

City of Kodiak Regular Council Meeting Agenda for April 13, 2017
7:30 p.m., at 710 Mill Bay Road, Assembly Chambers (Room 232)

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

- II. Previous Minutes**
Approval of Minutes of the March 23, 2017, Regular Council Meeting.....1

- III. Persons to Be Heard**
 - a. Proclamation: Month of the Military Child8
 - b. Proclamation: Week of the Young Child.....10
 - c. Public Comments (limited to 3 minutes) (486-3231)

- IV. Unfinished Business**
 - a. None

- V. New Business**
 - a. Resolution No. 2017–08, Authorizing the Issuance of a Permit to the Kodiak Chamber of Commerce for Use of Public Property in Conjunction With the Kodiak Crab Festival....14
 - b. Resolution No. 2017–09, Authorizing the Issuance of a Permit to Hope Community Resources for the Use of Public Property for Its Walk and Roll Community Walk Fundraiser18
 - c. Resolution No. 2017–10, Authorizing the Issuance of a Permit to Kodiak High School Softball Team for the Use of Public Property to Sell Concessions During Home Games.....22
 - d. Authorization of Amendment No. 2 to the Fisheries Analyst Contract.....26
 - e. Authorization of Amendment to Lease 222854 With the Kodiak Maritime Museum and Art Center For the Thelma C50
 - f. Approval of Second Amendment to Near Island Communications Site Sublease Between Kodiak Island Broadcasting, Inc. and New Cingular Wireless PCS, LLC.....70

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

- VII. Mayor’s Comments**

- VIII. Council Comments**

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

- X. Adjournment**

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<p>DRAFT</p>

**MINUTES OF THE REGULAR COUNCIL MEETING
OF THE CITY OF KODIAK
HELD THURSDAY, MARCH 23, 2017
IN THE BOROUGH ASSEMBLY CHAMBERS**

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

Mayor Pat Branson called the meeting to order at 7:30 p.m. Councilmembers Laura B. Arboleda, Randall C. Bishop, Charles E. Davidson, Gabriel T. Saravia, and Richard H. Walker were present and constituted a quorum. Councilmember John B. Whiddon was absent. Deputy City Manager Mike Tvenge and City Clerk Debra L. Marlar were also present.

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

II. PREVIOUS MINUTES

Councilmember Arboleda MOVED to approve the minutes of the February 9, 2017, special meeting, and February 9, 2017, regular meeting, and February 28, 2017, special meeting as presented.

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

III. PERSONS TO BE HEARD

a. Public Comments

None

IV. UNFINISHED BUSINESS

None

V. NEW BUSINESS

a. Authorization of Award of Design and Construction of Restrooms and Showers, Fisherman's Hall, Project No. 8517/17-05

On January 18, 2017, the City advertised the Request for Proposal (RFP) for the design-build project to construct new restrooms and showers at Fisherman's Hall. On February 21, 2017, the City received three proposals for the project from Scott's Heating and Plumbing Service Inc., Wolverine Supply Inc., and Friend Contractors, LLC. The recommendation is to authorize the design-build proposal for the new restrooms and showers at Fisherman's Hall to Friend Contractors LLC for the sum of \$152,650.

Councilmember Walker MOVED to award design and construction of the Restrooms Fisherman's Hall Project to Friend Contractors LLC in the amount of \$152,650, with funds coming from Project No. 8517/17-05.

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

b. Authorization of Award for the Kodiak Police Department Computer Aided Dispatch and Records Management Systems, Project No. 4029

The City of Kodiak has a budget of \$656,742 to replace antiquated E-911 equipment and integrate computer aided dispatching (CAD) and records management system (RMS) software. This budget includes an FY2015 Alaska Legislative Grant, in the amount of \$381,472, for the purpose of E-911 equipment replacement. Dr. Henry Richter was hired as a consultant to prepare two RFPs: one for the E-911 system replacement and one for CAD and RMS software. The RFPs were made available on December 22, 2016, and the City received several responses. The City received seven responses for the CAD/RMS proposal: Spillman Technologies, Tyler Technologies, SunGard Public Sector, ICO Technologies, Executive Information Services, Cyrun, and PTS Solutions.

Councilmember Davidson MOVED to award the bid for Kodiak Police Department Computer Aided Dispatch and Records Management Systems software to Spillman Technologies, Inc. in the amount of \$250,421 with funds from Project No. 4029.

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

c. Authorization of Award for the Kodiak Police Department IP-Based Phase II E-911 Telephone Equipment, Project No. 4029

The City of Kodiak has a budget of \$656,742 to replace antiquated E-911 equipment and integrate computer aided dispatching (CAD) and records management system (RMS) software. This budget includes a FY2015 Alaska Legislative Grant, in the amount of \$381,472, for the purpose of E-911 equipment replacement. Dr. Henry Richter was hired as a consultant to prepare two RFPs: one for the E-911 system replacement and one for CAD and RMS software. The RFPs were made available on December 22, 2016, and the City received several responses. Two responses were received for the Phase II E-911 proposal: one from ProComm Alaska and one from Alaska Communications Systems (ACS).

Councilmember Bishop MOVED to award the Kodiak Police Department IP-Based Phase II E-911 Telephone Equipment bid to Alaska Communications Systems (ACS) in the amount of \$342,150 with funds from Project No. 4029.

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

d. Appointment to Port and Harbors Advisory Board

The recent appointments for the Port and Harbors Advisory Board (PHAB) were on January 12, 2017, during the Council’s regular meeting. Norm Lenon and Stormy Stutes were appointed to three-year regular seats. The two alternate seats that remain vacant have terms ending December 31, 2017; both seats are one-year terms. An application has been received for the Port and Harbors Advisory Board. The Mayor makes the Port and Harbor Advisory Board appointments and they are confirmed by the Council.

Mayor Branson appointed David Jentry to the Alternate No. 1 one-year seat ending December 31, 2017.

Councilmember Walker MOVED to confirm the Mayoral advisory board appointment to the Port and Harbors Advisory Board as stated.

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

e. Appointment to Prince William Sound RCAC

The City of Kodiak has a dedicated seat for a representative on the Prince William Sound Regional Citizens’ Advisory Council (PWSRCAC). Wayne Donaldson has served as the City’s representative since January 8, 2015, and he has requested re-appointment.

Councilmember Davidson MOVED re-appoint Wayne Donaldson to a two-year term as the City of Kodiak representative on the Prince William Sound Regional Citizens’ Advisory Council.

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

VI. STAFF REPORTS

a. City Manager

Deputy City Manager Tvenge gave several project updates, which included the following: the Channel Transient Float project is on schedule; the new ambulance will be shipped to Kodiak in April; the ice rink has been shut down for the winter; and the old library has been demolished.

b. City Clerk

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

VII. MAYOR’S COMMENTS

Mayor Branson thanked Mr. Jentry and Mr. Donaldson for volunteering their time and congratulated them for their re-appointments to the PHAB and PWSRCAC advisory boards respectively. She said she is pleased with the shower and restroom remodel at Fisherman’s Hall. She said Comfish is next weekend. She commented that she appreciates the departmental presentations; the most recent presentation was from Public Works Director Kozak, which she stated was thor-

ough and provided great insight to staff coverage and the overall service delivery. She said next week she will travel to Juneau and has meetings scheduled with the Governor, Lt. Governor, the Commissioners for DOT&PF and ADF&G, and other committees and legislators.

VIII. COUNCIL COMMENTS

Councilmember Bishop said he met with the Mayor, Councilmember Whiddon and community members about expenses and revenues and discussed the upcoming budget cycle. He said they are in an economic trend and he plans to work diligently to explore all budgetary options.

Councilmember Saravia thanked the Finance department for their work and budget recommendations.

Councilmember Arboleda noted she had been out of town for her brother’s wedding, and she thanked the citizens for volunteering their time to participate in the City’s advisory boards and other community initiatives.

Councilmember Davidson congratulated Deputy City Manager Tvenge for his upcoming new role as the City Manager beginning in May. He encouraged the public to make suggestions on the City’s budget in the upcoming months.

Councilmember Walker said he is pleased about the Channel Transient Float project moving forward and the old library demolishment. He complimented the progression of the remodel of the Fisherman’s Hall project. He said the plans for Near Island will be coming to fruition, and he thanked the staff for their work. He said it is great to see that Baranof Park is widely used by youth, and he stated he looks forward to his trip to Juneau. He thanked Finance Director Mayes for her reports and thorough financial presentations. He gave his condolences to the Sega family.

IX. AUDIENCE COMMENTS

None

X. ADJOURNMENT

Councilmember Davidson MOVED to adjourn the meeting.

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

The meeting adjourned at 7:55 p.m.

CITY OF KODIAK

MAYOR

ATTEST:

CITY CLERK

Minutes Approved:

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PERSONS TO BE HEARD

MEMORANDUM TO COUNCIL

Date: April 13, 2017

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

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

ATTACHMENTS:

Attachment A: Proclamation: Month of the Military Child

PROCLAMATION Declaring Month of the Military Child

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

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

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

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

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

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

NOW THEREFORE, I, Pat Branson, Mayor of the City of Kodiak, do hereby proclaim April 2017 as

MONTH OF THE MILITARY CHILD

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

Dated this 13th day of April 2017.

City of Kodiak

Pat Branson, Mayor

MEMORANDUM TO COUNCIL

Date: April 13, 2017

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

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

ATTACHMENTS:

Attachment A: Proclamation: Week of the Young Child

PROCLAMATION
Declaring April 24 through 28, 2017,
Week of the Young Child

WHEREAS, the Kodiak Early Childhood Coalition and other local organizations, in conjunction with the National Association for the Education of Young Children, are celebrating the Week of the Young Child, April 24 through April 28; and

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

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

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

NOW THEREFORE, I, Pat Branson, Mayor of the City of Kodiak, do hereby proclaim April 24 through April 28 as

WEEK OF THE YOUNG CHILD

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

Dated this 13th day of April 2017.

City of Kodiak

Pat Branson, Mayor

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NEW BUSINESS

MEMORANDUM TO COUNCIL

To: Mayor Branson and City Councilmembers
From: Aimée Kniaziowski, City Manager *AK*
Thru: Mike Tvenge, Deputy City Manager *MT*
Date: April 13, 2017

Agenda Item: V. a. **Resolution No. 2017-08, Authorizing the Issuance of a Permit to the Kodiak Chamber of Commerce for Use of Public Property in Conjunction With the Kodiak Crab Festival**

SUMMARY: The Kodiak Chamber of Commerce is the local organization that manages the annual Kodiak Crab Festival, one of Kodiak's premiere events. It promotes Kodiak, gives a boost to the local economy, and provides fundraising opportunities for many local organizations and non-profits. This year the festival will run from May 24 through May 30, 2017. As in past years, Council authorizes a permit for the activities associated with Kodiak Crab Festival by adoption of a resolution. Staff recommends Council allow the Kodiak Chamber of Commerce to conduct the 2017 Kodiak Crab Festival activities on public property by adopting Resolution No. 2017-08.

PREVIOUS COUNCIL ACTION: As provided for in the Kodiak City Code, Council periodically issues permits to non-profit organizations to conduct fundraising or other related activities on City property.

DISCUSSION: The Kodiak Chamber of Commerce has sponsored and managed the annual Kodiak Crab Festival for many years. This will be the 59th anniversary of the festival. Celebrations include a parade, a carnival with different types of activities, and booths that sell food and other goods. As a community festival, the event brings residents and visitors together to enjoy the special opportunities that Kodiak has to offer. The festival also provides an important fund-raising opportunity for many local nonprofit organizations and contributes to the local economy by drawing visitors to the community. The festival will run from May 24 through May 30, 2017. Setup is scheduled to start at noon on Tuesday, May 23 and takedown will be completed by noon on Tuesday, May 30.

Resolution No. 2017-08 authorizes a permit for this 59th Annual Kodiak Crab Festival, allowing the use of City property for the festival, including City parking lot and street closures. The resolution also authorizes the street closure and traffic control for the parade on Saturday, May 27, 2017, from 8 a.m. to noon on Powell Avenue between Rezanof Drive and Mill Bay Road for the marshalling of the parade, and for the parade, which will begin at the corner of Powell Street and Mill Bay Road, turning right onto

Mill Bay Road to its intersection with Bartel Avenue and end along Bartel Avenue, which will be closed for parade dispersal. This parade route has been used successfully for several years (Attachment B).

ALTERNATIVES: There are two alternatives for Council to consider.

- 1) Adopt Resolution No. 2017–08. This is staff’s recommendation, because it supports the Kodiak Chamber of Commerce and their efforts to sponsor and manage this important community event. It is also consistent with past practice and is allowed by City Code.
- 2) Choose not to approve Resolution No. 2017–08. This is not recommended.

LEGAL: KCC 5.04.050 allows the Council to issue permits to non-profit organizations to conduct activities on designated City-owned property through passage of a resolution. Resolution No. 2017–08 complies with that requirement.

STAFF RECOMMENDATION: Staff recommends the Council adopt Resolution No. 2017–08, granting the Kodiak Chamber of Commerce a permit to conduct the 59th annual Kodiak Crab Festival and parade, providing they comply with applicable sections of KCC sections 5.04.050 and 5.04.060.

CITY MANAGER’S COMMENTS: The Chamber has sponsored and managed the Kodiak Crab Festival for many years. This is truly a unique event for locals and visitors alike. It provides many benefits and is a great excuse to have fun no matter the weather. The City has always supported this worthwhile event and appreciates the efforts of the Kodiak Chamber of Commerce for their ongoing sponsorship and management of the Kodiak Crab Festival. I recommend Council adopt Resolution No. 2017–08.

ATTACHMENTS:

- Attachment A: Resolution No. 2017–08
- Attachment B: Chamber of Commerce letter of request, dated March 13, 2017, and parade route map

PROPOSED MOTION:

Move to adopt Resolution No. 2017–08.

**CITY OF KODIAK
RESOLUTION NUMBER 2017-08**

A RESOLUTION OF THE COUNCIL OF THE CITY OF KODIAK AUTHORIZING THE ISSUANCE OF A PERMIT TO THE KODIAK CHAMBER OF COMMERCE FOR USE OF PUBLIC PROPERTY IN CONJUNCTION WITH THE KODIAK CRAB FESTIVAL

WHEREAS, the Kodiak Chamber of Commerce is a local nonprofit organization that manages the Kodiak Crab Festival; and

WHEREAS, this is the 59th anniversary of the Kodiak Crab Festival, which has a proud tradition of family fun; and

WHEREAS, this year the Kodiak Crab Festival will be held May 25 through May 29, with carnival and booth setup commencing at noon on May 23 and takedown completed by 5 p.m. on May 30; and

WHEREAS, the Kodiak Crab Festival provides an important fund-raising opportunity for many organizations in Kodiak, and provides for community participation and involvement by Kodiak citizens of all ages; and

WHEREAS, the 2017 Kodiak Crab Festival will be an economic asset to our community as it enhances our local visitor industry.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Kodiak, Alaska, that a permit be issued, with the permit fee waived, to the Kodiak Chamber of Commerce as provided in section 5.04.050(b) and (d) of the City Code for use of public property for 2017 Kodiak Crab Festival events on the condition that the Kodiak Chamber of Commerce agrees to comply with the stipulations set forth this section and section 5.04.060 of the City Code.

