

**Regular Meeting**  
**Tuesday, March 10, 2020**  
**6:00 p.m.**



**Unalaska City Hall**  
**Council Chambers**  
**43 Raven Way**

**Council Members**  
Thomas D. Bell  
Darin Nicholson  
David M. Gregory

## **UNALASKA CITY COUNCIL**

P. O. Box 610 • Unalaska, Alaska 99685  
(907) 581-1251 • [www.ci.unalaska.ak.us](http://www.ci.unalaska.ak.us)

**Council Members**  
Dennis M. Robinson  
Alejandro R. Tungul  
Shari Coleman

Vincent M. Tutiakoff Sr., Mayor  
Erin Reinders, City Manager

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## **AGENDA**

1. **Call to order**
2. **Roll call**
3. **Pledge of allegiance**
4. **Recognition of visitors**
5. **Adoption of agenda**
6. **Employee Anniversary Awards**
  - a. Sgt. Kevin Wood, Police Department, 10 years
  - b. Wilma Marchadesch, Finance Department, 10 years
  - c. Theresa Tuavale, Administration Department, 10 years
  - d. Daniel Winters, Public Utilities, 15 years
7. **Approve minutes of previous meeting** February 25, 2020
8. **Reports**
  - a. City Manager
  - b. Financial Reports January 2020
  - c. City Attorney conflict of interest opinion related to Ounalashka/Chena Power, LLC
9. **Community Input & Announcements** *Members of the public may make announcements of interest to the community.*
10. **Public testimony on agenda items** *Time for members of the public to testify or provide information to Council regarding items on the agenda. Members of the public may also speak when the issue comes up on the regular agenda by signing up with the City Clerk.*
11. **Public hearing** *Members of the public may testify about any item set for public hearing.*
  - a. Ordinance 2020-01: Amending Unalaska Code of Ordinances § 3.44.020 and § 3.44.030 (C) and (D), clarifying overtime approval requirements and specifying employees receiving overtime compensation for working on holidays
  - b. Ordinance 2020-02: Amending Unalaska Code of Ordinances § 6.28.030, Required Exemptions, to define exempt vessels and to rename and reorganize the code section

**12. Regular agenda** *Persons wishing to speak on regular agenda items must sign up with the City Clerk.*

a. Unfinished Business

- i. Ordinance 2020-01: 2<sup>nd</sup> Reading, Amending Unalaska Code of Ordinances § 3.44.020 and § 3.44.030 (C) and (D), clarifying overtime approval requirements and specifying employees receiving overtime compensation for working on holidays
- ii. Ordinance 2020-02: 2<sup>nd</sup> Reading, Amending Unalaska Code of Ordinances § 6.28.030, Required Exemptions, to define exempt vessels and to rename and reorganize the code section

b. New Business

- i. Resolution 2020-15: Authorizing the City Manager to sign a Settlement Agreement with Advanced Blasting Services, LLC to resolve City of Unalaska v. Advanced Blasting Services, LLC, Case no. 3UN-19-0025 CI
- ii. Ordinance 2020-03: Creating Budget Amendment #6 to the Fiscal Year 2020 Budget, increasing the budget for the Wastewater Treatment Plant Improvement Project and transfers from the General Fund by \$1,149,792 for the Settlement Agreement with Alaska Mechanical, Inc.

**13. Council Directives to City Manager**

**14. Community Input & Announcements** *Members of the public may make announcements of interest to the community.*

**15. Executive Session**

- a. Discussion regarding potential Power Purchase Agreement between City of Unalaska and Ounalashka/Chena Power, LLC
- b. Discussion regarding potential Power Sales Agreements between City of Unalaska and local seafood processing facilities

**16. Adjournment**

**Regular Meeting**  
**Tuesday, February 25, 2020**  
**6:00 p.m.**



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## MINUTES

1. **Call to order** Mayor Tutiakoff called the Regular Meeting of the Unalaska City Council to order on Tuesday, February 25, 2020 at 6:00 pm, in the Unalaska City council chambers.
2. **Roll call** The Clerk called the roll  
  
Present:  
Shari Coleman  
David Gregory  
Darin Nicholson  
Alejandro Tungul  
Vincent Tutiakoff, Sr., Mayor  
  
Absent:  
Dennis Robinson, Vice Mayor, excused  
Thomas D. Bell, excused
3. **Pledge of allegiance** Council member Nicholson led the Pledge of Allegiance
4. **Recognition of visitors** The City Manager recognized Chris Salts of Ounalashka Corporation, who introduced representatives of Ounalashka/Chena Power, LLC, including Bernie Karl, Jim Whitaker, Bruce Biederman, Yan Tang, John Ziagos, Natalie Cale, Dave Mathews, Bruce Campbell, Timber Holton and Rob Everts
5. **Adoption of agenda** Coleman made a motion to adopt the agenda; second by Gregory. Gregory made a motion to reschedule the public hearing, second reading and adoption of Ordinance 2020-01 to March 10, 2020; second by Tungul; no objection; amendment approved by consensus. Disposition of main motion: no objection; adopted by consensus.
6. **Approve minutes of previous meeting** Tungul made a motion to approve the minutes of February 11, 2020 as presented; second by Gregory; no objection; approved by consensus
7. **Reports**
  - a. The City Manager's written report contained in the packet; the manager provided additional comments and responded to council questions regarding executive level

searches; Captains Bay Road project placement on STIP; and entrance channel dredging project.

- b. Annual Reports – reports contained in council packet and the following presentations were made:
    - i. Library Advisory Committee – PCR Director Roger Blakeley and committee chair M. Lynn Crane (via telephone) gave the annual report of the Library Advisory Committee and responded to council questions
    - ii. Parks, Culture & Recreation Committee – Thomas Roufos, committee chair, gave the report of the PCR Committee and responded to council questions
    - iii. Planning Commission and Platting Board and Historic Preservation Commission Thomas Roufos, associate planner, gave the report of both the Planning Commission and Historic Preservation Commission and responded to council questions
  8. **Community Input & Announcements** PCR Director Roger Blakeley provided announcements regarding PCR programs (Soccer Program, Polar Bear Run, Soda Pop Plop & St. Patty's Day Dive / APIA fundraiser); and community member Sharon Livingston announced she will be gathering signatures for a state recall petition
  9. **Public testimony on agenda items** No testimony
  10. **Public hearing** Not held; rescheduled to March 10, 2020 by prior action
    - a. Ordinance 2020-01: Amending Unalaska Code of Ordinances § 3.44.030 (C) and (D) specifying employees receiving overtime compensation for working on holiday and clarification of overtime approval requirements
  11. **Work session** Coleman made a motion to move into work session; second by Tungul; no objection; approved by consensus
    - a. Tidelands lease with Bering Select Seafoods Ltd. – Associate Planner Thomas Roufos provided information to council regarding a proposed tidelands lease with Bering Select Seafoods; this item is on the regular agenda for approval, Resolution 2020-08
    - b. Report from Ounalashka/Chena Power, LLC regarding their Makushin geothermal project. Various representatives of Ounalashka/Chena Power, LLC gave their presentation regarding a proposed geothermal project and responded to questions from mayor, council and the public; public comment given via telephone by Chris Price of the Qawalangin Tribe
- Break -----
12. **Regular agenda** Motion and second made to return to regular session; no objection; approved by consensus
    - a. Ordinance 2020-01: 2<sup>nd</sup> Reading, Amending Unalaska Code of Ordinances § 3.44.030 (C) and (D) specifying employees receiving overtime compensation for working on holiday and clarification of overtime approval requirements – no action or discussion as this item was rescheduled to March 10, 2020

- b. Ordinance 2020-02: 1<sup>st</sup> Reading, Amending Unalaska Code of Ordinances § 6.28.030, Required Exemptions, to define exempt vessels; to remove the exemption for structures containing fire protection systems; and to reorganize the code section – Gregory made a motion to schedule Ordinance 2020-02 for second reading and public hearing on March 10, 2020; second by Tungul; introduction by city manager; discussion and questions; city attorney answered questions via telephone; roll call vote Tungul – yes; Gregory – yes; Nicholson – yes; Coleman – yes. Motion carries 4-0
  - c. Resolution 2020-08: Approving a long term lease agreement situate in ATS 1444, between the City of Unalaska and Bering Select Seafoods Ltd., for an outfall easement on City owned tidelands – Tungul made a motion to approve Resolution 2020-08; second by Gregory; introduction by city manager; discussion, questions and comments from council; roll call vote Coleman – yes; Gregory – yes; Nicholson – yes; Tungul – yes. Motion carries 4-0
  - d. Resolution 2020-13: Authorizing the City Manager to sign a Settlement Agreement with Alaska Mechanical, Inc., to resolve Alaska Mechanical, Inc. vs. City of Unalaska, case no. 3AN-15-8280 CI – Coleman made a motion to approve Resolution 2020-13; second by Gregory; introduction by city manager; summary and background provided by city attorney; discussion, questions and comments from council; roll call vote Coleman – yes; Nicholson – yes; Tungul – yes; Gregory – yes. Motion carries 4-0
  - e. Resolution 2020-14: Authorizing the City Attorney to bring a suit against American International Group, Inc. – Gregory made a motion to approve Resolution 2020-14; second by Coleman; introduction by city manager; city attorney responded to council questions; roll call vote Gregory – yes; Coleman – yes; Nicholson – yes; Tungul – yes. Motion carries 4-0
  - f. Liquor license renewal applications (no action requested) – no discussion; no action taken
13. **Council Directives to City Manager** Gregory made a motion to direct the city manager to look into what the city would need to do to retain the property tax exemption for structures containing fire protection systems in the optional category; second by Tungul; no objection; approve by consensus
14. **Community Input & Announcements** None
15. **Adjournment** Gregory made a motion to adjourn; second by Coleman; no objection; approved by consensus. Adjourned at 8:38 pm

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## MEMORANDUM TO COUNCIL

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To: Mayor and City Council Members  
From: Erin Reinders, City Manager  
Date: March 10, 2020  
Re: City Manager Report

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**Upcoming Deadlines:** The following filing and application deadlines are coming up.

- The annual application for the \$200 Senior Citizen Sales Tax Refund is due March 31, 2020

**COVID-19 Virus:** The Fire Department has rejoined the recently stood up Fisheries Infectious Diseases Working Group for the prevention of the current COVID-19 Virus and any future viruses that may pop-up. This group consists of members from Alaska wide fishing companies, The Alaska Department of Health, the CDC, King County Health, IFHS Clinic, Unalaska Fire Department, along with other agencies and companies in the Pacific Northwest.

This group is working to protect the fishing fleet and the ports that the fleet delivers to from an outbreak of an infectious disease. This group is in the process of putting in place control and monitoring protocols for their incoming crewmembers in multiple locations. With the help of King County Health and Health Force, companies are setting up screenings in Seattle. With the help of the Alaska Department of Health and representatives from the Anchorage Airport, this group is setting up screenings at Ted Stevens International Airport. Finally, local processors, IFHS, and UFD are putting in place protocols for dealing with any possibly infected individuals that do reach our island to slow the outbreak.

Unalaska has also formed a working group that will be meeting to discuss operational planning in the event that an infectious disease makes it to Unalaska. This will ensure that all of the key players on the island are on the same page when it comes to responses and actions taken to treat those infected. This would include appropriate personal protective equipment, protocols for bringing patients to the clinic, quarantine buildings and zones, and prevention plans for those uninfected individuals.

With these controls in place we are doing everything we can to prevent these diseases from spreading to the island. In the meantime following the CDC's guidelines for good hand washing habits, staying home when sick and using caution around others who are sick is the best course of action for individuals.

**Alaska Air Carriers Association Convention:** I attended day one of the Alaska Air Carriers Association Convention prior to SWAMC. This provided the opportunity to meet some key player as we work to address longer term issues regarding Unalaska's air service and airport improvements. I was able to make contact with State and Federal DOT employees who specialize in Essential Air Service and the Small Community Air Service Development Program. I will be following up with them to see how these programs may apply to our situation. Additionally I was able to meet the FAA Alaska Region Airport Division Director, the agency that

will ultimately fund infrastructure improvements resulting from State DOT's Master Plan Update. The Director assured me that Unalaska's need is on their radar.

**Summer Bay Road:** DPW Roads Division has blocked off the Summer Bay Road due to the potential avalanche risks.

**Capital Project Update:** The most recent Capital Projects Update has been posted to the City website. It can be found under the heading News and Announcements. Click on the link entitled Capital Projects Update to view the report which lists all 44 of our current projects.

**Executive Level Searches:** We have hired a new Fire Chief, Patrick Shipp, who should be joining the community and the team in April. Mike Hanson continues to serve as Acting Fire Chief until Patrick's formal start date. Remaining executive level vacancies include the Finance Director and Police Chief.

- *Finance Director.* We are looking forward to the onsite visit with our Finance Director candidate from March 11 through March 14. This visit will include a facility tour, staff meetings, and a panel interview. Jim Sharpe continues to serve as Interim Finance Director, who is also participating in meetings telephonically and available for staff while off island.
- *Police Chief.* Staff has updated the posting and position profile for recruitment purposes. We plan to begin advertising and recruitment efforts on March 9 with a closing date of April 6. John Lucking continues to serve as Interim Police Chief.

**Directives to the City Manager:** The following identifies the status of outstanding Directives to the City Manager:

- *Options for Increased Tobacco Tax (11/27/18).* *Ongoing.* Council discussed in detail at the July 9, 2019 Council Meeting. Future discussions will include additional information on Tobacco Excise Tax, a combination Tobacco Excise Tax with increased sales tax on alcohol and marijuana, fund dedication options, and potential rates. I have asked City Clerk, Marjie Veeder to work with our city attorneys and bring additional information to Council in the coming months.
- *Fiscal Sustainability Plan and Policy (5/14/19).* *Initiated.* Interim Finance Director Jim Sharpe began a discussion with City Council on sustainable long term planning at the December 12, 2019 Council meeting.
- *Research the use of feasibility of purchasing parcel 04-09-330 (1/28/2020).* *Initiated.* I have asked that Planning Director Bil Homka look in to this issue, with the assistance of Public Works Director Tom Cohenour. They will address the purchasing process, potential right of way adjustments, roadway improvements and actions related to the remaining property. The target date to provide this information to Council is at the second meeting in March.

