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September 22, 2022

VIA ELECTRONIC MAIL

Chris Hladick
Interim City Manager

Unalaska City Council

Re: Status Report

Dear Chris and City Council Members:

This report indicates the status of various pending matters and summarizes work performed since we last reported in May.

Fiber Optic Project

We have wrapped up our work with the Planning Department and Department of Public Works on the current phase of the project save for some occasional questions on details we help answer. Remaining unresolved is a dispute over ownership of existing buried conduit. That dispute does not prevent completion of the project.

Airport

We advised on an RFP for and award of new subleases.

General Matters

We have worked on an ordinance updating Title 17 building code requirements. Because the State is also in the process of updating state regulations this will be a two part process. One

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ordinance to adopt in the fall and a second ordinance to adopt next spring. The first ordinance is ready for introduction. We advised on a procurement issue. We advised on the agreement for audit services.

Utilities

We are helping finalize the transfer of title to property used for the new General Hill booster station from two private owners to the City. This has become more complicated than usual due to having to obtain deeds of reconveyance from two different banks. We received one of the deeds of reconveyance on September 21. There is also a lender signature on a plat which the City is waiting to receive. We advised on a lineman support contract.

Litigation Matters

Unalaska v. Jacobs Engineering: The City Council previously authorized filing a quiet title lawsuit. Our plan to avoid litigation by providing Jacobs Engineering with a draft complaint did not yield results. I suspect Jacobs is now such a large company the request for a quit claim deed to the property is stuck somewhere in the bureaucracy. Suit was filed September 22. The City will prevail in this action. If the case is not contested, this will be quickly resolved. Otherwise, it will take a year or two to complete.

EPA v. City of Unalaska: On the distant horizon will be some action to terminate the consent decree. EPA recently inspected the WWTP and has confirmed it is meeting all consent decree parameters.

City of Unalaska v. AIG: This case was decided in the City's favor on March 18, 2022. The judgment was in the amount of \$515,631.67. With attorney's fees and interest, the total judgment in favor of the City is \$589,126.43. AIG appealed the judgment to the 9th Circuit Court of Appeals. Council authorized settlement. We are waiting on final signatures on the settlement agreement. The City should expect to receive payment by the end of October.

Unalaska v. Tuyen Dinh: Since we last reported, trial was continued when opposing counsel got COVID shortly before trial. Trial is now set for October 19.

Wells and Lunn v. City of Unalaska, et al. /Penn Air v. City: These cases arise from an October 2019 Penair crash in Unalaska. Plaintiffs are pilots, passengers and their spouses. The pilots are pursuing the City directly. In the passenger case, Penn Air is suing the City. Both cases allege the city was negligent for placing (or failing to remove) a large rock that was positioned near the end of the runway. The plane struck the rock, which plaintiffs claim contributed to the crash and the injuries. The cases are in the discovery phase. Our office is the attorney defending the city as needed.

John Merrion v. City of Unalaska: This is a wrongful termination case. Summary judgment motions will be heard on October 5. A non-jury trial in Unalaska is scheduled for October 31. The City is represented by Clint Campion who was hired by the City's insurer, APEI.

Anthony Recco v. City of Unalaska: We have asked the attorney defending this case to discuss the status directly with the Council in executive session.

Minor Offenses

We have advised on disposition of several minor offenses.

Personnel Matters

ASCHR Complaint: A former employee alleged being passed over for a promotion and being underpaid on the basis of sex discrimination. We helped prepare the City's response and provide requested employment records to the ASCHR investigator. Since we last reported ASCHR determined there was insufficient evidence to validate the complaint.

Personnel Policies: We helped modify the FMLA policy and we have advised on issues related to the FMLA and overtime.

Very truly yours,

CHANDLER, FALCONER,
MUNSON & CACCIOLA, LLP

By: _____


Charles A. Cacciola