BE IT FURTHER RESOLVED that the Council hereby authorizes City street closure and traffic control for the Grand Parade on Saturday, May 27, 2017, from 8 a.m. to noon on Powell Avenue between Rezanof Drive and Mill Bay Road for the marshalling of the parade; and for the parade, which will begin at the corner of Powell Street and Mill Bay Road, turning right onto Mill Bay Road to its intersection with Bartel Avenue and end along Bartel Avenue, which will be closed for parade dispersal.

BE IT FURTHER RESOLVED that from May 23, 2017, through May 30, 2017, the Council hereby authorizes City parking lot closures in the east Harbormaster's parking lot, extending to the end of the St. Paul Harbor spit.

CITY OF KODIAK

MAYOR

ATTEST:

CITY CLERK

Adopted:
16



907-486-5557 • fax: 907-486-7605 • kodiakchamber.org • chamber@kodiak.org
100 East Marine Way, Ste 300 Kodiak, Alaska 99615



March 13, 2017

Kodiak City Mayor and City Council
710 Mill Bay Rd.
Kodiak, AK 99615



Dear Mayor Branson and Kodiak City Council,

The 2017 Kodiak Crab Festival will be held May 25th through May 29th. The official slogan for this year's festival is "Grundens... It's a Kodiak Bear Necessity!" and the logo design was created by Mary Ruskovich and the poster winner is Ashley Marie Young.



The Kodiak Crab Festival celebrates its 59th anniversary this year with a proud tradition of family fun spanning generations. This event enhances the visitor industry, thus making it an economic asset to our community. Additionally, the Kodiak Crab Festival provides vital fundraising opportunities for local nonprofit organizations.



On behalf of the Kodiak Chamber of Commerce, I respectfully request the City Council to consider passing a resolution authorizing the City to issue a permit to the Kodiak Chamber of Commerce for use of public property and facilities in conjunction with the Kodiak Crab Festival. I am also requesting that the \$20.00 permit fee be waived. The parade route has been permanently changed to the one we've used successfully the past decade along Mill Bay Road.

Booth setup is scheduled to begin at 12:00 (noon) on Tuesday, May 23rd and removed by 5:00 pm on Tuesday, May 30th.


Thank you for your support of this much-anticipated annual event. The wonderful tradition of Kodiak Crab Festival has carried on largely due to your assistance over the years. We at the Chamber welcome the Kodiak Crab Festival, marking 59 fun-filled years of this community-wide celebration!

Sincerely,

Stephanie DeLaGarza
Crab Festival Manager

MEMORANDUM TO COUNCIL

To: Mayor Branson and City Councilmembers

From: Aimée Kniaziowski, City Manager 

Thru: Corey Gronn, Parks and Recreation Director

Date: April 13, 2017

Agenda Item: V. b. **Resolution No. 2017-09, Authorizing the Issuance of a Permit to Hope Community Resources for the Use of Public Property for Its Walk and Roll Community Walk Fundraiser**

SUMMARY: Hope Community Resources (Hope) is a non-profit that is funded by grants and community donations. Hope wants to offer its annual walk and roll community walking fundraiser on May 6, 2017, at the Baranof Park track. Hope will set up a tent to offer snacks and drinks to participants and will accept donations. Staff recommends Council approve this use by adopting Resolution No. 2017-09.

PREVIOUS COUNCIL ACTION: The City Council routinely issues permits to non-profit and other community organizations to allow them to conduct fundraising activities that benefit the community on public property.

DISCUSSION: Hope is a non-profit that utilizes park facilities often and is very cooperative and always coordinates their activities to avoid any conflicts with the Parks and Recreation department. Hope offers this community walk annually and has requested to bring this to Baranof Park on May 6, 2017, from 8 a.m. - 1p.m.

City staff supports Hope Community Resources and their efforts to raise funds through community activities and recommends that the Council adopt the resolution to authorize the use of the Baranof Park track.

ALTERNATIVES:

- 1) Adopt Resolution No. 2017-09, which is staff's recommendation, because it is a great event that the community supports with great turnouts each year, and Council routinely approves permits to non-profits requesting use of City property.
- 2) Do not adopt the resolution, which is not recommended, because it is inconsistent with past actions to non-profit fundraising events and would impact their opportunity to raise money for their operations.

FINANCIAL IMPLICATIONS: There are no financial implications involved in allowing this permitted use.

STAFF RECOMMENDATION: Staff recommends Council approve Hope's request by adopting Resolution No. 2017-09.

CITY MANAGER'S COMMENTS: Hope is an important organization in Kodiak and requires resources and funds to provide services for their clients and families. This is a traditional annual fundraiser, and Hope worked closely with Corey Gronn to request the use of Baranof track and field. I support their work and request and recommend Council adopt Resolution No. 2017-09.

ATTACHMENTS:

Attachment A: Resolution No. 2017-09

Attachment B: Letter from Corrie Davis, dated March 23, 2017

PROPOSED MOTION:

Move to adopt Resolution No. 2017-09.

**CITY OF KODIAK
RESOLUTION NUMBER 2017-09**

A RESOLUTION OF THE COUNCIL OF THE CITY OF KODIAK AUTHORIZING THE ISSUANCE OF A PERMIT TO HOPE COMMUNITY RESOURCES FOR THE USE OF PUBLIC PROPERTY FOR ITS WALK AND ROLL COMMUNITY WALK FUNDRAISER

WHEREAS, the Hope Community Resources (Hope) is a non-profit that is funded by grants and community donations; and

WHEREAS, Hope is sponsoring a walk for the Kodiak community to raise funds for its operations; and

WHEREAS, Hope has requested use of the Baranof Park track on May 6 and will charge a fee and/or request donations; and

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

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Kodiak, Alaska, that a permit be issued, with the permit fee waived, to Hope Community Resources as provided in Section 5.04.050(b) and (d) of the City Code for use of public property for its 2017 Walk and Roll event on the condition that the group agrees to comply with the stipulations set forth in this section and Section 5.04.060 of the City Code.

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

CITY OF KODIAK

MAYOR

ATTEST:

CITY CLERK

Adopted:

3/23/2017

Regional Centers

South Central Region
540 W. International Airport Rd.
Anchorage, AK 99518-1110
(907) 561-5335
1-800-478-0078
Fax: (907) 564-7429

Mat-Su Valley Region
851 E. Westpoint Drive, Suite 306
Wasilla, AK 99654
(907) 357-3750
Fax: (907) 357-3751

Dillingham/Bristol Bay Region
P.O. Box 715
Dillingham, AK 99576-0715
1-800-478-2117
Fax: (907) 842-5007

Kodiak/Aleutian Region
1623 Mill Bay Road
Kodiak, AK 99615-6235
(907) 486-5011
Fax: (907) 486-5019

Seward/Resurrection Bay Region
P.O. Box 1933
Seward, AK 99664
(907) 224-2063
Fax: (907) 224-8225

Juneau/Southeast Region
9109 Mendenhall Mall Rd., Ste. 5D
Juneau, AK 99801
(907) 463-3602
Fax: (907) 463-3605

Barrow/North Slope Region
P.O. Box 2123
Barrow, AK 99723
(907) 852-3151
Fax: (907) 852-2855

Soldotna/Kenai Peninsula Region
43335 Kalifornsky Beach Rd., Ste. 27
Soldotna, AK 99669
(907) 260-9469
Fax: (907) 260-9435

www.hopealaska.org

Stephen P. Lesko
Executive Director

Roy T. Scheller
Deputy Executive Director

Kodiak City Counsel
46410 Cedar Street
Kodiak, AK 99615


Dear Kodiak City Counsel,

Hope Community Resources is a nonprofit organization that provides supports and services to people who experience disabilities. We are funded in part by grant and community donations. One of our annual fundraisers is our Walk and Roll community walk.

Walk and Roll has been held the first Saturday in May (this year May 6th) for the past 40 years. Due to the nature of our business, we have very specific route regulations. Last year our walk route conflicted with the city's triathlon, which is also held on the first Saturday in May.

We are requesting a nonprofit permit to use the Baranof track to hold our fundraiser. We would like to set up a sign in tent and have snacks available for participants. Our event would run from 8:00 am- 1:00pm. Please consider our proposal and let us know your decision so we can finalize our plans.


Sincerely,



Corrie Davis
Director of Community Support Services
Kodiak, Alaska
codavis@hopealaska.org

MEMORANDUM TO COUNCIL

To: Mayor Branson and City Councilmembers

From: Aimée Kniaziowski, City Manager 

Thru: Corey Gronn, Parks and Recreation Director

Date: April 13, 2017

Agenda Item: V. c. **Resolution No. 2017-10, Authorizing the Issuance of a Permit to Kodiak High School Softball Team for the Use of Public Property to Sell Concessions During Home Games.**

SUMMARY: The high school softball coach, Michelle Stratton, requested to sell concessions as a fundraiser for the High school softball program from April 13 - July 31. The concessions will be sold during home games. The softball team is a high school sport that requires a significant amount of self funding. The team raises money to cover the cost of travel and other costs associated with the sport. Staff recommends Council approve this use by adopting Resolution No. 2017-10.

PREVIOUS COUNCIL ACTION: The City Council routinely issues permits to non-profit and other community organizations to allow them to conduct fundraising activities that benefit the community on public property.

DISCUSSION: The Kodiak High School athletic teams have been receiving permits like this one for many years. Each year the teams are trying to raise more funds to continue the success of their programs. The softball team hosts several home games this season, including a four team tournament. The generous home schedule allows for concessions to be a good source of fundraising this season.

ALTERNATIVES:

- 1) Adopt Resolution No. 2017-10, which is staff's recommendation, because it promotes the use of the City's fields, helps the high school team meet their expenses, and is consistent with previous Council direction to support KHS sports.
- 2) Do not adopt Resolution No. 2017-10, which is not recommended, because it would not show support for the efforts of the high school team and would impact their opportunity to raise money for their program.

LEGAL: KCC 5.04.050 allows the Council to issue permits to non-profit organizations to conduct activities on designated City-owned property through passage of a resolution. The attached Resolution No. 2017-10 complies with that requirement.

STAFF RECOMMENDATION: Staff recommends Council approve the high school softball team's request by adopting Resolution No. 2017-10.

CITY MANAGER'S COMMENTS: Council routinely authorizes the use of City property for fundraising activities, especially activities that benefit high school student athletic groups. The high school softball team, like the other high school athletic teams, is self-supporting and relies on fundraisers to cover travel and other team related expenses. I support the softball team's efforts to raise funds to support their sport and recommend Council adopt Resolution No. 2017-10.

ATTACHMENTS:

Attachment A: Resolution No. 2017-10

Attachment B: Letter from Michelle Stratton, dated March 23, 2017

PROPOSED MOTION:

Move to adopt Resolution No. 2017-10.

**CITY OF KODIAK
RESOLUTION NUMBER 2017-10**

A RESOLUTION OF THE COUNCIL OF THE CITY OF KODIAK AUTHORIZING THE ISSUANCE OF A PERMIT TO THE HIGH SCHOOL SOFTBALL TEAM FOR THE USE OF PUBLIC PROPERTY TO SELL CONCESSIONS

WHEREAS, the Kodiak High School softball team (team) is a self-funded team affiliated with the Kodiak High School; and

WHEREAS, in order to cover some of the costs of the program, the Kodiak High School softball team has requested permission to sell concessions during home games to be held at East Addition and Baranof Park; and

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

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Kodiak, Alaska, that a permit be issued, with the permit fee waived, to the Kodiak High School softball team as provided in section 5.04.050(b) and (d) of the City Code for use of public property for its 2017 fundraising on the condition that the team agrees to comply with the stipulations set forth in this section and section 5.04.060 of the City Code.

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

CITY OF KODIAK

MAYOR

ATTEST:

CITY CLERK

Adopted:



Kodiak High Softball



March 23, 2017

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

Dear Mrs. Kniaziowski:

The Kodiak High Softball team would like to request a City Permit to use the Snack Shack Building located at East Addition Park to sell concessions and apparel. High School and Youth Softball Games will take place from April 12, 2017 to July 31, 2017. As most of you know we raise money for travel and equipment through Fund Raiser's, Raffles, Donations, and Concessions. Thank You for your Consideration.

We hope to see you in the stands this spring!

Sincerely,

Michelle Stratton

Michelle Stratton
Head Coach
Kodiak High Softball

MEMORANDUM TO COUNCIL

To: Mayor Branson and City Councilmembers

From: Aimée Kniazowski, City Manager and Mike Tvenge, Deputy City Manager *mt*

Date: April 13, 2017

Agenda Item: V. d. Authorization of Amendment No. 2 to the Fisheries Analyst Contract

SUMMARY: The City Council and Borough Assembly have worked with a fisheries analyst since 2011 to help track and respond to fisheries resource management issues important to the Kodiak area. Following the resignation of the first analyst in late 2013, the City and Borough selected and hired McCarty and Associates for a two year contract (Attachment B) with an option to renew. The majority of the two governing bodies agreed to a one-year extension of the contract with some modifications at the joint work session on February 24, 2016. Staff worked with the contractor who agreed to Amendment No. 1 to the contract ending on February 28, 2017. The City and Borough would like to extend this agreement at the recommendation of the Kodiak Fisheries Work Group for an additional year, ending on February 28, 2018. Amendment No. 2 (Attachment A) has changes that reflect a reduction in contract fee by \$5000 and clearer direction on points of contact, reporting, and meeting attendance. The Borough Assembly adopted contract Amendment No. 2 on March 23, 2017. Staff recommends Council authorize the contract amendment at this meeting, which will extend Heather McCarty's services through February 2018.