General Fund Operating Monthly Summary - Month Ending January 2020

	FY2020 Budget	January	FY2020 YTD	% OF BUD	FY2019 YTD	INC/(DEC) Last Year
<b>REVENUES</b>						
Raw Seafood Tax	4,200,000	234,927	2,858,616	68%	2,613,298	245,318
AK Fisheries Business	3,300,000	0	3,775,900	114%	3,306,990	468,911
AK Fisheries Resource Landing	5,000,000	0	4,601,633	92%	4,855,139	(253,505)
Property Taxes	6,100,000	31,485	7,049,743	116%	6,643,070	406,673
Sales Tax	7,000,000	563,254	4,713,752	67%	4,522,371	191,381
Investment Earnings	1,400,000	710,818	2,484,147	177%	2,434,150	49,997
Other Revenues	3,796,758	46,892	1,845,959	49%	1,877,817	(31,858)
Appropriated Fund Balance	10,223,877	0	0	0%	0	0
<b>Total General Fund Revenues</b>	<b>41,020,635</b>	<b>1,587,376</b>	<b>27,329,752</b>	<b>67%</b>	<b>26,252,834</b>	<b>1,076,917</b>
<b>EXPENDITURES</b>						
Mayor & Council	799,029	63,771	429,897	54%	219,665	210,232
City Administration						
City Manager's Office	392,770	32,265	193,941	49%	188,479	5,462
Administration	1,319,044	79,480	776,099	59%	677,724	98,375
<b>Total City Administration</b>	<b>1,711,814</b>	<b>111,745</b>	<b>970,040</b>	<b>57%</b>	<b>866,202</b>	<b>103,838</b>
City Clerk	527,270	42,130	272,484	52%	267,802	4,682
Finance						
Finance	1,314,902	(46,801)	476,525	36%	474,285	2,240
Information Systems	943,685	63,281	654,887	69%	636,540	18,347
<b>Total Finance</b>	<b>2,258,587</b>	<b>16,480</b>	<b>1,131,412</b>	<b>50%</b>	<b>1,110,826</b>	<b>20,587</b>
Planning	780,085	57,319	314,825	40%	299,623	15,202
Public Safety						
Police and Admin	3,865,790	281,385	1,490,862	39%	1,596,302	(105,441)
Police Communications	899,718	80,476	495,265	55%	0	495,265
Police Corrections	1,002,135	74,046	512,077	51%	491,294	20,784
<b>Total Public Safety</b>	<b>5,767,642</b>	<b>435,907</b>	<b>2,498,204</b>	<b>43%</b>	<b>2,087,596</b>	<b>410,608</b>
Fire & EMS						
Fire and Emergency Services	1,944,632	367,045	1,005,775	52%	935,537	70,238
<b>Total Fire &amp; EMS</b>	<b>1,944,632</b>	<b>367,045</b>	<b>1,005,775</b>	<b>52%</b>	<b>935,537</b>	<b>70,238</b>
Public Works						
DPW Admin & Engineering	799,891	58,981	336,740	42%	362,318	(25,578)
Streets and Roads	3,498,244	236,214	1,902,086	54%	1,449,379	452,707
Receiving and Supply	290,301	22,321	145,648	50%	135,653	9,995
Veh & Equip Maintenance	1,241,196	94,594	520,369	42%	599,572	(79,203)
Facilities Maintenance	1,394,166	118,327	680,818	49%	904,946	(224,129)
<b>Total Public Works</b>	<b>7,223,798</b>	<b>530,436</b>	<b>3,585,660</b>	<b>50%</b>	<b>3,451,869</b>	<b>133,791</b>
Parks, Culture & Recreation						
PCR Administration	244,801	28,612	137,094	56%	135,657	1,437
Recreation Programs	767,223	58,012	376,639	49%	325,792	50,847
Community Center Operations	1,011,501	81,767	426,262	42%	453,688	(27,426)
Library	847,366	75,735	427,728	50%	397,073	30,656
Aquatics Center	495,527	47,088	225,019	45%	208,256	16,762
Parks	39,500	366	31,503	80%	32,638	(1,135)
<b>Total Parks, Culture &amp; Recreation</b>	<b>3,405,918</b>	<b>291,579</b>	<b>1,624,245</b>	<b>48%</b>	<b>1,553,103</b>	<b>71,142</b>
Other Expenses	6,054,804	456,183	3,733,275	62%	4,012,282	(279,008)
<b>Total Operating Expenditures</b>	<b>30,473,578</b>	<b>2,372,596</b>	<b>15,565,818</b>	<b>51%</b>	<b>14,804,507</b>	<b>761,311</b>
Transfers To General Fund	0	0	0	0%	0	0
Transfers To Special Revenue	0	0	0	0%	0	0
Transfers To Capital Projects	10,046,789	0	10,046,789	100%	2,651,665	7,395,124
Transfers To Enterprise Funds	0	0	0	0%	0	0
Transfers To Enterprise Capital	1,075,000	75,000	1,075,000	100%	495,006	579,994
	<b>11,121,789</b>	<b>75,000</b>	<b>11,121,789</b>	<b>100%</b>	<b>3,146,671</b>	<b>7,975,118</b>
	<b>41,595,367</b>	<b>2,447,596</b>	<b>26,687,607</b>	<b>64%</b>	<b>17,951,178</b>	<b>8,736,429</b>
<b>Surplus/(Deficit)</b>	<b>(574,732)</b>	<b>(860,221)</b>	<b>642,145</b>	<b>65%</b>	<b>8,301,657</b>	<b>(7,659,512)</b>



	<b>FY2020 Budget</b>	<b>January</b>	<b>FY2020 YTD</b>	<b>% OF BUD</b>	<b>FY2019 YTD</b>	<b>INC/(DEC) Last Year</b>
<b>Electric Proprietary Fund</b>						
REVENUES	19,048,704	1,390,182	10,628,356	56%	10,774,416	(146,060)
Electric Line Repair & Maint	1,441,983	102,373	620,108	43%	513,222	106,886
Electric Production	10,326,628	810,672	6,358,134	62%	5,988,543	369,591
Facilities Maintenance	137,042	6,056	57,214	42%	28,833	28,380
Utility Administration	5,518,759	341,125	2,992,692	54%	3,249,487	(256,796)
Veh & Equip Maintenance	61,515	4,444	24,625	40%	40,670	(16,044)
Transfers Out	2,985,968	0	2,985,968	100%	1,871,402	1,114,566
EXPENSES	20,471,896	1,264,671	13,038,740	64%	11,692,157	1,346,584
NET EARNINGS/(LOSS)	(1,423,192)	125,511	(2,410,384)		(917,741)	(1,492,643)

<b>Water Proprietary Fund</b>						
REVENUES	2,693,207	180,718	1,359,317	50%	1,477,484	(118,168)
Transfers Out	3,009,084	0	3,009,084	100%	200,000	2,809,084
Facilities Maintenance	57,777	7,870	38,815	67%	36,678	2,136
Utility Administration	1,786,637	140,850	1,039,974	58%	1,042,971	(2,997)
Veh & Equip Maintenance	38,175	4,776	18,189	48%	9,298	8,891
Water Operations	1,642,141	122,878	829,473	51%	646,990	182,482
EXPENSES	6,533,814	276,374	4,935,534	76%	1,935,938	2,999,597
NET EARNINGS/(LOSS)	(3,840,607)	(95,657)	(3,576,218)		(458,453)	(3,117,764)

<b>Wastewater Proprietary Fund</b>						
REVENUES	2,649,887	217,653	1,369,160	52%	1,402,025	(32,865)
Transfers Out	0	0	0	0%	792,400	(792,400)
Facilities Maintenance	86,153	5,778	49,705	58%	27,682	22,023
Utility Administration	1,951,888	141,028	1,194,406	61%	1,208,516	(14,110)
Veh & Equip Maintenance	28,642	1,280	17,422	61%	10,411	7,011
Wastewater Operations	2,327,203	192,727	1,062,089	46%	766,359	295,730
EXPENSES	4,393,887	340,813	2,323,622	53%	2,805,368	(481,746)
NET EARNINGS/(LOSS)	(1,744,000)	(123,159)	(954,462)		(1,403,343)	448,881
Transfers In	998,248	0	0	0%	1,032,021	(1,032,021)

<b>Solid Waste Proprietary Fund</b>						
REVENUES	2,602,442	197,737	1,417,860	54%	1,286,017	131,843
Facilities Maintenance	78,105	10,498	30,705	39%	35,016	(4,311)
Solid Waste Operations	2,121,923	117,328	1,029,291	49%	765,178	264,113
Utility Administration	1,566,186	131,847	899,835	57%	903,724	(3,889)
Veh & Equip Maintenance	137,603	4,264	39,091	28%	29,602	9,489
Transfers Out	741,500	0	741,500	100%	0	741,500
EXPENSES	4,645,317	263,937	2,740,423	59%	1,733,520	1,006,902
NET EARNINGS/(LOSS)	(2,042,874)	(66,200)	(1,322,563)		(447,504)	(875,059)
Transfers In	44,622	0	0	0%	116,612	(116,612)

	<u>FY2020 Budget</u>	<u>January</u>	<u>FY2020 YTD</u>	<u>% OF BUD</u>	<u>FY2019 YTD</u>	<u>INC/(DEC) Last Year</u>
<b>Ports &amp; Harbors Proprietary Fund</b>						
REVENUES	8,257,948	447,064	4,109,754	50%	3,815,854	293,899
Bobby Storrs Small Boat Harbor	149,396	10,475	67,952	45%	72,681	(4,729)
CEM Small Boat Harbor	502,126	83,605	416,746	83%	398,182	18,564
Facilities Maintenance	55,151	4,379	19,450	35%	15,886	3,563
Harbor Office	8,031,646	580,056	4,014,147	50%	3,447,256	566,891
Ports Security	76,211	0	21,598	28%	16,430	5,168
Spit & Light Cargo Docks	508,061	55,116	330,540	65%	333,813	(3,273)
Unalaska Marine Center	1,054,667	83,902	665,106	63%	670,849	(5,743)
Veh & Equip Maintenance	60,531	3,508	23,710	39%	27,626	(3,915)
Transfers Out	1,105,650	0	1,105,650	100%	4,467,000	(3,361,350)
EXPENSES	11,543,439	821,041	6,664,899	58%	9,449,723	(2,784,824)
NET EARNINGS/(LOSS)	(3,285,491)	(373,977)	(2,555,145)		(5,633,869)	3,078,724
<b>Airport Proprietary Fund</b>						
REVENUES	559,993	45,648	285,005	51%	285,795	(790)
Airport Admin/Operations	583,495	54,545	340,801	58%	357,887	(17,086)
Facilities Maintenance	242,952	9,737	59,713	25%	51,880	7,833
EXPENSES	826,447	64,282	400,514	48%	409,767	(9,253)
NET EARNINGS/(LOSS)	(266,454)	(18,634)	(115,509)		(123,972)	8,463
<b>Housing Proprietary Fund</b>						
REVENUES	254,468	11,440	139,408	55%	152,589	(13,181)
Facilities Maintenance	227,369	5,837	63,443	28%	87,229	(23,785)
Housing Admin & Operating	361,143	29,432	205,758	57%	190,976	14,782
EXPENSES	588,512	35,269	269,201	46%	278,204	(9,003)
NET EARNINGS/(LOSS)	(334,044)	(23,829)	(129,793)		(125,615)	(4,178)

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City of Unalaska  
Utility Revenue Report  
Summary

01/31/20

FY20 Budget Month	Electric	Water	Waste Water	Solid Waste	Monthly Revenue	FY20 Revenue	FY19YTD Revenue	YTD Inc/(Dec)
Jul-19	2,041,702	338,438	213,747	240,284	2,834,170	2,834,170	2,675,055	159,115
Aug-19	1,991,612	329,977	210,530	267,922	2,800,041	5,634,211	5,858,037	(223,825)
Sep-19	1,434,679	276,434	221,311	211,845	2,144,269	7,778,480	7,974,822	(196,342)
Oct-19	1,303,679	106,000	198,439	206,051	1,814,170	9,592,650	9,817,718	(225,068)
Nov-19	1,146,245	69,211	153,402	152,278	1,521,136	11,113,786	11,260,719	(146,932)
Dec-19	1,238,889	54,291	154,077	110,447	1,557,704	12,671,490	12,610,843	60,647
Jan-20	1,390,461	180,718	217,653	193,187	1,982,019	14,653,510	14,201,432	452,078
Feb-20	0	0	0	0	0	0	16,445,846	0
Mar-20	0	0	0	0	0	0	18,951,284	0
Apr-20	0	0	0	0	0	0	20,946,322	0
May-20	0	0	0	0	0	0	22,365,728	0
Jun-20	0	0	0	0	0	0	23,865,256	0
YTD Totals	10,547,267	1,355,069	1,369,160	1,382,013	14,653,510			
FY20 Budget	18,877,278	2,610,839	2,607,950	2,562,531	26,658,598			
% to budget	55.9	51.9	52.5	53.9	55.0			

City of Unalaska  
Electric Revenue Report  
Electric Fund

01/30/20

FY20 Budget Month	Residential	Small General	Large General	Industrial	P.C.E. Assist	Other Revenues	Monthly Revenue	FY20 YTD Revenue	FY19 YTD Revenue	YTD Inc/(Dec)
Jul-19	93,544	118,063	166,850	1,610,047	49,887	3,312	2,041,702	2,041,702	1,975,144	66,559
Aug-19	92,064	48,669	104,004	1,693,030	48,587	5,257	1,991,612	4,033,314	4,256,192	(222,877)
Sep-19	85,851	74,390	129,603	1,085,499	49,107	10,228	1,434,679	5,467,993	5,732,988	(264,995)
Oct-19	113,072	90,945	153,791	893,562	47,970	4,339	1,303,679	6,771,672	7,083,392	(311,720)
Nov-19	104,149	85,587	133,447	755,803	63,160	4,099	1,146,245	7,917,918	8,080,713	(162,796)
Dec-19	136,019	98,719	152,175	784,225	62,537	5,214	1,238,889	9,156,806	9,127,120	29,686
Jan-20	132,791	119,327	161,600	910,438	61,770	4,534	1,390,461	10,547,267	10,169,697	377,570
Feb-20							0	0	11,602,998	0
Mar-20							0	0	13,262,884	0
Apr-20							0	0	14,700,056	0
May-20							0	0	15,775,615	0
Jun-20							0	0	16,763,006	0
YTD Totals	757,490	635,699	1,001,471	7,732,604	383,018	36,984	10,547,267			
FY20 Budget	1,147,831	1,286,314	2,588,359	13,166,557	627,396	60,821	18,877,278			
% of Budget	66.0	49.4	38.7	58.7	61.0	60.8	55.9			

Kwh Sold

FY 20 Month	Residential	SM. Gen (Includes Street lights)	Large General	Industrial	Total FY20 Kwh Sold	Total FY19 Kwh Sold	Increase (Decrease)
July	271,136	343,064	504,642	4,971,895	6,090,737	5,296,782	793,955
August	246,372	246,372	460,815	5,496,225	6,449,784	6,281,823	167,961
September	251,142	233,357	409,411	3,427,315	4,321,225	4,043,612	277,613
October	326,960	282,519	474,730	2,810,655	3,894,864	3,744,427	150,437
November	302,203	265,682	406,720	2,352,155	3,326,760	2,621,709	705,051
December	365,890	283,674	437,905	2,276,450	3,363,919	2,787,686	576,233
January *	368,347	340,461	459,552	2,668,260	3,836,620	3,144,745	691,875
February				0	0	4,521,664	0
March					0	5,517,900	0
April					0	4,450,677	0
May					0	3,451,051	0
June					0	3,258,812	0
Total	2,132,050	1,995,129	3,153,775	24,002,955	31,283,909	49,120,888	3,363,125
Percent Sold	6.8%	6.4%	10.1%	76.7%	100.0%		

Generator Fuel

FY20 Average Price Fuel	FY19 Average Price Fuel
2.2808	2.7133
2.2532	2.5517
2.3070	2.6189
2.3367	2.7620
2.8235	2.7018
2.2705	2.2137
2.2478	2.0713
	2.2716
	2.3469
	2.4175
	2.5783
	2.2808
2.3599	2.4606
-4.09%	

% Change from Prior Year

FY20 Cumulative kwh Sold	FY19 Cumulative kwh Sold
6,090,737	5,296,782
12,540,521	11,578,605
16,861,746	15,622,217
20,756,610	19,366,644
24,083,370	21,988,353
27,447,289	24,776,039
31,283,909	27,920,784
31,283,909	32,442,448
31,283,909	37,960,348
31,283,909	42,411,025
31,283,909	45,862,076
31,283,909	45,862,076

City of Unalaska  
Water Revenue Report  
Water Fund

01/31/20

FY20 Month	Unmetered Sales	Metered Sales	Other Revenues	Monthly Revenue	FY20 YTD Revenue	FY19YTD Revenue	YTD Inc/(Dec)
Jul-19	12,319	326,092	26	338,438	338,438	306,593	31,844
Aug-19	12,356	316,505	1,117	329,977	668,414	766,223	(97,809)
Sep-19	12,188	263,043	1,203	276,434	944,849	993,628	(48,780)
Oct-19	12,321	92,708	971	106,000	1,050,849	1,098,027	(47,178)
Nov-19	12,314	56,928	(32)	69,211	1,120,060	1,206,344	(86,284)
Dec-19	12,318	41,991	(17)	54,291	1,174,351	1,279,445	(105,094)
Jan-20	12,314	164,740	3,663	180,718	1,355,069	1,461,769	(106,700)
Feb-20				0	0	1,846,779	0
Mar-20				0	0	2,229,099	0
Apr-20				0	0	2,426,378	0
May-19				0	0	2,491,966	0
Jun-20				0	0	2,660,145	0
YTD Totals	86,130	1,262,008	6,931	1,355,069			
FY20 Budget	161,560	2,420,955	28,324	2,610,839			
% of Budget				51.9			

