

City of Kodiak Regular Council Meeting Agenda for November 9, 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 October 26, 2017, Regular Council Meeting.....1

- III. Persons to Be Heard**
 - a. Public Comments (limited to 3 minutes) (486-3231)

- IV. Unfinished Business**
 - a. Authorization of Service Agreement With Johnson Controls, Inc., for Annual Inspection and Preventative Maintenance of the Kodiak Police Station Building Control Systems....8
 - b. Second Reading and Public Hearing, Ordinance No. 1367, Amending Kodiak City Code 3.08.120, “Maximum Taxable Sale,” to Increase the Maximum Amount of a Sale Service or Rental that is Subject to City Sales Tax to \$3,000.....30
 - c. Second Reading and Public Hearing, Ordinance No. 1368, Amending Kodiak City Code 3.08.040, “General Exemptions” and Kodiak City Code 3.08.120, “Maximum Taxable Sale,” To Exempt Real Property Rentals Exceeding One Month and \$750.00 From City of Kodiak Sales Tax.....34

- V. New Business**
 - a. First Reading, Ordinance No. 1370, Amending Chapter 5.04 of the Kodiak City Code to Add a New Section 5.04.080 Pertaining to Procedures for Issuing Permits for Retail Sales of Seafood Directly From Vessels at City Port and Harbor Facilities.....40
 - b. First Reading, Ordinance No. 1371, Authorizing a Contract With the Kodiak Historical Society to Operate the Baranov Museum Through June 30, 2020.....46
 - c. Resolution No. 2017–26, Authorizing the Borrowing From the Alaska Clean Water Fund of an Aggregate Amount Not to Exceed Six Hundred Thousand Dollars (\$600,000) to Pay Part of the Cost of Phase I of an Upgrade to the City of Kodiak Wastewater Treatment Plant Condition and Process Assessment.....60
 - d. Resolution No. 2017–27, Adopting a FY2019 State Capital Improvement Program List.....71
 - e. Resolution No. 2017–28, Adopting the Federal Fiscal Year 2018 Federal Capital Needs and Issues List.....76

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

- VII. Mayor’s Comments**

- VIII. Council Comments**

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

X. Executive Session

a. City Clerk’s Annual Evaluation.....84
b. City Manager’s Six-Month Evaluation.....86

XI. Adjournment

<p style="font-size: 2em; margin: 0;">DRAFT</p>

**MINUTES OF THE REGULAR COUNCIL MEETING
OF THE CITY OF KODIAK
HELD THURSDAY, OCTOBER 26, 2017
IN THE BOROUGH ASSEMBLY CHAMBERS**

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

Mayor Pat Branson called the meeting to order at 7:31 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. City Manager Mike Tvenge, City Clerk Debra Marlar, and Assistant Clerk Shannon Hamer were also present.

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

II. PREVIOUS MINUTES

Councilmember Arboleda MOVED to approve the minutes of the October 12, 2017, regular 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. Proclamation: Extra Mile Day

Councilmember Walker read the proclamation, which urges each individual in the community to take time to not only “go the extra mile” in his or her own life, but to also acknowledge all those around who are inspirational in their efforts and commitment to make their organizations, families, community, country, or world a better place.

b. Public Comments

Mike Milligan suggested that the City look at selling property on Near Island. He said shovel ready projects could qualify for federal money and stated the Kodiak Island Borough had a land sale fund. He suggested revenues could be increased by broadening the tax base. Mr. Milligan praised the Baranof Park and the Kodiak Public Library. He encouraged other ways to generate revenues instead of sales tax.

Jack Mann, a 75-year resident and former business owner in Kodiak, stated that the sales tax cap will defer buyers to shop online and in Anchorage. Mr. Mann made disparaging remarks about various City projects and Councilmembers and stated his belief that there is out of control spending.

Renee Darrenkamp (via phone) said she was glad that the Council seems to be listening to citizens that have made constructive comments on the budget issue. She agreed when Councilmember Whiddon stated that cuts from City departments means job losses for our friends and neighbors. Ms. Darrenkamp spoke against raising the sales tax cap and stated her opinion the is-

sue was not ready for a vote. She asked the Council to first exhaust all of their options and stated she is willing to serve on a committee or help with ideas.

Marya Nault stated that Ordinance 1367 will adversely affect many. She stated it is unrealistic to believe revenue will increase if people quit buying locally. Ms. Nault agreed with Mr. Mann's statement that the Council's spending is out of control. She referenced an article in the Daily Mirror about using City business licenses as way to punish people who don't pay sales tax on time. She said it is wrong to penalize all businesses for the few who don't pay taxes, and suggested it would add more work for the City staff. Ms. Nault emphasized that this is the wrong time to raise cap to \$3,000.

IV. UNFINISHED BUSINESS

a. Continued First Reading, Ordinance No. 1367, Amending Kodiak City Code 3.08.120, "Maximum Taxable Sale," to Increase the Maximum Amount of a Sale Service or Rental that is Subject to City Sales Tax to \$3,000

Mayor Branson read Ordinance 1367 by title. Since May 2016, City staff has provided updates regarding the City's fiscal outlook. The State of Alaska budget has been experiencing a shortfall over the past three fiscal years that has impacted funding provided to the City of Kodiak. The City revenues are generated through sales tax, property tax, City charges for services, and inter-governmental revenues. Due to continual decreases in City intergovernmental revenues, City staff has presented data to the City Council and Mayor throughout eighteen work sessions to consider the implications to the City. These discussions culminated into the direction from Council to move forward with three ordinances:

- Increase minimum taxable sale from \$750 to \$3,000
- Hold the maximum taxable sale on real property commercial and real property residential rentals to \$750
- Eliminate the 2% discount allowed to early sales tax filers

The motion to pass Ordinance No. 1367 in the first reading and advance to second reading and public hearing at the next special or regular meeting was made and postponed at the September 28, 2017, regular meeting.

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

b. Continued First Reading, Ordinance No. 1368, Amending Kodiak City Code 3.08.040, "General Exemptions" and Kodiak City Code 3.08.120, "Maximum Taxable Sale," to Exempt Real Property Rentals Exceeding One Month and \$750.00 From City of Kodiak Sales Tax

Mayor Branson read Ordinance 1368 by title. Ordinance No. 1368 is meant to protect rental property from escalating sales taxes with the intent to continue the City Council's vision of maintaining affordable housing in our community. The sales tax cap for property rentals is set at \$750.

The motion to pass Ordinance No. 1368 in the first reading and advance to second reading and public hearing at the next special or regular meeting was made and postponed at the September 28, 2017, regular meeting.

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

V. NEW BUSINESS

a. Authorization to Cancel the November 23 and December 28, 2017, Regular Meetings and Authorize the City Manager to Schedule Additional Special Meetings if Needed

The regularly scheduled Council meetings for November and December may be cancelled to reflect the holidays and elected official and staff travel schedules.

Councilmember Walker MOVED to cancel the November 23, and December 28, 2017, regular meetings and authorize the City Manager to schedule additional special meetings if needed.

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

b. Certification of Election

The City of Kodiak held a regular election October 3, 2017, and voters cast ballots for the two-year Mayoral position and the two three-year City Council positions. The Canvass Board met October 11, 2017, to tally the votes of the admissible questioned and absentee ballots, together with votes counted on election night. The final results of the October 3, 2017, Municipal City election were:

Mayor—One Two-Year Term	
Pat Branson	428
Write-ins	38
City Council—Two Three-Year Terms	
Laura B. Arboleda.....	396
Randall C. Bishop	360
Write-Ins	32

Of the 3,574 registered City voters, 603 cast eligible City ballots, for a 16.9 % voter turnout, which is 6.9% lower than last year.

Councilmember Bishop MOVED to certify the results of the October 3, 2017, regular election and declare Pat Branson elected Mayor for a two-year term and Laura B. Arboleda and Randall C. Bishop elected to the City Council for three-year terms.

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

On October 23, 2017, the Deputy City Manager met with the “Social Issues and Public Safety Subcommittee” of the Downtown Revitalization committee. The discussion focused on a partnership between local businesses and KPD to locate a satellite police station downtown to provide a greater police presence as well as outreach to local businesses and visitors. The subcommittee is seeking input and ideas to tackle the negative impacts of drug and alcohol abuse to the downtown area.

Manager Tvenge and Deputy Manager Van Daele attended a kickoff meeting of the “Brownfields Assessment Coalition” on October 25, 2017, which is a partnership between the Kodiak Island Borough (KIB), the City, Natives of Kodiak (NOK), and Stantec Consulting. Manger Tvenge signed a Memorandum of Agreement on October 26, 2017, for the City to be a member of the coalition. Stantec Consulting will work closely with the KIB and NOK to access areas for environmental remediation and apply for the grant funding. The City’s involvement as a coalition member is to provide local historical knowledge for the grant application and show support for identified site cleanup and rehabilitation.

Senator Murkowski has been trying to include the Pink Salmon Fishery Resource Disaster Declaration in the latest disaster relief bills; however, this fishery disaster pales in comparison to the hurricane damage. There will be another opportunity in December to bring this request forward in the Omnibus Spending Bill.

The Public Library is hosting a concert, a cultural exhibit, genealogical workshops, and Nordic lifestyle demonstrations November 5, 2017, through November 11, 2017, for this year’s Scandinavian Culture and Film Festival.

b. City Clerk

Clerk Marlar thanked the election workers for their help during the October 3rd election. She said that the Municipality of Anchorage is transitioning to entirely by-mail voting, and she will have the opportunity to investigate this process as a possibility for Kodiak when attending the AML conference in Anchorage next month. Ms. Marlar reviewed the schedule of upcoming City Council Meetings.

VII. MAYOR’S COMMENTS

Mayor Branson thanked Deputy Mayor Bishop for filling in for her while she was on vacation. She also thanked Councilmembers Whiddon and Bishop for arranging the Community Forum and those who attended. The Council continues to work on the budget issue. Several options were discussed Tuesday night, and various options will continue to be talked about. Mayor Branson is proud of the Council’s productivity with the budget and the Economic Development Committee. She stated that the Near Island Plan is nearly complete. Branson believes that assisting the State in taking advantage of online sales is important in lobbying efforts this year, and

she would like this to be a legislative priority. Mayor Branson thanked the public for re-electing her and congratulated Councilmembers Bishop and Arboleda.

VIII. COUNCIL COMMENTS

Councilmember Bishop congratulated Mayor Branson and Councilmember Arboleda and stated he is proud to be part of the Council. He voiced appreciation to community members who came to express concerns at the Community Forum on October 16th. Councilmember Bishop thanked Mayor Branson for attending the Board of Fish meeting in Anchorage. He mentioned the Kodiak Chamber of Commerce Downtown Trick-or-Treat event next week.

Councilmember Saravia congratulated those who were re-elected this year. He stated that he ran unopposed two years ago, and two Councilmembers ran unopposed this year. He said he would like to see more community members running for office. Councilmember Saravia opined that to keep up the quality of life for citizens some things can't be cut. He emphasized that the ordinances today were in the first reading, and they could be amended in the second reading. He said the State does not have municipal money to pass along, and the cap was not raised when the sales tax was last raised. Many options were discussed at the Work Session to increase revenues. He reiterated the need to look at the type of City and services we want to provide.

Councilmember Arboleda greeted the audience and congratulated Mayor Branson and Councilmember Bishop on their re-election. She reminded the community to drive safely.

Councilmember Davidson stated that he is disappointed to hear that longtime service on the Council has become odious, and he found this hurtful. He stated he has made many sacrifices and spent money out of his own pocket as a Councilmember. He encouraged others to run for office. He congratulated the Mayor and his colleagues on re-election.

Councilmember Walker also congratulated those who were re-elected to the Council. He stated that the vote tonight was to keep the ordinances on the table, and there will be more negotiating. He stated we don't have State or Federal funding to help with the budget. Councilmember Walker voiced disappointment in the turnout for the community forum. He said he would like to see more of the community getting involved and showing up to meetings. He stated Kodiak is his home, and he cares about what happens in Kodiak. He noted the Council will do what they think is best for the community and they have been working very hard for over 18 months on many scenarios; he asked the community to hang in there with them.

IX. AUDIENCE COMMENTS

Mike Milligan clarified that taxes on internet sales have to be legislated at the Federal level, as Internet Commerce is a power allocated to Congress under the Constitution. He stated every community in America is up against the same thing. He stated the importance of "bricks and mortar" business to the community. Mr. Milligan voiced appreciation to the Council for their work, and stated that if anyone thinks they can do better they should run for office.

Marya Nault commented about a previous Kodiak Island Borough effort to raise taxes and how the citizens came out in force. She read a portion of a Kodiak Daily Mirror article about business licenses, and re-emphasized that this is not the answer. She stated the City should deal with busi-

nesses on a case-by-case basis. She said revocation of business licenses for failure to pay taxes will not generate revenue, because the City will then not receive any sales tax.

Chris Lynch (via phone) voiced appreciation for the hard work the Council has done. She said she has received responses to her questions quickly. She supports a mill rate increase. Ms. Lynch recommended sales tax for bazaars and extra-curricular activities. She thanked the Council for their time.

X. OATH OF OFFICE

KCC 2.28.080 requires elected officials to take and subscribe to the Oath of Office. The City Clerk administered the Oath of Office to Mayor Branson and Councilmembers Arboleda and Bishop.

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 8:22 p.m.

CITY OF KODIAK

MAYOR

ATTEST:


CITY CLERK

Minutes Approved:

UNFINISHED BUSINESS

MEMORANDUM TO COUNCIL

To: Mayor Branson and City Councilmembers

From: Mike Tvenge, City Manager 

Thru: Ronda Wallace, Chief of Police

Date: October 26, 2017

Agenda Item: IV. a Authorization of Service Agreement With Johnson Controls, Inc., for Annual Inspection and Preventative Maintenance of the Kodiak Police Station Building Control Systems

SUMMARY: This authorization would award a multi-year service agreement to Johnson Controls, Inc. (JCI) to provide preventative maintenance and correction of minor deficiencies encountered during routine inspections of the fire, security, and mechanical systems utilized within the Kodiak Police Station. The vote on this motion was postponed at the June 8, 2017, meeting. Since that time, staff has worked with a local vendor who is more cost efficient and trained to provide the needed service. Staff recommends that Council postpone this item indefinitely.

Staff recommends the Council not authorize this three-year agreement. The Johnson Controls proposed amounts are as follows: \$35,768 for FY2018; \$37,199 for FY2019; and \$38,687 for FY2020. A second vendor has proposed similar or greater services for a 3 year total cost savings of \$65,000.

PREVIOUS COUNCIL ACTION:

- Council authorized the three-year service agreement with Johnson Controls, Inc. during the June 12, 2014, regular meeting.
- Council reviewed the proposed three-year agreement with Johnson Controls, Inc., at the June 6, 2017, work session.
- On June 8, 2017, Council postponed the authorization for the three-year service agreement with Johnson Controls, Inc.

DISCUSSION: The Kodiak Police Station incorporates a number of automated systems that control and operate the buildings fire, security and mechanical systems. JCI was contracted to provide preventative maintenance and corrections of minor deficiencies encountered during routine inspections of the fire, security and mechanical system controls in the Kodiak Police Station when it came on line in 2010. While staff has participated in owner training intended to familiarize them with these sophisticated operating and control systems, City staff does not possess the training or qualifications to maintain and service these systems. These sophisticated systems must be routinely inspected and serviced for optimal performance. The three-year agreement with JCI terminated at the end of FY2017.

ALTERNATIVES:

- 1) Postpone the agreement indefinitely. This is the recommended option as staff is working with a local qualified vendor who is more cost efficient.
- 2) Authorize the award of a new three-year agreement with JCI, which is not recommended as staff has found more cost efficient ways to maintain the building's control systems

FINANCIAL IMPLICATIONS: The first year amount of this multi-year agreement is included in the FY2018 General Fund, Police Administration, Professional Services.

LEGAL: N/A

STAFF RECOMMENDATION: Staff recommends Council postpone the agreement indefinitely.

CITY MANAGER'S COMMENTS: Along with the high technology of this system, it requires understanding and specialized tools to provide maintenance and service. Although the building controls are a Johnson Controls system the City purchased this equipment with the construction of the building and therefore is the owner. JCI just like any qualified building control trade is qualified to do repairs on the system. I recommend Council explore a competitor's service agreement.

ATTACHMENTS:

Attachment A: Johnson Controls, Inc., Service Agreement

PROPOSED MOTION:

Move to postpone indefinitely the pending service agreement with Johnson Controls.

