.	1	Lump Sum	\$42,570.00	\$39,880.00
				\$42,570.00	\$39,880.00
				<b>Grand Total</b>	<b>\$42,570.00</b>
					<b>\$39,880.00</b>

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## MEMORANDUM TO COUNCIL

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**To:** Mayor Branson and City Councilmembers  
**From:** Aimée Kniazowski, City Manager  
**Thru:** Mike Tvenge, Deputy City Manager and James R. Mullican Jr., Fire Chief  
**Date:** August 11, 2016 *MA*  
**Agenda Item:** V. j. Authorization of Ambulance Purchase

---

**SUMMARY:** The City Fire Department provides Emergency Medical Advance Life Support services and transport to the citizens of the City as well as those on the road system. The Fire Department supports three ALS ambulances to meet the current service requests. The Council approved sole source purchase for an ambulance in 2003 and again in 2007. Staff recommends that Council approve the sole source quote with Braun NW Inc. in Chehalis, WA for a 2017 North Star 167-1 Ambulance in the amount of \$193,093, and additional modifications and safety equipment expenditures bringing the total to \$195,000 with funding coming from the FY2017 General Fire Department Budget Line item.

**PREVIOUS COUNCIL ACTION:** The City Council approved the sole source purchasing of ambulances both in 2003 and 2007.

**DISCUSSION:** The City Fire Department has three ALS ambulances in the fleet. The service life of an ambulance per the City vehicle replacement schedule is ten years. Medic 1 purchased in 2003 is now 14 years old and continually requires significant mechanical repairs to keep it serviceable; in fact, the ambulance has failed twice with patients in the back while being transported to the hospital.

In 2013 the Fire Department was awarded a Code Blue grant that resulted in the purchase of a 2014 Braun NW Inc. ambulance. Staff is highly impressed with the quality and serviceability of this ambulance. Also, Braun NW Inc. offers a prime mover replacement program for ambulances purchased from their company. This means when this 2014 ambulance reaches its ten-year life span the company will refurbish the existing patient compartment and place it on a new model year truck body at a significant savings. This program combined with Braun NWs' relationship with Ford Motor Company, which maintains Ford's power train warranty on all new vehicles, makes Braun NW an excellent resource.

As presented during the FY2017 budget workshop this year, we have again been awarded a Code Blue Grant. In September, if state funding is approved, we intend to replace our third ambulance, also in need of replacement, through the Code Blue system. The Code Blue contractor is Braun NW Inc.

The sole source purchase keeps the maintenance need for special tools and mechanic training to a minimum. Continuity between ambulance styles also improves medical treatment of patients on emergency scenes as each ambulance is exactly the same, reducing equipment retrieval time and maximizing direct patient interaction.

**ALTERNATIVES:**

- 1) Authorize the sole source purchase of this ambulance per City Code Section 3.12.070 2(d), which is staff's recommendation.
- 2) Do not authorize this sole source purchase. This is not recommended, as the existing ambulance has exceeded its useful life and would negatively impact emergency medical response.
- 3) Do not authorize the award of the ambulance as requested, but request staff to issue a bid. This will not provide a significant savings and the result will be non standardized ambulances.

**FINANCIAL IMPLICATIONS:** The replacement of one fully funded ambulance is in the FY2017 budget in the amount of \$195,000. This budgeted amount will allow for the quoted price and additional interior modifications and safety equipment.

**LEGAL:** Kodiak City Code 3.12.070 2(d) allows for the City Manager to recommend this sole source purchase.

**STAFF RECOMMENDATION:** Staff recommends Council authorize the purchase of a 2017 North Star 167-1 Ambulance from Braun NW Inc. in the amount of \$195,000 with funds coming from the FY2017 General Fire Department Budget Line item.

**DEPUTY CITY MANAGER'S COMMENTS:** I recommend Council approve the purchase of the 2017 ambulance. The benefits of similar or identical design of emergency vehicles are rather obvious. The compartments and equipment are consistent with each vehicle and where the EMTs are trained to respond. This vehicle purchase has been included in the FY 2017 annual budget.

**ATTACHMENTS:**

- Attachment A: Braun NW Inc. quote dated 6/29/2016
- Attachment B: Public Works Shop assessment

**PROPOSED MOTION:**

Move to authorize the purchase of a 2017 North Star 167-1 Ambulance from Braun NW Inc. in the amount of \$ 195,000 with funds from the FY2017 General Fire Department Budget Line item and authorize the City Manager to execute the documents on behalf of the City.



150 North Star Drive / PO Box 1204 / Chehalis, WA 98532 / 360.748.0195 / 800.245.6303 / fax 360.748.0256

**PROPOSAL**

**JUNE 29, 2016**

**KODIAK, CITY OF, FIRE DEPARTMENT  
ATTN: JIM MULLICAN, FIRE CHIEF  
219 LOWER MILL BAY ROAD  
KODIAK, AK 99615  
[JMULLICAN@CITY.KODIAK.AK.US](mailto:JMULLICAN@CITY.KODIAK.AK.US)**

**RE: 2017 NORTH STAR 167-1 AMBULANCE**

**BRAUN NORTHWEST IS PLEASED TO OFFER THE FOLLOWING PROPOSAL:**

**ONE (1) 2017 NORTH STAR 167-1 AMBULANCE ON A 2017 FORD F450 4X4 AMBULANCE PREP CHASSIS BASED UPON ENCLOSED VEHICLE #1864-1 "AS BUILT" SPECIFICATIONS DATED 7-20-2015 AND DRAWINGS DATED 2-12-14 WITH THE FOLLOWING MODIFICATIONS:**

- **CHASSIS TO BE 2017 MODEL YEAR**
- **RE-PAINT CHASSIS VERMILLION RED IN PLACE OF RACE RED**
- **TWO (2) TRIPS FOR TWO (2) PERSONS, ORIGATION POINT KODIAK, AK TO DESTINATION POINT CHEHALIS, WA AND RETURN.**
- **VEHICLE TO BE DELIVERED TO KODIAK, AK VIA SAMSON TUG AND BARGE TO INCLUDE SHRINK WRAP.**

**TOTAL AMOUNT F.O.B., KODIAK, AK..... \$193,093.00**

Sales tax not included

**F.O.B.: KODIAK, ALASKA**

**DELIVERY: APPROXIMATELY TWO HUNDRED EIGHTY (280) DAYS ARO.**

**TERMS: NINETY PERCENT (90%) PAYMENT DUE UPON RECEIPT OF VEHICLE. BALANCE DUE IN THIRTY (30) DAYS.**

*Braun Northwest, Inc. is an Alaska business (#706823).*

*(Note: This bid is contingent on use of customer's Government Ford Fleet Identification Number.)*