Million Gallons Produced

FY20 Month	FY 20 Produced	FY 19 Produced	Increase (Decrease)
July	144.933	149.496	(4.563)
August	137.816	165.530	(27.714)
September	119.165	98.852	20.313
October	50.297	57.040	(6.743)
November	36.136	41.353	(5.217)
December	28.865	38.233	(9.368)
January	81.562	83.650	(2.088)
February		165.013	0.000
March		163.182	0.000
April		90.469	0.000
May		33.090	0.000
June		80.544	0.000
Total	598.774	1166.452	(35.380)

FY20 Water Cumulative	FY19 Water Cumulative
144.933	149.496
137.816	315.026
119.650	413.878
169.947	470.918
206.083	512.271
234.948	550.504
316.510	634.154
0.000	799.167
0.000	962.349
0.000	1052.818
0.000	1085.908
0.000	1166.452

City of Unalaska  
Wastewater Revenue Report  
Wastewater Fund

01/31/20

FY20 Month	Unmetered Sales	Metered Commercial	Metered Industrial	Other Revenues	Monthly Revenue	FY20 YTD Revenue	FY19 YTD Revenue	YTD Inc/(Dec)
Jul-19	38,698	165,763	8,802	484	213,747	213,747	187,607	26,140
Aug-19	38,590	152,192	8,977	10,772	210,530	424,277	401,081	23,196
Sep-19	37,816	167,480	7,725	8,291	221,311	645,588	639,231	6,358
Oct-19	38,482	151,100	4,311	4,547	198,439	844,028	847,719	(3,692)
Nov-19	38,459	109,503	780	4,660	153,402	997,430	1,030,043	(32,613)
Dec-19	38,470	107,541	836	7,229	154,077	1,151,507	1,163,062	(11,555)
Jan-20	38,459	170,718	6,922	1,554	217,653	1,369,160	1,345,386	23,774
Feb-20					0	0	1,573,580	0
Mar-20					0	0	1,789,032	0
Apr-20					0	0	1,984,696	0
May-20					0	0	2,132,013	0
Jun-20					0	0	2,295,878	0
YTD Totals	268,973	1,024,298	38,353	37,536	1,369,160			
FY20 Budget	482,570	2,020,704	46,025	58,651	2,607,950			
% of Budget					52.5			

FY20 Month	FY20 Effluent (Gal)	FY19 Effluent (Gal)	Increase (Decrease)
July	10,335,000	11,334,000	(999,000)
August	10,748,000	12,167,000	(1,419,000)
September	10,824,000	11,085,000	(261,000)
October	13,384,000	13,286,000	98,000
November	12,123,000	12,990,000	(867,000)
December	11,309,000	11,799,000	(490,000)
January	13,438,000	17,421,000	(3,983,000)
February		15,011,000	0
March		15,848,000	0
April		13,470,000	0
May		9,091,000	0
June		10,776,000	0
Total	82,161,000	154,278,000	(7,921,000)

FY20 Cumulative	FY19 Cumulative
10,335,000	11,334,000
21,083,000	23,501,000
31,907,000	34,586,000
45,291,000	47,872,000
57,414,000	60,862,000
68,723,000	72,661,000
82,161,000	90,082,000
0	105,093,000
0	120,941,000
0	134,411,000
0	143,502,000
0	154,278,000

City of Unalaska  
Solid Waste Revenue Report  
Solid Waste Fund

01/31/20

FY20 Month	Residential Fees	Tipping Fees	Other Revenue	Monthly Revenue	FY20 YTD Revenue	FY19 YTD Revenue	YTD Inc/(Dec)
Jul-19	29,023	174,581	36,680	240,284	240,284	205,711	34,573
Aug-19	29,035	193,226	45,661	267,922	508,206	434,541	73,665
Sep-19	28,997	154,078	28,770	211,845	720,050	608,975	111,075
Oct-19	29,364	142,867	33,820	206,051	926,102	788,580	137,522
Nov-19	29,373	98,228	24,677	152,278	1,078,379	943,618	134,761
Dec-18	29,403	56,284	24,760	110,447	1,188,826	1,041,216	147,610
Jan-20	29,369	136,247	27,571	193,187	1,382,013	1,224,579	157,434
Feb-20				0	0	1,422,489	0
Mar-20				0	0	1,670,269	0
Apr-20				0	0	1,835,191	0
May-20				0	0	1,966,134	0
Jun-20				0	0	2,146,227	0
YTD Totals	204,563	955,511	221,939	1,382,013			
FY20 Budget	273,770	1,966,240	322,521	2,562,531			
% of Budget	74.7	48.6	68.8	53.9			

FY20 Month	FY20 Tons of Waste	FY19 Tons of Waste	Increase (Decrease)
July	676.37	691.90	(15.53)
August	769.86	792.71	(22.85)
September	640.50	559.25	81.25
October	630.93	497.11	133.82
November	465.26	522.57	(57.31)
December	286.49	341.29	(54.80)
January	551.56	619.61	(68.05)
February		634.20	0.00
March		982.72	0.00
April		550.45	0.00
May		419.53	0.00
June		591.97	0.00
Total	4020.97	7203.31	(3.47)

Cummulative	
FY20 Tons of Waste	FY19 Tons of Waste
676.37	691.90
1446.23	1484.61
2086.73	2043.86
2717.66	2540.97
3182.92	3063.54
3469.41	3404.83
4020.97	4024.44
0.00	4658.64
0.00	5641.36
0.00	6191.81
0.00	6611.34
0.00	7203.31

**CITY OF UNALASKA  
FY20 PORTS REVENUE**

Month	Year	UMC Dock				Spit Dock		Small Boat Harbor		Cargo Dock		CEM		Other Rev&Fees	Monthly Revenue	FY20 YTD Revenue	% of Budget	FY19 YTD Revenue	YTD Inc(Dec)	
		Docking/Moorage	Wharfage Fees	Rental Fees	Utility Fees	Docking / Moorage	Utility Fees	Docking / Moorage	Utility Fees	Dockage / Moorage	Wharfage Rental/Util	Docking/Moorage	Utility Fees							
Jul	2019	158,396	282,213	51,885	80,177	21,419	1,563	5,547	787	6,251	3,710	16,922	3,445	20,027	652,342	652,342	8.4%	478,637	173,705	
Aug	2019	159,468	377,141	49,478	38,997	46,269	2,301	5,658	451	4,229	3,686	36,095	7,345	13,491	744,609	1,396,951	18.0%	1,141,980	254,971	
Sept	2019	172,894	305,675	48,050	42,273	89,478	4,236	4,961	582	6,563	18,781	33,743	7,115	9,697	744,048	2,140,999	27.6%	1,762,136	378,863	
Oct	2019	125,328	179,166	45,440	25,591	40,873	16,694	4,819	577	4,945	21,849	22,831	27,737	904	516,754	2,657,753	34.2%	2,290,549	367,204	
Nov	2019	70,380	118,397	47,944	46,526	17,222	22,389	8,541	399	1,821	9,442	77,221	42,886	2,008	465,177	3,122,930	40.2%	2,773,303	349,627	
Dec	2019	57,003	41,731	47,249	35,193	29,944	23,337	14,394	622	1,257	4,629	237,958	45,250	1,192	539,759	3,662,689	47.1%	3,342,706	319,984	
Jan	2020	97,888	64,921	47,896	37,797	63,416	28,723	4,770	1,144	12,703	22,283	7,469	56,976	1,075	447,061	4,109,750	52.9%	3,785,685	324,065	
Feb	2020														0	0	0.0%	4,358,277	0	
Mar	2020														0	0	0.0%	5,163,213	0	
Apr	2020														0	0	0.0%	5,799,757	0	
May	2020														0	0	0.0%	6,181,979	0	
Jun	2020														0	0	0.0%	6,557,217	0	
<b>Totals</b>		<b>841,358</b>	<b>1,369,243</b>	<b>337,942</b>	<b>306,554</b>	<b>308,622</b>	<b>99,243</b>	<b>48,691</b>	<b>4,563</b>	<b>37,769</b>	<b>84,379</b>	<b>432,239</b>	<b>190,754</b>	<b>48,393</b>	<b>4,109,750</b>					
Loc total		2,855,096				407,865		53,254		122,149		622,993								
Loc percent		69.5%				9.9%		1.3%		3.0%		15.2%								
FY20 Budget		1,735,300	3,125,950	600,000	360,000	434,730	125,000	87,000	14,290	120,000	122,500	635,000	313,500	97,500	7,770,770					
% to Budget		48.5%	43.8%	56.3%	85.2%	71.0%	79.4%	56.0%	31.9%	31.5%	68.9%	68.1%	60.8%	49.6%	52.9%					

**PORTS RECEIVABLES**

Month	Year	Current	Over 30 Days	Over 60 Days	Over 90 Days	Total Due	% Past Due 90 Days +	Cash Received
Jul	2019	667,427	104,806	19,654	35,762	827,649	4.3%	386,283
Aug	2019	634,450	169,640	21,234	5,641	830,966	0.7%	739,289
Sept	2019	806,036	116,524	98,381	23,085	1,044,026	2.2%	476,913
Oct	2019	485,916	176,086	60,750	34,331	757,084	4.5%	720,591
Nov	2019	549,662	60,364	56,549	47,454	714,029	6.6%	392,102
Dec	2019	492,146	124,345	40,421	41,578	698,491	6.0%	437,902
Jan	2020	321,521	123,519	12,164	4,170	461,374	0.9%	362,435
Feb	2020					0	0.0%	
Mar	2020					0	0.0%	
Apr	2020					0	0.0%	
May	2020					0	0.0%	
Jun	2020					0	0.0%	
<b>YTD Cash Received</b>								<b>3,515,515</b>



**CITY OF UNALASKA  
FY20 AIRPORT REVENUE**

MONTH	YEAR	MONTHLY LEASES	MISC INCOME	LATE FEES	MONTHLY REVENUE	FY20 YTD REVENUE	% OF BUDGET	FY19 YTD REVENUE	YTD INC/(DEC)
JUL	2019	39,018	17	838	39,873	39,873	7.2%	40,050	(176)
AUG	2019	39,018	17	687	39,722	79,596	14.4%	80,102	(506)
SEP	2019	39,018	27	736	39,781	119,376	21.6%	120,165	(788)
OCT	2019	38,918	35	691	39,644	159,020	28.8%	160,232	(1,212)
NOV	2019	38,918	22	699	39,639	198,659	36.0%	199,831	(1,173)
DEC	2019	39,968	25	706	40,699	239,357	43.4%	240,422	(1,065)
JAN	2020	44,926	18	704	45,648	285,005	51.7%	285,795	(790)
FEB	2020				0	0	0.0%	330,099	0
MAR	2020				0	0	0.0%	369,906	0
APR	2020				0	0	0.0%	409,734	0
MAY	2020				0	0	0.0%	449,607	0
JUN	2020				0	0	0.0%	489,482	0
<b>TOTAL</b>		<b>279,783</b>	<b>161</b>	<b>5,061</b>	<b>285,005</b>		<b>0.0%</b>		
<b>FY20 BUDGET</b>		<b>544,000</b>	<b>3,500</b>	<b>4,000</b>	<b>551,500</b>				
<b>% TO BUDGET</b>		<b>51.4%</b>	<b>4.6%</b>	<b>126.5%</b>	<b>51.7%</b>				

**RECEIVABLE BALANCES**

MONTH	YEAR	CURRENT	OVER 30 DAYS	OVER 60 DAYS	OVER 90 DAYS	TOTAL DUE	% PAST DUE 90 DAYS +	CASH RECEIVED
JUL	2019	37,699	2,934	63	104,528	145,225	72.0%	39,293
AUG	2019	35,589	7,810	1,392	86,713	131,504	65.9%	35,318
SEP	2019	40,122	2,604	5,641	87,714	136,081	64.5%	29,334
OCT	2019	38,351	9,194	0	88,279	135,824	65.0%	38,671
NOV	2019	39,922	3,537	6,445	83,370	133,275	62.6%	38,412
DEC	2019	34,067	1,387	1,755	79,163	116,373	68.0%	51,543
JAN	2020	24,084	1,131	324	76,190	101,729	74.9%	37,733
FEB	2020					0	0.0%	
MAR	2020					0	0.0%	
APR	2020					0	0.0%	
MAY	2020					0	0.0%	
JUN	2020					0	0.0%	
<b>YTD TOTAL</b>								<b>270,304</b>

## FY 20 HOUSING RENTAL REVENUE

MONTH	YEAR	HOUSING RENTALS	MISC. REVENUE	MONTHLY REVENUE	FY20 YTD REVENUE	% OF BUDGET	FY19 YTD REVENUE	YTD INC/(DEC)
JUL	2019	13,398		13,398	13,398	5.4%	12,896	502
AUG	2019	28,155		28,155	41,553	16.7%	40,437	1,115
SEP	2019	27,270		27,270	68,822	27.7%	62,602	6,221
OCT	2019	12,008		12,008	80,830	32.5%	82,764	(1,934)
NOV	2019	20,240		20,240	101,070	40.7%	110,839	(9,769)
DEC	2019	26,898		26,898	127,968	51.5%	124,514	3,454
JAN	2020	11,440		11,440	139,408	56.1%	152,589	(13,181)
FEB	2020			0	0	0.0%	166,264	0
MAR	2020			0	0	0.0%	186,528	0
APR	2020			0	0	0.0%	206,453	0
MAY	2020			0	0	0.0%	227,371	0
JUN	2020			0	0	0.0%	248,132	0
TOTAL		139,408	0	139,408				
FY20 Budget		248,500	0	248,500				
% TO BUDGET		56.1%		56.1%				

**BOYD, CHANDLER, FALCONER & MUNSON, LLP**  
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**MEMORANDUM**

**TO:** Erin Reinders  
City Manager

**FROM:** Brooks W. Chandler  
City Attorney



**DATE:** March 5, 2020

**SUBJECT:** Geothermal Project Conflict of Interest Rulings

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We previously provided general advice on the above-referenced matter. (See November 22, 2019 memorandum). The background facts and analysis discussed in that memorandum will not be repeated here. In summary we recommended formal disclosures by Mayor Tutiakoff and two council members related to ownership of shares in and payments received from Ouhnalashka Corporation (“OC”) whether as an employee or as a corporate director. In our opinion stock ownership and employment constituted a “financial interest” in a potential contract between the City and an LLC 51% of which is owned by OC. Those disclosures have been made and reviewed. The purpose of this memorandum is to provide the city attorney ruling required by UCO 2.88.040( C) as to whether the financial interest is a “substantial financial interest” precluding participation in discussions about a power purchase agreement and voting on whether to approve a power purchase agreement between the City and the LLC.

OC has a 51% ownership interest in an LLC which is proposing to sell geothermal power to the City. OC has 26,900 issued shares of stock. Mayor Tutiakoff owns 70 shares (.26% of the corporation). Council member Robinson owns 75.89 shares (.28% of the corporation). Council member Gregory’s immediate family members own a total of 115 shares (.42% of the corporation). This ownership interest of less than one half of one percent is well below the 5% ownership threshold which city code defines as a “substantial financial interest” in a contract with the City. UCO 2.88.020(B)(3)(b). The Mayor and council members are not precluded from participation and voting on a power purchase agreement between the City and the LLC by

reason of stock ownership in OC.