Planned Service Proposal



Attachment A

CUSTOMER
KODIAK POLICE STATION

LOCAL JOHNSON CONTROLS OFFICE
2000 W INTERNATIONAL ROAD, UNIT #B-1
ANCHORAGE, AK 99502

AGREEMENT START DATE:
07/01/2017

PROPOSAL DATE:
03/20/2017

ESTIMATE NO.:
1-LXLN7JG



Partnering with you to deliver value-driven solutions

A Planned Service Agreement with Johnson Controls provides you with a customized service strategy designed around the needs of your facility. Our approach features a combination of scheduled, predictive and preventative maintenance services that focus on your goals.

As your building technology services partner, Johnson Controls delivers an unmatched service experience delivered by factory-trained, highly skilled technicians who optimize operations of the buildings we work with, creating productive and safe environments for the people within.

By integrating our service expertise with innovative processes and technologies, our value-driven planned service solutions deliver sustainable results, minimize equipment downtime and maximize occupant comfort.



Executive Summary

PLANNED SERVICE PROPOSAL FOR KODIAK POLICE STATION

Dear Rhonda Wallace,

We value and appreciate your interest in Johnson Controls as a service provider for your building systems and are pleased to provide a value-driven maintenance solution for your facility. The enclosed proposal outlines the Planned Service Agreement we have developed on your facility.

Details are included in the Planned Service Agreement summary (Schedule A), but highlights are as follows:

- In this proposal we are offering a service agreement for 3 Years - starting 07/01/2017 and ending 06/30/2020.
- The agreement price for first year is \$35,768.00; see Schedule A, Supplemental Price and Payment Terms, for pricing in subsequent years.
- The equipment options and number of visits being provided for each piece of equipment are described in Schedule A, Equipment list.

As a manufacturer of both mechanical and controls systems, Johnson Controls has the expertise and resources to provide proper maintenance and repair services for your facility.

Again, thank you for your interest in Johnson Controls and we look forward to becoming your building technology services partner.

Please contact me if you have any questions.

Sincerely,



Matt H. Webster
Service Manager
(907) 243-3737

Benefits of Planned Service

A Planned Service Agreement with Johnson Controls will allow you to optimize your building's facility performance, providing dependability, sustainability and energy efficiency. You'll get a value-driven solution that fits your specific goals, delivered with the attention of a local service company backed by the resources of a global organization.

With this Planned Service Agreement, Johnson Controls can help you achieve the following five objectives:



1. Identify Energy Savings Opportunities

Since HVAC equipment accounts for a major portion of a building's energy usage, keeping your system performing at optimum levels may lead to a significant reduction in energy costs.

2. Reduce Future Repair Costs

Routine maintenance may maximize the life of your equipment and may reduce equipment breakdowns.

3. Extend Asset Life

Through proactive, factory-recommended maintenance, the life of your HVAC assets may be extended, maximizing the return on your investment.

4. Ensure Productive Environments

Whether creating a comfortable place where employees can be productive or controlling a space to meet specialized needs, maintenance can help you achieve an optimal environment for the work that is being accomplished

5. Promote Environmental Health and Safety

When proper indoor conditions and plant requirements are maintained, business outcomes may be improved by minimizing sick leave, reducing accidents, minimizing greenhouse gas emissions and managing refrigerant requirements.

All of the services we perform on your equipment are aligned with "The 5 Values of Planned Maintenance" and our technicians understand how the work they perform can help you accomplish your business objectives.

Personalized Account Management

A Planned Service Agreement also provides you with the support of an entire team that knows your site and can closely work with you on budget planning and asset management. Your local Johnson Controls account management team can help guide planned replacement, energy retrofits and other building improvement projects. You'll have peace of mind that an entire team of skilled professionals will be looking out for what is best for your facility and budget.

A Culture of Safety

Johnson Controls technicians take safety seriously and personally, and integrate it into everything they do. All of our technicians participate in regular and thorough safety training. Because of their personal commitment, we are a leader in the HVAC service industry for workplace safety performance. This means that you do not have to worry about us when we are on your site.



Commitment to Customer Satisfaction

Throughout the term of your Planned Service Agreement, we will periodically survey you and use your feedback to continue to make improvements to our service processes and products. Our goal is to deliver the most consistent and complete service experience possible. To meet this goal, we've developed and implemented standards and procedures to ensure you receive the ultimate service experience – every time.

Energy & Sustainability

A more sustainable world one building at a time – Johnson Controls is a company that started more than 125 years ago with a product that reduced energy use in buildings. We've been saving energy for customers ever since. Today, Johnson Controls is a global leader in creating smart environments where people live, work and play, helping to create a more comfortable, safe and sustainable world.

The Value of Integrity

Johnson Controls has a long, proud history of integrity. We do what we say we will do and stand behind our commitments. Our good reputation builds trust and loyalty. In recognition for our commitment to ethics across our global operations, we are honored to be named one of the World's Most Ethical Companies by Ethisphere Institute, a leading think tank dedicated to business ethics and corporate social responsibility. In addition, *Corporate Responsibility Magazine* recognizes Johnson Controls as one of the top companies in its annual "100 Best Corporate Citizens" list.



Service Plan Methodology

As part of the delivery of this Planned Service Agreement, Johnson Controls will dedicate a local customer service agent responsible for having a clear understanding of the agreement scope, and your facility procedures and protocols.

A high-level overview around our service delivery process is outlined below including scheduling, emergency service, on-site paperwork, communication and performing repairs outside of the agreement scope.

Scheduling

Preventative maintenance service will be scheduled using our automated service management system. In advance of the scheduled service visit, our technician is sent a notice of service to a smartphone. Once the technician acknowledges the request, your customer service agent will call or e-mail your on-site contact to let you know the start date and type of service scheduled.

The technician checks in, wears personal protective equipment, performs the task(s) as assigned, checks out with you and asks for a screen capture signature on the smartphone device. A work order is then e-mailed, faxed or printed for your records.

Emergency Services

Emergency service can be provided 7 days a week, 24 hours a day, 365 days a year. During normal business hours, emergency service will be coordinated by the customer service agent. After hours, weekends and holidays, the emergency service number transfers to the Johnson Controls after-hours call center and on-call technicians are dispatched as needed.

Johnson Controls is committed to dispatching a technician within hours of receiving your call through the service line. A work order is e-mailed, faxed or printed for your records. Depending on the terms of your agreement, you may incur charges for after hour services.

Communication

A detailed communication plan will be provided to you so you know how often we will provide information to you regarding your Planned Service Agreement. The communication plan will also provide you with your main contacts at Johnson Controls.

Approval Process for Non-Covered Items

Johnson Controls will adhere to your procurement process. No work will be performed outside of the agreement scope without prior approval. Johnson Controls will work with you closely to ensure your procurement process is followed before any non-covered item work is started.

Summary of Services and Options

Comprehensive and Operational Inspections

During comprehensive and operational inspections, Johnson Controls will perform routine checks of the equipment for common issues caused by normal wear and tear on the equipment. Additional tests can be run to confirm the equipment's performance.

Routine maintenance, such as lubrication, cleaning and tightening connections, can be performed depending on the type of equipment being serviced. Routine maintenance is one of the keys to the five values of maintenance – it can help identify energy saving opportunities, reduce future repair costs, extend asset life, ensure productive environments, and promote health and safety.

Filter Replacement

Clean air filters help maintain proper airflow throughout your building. Decreased airflow can impair the performance of the cooling coil and may lead to occupant discomfort and inefficient operation of the HVAC system. Johnson Controls will replace the filters on a regular basis to maintain airflow and maximize air quality.

Summary

Thank you for considering Johnson Controls as your building technology services partner. The following agreement document includes all the details surrounding your Planned Service Agreement.

With planned service from Johnson Controls, you'll get a value-driven solution that can help optimize your building controls and equipment performance, providing dependability, sustainability and energy efficiency. You'll get a solution that fits your specific goals, delivered with the attention of a local service company backed by the resources of a global organization.

We'll be your building technology services partner

Planned Service Agreement

Customer Name : KODIAK POLICE STATION
Address: 2160 MILL BAY RD KODIAK,AK 99615-6633
Proposal Date: 03/20/2017
Estimate #: 1-LXLN7JG

Scope of Service

Johnson Controls, Inc. ("JCI") and the Customer (collectively the "Parties") agree Preventative Maintenance Services, as defined in Schedule A ("Services"), will be provided by JCI at the Customer's facility. This Planned Service Agreement, the Equipment List, Supplemental Price and Payment Terms, Terms and Conditions, and Schedules attached hereto and incorporated by this reference as if set forth fully herein (collectively the "Agreement"), cover the rights and obligations of both the Customer and JCI.

Extended Service Options for Premium Coverage

If Premium Coverage is selected, on-site repair services to the equipment will be provided as specified in this Agreement for the equipment listed in the attached Equipment List.

Equipment List

Only the equipment listed in the Equipment List will be covered as part of this Agreement. Any changes to the Equipment List must be agreed upon in writing by both Parties.

Term / Automatic Renewal

This Agreement takes effect on 07/01/2017 and will continue until 06/30/2020 ("Original Term"). The Agreement will automatically renew on a year-to-year basis after the Original Term ends unless the Customer or JCI gives the other written notice it does not want to renew. The notice must be delivered at least (45) days prior to the end of the Original Term or of any renewal period. The Original Term and any renewal periods are sometimes collectively referred to in this Agreement as the "Term". Renewal price adjustments are discussed in the Terms and Conditions.

Refrigerant Charges

Refrigerant is not included under this Agreement and will be billed separately to the Customer by JCI.

Price and Payment Terms

The total Contract Price for JCI's Services during the 1st year of the Original Term is \$35,768.00. This amount will be paid to JCI in Semi-Annual installments. Pricing for each subsequent year of a multiyear original term is set forth in the Supplemental Price and Payment Terms. All payments will be due and payable within 30 days of the invoice date and such timely payment by Customer shall be a condition precedent to JCI's obligation to perform its Services. A penalty of one and a half percent (1.5%) of the amount due per month shall accrue for payments received after the payment due date. Renewal price adjustments are set forth in the Terms and Conditions.

Invoices will be sent to the following location:

CITY OF KODIAK
710 MILL BAY RD #220
KODIAK, AK 99615

This proposal is valid for thirty days from the proposal date.

JOHNSON CONTROLS Inc.

<u>By: Matthew Bintz</u>	<u>By:</u>
<u>Signature: <i>[Signature]</i></u>	<u>Signature:</u>
<u>Title: Customer Service Agent</u>	<u>Title:</u>
<u>Date: 3/20/17</u>	<u>Date:</u>
<u>Signature: <i>Mark W. Wilt</i></u>	<u>Customer PO#:</u>
<u>Title: Service Manager</u>	
<u>Date: 3/20/17</u>	

JCI Branch: JOHNSON CONTROLS ANCHORAGE AK CB - 0N60
Address: 2000 W INTERNATIONAL ROAD, UNIT #B-1
ANCHORAGE, AK 99502
Branch Phone: (907) 243-3737

Schedule A - Equipment List

KODIAK POLICE STATION	2160 MILL BAY RD, KODIAK, AK 99615-6633
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Block Hours - Controls			
Quantity: 1		Services Provided	
Coverage Level: Basic		2 Preventive Maintenance (Controls Technician On-Site Visit)	
Customer Tag	Manufacturer	Model #	Serial #
Kodiak Police Station Controls PSA			

Block Hours - Mechanical Heavy			
Quantity: 1		Services Provided	
Coverage Level: Premium		1 Preventive Maintenance (Mechanic On-Site Visit)	
Customer Tag	Manufacturer	Model #	Serial #
	JCI_YORK		1-LKJLTW0

Block Hours - Security System Rep			
Quantity: 1		Services Provided	
Coverage Level: Premium		1 Preventive Maintenance (Fire Testing, On-Site)	
Customer Tag	Manufacturer	Model #	Serial #
	Write-In		SF-44437016-1-1

Filters, HEPA, Large - Quarterly			
Quantity: 1		Services Provided	
Coverage Level: Basic		4 Operational	
Customer Tag	Manufacturer	Model #	Serial #

Filters, Standard Pleated, Medium - Quarterly			
Quantity: 1		Services Provided	
Coverage Level: Basic		4 Operational	
Customer Tag	Manufacturer	Model #	Serial #

Equipment Tasking

Block Hours - Controls

Preventive Maintenance Use appropriate eye protection in work environment
Use appropriate Head protection on worksite
Use appropriate hand gloves on worksite
Use and follow the JCI safety policy for Fall Protection while performing work
Use and follow the JCI Ladder Safety processes while performing work
Use and follow the JCI Lock-out Tag-out on all electrical machinery
Check with appropriate customer representative for operational deficiencies
Perform scheduled block hour tasks
Complete any required maintenance checklists, report observations to appropriate customer representative

Block Hours - Mechanical Heavy

Preventive Maintenance Use appropriate eye protection in work environment
Use appropriate Head protection on worksite
Use appropriate hand gloves on worksite
Use and follow the JCI safety policy for Fall Protection while performing work
Use and follow the JCI Ladder Safety processes while performing work
Use and follow the JCI Lock-out Tag-out on all electrical machinery
Check with appropriate customer representative for operational deficiencies
Perform scheduled block hour tasks
Complete any required maintenance checklists, report observations to appropriate customer representative

Block Hours - Security System Rep

Preventive Maintenance Use appropriate eye protection in work environment
Use appropriate Head protection on worksite
Use appropriate hand gloves on worksite
Use and follow the JCI safety policy for Fall Protection while performing work
Use and follow the JCI Ladder Safety processes while performing work
Use and follow the JCI Lock-out Tag-out on all electrical machinery
All work must be performed in accordance with Johnson Controls safety policies
Check with appropriate customer representative for operational deficiencies
Perform scheduled block hour tasks
Remove and dispose any debris from any maintenance activity
Document tasks performed during visit and report any observations to appropriate customer representative

Filters, HEPA, Large - Quarterly

Operational Use appropriate eye protection in work environment
Use appropriate Head protection on worksite
Use appropriate hand gloves on worksite
Use and follow the JCI safety policy for Fall Protection while performing work
Use and follow the JCI Ladder Safety processes while performing work
Use and follow the JCI Lock-out Tag-out on all electrical machinery

- Check with appropriate customer representative for operational deficiencies
- Replace air filters per agreement
- Turn equipment off
- Remove dirty filters
- Install new filters
- Turn equipment on
- Dispose of dirty filter appropriately
- Complete any required maintenance checklists, report observations to appropriate customer representative

Filters, Standard Pleated, Medium - Quarterly

Operational

- Use appropriate eye protection in work environment
- Use appropriate Head protection on worksite
- Use appropriate hand gloves on worksite
- Use and follow the JCI safety policy for Fall Protection while performing work
- Use and follow the JCI Ladder Safety processes while performing work
- Use and follow the JCI Lock-out Tag-out on all electrical machinery
- Check with appropriate customer representative for operational deficiencies
- Replace air filters per agreement
- Turn equipment off
- Remove dirty filters
- Install new filters
- Turn equipment on
- Dispose of dirty filter appropriately
- Complete any required maintenance checklists, report observations to appropriate customer representative

Supplemental Price & Payment Terms (Applies to Multi-Year Contracts Only)

Year	Total Annual Dollar Amount	Payment Frequency
Year 1 (7/2017 - 6/2018)	\$35,768.00	Semi-Annual
Year 2 (7/2018 - 6/2019)	\$37,199.00	Semi-Annual
Year 3 (7/2019 - 6/2020)	\$38,687.00	Semi-Annual

Special Additions and Exceptions

The purpose for a multi-year contract is to secure fixed pricing for upcoming years. See Term/Automatic Renewal for Cancellation.

This is a combined service contract for both HVAC and Fire Testing Services.

The scope of this proposal will provide the following:

- Johnson Controls will provide one annual visit, and all associated travel, transportation, and lodging costs, to include standard service and inspection of the fire alarm system and the annual required 100% system test and re-certification. Emergency visits will take the place of the next scheduled PSA visit if possible; else they will be billed separately. Materials will be billed separately.
- Johnson Controls will provide a Factory Trained Controls Technician for two annual visits of two days per visit to perform needed Metasys Building Automation System Preventative Maintenance tasks. Minor repairs and/or adjustments will be performed during on-site visits. A quote will be provided for any major repairs or above and beyond work requested by the customer.
- Johnson Controls will provide a Qualified Mechanic for one annual visit of two days per visit to perform needed Mechanical Preventative Maintenance tasks, with specific focus on facility mechanical cooling equipment. Minor repairs and/or adjustments will be performed during on-site visits. A quote will be provided for any major repairs or above and beyond work requested by the customer
- Johnson Controls will provide the filters required to perform a complete replacement of Air Handler filters on a quarterly basis.