**Respectfully Submitted by  
BRAUN NORTHWEST, INC.**

**We Agree to Accept the Above Proposal  
KODIAK, CITY OF, FIRE DEPARTMENT**

  
\_\_\_\_\_  
**Tami McCallum**  
Vice President Sales

\_\_\_\_\_  
**Signature** **Date**

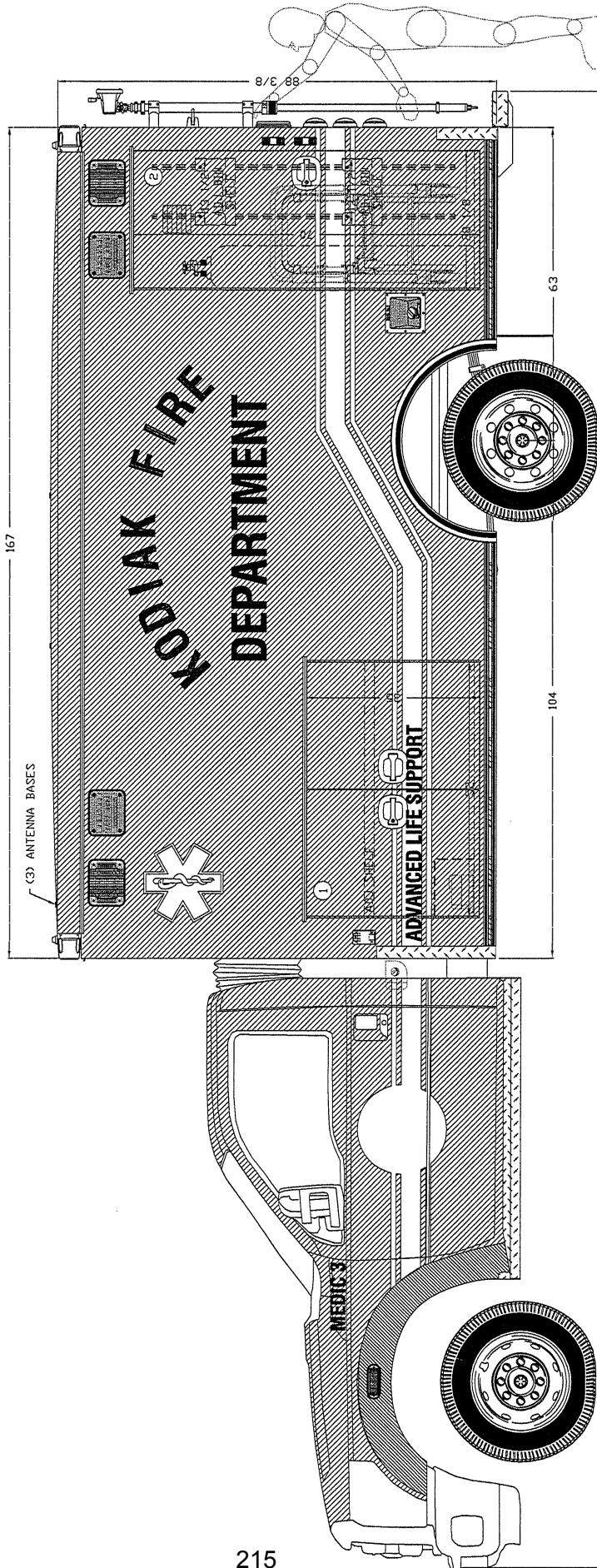
**Date:** 

\_\_\_\_\_  
**Printed Name** **Title**



TM/sel  
Enclosures: Specifications, drawings





Braun Northwest, Inc.

Department	SALES	Rev
Dwg. Name	18641	
Client	S.R.E.M.S.C. KODIAK	
Date	02/12/2014	Drawing By
		J.G.M.

TITLE: EXTERIOR S/S VIEW

## City of Kodiak Vehicle Evaluation

- Evaluation date 3-16-16
- City vehicle ID number 1FDXK47P93EB37912 - M-1
- Vehicle odometer reading 022721.3
- Vehicle history \_\_\_\_\_
- Vehicle test drive notes NORMAL
- \_\_\_\_\_
- Assess engine and transmission performance NORMAL
- \_\_\_\_\_

### Under vehicle inspection

- Front brakes condition, amount remaining RF 90% LF 90%
- Rear brakes condition, amount remaining RR 70% LR 70%
- Brake hoses, lines and cables GOOD
- \_\_\_\_\_
- Suspension and steering components, including tie rods, drag link, ball joints, springs shackles and shocks GOOD, BALL JOINTS NEED GREASED AS WELL AS TIE ROD ENDS.
- \_\_\_\_\_
- Condition of frame, frame hangers and body mounts GOOD
- \_\_\_\_\_
- Transmission, transfer case and differentials GOOD
- \_\_\_\_\_
- Underside of engine and engine compartment GOOD

### Under hood inspection

- Check all fluid levels and record GOOD, EXCEPT FOR ENGINE COOLANT
- Check battery and charging system GOOD
- Inspect engine for leaks, exhaust, oil, coolant ENGINE OIL NEAR CYL PAV TOWARDS THE REAR COOLANT RESERVOIR IS LOW
- Inspect power steering, hoses, belts and accessories P/S BU LEAKING, HOSES AND BELTS ARE GOOD
- Inspect electrical components and wiring GOOD
- Check cylinder power balance or compression GOOD
- \_\_\_\_\_
- Check power train control module for codes NOT ANY CODES AT THIS TIME

### Vehicle exterior

- Check for body damage—fenders, bumpers GOOD, JUST MINOR PAINT CHIPS AND PAINT BUBBLES ABOVE BOTH LEFT AND RIGHT, REAR FENDER FLARES

- o Check glass—windows, windshield GOOD
- o Check lights – lenses and proper operation GOOD

### Vehicle interior

- o Check interior—seats, steering wheel, pedals and panels GOOD
- o Check vehicle controls and accessories GOOD

### Added notes:

- P/S BOX HAD FLUID ON IT AND THE LINES,  
COULD BE A POSSIBLE SLOW LEAK.

THIS AMBULANCE IS 10 YEARS OLD AND HAS 40,000 MILES. IT HAS A CONTINUOUS HISTORY OF MECHANICAL FAILURES, SUSPENSION ISSUES, AND RUNNING PROBLEMS. CURRENTLY THE POWER STEERING SYSTEM, ENGINE, AND RADIATOR ARE DEVELOPING LEAKS AND THERE ARE TRACES OF OIL IN THE COOLING SYSTEM. MI HAS DIED ON THE ROAD A FEW TIMES AND RELIABILITY IS AN ISSUE. THIS VEHICLE SHOULD BE CONSIDERED FOR REPLACEMENT IN THE NEXT FISCAL YEAR.

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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, Glenn Melvin PE, City Engineer and Corey  
JWA Gronn, Park and Recreation Director  
**Date:** August 11, 2016

**Agenda Item:** V. k. Authorization of Purchase of Skate Ramps

---

**SUMMARY:** The final phase of the 2012 Baranof Park Improvement Project included replacement of skate park ramps. The skate park project is being constructed in phases. Phase I was completed in 2015 and Phase II is scheduled for 2016/2017. In preparation for Phase II, a Sole Source Request for Proposal (RFP) based on Kodiak City Code Section 3.12.070 "Exceptions to bidding requirements" was issued to American Ramp Company (ARC). A quote of \$116,427.96 for Phase II skate ramps was received from ARC by email on June 16, 2016. Staff recommends Council approve the purchase of Phase II skate ramps from American Ramp Company in the amount of \$116,427.96.

**PREVIOUS COUNCIL ACTION:** Council's actions to date have been to approve contracts and associated change orders for the design and construction of the track, two fields, and the bleachers. The scope of the overall Baranof Improvement Project has been defined by state grants and approved by Council following discussions with the Parks and Recreation Advisory Board as follows:

- February 26, 2013, the Parks and Recreation Advisory Board made a presentation to Council on Baranof Park project priorities, including their top priority to install turf in the baseball outfield area. Council asked the board to revisit the list with more updated cost estimates and to make an updated recommendation/presentation to Council.
- June 11, 2013, the Parks and Recreation Advisory Board presented their recommendations on the Baranof Park project priorities based on updated cost estimates. The Parks and Recreation Advisory Board's main priority remained the installation of synthetic turf in the baseball outfield in the 2013 construction season followed by other project components such as bleachers, cameras, and skate park improvements as funding allowed.
- August 8, 2013, Council authorized the purchase of Baranof Track and Field Bleachers, Project No. 9001/12-05
- November 13, 2014, Council authorized the Procurement of Baranof Park Skate Ramps, Project No. 9015/15-04

**DISCUSSION:** The final phase of the Baranof Park Improvement Project included several elements to be constructed including a field turf baseball outfield, security lighting and cameras, skate park ramps, improved lighting, and tennis court repainting.

American Ramp Company and their design team helped the City Parks Department and Parks and Recreation Advisory board design a phased approach to replacing the old wooden ramps at the skate park.

Phase I of the skate park was purchased November 13, 2014, from American Ramp Company and installed March 2014. The ramps selected in Phase I are a mobile engineered ramp system that includes a 20-year warranty. The design for Phase II includes connecting to the existing Phase I ramps. If the City were to connect other company's ramps to our current ramps, this would result in safety issues as well as voided warranty from our current supplier ARC. Sole sourcing is allowed per Kodiak City Code Section 3.12.070 (A and D) for contracts for professional services, and contracts for supplies, materials, equipment, or services for which the City Manager determines in writing that there is only one source. As done in Phase I, Phase II ramps will be assembled using city staff assisted by an ARC representative to oversee and approve the work. This method worked well on Phase I, and staff recommends that the City purchase Phase II ramp system from American Ramp Company.

ARC has provided price of \$116,427.96 for Phase II. The Skate Park improvement Project No. 9015 currently has \$100,000 in the budget for Phase II. The Parks and Recreation Capital Improvement account has \$115,000 of unassigned funds. To fully fund the costs of Phase II, \$20,000 will be assigned to the Skate Park Capital Improvement Project No. 9015/15-04 to cover the remaining \$16,427.96 project proposal and City Engineering Department and administration expenses on the project.

**STAFF RECOMMENDATION:** The Engineering Department has reviewed the proposal and found the equipment to be in order, and staff recommends Council approve the purchase of Phase II Skate Park equipment from American Ramp Company in the amount of \$116,427.96

**ALTERNATIVES:**

- 1) Authorize the purchase of Phase II Skate Ramps from ARC, which is recommended by staff, because it will properly connect to existing ramp system, maintain warranty, and will continue to provide a vital component to a very important community asset.
- 2) Do not authorize the purchase of the Phase II Skate Park Ramps, which is not recommended, because the existing ramps are nearing the end of their useful life and will need to be taken out of service if not replaced.