Mayor Tutiakoff and council member Robinson are members of the OC Board of Directors. Mayor Tutiakoff serves as the chair of the OC Board. Neither the Chair nor Directors are paid by OC. Therefore there is no substantial financial interest in the potential power sales agreement resulting from serving on the OC board or as chairman of the board of directors. The Mayor and council member Robinson are not disqualified from participation and voting on a power purchase agreement between the City and the LLC by reason of their serving as members of the OC board of directors.

Council member Gregory is employed by OC as its lands manager. He is eligible for and has received annual bonus payments in addition to his regular salary. Neither his salary nor bonus payments are directly tied to the success of any particular OC investment, operation or project including the geothermal power project. Therefore by definition his employment by OC does not constitute a substantial financial interest in the geothermal project or potential power purchase agreement between the City and the LLC. UCO 2.88.020(B)(1)(no substantial financial interest unless salary payments “directly affected” by proposed contract).

Similarly, the fact OC pays discretionary dividends from general funds of the corporation does not constitute a disqualifying conflict of interest for either council member or the Mayor. Such dividend payments are not directly tied to the geothermal project. The theoretical possibility dividends could be increased by an unknown amount should the geothermal power project be profitable is not sufficient to establish a “substantial financial interest”.

This ruling is specific to discussions of the potential purchase of geothermal power from the LLC including votes on whether to approve a power purchase agreement. This ruling does not mean that a ruling is required or if so what that ruling would be on any other matters coming before the city council involving OC.

If you, council member Robinson, council member Gregory or Mayor Tutiakoff have any questions regarding this ruling please let me know.

**BOYD, CHANDLER, FALCONER & MUNSON, LLP**  
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ANCHORAGE, ALASKA 99501  
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bcf@bcfaklaw.com

## **MEMORANDUM**

**TO:** Erin Reinders  
City Manager

**FROM:** Brooks W. Chandler  
City Attorney



**DATE:** November 25, 2019

**SUBJECT:** Geothermal Project Conflict of Interest

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At Mayor Tutiakoff's request, we have examined whether either his status as a shareholder or his role as chairman of the Ouhnalashka Corporation ("OC") creates a conflict of interest prohibiting his participation in Council consideration of matters pertaining to a geothermal project being pursued by Ounalashka/Chena Power, LLC ("the LLC") including a potential power purchase agreement between the LLC and the City. Based on our understanding of OC's involvement with the LLC, general information about the OC shareholder dividend program, the conflict of interest provisions of the Unalaska Code of Ordinances and relevant Alaska Supreme Court decisions on conflict of interest we have concluded no OC shareholder, employee or board member on the City Council including Mayor Tutiakoff has a disqualifying conflict of interest. However, because city code requires "declaration" of "any" financial interest a declaration should be made by the Mayor and Council members Gregory and Robinson prior to participating in council discussions about the project. This memorandum supplies the reasons for this recommendation.

### **FACTS.**

The Unalaska City Council is being asked to support and will be asked to approve a negotiated contract for the purchase of energy from a geothermal power project ("the Project"). The Project will be developed and owned by the LLC. OC owns 51% of the LLC.

Should the LLC successfully develop the Project some of OC's LLC distributions would

potentially be added to the principal held in an OC fund called the Ounalashka Shareholder's Trust<sup>1</sup> ("OST"). Earnings from OST are distributed to unit holders in the trust. The recently announced 2019 distribution was \$19 per unit. Mayor Tutiakoff and council member Robinson are unit holders as is council member Gregory's wife. Future contributions to the Trust from OC's share of LLC profits are contingent on overall development and operating costs associated with the Project. They can fairly be described as speculative.

Council member Gregory is currently employed by OC at a middle management level. His pay may include an annual bonus based on how well OC performs financially. Council member Robinson is a member of the OC Board of Directors as is the Mayor. Members of the Board are not paid other than stipends for attendance at each board meeting. Board member payments are not tied to OC's annual profit.

There will be two types of anticipated city council action within the next three months: 1) issuing a general letter of support for the Project and; 2) a vote on whether to approve a power purchase agreement.

## **ANALYSIS.**

Unalaska's conflict of interest ordinance applies both to City employees and elected officials. UCO 2.88.030(a) prohibits a City Council member from voting on any question in which the Council member "has a substantial financial interest".

A substantial financial interest in the making of "[a] contract" does not include being an employee of the person with whom the contract will be made where the "remuneration of employment will not be directly affected" by the contract. UCO 2.88.020(B)(1). Accordingly, a Council member who is an OC employee will have a substantial financial interest in the negotiated purchase of electricity from the LLC only if their OC salary is "directly affected" by the amount of profit OC will realize from the LLC. Any profit is likely years in the future. It is unlikely a bonus based on corporate income will be immediately impacted by a contract for the sale of power from the Project.

Owning shares in a company contracting with the City only constitutes a "substantial financial interest" when the council member owns more than 5% of the outstanding shares.

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<sup>1</sup> Contributions to OST principal are generated from six other OC subsidiaries whose primary historical business has been real estate development and leasing (Aleutian Development Co, Dutch Harbor Aggregate, Dutch Harbor Development, FDOC, Inc., Little Brazil Corp. , Uknadax Corporation and OC Communications, Inc.). The amount of such contributions is not fixed in stone but is dependent on profitability from year to year.

UCO 2.88.020(B)(3)(b). Since OC only owns 51% of the LLC a council member would need to own more than 10% of the outstanding OC shares in order to have more than a 5% interest in the LLC. It is extremely unlikely OC share ownership constitutes a “substantial financial interest” in any contract between the City and the LLC<sup>2</sup>. However, as discussed below, all three city officials should declare a financial interest.

The conflict of interest ordinance anticipates a two step process. The first step is for the council member to “make known”; “any financial interest” the Council member has in a contract or matter being voted on. UCO 2.88.040(a). The second step is a determination by the city attorney regarding whether the council member may vote or participate<sup>3</sup> in the matter. UCO 2.88.040(c). Thus, the ordinance anticipates the city attorney making the determination regarding whether a declared financial interest is a “substantial” financial interest “direct or indirect”.

The requirement of a “declaration” of a “substantial” financial interest is required by state law. AS 29.20.010. State law does not mandate declarations of “any” financial interest, but the City is free to have stricter conflict of interest requirement than the minimum requirements established by state law. Unalaska has chosen to do so. Any financial interest in a City Council action must be declared. This also extends to any financial interest the spouse of a City Council member has in a matter being considered by the City Council.

In our opinion, City Council members who are OC employees, and who have in the past received annual bonus payments based in part on OC’s annual income or profit, have some financial interest in the purchase of electricity by the City from the LLC. Similarly, elected officials who are OC shareholders have “some” financial interest in the commercial success of the LLC.

For these reasons, OC employees or shareholders who are elected officials should declare the fact they are OC employees or shareholders, and also identify how frequently they have received bonus payments from OC based on OC’s financial performance (OC employee), the

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<sup>2</sup> It is our understanding that the “standard” number of OC shares held by those eligible to be OC shareholders is 100 shares. Shares can be acquired through inheritance or gift. Per the original articles of incorporation OC is authorized to issue up to 100,000 shares. We do not know if OC limits the total number of shares that may be held by any one eligible shareholder. As a practical matter it is virtually impossible for one individual to accumulate an ownership interest of 10% in OC.

<sup>3</sup> Participation includes a broader range of activities than voting. Participation would include discussions related to the proposed contract and the Project that occur at City Council meetings.

Geothermal Project Conflict of Interest Memorandum

November 25, 2019

Page 4 of 4

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number of OC shares they own and the total number of issued OC shares (shareholders). This disclosure can be made orally at a public meeting or in writing directed to the City Clerk. Once the declarations have been made we can finalize the opinion required by UCO 2.88.040(C).

There is another issue related to the conflict of interest question. This involves the legal concept of fiduciary duty. Council members owe a fiduciary duty to Unalaska residents. OC board members owe a fiduciary duty to OC shareholders. In some instances what is in the best interest of OC shareholders (such as the LLC receiving a high price for electricity sold to the City) will not be in the best interest of city residents (who are customers of the city's electric utility). This is not addressed by city code provisions or Title 29. It is a matter for individual consideration of each official as to what is "right". Presumably the contract will be negotiated at arm's length and will result in an agreement being recommended for approval by city staff. Nevertheless, OC board members who also serve the public as elected officials will need to think long and hard as to whether there is a conflict in their fiduciary duties which requires them to request to be excused from voting on an LLC-City contract for purchase of energy from the Project.

If you, the Mayor or the City Council have any questions about this topic, please let me know.



February 10, 2020

To: City Clerk, City of Unalaska

From: Vincent M. Tutiakoff, Sr., Mayor, City of Unalaska

Regarding: Disclosure Statement

To Whom it May Concern:

I'm writing to you and the Council regarding my involvement as a City of Unalaska representative concerning the negotiations of a Power Purchase Agreement between the Ounalashka Corporation/Chena Power, LLC (OCCP) and the City of Unalaska.

I am a Shareholder of the Ounalashka Corporation (OC) and own 70 shares of OC stock representing 26,900 of the outstanding shares of OC stock. I am also a Director on the OC Board and also serve as OC's Chair. I do not receive a bonus as the Chair or Director of OC. The OC Board historically has declared a discretionary quarterly dividend, which I receive as an OC shareholder. I am also a Trustee and Beneficiary of the Ounalashka Settlement Trust, from which I receive quarterly distributions.

Although OC owns a majority of OCCP, I am neither a Director nor Officer of the OCCP.

As for fiduciary duty to the corporation, it is to protect the assets of the shareholders. As to the fiduciary duty to the city, it is as a resident and voter, I will vote for what is good for the city as a whole.

*Vincent M. Tutiakoff, Sr.* -2-10-2020



2/10/2020

## Declaration of Financial Interest

Marjie,

I am writing this in response to Brooks regarding a potential conflict with the Makushin Geothermal project.

I am a shareholder of The Ounalashka Corporation (OC). I own 75.89 shares of stock.

I also sit on the board of directors of OC.

Ounalashka Corporation is the majority owner of Ounalashka Corporation/Chena Power LLC. (OCCP) of which I do not serve as a director.

OC has 26,900 outstanding shares of stock.

I do not receive any bonuses on the performance of OC.

Regarding my fiduciary duty and my belief in how I handle myself when the matter comes up.

When I am at a duly convened meeting of the City of Unalaska my fiduciary duty is to the City of Unalaska as a City Council member. I am one of six Council members

When I am at a duly convened meeting of The Ounalashka Corporation my fiduciary duty is to the shareholders of The Ounalashka Corporation. I am one of nine board members.

Dennis Robinson



TO: Unalaska City Clerk – Marjorie Veeder  
FROM: Councilman David M. Gregory  
DATE: February 19, 2020  
REF: Declaration of Financial Interest

With respect to my involvement with the OC/CP LLC I offer the following.

I am an employee of The Ounalashka Corporation, my title is Lands Manager, I am a salaried employee.

My wife Okalena Patricia Lekanoff Gregory is a shareholder in the Corporation and owns 95 shares of OC Stock out of a total of 26,900 total shares available. She is also a Director on the OC Board.

My Son, James Gregory and my daughter Delores Gregory are both Shareholders who own 10 shares of OC stock each.

I work for the Ounalashka Corporation which is the majority owner of the OC/CP LLC developing the Makushin Geothermal Project.

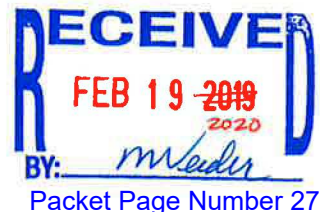

As an employee of the Ounalashka Corporation I am eligible for an annual bonus and have received bonuses in the past from OC.

I regard my fiduciary duty to the City of Unalaska as my number One duty while sitting as a Council Member during Council Meetings. I am one of six members of the Unalaska City Council.

In my role of Lands Manager for OC I am called upon to provide support to the OC/CP LLC in the form of providing maps, Drone Imagery, exhibits and expertise on the use of OC lands.

I am not involved in any final decision making in either the OC/CP project or other OC projects.

David M Gregory



CITY OF UNALASKA  
UNALASKA, ALASKA

ORDINANCE 2020-01

AN ORDINANCE OF THE UNALASKA CITY COUNCIL AMENDING UNALASKA CODE OF ORDINANCES § 3.44.020, AND § 3.44.030 (C) AND (D), CLARIFYING OVERTIME APPROVAL REQUIREMENTS AND SPECIFYING EMPLOYEES RECEIVING OVERTIME COMPENSATION FOR WORKING ON HOLIDAYS

BE IT ENACTED BY THE UNALASKA CITY COUNCIL as follows:

**Section 1: Classification.** This Ordinance is a Code Ordinance.

**Section 2: Effective Date.** This ordinance is effective upon adoption.

**Section 3: Amendment of § 3.44.020 OVERTIME PROCEDURES and § 3.44.030 TIME AND ONE-HALF OVERTIME**

Section 3.44.030 of the Unalaska Code of Ordinances is hereby amended to read as follows [additions are underlined and deletions are overstruck]:

§ 3.44.020 OVERTIME PROCEDURES.

Overtime payment will be received by all employees except for those employees who, by the nature of their work, are deemed by the city to be overtime exempt. All overtime records are subject to review by the City Manager. Department Directors will seek to minimize overtime wherever practicable. Overtime shall be scheduled as fairly and equally as practicable among employees, based first on qualifications to perform the work and secondly on seniority. All overtime shall be approved by the employee's supervisor.

§ 3.44.030 TIME AND ONE-HALF OVERTIME.

Overtime hours shall be paid and shall be defined as follows:

(A) Hours worked in excess of eight regular time hours worked in one day if working a five-day work week shall be paid at time and one-half. Hours worked in excess of ten regular time hours worked in one day if working a four-day work week shall be paid at time and one-half.

(B) Hours worked in excess of forty regular time hours of hours worked shall be paid at time and one-half. If an employee is compensated for a city holiday or for personal leave hours taken during the regular city work week, those hours of compensation for time worked shall not count as hours worked within the meaning of this section.

(C) For employees in regular full-time and regular part-time positions only, who are in pay status the day before and the day following a recognized city holiday listed in UCO 3.44.060, Hhours worked on such a holiday ~~recognized city holidays~~ shall be paid at time and one-half, in addition to holiday pay.

~~(D) All overtime must be approved by the supervisor and the Director prior to its performance.~~

PASSED AND ADOPTED by a duly constituted quorum of the Unalaska City Council on March 10, 2020.

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Vincent M. Tutiakoff, Sr.  
Mayor

ATTEST:

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Marjie Veeder, CMC  
City Clerk

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## MEMORANDUM TO COUNCIL

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To: Mayor and City Council Members  
From: J. R. Pearson, Assistant City Manager  
Through: Erin Reinders, City Manager  
Date: March 10, 2020  
Re: Ordinance 2020-01, amending Unalaska Code of Ordinances § 3.44.020 and § 3.44.030 (C) and (D), clarifying overtime approval requirements and specifying employees receiving overtime compensation for working on holidays

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**SUMMARY:** The Department of Administration recently realized that Unalaska Code of Ordinances § 3.44.030 (C) did not specify the applicable employees receiving compensation when working on recognized holidays.

In addition, the recent financial audit revealed that § 3.44.030 (D) did not consider the fact that at times, such as during emergencies, pre-approval of overtime by the supervisor and Director is not always possible.

After the first reading on February 11, 2020, Council communicated concerns about how adequately the proposed amendment to § 3.44.030 (D) addressed the findings in the recent financial audit. After discussions among staff and City attorney, the amendment will address the primary finding in the audit regarding pre-approval of overtime; however, it would be more appropriate to address other concerns in an updated overtime policy.

**PREVIOUS COUNCIL ACTION:** Council adopted the current version of Chapter 3 of the Code of Ordinances on September 10, 2019.