Detailed Pricing Breakout Details:

- HVAC Services (including filters)
 - Year 1 = \$20,745.00
 - Year 2 = \$21,575.00
 - Year 3 = \$22,438.00
- Fire Testing Services
 - Year 1 = \$15,023.00
 - Year 2 = \$15,624.00
 - Year 3 = \$16,249.00

Last Item Entry

TERMS AND CONDITIONS
DEFINITIONS

CONNECTED SERVICES are the services and related equipment that allow JCI to access, monitor, and trend data remotely, and which may be available for certain types of Covered Equipment.

CONTRACT PRICE means the price that Customer shall pay to JCI for the Services.

COVERED EQUIPMENT means the equipment for which Services are to be provided under this Agreement. Covered Equipment is set forth in Schedule A - Equipment List.

EQUIPMENT FAILURE means the failure, under normal and expected working conditions, of moving parts or electric or electronic components of the Covered Equipment that are necessary for its operation.

SCHEDULED SERVICE VISITS are the on-site labor visits required to perform JCI recommended inspections and preventive maintenance on Covered Equipment.

SCHEDULED SERVICE MATERIALS are the materials required to perform Scheduled Service Visits on Covered Equipment, unless excluded from the Agreement.

PREMISES means those Customer premises where the Covered Equipment is located.

REPAIR LABOR is the labor necessary to restore Covered Equipment to working condition following an Equipment Failure, but does not include services relating to total equipment replacement due to obsolescence or unavailability of parts.

CENTRAL STATION MONITORING means remote monitoring of Covered Equipment and/or systems including building automation, HVAC equipment, and fire alarm, intrusion, and/or other life safety systems for alarm and event notifications.

REMOTE OPERATING SERVICES means remote interrogation, modification and/or operation of building automation, HVAC equipment, and/or other Covered Equipment.

REPAIR MATERIALS are the parts and materials necessary to restore Covered Equipment to working condition following an Equipment Failure, but excludes total equipment replacement due to obsolescence or unavailability of parts, unless excluded from the Agreement. At JCI's option, Repair Materials may be new, used, or reconditioned.

SERVICES are the work, materials, labor, service visits, and repairs to be provided by JCI pursuant to this Agreement.

JCI'S SERVICES FOR COVERED EQUIPMENT

1. BASIC COVERAGE means Scheduled Service Visits, plus Scheduled Service Materials (unless excluded from this Agreement). No parts, equipment, Repair Labor or Repair Materials are provided for under BASIC COVERAGE.

2. PREMIUM COVERAGE means BASIC COVERAGE plus Repair Labor, plus Repair Materials (unless excluded from the Agreement).

3. EXTENDED SERVICE means Services performed outside JCI's normal business hours and is available only if Customer has PREMIUM COVERAGE. Extended Service is available either 24/5 or 24/7, at Customer's election. The price for Extended Service, if chosen by Customer, is part of the total Contract Price.

4. CONNECTED SERVICES. If Customer is receiving Connected Services on any Covered Equipment as more fully described in Schedule A, Customer may be required to allow JCI to install hardware and/or software to enable communication with Customer's Covered Equipment ("Gateway Device"). In order for JCI to deliver Connected Services on the Covered Equipment, Customer shall provide a secure Internet connection to allow remote access to the Gateway Device in order to remotely access, transmit, store, and trend data for the purposes of providing Services. JCI will not use Connected Services to remotely operate or make changes to Customer's Equipment. The Gateway Device shall remain JCI's property, and JCI may upon reasonable notice remove it at any time. JCI makes no any warranty or guarantee relating to the Connected Services.

5. CENTRAL STATION MONITORING OR REMOTE OPERATING SERVICES. If Central Station Monitoring Services or Remote Operating Services are provided, Customer agrees to furnish JCI with a list of the names, titles, addresses, and phone numbers of all persons authorized to enter the Premises during periods when such premises are closed for business. If JCI's Services include "Central Station Monitoring Services with Open and Close," Customer also agrees to furnish JCI with Customer's daily and holiday opening and closing schedules.

6. CUSTOMER SERVICE INFORMATION PORTAL. Customer may be able to utilize JCI's Customer Service Information Portal during the term of the Agreement, pursuant to the then applicable Terms of Use Agreement.

A. INITIAL EQUIPMENT INSPECTION NECESSARY FOR PREMIUM COVERAGE

If Customer has ordered PREMIUM COVERAGE, JCI will inspect the Covered Equipment within forty-five (45) days of the date of this Agreement, or as seasonal or operational conditions permit. JCI will then advise Customer if JCI finds any Covered Equipment not in working order or in need of repair. With Customer's approval, JCI will perform the work necessary to put the Covered Equipment in proper working condition, subject to the terms of this Agreement. Customer will pay for such work at JCI's standard rates for parts and labor in effect at the time that the work is performed. If Customer does not want JCI to perform the work identified as necessary by JCI, any equipment thereby affected will be removed from the list of Covered Equipment, and the Contract Price will be adjusted accordingly. Should Customer not make JCI's recommended repairs or proceed with the modified PREMIUM COVERAGE, JCI reserves the right to invoice Customer for the cost of the initial equipment inspection.

B. OUT OF SCOPE SERVICES

If, during any Service Visit, JCI detects a defect in any of Customer's equipment that is not Covered Equipment under this Agreement (an "Out of Scope Defect"), JCI may (but shall have no obligation to) notify Customer of such Out of Scope Defect. If Customer elects

JOHNSON CONTROLS PLANNED SERVICE PROPOSAL
PREPARED FOR KODIAK POLICE STATION

for JCI to repair such Out of Scope Defect, or if JCI otherwise performs any Services or provides any materials, parts, or equipment outside the scope of the Services (collectively, "Out of Scope Services"). Customer shall direct JCI to perform such Out of Scope Services in writing, and Customer shall pay for such Out of Scope Services at JCI's standard fees or hourly rates. If, after receiving notice of an Out of Scope Defect, Customer elects not to engage JCI to repair such Out of Scope Defect, Customer shall defend and indemnify JCI from and against any and all losses, damages, claims, costs and expenses arising directly or indirectly out of such Out of Scope Defect. Any Out of Scope Services performed by JCI at the direction of Customer pursuant to this Section shall be subject to the terms of this Agreement.

C. ADDITIONAL TERMS RELATING TO CENTRAL STATION MONITORING OF INTRUSION, FIRE, AND OTHER LIFE SAFETY SYSTEMS

1. Alarm Dispatches. JCI, upon receipt of an alarm or other signal from the Premises, shall make reasonable efforts to transmit the signal to the appropriate police, fire department, or other emergency response agency having jurisdiction (unless there is reason to believe that an emergency condition does not exist), and JCI shall make a reasonable effort to notify Customer or its designated representative by telephone, unless instructed to do otherwise by Customer in writing. JCI, upon receipt of an industrial process signal from the Premises, shall take reasonable steps to notify Customer's representative pursuant to Customer's written instructions. Customer acknowledges that if the signals transmitted from the Premises will be monitored in a monitoring facility not operated by JCI, the personnel in such monitoring facilities are not the agents of JCI, nor does JCI assume any responsibility for the manner in which such signals are monitored or the response to such signal.

2. Communications Media. Customer acknowledges that monitoring of Covered Equipment requires transmission of signals over standard telephone lines and/or the Internet and that these modes of transmission may be interrupted, circumvented, or compromised, in which case no signal can be transmitted from the Premises to the monitoring facility. Customer understands that to allow the monitoring facility to be aware of such a condition, additional or alternative protection can be installed, such as line security devices, at Customer's cost and expense and for transmission via telephone line only. Customer acknowledges it is aware that line security devices are available and, unless expressly identified in Schedule A - Equipment List, has declined to purchase such devices. Customer further acknowledges that such additional protection is not available for Internet transmission under this Agreement.

3. False or Unnecessary Alarms and Service Calls. At JCI's option, an additional fee may be charged for any false alarm or unnecessary Service Visit caused or necessitated by Customer. In addition, Customer shall be fully responsible and liable for any fines, penalties, or charges assessed as the result of any false alarm and shall reimburse JCI for any costs incurred by JCI in connection therewith.

D. EXCLUSIONS

1. JCI's Services and warranty obligations expressly exclude:

- (a) the repair or replacement of ductwork, casings, cabinets, structural supports, tower fill/slats/basin, hydronic and pneumatic piping, and vessels, gaskets, and piping not normally replaced or maintained on a scheduled basis, and removal of oil from pneumatic piping;
- (b) disposal of hazardous wastes (except as otherwise expressly provided herein);
- (c) supplies, accessories, or any items normally consumed during the use of Covered Equipment, such as ribbons, bulbs and paper;
- (d) the furnishing of materials and supplies for painting or refinishing equipment;
- (e) the repair or replacement of wire in conduit, buried cable/transmission lines, or the like, if not normally replaced or maintained on a scheduled basis; and
- (f) replacement of obsolete parts.

2. JCI's Services and warranty obligations do not include repairs or service required as the result of:

- (a) abuse, misuse, alterations, adjustments, attachments, combinations, modifications, or repairs to Covered Equipment not performed, provided, or approved in writing by JCI;
- (b) issues caused by or related to equipment not covered by this Agreement or attachments made to Covered Equipment;
- (c) acts or omissions of the Customer, including but not limited to operator error, Customer's failure to conduct preventive maintenance, issues resulting from Customer's previous denial of JCI access to the Covered Equipment, and Customer's failure to keep the site clean and free of dust, sand, or other particles or debris, unless such conditions are previously expressly acknowledged by JCI in writing;
- (d) use of the Covered Equipment in a manner or environment, or for any purpose, for which it was not designed by the manufacturer;
- (e) issues resulting from site-related and environmental conditions, including but not limited to power failures and fluctuations in electrical current (or "power surges");
- (f) the effects of erosion, corrosion, acid cleaning, or damage from unexpected or especially severe freezing weather;
- (g) any other issues or failures not specifically covered by this Agreement; or
- (h) any other issues caused by occurrences beyond JCI's reasonable control and without JCI's fault or negligence.

E. PAYMENT OBLIGATION

Customer shall pay all invoices when due in accordance with the payment terms provided for in the Agreement, and such payment is a condition precedent to JCI's obligation to perform Services under the Agreement. In issuing any purchase order related to this Agreement, and notwithstanding any language to the contrary therein, Customer acknowledges and agrees that any and all JCI invoices for an amount greater than \$25,000 shall be paid only via wire transfer, check, or money order. If this Agreement is renewed, JCI will provide Customer with notice of any adjustments in the Contract Price applicable to any renewal period no later than forty-five (45) days prior to the commencement of that renewal period. Unless Customer terminates the Agreement at least thirty (30) days prior to the start of such renewal period, the adjusted price shall be the price for the renewal period.

F. STANDARD OF CARE AND WARRANTIES

JCI warrants its Services will be provided in a good and workmanlike manner. JCI will promptly re-perform any non-conforming Services for no charge, as long as Customer provides written notice to JCI within one (1) calendar year from the date the Services were performed. If JCI installs or furnishes goods or equipment under this Agreement, and such goods or equipment are covered by an end-user warranty from their manufacturer, JCI will transfer the benefits of such warranty to Customer. Customer must promptly notify JCI in writing of any defect or non-conformance of the Services, parts, or equipment. Upon receipt of such written notice from Customer, JCI will repair or replace (at JCI's option) the defective equipment or re-perform the defective Services. These warranties do not extend to any Services or equipment that have been misused, altered, or repaired by Customer or third parties without the supervision of and prior written approval of JCI, or if JCI serial numbers or warranty decals have been removed or altered. All replaced parts or equipment shall become JCI's property. This warranty is not assignable. Warranty service will be provided during normal business hours, excluding holidays. The remedies set forth herein shall be Customer's sole and exclusive remedy with regards to any warranty claim under this Agreement. Any lawsuit based upon the warranty must be brought no later than one (1) year after the expiration of the applicable warranty period. This limitation is in lieu of any other applicable statute of limitations. **CUSTOMER FURTHER ACKNOWLEDGES AND AGREES THAT THESE WARRANTIES ARE JCI'S SOLE WARRANTIES AND ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THOSE OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.** Except with respect to goods or equipment manufactured by JCI and furnished to Customer hereunder, for which JCI shall provide its express written manufacturer's warranty, JCI shall not be considered a merchant or vendor of goods or equipment.

G. CUSTOMER OBLIGATIONS AND COMMITMENTS TO JCI

Customer warrants it has given JCI all information concerning the condition of the Covered Equipment.

The Customer agrees and warrants that, during the Term of this Agreement, Customer will:

- (1) operate the Covered Equipment according to the manufacturer's and/or JCI's recommendations;
- (2) keep accurate and current work logs and information about the Covered Equipment as recommended by the manufacturer and/or JCI;
- (3) provide an adequate environment for Covered Equipment as recommended by the manufacturer and/or JCI, including, but not limited to adequate space, electrical power, water supply, air conditioning, and humidity control;
- (4) notify JCI immediately of any Covered Equipment malfunction, breakdown, or other condition affecting the operation of the Covered Equipment;
- (5) provide JCI with safe access to its Premises and Covered Equipment at all reasonable and necessary times for the performance of the Services;
- (6) allow JCI to start and stop, periodically turn off, or otherwise change or temporarily suspend equipment operations so that JCI can perform the Services required under this Agreement;
- (7) as applicable, provide proper condenser and boiler water treatment for the proper functioning of Covered Equipment;
- (8) carefully and properly set and test the intrusion alarm system each night or at such other time as Customer shall close the Premises;
- (9) obtain all necessary licenses and permits required for and pay all taxes associated with the Services;
- (10) notify JCI immediately of any claimed inadequacy in, or failure of, the Covered Equipment or other condition affecting the operation of the Covered Equipment;
- (11) furnish any necessary 110 volt A/C power and electrical outlets at its expense;
- (12) properly maintain, repair, service, and assure the proper operation of any other property, system, equipment, or device of Customer or others to which the Covered Equipment may be attached or connected, in accordance with manufacturer recommendations, insurance carrier requirements, or the requirements of any fire rating bureau, agency, or other authorities having jurisdiction thereof;
- (13) not tamper with, alter, adjust, disturb, injure, remove, or otherwise interfere with any Covered Equipment (including any related software) and not permit the same to be done; and
- (14) refrain from causing false alarms, and reimburse JCI for any fine, penalty, or fee paid by or assessed against JCI by any governmental or municipal agency as a result thereof.

Customer acknowledges that its failure to meet these obligations will relieve JCI of any responsibility for any Covered Equipment breakdown, or any necessary repair or replacement of any Covered Equipment. If Customer breaches any of these obligations, JCI shall have the right, upon written notice to Customer, to suspend its Services until Customer cures such breach. In addition, Customer shall be responsible for paying or reimbursing JCI for any costs associated with corrective work required as a result of Customer's breach of these obligations.

H. INDEMNITY

JCI and Customer shall each indemnify the other party and its officers, agents, directors, and employees, from any and all damages, losses, costs and expenses (including reasonable attorneys' fees) arising out of third party claims, demands, or suits for bodily injury (including death) or damage to tangible property to the extent arising out of the negligence or intentional misconduct of the indemnifying party or its employees or agents. Customer expressly agrees that JCI shall be responsible for injury, damage, or loss only to the extent caused directly by JCI's negligence or intentional misconduct. The obligations of JCI and Customer under this section are further subject to sections I and J below.

I. LIMITATION OF LIABILITY

NEITHER JCI NOR CUSTOMER WILL BE RESPONSIBLE TO THE OTHER FOR ANY SPECIAL, INDIRECT, PUNITIVE, OR CONSEQUENTIAL DAMAGES (INCLUDING BUT NOT LIMITED TO LOST PROFITS OR LOSS OF BUSINESS). JCI'S TOTAL LIABILITY TO CUSTOMER FOR DAMAGES RESULTING FROM ANY CAUSE WHATSOEVER SHALL BE LIMITED TO \$250,000. IN NO EVENT SHALL JCI'S INDEMNIFICATION OBLIGATION EXCEED THE AMOUNTS PAID TO JCI UNDER THIS AGREEMENT OR THE AMOUNT OF INSURANCE REQUIRED BY THIS AGREEMENT, WHICHEVER IS GREATER. CUSTOMER UNDERSTANDS THAT JCI IS NOT AN INSURER REGARDING THE WORK OR THE SERVICES. JCI SHALL NOT BE RESPONSIBLE FOR ANY DAMAGE OR LOSS THAT MAY RESULT FROM FIRE SAFETY OR SECURITY EQUIPMENT THAT FAILS TO PERFORM PROPERLY OR FAILS TO PREVENT A CASUALTY OR LOSS.