**FINANCIAL IMPLICATIONS:** The FY2017 adopted budget for the Skate Park includes additions of \$74,000 to bring the total Skate Park Improvements project to \$200,000. Authorization of this proposal would increase the total project to \$220,000. The additional \$20,000 is currently unassigned to capital projects within the Parks Improvement Fund and will be assigned to the Skate Park Improvement Capital Project No. 9015/15-04.

**LEGAL:** N/A

**STAFF RECOMMENDATION:** Staff recommends Council authorize the purchase of Skate Ramp

as identified in (Attachment A) from American Ramp Company in the amount of \$116,427.96 with funds coming from Parks and Recreation Improvement Fund, Skate Park Improvements, Project No. 15-4/9015.

**DEPUTY CITY MANAGER'S COMMENTS:** I support staff's recommendation to purchase this additional equipment for the skate park. If we are to add components to the existing ramps we need to continue with the same manufacturer, thereby maintaining our warranty and reduce liability.

**ATTACHMENTS:**



Attachment A: ARC Skate Park Ramps Price Quote

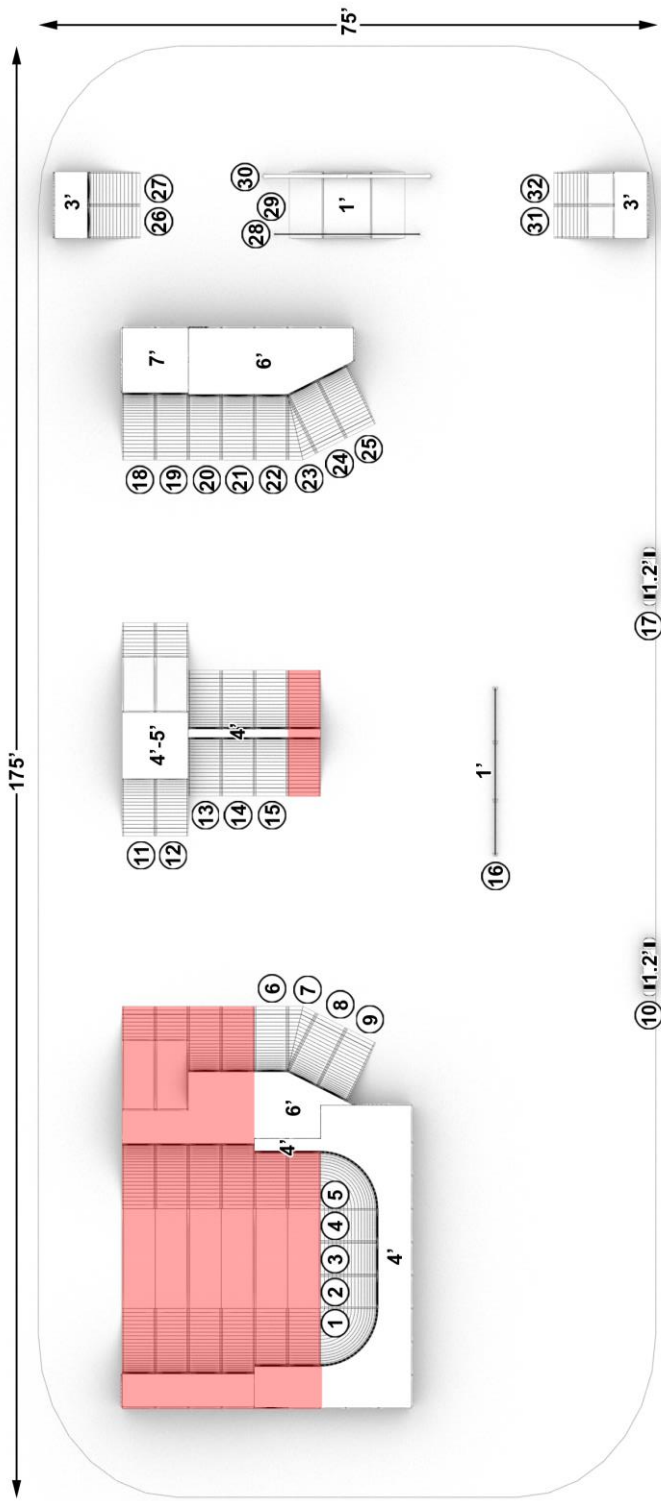
Attachment B: ARC Skate Park Ramps Photo

**PROPOSED MOTION:**

Move to authorize purchase of Phase II skate park equipment from American Ramp Company in amount of \$116,427.96 with funds coming from Parks and Recreation Improvement Fund, Skate Park Improvements, Project No. 15-4/9015.

EXHIBIT A

 WWW.AMERICANRAMPCOMPANY.COM	
601 McKinley Joplin, MO 64801 Tel: (417) 206-6816 Toll Free: (800) 949-2024 Fax: (417) 206-6888 <a href="mailto:sales@americanrampcompany.com">sales@americanrampcompany.com</a>	
<b>DRAWN BY</b>	<b>Chuck Dodge</b>
<b>DATE</b>	<b>6/16/16</b>
<b>REP. AGENCY</b>	
<b>American Ramp Company</b>	
<b>REP. NAME</b>	<b>Josh Willis</b>
<b>REP. PHONE</b>	<b>(800) 949-2024</b>
	
<b>CUSTOMER APPROVAL</b>	<b>DATE</b>
<b>PARK ENCLOSED?</b>	<b>Yes</b>
<b>PRO SERIES</b>	<b>✓</b>
<b>X SERIES</b>	<b>-</b>
<b>STEALTH SERIES</b>	<b>-</b>
<b>STEALTH CLASSIC SERIES</b>	<b>-</b>
<b>PROJECT NAME</b>	
<b>Baranof Park Skate Park</b>	
<b>DESIGN NO.</b>	<b>6233</b>



\*Note – Existing equipment is highlighted in red.

[CLICK HERE TO VIEW DESIGN RENDERINGS](#)

*This page is the creative property of American Ramp Company. It cannot be copied or redistributed.*

601 McKinley  
 Joplin, MO 64801  
 Toll-free 877-RAMP-778  
 Local 417-206-6816  
 Fax 417-206-6888  
[sales@americanrampcompany.com](mailto:sales@americanrampcompany.com)



Quote #	Design #	FOB
04011_CD	6233	Kodiak, AK

Item	Obstacle	Height	Width	Length	Pro Series
1	Bowled Corner 90 Degree	4.0'	11.0'	11.0'	
2	Quarter Pipe	4.0'	4.0'	11.0'	
3	Quarter Pipe	4.0'	4.0'	11.0'	
4	Quarter Pipe	4.0'	4.0'	11.0'	
5	Bowled Corner 90 Degree	4.0'	11.0'	11.0'	
6	Quarter Pipe	6.0'	4.0'	17.5'	
7	Pyramid Corner (Radius) 26 Degree	6.0'	3.5'	7.9'	
8	Quarter Pipe	6.0'	4.0'	17.5'	
9	Quarter Pipe	6.0'	4.0'	12.0'	
10	Skateboard Bench (Concrete)	1.2'	1.5'	7.0'	
11	Jump Box	5.0'	4.0'	26.0'	
12	Jump Box	5.0'	4.0'	26.0'	
13	Street Spine	4.0'	4.0'	15.0'	
14	Street Spine	4.0'	4.0'	15.0'	
15	Street Spine	4.0'	4.0'	15.0'	
16	Grind Rail (Round)	1.0'	2"	20.0'	
17	Skateboard Bench (Concrete)	1.2'	1.5'	7.0'	
18	Quarter Pipe	7.0'	4.0'	16.0'	
19	Quarter Pipe	7.0'	4.0'	16.0'	
20	Quarter Pipe	6.0'	4.0'	16.0'	
21	Quarter Pipe	6.0'	4.0'	16.0'	
22	Quarter Pipe	6.0'	4.0'	16.0'	
23	Pyramid Corner (Radius) 26 Degree	6.0'	3.5'	7.9'	
24	Quarter Pipe	6.0'	4.0'	16.0'	
25	Quarter Pipe	6.0'	4.0'	14.0'	
26	Quarter Pipe	3.0'	4.0'	10.0'	
27	Quarter Pipe	3.0'	4.0'	10.0'	
28	Grind Rail, Kinked (Round)	1.0'	2"	18.0'	
29	Wedge, Flat, Wedge	1.0'	8.0'	14.0'	
30	Grind Ledge	2.0'	0.5'	20.0'	
31	Bank Ramp	3.0'	4.0'	11.0'	
32	Bank Ramp	3.0'	4.0'	11.0'	