PREVIOUS ACTION:

- February 2014, both the City and Borough approved a two-year contract with McCarty and Associates
- February 24, 2016, Council and Assembly members agreed to a one-year contract extension for McCarty and Associates with several modifications and instructed the Managers to negotiate the renewal/amendment with the contractor
- March 15, 2016, Council reviewed and discussed Amendment No. 1 to the McCarty contract at the work session
- March 17, 2016, Council approved Amendment No. 1 extending the agreement one year
- March 17, 2017, Council discussed Amendment No. 2 at its work session
- March 23, 2017, Borough Assembly adopted Amendment No. 2 to the contract

DISCUSSION: The City Council and Borough Assembly established a fisheries work group to hold meetings and work with the jointly contracted fisheries analyst on fisheries issues of importance to Kodiak. The joint fisheries work group is made up of three elected officials of the City and three Assembly members. Heather McCarty was hired in 2014 and has been working with the group on

fisheries related management issues since that time. Her two-year contract had an option for two one-year renewals. Amendment No. 2 will extend this Agreement for the second renewal.

The Kodiak Fisheries Work Group co-chairs met with the managers on Monday, March 13 and outlined minor changes for Amendment No. 2; consensus was reached by both bodies. The Fisheries Analyst also reviewed the amendment. The City and Borough co-chairs, managers, and Fisheries Analyst have agreed to a one-year extension with some changes to the agreement including defining scope of services, contract administration, meeting, and reporting schedules, which are outlined in (Attachment A). The contract annual fee is \$55,000 or \$4,584 per month plus reimbursement for authorized expenses. The City pays half of all costs and the Borough pays the other half.

ALTERNATIVES: Council may approve, postpone, or not approve the contract amendment. Staff recommends Council approve the contract amendment as submitted since the need for an individual to advise the City and Borough on fisheries matters is important and ongoing. The amendment reflects direction expressed by the co-chairs.

FINANCIAL IMPLICATIONS: The cost for this professional service contract to the City is \$27,500 per year plus authorized expenses. Costs for this professional service are included in the Legislative section of the FY2017 budget and will be included in the FY2018 budget once awarded.

CITY MANAGER'S RECOMMENDATION AND COMMENTS: I have seen the benefit of having a professional fisheries analyst/consultant available to help the community understand and respond to complex fisheries issues that affect Kodiak. The joint fisheries work group has worked well with Ms. McCarty and sees the importance of continuing this contract for another year. This one-year amended contract is supported by the City, Borough, and Fisheries Analyst.

ATTACHMENTS:

Attachment A: Amendment No. 2 to the contract with McCarty and Associates

Attachment B: 2014-2016 contract with McCarty and Associates

PROPOSED MOTION:

Move to authorize Amendment No. 2 to the Fisheries Analyst Contract with McCarty and Associates effective from March 1, 2017, through February 28, 2018, in the amount of \$27,500 per year plus authorized expenses for the City's share of the contract costs, with funds coming from the General Fund Legislative professional services account and authorize the City Manager to execute the documents on behalf of the City.

AMENDMENT NO. 2**Professional Services Agreement with McCarty and Associates
for Fisheries Analyst Consulting and Related Services**

This Amendment No 2 to the professional services agreement with McCarty and Associates for Fisheries Analyst Consulting and Related Services (Amendment No. 2) is made and entered into effective as of March 1, 2017, by and between the KODIAK ISLAND BOROUGH, organized under the laws of the State of Alaska, hereinafter referred to as the Borough; the CITY OF KODIAK, organized under the laws of the State of Alaska, hereinafter referred to as the City; and MCCARTY AND ASSOCIATES, a sole proprietor company authorized to do business in Alaska, with offices located at Juneau, Alaska, hereinafter referred to as the Contractor (collectively referred to as the Parties).

RECITALS

WHEREAS, the Parties entered into a Professional Services Agreement made as of February 7, 2014, for Contractor to monitor, analyze and report on fisheries issues and policy developments that may impact or affect the economy and community in Kodiak, Alaska; for a two- year term ending on February 6, 2016 (Agreement); and

WHEREAS, the Parties amended the Agreement with Amendment No. 1, effective March 1, 2016, which provided that the Agreement may be extended for one year upon approval by the Borough, City, and Contractor; and

WHEREAS, the Parties desire to amend and extend the Agreement.

NOW, THEREFORE, in consideration of the foregoing recitals, which are hereby incorporated herein by reference, and of the mutual covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. **Amendments to Agreement.** The following amendments are made to the Agreement by this Amendment No. 2:

Section 2.0 Term of Agreement is amended in its entirety to read as follows:

This Agreement shall take effect March 1, 2017. This Agreement shall remain in full force and effect for one year, expiring on February 28, 2018. This Agreement may be amended only in writing and upon compliance with all applicable statutes, ordinances, and regulations.

Section 3.0 Fees is amended in its entirety to read as follows:

Contractor will be paid \$4,584 per month. Contractor shall be reimbursed for travel-related costs including airfare, local transportation, lodging and per diem for meals based on the current US Government Services Administration (GSA)

agency schedule when preapproved by the Fisheries Work Group (FWG) co-chairs. The contractor shall submit monthly invoices, no later than the 10th of the following month, detailing work and expenses incurred. The Borough and City will each pay one half of each accurate monthly invoice.

Section 4.0 Scope of Services is amended to read as follows:

The Borough, City, and Contractor have agreed upon a scope of work described in the Contractor's proposal, Exhibit B, to provide Fisheries Analyst Services based on approved standards and instructions. Contractor will attend monthly meetings of the Kodiak Fisheries Work Group either in person or via teleconference, as agreed to by the Contractor and the FWG Co-chairs. Contractor will attend the Joint Work Sessions of the Assembly and Council via teleconference, as requested by the FWG Co-chairs. Attendance at other meetings in Kodiak may be requested by the Borough/City Fisheries Work Group. Additional Contractor fee for additional meetings (if any) must be agreed to, in writing, and approved by the Borough/City Fisheries Work Group.

In addition, Section 4 C of Exhibit B is amended to read:

Provide the written monthly reports prepared for the FWG meetings to both the Borough Assembly and the City Council through the Clerks, and make presentations via teleconference at joint work sessions of the Borough and City, as requested by the FWG Co-chairs. Reporting should include discussions or updates of ongoing concerns, introductions of proposed changes, and a summary of work performed since the previous report.

This Scope of Services can only be changed in writing pursuant to Section 25.0 of the original Agreement.

Section 5.0 Report Schedule is amended in its entirety to read as follows:

Written monthly reports shall be provided to the Borough and City to be presented at monthly scheduled Fisheries Work Group meetings. Contractor shall also provide monthly fisheries updates at Joint Work Sessions of the Borough and City orally via teleconference, as requested by the Co-chairs of the FWG. Contractor shall report in writing and orally to the Borough/City Fisheries Work Group on each fisheries meeting attended. Contractor shall attend telephonically and report to Borough/City Joint Work Sessions when requested by the Borough Assembly and City Council. Joint Work Sessions are anticipated to occur on a quarterly basis.

Section 6.0 Personnel/Organization is amended in its entirety to read as follows:

Key Personnel. Fisheries Analyst Services provided by the Contractor will be performed by **Heather McCarty**.

Changes in Key Personnel. The Contractor shall give the Borough and City,

through notice to the Contracting Officers, reasonable advance notice of any necessary substitution or change of key personnel and shall submit justification therefore in sufficient detail to permit the Borough and City to evaluate the impact of such substitution on this Agreement. No substitutions or other changes shall be made without the written consent of the Borough and City.

The contact person(s) on issues related to agenda setting and fisheries related issues of the Joint Fisheries Work Group, or direction on topics identified in the contract scope of work are the current co-chairs of the Fisheries Work Group.

The contact person(s) on the administration of this contract are the City Manager and Borough Manager.

Contractor will provide the Managers a listing of clients that are currently contracting with the Contractor. Any new clients will be divulged to the Managers.

Section 9.0 Compliance With Laws is amended in its entirety to read as follows:

The Contractor shall be familiar with and at all times comply with and observe all applicable federal, state and local laws, ordinances, rules, regulations, and executive orders, all applicable safety orders, all orders or decrees of administrative agencies, courts, or other legally constituted authorities having jurisdiction or authority over the Contractor, the Borough, the City or the service which may be in effect now or during performance of the services. Contractor shall maintain a current State of Alaska business license and shall provide a copy to both the Borough and City.

Section 11.0 Insurance is amended in its entirety to read as follows:

The Contractor understands that no Borough or City insurance coverage, including Workers' Compensation, is extended to the Contractor while completing the services described in this Agreement. The Contractor shall carry adequate (commercially reasonable coverage levels) insurance covering Workers' Compensation (if Contractor has employees), general public liability, automobile, and property damage including a contractual liability endorsement covering the liability created or assumed under this Agreement. The Contractor shall not commence work under this Agreement until the Contractor provides the Borough and City with certificates of insurance evidencing that all required insurance has been obtained. Contractor shall provide an updated insurance certificate at least ten days before expiration. These insurance policies and any extension or renewals thereof must contain the following provisions or endorsements:

Borough and City are additional insured hereunder as respects liability arising out of or from the work performed by Contractor.

Borough and City will be given thirty (30) days prior notice of cancellation or material alteration of any of the insurance policies specified in the certificate.

Insurer waives all rights of subrogation against Borough and City and their employees or elected officials.

The insurance coverage is primary to any comparable liability insurance carried by the Borough and City.

Upon request, Contractor shall permit the Borough and City to examine any of the insurance policies specified herein. Any deductibles or exclusions in coverage will be assumed by the Contractor, for account of, and at the sole risk of the Contractor.

The minimum amounts and types of insurance provided by the Contractor shall be subject to revision at the Contracting Officers' request in order to provide continuously throughout the term of the Agreement a level of protection consistent with good business practice and accepted standard of the industry.

Section 28.0 Notices is amended in its entirety to read as follows:

Any notices, bills, invoices, or reports required by the Agreement shall be sufficient if sent by the parties by electronic mail or by United States mail, postage paid, to the addresses noted below:

Kodiak Island Borough
Attn: Borough Manager
710 Mill Bay Road, Room 125
Kodiak, AK 99615
mpowers@kodiakak.us

McCarty and Associates
Attn: Heather McCarty
1537 Pine Street
Juneau, AK 99801
hdmccarty@gmail.com

City of Kodiak
Attn: City Manager
710 Mill Bay Road, Room 113
Kodiak, AK 99615
mtvenge@city.kodiak.ak.us

2. **Effect and Continuation of Agreement Terms.** Except as specifically modified herein, all of the terms, provisions, covenants and conditions of the Agreement continue in full force and effect without modification or change. The Parties hereby covenant, ratify and reaffirm each and every of their respective obligations under the Agreement as amended by this Amendment No. 2.
3. **Effective Date.** This Amendment No. 2 is effective as of March 1, 2017.
4. **Authority.** The Parties represent and warrant to each other that each has the full, complete and absolute authority to enter into this Amendment No. 2 that this Amendment No. 2 has been duly authorized by its local governing body or owners; that the person executing this Amendment No. 2 on its behalf has the full power and authority to do so; and this Amendment No. 2 is binding and enforceable against it in accordance with its terms.

5. **Counterparts.** For the convenience of the Parties hereto, this Amendment No. 2 may be executed, including by facsimile signature, in one or more counterparts, each identical to the other, so long as the counterparts in a set contain the signatures of all the Parties to this Amendment.

IN WITNESS WHEREOF, the parties have entered into this Amendment No. 2 effective as of the date and year hereinabove first written.

KODIAK ISLAND BOROUGH

By: Michael Powers
Title: Borough Manager

Date

ATTEST:

Nova Javier, MMC
Borough Clerk

CITY OF KODIAK

By: Mike Tvenge
Title: Acting City Manager

Date

ATTEST:

Debra Marlar, MMC
City Clerk

McCarty and Associates

By: Heather McCarty
Title: Owner

State of Alaska
Third Judicial District

The foregoing Instrument was acknowledged before me by _____
on this _____ day of _____ 2017.

L.S.

Notary Public in and for Alaska
My Commission Expires:

**Professional Services Agreement with
McCarty and Associates
for Fisheries Analyst Consulting and Related Services**

This **AGREEMENT**, made and entered into this **7th** day of **February, 2014** by and between the **KODIAK ISLAND BOROUGH**, organized under the laws of the State of Alaska, hereinafter referred to as the "**Borough**", the **CITY OF KODIAK**, organized under the laws of the State of Alaska, hereafter referred to as the "**City**" and **MCCARTY AND ASSOCIATES** a sole proprietor company authorized to do business in Alaska, with offices located at Juneau, Alaska, hereinafter referred to as the "**Contractor.**"

WITNESSETH

WHEREAS, the Borough and City wish to enter into a contract with an independent contractor to monitor, analyze and report on fisheries issues and policy developments that may impact or affect the economy and community in Kodiak, Alaska; and

WHEREAS, in response to a request for proposals, Contractor submitted a proposal asserting it is qualified to perform these services and able to do so in a timely manner;

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

1.0 DEFINITIONS

1.1 "Agreement" shall mean this Professional Services Agreement, including:

Exhibit A – McCarty & Associates proposal dated January 21, 2014

Exhibit B – Borough and City's request for proposals

1.2 "Change Order" is an addition to, or reduction of, or other revision approved by the Borough and City in the scope, complexity, character, or duration of the services or other provisions of this Agreement.

1.3 "Borough" shall mean the Kodiak Island Borough, Alaska.

1.4 "Borough/City Fisheries Work Group" is a sub-committee of the Borough Assembly and City Council consisting of three Assembly members and three Council members (KIB Assembly Resolution FY2013-32).

1.5 "City" shall mean the City of Kodiak, Alaska.

- 1.6 "Contracting Officers" shall mean Borough Manager and the City Manager, and include any successor or authorized representatives.
- 1.7 "Contractor" shall mean McCarty and Associates.
- 1.8 "Fisheries Analyst Services" shall include monitoring, analyzing, and reporting to the Borough and City on fisheries issues and policy developments that may impact or affect the economy and communities with the City and the Borough, as further described in the Borough's and City's request for proposals (Exhibit B) and Contractor's proposal (Exhibit A).

2.0 TERM OF AGREEMENT. This Agreement shall take effect on February 7, 2014. This Agreement shall remain in full force and effect for two years expiring on February 6, 2016. This Agreement may be extended for two one year options to extend upon approval by the Borough, City and Contractor. This Agreement may be amended only in writing and upon compliance with all applicable statutes, ordinances, and regulations.

3.0 FEES. Contractor will be paid \$5,000 per month, at the beginning of each month, and reimbursed for reasonable travel-related costs including airfare, local transportation, lodging and per diem for meals based on the current US Government Services Administration (GSA) agency schedule. The Contractor will submit monthly invoices, detailing work and expenses incurred. The Borough and City will each pay one half of each accurate monthly invoice.