**BACKGROUND:** The current version of § 3.44.030 (C) caused confusion concerning whether less than part time employees were entitled to compensation when working holidays.

The recent financial audit revealed that pre-approval of overtime by the supervisor and Department Director, as required by § 3.44.030 (D), did not always have supporting documentation indicating that it had been pre-approved. Further investigation determined that pre-approval of overtime is not possible in every instance.

This code change is part of a multi-pronged approach to address overtime usage as well as the finding (which related only to the documentation of overtime pre-approval). In order to better ensure proper management and documentation of our time and staffing and improve consistency throughout the organization we have taken two additional actions. One is updating the city-wide overtime policy, which dives deeper in to how we will implement code. This updated policy is included in your packets. The second is work on implementing an electronic time management system. This will replace our current antiquated paper-based system, and streamline approval processes and improve the consistency of documentation.

**DISCUSSION:** The amendment to § 3.44.030 (C) is needed to accurately define those employees who will be compensated when working on holidays. This amendment also supports § 3.44.090 Computation of Holiday Pay that defines those eligible for holiday pay. Please note

that employees who are in “pay status” are those who are not in leave without pay status prior and after the holiday. Employees who are not in leave without pay status remain in pay status through weekends or other normal days off as based on their work schedule.

An amendment was made to § 3.44.030 (D) and then moved to § 3.44.020. The amendment is needed because the language “prior to performance” is ambiguous and has historically been difficult to apply and document consistently. There are also times when pre-approval is impracticable (such as emergencies). Staff and the City Attorney believes that facilitating internal compliance would be more appropriately addressed in an updated administrative policy regarding overtime. Directors were removed from this section because approval of overtime is most frequently made by the supervisors. § 3.44.020 is the more appropriate location to insert the amended overtime approval requirement.

**ALTERNATIVES:** Council could decide not to adopt these amendments. However, there will be continued confusion about who is eligible for compensation while working on recognized City holidays. In addition, there would continue to be ambiguity about pre-approval of overtime and future financial audits would likely continue to note that this section of code is not being followed.

**FINANCIAL IMPLICATIONS:** None.

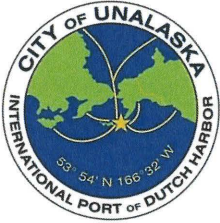
**LEGAL:** Staff consulted with the City Attorney, who provided suggestions to better communicate the intent of the amendments.

**STAFF RECOMMENDATION:** Staff recommends approval.

**PROPOSED MOTION:** I move to adopt Ordinance 2020-01.

**CITY MANAGER COMMENTS:** These proposed changes provide increased clarity for all employees. The specifics of these changes were developed in a coordinated effort between staff and the city attorney. I support this Ordinance.

**ATTACHMENTS:** Updated City Policy – 12.0614 Overtime.

	<b>Responsible Department:</b> Administration
	<b>Document Type:</b> POLICY & PROCEDURE
	<b>Number:</b> 12-0614
	<b>Title:</b> Overtime
	<b>Effective Date:</b> March 5, 2020
	<b>Re-evaluation Date:</b>
<b>Reference:</b> UCO §3.44.020, §3.44.030, §3.44.040, §3.44.050	

**PURPOSE:** To document the City's policy regarding overtime, and to provide overtime reporting and approval requirements.

**SCOPE:** Citywide non-exempt employees, supervisors, and Directors responsible for reporting overtime.

**DEFINITIONS:**

Fair Labor Standards Act (FLSA) – 1933 Federal law governing labor standards.

Non-exempt employees – Employees who are compensated on an hourly basis, subject to the rules of the Fair Labor Standards Act (FLSA).

Overtime – Hours worked in excess of 8 hours per day (or 10 hours per day if agreed in employee contract) or 40 hours per week. Types of overtime are listed below:

- Call-outs or Emergencies – Time worked as a result of call-outs or emergencies after normal work hours. It may not always be practicable to obtain supervisor approval for this type of overtime until after the work has started or has been completed.
- Incidental – Time worked after normal work hours that may be required as a result of needing to meet deadlines, critical work that could not be not completed during normal work hours, another employee calls in sick, or other incidents. Generally, this should be approved by the supervisor prior to performance.
- Scheduled Overtime – Overtime worked that was scheduled by the supervisor and it is understood that this was approved prior to performance.

**ATTACHMENTS:** None

**DETAILS:**

This policy shall be communicated to all employees and must be strictly enforced. Merely informing employees of the rule against unauthorized overtime is not sufficient.

**1. Statement of Policy**

- a. As a general rule of FLSA, the City of Unalaska must pay employees for whatever work the employer knowingly “suffers or permits” an employee to perform. This applies even if the work is conducted away from the employee’s usual work location and even if the work is not specifically requested or expected.
- b. Non-exempt employees are not to work before, beyond, or outside their normal hours, and are not to work overtime unless specifically authorized pursuant to UCO 3.44.020, 3.44.030, 3.44.040 and 3.44.050.



- c. Non-exempt employees shall report only the time worked, regardless if it was more or less than the normally scheduled work hours.
- d. Overtime shall be approved by the supervisor.
- e. Directors and supervisors shall conduct audits of employee time records on a regular basis.
- f. Directors and supervisors are responsible for the accuracy of employee time reporting and shall ensure that employees are accurately reporting their time worked and are only working the authorized amount of overtime. Employees submitting false information or working overtime without supervisor approval may be subject to discipline, up to and including termination.
- g. Directors and supervisors must be diligent in minimizing overtime and preventing the abuse of overtime. Applicable law makes it the duty of management to exercise its control and ensure that work is not performed that the employer does not deem necessary.
- h. Failure to adhere to this policy may result in disciplinary action.

## **2. Approval and Documentation of Overtime**

Approval of overtime is established when the supervisor and director approve submitted employee time records documenting overtime.

- a. The comments section of the time reporting system shall be used for overtime reporting. For those departments that require more overtime work, additional documentation may be submitted or maintained with the time records.
- b. Supervisors and Directors should assign overtime based on qualifications to perform the work, skillsets, or necessary certifications or licenses. Where qualifications are equal, seniority may be a factor in assigning overtime. Employee development and training should be encouraged so that the division is not dependent on a limited number of employees available to work overtime. When approving and documenting overtime, supervisors and Directors shall avoid showing favoritism in assigning overtime.
- c. When approving documented overtime, the supervisor and/or Director shall ensure that the following information is included:
  - i. Department and Division
  - ii. Employee name
  - iii. Date overtime worked
  - iv. Date overtime approved
  - v. Hours of overtime
  - vi. Description of work accomplished during the overtime
  - vii. Name of the supervisor or Director who approved the overtime
  - viii. Justification of each instance of overtime with an explanation of why it was needed and why it could not be done during normal work hours

Note: Overtime justification should include enough information to allow Directors to understand what work was performed and why it could not be performed during normal working hours. Statements such as "it has to be done" or "worked more than 8 hours" are not sufficient. Examples of appropriate justification include: emergency call outs after normal work hours,

12-0614 Overtime

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another employee calls in sick, or completing a repair that brings critical services back online. Routine repairs and maintenance, and administrative work would not typically be justified overtime, except in some cases when firm deadlines must be met and other critical tasks prevented the work from being completed during normal work hours.

**APPROVED:**

**J R Pearson**

Digitally signed by J R  
Pearson  
Date: 2020-03-05 16:10:38

J. R. Pearson, Assistant City Manager



Erin Reinders, City Manager

3/5/2020

\_\_\_\_\_  
Date

3/5/2020

\_\_\_\_\_  
Date

CITY OF UNALASKA  
UNALASKA, ALASKA

ORDINANCE 2020-02

AN ORDINANCE OF THE UNALASKA CITY COUNCIL AMENDING UNALASKA CODE OF ORDINANCES § 6.28.030, REQUIRED EXEMPTIONS, TO DEFINE EXEMPT VESSELS AND TO RENAME AND REORGANIZE THE CODE SECTION

WHEREAS, the property tax exemption for vessels is not intended to apply to permanently docked or moored vessels; and

WHEREAS, the title of the code section is more accurate if labeled “Exemptions” rather than “Required Exemptions”; and

WHEREAS, § 6.28.030 has been amended from time to time; and

WHEREAS, owing to periodic amendments, the structure of the section has become unnecessarily complex; and

WHEREAS, a clear restatement of the exemptions and the rules pertaining to them is desirable.

BE IT ENACTED by the Unalaska City Council:

Section 1: Form. This is a Code ordinance.

Section 2: Effective Date. This ordinance becomes effective upon adoption.

Section 3: Repeal and Reenactment of UCO § 6.28.030. Unalaska Code of Ordinances § 6.28.030 is hereby repealed and replaced with a new § 6.28.030 to read as follows:

**§ 6.28.030 EXEMPTIONS.**

(A) The following is exempt from general property taxation:

- (1) Municipal, state or federally owned property, except that a private leasehold, contract or other interest in property is taxable to the extent of the interest.
- (2) Household furniture and personal effects of members of a household.
- (3) Property used exclusively for nonprofit religious, charitable, cemetery, hospital or educational purposes.
- (4) Property of a nonbusiness organization or its auxiliary composed entirely of persons with 90 days or more of active service in the armed forces of the United States whose conditions of service and separation were other than dishonorable.
- (5) Money on deposit.

- (6) The first \$150,000 of the assessed value of the real property owned and occupied as a permanent place of abode by (a) a resident 65 years of age or over; (b) a disabled veteran; (c) a resident at least 60 years old who is the widow or widower of a person who qualified for an exemption under (a) or (b) of this subsection. In a case of hardship, the City of Unalaska hereby provides for exemption beyond the first \$150,000 of assessed value in accordance with regulations of the State of Alaska.
- (7) Real property or an interest in real property that is exempt from taxation under 43 U.S.C. 1620(d), as amended.
- (8) The increase in assessed value directly attributable to the subdivision of a single parcel of property into three or more parcels and completion of the construction of any improvements made to the property by the property owner necessitated by its subdivision. This exemption shall commence no earlier than the first assessment year after subdivision and shall expire for each individual lot upon the earlier of:
  - (a) Sale, leasing or rental of the lot; or
  - (b) Construction or placement of any structure upon the lot; or
  - (c) Use of the lot for any occupation, employment, or enterprise that is carried on for profit; or
  - (d) The end of the fifth assessment year following subdivision.
- (9) One motor vehicle per household owned by a resident who is 65 years of age or older on January 1 of the assessment year is exempt either from taxation on its assessed value or from the registration tax under AS 28.10.431. An exemption may be granted under this subsection only on written application on a form prescribed by the Alaska Department of Administration.
- (10) Commercial and non-commercial vessels.
- (11) All other property exempt from general taxation under AS 29.45.030.
- (12) The first \$10,000 of the assessed value of the real property owned and occupied as a permanent place of abode by a resident who provides in the City volunteer (a) firefighting services and is certified as a fire fighter by the Alaska Department of Public Safety, or (b) emergency medical services and is certified under AS 18.08.082.
- (13) The first \$30,000 of the full and true value of all personal property is tax exempt.
- (14) Two percent of the assessed value of a structure if the structure contains a fire protection system that is approved under AS 18.70.081, in operating condition, and incorporated as a fixture or part of the structure, based on the assessment:

- (a) for 1981, if the fire protection system was a fixture of the structure on January 1, 1981; or
  - (b) as of January 1 of the year immediately following the installation of the fire protection system, if the fire protection system became a fixture of the structure after January 1, 1981.
- (B) In subsection (A)(3) of this section, property used exclusively for religious purposes includes the following property owned by a religious organization:
  - (1) The residence of a bishop, pastor, priest, rabbi, minister, or religious order of a recognized religious organization;
  - (2) A structure, its furniture, and fixtures used by the religious organization solely for public worship, charitable purposes, religious administrative offices, religious education, or a nonprofit hospital; and
  - (3) Real property occupied by parking spaces required by local ordinance to be adjacent to or near a structure described in subsection (2), above, and owned by the religious organization owning said structure.
- (C) Property described in subsections (A)(3) or (4) of this section from which income is derived is exempt only if that income is solely from use of the property by qualified nonprofit religious, charitable, hospital, educational groups, or veteran groups. If used by nonprofit educational groups, the property is exempt only if used exclusively for classroom space.
- (D) For the purposes of (A)(6) and (A)(12) of this section:
  - (1) Real property includes but is not limited to mobile homes, whether classified as real or personal property for municipal tax purposes.
  - (2) "Disabled Veteran" means a disabled person separated from the military service of the United States under a condition that is not dishonorable who is a resident of the State, whose disability was incurred or aggravated in the line of duty in the military service of the United States, and whose disability has been rated as 50% or more by the branch of service in which that person served or by the Veteran's Administration.
  - (3) No exemption may be granted except upon written application for the exemption on a form prescribed by the State assessor for use by local assessors or upon a form established by the City Assessor. The claimant must file the application no later than March 1 of the assessment year for which the exemption is sought. The City Council for good cause shown may waive the claimant's failure to make timely application for the exemption for that year and authorize the assessor to accept the application as if timely filed. The claimant must file a separate application for each assessment year in which the exemption is sought. If an application is filed within the required time and approved by the assessor, the assessor shall allow an exemption in accordance with the provisions of this section. If a claimant whose failure to file by March 1 of the assessment year has been waived as

provided in this subsection and application for exemption is approved, the amount of tax which the claimant may have already paid for the assessment year for the property exempted shall be refunded to the claimant.

- (4) The assessor shall require proof in the form the assessor considers necessary of the right to and amount of an exemption claimed, and shall require a disabled veteran claiming an exemption thereunder on that basis to provide evidence of the disability rating. The assessor may require proof of eligibility at any time.
  - (5) Only one exemption under (A)(6) may be granted for the same property and, if two or more persons are eligible for an exemption for the same property, the parties shall decide between or among themselves which shall receive the benefit of the exemption. Exemption under (A)(6) may be denied if the assessor determines, after notice and hearing to the parties concerned, that the property was conveyed to the applicant primarily for the purpose of obtaining the exemption.
  - (6) If two or more individuals are eligible for an exemption for the same property under (A)(12), not more than two exemptions may be granted.
  - (7) The assessor's eligibility determination may be appealed under AS 44.62.560-44.62.570.
- (E) For the purpose of determining property exempt under (A)(7) of this section, the following definitions apply to terms used in 43 U.S.C. 1620(d) unless superseded by applicable federal law:
- (1) "Developed" means a purposeful modification of the property from its original state that effectuates a condition of gainful and productive present use without further substantial modification, surveying, construction of roads, providing utilities or other similar actions normally considered to be component parts of the development process, but that do not create the condition described in this subsection, do not constitute a developed state within the meaning of this subsection developed property, in order to remove the exemption, must be developed for purposes other than exploration, and be limited to the smallest practicable tract of the property actually used in the developed state.
  - (2) "Exploration" means the examination and investigation of undeveloped land to determine the existence of subsurface nonrenewable resources.
  - (3) "Lease" means a grant of primary possession entered into for gainful purposes with a determinable fee remaining in the hands of the grantor with respect to a lease that conveys rights of exploration and development, this exemption shall continue with respect to that portion of the leased tract that is used solely for the purpose of exploration.
  - (4) If property or an interest in property that is determined not to be exempt under (A)(7) reverts to an undeveloped state, or if the lease is terminated,

the exemption shall be granted, subject to the provisions of (A)(7) of this section.

- (F) For the purpose of determining property exempt under (A)(8) of this section:
- (1) The date of subdivision shall be either the date of preliminary approval of a plat by the platting authority or the date of recordation of a final plat by the Alaska Department of Natural Resources;
  - (2) Lots for which the city completes the construction of required improvements shall not be exempt; and
  - (3) Lots whose exemptions terminate prior to the due date for final payment of tax shall not be subject to a pro rata payment of tax.
- (G) For the purpose of determining eligibility for exemption under (A)(10) of this section, a vessel must have been capable of safe navigation and operation upon the waters of the city as of January 1 of the assessment year or within 60 days of that date, and be registered and numbered under AS 05.25.055 unless exempt from the numbering and registration requirements of AS 05.25.055, and not be permanently moored, docked or affixed to the tidelands.
- (H) Laws exempting certain property from execution under AS 09 (Code of Civil Procedure) do not exempt the property from taxes levied and collected by the City.