Subtotal	\$141,320.30
Framework Enclosures	\$14,132.03
Freight	FREE
Supervised Installation	\$7,066.01
NJPA Discount	-\$11,376.28
Made In America Discount	-\$34,714.10

**TOTAL** **\$116,427.96**

Estimated Monthly Payment, 5 Year Term \$2,340.20

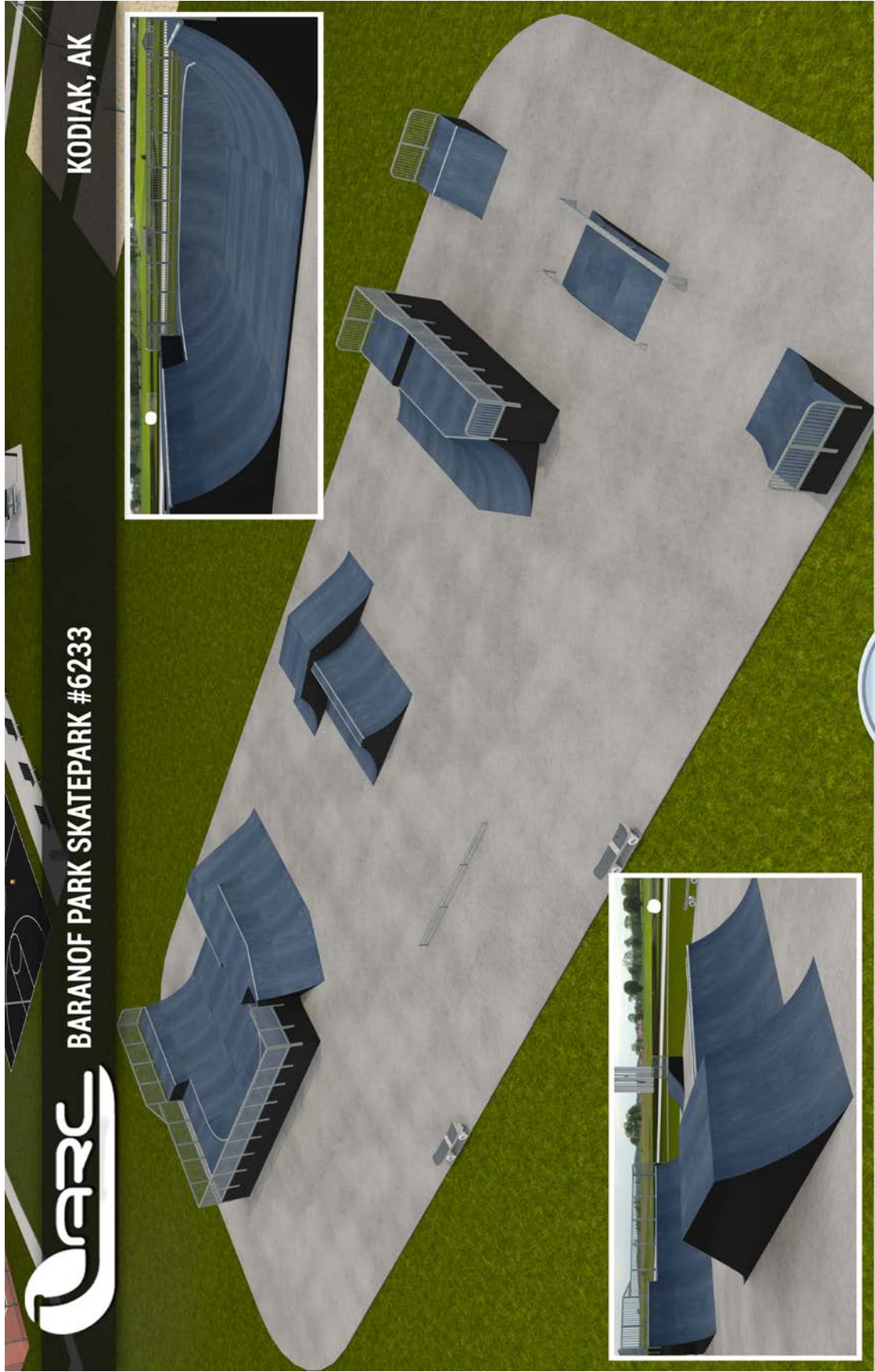


**Notes:**

- Framework Enclosures Optional
- Estimated Monthly Payment is based on a Tax-Exempt Municipal Lease. Final rates are subject to credit review and/or market changes in the index rate. For more options/information please contact our Finance Partner: Chris Canavati with NCL at 866-763-7600 or [chris@lscfinancial.com](mailto:chris@lscfinancial.com)
- If your project is subject to prevailing wage, bonding requirements, or sales tax, call for revised quote.



**Purchase through our competitively bid government NJPA contract.  
WE LOOK FORWARD TO BUILDING YOU A GREAT SKATE PARK!**



BARANOF PARK SKATEPARK #6233

KODIAK, AK

20 YEAR WARRANTY

FASTENER FREE RIDING SURFACE



MAXGRIP™ POLYESTER POWDERCOAT 3/16" STEEL RIDING SURFACE

WWW.AMERICANRAMPCOMPANY.COM



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## MEMORANDUM TO COUNCIL

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**To:** Mayor Branson and City Councilmembers  
**From:** Aimée Kniaziowski, City Manager  
**Thru:** Mike Tvenge, Deputy City Manager, Mark Kozak, Public Works Director and  
Corey Gromm, Parks and Recreation Director  
**Date:** August 11, 2016

**Agenda Item: V. I. Authorization of Bid Award for Bobcat Utility Work Machine for the Parks and Recreation Department**

---

**SUMMARY:** Bid No. 537 consists of a replacement Utility Work Machine for the Parks and Recreation Department. Parks and Recreation is replacing an existing Toolcat with a new four-wheel-drive Bobcat Toolcat 5600 G-Series. The Toolcat has been through a mechanical evaluation by the City maintenance shop and has been recommended to be replaced. Staff recommends Council authorize the bid award to Craig Taylor Equipment Company-Soldotna as the lowest responsible bidder as defined in City Code 3.12.060.

**PREVIOUS COUNCIL ACTION:** The City Council adopted a vehicle and equipment replacement policy in 2011. This equipment replacement is budgeted in the FY2017 budget.

**DISCUSSION:** The Public Works shop does mechanical evaluations on all City vehicles and equipment due for replacement. Each piece is evaluated using a mechanical and structural evaluation process to determine how safe the vehicle or equipment is to operate and then for significant mechanical problems requiring a major investment in repairs. Staff then weighs the estimated repair or component replacement cost against the potential additional years of service. Structural deterioration of the frames on smaller vehicles usually determines the remaining time in service, due primarily to the coastal environment. When each vehicle or piece of heavy equipment is evaluated, the staff also weighs the risk of extending the time in service. The shop evaluates the equipment and vehicles in April before the departments prepare their budgets for the coming fiscal year. If a piece of equipment or vehicle is extended one year, that piece usually remains in service for eighteen months to two years before being replaced. Staff modified the bid specs to accept current year models in an effort to save money and improve delivery times.

The Toolcat was evaluated on March 18, 2016, by the City Mechanic who recommended replacement. The current Toolcat spends a fair amount of time in the City maintenance shop undergoing maintenance on the various issues.

The evaluation of the Toolcat identified the following conditions:

- 1) Floor boards, frame, and bed have severe rust.
- 2) Holes in areas of the body and floor board
- 3) Multiple hydraulic fluid leaks
- 4) Engine leaks oil
- 5) Broken exhaust manifold
- 6) Needs new tires

**ALTERNATIVES:**

- 1) Award the bid to the lowest responsible bidder in the amount of \$55,500 for the Bobcat Utility Work Machine for the Parks and Recreation Department, which is staff's recommendation.
- 2) Reject the bid and do not purchase the new Toolcat. This is not recommended since mechanical evaluations of this piece of equipment have identified numerous mechanical and structural issues and to delay replacement could put employees or the public safety at risk.

**FINANCIAL IMPLICATIONS:** The funding for replacing the Toolcat was approved in the FY2017 Parks and Recreation budget.

**STAFF RECOMMENDATION:** Staff recommends that Council approve the award of Bid No. 537 to Craig Taylor Equipment Company in the amount of \$55,500 with funds coming from Parks and Recreation-administration machinery and equipment budget.

**DEPUTY CITY MANAGER'S COMMENTS:**I support the recommendation to replace the existing Toolcat Utility Work Machine. As mentioned, the replacement cost was included in the approved FY17 budget. The Department has several utility attachments that will shift easily from the current Toolcat. This purchase will enhance the productivity of our Parks and Recreation maintenance.