J. FORCE MAJEURE

JCI WILL NOT BE RESPONSIBLE FOR DAMAGE, LOSS, INJURY OR DELAY CAUSED BY CONDITIONS THAT ARE BEYOND THE REASONABLE CONTROL, AND WITHOUT THE INTENTIONAL MISCONDUCT OR NEGLIGENCE, OF JCI. SUCH CONDITIONS INCLUDE, BUT ARE NOT LIMITED TO: (A) ACTS OF GOD; (B) ACTS OF GOVERNMENT AGENCIES; (C) STRIKES; (D) LABOR DISPUTES; (E) FIRE; (F) EXPLOSIONS OR CASUALTIES; (G) THEFTS; (H) VANDALISM; (I) RIOTS OR WAR; (J) TERRORISM; AND (J) UNAVAILABILITY OF PARTS, MATERIALS, OR SUPPLIES.

K. RESOLUTION OF DISPUTES

If a dispute arises under this Agreement, the parties shall promptly attempt in good faith to resolve such dispute by negotiation. In the event the dispute is unable to be resolved, either party shall have the right to initiate arbitration by filing with the American Arbitration Association provided no other legal action has been previously filed. Upon filing of the arbitration, the AAA shall have the exclusive jurisdiction over the Dispute. Thus, either party may decide to file an action in a court of competent jurisdiction and if that court filing is the first legal proceeding filed, that court shall have jurisdiction over the Dispute to the exclusion of any arbitration. Arbitration shall be conducted in accordance with the then current arbitration rules of the American Arbitration Association or other arbitration service mutually agreed to by the parties. Arbitration must be completed within sixty (60) days after the Dispute is submitted to arbitration unless the parties mutually agree otherwise. The award rendered by the arbitrator shall be final, and judgment issued by the Arbitrator may be entered in accordance with applicable law in any court having competent jurisdiction. The party prevailing in the arbitration or court proceeding shall be entitled to an award of its reasonable costs, including reasonable attorneys' fees, incurred as a result of the Dispute. **CUSTOMER MUST BRING ANY CLAIM AGAINST JCI WITHIN ONE (1) YEAR AFTER THE CLAIM AROSE. IF CUSTOMER DOES NOT, CUSTOMER WILL HAVE IRREVOCABLY WAIVED ITS RIGHT TO SUE JCI AND/OR INSTITUTE OTHER PROCEEDINGS, AND JCI SHALL HAVE NO LIABILITY TO CUSTOMER FOR SUCH CLAIM. TIME IS OF THE ESSENCE RELATIVE TO CUSTOMER PURSUING ANY SUCH CLAIM. THE PROVISIONS OF THIS AGREEMENT WHICH APPLY TO ANY CLAIM SHALL REMAIN IN EFFECT EVEN AFTER THE AGREEMENT IS TERMINATED. JCI AND CUSTOMER EACH WAIVE THEIR RIGHT TO A JURY TRIAL.**

L. TERMINATION

1. Central Station Monitoring, Remote Operating Services, and Central Station Monitoring with Open or Close Services may be immediately canceled by either party if JCI's central station, connecting wires, or monitoring systems are destroyed by fire or other catastrophe, or where the Premises are so substantially damaged that it is impractical to continue Services.
2. If either party fails to perform any of its obligations under this Agreement, the other party shall provide written notice thereof to the party alleged to be in default. Should the party alleged to be in default fail to respond in writing or take action to cure the alleged default within ten (10) days of receiving such written notice, the notifying party may terminate this Agreement by providing written notice of such termination.
3. Upon termination of this Agreement for any reason, Customer shall pay to JCI all undisputed amounts owed through the date of termination within thirty (30) days of such termination. Customer shall also provide JCI with reasonable access to the Premises to remove the Gateway Device and any other JCI property and to un-program any intrusion, fire, or life safety system, as applicable. Customer shall be liable for all fees, costs, and expenses that JCI may incur in connection with the enforcement of this Agreement, including without limitation, reasonable attorney fees, collection agency fees, and court costs.
4. If the Agreement is for a multi-year term, either party may terminate the Agreement after the first full year of Services by giving the other party no less than forty-five (45) days written notice; provided, however, that if Customer has ordered PREMIUM COVERAGE, Customer may terminate the Agreement only upon JCI's written consent

M. ASBESTOS, MOLD AND HAZARDOUS MATERIALS

"Hazardous Materials" means any material or substance that, whether by its nature or use, is now or hereafter defined or regulated as a hazardous waste, hazardous substance, pollutant, or contaminant under any local, state, or federal law, regulation, or ordinance relating to or addressing public and employee health and safety and protection of the environment, or which is toxic, explosive, corrosive, flammable, radioactive, carcinogenic or otherwise hazardous or which is or contains petroleum, gasoline, diesel, fuel, another petroleum hydrocarbon product or polychlorinated biphenyls. "Hazardous Materials" specifically includes mold, lead-based

paints, and asbestos-containing materials ("ACM").

Neither Customer nor JCI desires to or is licensed to undertake direct obligations relating to the identification, abatement, cleanup, control, removal or disposal of ACM. It is JCI's policy to seek certification for facilities constructed prior to 1982 that no ACM is present, and Customer shall provide such certification for buildings it owns, or aid JCI in receiving such certification from facility owners in the case of buildings that it does not own, if JCI will undertake Services in the facility that could disturb ACM.

JCI will be responsible for removing or disposing of any Hazardous Materials that it uses in providing the Services ("JCI Hazardous Materials") and for the remediation of any areas affected by the release of JCI Hazardous Materials. For other Hazardous Materials that may be present at its facilities ("Non-JCI Hazardous Materials"), Customer shall supply JCI with any information in its possession relating to the presence of Hazardous Materials if their presence may affect JCI's performance of the Services. If either Customer or JCI becomes aware of or suspects the presence of Non-JCI Hazardous Materials that may interfere with JCI's Services, it shall immediately stop the Services in the affected area and notify the other party. As between Customer and JCI, Customer shall be responsible at its sole expense for removing and disposing of Non-JCI Hazardous Materials from its facilities and for the remediation of any areas impacted by the release of the Non-JCI Hazardous Materials and must provide a certificate of abatement before JCI will be obligated to perform or continue its Services, unless JCI had actual knowledge that Non-JCI Hazardous Materials were present and acted in disregard of that knowledge, in which case (i) JCI shall be responsible at its sole expense for the remediation of any areas impacted by its release of such Hazardous Materials, and (ii) Customer shall remain responsible at its sole expense for the removal of Hazardous Materials that have not been released and for releases not resulting from JCI's performance of the Services. Customer shall defend and indemnify JCI against any losses, costs, damages, expenses, and claims arising out of its failure to comply with this Section M.

N. CUSTOMER DATA

Customer data is owned by and shall belong to Customer. JCI will access and use Customer data to provide Services to Customer. JCI will not disclose to any third party any individual Customer data acquired through performance of the Services without Customer's consent. Customer agrees that JCI and its subsidiaries, affiliates and approved third party contractors and developers may collect and use Customer data for any reason, as long as any external use of the data is on a de-identified basis that does not personally identify Customer or any individual. Customer hereby grants JCI a perpetual, worldwide, irrevocable, royalty free license to use, modify, manipulate, sublicense, and create derivative works from such data. JCI shall retain all rights to any intellectual property, data, materials and products created as a result of its performance of Services.

O. JCI'S INTELLECTUAL PROPERTY

JCI shall retain all right, title and interest in any (a) work provided to Customer, including without limitation, all software source and object code, documentation, technical information or data, specifications and designs and any changes, improvements or modifications thereto ("Deliverables"), and (b) Know-How (defined below) employed by JCI in the creation of the Deliverables or performance of the Services, whether known to JCI prior to, or developed or discovered or acquired in connection with, the performance of its obligations under this agreement. Ownership of all Deliverables and Know-How shall vest solely in JCI and no Deliverables shall be deemed "works made for hire." Without limiting the generality of the foregoing, ownership of all source files used in the course of performing the Services shall remain the exclusive property of JCI. For purposes of this Agreement, "Know-How" means any know-how, processes, techniques, concepts, methodologies, tools, analytical approaches, database models and designs, discoveries, and ideas furnished, produced by, developed, or used by JCI in the creation or provision of the Deliverables or in the performance of the Services, and any changes, improvements, or modifications thereto or derivatives thereof.

P. MISCELLANEOUS PROVISIONS

1. All notices required to be given hereunder shall be in writing and shall be considered properly given if: (a) delivered in person, (b) sent via the United States Postal Service, postage prepaid, registered or certified with return receipt requested, (c) sent by overnight delivery service (e.g., FedEx, UPS), or (d) sent by facsimile, email or other electronic means and confirmed by facsimile, return email or telephone.
2. This Agreement may not be assigned by Customer without JCI's prior written consent. JCI shall have the right to assign this Agreement to any other person, firm, or corporation without Customer's consent. JCI shall also have the right, in its sole discretion, to subcontract any portion of the Services. This Agreement inures to the benefit of and is applicable to any assignees or subcontractors of JCI, and is binding upon Customer with respect to said assignees or subcontractors with the same force and effect as it binds Customer to JCI.
3. This Agreement shall be subject to and governed by the laws of the State where the Services are performed.
4. If any provision of this Agreement is found to be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby.
5. This Agreement is the entire contract between JCI and Customer and supersedes any prior oral understandings, written agreements, proposals, or other communications between the parties.
6. Customer acknowledges and agrees that any purchase order issued by Customer in connection with this Agreement is intended only to establish payment authority for Customer's internal accounting purposes and shall not be considered to be a counteroffer, amendment, modification, or other revision to the terms of this Agreement. No term or condition included or referenced in Customer's purchase order will have any force or effect and these terms and conditions shall control. Customer's acceptance of any Services shall constitute an acceptance of these terms and conditions. Any proposal for additional or different terms, whether in Customer's purchase order or any other document, unless expressly accepted in writing by JCI, is hereby objected to and rejected.
7. If there are any changes to Customer's facilities or operations, or to applicable regulations, laws, codes, taxes, or utility charges, that materially affect JCI's performance of the Services or its pricing thereof, JCI shall have the right to an equitable and appropriate adjustment to the scope, pricing, and other affected terms of this Agreement. **[END OF DOCUMENT]**

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MEMORANDUM TO COUNCIL

To: Mayor Branson and City Councilmembers
From: Mike Tvenge, City Manager *MT*
Thru: Kelly Mayes, Finance Director
Date: November 9, 2017

Agenda Item: IV. b. Second Reading and Public Hearing, Ordinance No. 1367, Amending Kodiak City Code 3.08.120, "Maximum Taxable Sale," to Increase the Maximum Amount of a Sale Service or Rental that is Subject to City Sales Tax to \$3,000

SUMMARY: Since May 2016, City staff has been providing updates regarding the City's fiscal outlook. The State of Alaska provides funding to the City of Kodiak through various sources – capital grants, shared revenues, PERS on-behalf payments, and other miscellaneous sources. Due to economic conditions within the State, the State of Alaska budget has been experiencing a shortfall over the past three fiscal years. This shortfall at the state level has impacted funding provided to the City of Kodiak. The City revenues are generated through sales tax, property tax, city charges for services, and intergovernmental revenues. Due to continual decreases in city intergovernmental revenues, city staff has presented data to the City Council and Mayor throughout eighteen work sessions to consider the implications to the City. These discussions culminated into the direction from Council to move forward with three ordinances:

- Increase minimum taxable sale from \$750 to \$3,000
- Hold the maximum taxable sale on real property commercial and real property residential rentals to \$750
- Eliminate the 2% discount allowed to early sales tax filers

PREVIOUS COUNCIL ACTION: The Council has held eighteen work sessions directly relating to the City's fiscal outlook, budgeting, revenue projections, and sales tax. These began in May 2016 and were held approximately once per month (excluding June 2016, November 2016, and December 2016). During the September 11, 2017, work session, Council directed City staff to move forward with the ordinance noted above. At the September 28, 2017, regular meeting Council postponed passing Ordinance No. 1367 in the first reading until a Community Forum was held, which occurred on October 16, 2017. Ordinance No. 1367 was passed in the continued first reading on October 26, 2017.

FINANCIAL IMPLICATIONS: Financial implications for increasing the sales tax minimum taxable sale from \$750 to \$3,000, maintaining a \$750 maximum sale amount for real property residential and commercial rentals, and eliminating the 2% discount offered for timely filing of sales tax returns are

projected to increase City revenues by approximately \$5.8 million within the first full year of implementation.

ALTERNATIVES:

- 1) Adopt Ordinance No. 1367 in the second reading after the public hearing, which is staff's recommendation, because it is consistent with the Council's direction.
- 2) Postpone, amend, or do not pass Ordinance No. 1367.

LEGAL: The City's attorney wrote Ordinance No. 1367.

CITY MANAGER'S COMMENTS: These changes to our City's tax structure are necessary if City Council wishes to provide the level of service typically provided and look forward to upgrades in the City's aging infrastructure. We have established a long-range capital improvement plan, which will require millions of dollars in expenditures, over the next ten years or longer. In order to accomplish these goals, additional revenue will be necessary. This infrastructure includes essential life /safety as well as support to our primary economic industries. If adopted without amendment, this ordinance will become effective January 1, 2018. Staff supports this ordinance.

NOTES/ATTACHMENTS:

Attachment A: Ordinance No. 1367

PROPOSED MOTION:

Move to adopt Ordinance No. 1367.

**CITY OF KODIAK
ORDINANCE NUMBER 1367**

AN ORDINANCE OF THE COUNCIL OF THE CITY OF KODIAK AMENDING KODIAK CITY CODE 3.08.120, "MAXIMUM TAXABLE SALE," TO INCREASE THE MAXIMUM AMOUNT OF A SALE SERVICE OR RENTAL THAT IS SUBJECT TO CITY SALES TAX TO \$3,000

WHEREAS, it in the City of Kodiak's best interest to exempt sales that exceed \$3,000 from sales tax during the 2018 fiscal year due, in part, to the fiscal challenges facing the City's taxpayers,

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

Section 1: Kodiak City Code 3.08.120, entitled "Maximum taxable sale," is hereby amended to read as follows:

- (a) **Except as otherwise provided in this section, if** ~~if~~ the sales price of an item or items or the charge for rental of any property or performance of any service exceeds **\$3,000** ~~\$750.00~~ for a single transaction, that portion of the price or charge in excess of **\$3,000** ~~\$750.00~~ shall be exempt from the tax levied by this chapter.
- (b) In determining the maximum tax payable with regard to a single transaction for the rendering of services on a substantially regular basis, which services are generally repetitive in nature and are to be performed over a period of time under a contract, each period for payment or partial payment under the contract shall be deemed a separate service transaction. The maximum tax payable shall be applicable to each deemed service transaction with tax payments to accrue and become payable at the time of filing the next quarterly return to be submitted following receipt of payment for the service.
- (c) For purposes of computing the maximum tax, a rental of property for a period in excess of one month shall be deemed as a series of rentals with each rental transaction terminating as a rental payment is made. The maximum sales tax payable shall be applicable to each deemed rental with tax payments to accrue and become payable at the time of filing the next quarterly return to be submitted following receipt of the rental.
- (d) For purposes of computing the maximum tax, a transaction which takes the form of a lease shall be deemed a rental or series of rentals unless a party to the transaction demonstrates that it constitutes a capital lease as defined in this chapter. A capital lease shall be treated as an installment purchase. The finance director shall have the final authority to determine whether or not a par-

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

particular transaction constitutes a capital lease and may require the parties to such a transaction to submit such information or documentation as the finance director feels is reasonably necessary to make this determination. In making such a determination the finance director may rely upon the 1991 Comprehensive Governmental GAAP Guide by Larry P. Bailey (Miller Accounting Publications, Inc., a subsidiary of Harcourt Brace Jovanovich Publishers).

Section 2: This ordinance shall be effective on January 1, 2018 and no earlier than one month after its final passage and publication in accordance with Kodiak Charter Section 2-13.