4.0 SCOPE OF SERVICES. The Borough, City, and Contractor have agreed upon a scope of work described in the Contractor's proposal, Exhibit A, to provide Fisheries Analyst Services based on approved standards and instructions [as specifically described in Exhibits A and B.] When available, Contractor will also attend local meetings of the Kodiak Fisheries Advisory Committee (KFAC) and the Kodiak Regional Aquaculture Association (KRAA). Attendance at other meetings may be requested by the Borough/City Fisheries Work Group. Additional Contractor fee for additional meetings (if any) must be agreed to, in writing, and approved by the Borough/City Fisheries Work group.

This Scope of Services can only be changed in writing pursuant to Section 25.0 of this Agreement.

5.0 REPORT SCHEDULE. Written quarterly reports shall be provided to the Borough and City within 30 days following the end of each calendar quarter. Contractor shall also report, written and/or oral, to the Borough/City Fisheries Sub-committee after each fisheries meeting attended and attend Borough/City Joint Work Sessions when requested by the Borough/City Fisheries Sub-committee. Joint work sessions are anticipated to occur on a quarterly basis.

6.0 PERSONNEL/ORGANIZATION

6.1 Key Personnel. Fisheries Analyst Services provided by the Contractor will be performed by:

Heather McCarty

6.2 Changes in Key Personnel. The Contractor shall give the Borough and City, through notice to the Contracting Officers, reasonable advance notice of any necessary substitution or change of key personnel and shall submit justification therefore in sufficient detail to permit the Borough and City to evaluate the impact of such substitution on this Agreement. No substitutions or other changes shall be made without the written consent of the Borough.

7.0 STANDARD OF PERFORMANCE. The Contractor agrees to use its best efforts to provide Fisheries Analyst Services. The Contractor accepts the relationship of trust and confidence established between it and the Borough and City by this Agreement. The Contractor covenants with the Borough and City to furnish its best skill and judgment. The Contractor shall provide all services in a competent manner.

8.0 TIMELINESS OF PERFORMANCE. Time is of the essence in this Agreement.

9.0 COMPLIANCE WITH LAWS. The Contractor shall be familiar with and at all times comply with and observe all applicable federal, state and local laws, ordinances, rules, regulations, and executive orders, all applicable safety orders, all orders or decrees of administrative agencies, courts, or other legally constituted authorities having jurisdiction or authority over the Contractor, the Borough, or the service which may be in effect now or during performance of the services.

10.0 INDEMNITY. The Contractor shall indemnify, defend, and hold harmless the Borough and City from and against any claim of, or liability for, negligent acts, errors, and omissions of the Contractor under this Agreement, including attorney fees and costs. The Contractor is not required to indemnify, defend, or hold harmless the Borough or City for a claim of, or liability for, its (the Borough or City, as applicable) independent negligent acts, errors, and omissions. If there is a claim of, or liability for, a joint negligent act, error, or omission of the Contractor

and the Borough and City, the indemnification, defense, and hold harmless obligation of the Contractor, and liability of the parties, shall be apportioned on a comparative fault basis. In this provision, "Contractor", "Borough" and "City" include the employees, agents, and contractors who are directly responsible, respectively, to each. In this provision, "independent negligent acts, errors, and omissions of the Borough and City means negligence other than in the Borough's and City's selection, administration, monitoring, or controlling of the Contractor, or in approving or accepting the Contractor's work.

11.0 INSURANCE. The Contractor understands that no Borough or City insurance coverage, including Workers' Compensation, is extended to the Contractor while completing the services described in this Agreement. The Contractor shall carry adequate (commercially reasonable coverage levels) insurance covering Workers' Compensation, general public liability, automobile, professional liability, and property damage including a contractual liability endorsement covering the liability created or assumed under this Agreement. The Contractor shall not commence work under this Agreement until the Contractor provides the Borough and City with certificates of insurance evidencing that all required insurance has been obtained. These insurance policies and any extension or renewals thereof must contain the following provisions or endorsements:

- a. Borough and City are additional insured thereunder as respects liability arising out of or from the work performed by Contractor.
- b. Borough and City will be given thirty (30) days prior notice of cancellation or material alteration of any of the insurance policies specified in the certificate.
- c. Insurer waives all rights of subrogation against Borough and City and their employees or elected officials.
- d. The insurance coverage is primary to any comparable liability insurance carried by the Borough and City.

Upon request, Contractor shall permit the Borough and City to examine any of the insurance policies specified herein. Any deductibles or exclusions in coverage will be assumed by the Contractor, for account of, and at the sole risk of the Contractor.

The minimum amounts and types of insurance provided by the Contractor shall be subject to revision at the Contracting Officers' request in order to provide continuously throughout the term of the Agreement a level of protection consistent with good business practice and accepted standard of the industry.

12.0 GOVERNING LAW. The laws of Alaska will determine the interpretation, performance and enforcement of this Agreement.

13.0 OWNERSHIP OF WORK PRODUCTS. Payment to the Contractor for services hereunder include full compensation for all work products and other materials produced by the Contractor pertaining to this Agreement.

The originals of all material prepared or developed by the Contractor or its employees, agents, or representatives hereunder, including documents, drawings, designs, calculations, maps, sketches, notes, reports, data, models, computer tapes, and samples shall become the property of the Borough and City when prepared, whether delivered or not, and shall, together with any materials furnished the Contractor and its employees, agents, or representatives by the Borough and City hereunder, be delivered to the Borough and City upon request and, upon termination or completion of this Agreement. Materials previously created and copyrighted by the Contractor included in this project will remain property of the Contractor. Copies will be made available to the Borough and City upon request. Materials purchased from and copyrighted by third parties are not included in this provision.

14.0 PATENTS, TRADEMARKS, AND COPYRIGHTS. The Contractor agrees to defend, indemnify, and save the Borough and City harmless from and against any and all claims, costs, royalties, damages and expenses of any kind of nature whatsoever (including attorneys' fees) which may arise out of or result from or be reasonably incurred in contesting any claim that the methods, processes, or acts employed by the Contractor or its employees in connection with the performance of services hereunder infringes or contributes to the infringement of any letter patent, trademark, or copyright. In case such methods, processes, or acts are in suit held to constitute infringement and use is enjoined, the Contractor, within reasonable time and at its own expense, will either secure a suspension of the injunction by procuring for the Borough and City a license or otherwise, or replace such method, process, etc., with one of equal efficiency.

15.0 NONWAIVER. No failure of the Borough, City or Contractor to insist upon the strict performance by the other of any of the terms of this Agreement or to exercise any right or remedy herein conferred, shall constitute a waiver or relinquishment to any extent of its rights to rely upon such terms or rights on any future occasion. Each and every term, right, or remedy of this Agreement shall continue in full force and effect.

16.0 SAFETY/PERFORMANCE. The Contractor shall comply with all federal and state statutes, ordinances, orders, rules, and regulations pertaining to the protection of workers and the public from injury or damage, and shall take all other reasonable precautions to protect workers and the public from injury or damage.

17.0 SUSPENSION OR TERMINATION.

- 17.1 Fault Termination or Suspension. This Agreement may be terminated by any party upon ten (10) days written notice if another party fails substantially to perform in accordance with its terms. If the Borough or City terminates this Agreement, they will pay the Contractor a sum equal to the percentage of work completed and accepted that can be substantiated by the Contractor, offset by any amounts owed to the Borough or City. However, within the ten (10) day Notice of Intent to terminate the party in default shall be given an opportunity to present a plan to correct its failure.
- 17.2 Convenience Suspension or Termination. Any party may at any time terminate or suspend this Agreement upon 30 days' prior written notice to each of the other parties, for any reason including its own needs or convenience. In the event of a convenience termination or suspension for more than six (6) months, the Contractor will be compensated for authorized services and authorized expenditures performed to the date of termination or suspension. No fee or other compensation for the uncompleted portion of the services will be paid, except for already incurred indirect costs which the Contractor can establish and which would have been compensated but because of the termination or suspension would have to be absorbed by the Contractor without further compensation.
- 17.3 Activities Subsequent to Receipt of Notice of Termination or Suspension. Following receipt of a Notice of Termination or suspension and except as otherwise directed by the Contracting Officers, the Contractor shall:
- a. perform only work authorized under this Agreement through the termination or suspension date and to the extent specified in the Notice; and
 - b. deliver in the manner, at the times, and to the extent directed by the Contracting Officers, work in progress, completed work, supplies, and other material produced as a part of, or acquired in respect of the performance of the work terminated or suspended by the Notice.

18.0 EQUAL EMPLOYMENT OPPORTUNITY. The Contractor shall not discriminate against any employee or applicant for employment because of race, religion, color, national origin, or because of age, physical handicap, sex, marital status, change in marital status, pregnancy, or parenthood when the reasonable demands of the position do not require distinction on the basis of age, physical handicap, sex, marital status, changes in marital status, pregnancy, or parenthood. The Contractor shall take affirmative action required by law to ensure that applicants are employed and that employees are treated during

employment without regard to their race, color, religion, national origin, ancestry, age, or marital status.

19.0 NO ASSIGNMENT OR DELEGATION. The Contractor may not assign, subcontract or delegate this Agreement, or any part of it, or any right to any of the money to be paid under it without written consent of the Contracting Officers.

20.0 INDEPENDENT CONTRACTOR. The Contractor shall be an independent contractor in the performance of the work under this Agreement, and shall not be an employee or agent of the Borough or of the City.

21.0 PAYMENT OF TAXES. As a condition of performance of this Agreement, the Contractor shall pay all federal, state and local taxes incurred by the Contractor and shall require their payment by any other persons in the performance of this Agreement.

22.0 PRECEDENCE AND DIVISIBILITY. The provisions of this Agreement shall fully govern the services performed by the Contractor. If any term, condition, or provision of this Agreement is declared void or unenforceable, or limited in its application or effect, such event shall not affect any other provisions hereof and all other provisions shall remain fully enforceable.

23.0 ENTIRE AGREEMENT. This Agreement contains the entire agreement between the parties as to the services to be rendered by the Contractor. All previous or concurrent agreements, representations, warranties, promises, and conditions relating to the subject matter of this Agreement are superseded by this Agreement.

24.0 CLAIMS AND DISPUTES. Venue for all claims and disputes under this Agreement, if not otherwise resolved by the parties, shall be in the appropriate Alaska State court in Anchorage or Kodiak, Alaska.

25.0 CHANGES IN SCOPE OF WORK.

25.1 General. Additional services not specifically provided for in this Agreement will not be compensated.

25.2 Changes in Scope of Work. The Contracting Officers may, at any time, by a written Change Order delivered to the Contractor, make changes to the scope of work, or authorize additional work outside the scope of work to the extent authorized by Borough and City appropriations.

25.3 Compensation to the Contractor. If any Change Order for which compensation is allowed under this Article causes an increase or decrease in the estimated cost of, or time required for, the performance of

any part of the work under this Agreement, or if such change otherwise affects other provisions of this Agreement, an equitable adjustment will be negotiated. Such an adjustment may be:

- a. in the estimated cost or completion schedule, or both;
- b. in the amount of fee to be paid; and
- c. in such other provisions of the Agreement as may be affected, and the Agreement shall be modified in writing accordingly.

25.4 Any claim by the Contractor for adjustment under this section must be asserted within fifteen (15) days from the day of receipt by the Contractor of the notification of change; provided, however, that the Contracting Officers, deciding that the facts justify such action, may receive and act upon any such claim asserted at any time prior to final payment under this Agreement. Failure to agree to any adjustment shall be a dispute within the meaning of Section 2540 of this Agreement.

26.0 LIMITATION OF FUNDS.

26.1 At no time will any provision of this Agreement make the Borough or City liable for payment for performance of work under this Agreement in excess of the amount that has been appropriated by the Borough Assembly (for the Borough) or City Council (for the City) and obligated for expenditure for purposes of this Agreement.

26.2 Change orders issued pursuant to Section 25 of this Agreement shall not be considered an authorization to the Contractor to exceed the amount allotted in the absence of a statement in the change order, or other modification increasing the amount allotted.

26.3 Nothing in this Section shall affect the right of the Borough and City under Section 17 to terminate this Agreement.

27.0 PRIOR WORK. For the purposes of this Agreement, work done at the request of the Borough and City before execution of this Agreement, if any, shall be deemed to be work done after its execution and shall be subject to all the conditions contained herein.

28.0 NOTICES. Any notices, bills, invoices, or reports required by the Agreement shall be sufficient if sent by the parties by electronic mail or by United States mail, postage paid, to the addresses noted below:

Kodiak Island Borough
Attn: Borough Manager
710 Mill Bay Road, Room 125
Kodiak, AK 99615
bcassidy@kodiakak.us

McCarty and Associates
Attn: Heather McCarty
1537 Pine Street
Juneau, AK 99801
hdmccarty@gmail.com

City of Kodiak
Attn: City Manager
710 Mill Bay Road
Kodiak, AK 99615
akniaziowski@city.kodiak.ak.us

IN WITNESS WHEREOF, the parties have executed this Agreement.

Kodiak Island Borough

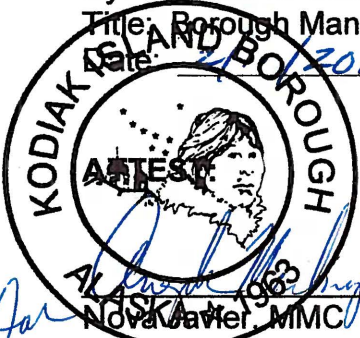
McCarty and Associates

Charles E. Cassidy Jr

Heather D. McCarty

By: Charles E. Cassidy Jr
Title: Borough Manager
Date: 1/30/14

By: Heather McCarty
Title: Owner
Date: 1/30/14


Janet...
Nov 1982
Borough Clerk

(Borough seal)

City of Kodiak

Aimée Kniazowski

By: Aimée Kniazowski
Title: City Manager
Date: 2/9/14

ATTEST:

Debra Marlax

Debra Marlax, MMC
City Clerk



(City seal)

January 21, 2014

Kodiak Island Borough
Office of the Manager
710 Mill Bay Road
Kodiak, AK 99615

Dear Mr. Cassidy:

I am submitting this proposal in response to the Request for Proposals for the services of a Fisheries Analyst for the Kodiak Island Borough and the City of Kodiak. Along with this transmittal letter I attach the required Implementation Plan, my company profile and work experience and credentials in the form of an expanded CV, my proposed fee, and four references.

It is with great pleasure and anticipation that I submit a proposal to work with the community leaders and people of Kodiak. I am a 35-year resident of coastal Alaska fishing communities, from a commercial salmon fishing family, and a true believer in the need for reasonable and informed local decision-making to sustain and develop this state's fisheries resources. Although I have never lived in Kodiak, I have been visiting your beautiful island regularly for more than 20 years, as a long-time member of the Policy Council for your "Fish Tech" Center, as a faithful ComFish attendee, as a member of the North Pacific Council "family," and as a consultant for a Kodiak processor who works with all species.