**ATTACHMENTS:**

Attachment A: Bid Forms

Attachment B: Parks and Recreation Bobcat Utility Work Machine Mechanical Evaluation

**PROPOSED MOTION:**

Move to award Bid No. 537 for the purchase of a Bobcat Utility Work Machine in the amount of \$55,500 to Craig Taylor Equipment Company with funds coming from the Parks and Recreation-administration machinery and equipment budget.



## Product Quotation

Quotation Number: 24525D024540

Date: 2016-07-22 14:36:08

Ship to	Bobcat Dealer	Bill To
City of Kodiak, Parks & Rec Attn: Corey Gronn 1222 Kitchenoff Street Kodiak, AK 99615 Phone: (907) 486-8670	Craig Taylor Equipment Co Soldotna AK 44170 KALIFONSKY BEACH ROAD SOLDOTNA AK 99669  ----- Contact: Mike Coverstone Phone: 907-262-5977 Fax: 907 262 9516 Cellular: 907 598 4440 E Mail: coverstone@craigtaylorequipment.com	City of Kodiak, Parks & Rec Attn: Corey Gronn 1222 Kitchenoff Street Kodiak, AK 99615 Phone: (907) 486-8670

Description	Part No	Qty	Price Ea.	Total
<b>Toolcat 5600 G-Series</b>	M1221	1	\$50,221.00	\$50,221.00
Adjustable Vinyl Seats	Hydraulic Dump Box			
All-Wheel Steer	Instrumentation:			
Automatically Activated Glow Plugs	Hourmeter, Job Hours, Speedometer,			
Auxiliary Hydraulics	Tachometer, Fuel Guage, Engine			
Variable Flow with dual direction detent	Temperature Gauge, and Warning Lights			
Beverage Holders	Joystick, Manually Controlled with Lift Arm Float			
Bob-Tach	Lift Arm Support			
Boom Float	Parking Brake, automatic			
Cargo Box Support	Power Steering with Tilt Steering Wheel			
Cruise Control	Radiator Screen			
Deluxe Operator Canopy includes:	Rear Reciever Hitch			
Front Window, Rear Window ,	Seat Belts, Shoulder Harness			
Front Wipers, and Electrical Power Port	Spark Arrestor Muffler			
Lower Engine Guard	Suspension, 4-wheel independent			
Limited Slip Transaxle	Tires: 27 x 10.5-15 (8 ply), Lug Tread			
Engine and Hydraulic Monitor with Shutdown	Toolcat Interlock Control System (TICS)			
Front Work Lights	Two-Speed Transmission			
Full-time Four-Wheel Drive	Warranty: 1 Year, Unlimited Hours			
Horsepower Management				
Roll Over Protective Structure (ROPS) . Meets Requirements of SAE-J1040 & ISO 3471				
Falling Object Protective Structure (FOPS) . Meets Requirements of SAE-J1043 & ISO3449, Level I				
Dome Light				
Deluxe Road Package	M1221-P01-C01	1	\$2,211.00	\$2,211.00
Backup Alarm	Side Mirrors			
Turn Signals	Horn			
Flashers	Lower Engine Guard			
Tail Lights	Rear Work Lights			
Brake Lights	Headlights			
Rear View Mirror				
Cab Enclosure with Heater & Air Conditioning	M1221-R02-C03	1	\$4,632.00	\$4,632.00
High Flow Package	M1221-R03-C02	1	\$1,447.00	\$1,447.00
29 X 12.5 Turf Tires	M1221-R05-C05	1	\$655.00	\$655.00
Heavy Duty Battery	M1221-R07-C02	1	\$81.00	\$81.00
Attachment Control	M1221-R08-C02	1	\$190.00	\$190.00
Power Bob-Tach	M1221-R12-C02	1	\$999.00	\$999.00

Engine Block Heater	M1221-A01-C02	1	\$108.00	\$108.00
Rotating Beacon	6815258	1	\$158.00	\$158.00
68" General Purpose Bucket	7114586	1	\$695.00	\$695.00
--- Bolt-On Cutting Edge, 68"	7104508	1	\$166.00	\$166.00
Total of Items Quoted			<b>\$61,563.00</b>	
Dealer P.D.I.			<b>\$800.00</b>	
Freight Charges			<b>\$5,200.00</b>	
Dealer Assembly Charges			<b>\$250.00</b>	
Discount Valued Customer			<b>(\$12,313.00)</b>	
Quote Total - US dollars			<b>\$55,500.00</b>	

**Notes:**

One service and one parts manual included.

All prices subject to change without prior notice or obligation. This price quote supersedes all preceding price quotes. Customer must exercise his purchase option within 30 days from quote date.

**Customer Acceptance:**

Purchase Order: \_\_\_\_\_

**Authorized Signature:**

**Print:** \_\_\_\_\_ **Sign:** \_\_\_\_\_ **Date:** \_\_\_\_\_

## BID FORM

TO: Aimee Kniazowski, City Manager  
City of Kodiak  
710 Mill Bay Road, Room #114  
PO Box 1397  
Kodiak AK 99615

Any exceptions to the published bid specifications must be listed by item.

In compliance with your Invitation to bid for Bid No. 537 dated June 28, 2016, the undersigned hereby proposes to provide the following:

1. One (1) 2016/2017 Bobcat Toolcat utility work machine.

**Bid amount**

55,500.00

**Total** 55,500.00


**(Turn in Page 9 & 10 in as part of your bid)**



Bid price valid for 60 days.

Submitted by:

Dated: 7-22-16

  
Signature

Craig Taylor Equipment  
Business Name

VP / Branch Manager  
Title

44170 Kalifornsky Beach Rd  
Address

907-262-5977  
Telephone

Soldotna AK 99669  
City, State, Zip

**LEGAL AD:**

**Bid No. 537  
FY 2017**

**Addendum No. 1**

The City of Kodiak issued Bid No. 537 on June 28, 2016. Addendum No. 1 changes the specification for the following:

- 1) Remove Page 6 in its entirety and replace with a revised page 6

There are no changes to the Bid time, date and location

Please see the City Web Site at [www.city.kodiak.ak.us](http://www.city.kodiak.ak.us) or Contact Victoria Ellis at (907)486-8656 or [vellis@city.kodiak.ak.us](mailto:vellis@city.kodiak.ak.us) for the new bid form.

## City of Kodiak Equipment Evaluation

- Evaluation Date 3-18-16
- City vehicle ID number PR ~~130~~ Bobcat
- Equipment hour meter reading and mileage 3805 hrs
- Equipment history Parks and Rec
- Equipment test drive notes FAULT CODES 50-13 50-14 50-15
- 
- Assess engine and transmission performance operates OK
- 

### Under equipment inspection

- Front end, draw bar, mold board and circle turn (inspect for cracks and multiple repair spots) NA
- Rear tandem and differential NA
- Brake hoses, lines and cables OK
- 
- Suspension and steering components, including tie rods, drag link, ball joints, springs shackles steering ram leaks, suspension OK
- 
- Condition of frame, frame hangers and body mounts Rusting through floor boards, rusting frame pad
- Transmission fluid level, color, engagement hydraulic level - OK
- 
- Underside of engine and engine compartment oil, hydraulic leaks
- Check hydraulic cylinders/ rams (check ends for excessive wear, check to see if rams are bent, leaking) rear hydraulic rams worn, right leaks,

### Under hood inspection

- Check all fluid levels and record 100%
- Check battery and charging system 14.16 V
- Inspect engine for leaks, exhaust, oil, coolant Exhaust manifold leak
- oil leak, hydraulic oil leak
- Inspect hoses, belts and accessories
- loose hose on hydraulic block
- Inspect electrical components and wiring wiring OK
- Check cylinder power balance or compression
- 
- Check for abnormal engine, clutch noises engine leaks oil, manifold leak
- Inspect hydraulic pumps and drive hydraulic pumps leaking

### Equipment exterior

- Check for body damage/ rust rusting on frame, floor boards, doors
- Check glass—windows, windshield OK
- Check lights and strobes for proper operation good  
Rear work light Broken

### Equipment interior

- Check interior—seats, steering wheel, pedals and panels seats worn SAFETY SWITCH Broken
- Check equipment comfort controls and accessories (heater, wipers and fans) \_\_\_\_\_
- OK
- Use all controls to check function working condition
- \_\_\_\_\_

### Added notes:

THIS VEHICLE IS 9 1/2 YEARS OLD, HAS 3800 HRS, AND IS IN OVERALL POOR CONDITION. BODY SUPPORTS FLOOR BOARDS, FRAME, AND BED ARE RUSTING THROUGH, WITH SOME HOLES PRESENT AND PARTS RUSTED OFF. THERE ARE FLUID LEAKS IN MANY AREAS AND THE EXHAUST MANIFOLD IS RUSTED AND LEAKING CAUSING IRRITATION TO THE OPERATOR. IT HAS SPEED SENSOR ISSUES THAT WOULD REQUIRE A DRIVE AXLE REBUILD, NEEDS NEW TIRES. IT IS FREQUENTLY IN THE SHOP AND REPAIRS TO THIS TYPE OF VEHICLE CAN BE VERY EXPENSIVE.