CITY OF KODIAK

MAYOR


ATTEST:

CITY CLERK

First Reading: Postponed in First Reading September 28, 2017
Continued First Reading: Passed in the First Reading October 26, 2017
Second Reading:
Effective Date:

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

MEMORANDUM TO COUNCIL

To: Mayor Branson and City Councilmembers
From: Mike Tvenge, City Manager 
Thru: Kelly Mayes, Finance Director
Date: November 9, 2017

Agenda Item: IV. c. Second Reading and Public Hearing, Ordinance No. 1368, Amending Kodiak City Code 3.08.040, "General Exemptions" and Kodiak City Code 3.08.120, "Maximum Taxable Sale," To Exempt Real Property Rentals Exceeding One Month and \$750.00 From City of Kodiak Sales Tax

SUMMARY: Since May 2016, City staff has been providing updates regarding the City's fiscal outlook. The State of Alaska provides funding to the City of Kodiak through various sources – capital grants, shared revenues, PERS on-behalf payments, and other miscellaneous sources. Due to economic conditions within the State, the State of Alaska budget has been experiencing a shortfall over the past three fiscal years. This shortfall at the state level has impacted funding provided to the City of Kodiak. The City revenues are generated through sales tax, property tax, city charges for services, and intergovernmental revenues. Due to continual decreases in city intergovernmental revenues, city staff has presented data to the City Council and Mayor throughout eighteen work sessions to consider the implications to the City. These discussions culminated into the direction from Council to move forward with three ordinances:

- Increase minimum taxable sale from \$750 to \$3,000
- Hold the maximum taxable sale on real property commercial and real property residential rentals to \$750
- Eliminate the 2% discount allowed to early sales tax filers

PREVIOUS COUNCIL ACTION: The Council has held eighteen work sessions directly relating to the City's fiscal outlook, budgeting, revenue projections, and sales tax. These began in May 2016 and were held approximately once per month (excluding June 2016, November 2016, and December 2016). During the September 11, 2017, work session, Council directed City staff to move forward with the ordinances noted above. At the September 28, 2017, regular meeting Council postponed passing Ordinance No. 1367 in the first reading until a Community Forum was held, which occurred on October 16, 2017. Council passed Ordinance No. 1367 in the first reading on October 26, 2017.

FINANCIAL IMPLICATIONS: Financial implications for increasing the sales tax minimum taxable sale from \$750 to \$3,000, maintaining a \$750 maximum sale amount for real property residential and commercial rentals, and eliminating the 2% discount offered for timely filing of sales tax returns are

projected to increase City revenues by approximately \$5.8 million within the first full year of implementation.

ALTERNATIVES:

- 1) Adopt Ordinance No. 1368 in the second reading after the public hearing, which is staff's recommendation, because it is consistent with the Council's direction at the work session on September 11, 2017.
- 2) Postpone, amend, or do not adopt Ordinance No. 1368.

LEGAL: The City's attorney wrote Ordinance No. 1368.

CITY MANAGER'S COMMENTS: This ordinance does not change the current tax structure for residential or commercial rental property. In fact it is meant to protect rental property from escalating sales taxes with the intent to continue the City Councils vision of maintaining affordable housing in our community. This cap in sales tax for property rental is set at \$750. If adopted without amendment, this ordinance will become effective January 1, 2018. Staff supports this ordinance.

NOTES/ATTACHMENTS:

Attachment A: Ordinance No. 1368

PROPOSED MOTION:

Move to adopt Ordinance No. 1368.

**CITY OF KODIAK
ORDINANCE NUMBER 1368**

AN ORDINANCE OF THE COUNCIL OF THE CITY OF KODIAK AMENDING KODIAK CITY CODE 3.08.040, “GENERAL EXEMPTIONS” AND KODIAK CITY CODE 3.08.120, “MAXIMUM TAXABLE SALE,” TO EXEMPT REAL PROPERTY RENTALS EXCEEDING ONE MONTH AND \$750.00 FROM CITY OF KODIAK SALES TAX

WHEREAS, it is in the City of Kodiak’s best interest to exempt rentals of real property that are for longer than one month and more than \$750 from sales tax; and

WHEREAS, this exemption also serves as a “tax cap” and thus it is best codified in both the “general exemptions” and “maximum taxable sale” sections of the Kodiak City Code to provide Kodiak’s taxpayers with clarity when applying the Kodiak City Code,

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

Section 1: Kodiak City Code 3.08.040 entitled “General Exemptions” is amended as follows:

The following classes of sales, rentals, and services are exempt from the tax imposed by this chapter:

- (a) Casual and isolated sales and rentals of personal property, and services not rendered in the regular course of business of the seller;
 - (b) Medical services performed by licensed medical doctors, dentists, osteopaths, optometrists, psychiatrists, psychologists, and chiropractors; sales of medicinal preparations and drugs prescribed by medical doctors; and hospital services;
 - (c) Sales, rentals, and services to religious and charitable organizations as defined in Sections 501(c)(1), (3), and (4) of the Internal Revenue Code, for the conduct of regular religious or charitable functions and activities, and not for the support or maintenance of the general membership or for communal living;
 - (d) Sales of food in school cafeterias and lunchrooms that are operated primarily for students;
 - (e) Sales and services by nonprofit schools and student organizations within schools for support of the school, organization, or extracurricular activities or events;
 - (f) Sales, rentals, and services to the United States, the state of Alaska, and any agencies or political subdivisions thereof;
 - (g) Dues or fees to clubs, labor unions, and fraternal organizations;
- [Bold and underlined added.]** Deleted language ~~stricken through.~~

- (h) Subscriptions to newspapers and periodicals;
- (i) Sales of insurance and bonds of guaranty and fidelity;
- (j) Funeral charges;
- (k) Transportation charges of commercial airlines, air charters, and passenger ship companies; provided, however, that this exemption shall not extend to boat charter operations not affecting interstate commerce;
- (l) Services rendered by banking or savings and loan institutions or credit unions;
- (m) Services rendered by an employee to an employer in the normal course of employment;
- (n) Sales, rentals, and services which the city is prohibited from taxing by the Constitution or laws of the United States or the state of Alaska;
- (o) Retail sales in dining rooms or cafeterias of food furnished by nonprofit organizations under programs wholly or partially supported by government funds;
- (p) Nursery and babysitting services;
- (q) Long-distance transmission of telephone and telegraph messages;
- (r) Sales of heating fuel exclusively for residential uses (not to include fuel used in or on watercraft);
- (s) Sales of electrical service to exclusively residential units;
- (t) Sales of propane gas exclusively for residential uses (e.g., cooking, water heating, heating, clothes drying);
- (u) Sale of fuel used in stationary power plants that generate electrical energy exclusively for private residential consumption;
- (v) Sales, rentals, and services to nonprofit associations or organizations operated primarily for the purpose of planning, promoting, and conducting organized group activities for participants who are 18 years of age or less;
- (w) Charges for garbage/refuse collection for garbage/refuse generated exclusively by residential use;
- (x) Sales of water and sewer utility services for residential use; and

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

(y) Sales by religious or charitable organizations, as defined in Sections 501(c)(1), (3), and (4) of the Internal Revenue Code, of pull tabs, raffle and lottery tickets, bingo cards, and other tokens of participation in games of chance and contests of skill;

(z) Charges for rental of any residential or commercial real property for a period in excess of one month that exceeds \$750.00 for a single transaction.

Section 1: Subsection (a) of Kodiak City Code 3.08.120, entitled “Maximum taxable sale,” is hereby amended to read as follows:

(a) If the sales price of an item or items or the charge for rental of any property or performance of any service exceeds \$750.00 for a single transaction, that portion of the price or charge in excess of \$750.00 shall be exempt from the tax levied by this chapter. **If the the charge for rental of any residential or commercial real property for a period in excess of one month exceeds \$750.00 for a single transaction, that portion of the charge in excess of \$750.00 shall be exempt from the tax levied by this chapter.**

Section 2: This ordinance shall be effective on January 1, 2018 and no earlier than one month after its final passage and publication in accordance with Kodiak Charter Section 2–13.

CITY OF KODIAK

MAYOR

ATTEST:


CITY CLERK

First Reading: Postponed in First Reading September 28, 2017
Continued First Reading: Passed in the First Reading October 26, 2017
Second Reading:
Effective Date:

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

NEW BUSINESS

MEMORANDUM TO COUNCIL

To: Mayor Branson and City Councilmembers
From: Mike Tvenge, City Manager 
Thru: Matt Van Daele, Deputy City Manager
Date: November 9, 2017

Agenda Item: V. a. **First Reading, Ordinance No. 1370, Amending Chapter 5.04 of the Kodiak City Code to Add a New Section 5.04.080 Pertaining to Procedures for Issuing Permits for Retail Sales of Seafood Directly From Vessels at City Port and Harbor Facilities**

SUMMARY: The draft ordinance amends Chapter 5.04 of the Kodiak City Code by adding a new section 5.04.080 pertaining to procedures for issuing permits for retail sales of seafood directly from vessels at City Port and Harbor Facilities.

PREVIOUS COUNCIL ACTION:

- Chapter 5.04 was last amended in fall of 2004 by Ordinance 1177 to allow the placement of vending machines on City property.
- Last summer (2016), the Council was presented with a “Public Sentiment Petition” containing 67 signatures of Kodiak residents expressing their desire for “[a] *revision to City ordinances which prohibit commercial fishermen from selling directly off their vessels to dockside consumers.*”
- Draft code language was subsequently discussed at the September 26, 2017, work session, and the Council directed staff to work with the PHAB, and then provide these recommendations to our legal counsel.
- Staff met with the PHAB on October 10th, and after minor changes were incorporated, PHAB voted unanimously to advance the draft language to the City Council with a recommendation to adopt the ordinance.
- Subsequently, staff provided this revised language to our legal counsel, and their recommendation was provided to the Council at our work session on October 24th.

DEPUTY CITY MANAGER COMMENTS: Kodiak is one of the top ports in the Nation for seafood harvest, but we are one of the few locations in Alaska that does not allow “*retail sales of fresh seafood to the ultimate consumer by the actual harvester.*” There is broad public support for allowing these types of sales, adoption of this Ordinance would conceivably assist with both Downtown Revitalization as well as Archipelago-wide economic development, and therefore Staff is fully supportive of this proposed code change and Ordinance.

CITY MANAGER COMMENTS: There are several communities in Alaska that provide an opportunity for food producers to sell their products locally. Kodiak has adopted this “buy local” niche with local bazaars and craft fairs, such as the Beartown Market and the Kodiak Harvest Co-op. Seafood sales would be a welcome expansion to the “buy local” movement and I believe it will add value to our downtown economy. Again, staff supports this ordinance.

ATTACHMENTS:

Attachment A: Ordinance No. 1370

PROPOSED MOTION:

Move to pass Ordinance No. 1370 in the first reading and advance to second reading and public hearing at the next regular or special meeting.

**CITY OF KODIAK
ORDINANCE NUMBER 1370**

AN ORDINANCE OF THE COUNCIL OF THE CITY OF KODIAK AMENDING CHAPTER 5.04 OF THE KODIAK CITY CODE TO ADD A NEW SECTION 5.04.080 PERTAINING TO PROCEDURES FOR ISSUING PERMITS FOR RETAIL SALES OF SEAFOOD DIRECTLY FROM VESSELS AT CITY PORT AND HARBOR FACILITIES

WHEREAS, the Kodiak City Code Section 5.04.010 prohibits selling goods in or upon a city street, alley, sidewalk, parking lot, park, or other public place except where specifically permitted; and

WHEREAS, the City of Kodiak operates port and harbor facilities which are a “public place” as that term is used in Section 5.04.010; and

WHEREAS, the City of Kodiak wishes to allow commercial harvesters of seafood the opportunity to obtain a permit to sell seafood directly from a vessel moored at city port and harbor facilities; and

WHEREAS, it is in the best interest of the City to vest administrative duties associated with the issuance of such permits with the Harbormaster.

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

Section 1: Kodiak City Code Chapter 5.04 is hereby amended by adoption of a new Section 5.04.080 to read as follows:

5.04.080 - Permits for the retail sale of seafood by harvesters to consumers

(a) The harbormaster may issue permits allowing retail sales of seafood to the ultimate consumer by the actual harvester from the harvester’s vessel at City port and harbor facilities.

(b) An application under this section shall be submitted to the Harbormaster on a form prepared by the city accompanied by any required fees established by resolution or motion of the city council. The application shall contain the following information:

- (1) The name, address, telephone number, and email address of the applicant;
- (2) The business name to be used and the nature of the business;
- (3) Description and license number (as applicable) of the vessel proposed to be

used in the business;

- (4) The location where the applicant would prefer to conduct the business;
- (5) The specific type or types of seafood proposed to be sold;
- (6) Copies of requisite State and/or Federal permits and/or licenses required for such activity; and,
- (7) An acknowledgement by the applicant agreeing to be bound by all of the terms, conditions, and provisions set forth in this section, and such additional terms and conditions as may be set forth in the permit.

(c) A permit issued under KCC 5.04.080 shall be subject to the following terms and conditions:

- (1) The applicant shall obtain and prominently display on the vessel all other licenses and permits necessary to the conduct of the business;
- (2) The applicant shall conduct sales of seafood only at specific locations and/or times designated in the permit by the harbormaster;
- (3) The applicant shall allow inspection of the vessel from which the business is conducted by the harbormaster or designee(s) at all reasonable hours;
- (4) The applicant shall maintain the area in the immediate vicinity of the business in a neat and clean condition and shall remove all accumulated waste, litter, and debris daily upon closing of sales; and shall not allow any hazards or disruptions to pedestrian or vehicular traffic due to the operation of the business;
- (5) The applicant shall not allow any hazards or disruptions to pedestrian or vehicular traffic due to the operation of the business;
- (6) Unless otherwise authorized by the Harbormaster, signs or advertising may only be displayed on the vessel;
- (7) All product processing, handling, and packaging shall take place on the vessel;
- (8) Seafood waste shall not be discarded in the harbor or in harbor trash receptacle;

(9) Business conducted under this permit is not considered casual and isolated sales, and the applicant must remain in compliance with sales and property tax laws in order to retain their permit;

(10) The applicant must remain in compliance with Chapter 18.28, Port and Harbor facilities.

(d) If the applicant fails to comply with any condition or provision of this section, the Harbormaster may, after not less than two hours' notice and an opportunity to be heard, revoke the permit.

(e) If the applicant fails to leave the immediate vicinity in a clean condition as required by this section, the City may, after reasonable verbal notice, perform such work and the applicant shall be liable for all costs so incurred. Items and/or materials removed by the City may be discarded in the dump or otherwise disposed of as abandoned property having no value.

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

CITY OF KODIAK

By: _____
MAYOR

ATTEST:

By: _____
CITY CLERK

First Reading:

Second Reading:

Effective Date:

Ordinance No. 1370
Page 3 of 3

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MEMORANDUM TO COUNCIL

To: Mayor Branson and City Councilmembers
From: Mike Tvenge, City Manager *MT*
Date: November 9, 2017

Agenda Item: V. b. First Reading, Ordinance No. 1371, Authorizing a Contract With the Kodiak Historical Society to Operate the Baranov Museum Through June 30, 2020

SUMMARY: The City has provided funding to the Kodiak Historical Society to help cover operating costs of the Baranov Museum for many years. In 2014, KHS requested that the City enter into a multi-year operating agreement or contract with them for the services provided at the Baranov Museum. The current contract expires June 30, 2018. The Historical Society is planning an exhibit redesign project that benefits by support from the City. Ordinance No. 1371 will authorize a new two-year agreement from July 1, 2018, through June 30, 2020. Based on City Charter requirements and legal advice, the contract approval is made by Council through the ordinance process. Most of the terms in the new contract are the same as the existing contract, but the annual funding level will be set in the FY2019 and FY2020 budgets. Staff recommends Council adopt Ordinance No. 1371.

PREVIOUS COUNCIL ACTION:

- Council has funded the Kodiak Historical Society to help cover operating costs of the Baranov Museum for many years through a line item in the Parks and Recreation portion of the City's operating budget.
- March 25, 2014, work session, KHS made a formal presentation to Council requesting a two-year agreement.
- May 10, 2014, Council supported a two-year agreement for FY2015-2016.
- May 26, 2016, Council authorized Ordinance 1348, which authorized a museum services contract through June 30, 2018.