PASSED AND ADOPTED by a duly constituted quorum of the Unalaska City Council on March 10, 2020.

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Vincent M. Tutiakoff, Sr.  
Mayor

ATTEST:

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Marjie Veeder, CMC  
City Clerk

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## MEMORANDUM TO COUNCIL

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To: Mayor and City Council Members  
From: Marjie Veeder, City Clerk  
Through: Erin Reinders, City Manager  
Date: March 10, 2020  
Re: Ordinance 2020-02, Amending Unalaska Code of Ordinances § 6.28.030, property tax exemptions

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**SUMMARY:** This ordinance amends § 6.28.030, Required Exemptions, in the property tax code. The version of the ordinance presented tonight:

- retains the exemption for structures containing fire protection systems, exempting 2% of the assessed value of the structure; see paragraph (A)(14) of the ordinance
- clarifies that the exemption for vessels does not apply to vessels that are permanently docked or moored, with simplified language as compared to the earlier version of the ordinance; see paragraphs (A)(10) and (G) of the ordinance
- renames the section “Exemptions” and
- reorganizes the section

**PREVIOUS COUNCIL ACTION:** Previous council action related to § 6.28.030, Required Exemptions, is as follows:

- Ordinance 2003-05 passed May 6, 2003: council adopted an ordinance amending and rewriting in its entirety, Title 6, Revenue and Finance.
- Ordinance 2015-22, passed November 24, 2015: creating an exemption from business personal property tax for the first \$30,000 of the full and true value of business personal property.
- Ordinance 2015-26, passed on January 26, 2016: creating a five year exemption from property tax for the increase in assessed value directly attributable to the subdivision of a single parcel of property into three or more parcels.
- On February 25, 2020, council reviewed a proposed draft of Ordinance 2020-02, and directed the city manager to determine steps necessary to retain the exemption for structures containing fire protection systems.

**BACKGROUND and DISCUSSION:** The proposed ordinance is organized so that the exemptions are listed in section (A) and numbered 1-14. Sections (B) through (G) provide additional detail regarding certain exemptions; and section (H) states that certain state laws exempting certain property from execution do not exempt the property from city property tax.



In 2017, the state repealed the mandatory exemption for 2% of the assessed value of structures containing fire protection systems, but now allows for such an exemption in the optional category. Inaccurate advice was given by the city attorney in preparation for the February 25 council meeting. Please see related memo from Boyd, Chandler, Falconer & Munson dated February 26, 2020. The City may retain the partial exemption should the Council wish to do so. The fire protection system exemption, if retained, applies to all structures, not just residential, and does not need to be ratified by the voters.

There are vessels located within the city limits that are permanently affixed in the tidelands. The city attorney and contract assessor agree that these vessels are subject to city property tax without amending code, but recommended clarification. Ordinance 2020-02 clarifies that the exemption for vessels in paragraph A(10) does not apply to vessels permanently docked, moored or affixed in the tidelands. This clarification is accomplished in paragraph (G) by stating that vessels eligible for the exemption must be capable of safe navigation and operation in the waters of the city as of January 1 of the assessment year, or within 60 days of that date, and be registered and numbered as provided for under state statute AS 05.25.055, unless exempt from the numbering and registration requirements. The language of this section was simplified from the version presented to council on February 25, 2020, by referencing state statute for the registration and numbering of boats.

Though not part of the vessel definition, the first \$30,000 of the full and true value of all personal property is tax exempt, so any vessel worth less than \$30,000, regardless of whether the vessel qualifies for the exemption, is exempt.

**ALTERNATIVES:** Council may choose to adopt this ordinance or not; or may choose to amend the ordinance.

**Partial exemption for structures containing fire protection systems:** This is allowed by the state as an optional exemption. It is council's decision whether to retain this exemption or not. If council wishes to remove this partial exemption, a motion to amend Ordinance 2020-02, deleting paragraph (A)(14) is required.

**Impact of not clarifying the Vessel Exemption:** Vessels permanently moored or docked, or permanently affixed in the tidelands, are already subject to property tax. This code clarification reduces the risk of a dispute or litigation should the owner of one these vessels disagree with our conclusion.

**FINANCIAL IMPLICATIONS:** The version of the ordinance presented tonight retains the partial exemption for structures containing fire protection systems. If council chooses to delete this exemption, four property owners owning nine parcels claiming the exemption, will be impacted. The combined value of the exempt property is \$933,252, resulting in an increase in taxable value, and thereby increasing property tax revenue to the city by \$9,799.15 at the current millage rate.

There are two property owners whose permanently affixed vessels were added to the tax roll this year, with a combined assessed value of \$2,350,700, resulting in an increase in taxable value, and thereby increasing property tax revenue to the city by \$24,682.35 at the current millage rate.

**LEGAL:** The City Attorney has been involved in the discussion of this topic, and wrote the ordinance.

**STAFF RECOMMENDATION:** Staff recommends adoption of Ordinance 2020-02.

**PROPOSED MOTION:** I move to adopt Ordinance 2020-02.

If council wishes to remove the partial exemption for structures containing fire protection systems, a motion to amend proposed Ordinance 2020-02, deleting paragraph (A)(14) is required.

**CITY MANAGER COMMENTS:** I support staff's recommendation.

**ATTACHMENTS:**

Exhibit A - current version of § 6.28.030

Exhibit B - AS 05.25.055, Registration and Numbering of Boats

**EXHIBIT A**  
**CURRENT VERSION OF UCO § 6.28.030 REQUIRED EXEMPTIONS**

(A) The following property is exempt from general taxation:

(1) Municipal, state or federally owned property, except that a private leasehold, contract or other interest in property is taxable to the extent of the interest.

(2) Household furniture and personal effects of members of a household.

(3) Property used exclusively for nonprofit religious, charitable, cemetery, hospital or educational purposes.

(4) Property of a nonbusiness organization or its auxiliary composed entirely of persons with ninety (90) days or more of active service in the armed forces of the United States whose conditions of service and separation were other than dishonorable.

(5) Money on deposit.

(6) The real property of certain residents of the State to the extent and subject to the conditions provided in (E) of this section.

(7) Real property or an interest in real property that is exempt from taxation under 43 U.S.C. 1620d, as amended.

(8) The increase in assessed value directly attributable to the subdivision of a single parcel of property into three or more parcels and completion of the construction of any improvements made to the property by the property owner necessitated by its subdivision. This exemption shall commence no earlier than the first assessment year after subdivision and shall expire for each individual lot upon the earlier of:

(a) Sale, leasing or rental of the lot; or

(b) Construction or placement of any structure upon the lot; or

(c) Use of the lot for any occupation, employment, or enterprise that is carried on for profit; or

(d) The end of the fifth assessment year following subdivision.

(B) In subsection (A) of this section, property used exclusively for religious purposes includes the following property owned by a religious organization:

(1) The residence of a bishop, pastor, priest, rabbi, minister or religious order of a recognized religious organization.

(2) A structure, its furniture and its fixtures used solely for public worship, charitable purposes, religious administrative offices, religious education or a nonprofit hospital.

(3) Lots required by local ordinance for parking near a structure defined in subsection (2) of this subsection.

(C) Property described in subsections (A)(3) or (4) of this section from which income is derived is exempt only if that income is solely from use of the property by nonprofit religious, charitable, hospital, or educational groups. If used by nonprofit educational groups, the property is exempt only if used exclusively for classroom space.

(D) Laws exempting certain property from execution under AS 09 (Code of Civil Procedure) do not exempt the property from taxes levied and collected by the City.

(E) The real property owned and occupied as a permanent place of abode by a (1) resident sixty-five (65) years of age or over, (2) disabled veteran, or (3) resident at least sixty (60) years old who is the widow or widower of a person who qualified for an exemption under (1) or (2) of this subsection, is exempt from taxation on the first \$150,000 of the assessed value of the real property. In a case of hardship, the City of Unalaska hereby provides for exemption beyond the first \$150,000 of assessed value in accordance with regulations of the State of Alaska. Only one (1) exemption may be granted for the same property and, if two (2) or more persons are eligible for an exemption for the same property, the parties shall decide between or among themselves which shall receive the benefit of the exemption. Real property may not be exempted under this subsection if the assessor determines, after notice and hearing to the parties concerned, that the property was conveyed to the applicant primarily for the purpose of obtaining the exemption. The determination of the assessor may be appealed under AS 44.62.560-44.62.570.

(F) No exemption may be granted under (A)(8) or (E) of this section except upon written application for the exemption on a form prescribed by the State assessor for use by local assessors or upon a form established by the City Assessor. The claimant must file the application no later than March 1 of the assessment year for which the exemption is sought. The City Council for good cause shown may waive the claimant's failure to make timely application for the exemption for that year and authorize the assessor to accept the application as if timely filed. The claimant must file a separate application for each assessment year in which the exemption is sought. If an application is filed within the required time and approved by the assessor, the assessor shall allow an exemption in accordance with the provisions of this section. If a claimant whose failure to file by March 1 of the assessment year has been waived as provided in this subsection and application for exemption is approved, the amount of tax which the claimant may have already paid for the assessment year for the property exempted shall be refunded to the claimant. The assessor shall require proof in the form the assessor considers necessary of the right to and amount of an exemption claimed under (A)(8) or (E) of this section, and shall require a disabled veteran claiming an exemption under (E) of this section to provide evidence of the disability rating. The assessor may require proof under this section at any time.

(G) (1) In (E) and (F) of this section the term real property includes but is not limited to mobile homes, whether classified as real or personal property for municipal tax purposes.

(2) In (E) and (F) of this section, the term "Disabled Veteran" means a disabled person separated from the military service of the United States under a condition that is not dishonorable who is a resident of the State, whose disability was incurred or aggravated in the line of duty in the military service of the United States, and whose disability has been rated as fifty percent (50%) or more by the branch of service in which that person served or by the Veteran's Administration.

(H) Two percent (2%) of the assessed value of a structure is exempt from taxation if the structure contains a fire protection system approved under AS 18.70.081, in operating conditions, and incorporated as a fixture or part of the structure. The exemption granted by this subsection is limited to:

(1) An amount equal to two percent (2%) of the value of the structure based on the assessment for 1981, if the fire protection system is a fixture of the structure on January 1, 1981; or

(2) An amount equal to two percent (2%) of the value of the structure based on the assessment as of January 1 of the year immediately following the installation of the fire protection system if the fire protection system becomes a fixture of the structure after January 1, 1981.

(I) For the purpose of determining property exempt under (A)(7) of this section, the following definitions apply to terms used in 43 U.S.C. 1620d unless superseded by applicable federal law.

(1) "Developed" means a purposeful modification of the property from its original state that effectuates a condition of gainful and productive present use without further substantial modification, surveying, construction of roads, providing utilities or other similar actions normally considered to be component parts of the development process, but that do not create the condition described in this subsection, do not constitute a developed state within the meaning of this subsection developed property, in order to remove the exemption, must be developed for purposes other than exploration, and be limited to the smallest practicable tract of the property actually used in the developed state.

(2) "Exploration" means the examination and investigation of undeveloped land to determine the existence of subsurface nonrenewable resources.

(3) "Lease" means a grant of primary possession entered into for gainful purposes with a determinable fee remaining in the hands of the grantor with respect to a lease that conveys rights of exploration and development, this exemption shall continue with respect to that portion of the leased tract that is used solely for the purpose of exploration.

(J) If property or an interest in property that is determined not to be exempt under (A)(7) of this section reverts to an undeveloped state, or if the lease is terminated, the exemption shall be granted, subject to the provisions of (A)(7) of this section.

(K) For the purpose of determining property exempt under (A)(8) of this section:

(1) The date of subdivision shall be either the date of preliminary approval of a plat by the platting authority or the date of recordation of a final plat by the Alaska Department of Natural Resources.

- (2) Lots for which the city completes the construction of required improvements shall not be exempt.
- (3) Lots whose exemptions terminate prior to the due date for final payment of tax shall not be subject to a pro rata payment of tax.

(L) One motor vehicle per household owned by a resident sixty- five (65) years of age or older on January 1 of the assessment year is exempt either from taxation on its assessed value or from the registration tax under AS 28.10.431. An exemption may be granted under this subsection only on written application on a form prescribed by the Alaska Department of Administration.

(M) Commercial and non-commercial vessels.

(N) All other property exemptions from general taxation under AS 29.45.030.

(O) The real property owned and occupied as a permanent place of abode by a resident who provides in the City volunteer (1) firefighting services and is certified as a fire fighter by the Alaska Department of Public Safety, or (2) emergency medical services and is certified under AS 18.08.082 is exempt from taxation on the first \$10,000 of the assessed value of the real property. If two (2) or more individuals are eligible for an exemption for the same property, not more than two exemptions may be granted.

(P) The first \$30,000 of the full and true value of all personal property is tax exempt.

**EXHIBIT B**  
**AS 05.25.055. Registration and Numbering of Boats**

- (a)** An undocumented boat placed on water of the state must be registered and numbered as required by this chapter. The Department of Administration shall adopt by regulation a boat registration and numbering system that is consistent with the national standard for state numbering systems established by the United States Coast Guard.
- (b)** In adopting a boat registration system under (a) of this section, the Department of Administration shall authorize agents, including boat dealers, to register boats.
- (c)** A boat dealer shall require a purchaser of a new or used boat sold at retail to complete a registration application and pay the registration fee before the boat leaves the dealer's premises unless the boat is exempt from registration and numbering under this chapter or regulations adopted under this chapter.
- (d)** A person may not operate a boat on water of the state unless a valid certificate of number has been awarded by the Department of Administration to the boat and the identification number and any required validation decals are properly displayed on the boat.
- (e)** The Department of Administration shall authorize agents to accept an application and registration fee for registration, to issue a registration, and to forward the application and registration fee to the Department of Administration.
- (f)** Unless otherwise provided by this chapter, or unless the owner has been awarded a current, valid Alaska certificate of number from the United States Coast Guard, the owner of a boat for which a current certificate of number has been awarded under federal law or a federally approved numbering system of another state shall apply for a certificate of number in this state as required by this chapter if the boat is operated on water of the state for more than 90 consecutive days. If a boat has an existing number, the owner may request that the department issue the same number for purposes of this section, and the department shall comply with the request unless compliance would result in a duplication of numbers.
- (g)** A certificate of number issued under this chapter is valid for three years unless terminated or discontinued earlier as required by this chapter and regulations adopted under this chapter. The certificate expires on the last day of the month at the end of the three-year period. The expiration date shall be indicated on the certificate.
- (h)** All records of ownership of boats that are kept by the Department of Administration under this section are public records. The Department of Administration shall provide records of ownership and registration expense reports to the Department of Public Safety for the purposes of meeting the federal requirements for state programs and implementing this chapter.
- (i)** The following boats are exempt from the numbering and registration provisions of this section:
- (1)** a boat that is operated in this state for a period not exceeding 90 consecutive days and that has a current, valid certificate of number issued by another state having a federally approved numbering system;
  - (2)** a foreign boat operated in water of the state for a period not exceeding 90 consecutive days;
  - (3)** a boat owned by the United States or an entity or political subdivision of the United States, or a boat owned by a state or an entity or political subdivision of a state;
  - (4)** a boat that is not equipped with mechanical propulsion;
  - (5)** a boat with a valid document to operate the boat that is issued by the United States or a foreign government;
  - (6)** a handmade nonmotorized umiaq with a walrus or sealskin covering.