TO AVOID EXCESSIVE REPAIR & MAINTENANCE COSTS AND BECAUSE OF THE VERSATILITY THIS VEHICLE PROVIDES TO PARKS & REC, I RECOMMEND REPLACING IN THE NEXT FISCAL YEAR.

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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:** August 11, 2016

**Agenda Item:** V. m. Authorization to Terminate the Building Inspection Program MOA

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**SUMMARY:** On April 15, 1988, the Kodiak Island Borough and the City of Kodiak established a single program for inspection of buildings within the jurisdiction of both governments. This agreement was modified in May of 1997 and stands as the MOA we work from today. The Borough has breached the agreement objective to ensure a consistent application of building regulations in the City of Kodiak and the Kodiak Island Borough. This Agreement may be terminated by either party upon ninety (90) days advance written notice, and that is Staff's recommendation to Council.

**PREVIOUS COUNCIL ACTION:**

- February 9, 2016, staff briefed Council on Borough Ordinance No. FY2016-12, eliminating the engineering requirement for certain residential construction.
- June 16, 2016, a memo to Council from City Building Official Doug Mathers explaining the effect of the Borough decision to roll back the 2012 International Residential Code (IRC) to the 1997 Uniform Building Code (UBC).
- June 21, 2016, staff briefed Council on proposed updated building codes.
- City Council has had presentations from the Joint Building Code Review Committee (JBCRC), City Building Official and staff about this proposed building code change, which has now been adopted.

**BACKGROUND:** In June 2016 the Kodiak Island Borough adopted a building code change for one and two family dwellings and residential accessory buildings to comply with the 1997 Uniform Building Code. This is a change from the previous 2012 code requirement. The high cost of engineering was cited as a necessary need for this change. The City and Borough operated under a May 1997 Memorandum of Agreement to provide for building inspections, and this code change by the Borough has raised questions about the application of the Agreement. We would now be enforcing the recent Borough Ordinance FY2016-12 (UBC 1997) outside the City limits for one and two family dwellings. This conflicts with the enforcement of the IRC 2012 within the City.

**DISCUSSION:** The City Building Department and Fire Department are currently upholding the City's responsibility as spelled out in the Joint MOA. However, they express concerns regarding the effect this has on the City liability insurance coverage, required in the MOA. Does enforcement of an outdated

building code affect the coverage provided by our insurance carrier? That can only be determined by the actual claim; the City's broker feels this may be viewed as a fundamental increase in exposure and either exclude the claim or increase the City premium. Per our agreement with the State, we are required to comply with the minimum acceptable standard, and that is the 2009 IFC, regardless of the Borough building code adoption. The City is the lead agency for fire inspections on the Kodiak road system, meaning we answer to the State not the Borough.

The City Building Department has spoken and corresponded numerous times with the Borough staff and Assembly in opposition to this regression in building code change. We do not want to inspect two different residential codes – 2012 IRC within the City, while using the 1997 UBC for the Borough residents. The city has expressed concern for the residents of Borough. The MOA has been breached and can only be cured by adopting, inspecting, and enforcing similar building codes. For these reasons the City Fire and Building Department recommend terminating the MOA.

**ALTERNATIVES:**

- 1) Council may use Section 9: This agreement may be terminated by either party upon ninety (90) days advance written notice to the other party.
- 2) Council may increase the notification and terminate the MOA beyond 90 days.
- 3) Council may negotiate a new agreement with the Borough.

Terminating the agreement in 90 days will limit the risks identified above and perhaps result in a new agreement or discontinue the service to the Borough entirely.

**FINANCIAL IMPLICATIONS:** The City Building Department office is supplied by the Borough at no cost to the City. The Borough shares in the operational costs based on the value of the property and the expenses associated with implementation of the inspections. The Borough paid the City \$109,000 in FY2015 and \$109,000 in the first three quarters of FY2016 to date.

Providing building department services strictly to the City would theoretically reduce the work load of the Department.

**LEGAL:** Legal counsel has reviewed the Memorandum of Agreement and determined City Council may terminate by motion.

**STAFF RECOMMENDATION:** Staff recommends termination of the Agreement with regret. The residents of the Borough will need to take additional steps and costs to continue inspections and permitting, as currently, there appears to be no one on the Island qualified to do inspections required by the State and lending institutions. The Staff does recommend termination, as the Borough Building Code for one and two family dwellings and the MOA do not align as written.

**DEPUTY CITY MANAGER'S COMMENTS:** I support staffs recommendation to terminate the MOA under the conditions set forth in Section 9. The importance of updated building codes cannot be overlooked. These code changes are implemented to provide for the health and safety of the occupants. That is why the City has progressively updated its code regulations, and by doing so, the City continues to align with the State and lending institutions regulations and requirements. Alaska Housing Finance Corporation and the United States Department of Agriculture have adopted the 2012 IRC, matching the City of Kodiak. Rolling back building codes to 1997 does not follow the pattern of increased life safety and health. For these reasons, I also recommend Council terminate the Memorandum of Agreement in hope a future agreement can be re-written to reflect current building standards used across the nation.

**ATTACHMENTS:**

A: Memorandum of Agreement Between the Kodiak Island Borough and the City of Kodiak

**PROPOSED MOTION:**

Move to terminate the Building Inspection Program Memorandum of Agreement between the Kodiak Island Borough and City of Kodiak dated May 16, 1997.

August 11, 2016  
Agenda Item V. m. Memo Page 3 of 3



**MEMORANDUM OF AGREEMENT**  
**between the**  
**KODIAK ISLAND BOROUGH and the CITY OF KODIAK**

**BUILDING INSPECTION PROGRAM**

On April 15, 1988, the Kodiak Island Borough and the City of Kodiak established a single program for the inspection of buildings within the jurisdiction of both governments. In the past there has been one building inspector/official for each local government. This memorandum of agreement (MOA) reestablishes the parameters of the single building inspection program that serves the residents of both jurisdictions, and replaces the original Building Inspection MOA of 1988.

**Objectives**

1. To provide for a single building inspection program for the City of Kodiak and the Kodiak Island Borough.
2. To ensure a consistent application of building regulations in the City of Kodiak and the Kodiak Island Borough.
3. To reduce the total cost of building inspection services in the Kodiak Island Borough and the City of Kodiak.
4. To provide an economical, efficient, and effective building inspection program for residents of the Kodiak Island Borough and the City of Kodiak.

**Points of Agreement**

1. The Kodiak Island Borough (hereinafter "Borough") hereby contracts with the City of Kodiak (hereinafter "City") for building inspection services. Personnel aspects of the program are the responsibility of the City, and the building official and assistant building official shall be employees of the City.
  - A. This service will include the following:
    - (1) a full-time building official;
    - (2) a full-time assistant building official;
    - (3) a half-time administrative assistant;
    - (4) all other necessary and typical functions associated with an operational building inspection program;
    - (5) administration and enforcement of Borough Code Title 15, Buildings and Construction, including issuing permits, checking plans, performing field inspections, maintaining records of each permit, and maintaining statistical records;

- (6) records will be kept on each building permit and will include at a minimum, the following applicable information: building permit applications, approved plans and specifications; the as-built site plan; compaction report on engineered fills; and inspection reports on all inspections performed; and
  - (7) issuance of a certificate of occupancy and/or final inspection report when construction, for which a permit was issued, is completed. The borough assessor shall be provided with a copy of all certificates of occupancy and/or final inspection reports on a monthly basis.
- B. The Borough will supply the office space for the building inspection program.
  - C. The City will supply the vehicle for the building inspection program.
  - D. The building inspection office will be tied into both the Borough and the City telephone and remote communication systems, and the Borough AS/400 computer for access to property record files. Building inspection program staff will implement the HTE Building Permit software application once it has been installed and training has been provided by the Borough.
  - E. Monthly and annual reports of building permit activities will be submitted on forms agreed to by the Borough and the City.
2. In all cases, the building official will be responsible for ensuring that all structures are in compliance with adopted codes. The Kodiak Island Borough or the City of Kodiak may, on a case-by-case basis, request from the building official approval to use alternative personnel for ensuring that public construction projects meet adopted codes. The building official may deny approval for the use of alternative personnel based on the lack of appropriate qualifications of the personnel. All code compliance inspection reports or similar records generated for public construction projects shall become part of the building file maintained in the building inspection program office.