ALTERNATIVES:

- 1) Council may pass Ordinance No. 1371 in the first reading and advance to second reading and public hearing, which is staff's recommendation to ensure continued community access to the museum and its programs and to provide the long-term support the Museum needs to move forward with its redesign project.
- 2) Council may fail or postpone Ordinance No. 1371, which is not recommended, because the Museum needs the City's support to move forward with its redesign project.

FINANCIAL IMPLICATIONS: The existing contract includes \$92,700 annually, plus \$2,000 for fire suppression costs. The new contract does not contain a specific amount; it states an amount approved by Council in the annual budget.

LEGAL: The City Attorney was consulted about the agreement and process and he prepared the original Ordinance 1348. He said the agreement requires approval through the adoption of an ordinance, per City Charter §V-17 Contracts and Sales, because it is similar to a lease and deals with the disposal of interest in real property belonging to the City.

STAFF RECOMMENDATION: Staff recommends Council adopt Ordinance No. 1371. The two-year agreement ending on June 30, 2020, would permit the Kodiak Historical Society to provide museum services and collections to the community through the Baranov Museum with terms to be determined by Council for each of the two years, with funds coming from the General Fund, Parks and Recreation, Museum account.

CITY MANAGER'S COMMENTS: The City has provided by contract which included funding to the KHS for many years in order to help them operate the Baranov Museum. KHS attached letter requests another two-year agreement with the City. If Council agrees to the terms of the contract, and wishes to continue the partnership, staff recommends passing Ordinance No. 1371 in the first reading and advance to second reading and public hearing at the next meeting.

ATTACHMENTS:

Attachment A: Ordinance No. 1371

Attachment B: July 1, 2018-June 30, 2020, contract between the Historical Society of Kodiak and the City of Kodiak

Attachment C: Historical Society Request Letter

Attachment D: Ordinance No. 1348

PROPOSED MOTION:

Move to pass Ordinance No. 1371 in the first reading and advance to second reading and public at the next regular or special meeting.

**CITY OF KODIAK
ORDINANCE NUMBER 1371**

**AN ORDINANCE OF THE COUNCIL OF THE CITY OF KODIAK
AUTHORIZING A CONTRACT WITH THE KODIAK HISTORICAL SOCIETY TO
OPERATE THE BARANOV MUSEUM THROUGH JUNE 30, 2020**

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

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

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

WHEREAS, the Kodiak Historical Society has an existing contract to operate the Museum through June 30, 2018; and

WHEREAS, the Kodiak Historical Society is planning an exhibit redesign project that requires commitment from the City beyond the current June 30, 2018, contract expiration.

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

Section 1: Notwithstanding anything to the contrary in Kodiak City Code Chapter 18.20, the Council of the City of Kodiak hereby authorizes the Contract for Museum Services with the Kodiak Historical Society for a term commencing July 1, 2018, and ending June 30, 2020, for the operation of the Museum.

Section 2: The form and content of the Contract for Museum Services hereby are in all respects authorized, approved and confirmed, and the City Manager hereby is authorized, empowered and directed to execute and deliver the Contract for Museum Services to the Kodiak Historical Society behalf of the City, in substantially the form and content now before this meeting but with such changes, modifications, additions and deletions therein as she shall deem necessary, desirable or appropriate, the execution thereof to constitute conclusive evidence of approval of any and all changes, modifications, additions or deletions therein from the form and content of said document now before this meeting, and from and after the execution and delivery of said document, the City Manager hereby is authorized, empowered and directed to do all acts and things and to execute all

documents as may be necessary to carry out and comply with the provisions of the Contract for Museum Services as executed.

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

CITY OF KODIAK

MAYOR

ATTEST:

CITY CLERK

First Reading:
Second Reading:
Effective Date:

**CITY OF KODIAK
CONTRACT NO. 234354
MUSEUM SERVICES**

CONTRACT FOR MUSEUM SERVICES dated as of July 1, ~~2016~~2018, by and between the City of Kodiak, an Alaska municipal corporation (“City”), whose address is 710 Mill Bay Road, Kodiak Alaska, and the Kodiak Historical Society, an Alaska nonprofit corporation (“Contractor”), whose address is 101 E. Marine Way, Kodiak Alaska.

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

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

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

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

ARTICLE I

Provision of Services, Term, Compensation

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

Section 1.2. Term of Contract. The term of this contract commences July 1, ~~2016~~2018, and expires June 30, ~~2018~~2020, provided that either party may terminate this contract upon thirty (30) days written notice to the other party.

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

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

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

ARTICLE II Scope of Services

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 2.4. Collection. Contractor shall have full responsibility for the maintenance, care, documentation and use of the Collection. The accession and deaccession of Collection items as well as their management, care, documentation and use shall be governed by Contractor's Collection Management Policy and in accordance with standards defined by the American Alliance of Museums. The Collection will be used for exhibitions, research and public programs at the discretion of Contractor in accordance with its mission and in order to provide museum services to the City.

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

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

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

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

ARTICLE III Payment of Expenses

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

Section 3.2. Utilities. City shall pay the costs of the following utility services provided to the Museum: fuel oil, heat, electricity, water and sewer. Contractor shall pay the costs of

telecommunications utility services and, except as provided in the preceding sentence, any and all other utilities provided to Contractor at the Museum.

Section 3.3. Repairs and Maintenance.

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

**ARTICLE IV
Indemnification and Insurance**

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

Section 4.2. Insurance.

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

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

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

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

(1) List the as additional insureds City, including all elected and appointed City officials, all City employees and volunteers, all City boards, commissions and/or

authorities and their board members, employees, and volunteers, and waive subrogation in favor of the foregoing;

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

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

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

ARTICLE V Miscellaneous

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

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

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

Section 5.4. No Waiver. No waiver of any condition or provision of this contract by any party

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

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

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

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

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

IN WITNESS WHEREOF, the parties hereto have hereunder set their hands this ____ day of _____ 2017.

CITY OF KODIAK
710 Mill Bay Road
Kodiak, AK 99615

KODIAK HISTORICAL SOCIETY
101 E Marine Way
Kodiak, AK 99615

Mike Tvenge, City Manager

Meghan Kelly, President

Attest:

Witness:

Debra Marlar, City Clerk



October 2, 2017

Corey Gronn,
Director of Parks & Recreation
Mike Tvenge,
City Manager
Mayor Pat Branson
City Council Members

City of Kodiak
710 Mill Bay Road
Kodiak, AK 99615

Re: CONTRACT NO. 222379: Museum Services between the City of Kodiak and Kodiak Historical Society for the operation of the Baranov Museum

Dear Mr. Gronn, Mr. Tvenge, Mayor Branson, and Members of the Council:

The Kodiak Historical Society & Baranov Museum hereby request that the Contract be extended for the period of 2018-2020.

This modification is requested for the following reason(s):

The City of Kodiak and the Kodiak Historical Society have been in partnership to care for and operate the Baranov Museum since 1972, when the City accepted the ownership of the Russian American *magazin* from the Alaska Housing Authority. Together, we have built a museum that is commonly referred to as “a gem of the community.”

We strive to facilitate the exploration of the natural, cultural and artistic heritage of Kodiak Island and surrounding communities and to create opportunities for the public to discover, share and exchange knowledge using the collections and resources made available through the operation of the Baranov Museum. We are the only museum and historical society focused on the full breadth of Kodiak history, working to preserve, interpret and share the unique history of our island and surrounding communities.

KHS is engaged in a project to construct and install new exhibits for the Baranov Museum. No structural changes will be made to the building as part of the plans. The goal of this project is to fabricate our existing exhibit designs that were developed through support from an IMLS Museums for America grant. This project will fully capitalize on the museum’s assets, and better reflect Kodiak’s historic and current diversity.





Through our multi-year exhibit design process which included input from the community and a variety of elders and target groups, we established two Primary Themes for our new exhibition plan. These themes are: 1. The Russian-American Magazin in which the museum is housed bears witness to over 200 years of Alaska history. 2. Cultural diversity is central to Kodiak's historic and contemporary reality.

The proposed exhibit redesign project will cover 1,900 square feet, the ground floor of the Baranov Museum building with approximately 450 objects displayed, some not previously available for viewing. The project budget, including a 10% contingency, is \$750,000. We have some funding in place and are developing a campaign plan to identify other sources of funding and establish a timeline for the fundraising and project.

Within the redesigned exhibits, visitors will be able to access information about Kodiak's international connections through exhibits that detail the following: the role of Kodiak in the Russian American colonies; the importance of Kodiak's furs to international markets; the immigration inspired by Kodiak's fisheries; the strategic importance of Kodiak to the Aleutian Campaign during WWII; the importance of Alutiiqs, Asians, Scandinavians, and others to Kodiak's history. In our new exhibits, visitors will see that although Kodiak is a remote island in the North Pacific, our history is connected to global events and our residents have helped shape international conversations. We appreciate the City's ongoing support as our partner in stewardship of our beloved community resource.

An extension of the existing contract is essential to museum sustainability and the redesign project success, as it demonstrates unwavering support from the City of Kodiak and our community by maintaining critical revenues for operational costs as we embark on project fundraising.

Thank you for consideration of our request.

Kind regards,

Sarah Harrington
Executive Director,
Kodiak Historical Society & Baranov Museum



**CITY OF KODIAK
ORDINANCE NUMBER 1348**

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

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

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

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

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

Section 1: Notwithstanding anything to the contrary in Kodiak City Code Chapter 18.20, the Council of the City of Kodiak hereby authorizes the Contract for Museum Services with the Kodiak Historical Society for a term commencing July 1, 2016, and ending June 30, 2018, for the operation of the Museum.

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


Section 3: The Contract for Museum Services authorized by this ordinance is subject to the requirements of City Charter Section V-17. Therefore, if one or more referendum petitions with signatures are properly filed within one month after the passage and publication of this ordinance, this ordinance shall not go into effect until the

petition or petitions are finally found to be illegal and/or insufficient, or, if any such petition is found legal and sufficient, until the ordinance is approved at an election by a majority of the qualified voters voting on the question. If no referendum petition with signatures is filed, this ordinance shall go into effect one month after its passage and publication.

CITY OF KODIAK


MAYOR

ATTEST:



DEPUTY CITY CLERK

First Reading: May 12, 2016
Second Reading: May 26, 2016
Effective Date: July 1, 2016



MEMORANDUM TO COUNCIL

To: Mayor Branson and City Councilmembers

From: Mike Tvenge, City Manager 

Thru: Mark Kozak, Public Works Director and Glenn Melvin PE, City Engineer

Date: October 26, 2017

Agenda Item: V. c. Resolution No. 2017– 26, Authorizing the Borrowing From the Alaska Clean Water Fund of an Aggregate Amount Not to Exceed Six Hundred Thousand Dollars (\$600,000) to Pay Part of the Cost of Phase I of an Upgrade to the City of Kodiak Wastewater Treatment Plant Condition and Process Assessment

SUMMARY: The last Wastewater Treatment Plant (WWTP) upgrade was completed in 1999. Generally, wastewater treatment plants are evaluated and upgraded approximately every 20 years. We have developed a concept plan using four phases to complete the project. Staff is requesting Council approve Resolution No. 2017–26, which authorizes the application for a \$600,000 dollar loan from the Alaska Clean Water Fund (ACWF) loan program to begin the WWTP Upgrade, Phase I Condition and Process Assessment Project No. 18-04/7522.

PREVIOUS COUNCIL ACTION:

- June 2017 Council approved the FY2018 budget, which included \$600,000 for the WWTP Upgrade. The budget is contingent on using the Alaska Clean Water Loan.

DISCUSSION: Staff has identified a plan using a four phase approach. Phase I will be a complete condition assessment of the facility as well as an assessment of all process systems. Phase II will be preliminary design of the facility upgrade, Phase III will be final design, and Phase IV will be construction. The four phase approach can be used as a basis for multiple project delivery methods.

Phase I Condition and Process Assessment will identify all aspects of the WWTP facilities condition and define the scope of the plant upgrade project. It will allow us to clearly understand every aspect of work that needs to be done including, site, buildings, electrical systems, SCADA system, and process systems. Based on this assessment, a preliminary project budget can be established to seek additional funding for the project.

Submitted in the loan questionnaire, we included the assessment of both Lift Station # 5 (last lift station before the WWTP for the entire City) and Lift Station #1B (primary lift station for most of the service district) as well as the force mains from these stations to the WWTP. Including these two lift stations and force mains within the scope of the loan will make them part of the initial phase I assessment. This will identify upgrade needs for future expansion of the wastewater collection system as well as assess

the condition of these two critical lift stations. In addition, how these two lift stations pump into the WWTP is a known problem and this issue can be addressed as part of the upgrading of the plant.

ALTERNATIVES: Staff recommends that Council adopt the resolution authorizing the ACWF loan application in the amount of \$600,000.

- 1) With the authorization of the loan application it allows the project to get started. In addition, loan funds through this program help with future funding of the project. For example, having an executed ACWF loan improves points on any future application for a grant through the ADEC. The loan would be @ 1.5% interest rate, which is very good considering other funding options.
- 2) Do not authorize the loan application, this is not recommended, since it would delay the project until funds can be arranged through another funding source.

FINANCIAL IMPLICATIONS: Applying for the ACWF loan for this project will provide a start to a project that will take multiple years to accomplish. Currently if ACWF loan funds are used on a phase of a project, it improves the score on future loan questionnaires in order to complete the project. Until the assessment phase of this project is complete, we really do not have a total cost estimate of the project.

When the last project was completed, the cost added to the City assets was slightly over \$14 million. We did not research this in detail, but it gives an approximate size of the project we are expecting. In the initial questionnaire submitted to ADEC for this \$600,000 ACWF loan, Public Works Director Mark Kozak estimated approximately \$15 million in construction costs. Additionally there is estimated \$4 million in engineering, design and construction management work. Again, these are estimates based on the last WWTP upgrade.

It is critical that the project budget be built from the complete facility assessment. When the last upgrade was budgeted, the project budget fell way short of the original bid openings. This required significant downsizing and reprioritizing of the project to fit within the existing budget. The significant compromising has lead to years of operating challenges that now need to be addressed.

The primary goal with our current approach is to clearly understand the need of the facility and build a project budget to fully upgrade the plant, to operate for the next 20 plus years. We have used these loans on other City water and sewer projects, and the program is one of the best funding sources available for Municipalities operating public water and wastewater systems.

LEGAL: The City Attorney wrote the resolution and the ADEC required attorney letter for submission with the loan application.

STAFF RECOMMENDATION: Staff recommends Council approve Resolution No. 2017-26 authorizing the application of an ACWF loan in the amount of \$600,000 for WWTP Upgrade Phase I Condition and Process Assessment Project No. 18-04/7522.

CITY MANAGER'S COMMENTS: The Waste Water Treatment Plant upgrade has been submitted as a Community Project Request under the Federal Infrastructure Initiative. This request has not yet been reviewed by Congress. With the most recent Preliminary Draft APDES Permit requirement, it is essential that any plant upgrade begin soon and incorporate the necessary infrastructure for potential secondary treatment. A facility assessment is Phase I of IV which will extend several years. If ADEC requires the City to provide secondary treatment, the City must demonstrate we are working within the ADEC 5 year compliance deadline. It would be beneficial to apply for the Municipal Loan Program funding with below market rates and terms of 1-30 years. Up to 100% of project costs for planning, design and construction may be eligible for financing under the Alaska Clean Water Fund.

NOTES/ATTACHMENTS: Attachment A: Resolution No. 2017-26
Attachment B: Loan Application

PROPOSED MOTION:

Move to adopt Resolution No. 2017-26.