**BOYD, CHANDLER, FALCONER & MUNSON, LLP**

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**MEMORANDUM**

**To:** Erin Reinders  
Marjorie Veeder

**From:** Charles A. Cacciola

**Date:** February 26, 2020

**Re:** Fire Protection System Exemption

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Until 2017, Alaska law required municipalities to exempt 2% of a structure's value if the structure had a fire protection system. This exemption was codified as subsection (l) of AS 29.45.030, the statute setting forth *required* property tax exemptions. The legislature repealed AS 29.45.030(l) in 2017.

At the same time, the legislature added a new subsection (x) to AS 29.45.050, the statute setting forth *optional* exemptions. The new AS 29.45.050(x) is substantively the same as the repealed AS 29.45.030(l). In short, the legislature changed the fire system exemption from a required exemption to an optional exemption. As a result of the change, the City is no longer required to provide the exemption, but may do so if it chooses.

I previously advised that AS 29.45.050 — optional exemptions — did not authorize the City to provide the fire system exemption. This was incorrect. Though I relied upon an up-to-date volume of statutes for AS 29.45.030, I looked at an outdated volume when Ms. Veeder asked about alternatives to removing this exemption from UCO § 6.28.030. Because AS 29.45.050(x) did not appear in the outdated volume, I advised that the only provision of AS 29.45.050 that could provide a (partial) basis for the fire system exemption was subsection (a), which authorizes exemptions for residential property only and only if ratified by the voters.

Because the legislature added the fire system exemption to AS 29.45.050 as subsection (x), the City may retain the exemption should the Council wish to do so. The fire system exemption, if retained, applies to all structures, not just residential, and does not need to be ratified by the voters.

CITY OF UNALASKA  
UNALASKA, ALASKA

RESOLUTION 2020-15

A RESOLUTION OF THE UNALASKA CITY COUNCIL AUTHORIZING THE CITY MANAGER TO SIGN A SETTLEMENT AGREEMENT WITH ADVANCED BLASTING SERVICES, LLC ("ABS") TO RESOLVE CITY OF UNALASKA v. ADVANCED BLASTING SERVICES, LLC, CASE NO. 3UN-19-0025 CI

WHEREAS, on or about September 25, 2012, ABS and the City entered into a Construction Contract designated as Wastewater Treatment Plant Civil Site Preparation, DPW Project No. 12501-03 and DPW Project No. 12802, City of Unalaska Cells II-1 & II-2 Landfill Expansion (the "Contract") wherein ABS agreed to work in accordance with the terms, conditions and specifications stated in the Contract documents (the "Project"); and

WHEREAS, certain issues and disputes have arisen between the City and ABS related to the Contract and the work performed on the Project by ABS; and

WHEREAS, the City and ABS are presently in litigation with each other in the Superior Court of the State of Alaska, Third Judicial District at Unalaska, Case No. 3UN-19-0025 CI (the "Suit"); and

WHEREAS, the City claimed ABS breached the contract by over-excavation of the subgrade, and leaving undetonated explosives on the site of the Project, and sought a judgment in excess of Five Hundred Thousand Dollars (\$500,000) plus costs and attorney's fees; and

WHEREAS, ABS claimed the City owed ABS the balance of the contract price in the amount of Ninety Four Thousand Seven Hundred and Ten Dollars (\$94,710) and disputed having breached the Contract; and

WHEREAS, the City and ABS negotiated in good faith resulting in a proposed Settlement Agreement whereby ABS agrees to pay the City Two Hundred Fifty Five Thousand Two Hundred Ninety Dollars (\$255,290) and both ABS and the City release each other from other claims under the Contract and dismiss the Suit with prejudice; and

WHEREAS, the City Attorney and City Manager recommend the City Council approve the Settlement Agreement.

NOW, THEREFORE, IT IS HEREBY RESOLVED THAT THE UNALASKA CITY COUNCIL authorizes the City Manager to sign the Settlement Agreement between the City of Unalaska and Advanced Blasting Services, LLC.

PASSED AND ADOPTED by a duly constituted quorum of the Unalaska City Council on March 10, 2020.

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Vincent M. Tutiakoff, Sr.  
Mayor

ATTEST:

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Marjie Veeder, CMC  
City Clerk



## MUTUAL RELEASE AND SETTLEMENT AGREEMENT

This Mutual Release and Settlement Agreement (“Agreement”) is by and between the City of Unalaska (“City”) and Advanced Blasting Services, LLC (“ABS”) collectively referred to herein as the “Parties,” or individually as a “Party.”

WHEREAS, the City and ABS entered into an agreement designated as Wastewater Treatment Plant Civil Site Preparation, DPW Project No. 12501-03 and DPW Project No. 12802 City of Unalaska Cells II-1 & II-2 Landfill Expansion (the “Contract”) wherein ABS agreed to work (the “Project”) in accordance with the terms, conditions and specifications stated in the Contract documents; and

WHEREAS, certain issues and disputes have arisen between the parties related to the Contract and the work performed on the Project by ABS; and

WHEREAS, the Parties are presently in litigation with each other in the Superior Court of the State of Alaska, Third Judicial District at Unalaska, Case No. 3UN-19-0025 CI (the “Suit”)

WHEREAS, the City and ABS desire to amicably resolve any and all claims that have been asserted or which could have been asserted by either party concerning the Contract and/or the Project prior to the date of this Agreement.

NOW, THEREFORE, intending to be legally bound, and in consideration of the terms of this Agreement, and other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the parties agree as follows:

1. ABS shall pay to the City the sum of TWO HUNDRED FIFTY-FIVE THOUSAND TWO HUNDRED NINETY DOLLARS AND NO/100 (\$255,290.00) (the “Settlement Payment”), and shall perform the other obligations set forth in this paragraph and this agreement, as a complete and final settlement of all outstanding issues, damages and claims arising out of the contract and/or the Project, including, but not limited to all claims that have been asserted or which could have been asserted by the City prior to the effective date of this Agreement. Said amount shall be paid to the City on or before April 1, 2020.

2. The City, on behalf of itself and its subsidiaries and affiliates, attorneys, directors, agents, subcontractors, successors and assigns, hereby fully and finally releases, remises and forever discharges ABS, and the Ohio Casualty Insurance Company (“Ohio Casualty”) and their subsidiaries, sureties, affiliated corporations, and each of respective present and former consultants, representatives, attorneys, officers, directors, agents, subcontractors, successors and assigns, of and from all manner of debts, demands, actions, causes of actions, suits, accounts, damages, contracts and agreements and any and all other claims and liabilities whatsoever, in law and in equity, known or unknown,

related to, arising from or in any way concerning the Contract, the Project or the work performed thereon and all other claims that have been asserted or which could have been asserted by the City prior to the effective date of this Agreement.

3. ABS on behalf of itself and Ohio Casualty and their subsidiaries, sureties, affiliates, attorneys, directors, agents, subcontractors, successors and assigns, hereby fully and finally releases, remises and forever discharges City, its subsidiaries, affiliated corporations, and each of its respective present and former consultants, representatives, attorneys, elected officials, officers, directors, agents, subcontractors, successors and assigns, of and from all manner of debts, demands, actions, causes of actions, suits, accounts, damages, contracts and agreements and any and all other claims and liabilities whatsoever, in law and in equity, known or unknown, related to, arising from or in any way concerning the Contract, the Project or the work performed thereon and all other claims that have been asserted or which could have been asserted by ABS or its sureties prior to the effective date of this Agreement.

4. Within ten (10) days after receipt of the Settlement Payment by City, the Parties will stipulate to dismissal of the Suit with prejudice and without costs or fees assessed to any Party.

5. This Agreement is in full and final settlement of disputed claims, and it contains the entire agreement between the undersigned parties with regard to the matters set forth herein, and all prior negotiations, understandings and agreements are merged and incorporated herein. This Agreement may not be modified except by a further writing signed by all the parties hereto.

6. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of each of the parties hereto.

7. Each party represents that in entering into this Agreement that; 1) it has the authority to do so, 2) the execution of this Agreement has been duly and properly authorized by the Party on whose behalf this Agreement is executed; and 3) the consent of all persons or entities necessary to the execution of this Agreement has been obtained. Each Party further warrants that it is represented by counsel, that it has made such investigation of the facts as it has thought necessary and appropriate, and that it has relied on the advice of its own attorneys. Except as set forth below, each party will bear its own attorney's fees and disbursements incurred in connection with this matter.

8. The parties to this Agreement further agree that they will not, either individually or in concert with others, maintain or cause to be maintained, any further claims, demands, actions, lawsuits, arbitrations, or similar proceedings in any capacity whatsoever against each other as a result of, or pertaining to, the claims and disputes referenced in this Agreement.

9. The parties to this Agreement warrant that the terms of this Agreement have been completely read and are voluntarily accepted; that they are not executing this Agreement as a result of financial disadvantage; that no promise or inducement has been offered or made except as herein set forth; that this Agreement is executed without reliance upon any statement or representation by any party to this Agreement, or any agents or attorneys of any party to this Agreement, concerning the nature and extent of the other party's damages, or the legal liability, financial responsibility, financial status, or assets of the other party.

10. The parties to this Agreement hereby acknowledge, represent and warrant that they have not voluntarily or involuntarily assigned, transferred, conveyed, sold or given, or granted or suffered a security interest in or encumbrance or lien against, all or any part of the claims against any or all of the parties that are released, discharged and acquitted in this Agreement.

11. The parties have reviewed and understand: (a) the decisions of the Alaska Supreme Court in (i) *Witt v. Walkins*, 579 P.2d 1065 (Alaska 1978), (ii) *Young v. State*, 455 P.2d 889 (Alaska 1969), (iii) *Totem Marine Tug and Barge v. Alyeska Pipeline Services Co.*, 584 P.2d 15 (Alaska 1978), and (iv) *Zeilinger v. Sohio Alaska Petroleum Company*, 823 P.2d 653 (Alaska 1992); and (b) the decision of the United States District Court for the District of Alaska in *United States v. Ramstad Construction Co.*, 194 F. Supp. 379 (D. Alaska 1961). The parties represent and warrant that they understand and accept the consequences of this Agreement despite these decisions and that none of the principles in any of these cases make this Agreement invalid or unenforceable.

12. In the event that a question, dispute or requirement for interpretation or construction should arise with respect to this Agreement, the jurisdiction and venue therefore shall lie exclusively with the courts for the Third Judicial District for the State of Alaska, at Unalaska, Alaska.

13. This Agreement and the respective rights, remedies and obligations of the parties hereunder shall be construed and interpreted in accordance with the laws of the State of Alaska.

14. In the event of a dispute arising under this Agreement, the prevailing Party shall be entitled to its reasonable attorneys' fees and costs.

15. The parties understand and agree that (i) the settlement embodied in this Agreement is a compromise of doubtful and disputed claims; and (ii) that this Agreement and the financial arrangement provided for herein are not to be construed as an admission of liability on the part of any party hereto to any other party, or other person or entity.

16. This Agreement may be executed in one or more counterparts, and each counterpart is deemed to be an original. Signature pages may be transmitted by Portable

Document Format via email or by facsimile, which shall be admissible in evidence.

17. This Agreement shall be effective when all of the parties to this Agreement have executed it and the City has approved it.

EACH PARTY WHO OR WHICH HAS EXECUTED THIS AGREEMENT, EITHER INDIVIDUALLY OR THROUGH ITS AUTHORIZED AGENT, ATTORNEY OR REPRESENTATIVE, HAS CAREFULLY READ IT, THOROUGHLY KNOWS AND UNDERSTANDS THE CONTENTS, CONSEQUENCES AND MEANING OF IT, AND EXECUTED AND DELIVERED IT AS ITS FREE, KNOWING AND VOLUNTARY ACT AND DEED.

CITY OF UNALASKA

ADVANCED BLASTING SERVICES, LLC

By: _____	By: _____
Name: Erin Reinders _____	Julia Saunders
Title: City Manager _____	Title: President
Date: _____	Date: _____

**BOYD, CHANDLER, FALCONER & MUNSON, LLP**

ATTORNEYS AT LAW  
SUITE 302  
911 WEST EIGHTH AVENUE  
ANCHORAGE, ALASKA 99501  
TELEPHONE: (907) 272-8401  
FACSIMILE: (907) 274-3698  
bcf@bcfaklaw.com

**MEMORANDUM**

**TO:** Unalaska City Council



**FROM:** Brooks W. Chandler, City Attorney

**RE:** Unalaska v. ABS Settlement Agreement

**DATE:** March 4, 2020

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Advanced Blasting Services LLC has agreed to settle the WWTP litigation for \$255,290. This amount reflects a settlement value of \$350,000 but gives credit to ABS for \$94,710 in previously withheld payments on a \$3,952,788 contract. The amount of the payment ABS agreed to make is consistent with the direction previously provided to our office and will fully resolve all outstanding disputes associated with construction of the WWTP. The settlement agreement requires ABS to make this payment by April 1. I recommend approval of the Resolution authorizing the city manager to sign the settlement agreement.

The settlement is good value for the City. The City's claims against ABS exceeded \$500,000. Not all the claims were strong. They did involve fairly technical issues regarding blasting technique and geotechnical investigation. There is risk and significant expense associated with any complex litigation. The settlement agreement reflects a fair outcome for the City.

I can be available by telephone to answer any questions.

CITY OF UNALASKA  
UNALASKA, ALASKA

ORDINANCE 2020-03

CREATING BUDGET AMENDMENT #6 TO THE FISCAL YEAR 2020 BUDGET, INCREASING THE BUDGET FOR THE WASTEWATER TREATMENT PLANT IMPROVEMENT PROJECT AND TRANSFERS FROM THE GENERAL FUND BY \$1,149,792 FOR THE SETTLEMENT AGREEMENT WITH ALASKA MECHANICAL, INC.

BE IT ENACTED BY THE UNALASKA CITY COUNCIL

- Section 1. Classification: This is a non-code ordinance.
- Section 2. Effective Date: This ordinance becomes effective upon adoption.
- Section 3. Content: The City of Unalaska FY20 Budget is amended as follows:

- A. That the following sums of money are hereby accepted and the following sums of money are hereby authorized for expenditure.
- B. The following are the changes by account line item:

**Amendment No. 6 to Ordinance 2019-07**

	<u>Current</u>	<u>Requested</u>	<u>Revised</u>
<b>I. OPERATING BUDGETS</b>			
<b>A. General Fund</b>			
Sources:			
Appropriated Fund Balance	\$ 10,223,877	\$ 1,149,792	\$ 11,373,669
Uses:			
Transfer to WWTP	\$ 10,310,894	\$ 1,149,792	\$ 11,460,686
<b>II. CAPITAL BUDGETS</b>			
<b>A. Wastewater Capital - Treatment Plant</b>			
WWTP Improvements			
Sources:			
Transfers From General Fund	\$ 10,310,894	\$ 1,149,792	\$ 11,460,686
Uses:			
WWTP Improvements Project	\$ 31,786,913	\$ 1,149,792	\$ 32,936,705

PASSED AND ADOPTED by a duly constituted quorum of the Unalaska City Council on March 24, 2020.