If approval is granted by the building official for the use of alternative personnel, a permit fee will not be charged for the portion of the project inspected by the alternative personnel; however, the value of any portion of a public construction project inspected by alternative personnel will be included in the project owner's portion of the permit value calculations for building inspection program operations. If building inspection program staff perform code compliance inspections for a public construction project, then the project will be charged the applicable building permit, electrical permit, or plumbing permit fees, and the project or portion of the project inspected will not be included in the permit value calculations for building inspection program operations.

The cost of the building inspection program will be split between the City and the Borough based on the dollar value of the permits issued inside the City (City responsibility) and outside the City (Borough responsibility). Payments by the Borough shall be made promptly upon billings submitted by the City.

- 3. The Community Development Department will work with the building inspection program office to ensure adherence to this MOA is implemented. This MOA is not intended to replace current day-to-day communications between staff, which are encouraged to continue. All policy issues,

whether City, Borough, or joint, will be referred to the Borough Mayor and City Manager for joint resolution.

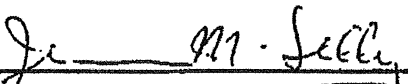
- A. The MOA for zoning compliance is incorporated, in total, in this MOA and is labeled Appendix A.
  - B. The MOA for the building fire safety inspection program for the Kodiak road system is incorporated, in total, in this MOA and is labeled Appendix B.
4. The Borough and the City shall review and revise their respective Building Codes and strive to maintain identical regulations that include, but are not limited to, the following:
- A. ~~ICBO Uniform Building Codes~~;
  - B. National Electrical Code;
  - C. Uniform Plumbing Code;
  - D. Driveway permits;
  - E. Ordinances providing for fire safety review and approval of plans and specifications, and the enforcement of state fire statutes and regulations; and
  - F. Building Valuations and Fee Schedules.
5. The Borough shall adopt an ordinance that shall require the identification of lot corners in the field prior to commencement of construction.
6. Insurance
- A. The City shall provide liability insurance. Upon request the City shall provide the Borough with evidence of the insurance coverage in force at any time. If the Borough should conclude that the insurance coverage obtained by the City is inadequate to protect its interest, the Borough shall give the City written notice of its concerns and shall request that the insurance coverage maintained by the City be broadened or increased in certain particulars. If the City fails to agree to the Borough's request and obtain the broadened, increased coverage within thirty (30) days after receipt of the request, then the Borough may either obtain such additional insurance coverage as it has requested and deduct the proven cost thereof from any payments otherwise due to the City or terminate this agreement in accordance with Section 9.
  - B. Any liability insurance policy obtained by either the City or the Borough shall contain a waiver of all subrogation claims against the other party.
  - C. The Borough agrees to indemnify and hold the City harmless from any and all uninsured claims or damages arising out of actions or omissions of the staff of the building inspection

program which are associated primarily with implementation of this agreement with respect to property lying outside of the City and the City agrees to indemnify and hold harmless the Borough from any and all uninsured claims or damages arising out of actions or omissions of the staff of the building inspection program which are associated primarily with implementation of this agreement with respect to property lying within the City.


7. The Borough and the City shall separately assume any legal costs associated with building inspection program enforcement within their respective jurisdictions.
8. It is the responsibility of the building inspection program staff to initiate Borough and City building and related code updates. All Borough and City code revisions that may affect the building inspection program shall be provided to the building official for review and comment.
9. This agreement may be terminated by either party upon ninety (90) days advance written notice to the other party.

DATED this 16th day of May, 1997.


KODIAK ISLAND BOROUGH

  
\_\_\_\_\_  
Jerome M. Selby, Mayor

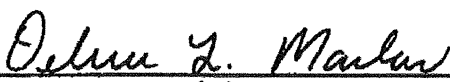
Attest:

  
\_\_\_\_\_  
Judith A. Nielsen  
Acting Borough Clerk

CITY OF KODIAK

  
\_\_\_\_\_  
William D. Jones, City Manager

Attest:

  
\_\_\_\_\_  
Orlene Z. Mauler  
Deputy City Clerk



## **ZONING COMPLIANCE PROGRAM**

### **Appendix A of the Building Inspection Program MOA**

On March 1, 1984, the Kodiak Island Borough(Borough) and the City of Kodiak (City) established a coordinated procedure for the enforcement of zoning regulations within the city limits. This Appendix replaces the original Zoning Compliance MOA of 1984, and provides a procedure for the inspection of zoning requirements through the building inspection program.

#### **Objectives**

1. To provide zoning compliance inspections in conjunction with building inspections.
2. To ensure a coordinated and consistent zoning compliance inspection program.
3. To provide a specific and acceptable process that defines the responsibilities of the Kodiak Island Borough and the City of Kodiak for implementing zoning compliance inspections as a function of the building inspection program.

#### **Points of Agreement**

1. No building permit will be issued without written zoning authorization from the Borough, except as may be otherwise provided for in the Borough Code.
2. Written zoning authorization by the Borough will be on a form provided by the Borough and printed in a format mutually agreed to by the City and the Borough. The format shall include at a minimum the following information:
  - A. property corner markers with identification or other acceptable markers must be in place and available for verification of setback distances; and
  - B. applicant acknowledgment that the information provided on the authorization is correct, and that the applicant agrees to comply with all ordinances and laws regulating zoning compliance.
3. The written zoning authorization will be specific in its identification of regulations that require compliance, including any approvals or conditions specified by the Borough Planning and Zoning Commission.
4. While conducting site inspections as part of the building permit process, it will be the responsibility of the building inspection program staff to note all violations of the written zoning authorization and to inform both the applicant and the Borough Community Development Department of any violations including, but not limited to, the following:
  - a. setback requirements;

- b. height restrictions;
  - c. off-street parking requirements and development standards; and
  - d. permitted uses.
5. In cases of confusion or conflict between the applicant and the building inspection program staff over either the written zoning authorization or the imposition of specific zoning regulations, the issue will be brought to the Community Development Department for resolution.
  6. In cases when there are violations of both the zoning and building codes, the Community Development Department and building inspection program staffs shall engage in joint enforcement action to the greatest extent possible. This includes, but is not limited to, joint signatures on violation letters and joint site inspections.

# **BUILDING FIRE SAFETY INSPECTION PROGRAM**

## **Appendix B of the Building Inspection Program**

The Kodiak Island Borough and the City of Kodiak wish to establish a coordinated building fire safety inspection program throughout each respective jurisdiction.

### **Objective**

To enforce State fire safety laws as established in AS 18.70 and AS 18.72 and all regulations adopted pursuant to these statutes through a local building fire safety program.

### **Points of Agreement**

1. It will be the responsibility of the City of Kodiak Fire Department to administer and enforce the requirements of the building fire safety program on the contiguous Kodiak road system.
2. Inspections requested by the Borough will be scheduled in as timely a manner as possible by the City Fire Department.
3. The Borough shall be financially responsible for the building fire safety inspection program outside the boundaries of the City.

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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:** August 11, 2016

**Agenda Item:** V. n. **Authorization of Payment of Final Closeout Costs Related to the Primary Construction Contract for Pier III Replacement, Project No. 11-07/8024**

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**SUMMARY:** The construction of Pier III had numerous challenges for the contractor, Pacific Pile and Marine LP (PPM). Numerous change orders, a total of 12, were submitted to the City and approved in entirety or partially. As the project came to a close there were disputed costs involved and resolutions to cure were unsuccessful. Formal mediation was scheduled in Kodiak on July 26, 2016. A settlement agreement (Attachment A) was reached between PPM and the City. The City Manager on behalf of the City Council agreed to make final payment on the disputed claims. The City shall pay PPM Six Hundred Fifty Thousand and 00/100 Dollars (\$650,000) by wire transfer within thirty (30) calendar days of the effective date of the agreement. I recommend Council approve this authorization of payment and direct the City Manager to issue payment.

**PREVIOUS COUNCIL ACTION:** City Council has approved previous change orders for this project.

- Change Orders No. 1 through 6 were executed by the City Manager as authorized per KCC 2.08.060 (f) and 3.12.020.
- Change Order No. 7 was approved by Council at the January 22, 2015, meeting.
- Change Order No. 8 (Global Settlement) was approved at the March 19, 2015, meeting.
- Change Orders No. 9 through 11 were executed by the City Manager as authorized per KCC 2.08.060(F) and 3.12.020.
- Change Order No. 12 was approved by Council February 25, 2016.

**BACKGROUND:** During the course of performance of work under the Construction Contract and thereafter, PPM submitted a claim with fifteen separate elements, including dock settlement, design conflicts, extended duration costs and other additional costs incurred relating to changed or added work.

During the course of performance of work under the construction contract and thereafter, the City submitted a claim for delayed damages alleging PPM failed to meet the mutually agreed upon deadline for “Partial Substantial Completion” and “Final Completion”.