**CITY OF KODIAK
RESOLUTION NUMBER 2017-26**

**A RESOLUTION OF THE COUNCIL OF THE CITY OF KODIAK
AUTHORIZING THE BORROWING FROM THE ALASKA CLEAN WATER FUND
OF AN AGGREGATE AMOUNT NOT TO EXCEED SIX HUNDRED THOUSAND
DOLLARS (\$600,000) TO PAY PART OF THE COST OF PHASE I OF AN UPGRADE
TO THE CITY OF KODIAK WASTEWATER TREATMENT PLANT
CONDITION AND PROCESS ASSESSMENT**

WHEREAS, pursuant to AS 46.03.032 the Alaska Department of Environmental Conservation ("DEC") may make loans to municipalities from the Alaska Clean Water Fund ("Clean Water Fund") to pay the cost of planning, designing, building, constructing, and rehabilitating public wastewater collection, treatment and discharge systems; and

WHEREAS, the City of Kodiak ("City") is eligible to borrow from the Clean Water Fund for the purpose described above, and the interest rates to be paid by the City on loans from the Clean Water Fund are favorable compared to the rates charged by other sources of funds that are available to the City; and

WHEREAS, Article VI, Section 3 of the Kodiak City Charter authorizes the City to borrow money and issue evidences of indebtedness therefor, the principal and interest of which are payable solely out of and the only security for which is the revenue of a revenue-producing utility or enterprise when authorized by the Council for the acquisition, construction, reconstruction, repair, improvement, extension, enlargement, and/or equipment of the utility or enterprise; and

WHEREAS, Article VI, Section 3 of the Kodiak City Charter requires that utility revenue obligations of the City be ratified by a majority of the qualified voters of the City only so long as voter approval is required by state law, and under the constitution and statutes of the State of Alaska the City may issue utility revenue obligations without voter approval; and

WHEREAS, the City Council has previously authorized spending \$600,000 in FY 2018 to pay for a complete condition assessment of the Wastewater Treatment Plant ("WWTP") including site, buildings, Lift Station #5, Lift Station #1B, force mains, electrical systems, SCADA system and all process systems as Phase I of an anticipated four phase upgrade of the WWTP ("the Project") contingent on obtaining a loan of \$600,000 from the Clean Water Fund ("the Loan"); and

WHEREAS, the Loan is necessary and in the best interest of the City and its residents to pay part of the cost of the Project.

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

Section 1. Definitions. In addition to the terms defined in the recitals above, the following terms shall have the following meanings in this Resolution:

"Gross Revenues" means all rates and charges and other income, in each case derived by or for the account of the City from the ownership, leasing, or operation of the Wastewater Utility, except proceeds from the sale of bonds or notes, any grants received for the Wastewater Utility, and interest received and profits derived from the investment of moneys obtained from such sources or from moneys held in any fund solely to pay or secure the payment of any bonds or notes issued in connection with the Wastewater Utility.

"Operating Expenses" means the current expenses incurred for operation, maintenance, or repair of the Wastewater Utility of a non-capital nature, and shall include without limitation payments required by any source of supply expenses; fuel expenses; treatment, transmission and distribution expenses; customer accounts expenses, administrative and general expenses, insurance premiums, lease rentals, legal, regulatory and engineering expenses; payments to pension, retirement, group life insurance, health and hospitalization funds; or other employee benefit funds which are properly chargeable to current operations; interest on customers' deposits, payroll tax expenses, and any other expenses required to be paid by law or permitted by standard practices for public utility systems similar to the properties and business of the Wastewater Utility (adjusted to reflect public ownership) and applicable in the circumstances. Operating Expenses shall not include any allowances for depreciation or amortization or any principal, redemption price or purchase price of, or interest on, any obligations of the City incurred in connection with the Wastewater Utility and payable from Gross Revenues or any fee or charge in lieu of City taxes.

"Wastewater Utility" means the wastewater utility of the City as the same may be added to, improved and extended for as long as the Loan is outstanding.

Section 2. Obligation of Loan. The obligation to repay the Loan shall be a special obligation of the City, payable and secured only as provided herein. Neither the faith and credit nor the taxing power of the City is pledged to the payment of the principal of or interest on the Loan. The Gross Revenues less the Operating Expenses of the Wastewater Utility are hereby pledged to repayment of the Loan.

Section 3. Authorization and Purposes of Loan. For the purpose of providing part of the funds required to pay the cost of the Project, the City is hereby authorized to borrow money from the Clean Water Fund in the form of the Loan in an aggregate principal amount not to exceed \$600,000.

Section 4. Loan Agreement. The City hereby is authorized to submit an application for and to enter into a loan agreement with DEC for the Loan ("Loan Agreement"). Subject to the limitations provided in Sections 2 and 3, the City Manager is hereby authorized to determine the principal amount, interest rate, maturity, and other details of the Loan; provided that the final maturity of the Loan shall not be more than 20 years from the date of the Loan Agreement and the interest on the Loan shall not exceed one and one-half percent per annum.

Section 5. Authority of Officers. The City Manager, the acting City Manager, the Finance Director, the acting Finance Director, the Clerk and the acting Clerk are, and each of them hereby is, authorized and directed to do and perform all things and determine all matters not determined by this resolution, to the end that the City may carry out its obligations under the Loan Agreement and this resolution.

Section 6. Severability. If any one or more of the provisions of this resolution shall be declared by any court of competent jurisdiction to be contrary to law, then such provision shall be null and void and shall be deemed separable from the remaining provisions of this resolution and shall in no way affect the validity of the other provisions of this resolution or of the Loan.

Section 7. Effective Date. This resolution shall become effective upon adoption by the Council.

CITY OF KODIAK

MAYOR

ATTEST:

CITY CLERK

Adopted:

Department of Environmental Conservation

DEC Online Application System (OASys)

ACWF Loan Application

Status: Incomplete and Not Signed - In Process

Status Details:

Not Completed
Not Signed

Application Not Submitted

Tracking #:	ACWFLA-0201	Facility:	WWTP Phase I Condition & Process Assessment	Type:	ACWF Loan Application
Org:	City of Kodiak- Public Works Dept				

General Information	Details
Project Title:	WWTP Phase I Condition & Process Assessment
Data Universal Numbering System (DUNS) Number:	078191970
Location Latitude: Converter	57.805148
Location Longitude:	-152.355212
General Project Location:	2853 Spruce Cape Rd. Kodiak, Alaska
This is:	Design/Study
Total Community Population:	6500
Total Population Served:	12500
What type of project is this?	Wastewater Treatment
Description of Project:	<p>Phase I of the WWTP Upgrade will complete a condition and process assessment of the entire WWTP and two major lift stations. The work will include complete mechanical and structural assessments of each building with the entire facility, operation process assessment for using the most up to date methods and process controls, SCADA assessment, electrical systems. It will include assessment of both lift station #5 (primary station from southern portion of community) and Mill Bay Beach lift station # 1B (primary station north of WWTP) as well as force mains from each lift station. It will also include the need for a dump station for debris from sewer system cleaning.</p>

Contacts	Details
Signatory Official	Mike Tvenge City Managerr, City of Kodiak PO Box 1397 Kodiak, AK, 99615 US Phone: 907-486-8640 mtvenge@city.kodiak.ak.us
Financial Contact	Kelly Mayes Finance Director, City of Kodiak PO Box 1397 Kodiak, AK, 99615 US Phone: 907-486-8659 kmayes@city.kodiak.ak.us
Application Preparer	Mark Kozak Public Works Director, City of Kodiak 2410 Mill Bay Road Kodiak, AK, 99615 US Phone: 907-486-8060 mkozak@city.kodiak.ak.us

<i>Project Costs</i>	<i>Details</i>
Administration:	40,000
Engineering Design:	560,000
Engineering Construction:	
Construction:	
Equipment:	
Contingencies:	
Ineligibles:	
Other (Identify Cost):	
Amount:	
Other (Identify Cost):	
Amount:	
Other (Identify Cost):	
Amount:	
Total of Other Costs:	0
Total Cost: (Sum of Above)	600,000

<i>Green Project/Component Information</i>	<i>Details</i>
Is this a green project?	Yes
Identify the most appropriate "Green" category type.	Energy Efficiency - The use of improved technologies and practices to reduce the energy consumption of water quality projects. Examples: water utility energy audits; clean power for publicly owned facilities; leak detection equipment; retrofits/upgrades to pumps & treatment processes; and, replace/rehabilitation of high distribution leakage.
Green Project/Component Description:	
One of the primary goals of the condition and process assessment will be to seek out energy efficiency's were possible. The WWTP was last upgraded in 1999 and significant improvements in energy efficient process are now available that maybe can be incorporated into the upgrade design.	
Is a project cost estimate attached?	No
Administration:	
Engineering Design:	10,000
Engineering Construction:	
Construction:	
Equipment:	
Contingencies:	
Other Component (description):	
Other Amount:	
Other Component (description):	
Other Amount:	
Other Component (description):	
Other Amount:	
Total Costs: (Sum of Above)	10,000

<i>Estimated Project Schedule</i>	<i>Details</i>
Is this application for a construction loan?	No
Loan Agreement Signed:	12/15/2017
Preliminary Engineering Report:	10/31/2018
Design Engineering:	12/01/2018
Preparation of Bid Documents:	
Award of Construction Contract:	
Construction Initiation:	
Construction Completion:	
Initiation of Operation:	
Anticipated first payment request:	03/02/2018
Do you anticipate submitting disbursement requests evenly throughout the project life?	Yes

<i>Other Funding</i>	<i>Details</i>
Federal Funds From:	
Amount:	0
Other State Funds From:	
Amount:	0
Other Local Funds From:	
Amount:	0
Other (Identify Source):	
Amount:	0
Other (Identify Source):	
Amount:	0

<i>Financial Information</i>	<i>Details</i>
Loan Amount:	600,000
Desired Repayment Term (yrs):	20
Estimated Annual Payment: (Given the above information, we will provide this if you wish.)	
General Funds:	0
Capital Reserves:	
User Fees:	600,000
Assessments, LIDs:	
Taxes (identify type):	
Amount:	
Other (identify):	
Amount:	
Describe whether or not any of these sources of funding or revenue have been previously pledged and, if so, please indicate the type of pledge or encumbrance (such as a previous bond sale, special assessment, legal or judicial settlement, etc.), amount pledged and any balance remaining: (If none, enter 'no')	
No	
Please describe any litigation that could affect your community's ability to repay this loan: (If none, enter 'no')	
No	
Does your community have a debt ceiling?	No
If so, what is it?	
How much remains available?	
Does your community have bonded indebtedness?	Yes
What is your current level of bonded indebtedness?	12,605,000
Date:	11/03/2017
Rating:	AA
Amount:	12,395,000
Operating Revenues:	97,900
User Fees Collected:	4,301,390
Non-Operating Revenues:	45,000
TOTAL Revenues:	4,444,290
Operating Expenses:	4,297,238
Annual Debt Service:	225,026
Other Non-Operating Expenses:	27,974
TOTAL Expenses:	4,550,238
Reserves:	0
If User Fees are intended to repay any portion of this loan, please submit:	Existing ordinance that authorizes the collection of user fees Current fee structure Pertinent portions of your budget documents Most recent State Single Audit Most recent rate study or rate analysis
Number of existing residential and commercial users:	9500
Number of proposed residential and commercial users:	9500
How much will this loan repayment increase user fees?	0
Please describe the increase:	
Current Ave Monthly Residential Customer Charge for Service:	84
Number of days in billing cycle:	30
Frequency of rate setting:	5 years
Number of changes in past 10 years:	7
Date of last rate increase:	07/01/2017


Description of guidance in rate setting:

A professional service provider performs a Sewer Utility rate study every five years. At completion of the rate study, a five year rate schedule with annual percentage increases is presented to the City Council for approval by Resolution.

<i>Attached Document Checklist</i>	<i>Details</i>
Documents to be submitted as part of this application: (these can be attached to the application in the next step)	Force Account Labor Approval Form , if applicable
	EPA Form 6600-06
	Disclosure of Lobbying Activities
	Certification from your City Attorney stating that the Municipality has sufficient legal authority to incur the debt for an Alaska Clean Water Fund Loan
and either:	A resolution from your city council authorizing this loan application and specifying that an additional resolution will be issued to authorize the acceptance of a loan offer from the Alaska Clean Water Fund.
Has a financial capacity assessment been performed in the past 2 years?	No

<i>Attachments</i>	<i>Title (Type), Description</i>
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MEMORANDUM TO COUNCIL

To: Mayor Branson and City Councilmembers
From: Mike Tvenge, City Manager 
Date: November 9, 2017

Agenda Item: V. d. **Resolution No. 2017–27, Adopting a FY2019 State Capital Improvement Program List**

SUMMARY: Council and staff reviewed a draft of the City’s FY2019 state CIP request resolution during the October 24 work session. Based on Council discussion, staff prepared the attached resolution requesting two projects that impact life and safety and support for the Community Assistance Program. Staff recommends Council adopt Resolution No. 2017–27.

PREVIOUS COUNCIL ACTION:

- Council adopts a State Capital Improvement Program List annually
- October 24, 2017, work session, Council discussed the resolution

DISCUSSION: Each year the City prepares and submits a resolution requesting financial support from the State of Alaska for priority projects that require additional funding beyond what the City is capable of covering on its own. This FY2019 resolution contains two key infrastructure projects; site acquisition and design for the new fire station, which is critical, and funding to construct the Shelikof Street bulkhead parking area, which has been carried over as a separate phase of the Shelikof Pedestrian Improvement project for several years. The parking design is at the 95% stage; essentially the project is ready for construction if funding becomes available. The resolution also contains a statement of support for continued funding of the State’s Community Assistance Program.

The state is facing major financial limitations again this year as the price of oil continues to remain low. This has huge implications for the state and its ability to fund operating and capital budgets. The Governor released a fiscal plan last year that was not supported by the legislature. The Governor stated his budget would contain a very limited capital budget, enough to meet the required match to receive federal funds. Like last year, the upcoming session will be difficult with many hard choices facing the state and its citizens.

The FY2019 state CIP request list is short and focused on life-safety projects. The City’s top priority is to move forward with the next phase of replacing the existing fire station, which includes site acquisition and building design. This is clearly a life-safety priority that will benefit the entire Kodiak area, not just residents of the City.

The Shelikof Street Bulkhead project is ready to construct if funding is available.

The FY2019 resolution provides a statement of support again this year for continued funding of the State's Community Assistance Program, which is under pressure as the state navigates this financial crisis. By supporting the continued funding, the City joins other local governments who are concerned that they will carry the costs of the financial burden of the state's shortfall. Local governments, including Kodiak, do not have the resources to fund the replacement or updates of infrastructure needed to keep adequate services available at the local level.

Staff will send an approved copy of Resolution No. 2017-27 to the Kodiak delegation and state lobbyist once it is adopted for their use in promoting these important community projects.

ALTERNATIVES:

- 1) Adopt Resolution No. 2017-27 as discussed in October. The list reflects Council's direction and will provide the delegation and lobbyist with information to use when promoting Kodiak's funding needs during this coming legislative session. This is staff's recommendation.
- 2) Amend or do not adopt the resolution.

FINANCIAL IMPLICATIONS: There are no direct financial implications in adopting the CIP resolution. However, the entire community will benefit if the City receives state funding assistance for any of these important projects. If funded, the much needed fire station project will move forward and the Shelikof project will enhance tourism, improve safety, parking, and public convenience. Finally, if the State continues to fund revenue sharing the City will receive funds to help offset the many costs associated with running a home rule community.

CITY MANAGER'S COMMENTS: The resolution for the City's FY2019 state funding request reflects Council's recommendations during the October 24th work session. The resolution continues to reflect projects desired by Council, can be advocated for by City representatives and our lobbyist, and can hopefully be supported by our delegation. I am uncertain if we will receive funding in FY2019 due to the state's funding situation however; we should keep these elements on the list in the event funding does become available. I recommend Council adopt the resolution, keeping in mind the state will be facing very difficult financial realities again this coming year.

ATTACHMENTS:

Attachment A: Resolution No. 2017-27, FY2019 State CIP requests

PROPOSED MOTION:

Move to adopt Resolution No. 2017-27.

**CITY OF KODIAK
RESOLUTION NUMBER 2017–27**

**A RESOLUTION OF THE COUNCIL OF THE CITY OF KODIAK ADOPTING
A FY2019 STATE CAPITAL IMPROVEMENT PROGRAM LIST**

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

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

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

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

WHEREAS, the National Marine Fisheries Service identified Kodiak as the second largest commercial fishing port in the United States in terms of volume and third largest in terms of value of product landed in their most recent national report, and the City requires a large infrastructure to support this commercial activity; and

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

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Kodiak, Alaska, that the following infrastructure replacement/improvement projects and issues are considered of primary importance and are hereby adopted as the City of Kodiak's FY2019 State capital improvement project and issues list:

1. New Fire Station, Phase II \$ 4,000,000

The City of Kodiak identified the need to replace its fire station and has been working toward a replacement plan since 2004. The building has clearly outlived its design life. The building is composed of three structures and sits on a site that is currently very limited as it abuts the tsunami inundation zone. The structure is built of cement block type construction built in the 1940s with two block and wood frame additions added in the 1960s and 1975. The structure poses a significant risk of failure in a seismic event. Cracks in the walls and initial separation of one of the additions from the rest of the structure occurred following the large 7+ earthquake in 2016. It has ongoing plumbing, drainage, and water infiltration issues. The facility houses personnel, fire and rescue apparatus, three ambulances, and many types of

specialty equipment and medical supplies that support the Advanced Life Support services offered to the entire Kodiak area well beyond the City boundaries. The building condition poses constant challenges and problems to the crews who work and live in the structure. Work to replace this building must continue because it is a key emergency response and life-safety facility for Kodiak and continues to require constant maintenance.

