

**CITY OF KODIAK
ORDINANCE NUMBER 1438**

**AN ORDINANCE OF THE COUNCIL OF THE CITY OF KODIAK APPROVING A
TERMINAL OPERATION CONTRACT AND A PIER II USE AND UPLAND
AGREEMENT WITH CMA TERMINALS ALASKA, LLC**

WHEREAS, the City of Kodiak operates port and harbor facilities including a dock suitable for shipment of ocean bound cargo commonly known as Pier II; and

WHEREAS, sound and prudent management of port facilities includes entering long term agreements providing preferential use of those facilities in return for guaranteed amounts of volume of cargo that will be loaded and unloaded thereby providing a guaranteed revenue stream which can be used to offset the City's costs of owning and operating the port facilities; and

WHEREAS, the City Council adopted Ordinance No. 1379 approving a terminal operation contract and a pier II use and upland agreement with American President Lines LTD on June 14, 2018; and

WHEREAS, American President Lines, LLC transferred terminal assets to affiliate CTA in December 2020; and

WHEREAS, American President Lines, LLC sold terminal assets to an affiliate known as CMA Terminals Alaska in August 2022; and

WHEREAS, the harbor master and city manager have negotiated a Terminal Operation Contract ("the Contract") and a Pier II Use and Upland Agreement ("the Agreement") with CMA Terminals Alaska, LLC ("CMAT Alaska"); and

WHEREAS, it is in the public interest that the terms of the Contract and the Agreement be approved; and

WHEREAS, the Agreement includes provisions leasing city property with a value of more than thirty thousand dollars (\$30,000); and

WHEREAS, the Contract has an initial term of five (5) years and provides two options for renewal upon mutual agreement for a potential term of fifteen (15) years; and

WHEREAS, Section V-17 of the Charter of the City of Kodiak requires any contract which by its terms will not be fully executed within five (5) years and any lease of city property valued at more than thirty-thousand dollars (\$30,000) be approved by ordinance adopted either by voter initiative or by the city council;

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

follows:

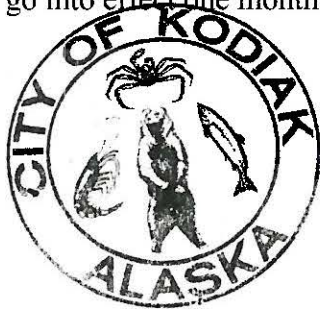
Section 1: Classification. This is a non-code ordinance.

Section 2: Exception to Kodiak City Code Provisions Pertaining to Leases of Property.

The City Council recognizes that Chapters 18.12 and 18.20 of the Kodiak City Code contain provisions requiring that leases of tidelands and city property be offered at public auction after public notice and provisions requiring an appraisal of the property proposed to be leased. The Council hereby excepts the Agreement and the Contract from all such provisions. The use of city property under a lease is only an incidental component of the Agreement and the Contract whose primary purpose is establishing terms and conditions of the use and operation of Pier II as a port facility of the City. The Council further finds that there is only a very small number of potential users of Pier II and that it is not in the public interest to open the variety of terms and conditions in the Contract and the Agreement to public auction.

Section 3: Approval of Contract and Agreement. The City Council hereby approves the Agreement and the Contract in the form attached to this ordinance and authorizes the city manager and the harbor master to take all steps necessary to finalize and sign the Agreement and the Contract.

Section 4: Effective Date. As provided in Section V-17 of the Charter of the City of Kodiak, 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: September 14, 2023
Second Reading: September 28, 2023
Effective Date: November 4, 2023