\_\_\_\_\_  
Vincent M. Tutiakoff, Sr.  
Mayor

ATTEST:

\_\_\_\_\_  
Marjie Veeder, CMC  
City Clerk

**City of Unalaska**  
**Summary of Budget Amendment and Schedule of Proposed Accounts**  
**FY20 Budget Amendment 6, Ordinance 2020-03**

- 1) General Fund - Operating Budget  
 Add \$1,149,792 transfer to the WWTP Improvement Project for AMI Settlement Agreement  
 Increase Appropriated Fund Balance by \$1,149,792
- 2) Wastewater Capital Fund - Treatment Plant  
 Add \$1,149,792 transfer to the WWTP Improvement Project for AMI Settlement Agreement  
 Add \$1,149,792 to Transfers From General Fund

	<u>Org</u>	<u>Object</u>	<u>Project</u>	<u>Current</u>	<u>Requested</u>	<u>Revised</u>
<b>1) <u>General Fund - Operating Budget</u></b>						
<b>Sources:</b>						
Appropriated Fund Balance	01010049	49900		\$ 10,223,877	\$ 1,149,792.00	\$ 11,373,668.50
<b>Uses:</b>						
<i>Transfers Out</i>						
Transfers to Proprietary Capital Projects	01029854	59940		\$ 1,075,000.00	\$ 1,149,792.00	\$ 2,224,792.00
<b>2) <u>Wastewater Capital Fund - Treatment Plant</u></b>						
<b>Sources:</b>						
<i>WWTP Improvements</i>						
Transfers From General Fund	52219848	49100	J0519	\$ 10,310,893.58	\$ 1,149,792.00	\$ 11,460,685.58
<b>Uses:</b>						
<i>WWTP Improvements</i>						
Construction Services	52226053	54500	J0519	\$ 9,311,297.18	\$ 1,149,792.00	\$ 10,461,089.18

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## MEMORANDUM TO COUNCIL

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To: Mayor and City Council Members  
From: Thomas Cohenour, Director, Department of Public Works  
Through: Erin Reinders, City Manager  
Date: March 10, 2020  
Re: Ordinance 2020-03: Creating Budget Amendment #6 to the Fiscal Year 2020 Budget, increasing the budget for the Wastewater Treatment Plant Improvement Project and transfers from the General Fund by \$1,149,792 for the Settlement Agreement with Alaska Mechanical, Inc.

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**SUMMARY:** In May 2013, the City contracted with Alaska Mechanical, Inc. (AMI) for construction of upgrades to the City's Wastewater Treatment Plant (WWTP) Project. In 2015, the WWTP project was completed and placed into operation. Since then, the City and AMI have grappled with unresolved disputes over claims covering numerous issues; some were resolved and some were not. The City and AMI negotiated in good faith resulting in a Settlement Agreement whereby the City agrees to pay AMI \$1,882,500. There is \$732,708 remaining in the Project Budget. Ordinance 2020-03, if approved, will provide \$1,149,792 from the General Fund to cover this action.

\$ 1,882,500	Settlement Agreement
\$ 732,708	Project Balance Available
\$ 1,149,792	Budget Amendment Request

**PREVIOUS COUNCIL ACTION:** Council passed Resolution 2020-13 on February 25, 2020 which authorized the City Manager to sign a Settlement Agreement with Alaska Mechanical, Inc. to resolve Alaska Mechanical, Inc. v City of Unalaska, case number 3AN-15-8280 CI.

**BACKGROUND:** The WWTP upgrades project was mandated by the Alaska Department of Environmental Conservation to bring the plant effluent into compliance with more stringent regulations. On June 3, 2013, the City issued AMI a Notice to Proceed on the upgrades to the WWTP. The new Liquid Stream Building became operational on July 30, 2015 and the WWTP as a whole became operational November 19, 2015. During the course of the contract, 72 Change Proposal Requests (CPR) were received from AMI.

**DISCUSSION:** The City firmly disagreed with AMI over some of the CPRs which were of significant dollar amounts. This led AMI to file suit. Negotiations ensued trying to achieve a global settlement in the best interest of both parties. Resolution 2020-13 was the final result of the negotiated global settlement.



**ALTERNATIVES:** The single best option that stands out is to approve this Budget Amendment and fund the amount stipulated in the Settlement Agreement.

**FINANCIAL IMPLICATIONS:** Staff requests \$1,149,792 from the General Fund be transferred into the Project Budget in order to move forward with the Settlement Agreement.

MUNIS PROJECT J0519 - WWTP IMPROVEMENTS						
DESC	BUDGET	EXPENSED	ENCUMBERED	MUNIS AVAILABLE	PENDING ENCUMBRANCES	ACTUAL AVAILABLE
Construction Services	\$ 6,970,874	\$ 6,970,874	\$ -	\$ -	\$ -	\$ -
Construction Services	\$ 8,566,600	\$ 8,566,600	\$ -	\$ -	\$ -	\$ -
Salaries and Wages	\$ 2,008	\$ 2,008	\$ -	\$ -	\$ -	\$ -
Overtime	\$ 3,697	\$ 3,697	\$ -	\$ -	\$ -	\$ -
Health Insurance Benefit	\$ 775	\$ 775	\$ -	\$ -	\$ -	\$ -
FICA/Medicare Employer Match	\$ 428	\$ 428	\$ -	\$ -	\$ -	\$ -
PERS Employer Benefit	\$ 1,380	\$ 1,380	\$ -	\$ -	\$ -	\$ -
Unemployment Ins Benefit	\$ 14	\$ 14	\$ -	\$ -	\$ -	\$ -
Workers Compensation Ins	\$ 165	\$ 165	\$ -	\$ -	\$ -	\$ -
Other Employee Benefits	\$ 29	\$ 29	\$ -	\$ -	\$ -	\$ -
Legal	\$ 105,631	\$ 105,631	\$ -	\$ -	\$ -	\$ -
Engineering and Architectural	\$ 5,824,928	\$ 5,784,608	\$ 845	\$ 39,475	\$ -	\$ 39,474.88
Other Professional	\$ 314,082	\$ 260,060	\$ 45,951	\$ 8,071	\$ -	\$ 8,071.00
Sampling / Testing	\$ 20,225	\$ 20,225	\$ -	\$ -	\$ -	\$ -
Survey Services	\$ 4,000	\$ 4,000	\$ -	\$ -	\$ -	\$ -
Buildings/Land Rental	\$ 15,376	\$ 15,376	\$ -	\$ -	\$ -	\$ -
Construction Services	\$ 9,311,297	\$ 8,528,124	\$ 98,011	\$ 685,163	\$ 1,882,500	\$ (1,197,337.43)
Telephone / Fax / TV	\$ 7,447	\$ 7,447	\$ -	\$ -	\$ -	\$ -
Advertising	\$ 1,215	\$ 1,215	\$ -	\$ -	\$ -	\$ -
Travel and Related Costs	\$ 1,367	\$ 1,367	\$ -	\$ -	\$ -	\$ -
General Supplies	\$ 129,187	\$ 129,187	\$ -	\$ -	\$ -	\$ -
Computer Hardware / Software	\$ 6,946	\$ 6,946	\$ -	\$ -	\$ -	\$ -
Business Meals	\$ 209	\$ 209	\$ -	\$ -	\$ -	\$ -
Interest Expense	\$ 499,032	\$ 499,032	\$ -	\$ -	\$ -	\$ -
	\$ 31,786,913	\$ 30,909,397	\$ 144,807	\$ 732,708	\$ 1,882,500	\$ (1,149,791.55)

**LEGAL:** N/A

**STAFF RECOMMENDATION:** Staff recommends approval of Ordinance 2020-03.

**PROPOSED MOTION:** I move to schedule Ordinance 2020-03 for public hearing and second reading on March 24, 2020.

**CITY MANAGER COMMENTS:** I support the Staff Recommendation.

**ATTACHMENTS:**

1. Resolution 2020-13 (Authorizing City Manager to sign Settlement Agreement)
2. Settlement Agreement

CITY OF UNALASKA  
UNALASKA, ALASKA

RESOLUTION 2020-13

A RESOLUTION OF THE UNALASKA CITY COUNCIL AUTHORIZING THE CITY MANAGER TO SIGN A SETTLEMENT AGREEMENT WITH ALASKA MECHANICAL, INC. TO RESOLVE ALASKA MECHANICAL, INC. V. CITY OF UNALASKA, CASE NO. 3AN-15-8280 CI

WHEREAS, on or about May 31, 2013, AMI and the City entered into a Construction Contract (the "Contract") for construction of upgrades to the City's Wastewater Treatment Plant (the "Project"), which was to provide chemically-enhanced primary treatment of domestic wastewater and landfill leachate at the Wastewater Treatment Plant; and

WHEREAS, disputes have arisen between the City and AMI resulting in AMI suing the City in the Superior Court of the State of Alaska, Third Judicial District at Anchorage, Case No. 3AN-15-8280 CI (the "Suit"); and

WHEREAS, AMI submitted claims with 14 separate elements including design conflicts, inconsistent drawings, changed site conditions from over-excavation of the subgrade, and delay costs attributed to 1) additional excavation and fill work; 2) a job site search for explosives; and 3) additions and deletions in concrete work, and sought a judgment of four million three hundred ninety-nine thousand, seven hundred forty three dollars and ten cents (\$4,399,743.10) plus costs and attorney's fees; and

WHEREAS, the City submitted a claim for liquidated damages in the amount of two million twenty-five thousand dollars (\$2,025,000) alleging AMI failed to meet mutually agreed deadlines for completion of three phases of the Project; and

WHEREAS, the City and AMI negotiated in good faith resulting in a proposed Settlement Agreement whereby the City agrees to pay AMI one million eight hundred eighty-two thousand five hundred dollars (\$1,882,500) and both AMI and the City release each other from other claims under the Contract but reserve rights should the United States Environmental Protection Administration seek to recover fines from the City as a result of delayed completion of the Project and dismiss the Suit with prejudice; and

WHEREAS, the City Attorney and City Manager recommend the City Council approve the Settlement Agreement.

NOW, THEREFORE, IT IS HEREBY RESOLVED THAT THE UNALASKA CITY COUNCIL authorizes the City Manager to sign the Settlement Agreement between the City of Unalaska and Alaska Mechanical Inc.

PASSED AND ADOPTED by a duly constituted quorum of the Unalaska City Council on February 25, 2020.

  
\_\_\_\_\_  
Vincent Tutiakoff  
Mayor

ATTEST:

  
\_\_\_\_\_  
Marjie Veeder, CMC  
City Clerk



## SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (“Agreement”) is entered into and effective as of the 25<sup>th</sup> day of February, 2020, by and between Alaska Mechanical, Inc. (“AMI”), and The City of Unalaska (“City”). Both are collectively referred to herein as the “Parties,” or individually as a “Party.”

### RECITALS

A. On or about May 31, 2013, AMI and the City entered into a Construction Contract (the “Contract”) for construction of upgrades to the City’s Wastewater Treatment Plant (the “Project”), which was to provide chemically-enhanced primary treatment of domestic wastewater and landfill leachate at the Treatment Plant.

B. Disputes have arisen between the Parties, and the Parties are presently in litigation with each other in the Superior Court of the State of Alaska, Third Judicial District at Anchorage, Case No. 3AN-15-8280 CI (the “Suit”). AMI submitted claims with 14 separate elements including design conflicts, inconsistent drawings, changed site conditions from over-excavation of the subgrade, and delay costs attributed to; 1) additional excavation and fill work; 2) a job site search for explosives and; 3) additions and deletions in concrete work. The City submitted a claim for liquidated damages alleging AMI failed to meet mutually agreed deadlines for completion of three phases of the Project.

C. Except as set forth herein, it is the intent of the Parties to fully and finally resolve any and all disputes between them concerning the Contract and the Project.

### AGREEMENT

In consideration of the mutual promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Payment. The City shall pay AMI the sum of \$1,882,500.00 via wire transfer within thirty (30) days of the effective date of this Agreement (the “Settlement Payment”).

2. Mutual Release. Other than the obligations contained in this Agreement, the Parties agree to release and discharge each other and their respective employees, officers elected officials, engineers, sureties, insurers, attorneys, and agents from all known and unknown charges, complaints, claims, liabilities, controversies, damages, causes of action, debts, and expenses of any nature whatsoever, known or unknown, which they have, or may have had, against the other, whether or not apparent or yet to be discovered, for any acts, omissions, or conduct relating to or arising from the Contract or the Project. Expressly excepted from this release are any warranty claims, which shall neither be enlarged nor diminished, latent defect claims, and should the EPA level fines against the City related to AMI’s work on the Project, AMI and the City reserve all rights and defenses against each other to defend against and address those fines.

3. Project Closeout. AMI shall within thirty (30) days of the effective date of this Agreement provide City; 1) the Consent of Surety to Final Payment, 2) Affidavit of Payment of Debts and Claims; and 3) a copy of the notice of completion filed with the State of Alaska Department of Labor and Workforce Development. AMI shall preserve project records for a period of three (3) years from the effective date of this Agreement.

4. Unknown Claims and Liabilities. The Parties represent that they are familiar with and that their attorneys have explained the meaning of decisions of the Alaska Supreme Court applicable to this Agreement, including but not limited to *Alaska Airlines, Inc. v. Sweat*, 568 P.2d 916 (Alaska 1977) and *Witt v. Watkins*, 579 P.2d 1065 (Alaska 1978), that protection of these holdings is waived, and, with the exceptions of paragraph 2 of this Agreement, that the Parties intend this Agreement to discharge each other and to release each other from any liability for damages or costs caused, enhanced, aggravated, or contributed to with respect to acts and claims within the scope of this Agreement, whether such damages and costs are subsequently discovered or are different in degree or kind than is now alleged, known, anticipated, or expected.

5. Dismissal of Suit. Within ten (10) days after receipt of the Settlement Payment by AMI, the Parties will stipulate to dismissal of the Suit with prejudice and without costs or fees assessed to either Party.

6. No Admission of Liability. The Parties understand and acknowledge that this settlement is the compromise of disputed claims. Neither the transfer of any consideration, the doing of any of the acts referred to in this Agreement, nor anything else contained in this Agreement shall be taken or construed to be an admission on the part of the Parties of any claims, demands, causes of action, obligations, damages or liability asserted by the other Party. The Parties expressly deny any and all such claims, demands, causes of action, obligations, damages and liabilities.

7. Attorneys' Fees and Costs. Except as specified below, all attorneys' fees, costs, and expenses incurred by the Parties shall be borne by the Party incurring them.

8. Complete Agreement. This Agreement contains all the promises and covenants made by the Parties. This Agreement supersedes any and all prior documents, discussions, communications, representations, understandings, negotiations, agreements, or contracts by and between the Parties. It is intended that the only obligations which remain between the Parties are expressed in this Agreement.

9. Binding Agreement. This Agreement shall bind the heirs, successors, representatives, and assigns of each Party.

10. Non-Reliance. In executing this Agreement, each Party warrants that it is relying solely on its own judgment and knowledge, and that it is not relying on any statement or representation made by the other Party or its agents.

11. Representation. The Parties acknowledge that they have been represented by counsel in the preparation of this Agreement, have been fully advised as to the legal effect of this Agreement, and have executed this Agreement freely and voluntarily. The Parties acknowledge that both have had the opportunity to participate in the drafting of this Agreement. Thus the

principle that ambiguities are to be construed against the drafter shall not be applicable in any litigation concerning this Agreement.

12. Governing Law. All questions with respect to the construction of this Agreement and the rights and liabilities incurred hereto shall be governed by the laws of the State of Alaska without regard to its choice-of-law provisions.

13. Authority. The individuals executing this Agreement on behalf of a corporation or other entity represent and warrant to the other Party; 1) that they have the authority to bind the Party on whose behalf they execute this Agreement, 2) the execution of this Agreement has been duly and properly authorized by the Party on whose behalf this Agreement is executed; and 3) the consent of all persons or entities necessary to the execution of this Agreement has been obtained.


14. Prevailing Party Attorneys' Fees. In the event of a dispute arising under this Agreement, the prevailing Party shall be entitled to its reasonable attorneys' fees and costs.


15. Counterparts. This Agreement may be executed in one or more counterparts, and each counterpart is deemed to be an original. Signature pages may be transmitted by Portable Document Format via email or by facsimile, which shall be admissible in evidence.

By signing below, each Party knowingly and voluntarily executes this Agreement and binds such Party to this Agreement.

**ALASKA MECHANICAL, INC.**

**CITY OF UNALASKA**

By:   
Name: Darren Buss  
Its: Vice President  
Date: February 21, 2020

By:   
Name: Erin Reinders  
Its: City Manager  
Date: February 26, 2020