My experience and familiarity with the local commercial and sport fisheries has been augmented by ten years of work with a community development group in the Bering Sea, where I gained an appreciation for the importance of subsistence fisheries to the Alaska Native cultures. The long association with the University of Alaska School of Fisheries and Ocean Sciences in both an advisory capacity and as an administrator of an industry-funded marine research program has given me insight into the important role of science in sustaining fisheries. I also served for three years as the fishery representative on the North Pacific Research Board, advocating for research in support of pressing fishery management issues.

As to current experience in the fishery regulatory process, I have attended every meeting of the North Pacific Fisheries Management Council (NPFMC) for the last 15 years, serving on a Council committee, making testimony and moving forward a number of important Council actions on behalf of employers and clients. I have also been to every regular meeting of the International Pacific Halibut Commission (IPHC) for the last six years, and have served on its Processor Advisory Group during that period. I cut my regulatory teeth on salmon issues when I worked with the salmon industry in Prince William Sound, moving actions through the Board of Fisheries (BOF) and the Department of Fish and Game. I have not spent a lot of time in the last few years at the BOF, but I am very familiar with that process.

Because of my varied experiences, I understand fishery resource management issues in Alaska, from several different perspectives: harvesting, processing, aquaculture, marketing, Alaska Native culture, sustainability, research and education. I have participated in formal and informal bodies, boards and commissions at all levels, and am able to communicate well in those settings.

I am very conversant with the State Constitution and the State and Federal fishery regulations, and with the processes that create them. The Magnuson Stevens Act with its national standards has been in my briefcase for years, and is dog-eared from use. I have taken a national course in the NEPA regulations that guide Federal regulatory decision-making.

One of my personal and professional hallmarks is fairness and honesty; I hope that conversations with my references will bring that out. Because I have represented many different sectors and interests, and have lived in and focused on fishing communities, I really do perceive and approach issues from multiple angles – and always with the interests of the community uppermost. I believe I can offer unbiased fisheries analysis and advice to the community leaders of Kodiak.

It is clear to me that some might consider my work with a Kodiak processor a conflict of interest with representing the City and Borough of Kodiak. If I am asked to work with Kodiak, I am prepared to immediately and completely end that professional relationship. My other client relationships, in my opinion, could not be judged a conflict of interest.

Regarding technical considerations, I do have property and car insurance, including liability insurance, and can provide that information. I do not have professional liability insurance, as it has not been required in other contracts and it is a considerable expense. I am in the process of renewing my Alaska business license.

I believe I have provided all of the required information – but if you have any questions or need additional information please call or email me any time. I look forward to hearing from you, and to serving the people of Kodiak.

Best regards,


Heather McCarty

Request for Proposals: FISHERIES ANALYST

1. AUTHORITY

- A. The authority to issue this Request for Proposal (RFP) is granted under KIBC 3.30.110 Competitive sealed proposals – Negotiated procurement.

2. PURPOSE AND INTENT

- A. It is the primary intent of this RFP is to select a qualified firm or individual to act as a Fisheries Analyst. The Fisheries Analyst will work jointly for the local governments of Kodiak Island: the Kodiak Island Borough (KIB) and the City of Kodiak (City). The selected proposer will enter into a term contract for a period of two years with options for two additional one year extensions. The term contract will include a six month initial review to ensure an understanding of the Scope. The contract will also include a termination clause by either party with a 30 day notice.
- B. The work shall be performed in compliance with all applicable federal, state and local requirements. The KIB and City require all work to be performed efficiently, cost effectively, and according to best business practices of the industry.

3. BACKGROUND/SITUATION

The economy of the Kodiak region is based on a healthy, diverse and well-managed fisheries resource that includes more than 30 species of fish harvested and processed onshore. The Kodiak region comprises all fisheries user groups -- subsistence, sportfish, commercial sportfish, personal use, commercial fish, the processing sector, fisheries research and protection sectors, and the fishing industry support sector. Policy development and regulatory management in the Kodiak region is challenging because of the need to address such diverse and competing concerns as species fished, vessel size, gear type, limited entry permits, quota share, limited license permits, and crew share interests.

4. SCOPE (aim or purpose)

The primary role of the Fisheries Analyst will be to monitor, analyze and report on fisheries issues and policy developments that may impact or affect the economy and community of Kodiak.

- A. Monitor actions and pending decisions of regulatory bodies such as the NOAA/National Marine Fisheries Service, the State of Alaska Department of Fish and Game, and International Pacific Halibut Commission to anticipate regulatory actions that could impact Kodiak's economy.
- B. Attend meetings of the North Pacific Fisheries Management Council, State of Alaska Board of Fisheries, and other fishery meetings as directed, to

provide a summary of issues, discussion and actions to the Assembly/City Council that could impact Kodiak's economy.

- C. Provide written quarterly report to both the Borough Assembly and the City Council and make presentations at joint Borough Assembly/City Council work sessions. Reporting should include discussions or updates of ongoing concerns, introductions of proposed changes, and a summary of work performed since the previous report.
- D. Prepare analyses of potential impacts of proposed regulatory changes on the Kodiak economy.
- E. Provide information to Assembly/Council to analyze and understand issues based on facts and from a neutral point of view, and to make decisions or develop positions on issues affecting or impacting the economy and people of Kodiak.
- F. The successful proposer should possess the following qualifications:
 - 1. An understanding of local and regional fisheries to include species, vessel and gear types, fisheries user groups -- subsistence, sportfish, commercial sportfish, personal use and commercial fish, and the processing sector.
 - 2. A thorough understanding of the State constitution regarding Alaska's fisheries and all state and federal fisheries laws and regulations.
 - 3. An understanding of fisheries resource management issues and how they affect Kodiak's seafood industry and economy.
 - 4. Documented recent experience in state and federal fisheries resource management processes.
 - 5. Current or recent involvement in the fisheries regulatory process in both the State and Federal environment, specifically the North Pacific Fisheries Management Council, IPHC and AK Department of Fish and Game, Board of Fish.
 - 6. Familiarity with the Magnuson Stevens Act and how the national standards pertain to community fisheries.
 - 7. Ability to communicate effectively with local government bodies and to provide written reports both to and on behalf of the governing bodies.
 - 8. The ability to remain neutral on divisive issues.
 - 9. The ability to work well with boards and commission at the federal, state and local levels.
 - 10. Ability to provide applicable insurance coverage, such as workers' compensation, commercial automobile liability and professional liability.
 - 11. Possession of a State of Alaska Business License.

In the event that the proposer does not possess the above qualifications, the proposer must include a plan for addressing the lack of experience or qualification.

Additionally, if a proposer possesses a perceived conflict of interest, the proposer must also include a discussion about how the conflict of interest will be avoided

- G. The successful proposer will enter into a professional services contract that must be approved by the Kodiak Island Borough Assembly and Kodiak City Council.

5. REQUIRED INFORMATION

- A. Proposals must include:
- Transmittal Letter
 - Implementation Plan
 - Company Profile
 - Experience
 - Credentials
 - Proposed Fee
 - References
 - Ability to provide applicable insurance coverage

6. PROPOSAL PROCESS

- A. Proposals will be accepted until 3:00 PM on Tuesday, January 21, 2014. It is the proposer's responsibility to deliver proposals to:

Kodiak Island Borough
Office of the Manager
710 Mill Bay Road
Kodiak, AK 99615
(907) 486-9301

Faxed and electronic proposals will not be accepted.

- B. Proposals must be clearly marked: **FISHERIES ANALYST SERVICES PROPOSAL**

Provide six unbound copies of the proposal.

C. Evaluation Methodology: Each proposal will be evaluated according to criteria and given the relative weight shown in the table below.

EVALUATION CRITERIA	RELATIVE WEIGHT
PROPOSED RATES	25%
QUALIFICATIONS/EXPERIENCE	25%
IMPLEMENTATION PLAN	25%
REFERENCES	15%
OVERALL QUALITY OF PROPOSAL	10%

A recommendation of the top respondent will be made based on the results of reference checks, qualifications of the firm and response to the Scope of service provided. This will be submitted to the Kodiak Island Borough Assembly and the City of Kodiak City Council for approval and award.

D. Miscellaneous

The KIB and City reserve the right to reject or accept any or all bids, to waive irregularities or informalities in the proposal, and to give particular attention to the qualifications of the Proposer.

KIB and City reserve the right to issue written addenda to revise or clarify the RFP, respond to questions, and/or extend or shorten the due date of proposals.

KIB and City retain the right to cancel the RFP process if it is in their best interest. Any cost incurred by proposers for the preparation and submittal of the proposal is the sole responsibility of the proposer.

A proposal may be corrected or withdrawn by a written request received prior to the deadline for receipt of proposals.

All proposals become part of the public record and no part of any proposal may be confidential.

All proposals and other material submitted become KIB and City property and may be returned only at their option.

KIB and City assume no responsibility or liability for the transmission, delay, or delivery of proposals by either public or private carriers.

Any and all media announcements pertaining to this RFP require KIB and City's prior written approval.


This RFP does not obligate KIB and City or the selected proposer until a contract is signed and approved by all parties.


Contact Borough Manager Bud Cassidy at (907) 486-9302 or at bcassidy@kodiak.us with questions regarding this solicitation.

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MEMORANDUM TO COUNCIL

To: Mayor Branson and City Councilmembers

From: Aimée Kniazowski, City Manager 

Thru: Glenn Melvin, PE, City Engineer and Mike Tvenge, Deputy City Manager 

Date: April 13, 2017

Agenda Item: V. e. **Authorization of Amendment to Lease 222854 With the Kodiak Maritime Museum and Art Center For the Thelma C**

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 in January 2016 by Council. KMM requested the location be adjusted to make the installation more affordable and this action was approved in August 2016 by Council. KMM has requested the footprint in the lease that was approved by Ordinance No. 1356 and Lease No. 222854 in August 2016 be modified to reflect the increased location by 720 square feet due to changes in the design and funding constraints. Lease No. 222854 would require an amendment with a substitution of Exhibit A and Exhibit B; all other terms of Lease No. 222854 would remain the same. Staff recommends Council authorize the amendment to the lease to allow KMM to proceed with the construction of the Thelma C 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
- August 11, 2016, Council adopted Ordinance No. 1356 with Lease No. 222854 with the Kodiak Maritime Museum and Art Center for the Thelma C
- April 11, 2017, Council reviewed the lease amendments at the work session

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 initial approval from the City to lease a 7,224 sf area on the spit for the display, obtained needed permits, and acquired grant funds in January 2016.

In the spring of 2016 KMM notified the City and Council 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. Staff worked with KMM to locate the new installation spot between Trident Seafoods and the channel-side boat launch area. The footprint, 2,000+ sf vs. 7,224 sf for the original layout was much less expensive to construct. Council adopted Ordinance No. 1356 (Attachment D) and the Lease No. 222854 (Attachment C) on August 11, 2016, to approve the changes as requested by KMM.

In February 2017, KMM requested the footprint in the lease that was approved by Ordinance No. 1356 and Lease No. 222854 in August 2016 be modified to reflect the increased location by 720 square feet due to changes in the design and funding constraints.

The only differences in the documentation for the lease are new exhibits, with an increase in the 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) Authorize the Amendment to Lease No. 222854, which is staff’s recommendation, because it is consistent with expressed support over several years for this project.
- 2) Do not authorize the lease, 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 initial lease language and terms and drafted Ordinance No. 1356. 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 authorize the lease as amended to allow the construction of the Thelma C exhibit at the approved location.

CITY MANAGER'S COMMENTS: I support this project as do the Harbor Department and other Harbor users. KMM worked with City staff to keep us informed of the need to change the footprint of the lease area. Therefore, I encourage Council to approve this lease amendment as outlined in the memo.

ATTACHMENTS:

- Attachment A: Exhibit A & B Amendments
- Attachment B: Map with Exhibit Changes
- Attachment C: Lease with Kodiak Maritime Museum
- Attachment D: Ordinance No. 1356
- Attachment E: Letter of request from KMM, dated March 8, 2017

PROPOSED MOTION:

Move to authorize an amendment to Lease No. 222854 by substituting Exhibit A and Exhibit B dated March 23, 2017, for Exhibit A and Exhibit B as authorized by Ordinance No. 1356 and Lease No. 222854 on August 11, 2016.

**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 18°10'02" W 277.11 feet to the true point of beginning,

Thence from said point of beginning, S 34° 19' 46" E, 64.00 feet,

Thence S 55°40'14" W, 42.50 feet,

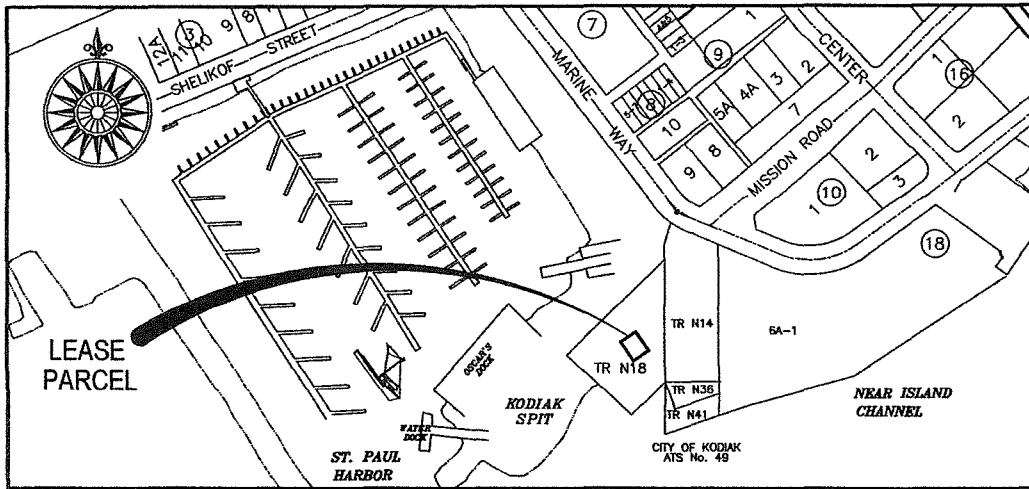
Thence N 34°19'46" W, 64.00 feet,

Thence N 55°40'14" E, 42.50 feet, to the point of beginning containing 2,720 square feet more or less.

