

Regular Meeting
Tuesday, March 24, 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

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

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

Due to recommended social distancing measures to stop the spread of coronavirus, City Council will be holding this meeting via telephone conference call. Members of the public are encouraged to participate by telephone, though they can listen to the meeting in Council Chambers at City Hall. Copies of the documents related to the meeting will be available on the City Website, by email request to the City Clerk, and in the lobby at City Hall.

Public comments and questions can be emailed to the City Clerk no later than 5:00 p.m. on the date of the meeting. These comments and questions will be read by the clerk during the meeting. Email any requests for the council packet, comments or questions to the City Clerk at mveeder@ci.unalaska.ak.us

MEETING CALL IN NUMBER (toll free)
(888) 251-2909
Access code 5646150

AGENDA

1. **Call to order**
2. **Roll call**
3. **Adoption of agenda**
4. **Approve minutes of previous meetings:** March 10, 2020 and March 18, 2020
5. **Report**
 - a. City Manager
6. **Community Input & Announcements**
7. **Public testimony on agenda items**
8. **Public hearing**
 - a. 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.
9. **Regular agenda**
 - a. Second reading and adoption of 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.
10. **Council Directives to City Manager**
11. **Community Input & Announcements**
12. **Executive Session:** IBU Negotiations
13. **Adjournment**

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



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Erin Reinders, City Manager

MINUTES

1. Call to order

Mayor Tutiakoff called the Regular Meeting of the Unalaska City Council to order on Tuesday, March 10, 2020, at 6:00 pm, in the Unalaska City council chambers.

2. Roll call

Present:

Mayor Tutiakoff, Sr.
Dennis Robinson
Darin Nicholson
Thomas D. Bell
Alejandro Tungul
David Gregory
Shari Coleman

Absent:

None

3. Pledge of allegiance

Council Member Coleman led the Pledge of Allegiance. A moment of silence was observed for community member Trey Henning.

4. Recognition of visitors

Dr. Murray Buttner, IFHS Clinic
Donna Bean, RN, BSN, State Public Health Nurse III
Brooks Chandler, City Attorney (Telephonic)

5. Adoption of agenda

Gregory made a motion to adopt agenda; Tungul seconded.
No objections.
Motion passed by consensus.

6. Employee Anniversary Awards

Mayor and Council recognized and awarded service plaques to the following city employees:

- 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
Tungul made a motion to approve February 25, 2020 meeting minutes; Gregory seconded.
No objections.
Motion passed by consensus.
8. **Reports**
 - a. City Manager
In addition to the report in the packet, City Manager announced staff is working closely with the IFHS clinic, industry partners and community agencies regarding preparedness efforts concerning the Coronavirus. City Manager introduced Donna Bean, RN, BSN, State Public Health Nurse III and Dr. Murray Buttner, IFHS Clinic. Donna Bean, RN and Dr. Buttner gave a presentation about the virus and what individuals can do to prepare for and prevent the spread of the coronavirus. After the presentation they answered Council questions.
 - b. Financial Reports January 2020 – in the packet.
 - c. City Attorney conflict of interest opinion related to Ounalashka/Chena Power, LLC
Brooks Chandler, City Attorney, explained the conflict of interest opinion related to Ounalashka/Chena Power, LLC and answered Council questions.
9. **Community Input & Announcements**
PCR – St. Patrick’s Day Swim next week at 6:30pm
10. **Public testimony on agenda items** – None.
11. **Public hearing**
Mayor Tutiakoff, Sr. opened the Public Hearing for Ordinance 2020-01 and Ordinance 2020-02. Hearing not testimony, the Public Hearing closed.
 - 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**
 - a. Unfinished Business
 - i. Ordinance 2020-01: 2nd 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

Coleman made a motion to adopt Ordinance 2020-01; Robinson seconded.
Roll Call Vote: Nicholson – yes; Gregory – yes; Coleman – yes; Tungul – yes; Bell – yes; Robinson – yes.
Motion passed 6-0.
 - ii. Ordinance 2020-02: 2nd Reading, Amending Unalaska Code of Ordinances § 6.28.030, Required Exemptions, to define exempt vessels and to rename and reorganize the code section

Robinson made a motion to adopt Ordinance 2020-2; Tungul seconded.
Roll Call Vote: Gregory – yes; Coleman – yes; Tungul – yes; Nicholson – yes; Robinson – yes; Bell – yes.
Motion passed 6-0.

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

Robinson made a motion to adopt Resolution 2020-15; Tungul seconded.

Roll Call Vote: Coleman – yes; Gregory – yes; Nicholson – yes; Robinson – yes; Tungul – yes; Bell – yes.

Motion passed 6-0.

- 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.

Gregory made a motion to move Ordinance 2020-03 to Second Reading and Public Hearing on March 24, 2020; Tungul seconded.

Roll Call Vote: Tungul – yes; Gregory – yes; Robinson – no; Bell – yes; Nicholson – yes; Coleman – yes.

Motion passed 5-1.

13. **Council Directives to City Manager** – None.

14. **Community Input & Announcements** – Council Member Bell and Mayor Tutiakoff, Sr. expressed kind sentiments for community member Trey Henning.