The City proposes completion of the project in three phases. Phase I of this project with a budget of \$1,110,000 and funded by the City was used to study the site, for a new facility once a derelict building is removed. It included the removal of the old building, site grading, and other work following the demolition of the old building. Phase I is 95% complete.

Phase II would include a new site acquisition and design completed prior to construction. Relocation would make the project more affordable to do in phases, would reduce the impact to the active fire station, and benefit the transition to a new building. Phase II costs would total \$4,000,000 with site acquisition and building design anticipated during FY2019. The remainder, an estimated \$10,000,000, would be required to complete construction and furnish the facility.

The City of Kodiak is requesting funding for Phase II of the New Fire Station project from the State in an amount of \$4,000,000 to ensure the project continues to move forward. This project may also be suitable for a GO Bond package in the event the legislature pursues bonds as a capital budget financing mechanism.

2. Community Assistance Program

As the cost of providing governmental services rise, the City of Kodiak must rely on and use all sources of revenue carefully to meet its obligations. The City is budgeted to receive \$109,300 this fiscal year, a substantial reduction from previous years.

\$249,981 in FY2017

\$377,926 in FY2016

\$397,792 in FY2015

\$402,490 in FY2014

The City urges the State to continue to provide revenue sharing to local governments through this program.

3. Shelikof Street Bulkhead Parking

\$1,100,000

In 2009, the City identified the need for pedestrian improvements from Pier II to downtown Kodiak as the preferred pedestrian route for cruise ship passengers to safely walk the street into the town center and to improve facilities for local residents, workers, and businesses that use the pier, street, and access to the City's adjacent 250 slip boat harbor. The first phase of the project, construction of an ADA accessible sidewalk, new retaining walls, improved lighting and parking, and utility work was completed in 2013. The second phase of the project was completed in January 2017. This phase covered geotechnical investigation, design, permitting, mapping, preparation for permitting through the Army Corps of Engineers, and 95% completion of the design to accommodate a 30 space bulkhead parking

area on the south side of Shelikof Street adjacent to St. Paul Harbor. The roadway area adjacent to the proposed bulkhead parking is highly congested. Due to lack of adequate parking, vehicles block walkways, equipment operates in the ROW, and access to businesses is often blocked, forcing pedestrians into the roadway. Construction of additional off-road parking will direct pedestrian traffic out of the congested roadway. The net increase in parking will benefit harbor users and retail businesses along Shelikof Street. It will provide improved and safer pedestrian access from Marine Way to the fish processors in the immediate area. The task for this phase will be to complete construction of the bulkhead parking area, including curb and gutter, paving, lighting, and utility relocates.

The City of Kodiak is requesting state funding assistance for the final construction of this project, including administration, in the amount of \$1,100,000 to enhance pedestrian and vehicle safety. Funds are requested through the Cruise Ship Excise Tax program or through a legislative grant. This project may also be suitable for a GO Bond package in the event the legislature pursues bonds as a capital budget financing mechanism.

CITY OF KODIAK

MAYOR


ATTEST:

CITY CLERK

Adopted:

MEMORANDUM TO COUNCIL

To: Mayor Branson and City Councilmembers

From: Mike Tvenge, City Manager 

Date: November 9, 2017

Agenda Item: **V. e. Resolution 2017–28, Adopting the Federal Fiscal Year 2018 Federal Capital Needs and Issues List**

SUMMARY: Each year the City identifies capital improvement projects important to the maintenance and/or improvement of the City’s infrastructure as well as issues that are important to the City or greater community. Council reviewed the draft outlining the proposed federal requests and issues at the October 24, 2017, work session. Staff worked closely with the City’s federal lobbyists’ Brad Gilman and Sebastian O’Kelly to articulate the list of projects and issues, which they will promote this year in Washington, D.C.

Brad Gillman reviewed the proposed CIP list and supported issues. The resolution also contains a list of issues that the City has supported in past federal requests. Two additional Clean Water Act issues have potential local impact; the EPA’s Waters of the U.S. Rule and Fishing Vessel Discharge Rule. Federal permit requirements may soon be necessary for “other waters” where State and local governments have current jurisdiction. Mr. Gilman suggested resubmitting the Pink Salmon Fishery Resource Disaster Declaration. A 2016 disaster declaration was submitted to the United States Department of Commerce in September 2016 by Governor Walker and Lt. Governor Mallot.

Resolution No. 2017–28 reflects the prioritized list of funding for the City’s main infrastructure related projects and other federal issues as outlined above for FFY18 and will be submitted to our Alaska delegation upon adoption by Council. These are not the only funding and policy issues the City will pursue in the coming year, but they are important because they benefit the community and region. The four projects and three issues included in the resolution will provide formality to the City’s concerns and allow Brad Gilman and staff to promote the City’s interests. Resolution No. 2017–28 reflects the list which Council, staff, and the City’s federal lobbyist recommend for approval.

PREVIOUS COUNCIL ACTION:

- Council adopts a resolution each year identifying the City’s prioritized list of projects for federal funding assistance
- October 24, 2017, Council reviewed the proposed FFY2018 draft resolution identifying the City’s federal projects and issues and agreed to move the resolution forward for approval

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Agenda Item V. e. Memo Page 1 of 2

ALTERNATIVES: Council may adopt, amend, or reprioritize Resolution No. 2017–28. Staff recommends Council approve the resolution as submitted. The list reflects City needs and is based on advice from our federal lobbyist.

FINANCIAL IMPLICATIONS: The City and its residents will benefit if the City is successful in obtaining an additional capital funding source to help offset losses of funding at the state level and by reducing reliance on local contributions.

CITY MANAGER’S COMMENTS: I worked with DC Lobbyist Brad Gilman to scope the development of this year’s resolution, which identifies specific capital projects and requested funding. This resolution still reflects our needs and follows Brad’s advice to advocate for full project costs with a focus on infrastructure and transportation type projects. It also lists the key issues the City has advocated for in the past and should keep an eye on during this congressional cycle. Brad is approving of this year’s capital requests and the issues. Staff recommends Council adopt the resolution.

ATTACHMENTS:

Attachment A: Resolution No. 2017–28 FFY18 Capital Requests and Issues

PROPOSED MOTION:

Move to adopt Resolution No. 2017–28.

**CITY OF KODIAK
RESOLUTION NUMBER 2017–28**

**A RESOLUTION OF THE COUNCIL OF THE CITY OF KODIAK ADOPTING
THE FEDERAL FISCAL YEAR 2018 FEDERAL CAPITAL NEEDS AND ISSUES LIST**

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

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

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

WHEREAS, Kodiak City Council has identified capital project needs for submission to the Alaska Congressional Delegation for funding consideration due to their significance and/or magnitude; and

WHEREAS, changes may be required as to how capital funding contributions for smaller communities like Kodiak, Alaska can be made at the Federal level; and

WHEREAS, the City of Kodiak faces several issues generated by Federal legislation or rulemaking that are of importance to the City of Kodiak, Alaska, and which may adversely impact life in Kodiak by placing undue burdens on those who work and live in the community.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Kodiak, Alaska, that the following projects and issues are high priorities for the community and are hereby adopted as the City of Kodiak Federal Fiscal Year 2018 prioritized federal capital project and issues list:

1. Fire Station Phase II \$14,000,000

The City of Kodiak identified the need to replace its fire station and has been working toward a replacement plan since 2004. The building has clearly outlived its design life. The building is composed of three structures and sits on a site that is currently very limited as it abuts the tsunami inundation zone. The structure is built of cement block type construction built in the 1940s with two block and wood frame additions added in the 1960s and 1975. The structure poses a significant risk of failure in a seismic event. Cracks in the walls and initial separation of one of the additions from the rest of the structure occurred following the large 7+ earthquake in 2016. It has ongoing plumbing, drainage, and water infiltration issues. The facility houses personnel, fire and rescue apparatus, three ambulances, and many types of specialty equipment and medical supplies that support the Advanced Life Support services offered to

the entire Kodiak area well beyond the City boundaries. The building condition poses constant challenges and problems to the crews who work and live in the structure. Work to replace this building must continue because it is a key emergency response and life-safety facility for Kodiak and continues to require constant maintenance.

The City proposes completion of the project in three phases. Phase I of this project with a budget of \$1,110,000 and funded by the City was used to study the site, for a new facility once a derelict building is removed. It included the removal of the old building, site grading, and other work following the demolition of the old building. Phase I is 95% complete.

Phase II would include a new site acquisition and design completed prior to construction. Relocation would make the project more affordable to do in phases, would reduce the impact to the active fire station, and benefit the transition to a new building. Phase II costs would total \$14,000,000 with site acquisition and building design anticipated during FY2019. Construction would begin during the following year.

The City of Kodiak is requesting Federal funding for Phase II of the New Fire Station project in the amount of \$14,000,000 to ensure the project continues to move forward.

2. St. Herman Harbor Infrastructure Replacement Study \$28,000,000

The economy of the City of Kodiak is based upon commercial fishing including local, state and federal governmental activities associated with support of the fisheries as well as research and enforcement activities. Each year Kodiak ranks as a top commercial fishing port. In 2015, NOAA statistics again put Kodiak as the second largest commercial fishing port in the United States in terms of volume and third in terms of value. This activity requires an infrastructure from potable water, electrical systems, and harbor and dock infrastructure that is much larger than its population might suggest.

The Kodiak Harbor Department relies on the generation of user fees and the State of Alaska's Harbor Facilities Grant Program to help match municipal costs for dock replacements. The City's request of federal funding assistance in the amount of \$28,000,000 would help the City develop a plan, including replacement of this aging infrastructure which supports the nations scientific and food source needs.

3. Waste Water Treatment Plant Facility \$ 19,000,000

The first phase of a larger project is to evaluate the condition of the Waste Water Treatment Plant facility (WWTP) and design a necessary upgrade to the City of Kodiak facility. The prior upgrade to the facility was in 1999. The condition and evaluation assessment will include all major components such as the building and aeration basins; including equipment replacement needs. Alaska Pollution Discharge Elimination System (APDES) permitting requirements will also be considered during this assessment. The City of Kodiak has received the Alaska Department of Environmental Conservation (ADEC) preliminary draft APDES permit. This new regulation of compliance is expected to require upgrades to our facility which we will factor in our condition and evaluation assessment.

The City of Kodiak is requesting federal funding in the amount of \$19,000,000 to assess, design and construct this WWTP project that will help support the wastewater needs of the community for the next twenty years.

4. Shelikof Street \$1,950,000

In 2009, the City identified the need for pedestrian improvements from Pier II to downtown Kodiak as the preferred pedestrian route for cruise ship passengers to safely walk the street into the town center and to improve facilities for local residents, workers, and businesses that use the pier, street, and access to the City's adjacent 250 slip boat harbor.

The first phase of the project, construction of an ADA accessible sidewalk, new retaining walls, improved lighting and parking, and utility work was completed in 2013. The second phase of the project was completed in January 2017. This phase covered geotechnical investigation, design, permitting, mapping, preparation for permitting through the Army Corps of Engineers, and 95% completion of the design to accommodate a 30 space bulkhead parking area on the south side of Shelikof Street adjacent to St. Paul Harbor.

The roadway area adjacent to the proposed bulkhead parking is highly congested. Due to lack of adequate parking, vehicles block walkways, equipment operates in the ROW, and access to businesses is often blocked, forcing pedestrians into the roadway. Construction of additional off-road parking will direct pedestrian traffic out of the congested roadway. The net increase in parking will benefit harbor users and retail businesses along Shelikof Street. It will provide improved and safer pedestrian access from Marine Way to the fish processors in the immediate area. The task for this phase will be to complete construction of the bulkhead parking area, including curb and gutter, paving, lighting, and utility relocates.

The City of Kodiak is requesting federal funding assistance for the final construction of this project, including administration, in the amount of \$1,950,000 to enhance pedestrian and vehicle safety.

City of Kodiak Supported Federal Issues:

1. EPA's "Waters of the U.S." Rule

The Environmental Protection Agency and the U.S. Army Corps of Engineers is moving forward with a proposed "Waters of the United States" rule that would expand Federal permitting and other requirements to many waters currently regulated by State and Local governments. The proposed rule would also apply to private landowners. The key change being proposed would expand Clean Water Act coverage to "other waters" where there is a "significant nexus" to currently covered interstate waters, territorial seas and navigable waterways. That determination is meant to be "case-specific" but has not been fully defined and the concern is that "significant nexus" could be interpreted to include floodplains, certain man-made waterways and ditches, and self-contained water bodies such as ponds or temporary/isolated wetlands. Under this model, Alaska's extensive acreage of wetlands would likely mean that wetlands and other water bodies,

including small streams and tributaries, that are seemingly isolated and geographically far removed from any current CWA-covered waterway would fall under the new definition.

The City of Kodiak feels the proposed rule would add extra layers of bureaucracy to the efforts of Kodiak citizens to use their land and for the City to engage in future public works projects. The City is requesting that the Alaska Delegation support legislative initiatives to curtail this proposed rule.

2. EPA’s Fishing Vessel Discharge Rule

EPA has promulgated two rules to require commercial fishermen to obtain Clean Water Act incidental discharge permits as a condition for operating both small and large fishing vessels. The permits would cover ballast water, fish hold water, anchor chain mud, deck wash/runoff, bilge pump discharge, gray or “stick” water, laundry, shower, and galley sink water. The permits require burdensome reporting, monitoring, inspections and compliance activities – all subject to heavy fines and citizen lawsuits under the Clean Water Act for what seems to be minimal environmental protection.

Congress has imposed a three year moratorium preventing EPA from implementing the Small Vessel General Permit Rule and the Vessel General Permit Rule. Efforts are underway within the Congress to make the moratorium permanent. The City of Kodiak is requesting that the Alaska Delegation actively support a permanent moratorium.

3. Pink Salmon Fishery Resource Disaster Declaration

The Kodiak Management Area had remained closed for 70 percent of the pink salmon run in 2016. The preliminary value of the pink salmon fishery catch was \$2.21 million compared to a five year average value of \$14.64 million.

The United States Department of Commerce Secretary has received a request from Alaska Governor Bill Walker seeking determination of a commercial fishery failure due to a fishery resource disaster for the 2016 pink salmon season. The National Oceanic and Atmospheric Administration’s National Marine Fisheries Service evaluated information provided by the Alaska Department of Fish and Game whether a commercial fishery failure occurred due to a resource disaster. After thorough review, the Department of Commerce Secretary has determined a request for determination of failure meets the requirements under Section 312(a) of the Magnuson-Stevens Fishery Conservation and Management Act.

This determination provides a basis for Congress to appropriate disaster relief funding. If such funding is provided, the National Marine fisheries Service Alaska Region would work with the State of Alaska to develop a spend plan that would create a more resilient fishery that can better withstand environmental disasters in the future.

The City of Kodiak supports Secretary Pritzler’s findings and asks Congress to appropriate the disaster relief funding.

CITY OF KODIAK

MAYOR

ATTEST:

CITY CLERK

Adopted:

EXECUTIVE SESSION

MEMORANDUM TO COUNCIL

To: Mayor Branson and City Councilmembers

From: Debra Marlar, City Clerk *DM*

Date: November 9, 2017

Agenda Item: X. a. City Clerk's Annual Evaluation

SUMMARY: Annually, the City Council reviews the performance of the City Clerk. In accordance with the Open Meetings Act, the City Clerk does not object to the evaluation being done in executive session.

PROPOSED MOTION:


Move to enter into executive session, as authorized by Kodiak City Code Section 2.04.100(b)(2), to conduct the City Clerk's annual performance evaluation.

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MEMORANDUM TO COUNCIL

To: Mayor Branson and City Councilmembers

From: Mike Tvenge, City Manager 

Date: November 9, 2017

Agenda Item: X. b. City Manager's Six-Month Evaluation

SUMMARY: Initially, at six months then annually thereafter, the City Council reviews the performance of the City Manager. In accordance with the Open Meetings Act, the City Manager does not object to the evaluation being done in executive session.

PROPOSED MOTION:

Move to enter into executive session, as authorized by Kodiak City Code Section 2.04.100(b)(2), to conduct the City Manager's six-month performance evaluation.

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