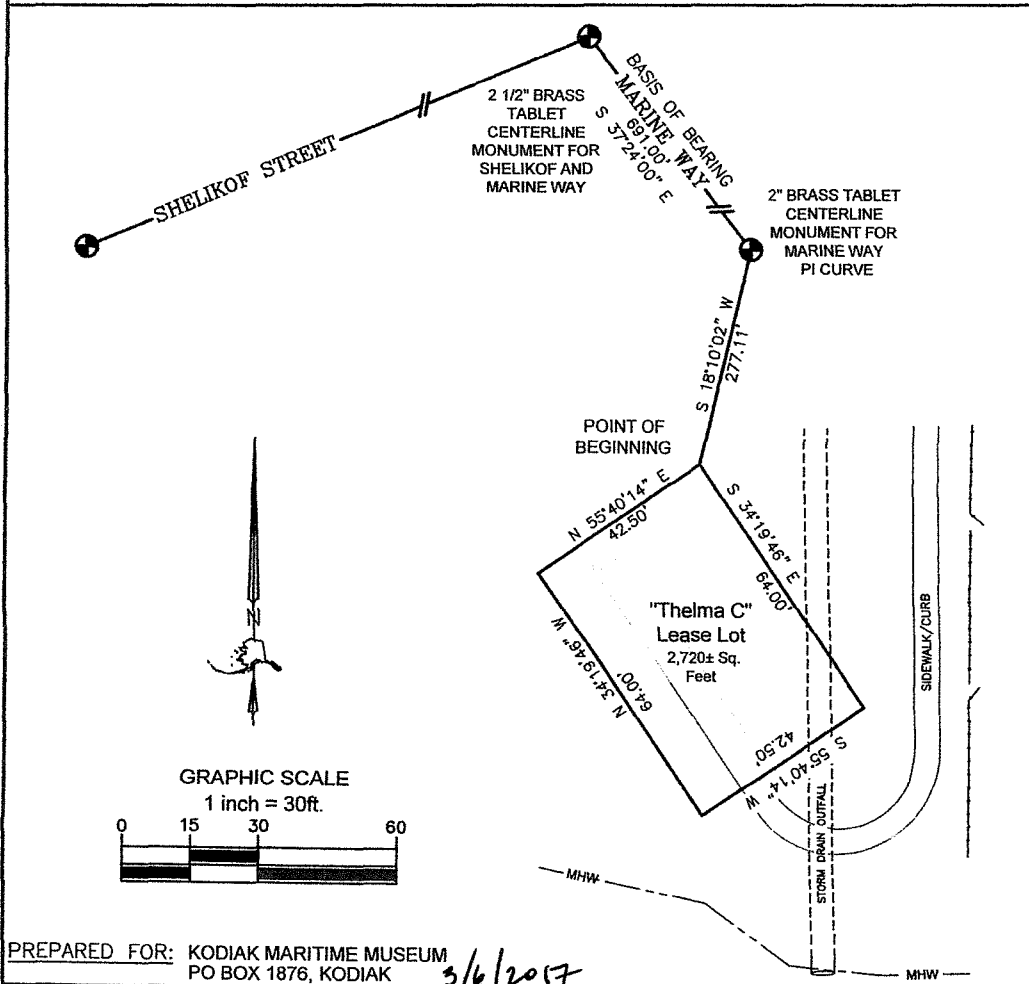
As shown on a sketch attached hereto and made a part of this description.

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.



VICINITY MAP SCALE 1INCH = 300FEET



PREPARED FOR: KODIAK MARITIME MUSEUM
PO BOX 1876, KODIAK

KODIAK LAND SURVEYING

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

3/6/2017

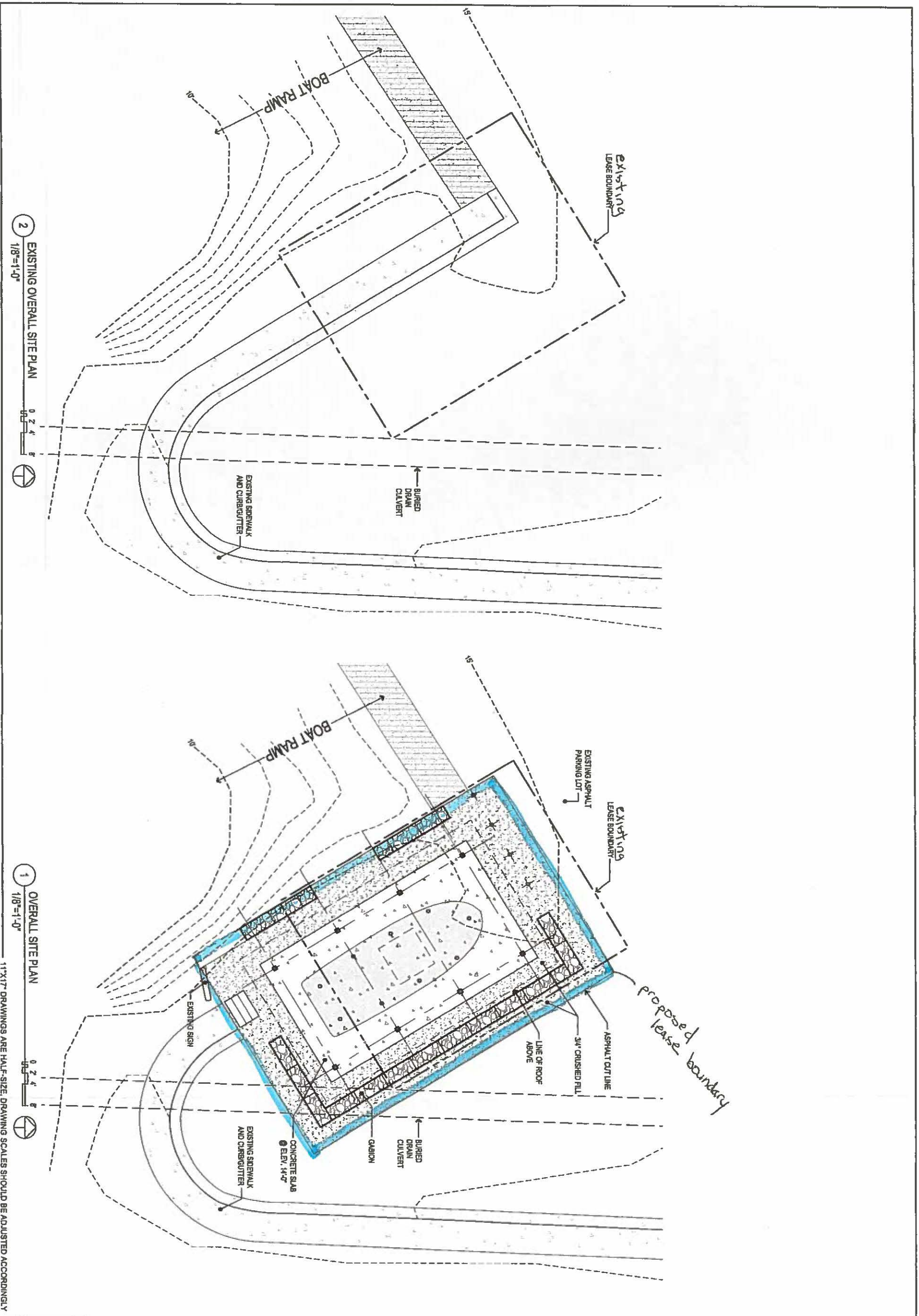
STATE OF ALASKA
49TH

JAMES PURDY
LS 10201
Registered Professional Land Surveyor

Kodiak Maritime Museum
Thelma C
Lease Parcel

CHANNEL SPIT, - WITHIN
TIDELANDS TRACT N18 of ATS 49
CITY OF KODIAK, ALASKA

Scale: 1INCH = 30FEET	Date: 3.6.2017
REF: THELMAC.DWG	Drawn: JLP



1 OVERALL SITE PLAN
1/8"=1'-0"
11"x17" DRAWINGS ARE HALF-SIZE. DRAWING SCALES SHOULD BE ADJUSTED ACCORDINGLY.

2 EXISTING OVERALL SITE PLAN
1/8"=1'-0"

<p>A0</p> <p>SITE PLANS</p>	<p>DESIGN DEVELOPMENT</p> <p>Job No. BA1205</p> <p>Drawn: DML, RVP Checked: JLB Date: DEC 2016 Revisions: XXX</p>	<p>THELMA C EXHIBIT PAVILION - NEW SITE</p> <p>Kodiak Maritime Museum St. Paul Harbor Kodiak, Alaska</p>	<p>BARNES · ARCHITECTURE INC. 216 East 4th Avenue, Anchorage, Alaska 99501 (907) 276-5161</p>
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**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.

9/27/2016

LESSEE:

KODIAK MARITIME MUSEUM AND ART CENTER



By: TOBY SULLIVAN, KMM EXECUTIVE DIRECTOR

Its: _____

LESSOR:

CITY OF KODIAK

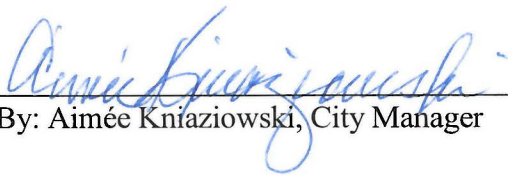

By: Aimée Kniaziowski, City Manager

EXHIBIT A

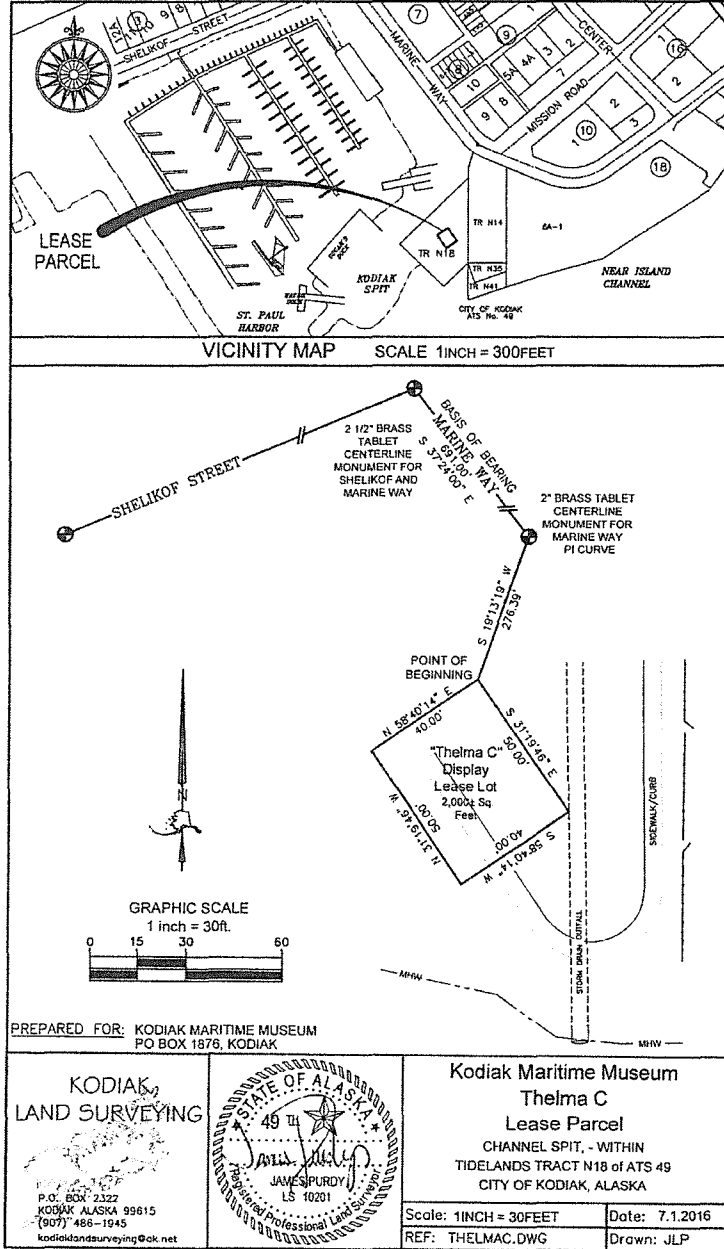
**A Lease Lot of land for Kodiak Maritime Museum's "Thelma C" Display,
Kodiak Spit, Kodiak Channel, City of Kodiak, Kodiak Island**

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



**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:

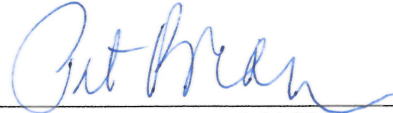
Section 1: Ordinance No. 1340 is hereby rescinded.

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



MAYOR

ATTEST:


CITY CLERK

First Reading: July 14, 2016
Second Reading: August 11, 2016
Effective Date: September 17, 2016





KODIAK MARITIME MUSEUM

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

March 8, 2016

Due to unforeseen changes in the design of the Thelma C Exhibit Project, driven by funding constraints, the Kodiak Maritime Museum is requesting a revision of our August 2016 lease from 2,000 square feet to 2,720 square feet. The lease description encompasses the asphalt cut necessary to construct the interpretive display foundation and the display itself.

When the museum applied to the City for the lease in May 2016, we believed the footage described in the application was accurate, although some other details of the project design were still incomplete. Available funding however, eventually dictated that we modify the design to use rock filled gabion baskets for the low perimeter wall, rather than poured concrete. While these gabions are less expensive, they have a slightly larger footprint than the concrete wall.

A consequence of this larger footprint is that one corner of the low wall around the exhibit now overlaps the new underground culvert running parallel to the Trident processing plant. While maintaining access to the culvert has been a concern to the City, it should be understood that the gabion baskets can be easily moved with a forklift, should maintenance of the culvert ever become necessary. No permanent structures or materials such as poured concrete or structural steel will lie over the culvert.

While switching from concrete perimeter walls to gabions is part of our cost saving effort, the change will also enhance the working waterfront visual ambience of the project. We have also modified the design to reduce site work and excavation, replaced the asphalt display pad with washed rock, and have replaced the Kalwall translucent roof panels called for in the original design with hot dipped 1 ½" deep corrugated roofing.

We anticipate construction to be phased, with earthwork occurring in April and the boat and interpretive panels put in place shortly after that. The structural steel for the protective pavilion over the boat will be constructed once the boat has been placed on the site. The existing sidewalk around the existing parking lot will remain as part of the display, and as in the original design, the display will not affect the channel side boat ramp.


The lease narrative has been revised accordingly.

Respectfully,

Toby Sullivan
Executive Director

MEMORANDUM TO COUNCIL

To: Mayor Branson and City Councilmembers

From: Aimée Kniazowski, City Manager 

Thru: Mike Tvenge, Deputy City Manager 

Date: April 13, 2017

Agenda Item: V. f. Approval of Second Amendment to Sublease at Near Island Communications Site Between Kodiak Island Broadcasting, Inc. and New Cingular Wireless PCS, LLC

SUMMARY: Kodiak Island Broadcasting Co., Inc. is requesting an amendment to the sublease held with New Cingular Wireless PCS LLC (Attachment A). Any communication sublease must be approved by Council per City Code Title 18, Section 18.20.230. This amendment, if approved, will be the second amendment to the sublease between Kodiak Island Broadcasting Co., Inc. and New Cingular Wireless PCS LLC.