15. **Executive Session**

7:15 pm - Robinson made a motion to meet in Executive Session to discuss and receive advice from the City Attorney about matters which have serious legal implications and the immediate public discussion of which may adversely affect the legal positions of the city; Tungul seconded.

No objection.

Motion passed by consensus.

- 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

8:42 pm – Reconvened to Regular Session.

16. **Adjournment**

Robinson made a motion to adjourn meeting; Tungul seconded.

No objection.

Meeting adjourned at 8:44 pm.

Marjie Veeder, CMC
City Clerk

rfw

Special Meeting
Wednesday, March 18, 2020
6:00 p.m.



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MINUTES

Pursuant to the City's Manager's Emergency Order of March 17, 2020, suspending the provisions of UCO § 2.20.075 regarding council member participation in meetings by teleconference, and due to recommended social distancing measures to stop the spread of coronavirus, this meeting was conducted via telephone conference call. The call in number was published with the agenda. Members of the public were encouraged to participate by telephone and did. The Mayor, City Manager and City Clerk were physically present in Council Chambers and audio of the meeting could be heard in the room by anyone who chose to attend. Before the meeting was called to order, the City Clerk provided guidance to the Mayor, Council and the public to facilitate holding the meeting via telephone.

1. **Call to order.** Mayor Tutiakoff called the meeting to order via telephone conference at 6:03 p.m.
2. **Roll call.** The City Clerk called the roll.

Present via Telephone Conference Call: Council Members Thomas Bell, Shari Coleman, David Gregory, Darin Nicholson, Dennis Robinson and Mayor Vincent Tutiakoff.

Absent: None.

The Mayor announced a quorum was present.

3. **Pledge of Allegiance.** Because the American Flag was not present at each caller's location, the Pledge of Allegiance was not performed.
4. **Adoption of agenda.** Tungul moved to adopt the agenda; second by Robinson. Roll Call Vote: Bell – yes; Coleman – yes; Gregory – yes; Nicholson – yes; Robinson – yes; Tungul – yes. Motion to adopt agenda passes 6-0.
5. **Resolution 2020-16:** Declaring a local emergency and authorizing the City Manager to take necessary actions to reduce the impact and spread of the coronavirus known as COVID-19 throughout the City of Unalaska.

Robinson moved to adopt Resolution 2020-16; second by Coleman.

Comments by City Manager; IFHS CEO Melanee Tiura commented; council members commented and asked questions; Dr. Megan Sarnecki from IFHS responded to questions; City Manager responded to questions.

Robinson moved to amend Resolution 2020-16 to add another “be it further resolved” clause so that the declaration a local emergency will remain in effect for so long as the declaration of a Public Health Disaster Emergency in the State of Alaska remains in effect; second by Tungul.

Council members commented. City Clerk clarified the wording of the amendment.

Roll Call Vote on the motion to amend: Bell – yes; Coleman – yes; Gregory – yes; Nicholson – yes; Robinson – yes; Tungul – yes. Motion passes 6-0. Amendment approved 6-0.

Roll call vote on main motion: Bell – yes; Coleman – yes; Gregory – yes; Nicholson – yes; Robinson – yes; Tungul – yes. Motion passes 6-0. Resolution 2020-16 adopted as amended 6-0.

6. **Questions and comments** from telephone participants Diane Kirchofer and Chris Chamberlain.
7. **Adjournment.** Motion to adjourn by Robinson; second by Tungul. Roll Call Vote: Bell – yes; Coleman – yes; Gregory – yes; Nicholson – yes; Robinson – yes; Tungul – yes. Motion to adjourn passes 6-0.

Meeting Adjourned at 6:26 p.m.

Marjie Veeder, CMC
City Clerk

MEMORANDUM TO COUNCIL

To: Mayor and City Council Members
From: Erin Reinders, City Manager
Date: March 24, 2020
Re: City Manager Report

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 City of Unalaska has declared a state of emergency. I have made the determination to close city facilities to the public and go down to minimal staffing levels as a protective measure for our employees and the community. As you know, City of Unalaska stood up the Emergency Operations Center (EOC) to provide a framework for coordinated communications, preparedness and response. This has now expanded into a Unified Command with the Clinic to better ensure a continued coordinated response as this situation unfolds. We are also including representatives from the School District and Industry, again in support of a coordinated effort. Thank you to City Staff and the numerous individuals, community organizations, local businesses, and industry partners for their continued effort to help protect and prepare our community. I encourage all of us to take the necessary measures to flatten the curve.

Council Meetings: As a matter of safety, Council meetings will be held telephonically. We will also be keeping the meetings as short as possible and addressing only time sensitive and required actions. Other materials may be included in packets for informational purposes. Other items may be placed on future agendas as this situation allows. The budget schedule may be changed and steps altered somewhat, but we are currently on track to have the budget approved in the required time period.

Executive Level Searches: The start date of our new Fire Chief, Patrick Shipp, was originally set for April 1, 2020. It is unclear how this may change based on travel challenges. Remaining executive level vacancies include the Finance Director and Police Chief.

- *Finance Director.* I have determined to not extend an offer to the candidate who participated in an onsite interview. We will be meeting the week of March 23rd to develop our next steps. 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. This is currently on hold given the emergency situation.

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

MEMORANDUM TO COUNCIL

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.

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 25th 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.

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

CITY OF UNALASKA

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