**DISCUSSION:** The construction contract spelled out the terms for dispute resolution. A mediator was chosen by both parties, PPM and the City, and each party sent Mediator Mr. William Bender



information explaining their respective positions. We met as a group and reached a binding settlement agreement which releases each party from all claims arising out of the project. Council is recommended to accept the terms and payment of this settlement agreement.

**ALTERNATIVES:**

- 1) I recommend Council accept the results of this settlement and authorize the City Manager to issue payment to Pacific Pile and Marine LP in the amount of \$650,000 prior to September 2, 2016.
- 2) Do not authorize this settlement payment to PPM and proceed directly to litigation, which is not recommended.

**FINANCIAL IMPLICATIONS:** Funding will be provided from the Cargo Terminal Fund to the Cargo Development Capital Project Fund. The transferred amount will be \$650,000.

**LEGAL:** The mediation process and the Settlement and Change Order document was prepared by the City's legal counsel of Birch Horton Bittner & Cherot.

**STAFF RECOMMENDATION:** Staff recommends Council authorize payment to PPM according to the terms and conditions of the Settlement and Change Order.

**DEPUTY CITY MANAGER'S COMMENTS:** I will quote the words of the Attorneys and Mediator; "when a settlement is reached neither party will be entirely happy with the outcome".

While the settlement brings closure to an agonizing dispute with the Contractor, we need to look ahead and understand the City has a Pier III dock with the amenities to transfer goods and passengers from. This facility is expected to remain in use for 30 years or more and is for the betterment of the entire community of Kodiak and the people it serves.

**ATTACHMENTS:** A: Settlement and Change Order

**PROPOSED MOTION:**

Move to authorize the Settlement and Change Order between the City of Kodiak and Pacific Pile & Marine, LP dated August 2, 2016.

## SETTLEMENT AND CHANGE ORDER

THIS SETTLEMENT AND CHANGE ORDER ("Agreement") records that agreement reached by and between the City of Kodiak, Alaska (the "City") and Pacific Pile & Marine, LP ("PPM") (hereafter collectively referred to as the "Parties").

### RECITALS

1. The City was and is the owner of that structure known as the Kodiak Pier III, located in Kodiak, Alaska; and
2. PPM entered into a written contract with the City (the "Construction Contract") to serve as general contractor for replacement of Pier III ("the Project"); and
3. During the course of performance of work under the Construction Contract and thereafter, PPM submitted a claim with fifteen separate elements, including dock settlement, design conflicts, extended duration costs, and other additional costs incurred relating to changed and added work; and
4. During the course of performance of work under the Construction Contract and thereafter, the City submitted a claim for delayed damages alleging PPM failed to meet the mutually agreed upon deadline for "Partial Substantial Completion" and "Final Completion" as delineated in Change Order 8; and
5. The parties wish to avoid the litigation process under the Construction Contract and have reached agreement on compromise and settlement on the terms and conditions to be and which are here reduced to writing, and shall serve as a change order to the Construction Contract;

NOW, THEREFORE, the parties confirm their agreement as follows:

### CHANGE ORDER AGREEMENT AND RELEASE

**A. Payments.** In consideration of the covenants by PPM below and with the Kodiak City Council's authorization, the City shall pay or cause to be paid to PPM the amount of Six Hundred Fifty Thousand and 00/100 Dollars (\$650,000) by wire transfer within thirty (30) calendar days of the Effective Date of this Agreement.

**B. Mutual Release.** Upon PPM's receipt of payment in full, PPM and the City release and forever discharge one another, and their agents, attorneys, affiliates, officers, employees, sureties, or other representatives from any and all claims, actions, causes of action, demands, rights, damages, costs, expenses and compensation whatsoever, whether derivative or direct, known or unknown, suspected or claimed, in any way relating to or arising out of the Project, or any facts giving rise thereto. Expressly excluded from this release are (1) any claims arising out

of this Agreement, (2) the payment due to PPM for Change Order Number 13 of \$4,167.78, (3) the payment due to PPM for PPM's remaining contract balance of \$39,792.18; and (4) PPM's Construction Contract warranties. PPM's obligation to warrant the work, as specified in the Parties' original Contract for Construction, shall survive this Agreement.

**C. Further Agreement As To Project Closeout.** The parties further agree that PPM shall provide the consent of surety document and release of bond claim document necessary for Project closeout. The Parties agree to equally share the cost of mediation. PPM will withdraw its Public Records Request submitted to the City. PPM will provide a two-hour interview with each of the following individuals in Seattle or by telephone (six hours total): Chris Willis, Wil Clark, and Zach Martin.

**D. Unknown Claims or Liabilities:** The parties represent that they are familiar with and that their attorneys have explained the meaning of decisions of the Alaska Supreme Court applicable to this Agreement, including but not limited to *Alaska Airlines, Inc. v. Sweat*, 568 P.2d 916 (Alaska 1977) and *Witt v. Watkins*, 579 P.2d 1065 (Alaska 1978), that protection of these holdings is waived, and that the parties intend this Agreement to discharge each other and to release each other from any liability for damages or costs caused, enhanced, aggravated or contributed to with respect to acts and claims within the scope of this Agreement, whether such damages and costs are subsequently discovered or are different in degree or kind than is now alleged, known, anticipated or expected.

**E. General Terms**

1. Third-Party Beneficiaries

The parties intend and agree that:

(a) Unless context clearly indicates otherwise, the release, covenants, warranties and representations made with respect to or on behalf of any entity identified or referenced herein are intended to encompass as well that entity's insurers, architects, engineers, officers, directors, principals, shareholders, agents, employees, attorneys and representatives.

(b) Except as provided herein, the parties intend and agree that the release provided for herein is for the sole benefit of the parties hereto, and is not intended to benefit any third party or other party not a signatory to this Agreement.

2. Warranty of Authority

By execution of this Agreement, each person signing on behalf of an entity warrants that:

(1) This Agreement is executed on behalf of a valid legal entity;

(2) Such entity has the full right and authority to undertake any action contemplated by this Agreement;

(3) The execution of this Agreement by the signatory has been duly and properly authorized by the party on whose behalf said Agreement is executed in accordance with Alaska laws, regulations, agreements and procedures governing the authority of such person or entity to execute this Agreement on behalf of such party; and

(4) The consent of all persons or entities whatsoever necessary to the due execution of this Agreement has been obtained.

3. No Admission of Liability

Neither the transfer of any consideration, the doing of any of the acts referred to in this Agreement, nor anything else contained in this Agreement shall be taken or construed to be an admission on the part of the parties of any claims, demands, causes of action, obligations, damages or liability asserted by the other party. The parties expressly deny any and all such claims, demands, causes of action, obligations, damages and liabilities.

4. Binding Effect

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, trustors, trustees, beneficiaries, predecessors, successors, assigns, partners, partnerships, parent, subsidiary, affiliated and related entities, officers, directors, principals, agents, servants, employees, representatives and all persons, firms, associations and/or corporations connected with them, including without limitation, their insurers, sureties and/or attorneys. The parties further acknowledge that each has had the opportunity to consult with independent counsel about the Agreement to the extent the party desires.

5. Disputes

All disputes and claims arising out of or relating in any way to this Agreement shall be submitted to private binding arbitration before William Bender.

6. Integration

All understandings and agreements by and between the parties regarding this Agreement are merged into this Agreement which is to be read in combination with the parties' Contract and Contract documents. The terms of this Agreement constitute the entire agreement regarding settlement between the parties on the above matters, and may not be altered, amended, modified or otherwise changed in any manner except by a writing executed by the parties, or as allowed by the Contract.

7. Titles

The titles to the sections of this Agreement are solely for the convenience of the parties and shall not be used as an aid in the interpretation or construction of this Agreement

8. Construction

Each party has had input or opportunity for input with respect to the form and content of this Agreement and the parties expressly agree that the rule of construction that ambiguities found in a document shall be construed against the drafter shall have no application to any subsequent construction of this Agreement.

9. Severability

If a court of competent jurisdiction holds any provision of this Agreement, or any portion thereof, to be invalid under any applicable statute or rule of law, such invalidity will not affect the validity of the other provisions of this Agreement. The Parties will substitute the invalid provision with a valid provision that most closely approximates the intent of the invalid provision.

10. Other provisions

This Agreement represents the complete and entire agreement between the parties with respect to the subject matter hereof and supersedes any and all prior agreements, promises, representations, warranties, contracts and covenants whether oral or written relating to the subject matter hereof.

11. Effective Date.

This Agreement shall become effective upon signature of all parties.


PACIFIC PILE & MARINE

DATED:

8/2/16

By:

Its:

  
PRESIDENT

CITY OF KODIAK, ALASKA

DATED: 8-2-2016

By:

Mike Twenge  
Its: Deputy City Manager