PREVIOUS COUNCIL ACTION:

- Council approved the five year renewal of the primary lease with Kodiak Island Broadcasting effective April 1, 2016, which authorized the subleasing to New Cingular Wireless PCS LLC and Alaska Wireless Network LLC.

DISCUSSION: Kodiak Island Broadcasting, Inc. is leasing 7,225 square feet, more or less, all as shown on a plat of survey prepared by Ecklund Surveying, dated May 5, 1992. This site on Near Island also supports the City of Kodiak communication equipment housed in the New Cingular Wireless building (AT&T) and on the tower. For this privilege the City does not receive sublease revenue from New Cingular Wireless PCS LLC. The City does however receive 50 percent of the sublease revenue from Alaska Wireless Network LLC. The building houses batteries to backup the equipment, should it loose electric power. This request is to add a generator building to provide additional backup power.

Language contained in Section 5 of the primary lease with Kodiak Island Broadcasting (Lessee) states: Lessor shall have the right to make additions, alterations, or improvements to the Site which will not impede Lessee's access to or use of the Site. Lessee shall have the right to erect, construct and maintain a suitable building and/or associated structure(s) on the Site necessary for the operation of a communications facility. Any improvements constructed by Lessee shall be consistent with the limited use of the Site authorized by this Lease and shall be constructed at Lessee's sole cost and expense. Upon termination of this Lease, such improvements shall become the property of Lessor or, at Lessee's option, removed by Lessee at its sole expense. Section 5 allows for tenant improvements to the communication site.

ALTERNATIVES:

- 1) Council may approve the second amendment to the Kodiak Island Broadcasting Co., Inc. sublease with New Cingular Wireless, which is recommended by staff, because it provides benefits to both the City and the community.
- 2) Council can deny approval to allow a generator building to be constructed on the site, which is not recommended.

FINANCIAL IMPLICATIONS: The construction and operational costs will be borne by the Lessee and subtenants. The City will not see an increase in revenue from this amendment.

LEGAL: N/A

STAFF RECOMMENDATION: Staff recommends approval of the second amendment of the sublease.

CITY MANAGER'S COMMENTS: The City will benefit from the availability of backup generator power at the communication site, since we also have communication equipment operational on site. Although we operate a small footprint in the building and on the tower, we have agreed to waive some of the sublease revenues as provided in the primary lease. Our monthly rent of the site to Kodiak Island Broadcasting Co., Inc. will remain at \$1432.60. I recommend City Council approve this second amendment between Kodiak Island Broadcasting Co., Inc. and New Cingular Wireless PCS LLC.

ATTACHMENTS:

- Attachment A: Second Amendment to Sublease between Kodiak Island Broadcasting Co., Inc. and New Cingular Wireless PCS LLC
- Attachment B: Near Island Communication Site Lease City of Kodiak and Kodiak Island Broadcasting Co. Inc.
- Attachment C: Ordinance No. 1343

PROPOSED MOTION:

Move to approve the second amendment between Kodiak Island Broadcasting, Inc. and New Cingular Wireless PCS, LLC for Near Island Communications Site Lease 221887.

Market: Alaska
Cell Site Number: AN2425
Cell Site Name: Near Island
Fixed Asset Number: 10125247

SECON DAMENDMENT TO SUBLEASE OF LAND AND TOWER SPACE LEASE

WHEREAS, Lessor and Lessee desire to amend the Lease to increase the size of the Tower Premises and

WHEREAS, Lessor and Lessee desire to adjust the payment in conjunction with the modifications to the Lease contained herein; and

WHEREAS, Lessor and Lessee desire to amend the Lease to modify the notice section thereof; and

WHEREAS, Lessor and Lessee, in their mutual interest, wish to amend the Lease as set forth below accordingly.

NOW THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Lessor and Lessee agree as follows:

1. Tower Premises. Lessor agrees to increase the size of the Tower Premises to accommodate Lessee's needs. Upon execution of this Amendment, Lessor leases to Lessee the Tower Premises as more completely described on attached Exhibit C-1. Lessor's execution of this Amendment will signify Lessor's approval of Exhibit C-1. Exhibit C-1 hereby replaces Exhibit C, to the Lease.

2. Rent. Commencing upon the earlier of construction start or June, 1 2018, the payment shall be increased by Two Hundred Fifty and No/100 Dollars (\$250.00) per month, subject to further adjustments as provided in the Lease.

3. Notices. Section 13 of the Lease is hereby deleted in its entirety and replaced with the following:

(A) All notices, requests, demands and communications hereunder will be given by first class certified or registered mail, return receipt requested, or by a nationally recognized overnight courier, postage prepaid, to be effective when properly sent and received, refused or returned undelivered. Notices will be addressed to the parties as follows.

If to LESSOR: Dennis Bookey
Vice President
Kodiak Island
Broadcasting
P.O. Box 708
Kodiak, AK 99615

If to LESSEE: New Cingular Wireless PCS, LLC
Attn: Network Real Estate Administration
Re: Cell Site # AN2425

Cell Site Name: Near Island (AK)
Fixed Asset #: 10125247
575 Morosgo Drive
Atlanta, GA 30324

With copy to: New Cingular Wireless PCS, LLC
Attn: Legal Department - Network
Re: Cell Site # AN2425
Cell Site Name: Near Island (AK)
Fixed Asset #: 10125247
208 S. Akard Street
Dallas, Texas 75202-4206

The copy sent to the Legal Department is an administrative step which alone does not constitute legal notice. Either party hereto may change the place for the giving of notice to it by thirty (30) days prior written notice to the other as provided herein.

B) In the event of a change of ownership, transfer or sale of the Tower Premises, within ten (10) days of such transfer, Lessor will send the below documents to Lessee. In the event Lessee does not receive such appropriate documents, Lessee shall not be responsible for any failure to pay the current Lessor:

- (i) Old deed to the Real Property
- (ii) New deed to Real Property
- (iii) Bill of Sale or Transfer
- (iv) Copy of current Tax Bill
- (v) New W-9

4. **Emergency 911 Service.** In the future, without the payment of any additional payment and at a location mutually acceptable to Lessor and Lessee, Lessor agrees that Lessee may add, modify and/or replace equipment in order to be in compliance with any current or future federal, state or local mandated application, including but not limited to emergency 911 communication services.

5. **Other Terms and Conditions Remain.** In the event of any inconsistencies between the Lease and this Amendment, the terms of this Amendment shall control. Except as expressly set forth in this Amendment, the Lease otherwise is unmodified and remains in full force and effect. Each reference in the Lease to itself shall be deemed also to refer to this Amendment.

6. **Capitalized Terms.** All capitalized terms used but not defined herein shall have the same meanings as defined in the Lease.

IN WITNESS WHEREOF, the parties have caused this Amendment to be effective as of the last date written below.

LESSOR:

Kodiak Island Broadcasting, Inc,
an Alaskan corporation

LESSEE:

New Cingular Wireless PCS, LLC,
a Delaware limited liability company

By: AT&T Mobility Corporation
Its: Manager

By: _____
Print Name: Dennis Bookey
Its:
Date:

By: _____
Print Name:
Its:
Date:

EXHIBIT C-1

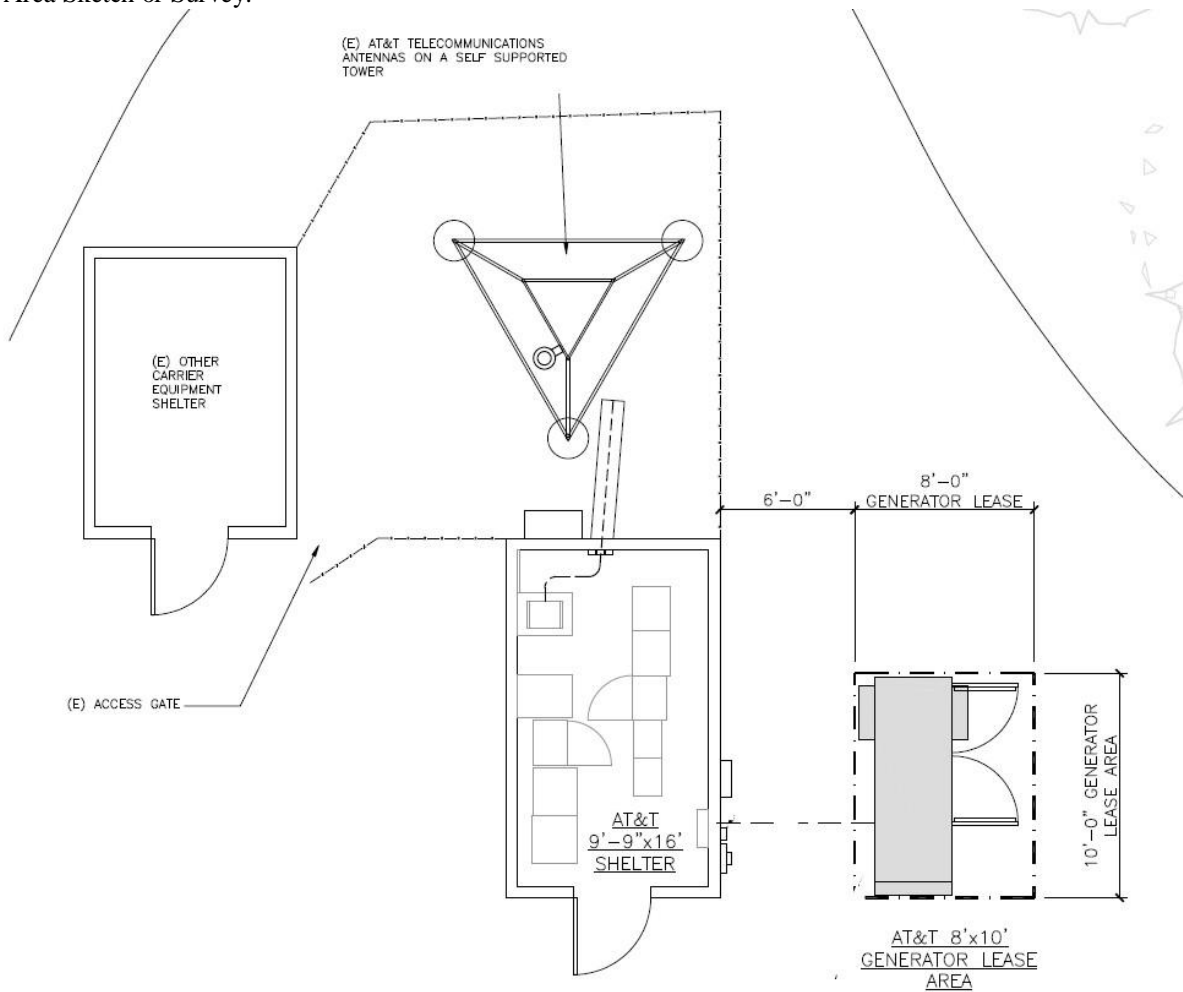
DESCRIPTION OF TOWER PREMISES

Page 1 of 1

to the Second Amendment to Sublease of Land and Tower Space Lease dated _____, 2017, by and between Kodiak Island Broadcasting, Inc., as Lessor, and New Cingular Wireless PCS, LLC, as Lessee.

The Tower Premises are described and/or depicted as follows:

Lease Area Sketch or Survey:



Notes:

1. This Exhibit may be replaced by a land survey and/or construction drawings of the Tower Premises once received by Lessee.
2. Any setback of the Tower Premises from the Property's boundaries shall be the distance required by the applicable governmental authorities.
3. Width of access road shall be the width required by the applicable governmental authorities, including police and fire departments.
4. The type, number and mounting positions and locations of antennas and transmission lines are illustrative only. Actual types, numbers and mounting positions may vary from what is shown above.

FOR LESSOR SIGNATURES IN ALASKA

REPRESENTATIVE CAPACITY:

STATE OF ALASKA)
) SS.
 THIRD JUDICIAL DISTRICT)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that said person signed this instrument, on oath stated that said person was authorized to execute the instrument and acknowledged it as the _____ of _____, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: _____.

Notary Seal	
	(Signature of Notary) _____ (Legibly Print or Stamp Name of Notary) Notary Public in and for the State of Washington My appointment expires: _____

FOR LESSEE SIGNATURES IN OREGON STATE

STATE OF OREGON)
) SS.
 COUNTY OF _____)

This instrument was acknowledged before me on _____, 201____ by
 _____ as _____ of AT&T Mobility Corporation.

Notary Seal	
	(Signature of Notary) _____ (Legibly Print or Stamp Name of Notary) Notary Public in and for the State of Oregon My Commission expires: _____

Prepared by, and after recording

Return to:

New Cingular Wireless PCS, LLC
Attn: Network Real Estate Administration
575 Morosgo Drive
Atlanta, GA 30324

(Space above this line for Recorder's Use Only)

Grantor: Kodiak Island Broadcasting, LLC

Grantee: New Cingular Wireless PCS, LLC, a Delaware limited liability company

Legal Description: Tract "D", Near Island, Plat Number 92-10, Kodiak Recording District, Third Judicial District, State of Alaska

Cell Site #: AN2425
Cell Site Name: Near Island
Fixed Asset #: 10125247
State: AK
Borough: Kodiak

MEMORANDUM OF SECOND AMENDMENT TO SUBLEASE OF LAND AND TOWER SPACE LEASE

This Memorandum of Second Amendment to Sublease of Land and Tower Space Lease is entered into on this day of _____, 2017, by and between Kodiak Island Broadcasting, Inc., an Alaska corporation, having a mailing address of 9740 Jupiter Drive, Anchorage, AK 99507 ("Lessor") and New Cingular Wireless PCS, LLC, a Delaware limited liability company, having a mailing address of 575 Morosgo Drive, Atlanta, GA 30324 ("Lessee").

1. Lessor and Lessee entered into a certain Sublease of Land and Tower Space Lease dated May 1, 2006, as amended by that certain First Amendment to Agreement dated September 30, 2009, as amended by that Second Amendment to Sublease of Land and Tower Space Lease (collectively, the "Lease") for the purpose of installing, operating and maintaining a communications facility and other improvements. All of the foregoing is set forth in the Lease.
2. The portion of the land being leased to Lessee (the "**Premises**") is described in **Exhibit 1** annexed hereto.
3. This Memorandum of Second Amendment to Sublease of Land and Tower Space Lease is not intended to amend or modify, and shall not be deemed or construed as amending or modifying, any of the terms, conditions or provisions of the Lease, all of which are hereby ratified and affirmed. In the event of a conflict between the provisions of this Memorandum of Second Amendment to Sublease and Tower Space Lease and the provisions of the Lease, the provisions of the Lease shall control. The Lease shall be binding upon and inure to the benefit of the parties and their respective heirs, successors, and assigns, subject to the provisions of the Lease.

3-2010 Amendment

IN WITNESS WHEREOF, the parties have caused this Memorandum of Second Amendment to Tower Space Lease to be effective as of the last date written below.

Lessor:

Kodiak Island Broadcasting, Inc.,
An Alaska corporation

Lessee:

New Cingular Wireless PCS, LLC,
a Delaware limited liability company

By: AT&T Mobility Corporation
Its: Manager

By: _____

Print Name: Dennis W. Bookey
Its: Vice President
Date:

By: _____

Print Name:
Its:
Date:

Prepared by:

Tom Spaulding
Select Site Acquisitions
2409 E Alki Lane
Liberty Lake, WA 99019

EXHIBIT 1

DESCRIPTION OF PREMISES

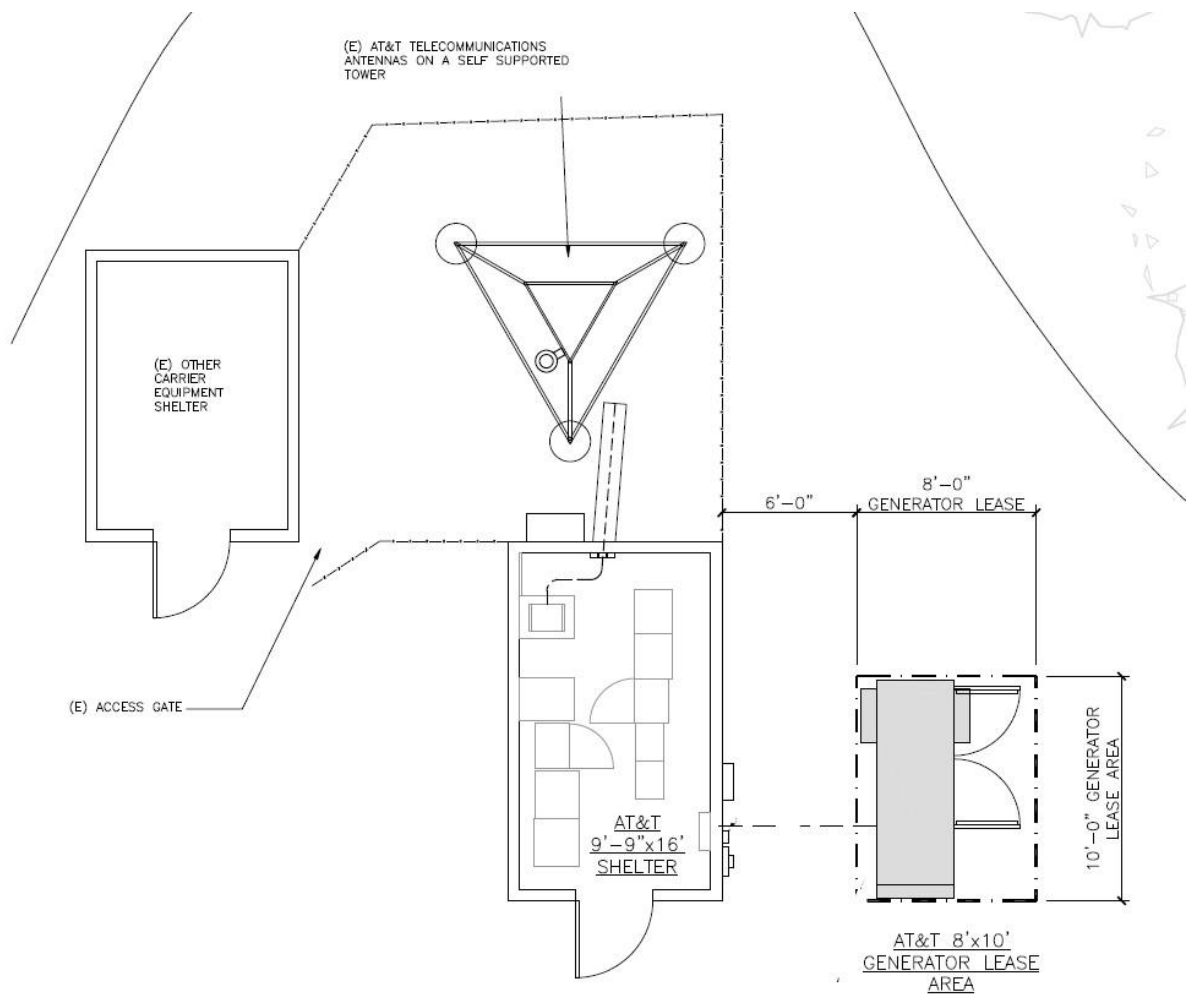
Page 1 of 2

to the Memorandum of Second Amendment to Sublease of Land and Tower Space Lease dated _____, 2017, by and between Kodiak Island Broadcasting, Inc., as Lessor, and New Cingular Wireless PCS, LLC, a Delaware limited liability company, as Lessee

The Tower Premises are described and/or depicted as follows:

Tract "D", Near Island, Plat Number 92-10, Kodiak Recording District, Third Judicial District, State of Alaska

Lease Area Sketch or Survey:



**NEAR ISLAND COMMUNICATION SITE LEASE
CITY OF KODIAK AND KODIAK ISLAND BROADCASTING CO., INC.**

THIS LEASE ("Lease") is made effective the 1st day of April 2016, by and between the CITY OF KODIAK, an Alaska municipal corporation ("Lessor"), and KODIAK ISLAND BROADCASTING CO., INC., an Alaska corporation ("Lessee").

WHEREAS, Lessor and Lessee entered into a Near Island Communications Site Lease effective as of December 1, 2005, which expired as of November 30, 2015, and has been carried over on a month-to-month basis; and

WHEREAS, Lessee desires to continue to lease the premises described herein for the communications facilities of Lessee and its sublessees; and

WHEREAS, the communications facilities that Lessee and its sublessees have located on the leased premises serve the interests of the City of Kodiak and its residents.

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

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

Beginning at the monument marking the point of curvature on the Dog (Salmon) Bay Road, station 66+85.60, Tract "D", Near Island, Plat Number 92-10, Kodiak Recording District, Third Judicial District, State of Alaska; thence the following State Plane Zone 5, courses:

- S 02°20'37" E, a distance of 139.09 feet to the TRUE POINT OF BEGINNING;
- Thence S 16°54'45" E, a distance of 85.00 feet;
- Thence S 73°05'15" W, a distance of 85.00 feet;
- Thence N 16°54'45" W, a distance of 85.00 feet;
- Thence N 73°05'15" E, a distance of 85.00 feet to the TRUE POINT OF BEGINNING;

containing 7,225 square feet, more or less, all as shown on a plat of survey prepared by Ecklund Surveying, dated May 5, 1992.

Together with a vehicular access easement along the following described line: Beginning at the monument marking the point of curvature on the Trident Basin Access Road, station 62+21.92; thence N 51°00' W 220 feet, more or less; thence N 16°54'45 W 63 feet, more or less.

2. Term. This Lease shall continue in effect for a period of five (5) years from the date first written above with an option for the Lessee to renew the Lease for an additional five (5) years upon the written request of the Lessee with all the terms and conditions of the 2016 Lease applying to the additional terms. Unless they conflict with the terms of this Lease, the provisions of Kodiak City Code section 18.20.350 in effect on the date first written above shall govern the Lessee's re-lease rights.

3. Rental. Lessee agrees to pay as and for rent the sum of \$1,000 per month in monthly installments which fall due on the first day of each calendar month; and Lessor shall further pay such amounts provided under Paragraph 13.

4. Conditions of Lease. The Site shall be used solely as a radio communication and telecommunications site. Lessor shall also be entitled to sufficient space on the tower to attach one omni antenna and all associated coaxial cabling, for Lessor's sole individual use, on such reasonable terms as the parties shall decide.

5. Improvements. Lessor shall have the right to make additions, alterations, or improvements to the Site which will not impede Lessee's access to or use of the Site. Lessee shall have the right to erect, construct and maintain a suitable building and/or associated structure(s) on the Site necessary for the operation of a communications facility. Any improvements constructed by Lessee shall be consistent with the limited use of the Site authorized by this Lease and shall be constructed at Lessee's sole cost and expense. Upon termination of this Lease, such improvements shall become the property of Lessor or, at Lessee's option, removed by Lessee at its sole expense.

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

7. Indemnity. Lessee shall defend, indemnify, and hold Lessor, its officers, agents, and employees harmless against any and all actions, suits, proceedings, claims, loss, liens, costs, expense, and liability of every kind and nature whatsoever, including without limitation attorney's fees reasonably incurred for response or defense, for injury to or death of persons or loss of or damage to property, including property owned by the Lessor, caused by or incurred as a result of Lessee's use and occupancy of the Site. This provision shall not apply to claims, actions, damages, losses, or proceedings caused solely by the negligence of officers, agents, or employees of Lessor.

8. Insurance. (a) Without limiting Lessee's obligations to indemnify under this Lease, Lessee shall procure and maintain at its sole expense, and shall keep in full force and effect throughout the term of this Lease, the following policies of insurance:

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

(2) Worker's Compensation and Employers Liability. Worker's Compensation shall be statutory as required by the State of Alaska. Employer's Liability shall be endorsed to the following minimum limits and contain USL&H coverage endorsement, if applicable: (i) bodily injury by accident--\$1,000,000 each accident; and (ii) bodily injury by disease--\$1,000,000 each employee, \$1,000,000 policy limit.

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

(1) Commercial General Liability

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

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

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

(3) All Insurance. Each insurance policy required by this Lease shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice has been given by the Insurer to Lessor by certified mail, return receipt requested.

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

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

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

10. Operation of Equipment. In installing, operating, or maintaining any equipment on the Site and in its general management of the Site, the Lessee will act in accordance with applicable laws and regulations and so as not to cause interference with any other radio or television transmitting or receiving equipment whether located on the Site or not. The Lessee will at all times protect from interference all frequencies assigned to the Lessor whether or not such frequencies are in use. The Lessee will not do, attempt, or permit any acts in connection

with this Lease which could be construed as a violation of law.

11. Security of Site. Lessee agrees to take, at the Lessee's own expense, all reasonable measures and precautions necessary to render the communications facility inaccessible to unauthorized persons.

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

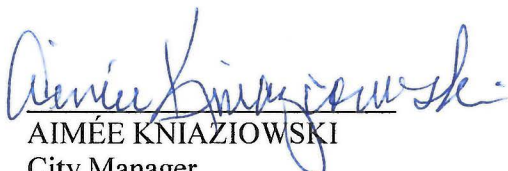
13. Assignment and Subleasing. Lessee is authorized to continue to lease tower spots to New Cingular Wireless PCS, LLC and Alaska Wireless Network LLC. Copies of the existing leases are attached as Exhibits A and B. Lessee shall not otherwise assign its rights, enter into a sublease, or delegate its duties under this Lease without the prior written consent of Lessor and under the terms outlined in Kodiak City Code Title 18, Section 18.20.230. Lessee shall remit to Lessor 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. For so long as New Cingular Wireless permits the City to install communications equipment in the building located on the lease site, Lessee will not be required to remit to Lessor any portion of the sublease revenues that Lessee receives from New Cingular Wireless.

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

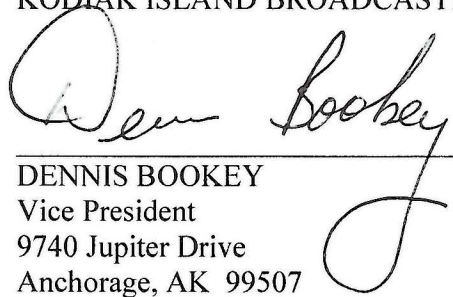
15. Applicable Law. Lessee shall, at all times, in its use and occupancy of the Site and in the conduct of its operations thereon, comply with all applicable federal, state, and local laws, ordinances, and regulations.

IN WITNESS WHEREOF, the parties executed this instrument as of the date first written above.

CITY OF KODIAK


AIMÉE KNIAZIOWSKI
City Manager
710 Mill Bay Road
Kodiak, AK 99615

KODIAK ISLAND BROADCASTING, INC.


DENNIS BOOKEY
Vice President
9740 Jupiter Drive
Anchorage, AK 99507

ATTEST:



DEBRA L. MARLAR
City Clerk

WITNESS:

**CITY OF KODIAK
ORDINANCE NUMBER 1343**

AN ORDINANCE OF THE COUNCIL OF THE CITY OF KODIAK AUTHORIZING A LEASE OF A COMMUNICATION SITE ON AN UNSUBDIVIDED PORTION OF U.S. SURVEY 4947 ON NEAR ISLAND TO KODIAK ISLAND BROADCASTING CO., INC.

WHEREAS, the City owns property on Near Island that it has leased to Kodiak Island Broadcasting Co., Inc. as a communication site since before 2000; and

WHEREAS, Kodiak Island Broadcasting Co., Inc. desires to continue leasing the communications site, and has requested that the City Council authorize the Near Island Communications Site Lease (“Lease”) that now is before this meeting, and it is in the best interest of the City that the Lease be authorized; and

WHEREAS, the City intends to continue to exercise its right to access to the communications tower permitted under Section 4 of the Lease; and

WHEREAS, the sublease to New Cingular Wireless PCS, LLC identified in Section 13 of the Lease will be approved at no cost, based on New Cingular Wireless PCS, LLC’s permission for the City to install communications equipment in its building on the Lease site; and

WHEREAS, the approval of subleases does not release Kodiak Island Broadcasting from any of its obligations under its Lease with the City; the sublessees agree to comply with all the terms of the City’s Lease with Kodiak Island Broadcasting regarding the use of the premises, insurance and environmental requirements; and the insurance provided by Kodiak Island Broadcasting must cover the activities of the sublessees.

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 with Kodiak Island Broadcasting Co., Inc., for a term commencing April 1, 2016, and ending March 31, 2021, with an option for the Lessee to renew the Lease for an additional five (5) years upon the written request of the Lessee with all the terms and conditions of the 2016 Lease applying to the additional terms of the communications site described in the Lease, located on an unsubdivided portion of U.S. Survey 4947 on Near Island in the City of Kodiak.

Section 2: The form and content of the Lease between the City and Kodiak Island Broadcasting Co., Inc. hereby are in all respects authorized, approved and confirmed, and the City Manager hereby is authorized, empowered and directed to execute and deliver the Lease to Kodiak Island Broadcasting Co., Inc. 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: 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:

Delia Mauler

CITY CLERK

First Reading: February 11, 2016

Second Reading: February 25, 2016

Effective Date: April 2, 2016